Judicial Departures and the Introduction of Qualified Retirement, 1892-1953*

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This study examines the effects of the 1919 introduction of qualified retirement allowing federal judges to retire rather than resign. Retired judges, unlike those who resigned, could perform judicial duties, and their retirement pay could not be diminished. Departures from the U.S. (Circuit) Courts of Appeals from 1892 to 1953 are examined to determine whether the 1919 reform altered how or why judges quit. The effects of political, personal, and institutional factors on departures are analyzed, with their influences expected to vary over time and among types of departures. Political factors are expected to be more influential from 1919 to 1953 as the retirement option made departure more attractive. Quantitative analysis reveals that retirements differed from resignations, and that personal and institutional factors were more influential than political considerations. The results indicate that judges respond to incremental reforms to their duties and benefits when they consider leaving office and, at least before 1954, did not exploit the opportunity to quit strategically.

Throughout the history of the federal courts, the elected branches have occasionally sought to influence the creation of judicial vacancies. The Jeffersonians' assault on the Federalist-dominated courts of 1801 to 1805 was one such episode (Simon, 2002), as were the 1869 creation of judicial pensions (Vining, Zorn, and Smelcer, 2006b) and President Franklin Roosevelt's Judiciary Reorganization Bill rejected in 1937 (McKenna, 2002). More recently, threats of impeachment and judicial removal have followed judicial rulings in cases such as *Newdow v. United States Congress*, 292 F.3d 597 (2002), and *Lawrence v. Texas*, 539 U.S. 558 (2003).[1] These reform efforts have a mixed record of success. Social scientists, including Ward (2003) and Vining, Zorn, and Smelcer (2006a and b), argue that amendments to judges' duties and benefits tend to influence judicial tenure and turnover more than political attacks. Among the most significant such reforms was the Act of February 25, 1919 (40 Stat. 1156) that introduced qualified retirement, now better known as "senior status," as an alternative to resignation for judges of the inferior federal courts. Judges who retired from regular active status, unlike those who resigned, remained judicial officers and were added to a roster of "retired judges" available to serve if asked by the senior

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[1]Both *Lawrence* and *Newdow* angered social conservatives. The former declared unconstitutional state laws that banned homosexual sodomy, and the latter declared unconstitutional the recitation of the "Under God" portion of the Pledge of Allegiance added to its text by Congress in 1954 (68 Stat. 249).

circuit judge (or, after 1948, the chief judge). They also maintained the benefits, prestige, and privileges of their offices other than seniority.

Reforms to the judicial retirement-and-resignation statute have been sought because Article III of the Constitution guarantees continuance in office "during good Behaviour," interpreted as ensuring life terms, sometimes resulting in practical or political difficulties.[2] Judges sometimes serve well past their prime, and regular turnover keeps the courts in line with both the public mood (Dahl, 1957; Giles, Blackstone, and Vining, 2008) and contemporary legal sentiment. Unless they die or are impeached and convicted, federal judges can quit at a moment of their choosing.[3] This study examines the effects of the 1919 Act introducing qualified retirement on the kinds and causes of departures from the U.S. Circuit Courts of Appeals (known after 1948 as the U.S. Courts of Appeals for the respective circuit) from 1892 to 1953. The time frame is bounded by the Judiciary Act of 1891 (26 Stat. 826) that created the circuit courts of appeals and the reform to judicial retirement rules in 1954 (68 Stat. 12). The threshold for pension eligibility remained 70 years of age and 10 years of service throughout this period.[4] The 1919 legislation offered district and circuit judges an alternative to resignation or death in active service but left the vesting requirements unchanged.

I argue, following earlier studies (Spriggs and Wahlbeck, 1995; Nixon and Haskin, 2000), that circuit judges leave office as a result of political, personal, and institutional factors. These determine the political contexts in which judges' successors are chosen, influence their livelihoods, and determine their roles and duties. The prospect of strategic exits, whereby judges act so their judgeships remain occupied by partisan allies, has long preoccupied social scientists (Squire, 1988). Whether the influences of causal factors shift in response to legislation amending financial incentives and duties associated with retirement and resignation is given less attention (cf., Ward, 2003). If so, incremental legislation may be a fruitful enterprise for policy-makers interested in regular turnover.

Retirement from regular active service, rather than resignation, was beneficial for both judges and their circuits. Retired judges stayed active in circuit affairs and enjoyed the security of the compensation clause of Article III. The latter protects judicial salaries from reduction, ensuring that federal judges shall "receive for their Services a Compensation which shall not be diminished during their Continuance in Office." Additional jurists can occupy the judgeships of retired circuit judges, reducing

[2] The retirement-and-resignation statute is found at Title 28, Section 371-375, of the United States Code.

[3] Only one circuit judge has been removed by impeachment and conviction. Robert Archbald of the Third Circuit (as well as the Commerce Court) was removed from office in 1913 due to improper use of his office (McGinnis, 1977). The Judicial Disability and Removal Act of 1980 and its revisions now allow judges to investigate allegations of disability or misconduct and seek disciplinary action if necessary (Hellman, 2007).

