The Role of Judge Ideology in Strategic Retirements in U.S. Federal Courts

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Abstract

The widely recognized phenomenon of federal judges retiring strategically has key implications for the composition of the judiciary, particularly given polarization between the two U.S. political parties. Using fine-grained measures of judicial ideology, we examine how ideology shapes such strategic retirements. First, we show that since Reagan's election, Democratic appointees to lower federal courts have been more likely to retire strategically than Republican ones. Second, we find that more ideologically conservative Republican appointees are more likely to strategically retire than are moderate Republican appointees but only suggestive evidence of a similar pattern among more liberal Democratic appointees. Third, as explanation, we find that moderate Republican appointees appear to "wait out" retiring strategically under more conservative recent presidents, such as Donald Trump, opting instead to retire under Democrats such as Joe Biden. Taken together, our results offer a key insight: ideology, and not just party, can be an important factor in driving strategic retirement.

Introduction

When he was appointed by Richard Nixon in 1970, the hope was that Harry Blackmun would be a reliable conservative vote on the Supreme Court, despite the fact that he was Nixon's third choice for the job. Nixon's press secretary described Blackmun as a "a man of outstanding abilities" and praised "his legal skills and judicial temperament." But perhaps the most important thing was that Nixon considered "Judge Blackmun to be a strict constructionist" (Semple Jr., 1970). Of course, as is now well-known, Blackmun did not go on to be a "strict constructionist." Over his 24 years on the Court, he authored a number of left-leaning opinions, famously speaking out in favor of same-sex relationships (via his powerful dissent in *Bowers v. Hardwick*) and in support of women's equal treatment (for example, in *Stanton v. Stanton*), and most famously authoring the opinion that established a constitutional right to an abortion (in *Roe v. Wade*).

Thus, it is meaningful that, despite being appointed by a Republican as a "strict constructionist," Blackmun chose to time his retirement to give a Democrat, Bill Clinton, the chance to name his successor. Blackmun actually provided evidence of his careful thinking on the topic in oral argument

notes when, in a case in the fall of 1992, he asked himself "What do I do now? Retire at once [or] 6/30/93 [or] 6/30/94"[1] By retiring during Clinton's presidency in 1994, he paved the way for a reliable liberal, Stephen Breyer, to be his replacement. Blackmun was not the only Republican appointee of his era to retire under a President of a different party than the one who appointed him, as both Justices David Souter (appointed by George H. W. Bush) and John Paul Stevens (appointed by Gerald Ford) chose to retire in the early years of the Obama administration.

In this paper, we investigate this phenomenon by leveraging not just judges' partisan information but, importantly, judges' ideology. We do so by relying on a dataset that includes fine-grained measures of liberal-conservative ideology from Bonica and Sen (2021) for lower-court federal

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judges appointed from 1960 to 2020. We then link these to the judges' retirement decisions and whether the judges retired "strategically" – i.e., under the party of the President who appointed them.

These data allow us to make several important contributions to the study of judicial retirements. First, we show that, historically, Republicans were more likely to retire strategically, but that this changed starting with the Reagan Administration. Since then, our data show that Democratic appointees are actually *more likely* to retire strategically than Republican appointees. Second, since Reagan, there is at most suggestive (p-value < 0.10) evidence that more liberal (progressive) Democratic appointees are more likely to strategically retire than more moderate Democratic appointees. For Republican appointees, however, ideology is a statistically significant predictive (p-value < 0.05) factor in the probability of strategic retirement, with more conservative Republican appointees being more likely to retire strategically than moderate Republican appointees. Third, we show that this pattern is driven in part by a tendency among some moderate Republican appointees to "wait out" retiring strategically during the Trump Administration, opting instead to retire "unstrategically" under the Biden Administration.

Our findings make a key contribution to the literature on judicial behavior, which is that ideology can be highly important for retirements in federal courts. In particular, judges who are ideologically distant from a sitting President may prefer to wait out retiring, *even if the current President is of the same party*. Currently, this is likely to be more salient for ideologically moderate judges appointed by Republican Presidents, for whom a more right-leaning Republican President may be too ideologically distant, and for whom retiring "unstrategically" may be especially appealing if the other side appears to offer a more moderate option (e.g., Trump versus Biden).

