Strategic Retirements of Elected and Appointed Justices: A Hazard Model Approach

Todd A. Curry, University of Texas at El Paso
Mark S. Hurwitz, Western Michigan University

Strategic accounts of judges usually consider various aspects of dispensation of cases. We look beyond these traditional areas of study in judicial politics to examine whether state supreme court justices render strategic retirement decisions. More specifically, we posit a dual theory of strategic retirements conditioned upon the institutional arrangements in which elected and appointed justices make retirement decisions. Employing an event history framework that analyzes the duration of state supreme court justices' tenure and reason for departing the bench in the several selection and retention systems from 1980 to 2005, we show that elected and appointed justices engage in strategic retirement behavior but do so as a function of the diverse environments in which they operate. Our study implicates a number of theoretical, empirical, and normative issues regarding the selection and retention of state supreme court justices.

Political scientists have studied with great interest how politicians and regimes gain power. We devote much attention to topics such as who governs (Dahl 1961), electoral outcomes and voting behavior (Abramson et al. 2015; Lewis-Beck et al. 2008), campaigns (Campbell 2008), ambition and political parties (Rohde 1979; Schattschneider 1960), and judicial appointments (Goldman 1997) for good reason. The pursuit and ascent of political power defines political behavior and outcomes, and it is essential to explain and understand these phenomena.

Notwithstanding, it also is imperative that we understand the circumstances by which political power ceases. That is, when one politician or regime achieves power, another concurrently loses power. Are the conditions for exiting political office strategic and voluntary, or involuntary and forced? Can we explain the circumstances surrounding the end of political power? In this article, we are interested in the latter concept, and the venue in which we analyze the salient issue of when political power terminates concerns state supreme courts.

More particularly, we seek to explain why state supreme court justices depart the bench, and we do so under the context of the rich institutional variation attendant in state courts. While the several methods of judicial selection place

different pressures on justices when seeking the bench, these political institutions also vary in how justices retain their judicial positions. Some justices must stand for re-election, while others need to receive the confidence of their governor or legislature to serve an additional term. Justices' careers ultimately are finite, and the decision whether to end a career is often coupled with the question of why to end it.

Are judicial retirement decisions a function of strategic calculus? Theoretic and normative motives make it essential for political scientists to understand whether, when, and why political actors behave strategically. This is particularly critical when examining the judiciary, often thought to be politically isolated, whether by design, socialization, or otherwise. As Hall succinctly stated: "Not only are judges believed to be inattentive to . . . politics because it is not their function to do otherwise, but normative proscriptions stipulate that judges *should not* take such considerations into account" (2001, 1113). Despite the conventional wisdom, evidence of strategic retirements would signify that justices are politically astute.

Whether justices make politically strategic retirement decisions is a nontrivial inquiry into judicial behavior. When a new justice joins the bench, his/her ideology and opinions supplant that which previously existed (Hall 2015). To study

Todd A. Curry (corresponding author: tacurry@utep.edu) is an assistant professor of political science at University of Texas at El Paso, El Paso, TX 79968. Mark S. Hurwitz (mark.hurwitz@wmich.edu) is a professor of political science at Western Michigan University, Kalamazoo, MI 49008–5346.

judicial retirements, then, is to examine how law and politics transform over time, since strategic retirements require a justice to be forward looking and to acknowledge his/her political role in the interpretation of law. Following upon these ideas, we analyze whether state supreme court justices make strategic retirement decisions.

INSTITUTIONS AND RETIREMENTS IN STATE SUPREME COURTS

There are myriad possibilities for state supreme court justices to end their careers on the bench. Justices might lose an election, fail to be reappointed, be nominated to the federal bench, be forced to retire because of age limits, be impeached, retire voluntarily, or die. Most of these paths for departing the bench require positive action on behalf of other actors or otherwise are out of the control of the justices. The choice to retire from the bench, then, is the only logical action that can be carried out unilaterally by an individual justice.[1] Nevertheless, a decision to quit the bench voluntarily does not take place in a vacuum, as a retirement determination could be conditioned by the institutional arrangements of selection and retention (Hall 2001).

When examining the landscape of state courts of last resort, a defining characteristic is the variation by which justices are selected and retained, including partisan, non-partisan, and hybrid elections, gubernatorial appointment, legislative selection, and the so-called Missouri Plan, which combines gubernatorial appointment via nomination by commission with retention elections.[2] Yet selection and retention systems generally can be categorized as (i) appointive or (ii) electoral (Berkson 1980). Consequently, we classify states as utilizing either one of these broad categories. Each of these mechanisms provides disparate incentives and threats to tenure, which in turn have the potential to influence a justice's retirement decision.

While scholarship focuses on selection, the retention mechanism is the key influence on a justice's decision to retire. Since most states do not provide for lifetime tenure, justices appointed to discrete terms face the threat of non-renewal by the governor or legislature. Retention by the executive or legislature allows an appointed justice to anticipate the likelihood of an ideologically congruent replacement. Accordingly, states with appointive systems pro-vide justices with the potential to make strategic retirement decisions.

The threats to renewal are very different for justices in states that utilize popular elections. Consequently, the motivation behind strategic retirements in appointive systems does not apply to electoral systems, since a justice facing a competitive election usually does not know the likelihood of an ideologically similar replacement. Instead, the potential of losing is a cogent threat to a justice facing re-election (Hall 2001). Accordingly, this logical perception of electoral vulnerability enables elected justices to retire strategically.

The potential for strategic retirement is countered by the argument, often made by those seeking judicial reform, that the Missouri Plan (which reformers term "merit selection") shields justices from political influence and thus should replace electoral systems. For instance, the American Judicature Society (AJS), one of the initial organizations to promote reform of the judicial system (Krivosha 1990), has claimed: "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" (American Judicature Society 2011).[3]

Are justices' retirement decisions a function of the institutional design of the assorted selection and retention systems, as we claim? Or, do some mechanisms insulate justices from political pressures, as reform advocates assert? In this article, we posit that justices exploit the opportunities and threats inherent in the varied political environments that arise from selection and retention rules to make strategic retirement decisions. In particular, we examine whether justices who perceive electoral vulnerability retire strategically. We then take the study further by analyzing whether justices in appointive systems retire strategically.

A DUAL THEORY OF STRATEGIC RETIREMENTS IN STATE SUPREME COURTS

The assumption that judges engage in strategic behavior was not always a prominent theory in political science. After Murphy (1964) elegantly explained the possible ways US Supreme Court justices could behave strategically, strategic accounts of judicial behavior languished for many years. In this regard, while Rohde and Spaeth (1976) published their formulation of justices' decision making based in part on

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1. A justice turning down a promotion to a federal court would constitute a voluntary action. However, because of the rarity of said occurrences, we do not consider them here.