[4] The Act of February 10, 1954, amended the age and tenure at which judges were eligible for qualified retirement. This statute allowed judges to take partial retirement (but not resignation) at 65 years old with 15 years of service or at 70 years old with 10 years of service. The ability to take qualified retirement was extended to Supreme Court justices in 1937, but they were excluded from the 1919 statute.

the burden on their colleagues. In effect, a judge's retirement increased a circuit's roster once a successor was confirmed. The benefits of this status were intended to entice judges to retire rather than resign or remain active until death. It had "the support not only of the Judiciary Committee of the House but of practically all the Federal judges throughout the country" as well as Attorney General Thomas Gregory and numerous bar associations.[5] There is ample reason to expect that the 1919 reform altered the types and causes of exits from the circuit bench.

INSTITUTIONAL CHANGE AND DEPARTURES FROM THE U.S. COURTS OF APPEALS

Aside from the 1919 introduction of retirement from regular active service, other developments from 1892 to 1953 influenced the roles of political, personal, and institutional factors in departures from the circuit bench.[6] The status and organization of these courts changed a great deal. Two new circuit courts were created, and the number of judgeships grew from nineteen to sixty-five. The old circuit courts, along with Supreme Court justices' circuit-riding duties, were eliminated in 1911.[7] The 1922 creation of the Conference of Senior Circuit Judges and 1939 establishment of the Administrative Office of the U.S. Courts also advanced judicial administration and autonomy. The former developed judicial administration policy, and the latter handled administrative, budgetary, and statistical functions (Fish, 1973).

The role of the U.S. Circuit Courts of Appeals was also enhanced by the Judges' Bill of 1925, which reduced the mandatory docket of the Supreme Court. This made the circuit courts the de facto final venue for appeals in most instances, thereby increasing their importance and that of circuit judgeships. The Act of June 25, 1948, gave the U.S. Courts of Appeals their current name and established administrative reforms. These developments enhanced the role and prestige of the circuit courts, making service on the federal bench more attractive in the period from the 1920s to the 1950s than before.

The 1919 statute that created qualified retirement became law in this climate of reform. Its origins suggest its attractiveness—federal judges argued that part-time service after retirement would be beneficial, and that their pensions were unduly subject to diminution.[8] Two decades after its passage Judge John J. Parker of the Fourth Circuit credited the introduction of qualified retirement with encouraging departures:[9]

[5] *Congressional Record*, 65th Congress, 3rd sess., December 12, 1918, p. 369.

[6] The circuit courts of appeals were created by the Judiciary Act of 1891, or Evarts Act (26 Stat. 826). For a brief but comprehensive study of the origins and development of federal court governance, see Wheeler (1992).

[7] For an extensive discussion of circuit riding by Supreme Court justices, see Glick (2003).

[8] *Congressional Record*, 65th Congress, 3rd sess., December 13, 1918, p. 428.

[9] Judge John J. Parker to Senate Committee on the Judiciary, Subcommittee on S. 1050, S. 1051, S. 1052, S. 1053, S. 1054, and H.R. 138, Seventy-seventh Congress, First Session, April 23, 1941, p. 25.

> The first [1869] act provided for the resignation of judges after they had reached the age of 70, and had served 10 years, with the provision that their salaries should be paid them for the remainder of their lives.
>
> The experience on that act was unsatisfactory. There had been a few retirements under the act. . . . One reason was because the retirement under the provision of the act meant that the money paid was paid as a pension and was subject to diminution by the Congress. The constitutional provision protecting the salary of a judge would not apply to a pension paid to a retired judge.
>
> More important, however, was the feeling that the judge was relinquishing his status as a judge. . . .
>
> . . . The act of 1919, as construed by the Supreme Court in the *Maxwell* case and in the *Booth* case, does this: It says that when the judge reaches the age of 70 and has served 10 years on the bench, instead of resigning and having his salary paid to him as a pension, he may take qualified retirement, that is to say, he may continue as a judge, with all the power and prerogatives of a judge, except that he yields seniority to the man who is appointed as his successor.[10]

This study, like Judge Parker, expects that the 1919 reform was an important turning point for departures from the U.S. (Circuit) Courts of Appeals.

WHY LEAVE THE BENCH?

Research and popular debate concerned with staffing the inferior federal courts tend to focus on the appointment process rather than departures (Giles, Hettinger, and Peppers, 2001; Goldman, 1997; Martinek, Kemper, and Van Winkle, 2002; Scherer, 2005; Scherer, Bartels, and Steigerwalt, 2008), but scholars have examined exits from the district and circuit courts. These studies are informed by those of Supreme Court turnover that provide their theoretical foundations. Wallis (1936) and Fairman (1938) examined the scarcity of Supreme Court departures seven decades ago but offered little systematic explanation. Their successors posited that health (Atkinson, 1999; Okie, 2004), mental decrepitude (Garrow, 2000), disability (Pusey, 1979), and strategic behavior (Squire, 1988) contribute to departures from that institution. Barrow and Zuk (1990) extended this literature to the lower federal courts, though they examined annual turnover rates rather than the behavior of individual judges.

No consensus has been reached regarding why lower federal judges step down. The seminal study by Barrow and Zuk (1990) concluded that institutional conditions have the most impact, but later research by Yoon (2006) declared personal considera-

[10] *Maxwell v. United States*, 271 U.S. 647 (1926), and *Booth v. United States*, 291 U.S. 339 (1934), clarified the roles of retired judges and affirmed their salary protections.

tions most influential. Both Spriggs and Wahlbeck (1995) and Nixon and Haskin (2000) found a marginal role for politics in voluntary departures from the circuit courts, while Yoon (2003) did not.

