Voluntary Retirements from State Supreme Courts: Assessing Democratic Pressures to Relinquish the Bench

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This article assesses whether electoral vulnerability promotes strategic retirements in state supreme courts and, more generally, whether elections are more effective in promoting democratic control of the bench than believed. Results indicate that voluntary retirements are influenced by electoral considerations, but only when justices are retained in partisan or retention elections. With nonpartisan elections, these effects are absent. Through the lens of judicial reform, these findings suggest that some arguments for abandoning partisan elections and adopting the Missouri Plan may lack merit and that the premises underlying institutional design should be reconsidered. Moreover, studies of judicial choice must be attentive both to strategy and context.

The manner in which democratic politics serves to structure both individual and collective decisions in political institutions constitutes a fundamental fascination for political scientists. As Brace aptly observed, “the nature and extent of public control of elected officials in the absence of widespread participation has long been one of the more enigmatic features of American democracy” (Brace 1984, 556). Part of solving this complex puzzle involves ascertaining why elected officials choose not to seek reelection. As many scholars have observed, representative democracy rests squarely upon the willingness of citizens to seek office and then, once elected, to maintain the desire to retain their seats. Yet, in some situations, deciding not to seek reelection may have much less to do with disinterest in public service than with fear of electoral defeat. Indeed, through elections, citizens may be capable of effecting membership change in public institutions quite apart from actually ousting incumbents.

In the U.S. House of Representatives, perhaps the most extensively studied American institution with regard to career paths and arguably the most representative by formal design, decisions to relinquish office have been demon-
Stratified to result from a wide array of forces, including pressures from the electoral arena. Though not without contradiction, the larger body of evidence supports the proposition that perceptions of electoral vulnerability, based upon such considerations as past margins of victory and changes in electoral districts, shape House members’ decisions not to seek reelection.

These patterns in the United States House of Representatives, though intriguing and important, are not really all that surprising, given the institution’s representative function and the frequent opportunities for citizens to express their preferences through the process of elections. Indeed, consistent with democratic theory, constituency preferences play a significant role not only in legislators’ career choices but also in their policy choices. A voluminous literature has established that fear of electoral reprisal induces members of Congress (e.g., Bartels 1991; Clausen 1973; Erikson 1978; Fiorina 1974; Kingdon 1981; Miller and Stokes 1963) and other legislators (e.g., Eulau and Prewitt 1973; Friedman and Stokes 1965) who wish to retain their seats to take constituency preferences into account when casting votes on the controversial issues of the day. Nonetheless, establishing that House incumbents, who clearly should respond to electoral pressures, actually do manifest such behavior, has constituted a substantial enterprise capturing the attention of some of the discipline’s most accomplished scholars and extensive pages in the most highly respected scholarly journals.

For elected courts, the relationship between democratic politics and individual career choices has been virtually ignored, perhaps in part because judges do not have a representative function by constitutional arrangement or because of the normative expectations of independence surrounding the American judiciary. As Hall and Brace (1992, 147) observed: “The belief that judges, trained in law, base their decisions on the long-run interests of the state without responding to the preferences of elected politicians, voters, or other external actors is a central tenet of the legal culture.” Accordingly, not only are judges believed to be inattentive to electoral politics because it is not their function to do otherwise, but normative proscriptions stipulate that judges should not take such considerations into account.

Nonetheless, the vast majority of judges in the United States must face the electorate regularly to retain their seats, and voluntary retirement is the largest source of membership change on the American bench (Dudley 1997). By these standards, elected state courts are directly comparable to legislatures at both state and federal levels. Moreover, there is limited evidence to suggest that state supreme court justices chosen under competitive conditions respond to their constituencies in precisely the same manner as elected representatives when voting on highly salient issues (Hall 1987, 1992, 1995). More generally, considerable research has demonstrated a significant gap between expectations within the legal culture and empirical reality. Despite these facts, we simply do not know whether perceptions of electoral vulnerability enter into the calculus to depart the bench.
This question has vitally important theoretical and practical implications. A situation wherein judges anticipate electoral defeat and strategically opt out to avoid being unseated would stand in direct contrast to expectations of judicial independence largely dominating understandings of judicial politics. Such a situation also would add support to the notion that judicial elections are more effective for providing democratic control of the bench than previously suggested or widely believed. Moreover, if judges’ decisions not to seek reelection are conditioned by rational estimations of the likelihood of failure, judicial politics scholars are underestimating the extent to which judges are strategic with respect to their political contexts and need to revise existing theories of judicial choice. From a practical standpoint, ascertaining whether judges are affected by electoral pressures would shed light on the controversy raging in the states over institutional design and would facilitate more informed choices about selection and retention methods that heretofore have been guided by untested assumptions and unsubstantiated claims.

In an effort to contribute to an understanding of the impact of democratic processes on the American judiciary, this article examines all decisions to seek reelection or to retire from state courts of last resort from 1988 through 1995 in the 38 states using some form of elections to select their judges. As others have argued (e.g., Baum 1997; Glick 1993; Hall and Brace 1992), state supreme courts have enormous influence over the distribution of wealth and power in the United States. Currently state court systems process over 99% of the nation’s legal business, and as courts of last resort, state supreme courts play a definitive role in solving some of the most vexing problems on the political agenda (Hall 1999). Further, the significance of state supreme courts is being heightened as American federalism continues to manifest a pronounced resurgence of state and local power (see, e.g., Weber and Brace 1999). From an analytical perspective, the states themselves differ substantially, serving as an excellent natural laboratory for testing hypotheses about the effects of institutional arrangements and other contextual forces on judicial career choices, including hypotheses about the ways in which electoral forces might stimulate strategic retirements and how these processes might vary across alternative institutional settings.

Generally, if state supreme court justices are immune to electoral pressures, decisions to retire should not be related to political conditions that enhance the risk of defeat. Instead, retirements should reflect such normal career concerns as age, remuneration, and workload. Alternatively, if justices behave strategi-
cally, basically in such a manner as to preempt possible electoral sanction, then electoral vulnerability should be an excellent predictor of opting out, when all other relevant factors are controlled.

The Judicial Selection Controversy

Clearly implicated in this investigation is the controversy over judicial selection. While the literature on judicial reform is voluminous and cannot easily be reduced to a few simple propositions, reform advocates have commented extensively on the inability of partisan elections to secure any measure of popular control over the courts, the very feature that is supposed to define such systems. Dubois (1980, 29) describes the reformers’ assertion about the lack of accountability as the “most fundamental and damning of the criticisms” against partisan judicial elections.

Noting among other things that voters in judicial elections seemingly lack the necessary information to make informed judgments, reformers have denounced the partisan election of judges, proposing nonpartisan elections and the Missouri Plan, of which retention elections are a part, as alternatives. Reformers view partisan elections as producing voter judgments that are completely disconnected from substantive evaluations of candidate quality or performance; consequently, judges are subject to idiosyncratic forces at election time and have no incentives to establish and maintain connections to voters.