2. There are numerous variations of state selection systems in general and the Missouri Plan in particular (see Hurwitz and Lanier 2008; Kritzer 2015; Shugerman 2012).

3. Other reform groups that have promoted variants of the Missouri Plan over judicial elections include the American Bar Association, Brennan Center for Justice, and Justice at Stake, as well as notable individuals such as retired Supreme Court Justice Sandra Day O'Connor (Hall 2015).

strategic behavior, this motivation was dropped in latter iterations (see Segal and Spaeth 2002).

After lying dormant for many years, theoretic and empirical accounts of strategic judicial behavior re-emerged. Using data and statistical methods not previously available, scholars harkened back to Murphy's conjectures to examine how strategic interaction motivates judicial behavior. The result is a burgeoning literature on strategic behavior in a variety of contexts, particularly state supreme courts. In what has become a seminal article, among the first to incorporate the concepts of rational choice theory and strategic voting to judicial behavior, Hall (1992) illustrates that justices in the ideological minority modify their votes on salient issues to increase their chances for re-election. Langer (2002) examines the conditions under which justices would be willing to engage in judicial review, finding that justices strategically consider the likelihood of reprisal from the legislature. And Brace and Boyea (2008) show that the institutions of selection systems, as well as public opinion, influence justices' decisions and the courts on which they sit in direct and indirect ways (see also Brace and Hall 1993; Cann and Wilhelm 2011; Hall 1992, 2001; Hall and Brace 1989; Savchak and Barghothi 2007).[4]

If, as this literature suggests, justices are forward-looking rational actors who make strategic decisions regarding dispensation of cases, then they also might behave strategically in other areas, including, as we contend, the decision to retire. Hall (2001) utilized the plethora of research on career decisions in Congress as a theoretical basis for her analysis of retirements from state supreme courts. These studies contend that House members evaluate their electoral environments when deciding whether or not to run for office (see Hall and van Houweling 1995; Hibbing 1982; Rohde 1979; Schlesinger 1966). Like Hall, we posit that elected justices should retire strategically when confronted with the vulnerability of a probable electoral defeat.

Hall also relied upon the literature on federal court retirements. These studies theorize that an Article III judge is more likely to retire when the president (and to a lesser degree the Senate) is of the same political party. Yet, the literature is "relatively underdeveloped," and the results are "mixed" (Nelson and Ringsmuth 2009, 490). Notwithstanding, the theoretic appeal behind these studies is palpable, and thus we apply it in part to state supreme courts. In particular, we claim that appointive systems allow justices to retire

strategically when the likelihood of ideological congruence in their successor is high.

How should we classify the Missouri Plan, which incorporates aspects of both appointive and electoral systems? The answer is critical because it affects our theoretic expectation. For instance, if we consider the Missouri Plan an appointive system, then we would expect its justices to be motivated by the ideology of the selector. If instead we deem the Missouri Plan an electoral system, then we would anticipate justices to be most influenced by the probability of defeat in their retention elections.

A priori information compels us to categorize the Missouri Plan as an appointive system. Missouri Plan justices are dependent upon the governor, a central figure in this selection process (Shugerman 2012). Furthermore, Missouri Plan justices confront an extremely low risk of defeat in retention elections, which are noncompetitive, nonpoliticized events (Kritzer 2015). Despite the media's focus on certain high-profile retention elections, the overwhelming majority of justices subject to retention elections are not at all electorally vulnerable. Since Missouri Plan justices likely appreciate the negligible probability of defeat in retention elections, this institution should not motivate their retirement decisions. Instead, we believe Missouri Plan justices should behave comparably to those in appointive systems. In other words, we would expect justices in Missouri Plan states to retire when an ideological ally occupies the governorship.[5]

We now can assert our theory of retirements in state supreme courts. More precisely, with these stated expectations, we posit a dual theory of strategic retirements, one thread of which applies to elected justices, while another pertains to appointed justices. The first strand of our dual theory pertains to justices in competitive electoral systems.[6] If a justice's renewal is dependent upon a competitive electoral system, strategic retirement should arise when a justice perceives an electoral threat (Hall 2001). As our *election*

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4. The literature also includes numerous studies on strategic behavior in federal courts (e.g., Cross 2007; Hammond, Bonneau, and Sheehan 2005).

5. Our classification of the Missouri Plan as an appointive system differs from that of Hall (2001) primarily because we are examining different conditions. Hall examined the retirement behavior of justices facing any type of re-election, whether partisan, nonpartisan, or retention, while we seek to analyze the influences of electoral and appointive systems on justices' decisions to retire.

6. Competitive elections include partisan, nonpartisan, and hybrid elections. Michigan and Ohio employ hybrid elections for their justices, which are competitive elections combining elements of partisan and nonpartisan systems (Hall 2015; Wheat and Hurwitz 2013). We do not include the Missouri Plan's retention elections in this category because retention elections are not competitive elections with attendant electoral vulnerability, keys to our election hypotheses.

hypotheses provide, electoral vulnerability can exist when one of the following conditions is present:

H1. Justices in states with competitive electoral systems (partisan, nonpartisan, or hybrid elections) are more likely to retire when the probability of electoral defeat increases due to a prior close election.

H2. Justices in states with competitive electoral systems (partisan, nonpartisan, or hybrid elections) are more likely to retire when the probability of electoral defeat increases due to an increase in ideological distance from the electorate.

H3. Justices in states with competitive electoral systems (partisan, nonpartisan, or hybrid elections) that include interim replacements are more likely to retire when the appointing body is ideologically congruent.

Election hypotheses 1 and 2 provide that weak incumbents are more likely to retire than face a competitive election, so as to avoid potential defeat at the polls. Recognizing their electoral vulnerability and preferring not to lose, these justices value retiring over potentially losing an election, and they behave accordingly. Election hypothesis 3 recognizes that elected justices may retire strategically when the governor is an ideological ally empowered to make an interim appointment.

The second aspect of our dual theory concerns justices in appointive systems. For appointed justices, the only pragmatic way to retire strategically is to leave the bench when the replacing institution is of a similar ideology, as we assert in the following *appointment hypothesis*:

H4. Justices in states with appointive systems (gubernatorial appointment, legislative selection, or Missouri Plan) are more likely to retire when the appointing body is ideologically congruent.

Appointment hypothesis 4 diverges from election hypotheses 1–3 because of the differing institutional environments in which justices seek reappointment or re-election (Brace and Boyea 2008; Leonard 2014). Partisan control of government matters (Kelly 2009). Thus, appointed justices are more likely to retire when they believe their preferences will continue on the bench based on an ideologically congruent appointment by the governor or legislature.