Social scientists have not consistently identified the change over time in judicial departures suggested by Judge Parker. Spriggs and Wahlbeck (1995:591-92), in fact, argue that change in the reasons for departures should not occur: "From the outset of the Republic, judges have behaved as political actors; there is no reason to believe that the impact of political and nonpolitical factors has recently shifted." Barrow and Zuk (1990) conclude that the forces driving turnover rates changed after 1954, a year they select arbitrarily, and Nixon and Haskin (2000) declare that voluntary departures were less predictable before 1919. Yoon (2005) tested for change over time, but omitted the 1919 introduction of qualified retirement from his empirical analysis. Nixon and Haskin (2000) refrain from examining the multiple departure mechanisms available to judges, and Spriggs and Wahlbeck (1995) count annual departures rather than perform analysis at the individual level. The relationship between departures from the circuit courts and changes to judges' duties and financial incentives, including those established by the 1919 reform, has been given little attention in prior research.

I follow studies of Supreme Court departures by Zorn and Van Winkle (2000) and Ward (2003) by recognizing that judges may leave office in several ways and that their behavior may change over time. Zorn and Van Winkle (2000) posit that the several ways justices leave office are the results of different causal processes and find empirical support for this claim. Ward (2003) argued that how and why justices leave office vary over time as they adapt to their circumstances and consider statutes governing pensions and circuit-riding duties. His qualitative analysis supported his theory, as did quantitative studies by Vining, Zorn, and Smelcer (2006a and b). Here a similar approach is applied to the U.S. Courts of Appeals from 1892 to 1953. The 1919 reform is expected to change how and why circuit judges quit, and qualified retirements should differ from resignations. The historical and current pension rules for judges of the inferior Article III courts are detailed in Table 1. Judges who died, were impeached and convicted, or resigned before vesting did not receive a pension.

Like other systematic analyses of judicial departures, this study determines the influence of political, personal, and institutional considerations. Personal and institutional factors are expected to be influential throughout the 1892-1953 period. The role of political considerations should be constrained before 1919 by the high bar for pension vesting and dissatisfaction with the resignation option. The introduction of retirement from regular active status as an attractive alternative to resignation should give circuit judges more freedom to consider the political consequences of stepping down.

Political Factors. Since Squire's (1988) analysis of Supreme Court turnover, most departure studies have focused on whether judicial departures are strategic. Because judges' replacements are nominated by the president and subject to Senate approval, they should be able to estimate the ideological stripes of their successors. As judges have legal and political philosophies they would like to advance, they should prefer

Table 1
Pension-Vesting Requirements for Judges of the Lower Federal Courts, 1891-Present

	1891-1918	1919-1953	1954-1983	1984-present
Resignation with salary	70 years old, 10 years service	70 years old, 10 years service	70 years old, 10 years service	not available
Qualified retirement (senior status)	not available	70 years old, 10 years service	70 years old, 10 years service or 65 years of age, 15 years service	"Rule of Eighty" with minimum age 65
Full retirement	not available	not available	not available	"Rule of Eighty" with minimum age 65

that their successors share those leanings. Spriggs and Wahlbeck (1995) and Nixon and Haskin (2000) found only limited support for the influence of partisan concordance between the judge and president. However, this approach may not be sufficiently nuanced. Because of the nature of succession politics, circuit judges may look beyond the party affiliation of the president toward their home-state senators.

If one of these senators is of the same party as the executive, *senatorial courtesy* constrains the president's selection. This means the senator, and by extension elites from the judge's state, will be consulted regarding potential nominees. Giles, Hettinger, and Peppers (2001) found that senators' involvement in judicial selection leads to different outcomes than when the president is unconstrained. Circuit judges should be aware of this arrangement. Judge Robert L. Williams of the Tenth Circuit, for example, corresponded with Oklahoma senator Elmer Thomas in November 1936 about his potential successor's attitudes toward New Deal programs.[11] This is preferable to *unilateral selection of nominees by the president*, although both are favorable to selection by an adversarial president.

The party balance of the Senate also indicates the likely leanings of one's successor. Support for a potential nominee may be difficult to predict. However, the tenor of the Senate should indicate that body's willingness to confirm judicial nominees of a certain stripe. A Senate with an overwhelming Democratic majority, for example, may reject a nominee with strong Republican leanings. A closely divided Senate will be less predictable. Spriggs and Wahlbeck (1995) found that increasing party disparity in that body led to a greater number of annual departures, but Nixon and Haskin (2000) found no such relationship.

Circuit judges may also consider the timing of their departures relative to presidential terms. Judges should be discouraged from stepping down in the *final year of an*

[11] Letter from Judge Robert L. Williams to Senator Elmer Thomas, November 20, 1936.

adversarial president's term. Quitting in that year allows the opposition party to choose a successor when holding out a short time could prevent it.