Our findings also offer future predictions: given current trends in party polarization, as more moderate Republicans depart and are replaced, those Republicans who are newly appointed or remain will be more conservative (Bonica & Sen, 2021). This would likely reduce the ideological distance between sitting Republican-appointed judges and more right-leaning Republican Party elites, including potential White House occupants. That would make the patterns we see here temporary, as we would expect these new and more conservative judges to also eventually retire strategically, locking in Republican control of their seat. Even so, our findings underscore the fact that ideology, in addition to partisanship, is an important consideration in predicting patterns of judicial retirement.

This paper proceeds as follows. First, we survey existing scholarship on the strategic retirements of judges to situate our inquiry on the relationship between judicial ideology and these retirements. Next we introduce our data, which include biographical data on lower-court judges as well as fine-grained ideology measures from Bonica and Sen

(2021). Our main results show that, starting with appointments made after Reagan's election, Democratic appointees are more likely to retire strategically than Republican appointees, and that more conservative Republican appointees are more likely to retire strategically than moderate Republican appointees. We show that one reason why may be because moderate Republican appointees sometimes "wait out" more conservative Presidents. In the discussion, we highlight that these patterns may be generated by asymmetric party polarization and that we may see a transition to a new equilibrium as more conservative Republican appointees increasingly replace moderate ones. The Appendix presents additional results.

What We Know About Strategic Retirements

Article III of the U.S. Constitution stipulates that federal judges "both of the supreme and inferior Courts, shall hold their Offices during good Behaviour" (*Constitution of the United States*, 1787). This, the framers believed, would help insulate the courts from the instability of public opinion, creating an important buffer for federal judges to uphold possibly unpopular positions. According to Alexander Hamilton in *The Federalist Papers*, this lifetime tenure would contribute significantly to "that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty" (Hamilton et al., 1787, No. 78).

Functionally, although life tenure may engender these sorts of benefits for decision-making, it means that the decision to step down (and thus create a vacancy on the federal bench) is left primarily up to the individual judge and their own considerations. These could include explicit political calculations about partisan control of their newly vacant seat. Here, scholars and courts observers have noted that judges who are not promoted tend to retire under conditions that allow co-partisans to name their replacement – a practice known as strategic retirement (Spriggs & Wahlbeck, 1995). Anthony Kennedy retiring under Donald Trump is one recent Supreme Court example, but there are others. Reagan appointee and frequent swing vote Sandra Day O'Connor gave up her seat in 2006, which allowed Republican George W. Bush to replace her with fellow Republican (and more reliably conservative) Samuel Alito. Following significant public pressure, Stephen Breyer, a Clinton appointee, retired under Democrat Joe Biden in 2022, allowing Biden to name fellow liberal Ketanji Brown Jackson as his replacement. (For an exception to the scholarly consensus, see Squire (1988), which finds no evidence for partisan strategic retirement when looking at the Supreme Court).

But justices and judges do not always follow the pattern of strategic retirement and occasionally retire in ways that allow opposing-party Presidents to name their replacements, as our example of Harry Blackmun illustrates. In some of these

instances, ideology may be a better predictor of retirement strategy than partisanship. For example, David Souter, appointed by Republican George H. W. Bush in 1990, frequently voted with liberals throughout his career. Instead of retiring under a Republican President, he retired under Democrat Barack Obama and was replaced with reliable liberal Sonia Sotomayor. Another Republican appointment, John Paul Stevens, was promoted to the Supreme Court in 1975 by Republican Gerald Ford (and to his initial Court of Appeals seat by Richard Nixon). Although a Republican appointment, he was a strong liberal voice on the Court, and he retired in 2010 under Obama and was replaced by fellow liberal Elena Kagan.[2]

The behavior of the nine individuals on the Supreme Court can, however, be idiosyncratic and based on highly specific personal, health, and political or ideological calculations, which makes undertanding broad patterns difficult. For this reason, scholars investigating strategic retirement have often examined judges on the lower federal courts. These judges are more numerous, with 852 authorized judgeships, 673 in the District Courts and 179 in the Courts of Appeals.[3] Like the Justices, these judges are appointed for life, so a seat on the federal bench opens only when one dies, retires or takes senior status, or is promoted to a different seat (or, in a handful of occurrences, is impeached).