In sum, we expect justices in appointive systems to retire when the appointing authority is ideologically compatible with their own policy preferences. On the other hand, we presume justices facing competitive elections will retire when

electoral vulnerability increases. In the following section we describe how we test our dual theory of strategic retirements.

DATA AND METHODS
Data, case selection, and variables

We collected data on the tenure of every state supreme court justice who served in one of 18 states from 1980 to 2005. To comport with our dual theory of strategic retirements, we categorized each state as employing either an appointive system (including gubernatorial appointment, legislative selection, or Missouri Plan) or a competitive electoral system (whether partisan, nonpartisan, or hybrid). This process yielded longitudinal data on the duration these justices spent in office as well as the moment in time and reason they exited the bench, whether by retirement, electoral loss, or otherwise. These data represent the dependent variable in our study (Judicial Tenure). Our data set includes nearly 400 justices and over 200 departures from the bench. Table 1 illustrates the states we analyze, their respective methods of selection and retention, and the number of justices and their retirements during the time period examined.

We selected the particular states in our analysis because they all possess characteristics utilized by the broader universe of states. Critically, each of these states employs its mechanism throughout the entire time period we analyze. That is, a nontrivial number of states altered their selection mechanism during our time period (Hurwitz and Lanier 2008), and we excluded them from the analysis so as not to induce superfluous institutional variance. We included no state with lifetime judicial tenure, as all of the states in our data set comprise limited terms of office. Moreover, we balanced the number of states with disparate selection and retention methods, so as to reflect the universe of states while checking that no single system overwhelmed the model.

We then chose the particular states in our analysis because they feature classic attributes, without significant modification, of the several methods of selection and retention. Only four states utilize partisan elections for their supreme court, and we included all of them in our analysis. We randomly sampled four states each utilizing nonpartisan elections and the Missouri Plan. We followed the same rule for gubernatorial appointment systems, including only two states, since so few employ gubernatorial appointment without lifetime appointment. We supplemented our appointment category with the two states that employ legislative selection. Finally, we augmented our data set with the two states that employ competitive hybrid elections, which incorporate traits of partisan and nonpartisan elections. As table 1 displays, there are over 3,000 total observations in our models. Based on these sampling decisions, which enabled us to

Table 1. Methods of Selection and Retention in State Supreme Courts, 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	Nonpartisan election	20	7
Oregon	Nonpartisan election	24	15
Washington	Nonpartisan election	28	15
Wisconsin	Nonpartisan election	18	9
Michigan	Hybrid election	20	10
Ohio	Hybrid election	23	10
Electoral system total		244	122
Appointive systems:			
Maine	Gubernatorial appointment	22	11
New Jersey	Gubernatorial appointment	19	12
South Carolina	Legislative selection	14	8
Virginia	Legislative selection	17	12
Iowa	Missouri plan	20	12
Kansas	Missouri plan	18	10
Oklahoma	Missouri plan	18	9
Nebraska	Missouri plan	19	10
Appointive system totals		147	84

Note. Number of electoral system observations = 2,048; number of appointive system observations = 1,548.

examine retirements in various contexts, we are confident that our sample is representative of the universe and that the findings derived from our sample are generalizable.

We now specify theoretical variables we employ to test our dual theory of retirements. These causal variables are largely different for each model since, as we posit, appointive and electoral systems enable justices to retire strategically in dissimilar ways. To test hypothesis 4, our appointment hypothesis, we create a dichotomous measure of ideological agreement between the justice and the nominating body by utilizing the partisan identification of the justice and the party in power of the institution in charge of appointments (Ideological Agreement).[7]

To test election hypothesis 1, we specify a close victory in the justice's prior election (Close Election). For states with just two candidates appearing on the ballot, we code a close election as one in which the incumbent received less than 55% of the vote, a decision rule that comports with those in election studies (Bonneau 2007). In blanket elections (when more than two candidates are on the ballot), we determine a close election by taking the expected distribution of the vote and adding 3. We then code a victory with less than this percentage as a close prior election, a convention we also export from election studies. For example, with five candidates on a ballot, we would expect an even 20% vote share; therefore, we would code an incumbent who received 23% or less as having won a prior close election.

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7. We do not apply a continuous ideological difference variable stemming from PAJID (Brace, Langer, and Hall 2000) and Berry et al. (1998) ideology scores. Since Berry scores measure the entire state government's ideological standing, not the specific institution responsible

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for judicial appointments, Berry scores are not as appropriate as our dichotomous Ideological Agreement variable, which better captures the variance in which we are interested (see Berry et al. 2013).

To test election hypothesis 2 with a variable measuring ideological distance between the justice and electorate,[8] we take the difference between the absolute value of the justice's PAJID score (Brace, Langer, and Hall 2000) and the Berry et al. (1998) ideology score for the state's electorate (Ideological Distance).[9] Finally, for hypothesis 3, we use the same coding technique we employed for hypothesis 4, which results in a dichotomous measure of ideological agreement between the justice and the selector positioned to make an interim appointment (Ideological Agreement).

Since justices may retire for reasons unrelated to the risks and opportunities offered by selection and retention systems, we include several personal and institutional variables to control for conditions that may influence justices' retirement. As for personal characteristics, we include the justice's age (Age), as individuals should be more likely to retire as they become older (Hall 2001).[10] We include var-

iables for gender (Gender) and minority status (Minority) to control for their potential influence. With respect to institutional characteristics, we control for term length (Term Length), as justices with longer terms may retire later than otherwise (Gaines, Nokken, and Groebe 2012). As judicial salary may influence retirements (Hall 2001), we control for the raw salary of the justice (Salary), taken from the Judicial Salary Tracker (National Center for State Courts 2015b). To control for increased workload, which may influence retirement decisions (Leonard and Ross 2014), we use the raw total of disposed cases in each state (Workload) from the Court Statistics Project (National Center for State Courts 2015a).

We incorporate three additional institutional variables to specify more fully our elections model. Two states in our data set, Michigan and Oregon, provide for the listing of incumbency on the ballot, which generally carries an advantage over challengers in judicial elections (Baum 1983; Bonneau and Cann 2011); thus, we include a dummy variable representing incumbency labels (Ballot Incumbent). In some state supreme courts, candidates do not compete statewide but instead run for district seats (Gibson 2012; Hall and Bonneau 2008), so we include a dummy to capture district representation (District). Finally, in most electoral states, governors are empowered to make interim appointments to fill vacancies (Graham 1990). These interim appointees are acutely vulnerable when facing their first competitive election (Hall and Bonneau 2006). Accordingly, we specify interim appointees facing their first election (Interim Appointee). Table 2 provides coding details of all variables included in our analysis.