Judges may also take into account a broader view of presidential politics. *Consecutive terms by presidents from the judge's party* should encourage judges to step down, particularly during the first and second terms. They may be eager to leave office after holding out for a partisan shift, and history demonstrates that no party typically retains the presidency for more than three terms.[12] Nixon and Haskin (2000) found no significant effect for service during presidents' second terms, but did not account for entrenchment in the White House by one political party. *Consecutive terms by presidents from an adversarial party* should discourage departures during the initial term or terms. The longer the adversarial party occupies the executive branch, the less attractive the prospect of waiting for a partisan shift.

Political considerations are expected to be more influential in the 1919-1953 period than before as the ability to retire and its related benefits made stepping down more attractive than resignation. Judges hesitant to resign should be more amenable to retirement and related opportunities to step down when beneficial to their political party.

Personal Factors. Whatever their political preferences, judges consider personal matters when contemplating departure. The effects of age, retirement pay, and personal finances are likely to prompt exits from the bench.

With *aging* comes physical and mental decline, the extent of which varies among individuals. Nixon and Haskin (2000) find that aging increases the likelihood of voluntary departures from the circuit bench when quitting would disadvantage a judge's party. Individuals of higher socioeconomic status, like judges, should be less susceptible to the physical deterioration associated with superannuation. They have access to medical care and are employed in sedentary jobs rather than performing manual labor. Nonetheless, advanced age eventually leads to departure by death if not by voluntary means.

Related to age is *pension status*. Circuit judges should be more likely to leave office after pension vesting. Resignations should be more likely after pension eligibility before 1919, when qualified retirement was not yet available. As Judge Parker argued, the 1919 statute should increase the impact of pension eligibility because it made leaving active service more attractive. Yoon (2005, 2006) demonstrated that pensions are important causes of departures from the lower federal courts, and both Spriggs and Wahlbeck (1995) and Nixon and Haskin (2000) found their influence to be statistically significant. After the 1919 Act, resignations should decline as vesting nears.

Circuit judges also consider *the adequacy of judicial salaries*. The lower judicial salaries, the more likely judges are to leave active service. Frustration with salaries

[12] An exception to this is the New Deal and Fair Deal period (1933-1953) in which Democratic presidents Franklin Roosevelt and Harry Truman held that office for five consecutive terms.

should motivate early resignations to a greater degree than departures after pension vesting, as individuals dissatisfied with judicial compensation quit after brief tenures. Judge Walter Noyes of the Second Circuit, for example, stepped down in 1913 because of insufficient salary (Schick, 1970:59) after five years of service. Both Spriggs and Wahlbeck (1995) and Nixon and Haskin (2000) found that lower salaries led to the departures of a subset of circuit judges (i.e., Democrats and those serving during the term of a copartisan president, respectively).

One aspect of salary satisfaction may be *a background in private practice*. Judges with long careers in private practice should have more assets than their colleagues and, therefore, be less likely to resign or retire. This effect should be greater in the more recent period as the earnings potential of private practice increased.

Institutional Factors. Judges are also constrained by their institutional contexts. A judge's role, workload, and status as a critical vote are all likely to influence their decision whether to remain active.

Service as the senior circuit judge or (since 1948) chief judge is a more personal institutional matter. Judges in this role were the administrative leaders of their courts. They also served on the Conference of Senior Circuit Judges and Judicial Conference of the United States after each was founded. Senior circuit judges enjoyed the honor of their titles and were at this time permitted to construct three-judge panels assigned to hear cases.[13] Service as chief judge should decrease the probability of both retirement and resignation, particularly in the 1919-1953 period as the position became more prominent and active in judicial administration.

The size of a judge's caseload may also influence departures. If their workloads are arduous, circuit judges may step down to reduce their burden or seek other employment. The U.S. Circuit Courts of Appeals were created in part to lighten the docket of the U.S. Supreme Court, and circuit judges do not enjoy the agenda-setting discretion afforded the justices since 1925. Barrow and Zuk (1990) and Spriggs and Wahlbeck (1995) both found that higher workloads encourage the departures of Republican circuit judges. Nixon and Haskin (2000) determined that increases in the volume of work led to departures among circuit judges whether they would help or hurt their party by quitting. During the 1892-1953 period, before the caseload explosion shortly after (Posner, 1999), the effect of caseload may not match contemporary expectations. For example, *The Annual Report of the Attorney General* in 1931 stated that "no problem is presented so far as the circuit courts of appeals are concerned. These appellate courts are well up with their work, and such exceptions as temporarily exist are not serious (p. 6)." The effect of caseload should be greater in the case of resignations than retirements, and should increase in the 1919-1953 period as the number of appeals rose.

[13] The latter duty later became controversial during the civil-rights movement and was removed from the powers associated with the position. Chief Judge Elbert Tuttle of the Fifth Circuit, for example, was criticized in this regard by opponents of desegregation (Bass, 1981). However, his actions took place after the time in this study.

Table 2
Departures from the U.S. (Circuit) Courts of Appeals by Regime Period

	Total Departures	Death	Resignation	Retirement	Qualified Retirement	Elevation	Disabled	Impeached
1891-1918	44	17 (38.6%)	22 (50%)	-	-	4 (9.1%)	-	1 (2.3%)
1919-1953	96	42 (43.8%)	13 (13.5%)	-	39 (40.6%)	2 (2.1%)	0	0
1954-1983	169	33 (19.5%)	10 (5.9%)	-	118 (69.8%)	6 (3.6%)	2 (1.2%)	0
1984-2004	165	15 (9.1%)	5 (3%)	10 (6.1%)	126 (76.4%)	6 (3.6%)	4 (2.4%)	0
Total								
1891-2004	474	107 (22.6%)	34 (7.2%)	25 (5.3%)	283 (59.7%)	19 (4%)	6 (1.3%)	1 (.21%)

Missing data are indicated when departure type unavailable; disability retirement introduced in 1939.