However, empirical research raises doubts about the validity of this proposition. Some case studies (Baum 1987; Lovrich and Sheldon 1983; Scheb 1983) have documented that at least under certain conditions, voters are sufficiently knowledgeable to make informed choices in judicial races. Similarly, based on an evaluation of partisan and nonpartisan supreme court elections in 25 states from 1948 to 1974, Dubois concluded that judicial elections “are about as effective in assisting voters to retrospectively evaluate and prospectively predict the behavior of judges as they are with respect to the selection of legislators and executives” (1980, 249). More recently, the first national study (Hall 2001) has demonstrated that despite an extraordinary incumbency advantage, state supreme court elections of all types reflect evidence consistent with retrospective voting about crime and a responsiveness to various forms of partisan politics. Unlike the conventional wisdom, this new research suggests that judicial elections can serve as an effective accountability mechanism and that judges who wish to retain their seats have an incentive to align themselves with their constituencies.

From the standpoint of many reformers, however, it is not desirable for judges to have such connections. In fact, reformers argue that not only do judicial elections fail to provide any opportunities for accountability (the presumed rai-

2 Reform advocates have been successful. Since 1960, 16 states have changed the way they choose judges, with 12 adopting the Missouri Plan (Council of State Governments, various years).
son d’être of such systems), but partisan elections impinge upon the independence of judges by allowing external pressures to penetrate the internal processes of courts. Reformers view retention elections, and to a lesser extent nonpartisan elections, as correcting this problem, not only by shielding judges from politics when rendering decisions but also by freeing judges from such political forces as the “vicissitudes of inter-partisan competition” when seeking reelection (Herndon 1962).

Despite the claims of the reformers, there is contradictory evidence about the ability of retention elections to insulate judges. The national study just mentioned (Hall 2001) documented that competition in retention elections, measured as the percentage of the vote to retain incumbents, is influenced by precisely the same external political pressures affecting partisan elections. Similarly, Squire and Smith (1988, 170) noted that retention elections “are easily turned into partisan contests in the minds of voters” based upon knowledge of the partisanship of the appointing governor. According to this literature, partisan elections and retention elections bear a striking resemblance.

Alternatively, some studies have demonstrated that justices in retention states may be insulated from external political pressures. At least on the issue of the death penalty, these justices are more likely to defy their constituencies by casting liberal dissents and by overturning death sentences than justices in other contexts (Brace and Hall 1993, 1997; Hall and Brace 1992). However, the picture is not uncomplicated. Some justices in retention states do behave in a representative manner. In the California Supreme Court, Traut and Emmert (1998) failed to find a general pattern of responsiveness to electoral pressures, though they did discover that two of six Democrats who were targets of conservative electoral opposition altered their behavior just before reelection in an apparent attempt to move closer to their constituents. Thus, justices subject to retention elections generally may be more insulated than justices facing partisan or nonpartisan contests, but there are obvious exceptions.

These contradictory findings in the judicial politics literature create serious ambiguities about the likely determinants of justices’ decisions to relinquish their seats. In an effort to resolve these ambiguities, this article investigates whether voluntary retirements in state supreme courts, like retirements in legislatures, are influenced by factors indicative of electoral vulnerability and whether these effects are conditioned by selection system.

Returning to the two primary assertions of judicial reform advocates—the lack of electoral accountability in partisan elections and the independence ensured by retention elections—this study will infer that citizen control over courts is present in retirement decisions if there is evidence that justices calculate whether to seek reelection or retire based on the risk of defeat, in addition to

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3 Generalizing these results should be done cautiously. The only retention state examined systematically is California, which may or may not be typical of retention election states.
the other factors that structure such choices. This indicator comes directly from Dubois (1980, 32), who defines one major facet of citizen control as judges having “a realistic fear of the electorate’s power of removal and adjust[ing] their behavior accordingly.” Similarly, independence will be inferred if decisions to relinquish office are unrelated to electoral politics or other external pressures.

Retirement Decisions in State Supreme Courts

To evaluate justices’ decisions to seek reelection or retire, data were gathered on all elections to state courts of last resort from 1980 through 1995 from a variety of sources. Most important were reports of secretaries of state, obtained by mail or visits to state capitals. Additionally, when these reports were not available, state blue books and Web sites were searched. As a final measure, telephone conversations with sitting justices and clerks of court and newspaper searches on Lexis-Nexis were utilized. These efforts produced a complete set of election returns for every state high court for a 16-year period. Because of the importance of having a measure of past electoral performance, this study will be limited to justices with terms ending 1988 through 1995. For all but a handful of justices, the 1980 through 1987 data will include an election from which past electoral performance can be calculated.

To supplement the election data, and to identify such important characteristics as dates of accession and departure, biographical data were collected from state blue books, The American Bench, Who’s Who in American Law, newspaper articles located through Lexis-Nexis, state supreme court Web sites, and telephone calls to clerks of court. Combined with the election data, these biographical data identify the justices who were up for reelection from 1988 through 1995 and their individual career choices. Consistent with previous research on voluntary retirements, this study excludes situations that involve involuntary departures (i.e., justices who died in office, were impeached, or were subject to mandatory retirement provisions) or progressive ambition (i.e., justices who accepted appointments to the federal courts or left to seek other offices).4

Overall, from 1988 through 1995, 245 justices in 38 states made decisions about whether to seek reelection or voluntarily relinquish their seats. Of these justices, 163 (66.5%) chose to run again while 82 (33.5%) opted out of office. Table 1 classifies these decisions by election type. As can be observed from the table, the number of justices making career decisions is quite similar across

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4 Nine justices up for reelection from 1988 through 1995 died in office, one was impeached, thirty-one reached the mandatory retirement age set by their states (though not all states have these laws), and nine left for the federal courts (four justices) or to seek other office (five justices). Additionally, one justice ran for Chief Justice against the incumbent, which precluded seeking reelection for his current seat, while another justice departed to become a member of the Mormon Church’s Council of Twelve Apostles.
systems, while the proportion of justices in partisan and nonpartisan election states who decided to run rather than retire is virtually identical. In retention states, justices have a somewhat greater tendency to seek reelection than their counterparts in nonpartisan and partisan systems, though the differences are small. Overall, clear majorities in each election system chose to run again rather than surrender their seats.

Further, as Table 2 reveals, of the justices who chose to give up their seats rather than seek another term, 5.1% were in their 40s, 20.5% had not yet reached the age of 60, and 37.2% were not yet 65. In fact, the youngest retirement occurred at age 45. Clearly not all justices leaving the bench are doing so because of advancing age. Therefore, it seems reasonable at least to consider the possibility that decisions to retire from state supreme courts are influenced by the same forces, including the fear of electoral defeat, that structure career decisions in other political institutions.