An event history framework

With our data and variables in place, we now discuss our strategic retirements models, which test our appointment hypothesis and our three election hypotheses. Each is based on an event history context, also known as hazard or duration models (Collett 2003). Event history models examining temporally ordered data have a rich history in political science (Box-Steffensmeier and Jones 2004), including research on judicial politics. For instance, Langer et al. (2003) apply a duration model to analyze how associate justices on state supreme courts select their chief justice, while Shipan

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8. We do not use the raw PAJID score to place each justice on an ideological continuum. Instead, we take the difference between the absolute value of a justice's PAJID score and the Berry et al. (1998) ideology score for electorate. By operationalizing our Ideological Distance variable in this way to test hypothesis 2, we are not concerned whether or not a justice is coded as liberal or conservative. Instead, we are concerned with the relative distance of that justice from the electorate. In other words, the direction of a justice's ideology is not critical; rather, what is critical is the relative distance of that justice's ideology to the electorate. As our hypothesis 2 provides, the greater the distance between a justice's ideology and the electorate, in whatever direction, the more likely that justice is to retire.

9. While criticism of PAJID can be found in the literature (see, e.g., Bonica and Woodruff 2015; McCall 2003; Windett, Harden, and Hall 2015), alternative measures of ideology either are inappropriate or not available for our analysis. First, if we applied partisan identification (Party ID) over PAJID, we would negate differences among justices within a state, distinctions that are critical to a justice's perception of his/her ideology vis-à-vis the electorate. Second, we believe that the alternative CF scores by Bonica and Woodruff and SDIRT scores by Windett, Harden, and Hall are important additions to the literature, as they serve not only as alternative measures to PAJID but also help to move the discipline forward in a cumulative sense. Unfortunately, neither CF nor SDIRT scores serves our purpose, primarily because they do not reach back long enough into the past for us to employ them in our analysis; at this point in time, they generally are not available prior to 1990 or 1995, respectively, which would exclude a large portion of our analysis (our data commence in 1970). Finally, Brace et al. (2000, 408) show that PAJID scores are valid, stable, and reliable in all the competitive electoral states in our data set, save perhaps for Kentucky, where Party ID outperformed PAJID. As well, we code our Ideological Distance variable with the same operationalization as Langer and Brace (2005). For these reasons, PAJID has been utilized appropriately in diverse studies of state courts (see, e.g., Comparato and McClurg 2007; Hurwitz and Lanier 2003; Randazzo, Waterman, and Fix 2011), and thus we are confident in our application of PAJID to operationalize our Ideological Distance variable. See also footnote 13 for a discussion of robustness checks using alternative models.

10. We use a variable to capture age rather than mandatory retirement for two reasons. First, in states with a mandatory retirement rule, age and

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mandatory retirement are highly correlated. Second, individuals in states that do not have mandatory retirement are still more likely to retire as they get older. Since both variables cannot be included, Age leads to a better specified model. Moreover, even if a mandatory retirement rule forces some justices off the bench, this will be captured by our Age variable and by our coding and analysis of this event.

Table 2. Operationalization of Variables

Dependent Variable	Coding/Risk
Judicial Tenure	Longitudinal variables, with attendant potential risks of leaving bench. In election model, potential risks are retirement and electoral loss; in appointment model, potential risk is retirement.
Independent variables of interest in election model:	
Close Election (test of hypothesis 1)	Dichotomous. 1 if close prior election; 0 if decisive win in prior election. If more than two candidates in race, close election determined if incumbent won by vote share equal to or less than expected vote distribution plus 3; if two candidates in race, close election determined if incumbent won by 55% or less.
Ideological Distance (test of hypothesis 2)	Continuous. Difference between absolute value of justice's PAJID (Brace, Langer, and Hall 2000) score and ideology score for electorate (Berry et al. 1998).
Ideological Agreement (test of both hypothesis 1 and hypothesis 2)	Dichotomous. 1 if partisan identification of justice and party in power of institution in charge of appointments are same; 0 otherwise.
Independent variable of interest in appointment model:	
Ideological Agreement (test of hypothesis 4)	Dichotomous. 1 if partisan identification of justice and party in power of institution in charge of appointments are same; 0 otherwise.
Control variables (both election model and appointment model unless specified otherwise):	
Age	Justice's age in each observed year.
Gender	1 if justice is female; 0 if male.
Minority	1 if justice is nonwhite; 0 if white.
Salary	Justice's raw salary in each observed year.
Tenure Length	Length of judicial term of office.
Workload	Raw total of disposed cases by justice's state supreme court.
Ballot Incumbent	1 if ballot specifies incumbency of justice; 0 otherwise (election model only).
District	1 if electoral district is subdivision of state; 0 if state-wide election (election model only).
Interim Appointee	1 if justice is interim appointee of the governor facing first competitive election; 0 otherwise (election model only).
Log(Duration)	Temporal dependence control in MNL event history framework addressed with log of duration of justice's tenure (election model only).

and Shannon (2003) use a hazard model to examine Supreme Court nominations and confirmation. As Langer et al. (2003, 655) provide, "One of the best ways to analyze changes over time in a comparative setting, while controlling for the possible presence of duration dependency, is an event history framework" (see also Langer and Brace 2005).

There are numerous event history models from which to choose, based on the assumptions of the model and data utilized. To test our hypothesis 4, we employ a Cox proportional hazard model (hereafter, "Cox model"). We utilize this semi-parametric technique for two reasons. First, we make no assumptions about the form of duration dependency. While parametric models assume specific distributions in the hazard function, our only assumption is that the hazard rate will vary in predictable fashion, not that the hazard rate will take a specific distributional form. Second, retirement is the one predominant way for appointed jus-

tices to leave the bench, as only a small minority of these justices departs the bench by means other than retirement.[11] Under these circumstances, a Cox hazard model is most appropriate for our research (Box-Steffensmeier and Jones 2004; Cox 1972).

In order to identify a Cox 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,

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11. Of the 93 justices in our appointments sample, only nine left by means other than retirement: six were nominated to the federal bench, one lost a retention election, and two passed away. These justices are coded as right-censored and thus are considered unobservable after their departures (Box-Steffensmeier and Jones 2004).

974). If this assumption fails to hold true, the estimates of all the covariates in the model could be biased, not just those of the offending variables. We accordingly examined the assumption of proportionality by testing the scaled Schoenfeld residuals and found no evidence of nonproportionality.