An institutional matter with legal and political consequences is *service on a divided circuit*. Ruckman (1993) showed that "critical," or pivotal, Supreme Court nominations face increased scrutiny. Judges also likely recognize the importance of narrow partisan or ideological division and decline to step down when their circuit is split. Zorn and Van Winkle (2000) found that potential critical nominations did not affect Supreme Court departures, but the smaller number of circuit judges from 1892 to 1953 increases the impact of each judgeship (especially before 1919). The effects of the causal factors are generally expected to vary in magnitude rather that direction between resignations and retirements.

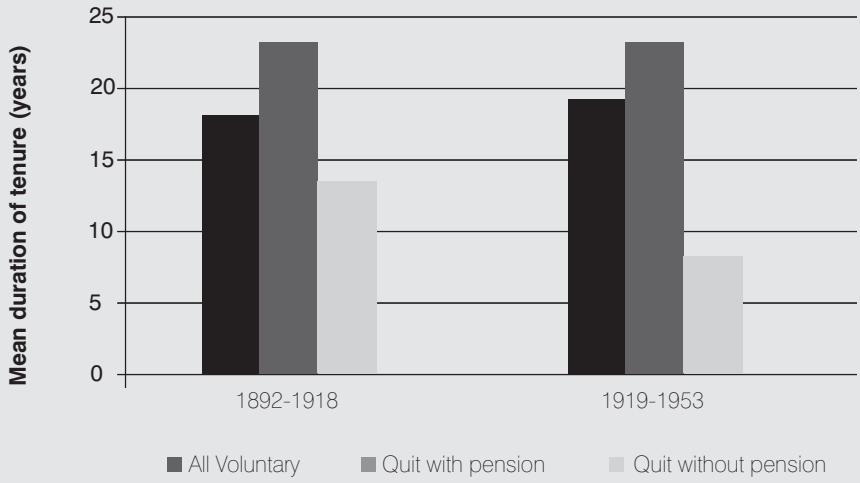
DATA AND METHODS

This study expands upon the theoretical (Zorn and Van Winkle, 2000; Ward, 2003; Yoon, 2005) and methodological (Zorn and Van Winkle, 2000; Nixon and Haskin, 2000; Yoon, 2005) advances of recent research. Of particular interest is variation over time and among departure types in response to the 1919 introduction of retirement from regular active status.

The time period in this study, 1892-1953, includes the entire history of the U.S. (Circuit) Courts of Appeals during which the pension eligibility requirements were 70

Figure 1

Duration of Tenure at Departure, by Type, 1892-1918 and 1919-1953



years of age and 10 years of service. I examine two subperiods, 1892-1918 and 1919-1953, divided by the 1919 introduction of qualified retirement. The behavior of judges is assessed through analysis at the individual level. All judges of the U.S. Circuit Courts of Appeals before 1954 appear in the data, whether or not they left the bench. This includes 202 judges and 140 total departures.[14]

Cox proportional hazards models are employed to determine the influences of political, personal, and institutional factors on the service time of circuit judges.[15] The dependent variable is the duration of tenure in active service as defined by the occurrence of a departure (failure) event. I first examine pooled voluntary departures in each time period, then resignations and qualified retirements separately.[16] The effects of the causal factors are expected to differ among types of departures and between regime periods. The operationalization of the independent variables is detailed in the Appendix.

[14] These judges contributed a total of 2,622 years of service, each of which occupies one line in the data. Of these, 851 judge-years (79 judges) were from 1892 to 1918 and 1,771 judge-years (158 judges) were from 1919 to 1953. These figures include the justices of the Court of Appeals of the District of Columbia, who were integrated into the courts of appeals in 1948.

[15] These models are concerned with the duration of time until some event. During the time until such an event, the subject under observation is said to be "at risk" of "failure." Once a failure event is observed, the subject drops out of the analysis and is "censored" from the data.

[16] When modeled separately, resignation and qualified retirement are "competing risks" (Box-Steffensmeier and Jones, 2004). Cox proportional hazards models are more flexible than alternatives such as the Weibull model as they do not assume a particular shape of the underlying hazard function. The Cox model also allows the use of time-varying covariates, necessary because each observation represents one year in a judge's term. Diagnostic tests reveal that no models included violate the proportional-hazards assumption.

Table 3
Influences on Voluntary Departures from the U.S. Circuit Courts of Appeals, 1892-1918 and 1919-1953

	Voluntary departures 1892-1918	Voluntary departures 1919-1953
Political factors		
Senatorial courtesy	.15*	2.23
Executive selection	.02†	3.70*
Senate composition	1.61	.95
Final year, adversarial president	.48	2.14
Consecutive terms, copartisan president	1.57	.71
Consecutive terms, adversarial president	4.42††	1.11*
Personal factors		
Pension eligibility	40.5††	36.82*
Age	.93†	.92†
Income (adjusted)	1.03	1.01
Private-practice background	.96	1.12
Institutional factors		
Senior/chief judge	9.58††	.42†
Caseload (adjusted)	1.01	1.00
Divided circuit	.79	1.21
Log-likelihood	-51.01	-173.87
Observations	848	1,771

Cell entries are hazard ratios; robust standard errors not presented.
†† Significant at .01 (two-tailed); † significant at .05 (two tailed);
* significant at .05 (one-tailed).