Scholarship has confirmed that strategic retirement is a prevalent practice in these courts. One important paper, Spriggs and Wahlbeck (1995), uses an event-counting approach to study the number of appeals court retirements from 1893 to 1991 under Democratic or Republican presidencies. Controlling for a variety of factors, the authors find that the number of retirements increases for Democratic appointees when there is a Democrat in the White House and for Republican appointees when there is a Republican in the White House. According to their modeling, the authors "expect 1.5 Democratic judges to retire each year under a Democratic President, while the expected number of retirements drops to only .5 judges under Republicans. For Republican judges, we expect 1.6 retirements under Republican rule, but only .5 departures while a Democrat is in office. Given that the average retirement rate for Democrats and Republicans is 1.3, this effect is not trivial" (p. 588). Notably, the quantity of interest in their analysis is the number of retirements per presidential administration.

These findings on same-party strategic retirement have been replicated using different approaches. Barrow and Zuk (1990) examine district and appeals court judges together. They find that the election of a President from the same party is followed by a statistically significant increase in retirements by judges initially named by Presidents of the same party (pp. 467–68), but that the election of an opposing-party President leads to no such surge. The pattern holds roughly equivalently for Democratic and Republican appointments. Nixon and Haskin (2000) fit a flexible model that takes as its quantity of interest a judge's choice in any time period of whether to retire and includes variables such as the age of the judge, workload, pension eligibility, and party considerations, including party strength in the Senate and also party control of their own circuit. In a summary of their findings, they conclude that an average non-pension-eligible 70-year-old judge with an opposing-party President has a predicted probability of retiring or around 0.0002 in a given month, but if the President is of the same party then this doubles, to around 0.0005 (p. 478). By contrast, they do not find any evidence that Senate composition (as distinct from White House occupancy) matters.

Most recently, Stolzenberg and Lindgren (2022) used sharp regression discontinuities before and after change-in-party Presidential elections, finding evidence of strategic retirements and stronger effects for Republican-appointed judges versus Democrat-appointed judges. They speculate that a reciprocity norm – whereby judges want to return the ability to appoint back to the party that appointed them – rather than ideology, could be influencing strategic retirements. Notably, the authors argue that "effects of ideology are not distinguishable from […] effects of party identity, except, possibly, for some judges of some courts" (Stolzenberg & Lindgren, 2022, p. 679). Our study differs from this study in two ways: (1) we focus on the full range of judicial retirements, not just those closely surrounding change-in-power elections, and (2) we incorporate explicit measures of ideology, not just party of appointing Presidents, of federal judges.

There is evidence of strategic retirements in state courts as well, and this literature in some instances also incorporates ideological information as we do here. For example, Curry and Hurwitz (2016) use an event-history framework to look at state high court justices' retirements across judicial selection systems from 1980 to 2005, showing that both elected and appointed justices engage in strategic retirement. Looking at judges who are elected, Hall (2001) finds evidence of strategic retirements in partisan and retention elections but not in nonpartisan elections. This study captures state ideology at the time of the retirement decision and suggests that ideology may be an important consideration.[4]

The broad scholarly consensus would suggest that strategic retirements driven by partisan considerations are an established phenomenon, and that ideology may play a role as well (Hall, 2001). In addition, evidence from the literature on American political institutions suggests possibly important ideological divergence in the U.S. political landscape, with evidence of increasing ideological heterogeneity even within political parties (Hacker & Pierson, 2015; Grossmann & Hopkins, 2016). This could impact judicial appointments as well as judicial retirements.

As evidence of the importance of ideology, as distinct from partisanship, several papers have documented ideology's important role in judges' voting (Bailey, 2007; Martin & Quinn, 2002; Zorn & Bowie, 2010), in nominations and judicial selection across tiers of the judiciary (Bonica & Sen,

2021), in the content of rulings (Segal, 1986), and in the concordance between judicial rulings and public opinion (Jessee et al., 2022). Looking outside of judges, some papers – some of which use the same measures we do here – have looked at how ideology varies descriptively across the legal profession (Bonica et al., 2016), law clerks (Bonica et al., 2017), and the academy (Bonica et al., 2018), documenting important patterns that speak to the methodology we use here.