The event history model we estimate to test our election hypotheses (hypotheses 1–3) follows the same motivation but differs with respect to choice of method. Whereas appointed justices primarily leave the bench via retirement, justices in electoral states can leave the bench in two principal ways, retirement or electoral loss. This demands a modeling choice that estimates hazards for both of these discrete events, allowing the coefficients to be estimated separately across each type of event. While a stratified Cox model estimates different baseline hazards for each type of event, it does not allow the coefficients to vary for each event type, and thus it is inappropriate to test our election hypotheses. To deal with competing risks in similar contexts, Box-Steffensmeier and Jones (2004, 173) recommend a particular specification of a multinomial logit (MNL) model: "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." Multinomial models in an event history framework are estimated as a series of linked logit functions, which allows the coefficients for the discrete events 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. In this MNL model, temporal dependence is addressed by including the log of the duration as a control variable (Log(Duration)).

The MNL models in an event history framework must not violate the assumption of independence of irrelevant alternatives, otherwise known as the assumption of independent risks (Gordon 2002). By using an MNL model, we assume that the baseline hazard for each type of k events is independent. This signifies that we assume that the baseline hazard rate for retirements is different from that of losing an election. In our context, the data-generating process creates a circumstance where the three categories analyzed within the MNL framework are theoretically discrete and independent. The decision to serve another term (our baseline category) is a positive action within the control of the justice, while losing an election generally is not. Furthermore, the decision to retire, while potentially conditioned by the assumption that one may lose an election, is unaffected by an electoral loss; indeed, retirement from the bench cannot occur after an electoral defeat. Nevertheless, we tested

this assumption statistically using the Hausman test and found no evidence of dependent risks (Long 1997).

Analysts utilizing hazard models must be aware of left truncation and right censoring. Left truncation occurs when an individual in the data set joined the risk pool prior to the first observation. In our study, this 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 from the data when their tenure first began as a supreme court justice. Thus, a justice may have been unobserved for eight years of prior tenure, but when that justice enters the risk pool at the beginning of the analysis, we code the data as if the justice began his/her tenure at $t = 9$. Left-truncated data thus contribute information to the model at the point at which they become observed. Right censoring occurs when a justice continues to serve after the end of our observation period in 2005. In event history analysis, this circumstance is not problematic because we are interested in the occurrence or nonoccurrence of an event, in our case retirements or lost elections, during the period of analysis. That is, right-censored data contribute information to the model until the point at which they are no longer observed (Box-Steffensmeier and Jones 2004).

Finally, when estimating the Cox model for our appointment hypothesis, we cluster the standard errors based upon the states, a common technique in research on state politics to ensure independence across the states in the data (Curry and Hurwitz 2016). The MNL approach for our election hypotheses allows for the use of a simple robust sandwich estimator to solve for possible deviations in the standard errors.

RESULTS
Retirements in appointive systems

The results for the multivariate Cox model for appointments are contained in table 3. Our appointment hypothesis, which provides that justices with a similar ideology as the appointing authority are more likely to retire than otherwise, is supported by the analysis, as our Ideological Agreement variable obtains statistical significance and is correctly signed. This indicates that justices across all appointive systems, including the Missouri Plan, are more likely to retire when there is a high likelihood that their replacement shares their policy preferences. Our results, therefore, suggest that appointed justices engage in strategic retirement behavior.

A number of control variables also proved influential; in fact, all of the personal variables reached significant levels. The variable Age is particularly dominant in the model. As

a justice's age increases, he/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. Yet, when Age is included in this multivariate setting, our theoretical variable of interest, Ideological Agreement, remains significant, demonstrating the importance of ideology to the issue of strategic retirements in appointive systems. Figure 1, which displays the relative hazard rates for justices dependent upon ideological agreement, shows that ideological congruence between the justice and the selector has a significant effect upon retirement in the short term, remaining discrete until about year 20. This suggests that justices who share a similar ideology with the selector of their replacement are more likely to retire before justices whose replacement would likely be of a dissimilar ideology.

The Gender and Minority variables also significantly affect retirement in appointive systems, although, interestingly, in opposite directions. We find that women are more likely to remain in office longer until their retirement, while minority justices retire relatively more quickly from the bench. These particular findings should provide incentive for future research to explain why gender and minority status affects retirement as they do here.

Among the institutional variables, Salary is statistically significant, demonstrating that justices are more likely to leave the bench as their salary increases. We surmise that this variable appears to be absorbing some variance that otherwise would be attributed to age, as salary generally increases over time with age. While there is no sound theoretical reason to assume that higher salaries cause individuals to retire from the bench, our results confirm Hall's (2001) findings in this area. Finally, Term Length and

Table 3. Cox Proportional Hazard Model for Appointive Systems

Variable	Estimate	SE
Theoretical variable:		
Ideological Agreement	.022*	.013
Institutional variables:		
Salary	8.24*	3.78
Term Length	−.019	.027
Workload	−.000	.001
Personal variables:		
Age	.007*	.002
Gender	−.802*	.250
Minority	.508*	.210

Note. $N = 1,548$; log likelihood $= -293.501$; likelihood ratio $\chi^2 = 984.67$; Prob $> \chi^2 = .00$.
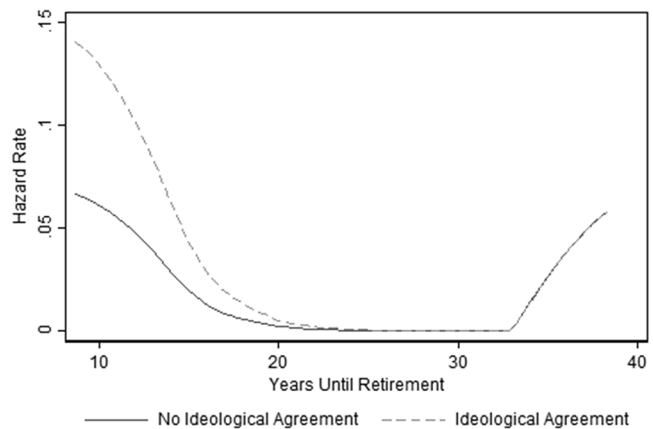* $p < .05$.

Figure 1. Ideology and retirement on appointed state courts

Workload supplied no influence on retirements in appointive systems, findings that provide additional nuance to the extant literature.

Retirements in electoral systems

To analyze states employing competitive elections, we present an MNL hazard model that contains two linked logit functions, one for retirements and another for electoral losses, the two competing risks in electoral systems (see table 4). Once again, our analysis provides evidence of strategic retirement behavior. In particular, for the retirement category, our Ideological Distance variable, which captures the difference between a justice's ideology and that of his/her constituents, is a strong predictor of retirements in the expected direction, even when controlling for other factors in the multivariate hazard model. Indeed, increasing ideological distance by a factor of one unit amplifies an individual's likelihood of retiring by about 100% over losing an election.[12]

On the other hand, the Close Election variable was not significant in the retirements category, as a prior close election did not influence retirement decisions. While these findings do not support hypothesis 1, they provide strong confirmation of hypothesis 2. More particularly, these results indicate that justices perceive their own electoral vulnerability based on ideological divergence of the elec-

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12. Odds ratios in competing risks models are extremely valuable with respect to substantive interpretation. Since each justice faces different risks (either losing an election or retiring), a significant variable increases or decreases the likelihood of one of those risks occurring. An odds ratio in this context informs us of the increase of one risk occurring over another, given a one unit change in the independent variable. In the Ideological Distance example, as a justice's ideology moves one unit away from that of the electorate, he/she is one times (or 100%) more likely to retire than lose an election.