TABLE 1
Decisions to Seek Reelection or Retire from State Supreme Courts, 1988–95, by Election Type

<table>
<thead>
<tr>
<th>Election Type</th>
<th>Run</th>
<th>Retire</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partisan</td>
<td>54</td>
<td>30</td>
<td>84</td>
</tr>
<tr>
<td></td>
<td>64.3%</td>
<td>35.7%</td>
<td></td>
</tr>
<tr>
<td>Retention</td>
<td>57</td>
<td>23</td>
<td>80</td>
</tr>
<tr>
<td></td>
<td>71.2%</td>
<td>28.8%</td>
<td></td>
</tr>
<tr>
<td>Nonpartisan</td>
<td>52</td>
<td>29</td>
<td>81</td>
</tr>
<tr>
<td></td>
<td>64.2%</td>
<td>35.8%</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>163</td>
<td>82</td>
<td>245</td>
</tr>
<tr>
<td></td>
<td>66.5%</td>
<td>33.5%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Further, as Table 2 reveals, of the justices who chose to give up their seats rather than seek another term, 5.1% were in their 40s, 20.5% had not yet reached the age of 60, and 37.2% were not yet 65. In fact, the youngest retirement occurred at age 45. Clearly not all justices leaving the bench are doing so because of advancing age. Therefore, it seems reasonable at least to consider the possibility that decisions to retire from state supreme courts are influenced by the same forces, including the fear of electoral defeat, that structure career decisions in other political institutions.

Specifying Models of Voluntary Retirement
in State Supreme Courts

The extensive literature on the U.S. House of Representatives provides an excellent basis for identifying the factors likely to affect voluntary retirement from elective office and to locate this inquiry within an overall theoretical framework. Generally, such decisions have been cast as a rational calculation of weighing the relative costs and benefits of service. Moore and Hibbing assert, for example, that “members voluntarily depart when their electoral, policy, and institutional situations no longer seem desirable” (1998, 1106). Stated some-

5 Missing data account for the small discrepancies between the numbers of observations in Table 1 and those in Tables 2, 4, 5, and 6.
# TABLE 2

## Age of Justices Retiring from State Supreme Courts, 1988–95, by Election Type

<table>
<thead>
<tr>
<th>Election Type</th>
<th>45–49</th>
<th>50–54</th>
<th>55–59</th>
<th>60–64</th>
<th>65–69</th>
<th>70–74</th>
<th>75–79</th>
<th>80–84</th>
<th>Total</th>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>3.4%</td>
<td>1</td>
<td>2</td>
<td>4</td>
<td>5</td>
<td>10</td>
<td>5</td>
<td>2</td>
<td>0</td>
<td>29</td>
</tr>
<tr>
<td>Retention</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.0%</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>10</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td>Nonpartisan</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.4%</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>12</td>
<td>6</td>
<td>1</td>
<td>1</td>
<td>29</td>
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<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.1%</td>
<td>4</td>
<td>4</td>
<td>8</td>
<td>13</td>
<td>32</td>
<td>12</td>
<td>4</td>
<td>1</td>
<td>78</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>45–49</th>
<th>50–54</th>
<th>55–59</th>
<th>60–64</th>
<th>65–69</th>
<th>70–74</th>
<th>75–79</th>
<th>80–84</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partisan</td>
<td>3.4%</td>
<td>6.9%</td>
<td>13.8%</td>
<td>17.2%</td>
<td>34.5%</td>
<td>17.2%</td>
<td>6.9%</td>
<td>0.0%</td>
<td>99.9%</td>
</tr>
<tr>
<td>Retention</td>
<td>10.0%</td>
<td>0.0%</td>
<td>10.0%</td>
<td>20.0%</td>
<td>50.0%</td>
<td>5.0%</td>
<td>5.0%</td>
<td>0.0%</td>
<td>100%</td>
</tr>
<tr>
<td>Nonpartisan</td>
<td>3.4%</td>
<td>6.9%</td>
<td>6.9%</td>
<td>13.8%</td>
<td>41.4%</td>
<td>20.7%</td>
<td>3.4%</td>
<td>3.4%</td>
<td>99.9%</td>
</tr>
<tr>
<td>Total</td>
<td>5.1%</td>
<td>5.1%</td>
<td>10.3%</td>
<td>16.7%</td>
<td>41.0%</td>
<td>15.4%</td>
<td>5.1%</td>
<td>1.3%</td>
<td>100%</td>
</tr>
</tbody>
</table>
what differently, Hall and van Houweling (1995, 121) argue that “in the main, members may be reelection-seekers but will not pay any price to seek something they may not find.” In short, the literature characterizes House members as rational actors who weigh the relative utility of reelection, the probability of winning, and the costs of running. Within these broad parameters fall such specific considerations as age, workload and remuneration (and other issues related to job satisfaction), electoral vulnerability, and conditions in the external political environment.

Additionally, research on the federal courts informs this inquiry. While federal judges are not elected, there is evidence to suggest that judicial retirements are, by some indicators, surprisingly similar to retirements from Congress. Although contradictions abound within this small but important body of work, the weight of the evidence supports the proposition that turnover on the federal bench may be determined by such normal career considerations as age, workload, and financial rewards, but also may be responsive to the external environment and “infused with partisanship” (Barrow and Zuk 1990, 457).

Specifically, studies of the U.S. House and the federal bench describe the following factors as important components of the calculus to seek reelection or to opt out of public office.

**Personal Characteristics: Age and Risk-Taking Propensities**

First, various characteristics of the officeholder should influence decisions to seek reelection or retire. Most important among these factors is age. As virtually every study of voluntary retirements in the House has documented, the probability of retirement increases with age; older members are signifi-
Significantly more likely than younger members to retire. Similarly, Hagle (1993) has determined that age plays an important role in retirements from the United States Supreme Court. To gauge the effects of age on voluntary retirements in state supreme courts, the various biographical sources just listed were used to identify each justice’s year of birth, and then age (Age) was calculated as age in years at the time of each justice’s reelection.

Similarly, the risk-taking propensities of the individual justices should be an important factor in decisions to retire. In the House of Representatives, Brace (1985) found that members who initially obtained their seats by challenging and unseating incumbents are substantially less likely to leave office voluntarily, ceteris paribus. Generally, these incumbents should be more risk-acceptant and should be less threatened by risky alternatives like losing reelection bids. To test this hypothesis in the context of the state high court bench, this study includes a dummy variable (Unseated an Incumbent) to identify those justices who initially won their seats by defeating sitting justices, with the expectation that these justices will be less likely to retire, all things being equal.