Taken together, this literature implies that ideology could be an important predictor of strategic retirements. At its simplest, we posit that *judges who are more ideologically extreme (i.e., very liberal Democratic appointees, or very conservative Republican appointees) will be the ones most likely to retire strategically*; after all, these are the judges who are the most ideologically distant from opposing-party Presidents. A liberal Democratic appointee should thus be very unlikely to retire under a Republican President, and, vice versa, a conservative Republican appointee should be very unlikely to retire under a Democratic President. To flip the intuition, we also posit that *ideological moderates may be the ones least likely to retire strategically.* A moderate Republican appointee, for example, may be skeptical or unwilling to retire under a very right-leaning Republican, especially when they believe a very moderate Democrat may soon be elected.

Research on asymmetric party polarization further suggests that Republican elected officials have moved more strongly to the right than have Democratic ones, although both have moved (Grossmann & Hopkins, 2016; McCarty, 2019). Along these lines, recent Republican Presidents (e.g., Donald Trump or George W. Bush) have been viewed by most as more conservative than their earlier Republican predecessors (George H.W. Bush or Ronald Reagan) in a way that cannot be said as easily for Democratic Presidents (e.g., comparing Barack Obama to Bill Clinton). Considering these shifts would have implications primarily for Republican appointees, which we consider in detail below.

Data on Federal Judges and Their Ideology

Data for this project come from two sources: (1) Federal Judicial Center (FJC) judge biographical data (Federal Judicial Center, 2024), and (2) ideology data from the Database on Ideology, Money in Politics, and Elections (DIME) (Bonica, 2013; Bonica & Sen, 2021). We describe both in detail.

Biographical Data

First, we obtain basic demographic data on U.S. Article III judges serving on U.S. District Courts and U.S. Courts of Appeals from 1789 through January 2024. For this, we looked to the FJC, a widely used resource among scholars of the courts. For initial appointments (i.e., prior to any promotions), we coded different types of retirements, including

whether a judge (1) took senior status,[5] (2) formally terminated his or her position, (3) died, or (4) was promoted, which we treat separately in the main-text analyses. In addition to the basic party information, we also coded a judge's age on initial confirmation,[6] gender (male or female), race (white or non-white), tier of court (District Court or Court of Appeals), and other basic information.

For each judge, we coded under which President (and also under which party) the earliest departure action took place. Correspondence in party between initial appointing President and departing President was coded as a "strategic retirement." For example, if a judge was initially appointed by Bill Clinton, a Democrat, and took senior status under Barack Obama, another Democrat, then this judge would be coded as having retired strategically. Note that we coded senior status, terminations, and deaths separately, with the difference in coding capturing the fact that some judges died, some ended their service and went on to do different things, and others took senior status and kept hearing a reduced caseload. However, the specifications below include these together, taking the retirement date for purposes of the analyses as the earliest of the set of terminations, deaths, and senior status. Thus, we are primarily interested in the time at which a non-promotion vacancy is created.

Importantly, we are including judges who died on the bench in the main analyses. For example, if the same judge appointed by Clinton had died during Obama's term rather than taken senior status, he or she would still be coded as having "retired" strategically. Admittedly, this, in tandem with our other coding choices, includes non-strategic behavior. Dying is not something that a judge may have agency over (although they may have some agency over whether to retire beforehand), and considering it as a strategic decision is not straightforward.[7] Including deaths allows us to capture individuals in the lower courts who made calculations similar to, e.g., Ruth Bader Ginsburg, an individual who would accurately be coded as not having retired strategically. However, to address the possibility that our results are sensitive to these this particular coding choice, in the Appendix we drop anyone who died while on the bench from the analyses; inferences are unchanged. As we further document in the Appendix, deaths are (1) rare occurrences and (2) appear randomly distributed across parties and, conditional on party, across ideology.