Table 4. Multinomial Logit Hazard Model for Electoral Systems

	Retirements		Electoral Defeats		Odds of Retirement over Electoral Defeat	Odds of Electoral Defeat over Retirement
Variable	Estimate	SE	Estimate	SE		
Theoretical variables:						
Close Election	.314	.223	1.22*	.491		3.40
Ideological Distance	.041*	.015	−.053	.042	1.04	
Ideological Agreement	.138	.197	.072	.426		
Institutional variables:						
District	−.589*	.330	−.105	.835	.554	
Salary	−8.33*	4.07	−5.12	7.48	1.00	
Term Length	−.080	.057	−.179	.122		
Workload	.000	.000	.000	.000		
Ballot Incumbent	−.064	.227	−2.21*	1.06		.109
Interim Appointee	.937	.592	2.71*	.691		14.98
Personal variables:						
Age	.104*	.020	−.009	.033	1.10	
Gender	−.101	.371	−.190	.583		
Minority	.276	.490	−.248	.669		
Statistical variables:						
Log(Duration)	.612*	.179	.821*	.323		
Constant	−9.72*	1.20	−4.53*	2.19		

Note. $N = 2,048$; log likelihood = −524.208; $\chi^2 = 167.18$; Prob $> \chi^2 = .00$.

* $p < .05$

torate and retire accordingly; however, justices do not sense the same vulnerability as they do not retire after surviving a prior close election. Interestingly, it appears that these justices would have been better off retiring, since in the electoral defeats category, a close prior election significantly led to a subsequent electoral loss.

Our final theoretical variable in both the retirements and electoral defeats category, Ideological Agreement, fails to achieve statistical significance in either model. This exhibits that justices in electoral systems do not retire because an ideologically congruent governor can make an interim appointment, nor does the possibility of an appointment by a same-party governor influence electoral defeats. Instead, as our Ideological Distance variable shows, justices retire due to an increased ideological divide between the justice and his/her electorate.[13]

Examining the relative hazard rates allows for substantive interpretation of the modeled effects. Figure 2 displays the hazard rate for the upper and lower quartiles in ideological distance based upon each competing risk. The *y*-axis for each graphic is different, which makes logical sense: the risk of someone losing an election, an event with a slim likelihood of occurring, is lower than that of retirement, an event with a high probability of occurring, given enough

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13. As checks on the robustness of our model, we ran, but do not report, three alternative variations, each of which recodes or replaces our Ideological Distance variable that we derive from PAJID scores. For the alternative models, we first employed SDIRT scores (Windett et al. 2015) to create a new Ideological Distance variable, which we ran in a model encompassing 1995–2005, based on SDIRT's time frame. We then replaced our Ideological Distance variable with a dichotomous, ideological agreement variable between the Party ID of the governor and justice

(Party ID), and another with a variable derived from two-party presidential vote share (Presidential Vote Share). In all three of these alternative models, the results remain principally the same as our original model, save for the new variables, each of which is correctly signed but not statistically significant at conventional levels. This statistical outcome is a result of inflated standard errors for the alternative variables, a consequence of a shorter time period or relative lack of variability in the new measures. We thus believe that these alternative models largely confirm what we find in the hazard models we report, providing confidence in our Ideological Distance variable. Perhaps this is not unexpected. "PAJID may be useful if the key theoretical concept researchers wish to measure is the ideological tenor of each state at the time a judge joined the bench" (Windett et al. 2015, 468). While we are not concerned with the time a justice joins the bench, we analyze the analogous environment when a justice departs the bench. Hence, we suggest that the manner we utilize PAJID to operationalize Ideological Distance is appropriate for our analysis while providing more statistical leverage than competing measures would. The authors will provide the results of these alternative models upon request.
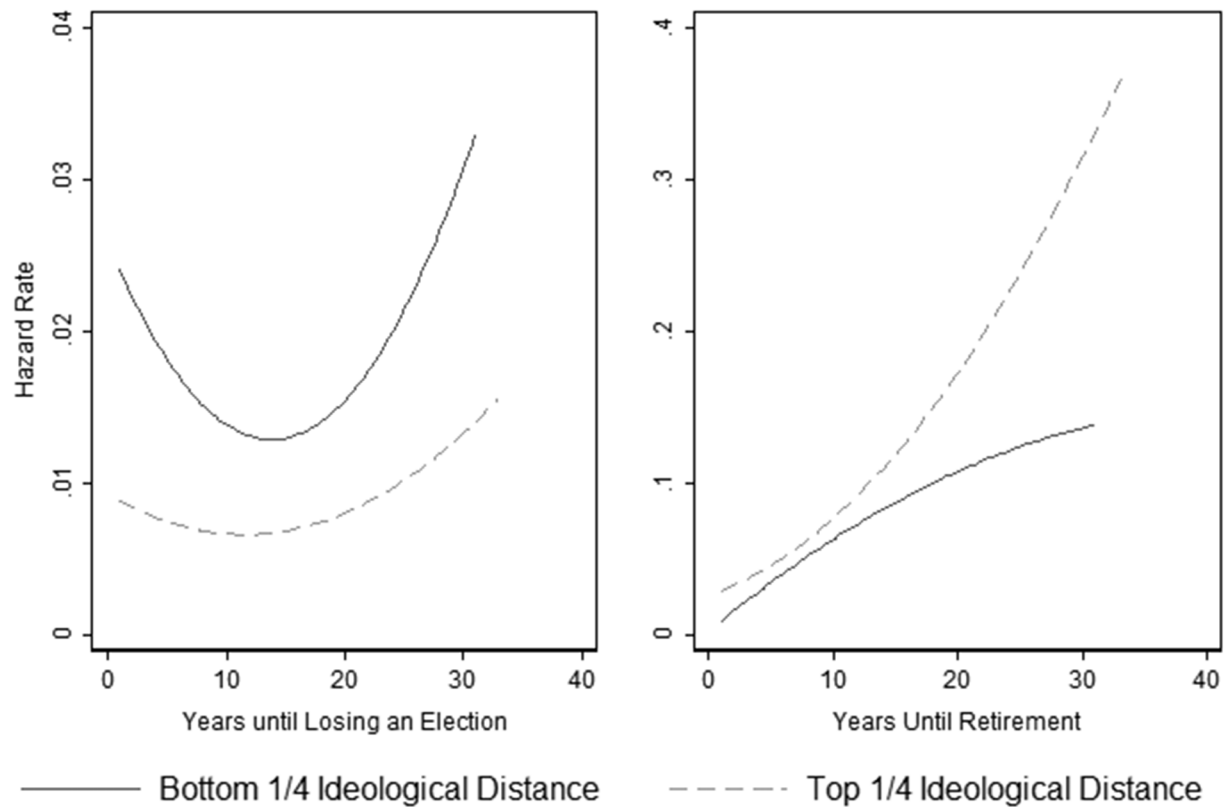
Figure 2. Hazard rate by ideological distance