Financial Remuneration and Workload/Job Satisfaction

In addition to the justices’ personal characteristics, a second set of factors that should become critical components of the calculation to retire or to seek reelection relate to the rewards and tasks of the job itself, which contribute to overall job satisfaction. Specifically concerning rewards, salary and other financial incentives should structure the willingness of incumbents to continue in office. Studies of the U.S. House have documented that as salaries increase, members are likely to seek to stay, while opportunities like “golden parachutes” encourage members to depart (Brace 1985; Clarke et al. 1999; Groseclose and Krehbiel 1994; Hall and van Houweling 1995; Hibbing 1982a, 1982b). In the federal courts, the weight of the evidence (Spriggs and Wahlbeck 1995; Squire 1988) supports the proposition that financial incentives like salaries and pension eligibility affect retirements, though Barrow and Zuk (1990) conclude that monetary considerations, including pensions, are relatively unimportant.

10 The most recent challenge comes from Kiewiet and Zeng (1993), who conclude that the substantive impact of age is small though invariably statistically significant.
11 However, Squire (1988) argues that infirmity rather than age is the critical determinant of voluntary departures from the U.S. Supreme Court.
12 Scholars also have recognized that representatives serving in formal leadership roles by virtue of seniority are significantly less likely to retire. However, no such opportunities exist in most state supreme courts. In the majority of states, the chief justice does not have formal powers that confer opportunities for influence, like the power to assign opinions, or to speak or vote first (Hall 1990). Unfortunately, like studies of the House, seniority cannot be included in these models because of its strong correlation with age.
To investigate the significance of salary in state supreme courts, this study includes two variables designed to capture both intrastate and interstate effects. The first variable (Salary Increases) measures the average annual change in salary within each state for the five-year period preceding the election. It makes good intuitive sense that a justice will be directly responsive to salary increases within his or her own state, more so than to salary trends in other states. However, to ascertain whether some supreme court seats simply are more attractive than others, this study includes a measure of each state’s base salary at the time of each election (Salary). Generally, justices who receive larger raises and are serving in states with higher salaries overall should not be as likely to retire as justices in states where raises and salaries are lower, all other factors considered. These figures were determined for each year using Book of the States.

In addition to remuneration, workload should be a significant component of job satisfaction. Numerous scholars have described the frustrating nature of service in the House and its impact on static ambition. Studies by Hibbing (1982c), Cooper and West (1981), Frantzich (1978), and Moore and Hibbing (1998) consider the burdens of service and the general proposition that House service simply is “not fun anymore.” In the most systematic examination of this notion, Moore and Hibbing (1998) conclude that dissatisfaction is not universal to the institution but rather is highly situational; however, job dissatisfaction does play a role in some members’ decisions not to seek reelection. Similarly, Barrow and Zuk (1990) find that caseloads, the primary indicator of workload in courts, are important predictors of turnover on the federal bench, though Spriggs and Wahlbeck (1995) deem such considerations unimportant.

To ascertain whether increasing workloads create a strong incentive simply to quit, this study includes a variable to take into account the changing nature of each court’s docket. Specifically, workload is measured as the average annual change in each state supreme court’s filings for the five-year period preceding the election (Change in Filings). Thus, for an election in 1988, average caseload change for each court was calculated using 1983 through 1987 data.

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13 Salary change was measured in a variety of ways, including the average annual change in salary for the three-year period preceding the election, supreme court salary as a proportion of state per capita disposable income, and as dummy variables for whether the justices received a pay raise during the three years preceding the election or in the year preceding the election. In no case did any alternative measure change the substantive results.

14 A variable for total filings is not included simply because salary and filings are strongly correlated.

15 Several alternative measures of workload were tested in the models. Workload was measured as the average annual change in each state supreme court’s filings for the three-year period preceding the election, the total annual filings for the court in the year of the election, and the total annual filings per justice for each court. In no case did any alternative measure change the substantive results.
Information on annual filings was taken from the National Center for State Court’s annual publication *State Court Caseload Statistics*.16

A final aspect of job satisfaction relevant to career choice is majority-party status within the institution. In the House, Democrats have been significantly less likely to retire than Republicans, all else being equal (e.g., Brace 1985; Frantzich 1978; Kiewiet and Zeng 1993). Affiliation with the majority party enhances opportunities for policy influence and leadership and, concomitantly, the attractiveness of the job (Groseclose and Krehbiel 1994; Hall and van Houweling 1995; Moore and Hibbing 1998), though the evidence is not entirely consistent (e.g., Kiewiet and Zeng 1993). Within the context of courts, scholars have yet to address this point.

Based upon current work, and all things being equal, it seems reasonable to hypothesize that justices who are affiliated with the political party controlling the court should have greater power to dictate case outcomes and to fashion public policies through the writing of majority opinions; therefore, these justices (Majority Party) should be less likely to depart the bench than justices of the minority party. For each court annually, majority party was determined using the Brisbin and Kilwein data set on state supreme courts, and each justice was coded as being a member of that majority or not.17

**Electoral Vulnerability**

A third set of factors, and most interesting for this analysis, are perceptions of electoral vulnerability and their effects on the desire to opt out of office. It is with these and other contextual political forces that differences across selection systems (i.e., partisan, nonpartisan, and retention elections) should be most pronounced. Judicial reform advocates consistently have argued that the various alternative selection schemes influence both the quality of the justices recruited for the bench and their subsequent decisions. Similarly, a growing body of work has demonstrated that institutional arrangements serve to structure the ways in which external pressures, including forces from the electoral arena, penetrate courts (e.g., Brace and Hall 1993, 1997; Hall and Brace 1992). Various recruitment and retention procedures create alternative strategic contingencies that insulate justices to greater or lesser degrees from external political pressures.

Despite consensus among scholars and practitioners that institutional arrangements matter, there is substantial disagreement about how differences across selection systems actually are manifested. On one hand, court reform advocates assert that justices in retention election states, and to a lesser extent non-

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16 Docket control is not relevant to this study since all courts considered herein except two have intermediate appellate courts below and consequently enjoy relatively discretionary dockets.
17 These data are located at http://www.polisci.wvu.edu/faculty/brisbin/.
partisan election states, remain relatively impervious to political pressures. Accordingly, justices’ decisions to relinquish the bench in retention and nonpartisan election states should not be influenced by electoral politics or other political considerations, though such factors may be highly relevant in partisan election states. Alternatively, some work (e.g., Hall 2001; Squire and Smith 1988) creates the opposite expectation that justices in both partisan and retention election states will not remain independent from external political forces. Given these contradictions in the scholarly discussion, this study simply posits that differences among selection systems are likely in the extent to which politics influences justices’ career decisions, without offering predictions about the exact nature of these differences.

Furthermore, structural differences between the U.S. House and state supreme courts might influence which particular factors in the electoral arena most effectively signal risk. With House members who all are elected every two years, previous levels of electoral support reasonably can be expected to serve as an excellent basis for assessing the likelihood of successful reelection bids. However, past electoral performance may be a poor gauge of future electoral fortunes for state supreme court justices, whose terms range from six to twelve years.