In the Appendix, we also replicate the main results looking not just at White House party control but Senate control as well. For this we code when the retirement date corresponds with same-party control of the Senate *and* same-party control of the White House – a kind of super-charged strategic retirement. For example, if the judge appointed by Bill Clinton also retired in Obama's first term, when Democrats controlled the Senate, the judge would be considered to be "super strategic." As we show in the Appendix, we ultimately find essentially identical patterns to the ones we present here when the outcome is "super" rather than just simply strategic.

Additionally, we show in the Appendix that ideology has no relationship to this kind of superstrategic retirement within those judges who retired strategically.

Table 1 reports various summary statistics for the full set of judges. Of note is the fact that the percent of judges overall who have retired strategically is high – 44% of all judges appointed since Reagan's election (including those still serving) have retired strategically. Of those who left their initial position by either taking senior status, terminating their appointment, or dying, about 59% retire strategically. Also of note is that a smaller number of judges are promoted from their initial appointment – around 18% – with the lion's share being promotions from district courts to courts of appeals. Finally, Table 1 previews that there may be a difference in the strategic retirement practices of the two parties, as, especially since Reagan's election, Democratic appointees retire strategically at higher rates.

Data on Judge-Level Ideology from DIME

Our primary interest is not just in party-driven strategic retirements, but also in whether ideology (as distinct from partisanship) could be a factor in explaining retirements. To measure ideology, we turned to the data from Bonica and Sen (2017) and later extended in Bonica and Sen (2021), which adapt underlying data from the Database on Ideology, Money in Politics, and Elections (Bonica, 2013). These data rely on financial contributions made by judges before they were invested on to the courts, using the information provided by the contributions to scale judges (and other individuals also included in DIME) on the same unidimensional scale, from more liberal (-2.0) to more conservative (2.0). For example, if an individual donated primarily to liberal candidates, she would be assigned a liberal DIME "CFscore," but if she donated to a mix of liberal and conservative candidates, she would be assigned a more moderate score. These would further be scaled by the amount of the contribution.

Importantly, DIME differs from other ideology measures, such as Martin-Quinn Scores (Martin & Quinn, 2002), Segal-Cover Scores (Segal & Cover, 1989), or Judicial Common Space (JCS) scores (Giles et al., 2001; Epstein et al., 2007). For example, Martin-Quinn scores focus on the Supreme Court and rely on Justices' voting records in tandem with some simple assumptions to scale the Justices on a unidimensional ideological scale. For example, Samuel Alito, who frequently votes alongside Clarence Thomas, would be estimated to have an ideology similar to Thomas's simply based on their cohesive voting. Because Martin-Quinn scores are estimated only for Supreme Court Justices, we do not use them here. JCS scores, by contrast, produce ideology estimates for lower-court federal judges; these impute judicial ideology using the estimated ideology of the appointing President in combination with the home-state senators, if they are of the same party. For example, a Trump-appointed appellate judge sitting in Texas would have an ideology that is a combination of the ideologies of Trump, Ted Cruz, and John Cornyn, while a Trump-appointed judge in California would only have Trump's. As we discuss in the Appendix, this approach may not fully capture variation in ideology because it could plausibly fail to capture meaningful differences between the moderates appointed by each party. We also note that estimates such as JCS scores are an amalgam of two different approaches (identity of appointing official/s and their ideologies), while DIME is estimated based on the judges' own observed behavior.[8]

To further contextualize DIME CFscores, consider some well-known examples from the Supreme Court: Antonin Scalia, a longtime conservative stalwart, has a CFscore of 1.096, while Ruth Bader Ginsburg, a strong liberal, has a CFscore of -0.995. The most liberal CFscore in the dataset is -1.657, belonging to Carter appointee Arthur Alarcón of the Ninth Circuit, while the most conservative score is 1.677, belonging to Ralph Erickson, a George W. Bush appointment to the District of North Dakota who later served on the Eighth Circuit. In terms of coverage, according to Bonica and Sen

Table 1. Summary Statistics on Federal District and Circuit Judges Appointed since 1960 or since 1981.