time. The left side of the graph displays that the hazard rate for losing an election is relatively similar across time. In contrast, the hazard rate for years until retirement is quite different, as the lower and upper quartiles are similar until about year 15, after which they significantly diverge. Thus justices furthest from the electorate are much more likely to retire than otherwise. This provides additional support for our hypothesis 2, as elected justices make strategic calculations to retire when their own ideology diverges from that of the electorate.

Although our other theoretical variable, Close Election, was not a noteworthy predictor for retirements, it obtains significance in the electoral defeats category. That is, winning by a narrow margin is an excellent predictor of losing a subsequent election. In fact, as the odds ratio shows, justices who survived a prior close election are 3.4 times more likely to lose their ensuing election than retire. Figure 3 reveals the hazard rates for leaving the bench by losing an election or retirement, given a prior close election. While the hazard rates remain consistent for the risk of retirement, a previous close election significantly modifies the hazard rate for electoral defeat.[14] This implies that justices are skillful stra-

tegic actors as they perceive increased ideological divergence with the electorate (fig. 2) but that they are not nearly as adept when it comes to understanding the consequence of barely winning an election (fig. 3). In other words, while successfully enduring a prior close election did not lead a justice into retirement, it probably should have, since that justice was more likely to lose the subsequent election.[15]

A number of personal and institutional variables are statistically significant in the retirement classification (see table 4). Age once again is a significant factor in elected justices choosing to retire from the bench. Whether or not a justice is in an electoral or appointive system, older justices are more likely to retire than otherwise. Moreover, as salary

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14. Even though the probability of losing an election remains low, we surmise that a prior close election is an overt signal that an incumbent

justice is vulnerable, which in turn increases the likelihood of quality challengers (Hall and Bonneau 2006). This amplifies the probability of a subsequent electoral loss, but not to such degree that a justice is more likely to retire; apparently, increasing ideological distance between the justice and electorate is not as clear an indicator of incumbent weakness to likely challengers as a prior close election.

15. We also estimated this hazard model as a multinomial probit (MNP), which does not make the same independence of irrelevant alternatives assumption as the MNL model. The results were nearly identical. Furthermore, Kropko (2008) demonstrates via simulation that even in the presence of dependent risk, MNL models nearly always provide more accurate estimates than MNP. Therefore, we report the findings of our MNL and maintain estimates of the MNP for interested readers upon request.
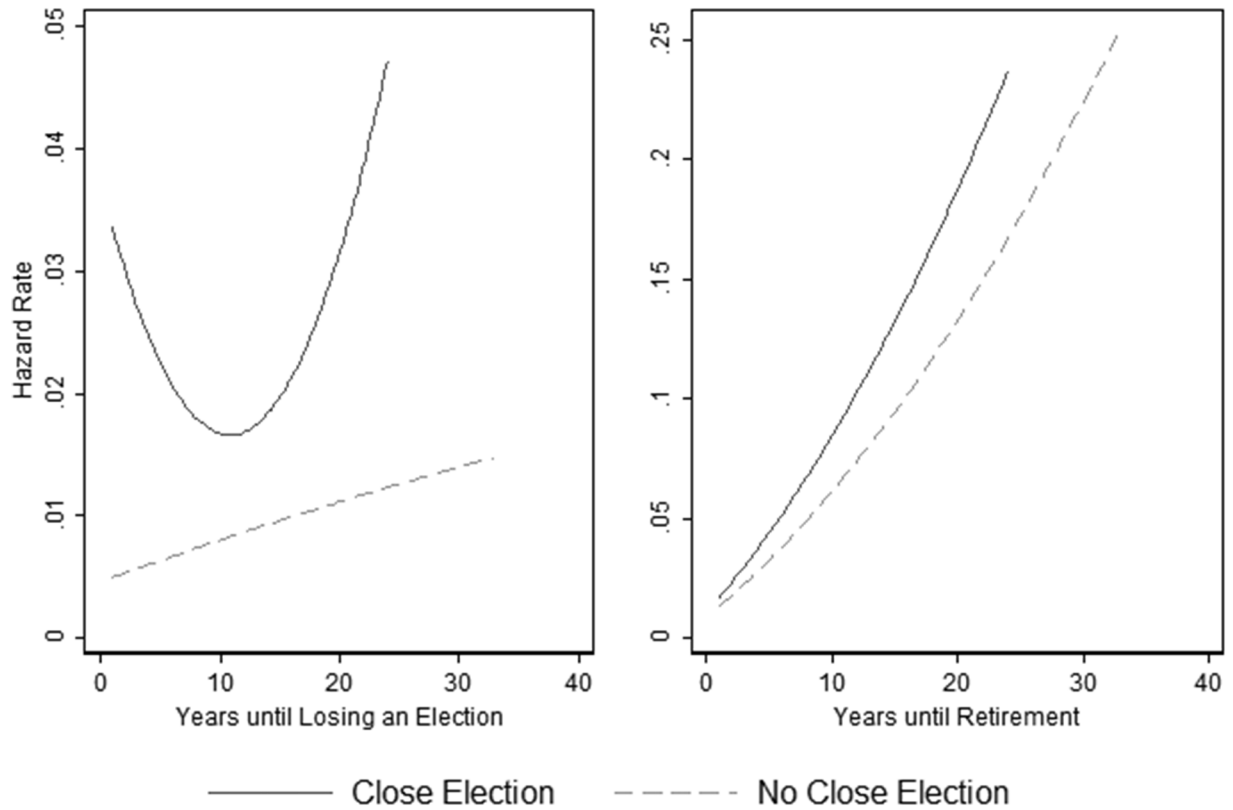
Figure 3. Hazard rate by previous election

increases, justices are less likely to leave the bench via retirement, although salary does not significantly affect an electoral loss. This differs from our findings in the appointments model, where salary had a positive effect on retirements. This difference is likely because the average tenure in appointive systems is longer than in electoral systems, thus muting the effect salary may have on retirement decisions. Finally, as the District variable indicates, district-based elections negatively influence retirements. It is likely that elections via district subdivisions engender a closer tie between the elected official and the constituency than state-wide elections, as apparently the justices feel they have a safer seat, reducing the likelihood of their voluntary retirement.