Similarly, redistricting (Brace 1985; Clarke et al. 1999; Groseclose and Krebbiel 1994; Kiewiet and Zeng 1993) and scandal (Clarke et al. 1999; Hall and van Houweling 1995; Kiewiet and Zeng 1993), which enhance the likelihood of voluntary departure from the House, are not relevant to state supreme courts or to the justices in this study. While formal changes in House districts occur regularly after the census and can substantially change incumbents’ reelection prospects (especially when two incumbents are pitted against each other for a single seat), redistricting rarely occurs in state supreme courts. Instead, most justices are elected statewide, and the handful of states using district-based systems infrequently redraw these boundaries. Regarding scandal, unlike the banking scandal that rocked the House in the early 1990s, only two single instances of scandal were identified in state supreme courts from 1988 through 1995. In the first situation, the justice voluntarily retired; in the second, the justice sought reelection and was defeated. Though the first case is consistent with the strategic retirements hypothesis and the second with the perils of not reading the political tea leaves, scandal does not occur frequently enough with justices to gauge the effect systematically.

In light of these issues, this study utilizes three separate indicators of electoral vulnerability, with the expectation that past electoral performance (as one of these indicators) may not have the same effect in state supreme courts as in the House. However, the other two indicators capture aspects of the electoral climate highly relevant to justices with relatively long terms of office. Moreover, as mentioned, the effects of these variables may vary considerably across alternative selection systems.
Regarding past electoral performance as the first indicator of electoral vulnerability, studies of the House have produced a confusing set of results, perhaps because the studies are based on different time periods, inconsistent measures of past performance, and different levels of analysis. In their discussion of the electoral vulnerability hypothesis, Groseclose and Krehbiel describe the evidence prior to the publication of their work as “weak, indirect, or mixed” (1994, 76).

Nonetheless, evidence supports the notion that past electoral performance becomes an important focal point for legislators’ assessments of the net utility of seeking reelection, particularly in the 1992 and 1994 elections (Clarke et al. 1999; Groseclose and Krehbiel 1994; Hall and van Houweling 1995) or when vulnerability is measured as a composite of past vote and various aspects of the political context (Moore and Hibbing 1998). Members who suffered relatively close calls in their last elections are significantly more likely to retire. Groseclose and Krehbiel (1994, 76) summarize this effectively:

The central point is that if the calculations regarding self-protection are rational, a reelection bid will not be launched at any cost. If an incumbent’s electoral prospects are sufficiently grim, a high cost of running relative to lower expected benefits from the office will lead to a voluntary choice of retirement.

As mentioned, however, the evidence is not consistent. Kiewiet and Zeng (1993) document that previous vote was not important in the career choices of House members from 1947 through 1986. This finding comports with earlier arguments about the “many confounding and complex factors that make [past electoral support] a difficult factor to evaluate” (Brace 1985, 112), particularly because retiring members tend to be more senior and have been elected from relatively safe seats (e.g., Brace 1985; Cooper and West 1981; Hibbing 1982a).

To provide an important point of comparison between the United States House and state supreme courts, this study posits that past electoral performance, measured as the percentage of vote obtained in the previous election (Previous Vote), may have a negative effect on the individual justices’ decisions to retire. This particular measure of electoral support is the most commonly used measure in studies of the House.

Past electoral performance has been measured as the incumbent’s percentage of the vote or percentage of the two-party vote, and the incumbent’s margin of victory over the closest opponent. Further, Moore and Hibbing (1998) combine the percentage of the two-party vote with a variable for midterm or presidential election year and whether the incumbent’s party controls the White House or is favored to win.

Because several of the states hold multimember elections, the votes for these justices were adjusted using the procedure recommended by Jewell (1982) for state legislative elections. Specifically, Jewell (1982) first divided each candidate’s vote by the total votes for all candidates in the district and then multiplied the result by the total number of seats within the district. As state politics scholars generally recognize (e.g., Tucker and Weber 1985; Weber, Tucker, and Brace 1991), this procedure produces votes equivalent to those for candidates in single-member districts.
A second indicator of electoral vulnerability, arguably more relevant to institutions with longer terms of office, are defeats of incumbent justices in the previous election. While terms may be as long as twelve years for justices, these terms are staggered among members of a court, with at least one justice almost always coming up for reelection every two years. Thus, an incumbent justice can gauge current political tides by observing the fate of fellow incumbents seeking reelection just a few short years earlier. In effect, by examining trends in the most recent supreme court election, justices can take a reading of the electoral climate roughly similar on a temporal dimension to the United States House.

Generally speaking, justices being thrown out of office should increase feelings of electoral insecurity for other incumbents, thereby increasing the probability of retirement in the next election. In fact, it seems reasonable to postulate that an electoral defeat will send a dramatic shock through the court, reminding justices in a rather vivid way of the potential hazards of seeking reelection. Therefore, the models include a dummy variable (Earlier Defeats) to capture whether a justice was defeated in the previous election in each respective state. Such defeats were identified from official election reports.

A third indicator of electoral insecurity involves ideological shifts in citizen ideology since each justice’s initial accession. Generally, justices are highly compatible with their state’s political climate at the time of their initial appointment or election (Brace and Hall 1997; Brace, Langer, and Hall 2000). However, as changes over time occur in the state’s ideological leanings, justices become distant, to greater or lesser degrees, from voters. Therefore, incumbents who have substantially fallen out of line with the state’s dominant ideology should anticipate stronger competition than incumbents more ideologically compatible with the electorate and should seek to avoid the risk of defeat. Indeed, Hall (2001) has documented that electoral competition is higher for justices under these circumstances.

The extent to which each state’s ideological climate has changed between the time of a justice’s initial accession and the time of each subsequent election can now be calculated with the Berry et al. (1998) state ideology scores. This innovative new measure provides an annual snapshot of the ideological predispositions of both state citizens and elites. Using these data, a change score (Ideological Distance) was derived for each justice by taking the absolute value of the difference between state ideology at the time of the justice’s initial accession and state ideology at the time of the upcoming election. While a state can become more liberal or more conservative from year to year, the relevant concern with this analysis is the magnitude of the change rather than its direction.20

For example, assume that citizen ideology is .50 when a justice initially is elected (the Berry et al. ideology scores range from 0 to 1.00, with 0 as most conservative and 1.00 as most liberal). If citizen ideology at the time of a subsequent election were .75, Ideological Distance would equal .25. Similarly, for that same justice, if citizen ideology at election time were .25, Ideological Distance would also equal .25.

20
Following the practice established by Brace, Langer, and Hall (2000), either citizen ideology or elite ideology was utilized for each justice’s accession score, depending upon the manner in which the justice came to the bench. For justices initially elected, citizen ideology at the time of selection was compared to citizen ideology at the time of the election. However, for justices initially appointed, elite ideology at the time of appointment was compared with citizen ideology at the time of the election. Thus, the ideology measure takes into account the alternative means through which justices in elective systems actually acquire their seats and the impact of these variations on justices’ ideological predilections.21

State Partisan Context

Like contextual forces generating feelings of electoral insecurity, changes in the state’s partisan context should influence the attractiveness of seeking reelection. As others (Barrow and Zuk 1990; Hagle 1993; Spriggs and Wahlbeck 1995) have noted with regard to the federal courts, and as countless anecdotal studies have documented, judges should be less likely to depart when the chief executive is of the opposite party.22 In the federal context, the political motivation is obvious: justices wish to have their political party retain the seats and also seek to ensure that their replacements are ideological allies.