	All		Republicans		Democrats	
	All	Post-Reagan	All	Post-Reagan	All	Post-Reagan
Number of judges	2459	1745	1320	1060	1139	685
Still serving in first position	23.1%	32.5%	23.1%	28.8%	23.0%	38.2%
Strategically retired (of retired)	57.1%	58.9%	55.6%	47.1%	58.6%	79.0%
Strategically retired (all)	48.4%	43.6%	48.0%	39.2%	48.8%	50.5%
Mean CFscore	0.015	0.104	0.459	0.592	-0.492	-0.637
Mean age at confirmation	50.1	50.1	49.5	49.6	50.8	50.9
Promoted (of judges to leave first position)	17.9%	18.0%	20.5%	19.3%	14.9%	15.6%
Female	19.2%	24.4%	14.3%	17.6%	24.9%	34.9%
Non-white	17.1%	19.3%	11.0%	12.0%	24.1%	30.5%

Source. FJC, DIME.

(2021), around 81% of Court of Appeals judges appointed since 2001 are included in the data. This compares to a coverage rate of about 43.4% among all U.S. lawyers and a rate of about 4-5 percent among the general population (Bonica et al., 2016).

We note some caveats with these measures. First, federal judges are prevented from making financial political contributions once they become judges; this means that CFscores, like JCS scores, are measured on the basis of pre-investiture information and are a poor measure of intellectual drift, which could be important for retirement decisions.[9] Second, although judges tend to be more politically active compared to the general public and have coverage in the DIME data that is higher in comparison, there are judges for whom DIME information is missing. We therefore rely on Bonica and Sen (2017)'s imputed CFscores for those missing CFscores. As explained in that paper, their imputation takes into account a variety of factors, including jurisdiction and ideology of appointing political actors.[10] Bonica and Sen (2017) validate the imputation by showing strong correspondence between imputed CFscores, JCS scores, and Martin-Quinn scores. In the Appendix, we discuss additional differences between DIME and JCS scores, and rerun the main models using JCS scores.

Table 1 provides summary statistics, including on DIME CFscores, for all judges (including the subset of judges who have not yet retired). Figure 1 gives some context on the distribution of CFscores across Democratic appointments (blue, left side of each histogram) and Republican appointments (red, right side of each histogram) to federal judgeships since 1960 (left panel) and since Ronald Reagan became President on January 20, 1981 (right panel).[11] Both show the classic bimodal ideological distribution that characterizes the U.S. political landscape, although with decreased overlap (as indicated by the purple regions) among judges appointed since Reagan. We explore patterns both before and after Reagan's election below.

Findings on Partisan and Ideological Differences in Strategic Retirement

We now turn to our main results. For all models unless otherwise noted, the unit of analysis is the individual judge, which includes the initial appointment of all lower federal judges.[12] We drop all judges still currently serving, as they have not yet retired, strategically or un-strategically.[13] As noted above, in most analyses, we remove individuals who are promoted, but we discuss analyses that include these individuals by examining final, rather than initial judicial position below, with full results in the Appendix.

Unless otherwise noted, our main analyses include judges who took senior status, retired, or died – and thus created a vacancy somewhere on the federal bench. As our outcome, we operationalize "strategic retirement" as being