FINDINGS AND DISCUSSION

Table 2 reports how circuit judges left office under each retirement and resignation statute to date. The proportion leaving the bench voluntarily was relatively consistent before and after the introduction of qualified retirement; the proportion of resignations before pension eligibility was also similar, accounting for 15.8 percent of exits before 1919 and 13.8 percent from 1919 to 1953. Before 1919, 39.5 percent of circuit judges not elevated or impeached eventually resigned after pension vesting. From 1919 to 1953, a comparable 41.5 percent of circuit judges not promoted or impeached took qualified retirement. These totals suggest similarities before and after the 1919 reform.

How long judges served was also relatively static between these periods, with the exception of resignations before vesting (see Figure 1). The average tenure of judges

Table 4
Influences on Resignations and Retirements from the U.S. Circuit Courts of Appeals, 1892-1918 and 1919-1953

	Resignations 1892-1918	Resignations 1919-1953	Qualified retirements 1919-1953
Political factors			
Senatorial courtesy	.25	8.66	1.61
Executive selection	.04	7.51	.99
Senate composition	1.15	.87	1.16
Final year, adversarial president[a]	.61		1.45
Consecutive terms, copartisan president	1.53	.84	.68
Consecutive terms, adversarial president[a]	3.97†		1.04
Personal factors			
Pension eligibility[b]	49.0††		.
Years until/since vesting		.53††	1.02
Age	.92*	1.68††	1.22
Income (adjusted)	1.03	.99	1.02††
Private-practice background	.68	2.59	1.08
Institutional factors			
Senior/chief judge	9.54††	.55	.29††
Caseload (adjusted)	1.00	1.00	1.00
Divided circuit[a]	.93		1.17
Log-likelihood	-38.86	-48.38	-107.17
Observations	848	1,771	1,771

Cell entries are hazard ratios; robust standard errors not presented.
†† Significant at .01 (two-tailed); † significant at .05 (two tailed);
* significant at .05 (one-tailed).
[a] Dropped from 1919 to 1953 resignations model due to lack of variation. See text for details.
[b] Dropped from 1919 to 1953 resignations and qualified retirements models due to lack of variation. See text for details.

who died in office increased, from 15.7 years before 1919 to 17.8 years from 1919 to 1953. Conversely, resignations without a pension came sooner—from a mean of 13.5 years of service from 1892 to 1918 to only 8.2 years served from 1919 to 1953. The average tenure of pension-eligible judges who quit, however, was nearly unchanged. Circuit judges resigning with pensions before 1919 served a mean of 23.1 years, and those taking qualified retirement from 1919 to 1953 averaged 23.3 years in office. However, these totals say little about *why* departures occurred.

Table 3 reports the influence of the causal variables on voluntary departures. Following previous research (e.g., Nixon and Haskin, 2000; Spriggs and Wahlbeck, 1995), this model does not distinguish between retirements and resignations. It also includes circuit judges who were elevated to the U.S. Supreme Court. The results, expressed as hazard ratios, support the expectation that the causal processes motivating departures differed over time.[17] Of the three categories of explanatory variables, only personal factors were consistent before and after the 1919 reform.

Pension eligibility strongly encouraged voluntary departures. Increasing age, contrary to expectations, made voluntary exits less likely. However, other things being equal, the substantive impact of an increase in age is marginal.[18] The institutional and political variables that are statistically and substantively significant in both time periods reverse their influences. The effect of service as senior circuit judge or chief judge changes dramatically before and after the 1919 reform. From 1892 to 1918 the senior circuit judge was eight times more likely to step down voluntarily than his colleagues in a given year; afterward, he was 58 percent less likely to quit than other circuit judges. Extended occupation of the presidency by political adversaries strongly encouraged voluntary departures from 1892 to 1918. This was expected, and indicates that judges who held out gave up rather than wait another term. Political consonance with the president (but not with a home-state senator) encouraged departures after 1918 (p=.06, two-tailed test) as expected, though a senatorial courtesy scenario did not.

Turning to the models for resignations and qualified retirements, the results in Table 4 suggest a different dynamic than that driving the broader category of voluntary departures. I constructed three models to determine the influences of political, personal, and institutional variables on specific types of departures. Resignations, whether before or after pension eligibility, were modeled for the 1892-1918 period. Seven of these resignations preceded vesting and fifteen came afterward. Resignations and qualified retirements are modeled as competing outcomes after the latter was introduced in 1919. Only after that reform could a circuit judge resign or retire after vesting. Judges who resigned after 1919, unlike those who retired, no longer provided service to their circuits and severed their ties to the federal judiciary.