In the states, changes in partisan control of the executive branch also might be indicative of a significant partisan shift in the state. But at least in the case of retention states (like with the federal bench), such a situation means losing the seat to the opposite party since the governor would appoint a replacement. Therefore, this study includes a variable (Governor’s Party) coded 1 if the governor and justice are of opposite parties, or 0 otherwise. Partisan control was identified using the Statistical Abstract of the United States for various years.

Controls for Unit Effects

Finally, dummy variables for each election cycle (1988, 1990, 1992) minus one (1994) are included in the models. These variables simultaneously control for the unique effects of each specific election and for other temporal effects in the pooled models.

Table 3 provides a complete list of the variables included in the models and their exact measurement, while the Appendix summarizes the means, standard

21 In partisan and nonpartisan election states, governors often have the power to make ad interim appointments to fill unexpired terms. Previous work (Dubois 1980) estimates that about half of all justices serving in partisan and nonpartisan elections initially received their positions through this process.

22 Only Squire (1988) finds no partisan considerations in decisions to retire from the federal bench.
TABLE 3
Variable Descriptions for Models of Voluntary Retirements in State Supreme Courts, 1988–95

<table>
<thead>
<tr>
<th>Dependent Variable:</th>
</tr>
</thead>
</table>
| Retire              | 1 if the incumbent did not seek reelection  
|                     | 0 otherwise  

<table>
<thead>
<tr>
<th>Independent Variables:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Characteristics</td>
</tr>
</tbody>
</table>
| Age                    | age in years of the incumbent at the time of reelection  
| Unseated Incumbent     | 1 if the justice initially acquired office by unseating an incumbent  
|                        | 0 otherwise  

| Job Satisfaction/Workload and Remuneration |  
| Salary Increases                   | annual change in salary, averaged over the 5-year period preceding the election  
| Salary                              | annual salary for supreme court justice  
| Change in Filings                   | annual change in filings, averaged over the 5-year period preceding the election  
| Majority Party                      | 1 if the justice is affiliated with the party of the court majority  
|                                     | 0 otherwise  

| Electoral Vulnerability |  
| Previous Vote           | percentage of the vote for the incumbent in the previous election  
| Earlier Defeats         | 1 if defeat of an incumbent justice in the state occurred in the previous election  
|                        | 0 otherwise  

| Ideological Distance |  
| difference between state ideology at the time of a justice's initial election or appointment and state ideology at the time of the supreme court election, using Berry et al. (1998) ideology scores  

| Partisan Political Context |  
| Governor's Party           | 1 if the governor is of opposite party of the incumbent justice at the time of reelection  
|                           | 0 otherwise  

| Statistical Control for Temporal Effects |  
| 1988, 1990, 1992 | 1 if reelection occurred in the designated year  
|                 | 0 otherwise  

deviations, and ranges of these variables. As Table 3 indicates, the dependent variable is retirement (Retire), coded 1 if the justice up for reelection between 1988 and 1995 chose to leave office and 0 if the justice decided to seek reelection.

**Estimation Technique**

Because the dependent variable is dichotomous, probit was used to estimate the models in which ordinary standard errors were replaced with robust standard errors. With data taking the form of a pooled cross-sectional time series (i.e., variation across time and space), cross-sectional complications related to both contemporaneous correlation of the errors and panel heteroscedastic error structures are possible. Huber/White/sandwich robust variance estimators, set to recognize the panel structure of the data and thus become robust to assumptions about within-group (i.e., state) correlation, are preferred.

Given the strong theoretical interest in comparing substantive results across alternative selection systems, separate models were estimated for partisan, nonpartisan, and retention election states. While a single model with a series of interaction terms would accomplish the same result, such a model would be unnecessarily difficult to read and interpret.

**Models of Voluntary Retirement in State Supreme Courts**

The results of estimating models of voluntary retirement in state supreme courts from 1988 through 1995 are reported in Tables 4 through 6. Overall, the electoral vulnerability hypothesis is supported in partisan and retention election states but must be rejected in nonpartisan states. While external pressures indicative of relative risk have an impact upon state supreme court justices’ decisions to relinquish office, these forces vary systematically according to the institutional arrangements structuring the choice. Overall, contrary to the claims of judicial reform advocates, justices in partisan and retention elections seem to be similarly situated with respect to their inability to remain impervious to electoral pressures when deciding whether to seek reelection or to retire, though justices in nonpartisan elections remain unaffected by such forces. In brief, nonpartisan elections appear to fulfill their promise while retention elections, and the Missouri Plan of which retention elections are a part, do not.

A more detailed examination of the models reveals some fascinating and complex patterns. Table 4 presents the results for states using partisan elections to choose their justices. As expected, justices in partisan election states who acquire their jobs by unseating incumbents are significantly less likely to retire (by probability of about .25), while advancing age and defeats in earlier supreme court elections significantly increase the odds. Quite striking is the im-

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23 This data set includes multiple observations from the same state both over time and in a given year. Thus, in the strictest sense, observations within states may not be truly independent.
pact of electoral defeats. Justices who come up for reelection just after another incumbent has been unseated have an increased probability of retiring of almost 41%, an impact consistent with the “running scared” hypothesis.

In fact, the combined effects of age, unseating incumbents, and electoral defeats are substantial. Consider the following hypothetical scenarios. First, consider a justice whose age is one standard deviation above the mean, who did not obtain office by ousting an incumbent, and who is in a state where another justice was just defeated, with all other factors controlled. Under these conditions, the predicted probability of that justice retiring is .7743. Alternatively, under opposite conditions (age is one standard deviation below the mean, the justice unseated an incumbent initially to win the seat, and no earlier defeats occurred), the predicted probability of retiring is .0034. As a second example, and setting age at the mean value, the predicted probability of retirement for justices who did not unseat incumbents but have observed other incumbents lose their jobs is .5427, while the opposite circumstance predicts the probability of opting out at .0237. While there are numerous other scenarios that could be constructed, these select few adequately serve to demonstrate how potent the effects of age, unseating incumbents, and electoral defeats can be on the justices’ career choices in partisan election states.