Two additional variables proved influential in the electoral defeats category. First, Ballot Incumbency significantly reduces the likelihood of a justice's defeat. As the literature on incumbency effects shows, this finding is not shocking. Yet, specifying incumbency status on the ballot does not affect the likelihood of a justice's retirement. Finally, the variable with the largest substantive effect on the model is Interim Appointee. If the justice attained the bench via an interim appointment and is facing his/her first competitive election, he/she is 15 times more likely to lose that election than retire. This confirms findings that justices

appointed to a bench where they are ordinarily elected are significantly more vulnerable to electoral challenge and subsequent defeat (Hall and Bonneau 2006).

DISCUSSION

Our hazard model approach supports a number of key conclusions while differentiating us from the extant literature. Most notably, we have uncovered evidence supporting our dual theory that justices in electoral and appointive systems make strategic retirement decisions. As anticipated, appointed justices look with an ideological eye to the selector to ascertain the most opportune time to retire. Elected justices also rely upon ideology but from a different angle, as they seek to avoid electoral defeat when they sense vulnerability due to deviating preferences with the electorate. Critically, these political calculi are far removed from traditional aspects of judicial decision making.

Hall (2001) addressed the issue of voluntary retirements in state courts that employ various electoral systems. In particular, she found evidence of strategic retirements in partisan and retention elections but not in nonpartisan elections. Our results simultaneously complement and diverge from hers, in part because our research designs are so different. We examine strategic retirements in both electoral and

appointive systems. Moreover, in our event history frame-work, we view the Missouri Plan's retention election as an appointive system. While justified theoretically, our empirical results provide that appointed justices, including those in the Missouri Plan, follow the ideology of the governor or legislature concerning retirement decisions. If Missouri Plan justices act differently from justices in other appointive systems, then our Ideological Agreement variable would not have achieved significance in the anticipated direction as it did in our hazard model. Thus, our analysis that includes justices in appointive systems (a category Hall did not include in her study) and that categorizes Missouri Plan justices as appointed justices illustrates that appointed justices make strategic retirement decisions.

Moreover, while our longitudinal period of analysis stems from 1980 to 2005, we needed to collect data from 1970 in order to include information on a justice's election prior to 1980. Finally, while Hall's statistical design was static in nature, our hazard model approach enabled us to examine judicial behavior in a more dynamic fashion. That is, we are not looking at the retirement decision itself, as Hall did, but instead we examine the justice's career leading up to and influencing the point of retirement. Thus, while both studies examine political retirement behavior, each analyzes distinctive evidence from discrete theoretical and statistical perspectives. Even though both uncover evidence of strategic retirement behavior, our findings diverge in critical aspects. As Hall asserted: "This study is only the first that seeks to unravel the fascinating and complicated nexus between democratic processes and career decisions in the states' highest courts. Countless questions remain" (2001, 1136). We believe that we have answered some of those questions in our study, while we second Hall's appeal that more questions remain to be answered, as judicial retirement behavior endures as a fertile area of research.

CONCLUSION

Examining how politicians and regimes acquire power is one of the cornerstones of political science research. Explaining the loss of power is equally important, especially when that event occurs because of voluntary action. In this regard, our hazard model approach shows that justices engage in strategic behavior in different ways, based on the institutions in which they operate. For appointed justices, we predicted that executive or legislative ideology would prove a key influence on justice's retirement decisions, an expectation borne out by our Cox model. As for elected justices, we predicted that electoral vulnerability would influence a justice facing a competitive election to retire. Here again, our MNL model confirmed our expectations. In sum, whether they face ap-

pointment by another branch or their constituents in a competitive election, state supreme court justices evince strategic retirement behavior.

We believe that our study is a valuable addition to the literature on state supreme court behavior. From a theoretical perspective, our dual theory on retirements posits that elected and appointed justices operate in divergent institutional environments, which condition the behavior of political actors. Obviously, we are not the first to make this suggestion, not even in the area of judicial behavior (see, e.g., Brace and Hall 1990). Nevertheless, our study augments the literature by engaging both electoral and appointive effects on judicial retirement decisions. That is, we expected that justices would be inspired by political stimuli in their retirement considerations and that these influences would be predictable in the diverse context of appointments or elections. Empirical support of our dual theory of retirements sustains this perspective.

Moreover, we show that appointed and elected justices display political behavior by perceiving threats in their respective environments and retiring accordingly. Justices in appointive systems look to the partisanship of the governor or legislature and retire based on the likelihood that their own policy preferences will continue on the court. This includes justices in the Missouri Plan, whom we find are similar to their brethren in other appointment systems. As such, they make retirement decisions with the same strategic calculus, as Missouri Plan justices apparently are not immune to political incentives.

Finally, we did not directly focus on the normative questions raised by the volatile debate concerning the most appropriate method of judicial selection and retention; however, our study offers us the opportunity to touch upon some of these issues. Numerous reform advocates have made ardent appeals to rid state judiciaries of elections in favor of the Missouri Plan (see, e.g., O'Connor 2010). Despite the case made by these prominent advocates, our empirical findings confirm some of the claims made by Bonneau and Hall (2009) and Gibson (2012). Consequently, we also question the assertions of reformers.

We find that justices in appointive systems, including the Missouri Plan, are more likely to retire when the body empowered to select their replacement is ideologically compatible. This indicates that justices ponder their own ideological proclivities as well as those of potential successors as vital factors when considering retirement. This is a purposeful, strategic action on the part of the justice. And, it is a decision not at all free from overt political influence. The institutional nature of this system that is designed in theory to shield justices from political influences instead facilitates

political decisions surrounding their retirement. This suggests that shielding justices from political influence is not akin to preventing justices from engaging in political behavior. In fact, it reveals that this institutional system intended to safeguard justices from political influence may better enable these justices to engage in strategic behavior.

The contention that judges are apolitical diviners of the law finds little support in empirical reality, and ours is another in this line of research that in many ways began with Pritchett (1948). Judges are political actors within political systems. Changing their method of selection and retention does not alter this reality; instead, it merely varies the manner by which political stimuli will be channeled within the judicial system. Ultimately, we find that justices in state courts of last resort, irrespective of their selection and retention, are likely to be forward-looking, strategic actors when choosing to depart the bench. Retiring at a particular point in time to ensure a comparable ideological replacement, or retiring rather than risk electoral defeat, are hallmarks of political decision makers, even those who happen to be state supreme court justices.

ACKNOWLEDGMENTS

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