The effect of *pension eligibility* on resignations is strong and statistically significant in the 1892-1918 period. Due to a lack of variation in pension eligibility among resigning or retiring judges, the number of years until or since vesting were included in the 1919-1953 models. Increasing service time relative to pension vesting made resigna-

[17] The interpretation of hazard ratios is relatively straightforward. A coefficient of 1.0 represents no change in the likelihood of departure for each unit change in the independent variable with all others held constant at their means. Coefficients greater than one represent an increase in the likelihood of departure equivalent to the distance from 1.0 (e.g., a hazard ratio of 1.5 indicates a 50 percent increase in the likelihood of departure). Conversely, coefficients less than one represent an analogous decrease in the likelihood of leaving the bench.

[18] The hazard ratio for an increase in age before 1919 is .93, meaning a unit increase is associated with a 7 percent decrease in the likelihood of voluntary departure (p=.08, two-tailed test). From 1919 to 1953 the hazard ratio for an increase in age is a nearly identical .92 (p=.011, two-tailed test).

tions less likely, but had no statistically significant impact on qualified retirements. *Age* has a significant effect only for resignations in the later time frame, as can be explained by the tendency to resign when relatively young. Before the 1919 reform, circuit judges resigned at an average age of 68.3 years (56 before vesting, 73.1 after vesting). This declined to 56.4 years from 1919 to 1953. Personal considerations had a different impact on resignations and qualified retirements, and each category differed from pooled voluntary departures.

Results for the political and institutional factors, where statistically significant, support only some of the hypotheses. Contrary to expectations, no variable for political concordance with the president or senators is statistically significant. Just seven of twenty-two resignations before 1919 took place while the president and judge had the same party affiliation, including four of seven before pension vesting. *The final year of an adversarial president's term* does not have a statistically significant effect before 1919. However, only two of the twenty-two resignations before the 1919 reform happened during the last year of an adversarial president's term. Both of those judges were pension-eligible at the time. From 1919 to 1953, none of the thirteen resignations took place as an adversarial president's term came to a close. This variable was excluded from the model for resignations in this period due to a lack of variation. This effect was not sustained for qualified retirements, but indicates that circuit judges after 1918 did not resign when the White House was occupied by a "lame duck" president from the opposite party.

The number of *consecutive terms by a copartisan president* approaches statistical significance ($p=.054$, one-tailed) in the model for qualified retirements from 1919 to 1953, suggesting that circuit judges may partially retire (but not resign) sooner when their party controls the White House as expected. *Consecutive terms by presidents from the opposite party* encouraged resignations both before and after 1919. This circumstance, in fact, had a large impact. From 1892 to 1918 a circuit judge was three times more likely to resign each term the opposition held the executive branch, and from 1919 to 1953 all thirteen resignations took place in the first term of an adversarial president.

Appointment as senior circuit judge had a substantial influence before and after 1919, but to different ends. Before qualified retirement was introduced a judge was eight times more likely to resign if a senior circuit judge than otherwise, a direct result of that office's occupation by jurists with the longest service time. Eighteen of twenty-two resignations from 1892 to 1918 were by senior circuit judges. After 1919 the relationship between that office and resignation disappeared, but senior circuit judges were 71 percent less likely to take qualified retirement than others. Four of the six judges who resigned before vesting prior to 1919 were senior circuit judges. Because senior circuit judges at this time were by default the longest serving members of their circuits, this is not surprising. Three of those four resigned to accept prestigious positions in the public sector.[19] *Service on a divided circuit* discouraged resignations as expected. Although not statistically significant from 1892 to 1918, just two of twenty-

two resignations were by judges on a divided circuit. This includes zero of seven resignations before pension vesting. Service on a narrowly divided circuit is excluded from the model for resignations from 1919 to 1953 because no circuit judge resigned in those circumstances.

As expected, differences are evident between departure types and over time. There are important disparities between the findings for voluntary departures and the specific departure types. Resignations differed from voluntary departures generally, including before 1919 when they were the dominant form of exit aside from death. Political maneuvering in resignations before 1954, when present, was related to timing or frustration rather than mere partisan consonance between judges and elected officials. The influence of personal and institutional considerations differed before and after 1919, but when significant mostly conformed to expectations.

The results suggest that judges responded to the 1919 reform as Congress intended and, contrary to expectations, departures did not become more strategic. No variable related to the presence of a copartisan president, home-state senator, or Senate had a significant influence on resignations or qualified retirements from 1919 to 1953. The positive and significant coefficient for *consecutive terms by opposing party presidents* before 1919 suggests that retention of the presidency by a judge's political opponents encouraged resignation. Such behavior is anticipated as judges "give up" rather than hold out (Zorn and Van Winkle, 2000; Vining, Zorn, and Smelcer, 2006a). There is only limited indication that circuit judges quit strategically in the three decades following the introduction of qualified retirement.

The role of institutional considerations varied over time. *Serving as senior circuit judge* increased the likelihood of resigning before 1919, but discouraged qualified retirements afterward. This may be due to the greater role of senior circuit judges as administrators beginning in the early 1920s; increased prestige and importance may have spurred judges to remain active.

Personal factors affected departures as judges aged and became eligible for pensions. An increase in age marginally discouraged voluntary departures both before and after 1919, but was found to increase the probability of resignations from 1919 to 1953. *Pension eligibility*, which is related to age, strongly encouraged resignations before 1919. After that date the likelihood of resignations declined as vesting neared, but time relative to vesting had no effect on qualified retirements. A background in private practice had no effect in any of the five models.