A somewhat surprising result in Table 4 is the positive correlation between past electoral performance and decisions to leave office. However, earlier work on the House (Brace 1985; Hibbing 1982a) suggests a plausible explanation for this seemingly anomalous relationship. Specifically, this result may be driven by the large proportion of retirements by senior justices from safe seats. A closer look at the data provides some support for this interpretation. Specifically, only seven of twenty-nine retirements (24.1%) were by junior justices (i.e., justices facing their first reelection bid for a second full term). Further, junior justices’ average about 66% of the vote, compared to senior justices who average about 76%. In essence, if strategic retirements based upon past electoral support are occurring, they will be challenging to identify, given processes unrelated to electoral politics that complicate the picture. Of course, it also is plausible that this aspect of electoral vulnerability does not play a part in justices’ decisions to relinquish the bench in partisan election states.

Finally, quite unlike career decisions in the House and, as at least some have suggested for the federal bench, decisions not to seek reelection in partisan election states are unrelated to job satisfaction. Caseloads, salaries, raises, and majority party status all fail to exert a statistically observable impact upon justices’ decisions to relinquish their seats. Likewise, shifts in state ideology and situations where governors and justices are of different parties do not influence these justices’ retirement decisions. Instead, justices’ career choices in partisan

24 This definition is consistent with studies of the freshman effect in courts and sophomore surge in the House.
election states appear to be driven by various characteristics of the justices themselves and some aspects of the political context.

Table 5 presents the results for retention election states. Remarkably, the only substantive variables contributing significantly to the justices’ career choices are those reflective of the political context. Defeats of incumbent justices in the previous election and higher levels of state ideological change significantly increase the likelihood of retirement in retention election states, while having a governor of the opposite party reduces these probabilities (by about 23%). In

\[\text{TABLE 4} \]

Voluntary Retirements from State Supreme Courts in Partisan Election States, 1988–95

| Variable                  | Coeff.  | Robust Std. Err. | z      | P > |z| | dF/\text{dx}\ast |
|---------------------------|---------|------------------|--------|-----|---|------------------|
| Age                       | 0.117077| 0.027068         | 4.325  | 0.000|   | 0.035452         |
| Unseated Incumbent        | -1.140239| 0.328552        | -3.470 | 0.001|   | -0.245610        |
| Salary Increases          | 0.035170| 0.028349         | 1.241  | 0.215|   | 0.010650         |
| Salary                    | 0.005390| 0.033295         | 0.162  | 0.871|   | 0.000002         |
| Change in Filings         | -0.001956| 0.044484       | -0.044 | 0.965|   | -0.000592        |
| Majority Party            | -0.678075| 0.553672       | -1.225 | 0.221|   | -0.239650        |
| Previous Vote             | 0.024038| 0.010151         | 2.368  | 0.018|   | 0.000727         |
| Earlier Defeats           | 1.223523| 0.382862         | 3.196  | 0.001|   | 0.408791         |
| Ideological Distance      | -0.008082| 0.022698       | -0.356 | 0.722|   | -0.002447        |
| Governor’s Party          | 0.207586| 0.523889         | 0.396  | 0.692|   | 0.062634         |
| 1988                      | 0.382558| 0.962379         | 0.398  | 0.691|   | 0.121806         |
| 1990                      | 0.359816| 0.840255         | 0.428  | 0.668|   | 0.114596         |
| 1992                      | -0.901364| 0.534239       | -1.687 | 0.092|   | -0.225041        |

Number of observations = 83
Wald chi2(8) = 121.46
Prob > chi2 = 0.0000
Log likelihood = -32.353852
Pseudo R2 = 0.3976
Constant = -9.551526

(*) \text{dF}/\text{dx} are the effects of a discrete change of a dummy variable from 0 to 1, or for an infinitesimal change in a continuous variable (extrapolated out), with the values of the other variables at their means.\textsuperscript{25} $z$ and $P > |z|$ are the test of the underlying coefficient being 0.

\textsuperscript{25}STATA calculates an infinitesimal change in the probability for continuous variables, or the slope of the probability function. Differences between these calculations and one-unit increases above the mean are slight. In fact, calculating a one-unit increase above the mean produced virtually identical results with these data. To facilitate replication, I report the statistics generated using the “dprobit” command.
fact, the marginal effect of previous defeats is considerable, increasing the predicted probability of retiring by almost 66% over situations where defeats did not occur. Stated differently, electoral defeats have the effect of altering subsequent decisions from seeking reelection to strategically opting out, all other factors held constant. Though seemingly strong, this finding should be considered cautiously, given the relatively few situations in which electoral defeats actually occurred.

Generally, these results not only support the electoral vulnerability hypothesis but also support the assertion that retention elections do not shield the judiciary from electoral or other political pressures. This is particularly fascinating, and somewhat paradoxical, since retention elections are the least likely of the three electoral forms to result in electoral defeat (Hall 2001).

The impact of contextual forces upon voluntary retirements in state supreme courts also can be illustrated by hypothetical example. For instance, in a situ-
tion where justices and governors share the same political party affiliation, where
the level of ideological change is one standard deviation above the mean, and
where incumbents were recently defeated (with other factors controlled), the
estimated probability of retirement is .7554. Under the opposite conditions, the
expected probability of relinquishing office is only .0094. In other words, cer-
tain combinations of forces in the external political environment in retention
election states (when other relevant factors are controlled) can change the like-
lihood of seeking reelection from highly unlikely to a virtual certainty.

Finally concerning voluntary retirements in retention election states, the dummy
variable for 1988 is statistically significant. Though the coefficient represents
little more than specific ignorance (Maddala 1971) substantively speaking, it
nonetheless indicates that for whatever reasons, the probability of retirement
was substantially lower in 1988 relative to the baseline year of 1994, once the

<table>
<thead>
<tr>
<th>Voluntary Retirements from State Supreme Courts in Nonpartisan Election States, 1988–95</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Coeff.</strong></td>
</tr>
<tr>
<td>Age</td>
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<td>Unseated Incumbent</td>
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<td>Salary Increases</td>
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<td>Salary</td>
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<td>Earlier Defeats</td>
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<td>Ideological Distance</td>
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<td>Governor’s Party</td>
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<tr>
<td>1988</td>
</tr>
<tr>
<td>1990</td>
</tr>
<tr>
<td>1992</td>
</tr>
</tbody>
</table>

Constant = −4.932059
Number of observations = 78
Wald chi2(10) = 302.00
Prob > chi2 = 0.0000
Log likelihood = −39.291838
Pseudo R2 = 0.2366

(*) dF/dx are the effects of a discrete change of a dummy variable from 0 to 1, or for an infinitesimal change in a continuous variable (extrapolated out), with the values of the other variables at their means.

z and P > |z| are the test of the underlying coefficient being 0.

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effects of the other variables in the model are taken into account. In future research, ascertaining what is important about 1988 seems worthwhile, especially since the same result occurs in nonpartisan election states, as evidenced in Table 6.

As Table 6 also indicates, the electoral vulnerability hypothesis must be rejected in nonpartisan election systems. While past electoral performance is statistically significant, the direction of the relationship is opposite the vulnerability hypothesis. As with partisan elections, however, there is evidence that this seeming anomaly can be explained by the retirement of a large proportion of senior justices with substantial past electoral support. Overall, 75.9% of the retirements were by senior justices, whose electoral support is roughly 24% higher than support for junior justices.

Otherwise, retirements from supreme courts in nonpartisan states are influenced by age, changes in filings (or workload), and majority party status. Advancing age and increasing workloads make retirements significantly more likely, while being a member of the court majority reduces the likelihood of retirement. In fact, as Table 6 demonstrates, the effect of a one-year increase in age above the mean (or a change from 62.65 to 63.65 years) increases the probability of retirement by about 3% (with all other factors controlled), while a 1% positive change in average filings increases the likelihood by about 4%. Also, majority party justices have a .21 lower probability of retiring, ceteris paribus.

As an illustration of the collective impact of these forces, consider a situation in which age and workload are one standard deviation above the mean and the justice does not belong to the political party controlling the court. Under these conditions, the predicted probability of retirement is .7339. Under the opposite conditions, the likelihood of retirement is .0769. As this scenario indicates, there are circumstances in which these forces can substantially structure justices’ career decisions in nonpartisan election states.

Apart from these important effects, other forces, including electoral defeats and ideological change, do not play a part in the justices’ decisions to retire. Indeed, if one were to seek to design a court that most resembled a civil service arrangement—basically one in which age and job satisfaction govern career choices—nonpartisan elections might be an excellent choice. Of course, this is but one of many considerations important in choosing any particular selection scheme for the state court bench.

Conclusion

This study establishes that under some types of institutional arrangements, voluntary retirements from state supreme courts are influenced by electoral politics. In states that select justices using partisan elections or the Missouri Plan, justices’ decisions of whether to face voters or relinquish their seats are determined, at least in part, by factors in the external political environment
indicative of relative risk. From the perspective of democratic theory, partisan elections and retention elections forge observable linkages between voters and justices in decisions to retire. In this regard, state supreme court justices chosen by partisan elections or the Missouri Plan are remarkably similar to members of the United States House of Representatives, though justices lack a formal representative charge.

Generally, however, the connections between voters and justices are conditioned institutional arrangements. While justices chosen in partisan and retention elections respond to contextual conditions that instill the fear of defeat when deciding whether to seek reelection or retire, justices in nonpartisan elections do not.

In effect, the reformers are, depending upon the issue, partially correct or seemingly wrong. With regard to citizen control (or accountability), the charge that partisan elections do not create linkages to voters appears to be inaccurate, at least with respect to retirement decisions. As demonstrated, partisan elections (as well as retention elections) do engender some degree of accountability, defined herein as justices calculating whether to seek reelection or retire based on their estimations of the risk of defeat. Whether this reality is desirable, however, is a normative question that cannot be answered by this study.

Concerning judicial independence, support for the claims of judicial reform advocates is mixed. With the Missouri Plan, the evidence is quite convincing that retention races do not insulate justices from politics, at least with respect to their careers. Justices in retention races seem to have a keen appreciation of their external political contexts when deciding whether to quit, and the fact that such influences are part of a calculus to opt out of office casts doubts about the ability of retention elections to remove politics from the judiciary. However, reformers’ expectations about the ability of nonpartisan elections to promote judicial independence appear to be well grounded.

Ascertaining why retention elections resemble partisan elections with respect to the ability of electoral and other contextual forces to influence justices’ career choices is critical, especially since the single driving force in promoting the Missouri Plan, at least as articulated by judicial reform advocates, is to remove such influences. Unfortunately, the data presented in this article cannot answer this question. It simply may be the case that the appointment process characterizing the Missouri Plan serves to sensitize justices to partisan politics, especially if the justices expect to be associated politically with the partisanship of their appointing governors, as suggested by Squire and Smith (1988). However, it does appear, as Glick (1978, 519) postulated over two decades ago, that “the Missouri Plan has produced a selection system that is much less visible than judicial elections. Yet the insulation seems only to obscure, not remove, many important partisan features and influences in judicial selection.”

This explanation, grounded in the importance of partisanship for structuring politics in the U.S., also would account for the insularity of nonpartisan elec-
tions, despite the fact that, for example, defeat rates are higher in nonpartisan states than in retention states. In situations where partisan labels are not on the ballot and where justices are not initially appointed (and hence cannot be associated with the partisanship of a governor), justices are not easily evaluated by partisan criteria and voters cannot readily vote on the basis of their own partisanship. Thus, justices generally may have the freedom to be inattentive to such concerns, though exceptions might occur when particular justices face highly partisan challenges or when justices initially receive ad interim appointments from governors to fill unexpired terms.

Apart from these issues, a caveat is in order about the comparisons made here since some results across models plainly are anomalous. For instance, there is no a priori reason to expect age to be important in partisan and nonpartisan election states but not in retention states, nor is a post hoc explanation readily constructed. While studies of a single institution like the U.S. House of Representatives also have produced inconsistent results about the effects of age, it is almost surely the case that both within the House over time and across state supreme courts, something systematic is occurring that has not yet been captured in the models. Much more work is needed to identify and model these factors.

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, including the effects of personal or health considerations on decisions to opt out, as well as identifying other forces in the political environment or within the confines of the collegial court that might shape the justices’ willingness to remain on the bench. At a minimum, the results of this study indicate that further inquiry will be fruitful, especially for examining and perhaps dispelling myths surrounding the politics of institutional design.

More generally, determining exactly how individual justices balance the countervailing pressures of electoral accountability and judicial independence remains one of the most fascinating yet unexplored areas of judicial politics research. Results presented in this study indicate that incorporating democratic pressures into theories of judicial choice is essential for a complete understanding of judicial politics. These results also support the proposition that judges are rational actors who respond strategically to their external environments as conditioned by their various institutional settings. Additional comparative analysis is needed to better illuminate these relationships. However, it is now quite clear that institutional arrangements matter in politics, and the judiciary is no exception (e.g., Brace and Hall 1995, 1997; Brace, Hall, and Langer 1999; Hall 1987). Evaluating the effects of these arrangements systematically, as well as working to delineate the precise conditions under which particular institutional configurations are adopted in the first place, should be an important component of the judicial politics research agenda.
## Variable Descriptions

### Partisan Elections:

<table>
<thead>
<tr>
<th>Variable</th>
<th>Mean</th>
<th>Standard Deviation</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
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<tbody>
<tr>
<td>Retire</td>
<td>0.35</td>
<td>0.48</td>
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<td>1</td>
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<td>Age</td>
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<td>8.73</td>
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<td>Unseated Incumbent</td>
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<td>Salary Increases</td>
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\( N = 83 \)

### Retention Elections:

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<th>Maximum</th>
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\( N = 74 \)

### Nonpartisan Elections:

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\( N = 78 \)
References


Melinda Gann Hall is a professor of political science at Michigan State University, East Lansing, MI 48824-1032.