The findings offer mixed support for the stated hypotheses. They do, however, uphold the propriety of examining distinct modes of departure separately. To conflate all voluntary departures does not accurately explain particular types of exits. Comparing time periods suggests that scholars must use caution when considering long swaths of institutional history.

[19] Judge Walter Gresham (CA 7) resigned in 1893 to become secretary of state. William H. Taft (CA 6) resigned in 1900 to head the U.S. Philippine Commission, and LeBaron Colt (CA 1) resigned in 1913 to serve as U.S. senator from Rhode Island.

As for the transformative effect of the 1919 reform, general findings are somewhat muddled. Judge Parker's assertion that introducing qualified retirement led to more and earlier departures is not entirely correct. The proportion of circuit judges who reached pension eligibility before quitting was relatively consistent. Judges who resigned, but not those who retired, tended to quit years sooner after the introduction of qualified retirement. In that regard it was at least a moderate success. Other benefits of qualified retirement, such as the valuable contributions of retired judges, are beyond the scope of this study. The fact that thirty-nine of forty pension-eligible circuit judges chose qualified retirement over resignation indicates that they responded favorably to the perks and financial protections of the 1919 Act.

CONCLUSIONS

This study examines the response of judges of the U.S. (Circuit) Courts of Appeals to a statutory reform that changed the duties and benefits associated with judicial departures. The 1919 introduction of retirement from regular active status, supported by jurists and enacted by the elected branches, provided district and circuit judges a way to leave the bench other than resignation or death (or the rare impeachment and conviction). Allowing judges to serve after retirement and providing them salary protections addressed concerns that led to prolonged tenure under the 1869 judicial retirement statute. The 1919 Act was somewhat successful but was not the panacea that Congress might have hoped.

Despite the failure of circuit judges to leave office en masse after pension vesting, the introduction of qualified retirement had important effects. The number of judges who resigned or retired after pension vesting increased from 34 to 40 percent. Political considerations, contrary to expectations, were secondary to personal and institutional circumstances. Circuit judges did not as a rule exploit the more attractive retirement option to seek partisan advantage. The substantial but not sweeping effects of the 1919 Act are emblematic of the influence Congress and the presidency can have on judicial turnover, to the advantage of the government, through gradual reforms.

The limited strategic maneuvering under the 1919 statute may be explained in part by the limited political significance of the lower federal courts before the 1950s. The U.S. Courts of Appeals are now regarded as a component of the broader policy-making apparatus, but during much of the pre-1954 period they lacked their modern prominence. The legal and political consequences of turnover among circuit judges were not then equivalent to recent decades. Alternatively, it may be that circuit judges who ascended through patronage appointments before the mid-1950s (Goldman, 1997) were not the same breed of political animal as their modern counterparts. Further research is needed to determine whether contemporary circuit judges resemble their predecessors (see Vining, 2009).

The findings suggest a need to consider institutional change and its effect on elite behavior. More specifically, they demonstrate the importance of rules and statutes governing how and when elites leave their offices. Incremental reforms, especially those embraced by the judiciary, can change when and how judges leave active serv-

ice. Differences are evident between departure types and among regime periods. Failure to distinguish among departure types can produce results that explain no type of exit sufficiently. Overall, the immediate effects of introducing qualified retirement were real but not radical. Circuit judges did not rush to leave after pension vesting, but were more willing to amble toward the exits. **jsj**

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APPENDIX

OPERATIONALIZATION OF INDEPENDENT VARIABLES

Variable	Description
Political Factors	
Senatorial courtesy	Presidency and Senate seat from judge's home state occupied by members of judge's political party (1/0).
Executive selection	Presidency occupied by member of a judge's party, but not a home-state Senate seat (1/0).
Senate composition	Party balance of the Senate (categorical; 0 if judge's party occupies fewer than 40 percent of seats, 1 if from 40-50 percent and minority party; 2 if 50-59 percent and majority party; 3 if 60 percent or greater).
Final year, adversarial president	Final year of presidential term while occupied by opposition party (1/0).
Consecutive terms, copartisan president	Number of consecutive terms by presidents from the presidents party (1-5).
Consecutive terms, adversarial president	Number of consecutive terms by presidents from the opposition party (1-5).
Institutional Factors	
Senior circuit judge/ Chief judge	Current senior circuit judge (pre-1948) or chief judge (1948-) of a circuit (1/0).
Caseload (adjusted)	Number of cases commenced each year divided by the number of active judges. For observations from 1919 to 1953, the number of active judges is added to one-quarter of the number of that circuit's judges on qualified retirement to account for the contributions of senior judges.
Divided circuit	Neither Democrats nor Republicans occupy 60 percent or greater of the judgeships on a judge's circuit (1/0).
Personal Factors	
Pension eligibility	Judge eligible for pension vesting (1/0).
Pension status	Number of years until or since pension vesting; 0 in year vesting reached.
Age	Current age of circuit judge on June 1 of year.
Income (adjusted)	Income in thousands of 2005 U.S. dollars, based on inflation in the Consumer Price Index.
Private practice background	Majority of a judge's career in private practice before federal judicial appointment (1/0).