whether that action (senior status, retirement, or death) took place under a President of the same party as the one who appointed the judge (0 or 1). All models are linear probability models for ease of interpretation, with logit specifications presented in the Appendix. We also include basic controls for (1) type of court (district vs appeals), (2) age at confirmation, and whether a judge is (3) female or (4) non-white.
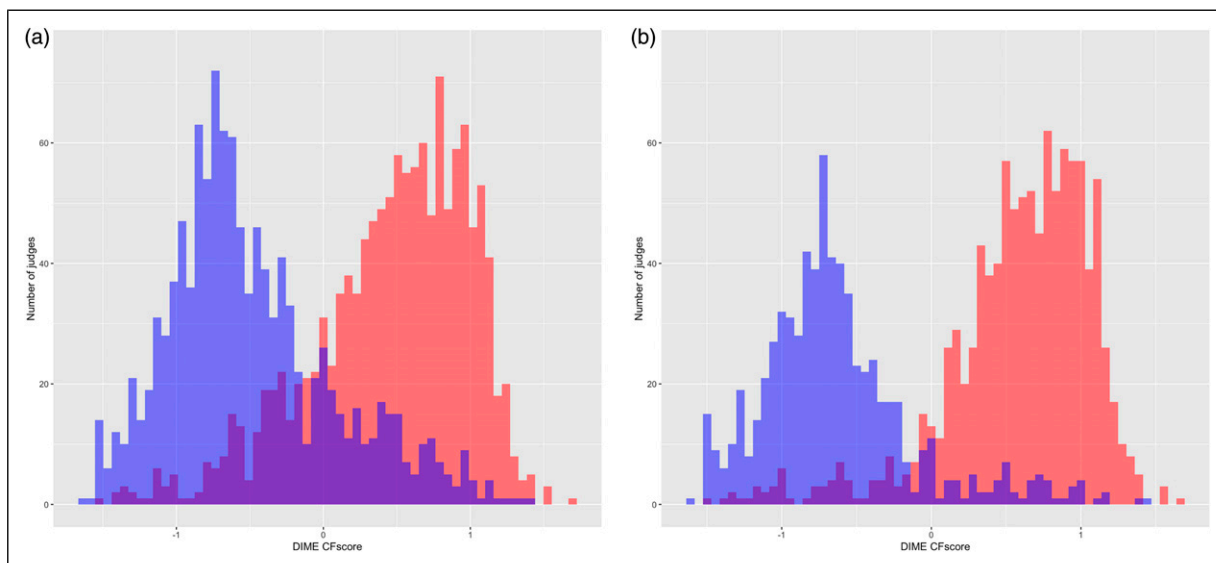
Strategic Retirement by Party

First, we examine whether there are any differences in strategic retirements between appointees of the two parties. These results are found in Table 2. In Column 1, we include all judges in the FJC data going back to 1960, when DIME coverage begins. As Column 1 shows, when we look at all judges from different time periods included together, we find no evidence to reject the null of no difference in strategic retirement between Republican appointees and Democratic appointees – i.e., no evidence that that Republican appointees retire strategically more frequently than Democratic appointees or vice versa.

In Column 2, we begin to explore time-varying trends by looking at the election of Ronald Reagan ("Post-Reagan") as a cut point. We choose Reagan's presidency for key reasons. First, scholars recognize Reagan as being the first modern President who considered judicial appointments as a tool to achieve policy goals (as opposed to a tool for patronage, see Goldman (1999)). Second, the Fifth Circuit Court of Appeals was split in half to form the Eleventh Circuit in 1981, giving Reagan additional appointments and setting the circuit boundaries to their modern locations. Third, political goals on the right regarding the courts crystallized into their modern form around this time; for example, the Federalist Society, the influential organization of conservative legal intellectuals, was formed in 1982. Finally, scholarship on polarization has noted that this was an important time of ideological "sorting," in which ideological liberals began increasingly identifying with the Democratic Party and ideological conservatives with the Republican Party (e.g., Levendusky, 2009).

In contrast to the results from Column 1, the results in Column 2 do show partisan differences, with Republican appointees before Reagan being more likely to retire strategically than Democratic appointees, but appointments by Reagan and later Republican Presidents being *less* likely to retire strategically. We can see this with the positive and significant coefficient on the lower-order Republican variable (which corresponds to pre-Reagan Republican appointees) and the negative and significant coefficient on the post-Reagan-interacted Republican variable (which corresponds to post-Reagan Republican appointees). This result is robust to the inclusion of basic covariates (Column 3).

In Column 4, we further investigate this pattern by subsetting to only these more recent (appointed by Reagan or later) judges. Here, the results show that *judges appointed by*

Figure 1. CFscore score distribution for judges appointed from 1960 to 2020. Source: FJC, DIME. (a) All judges appointed since 1960. (b) Judges appointed since Reagan.

Table 2. Relationship Between Partisanship and Strategic Retirements.

	(1) All	(2) All	(3) All	(4) Post-Reagan	(5) Post-Reagan
(Intercept)	0.586 (0.018)***	0.398 (0.024)***	0.431 (0.102)***	0.960 (0.132)***	0.956 (0.132)***
Republican-appointed	−0.029 (0.025)	0.420 (0.041)***	0.423 (0.041)***	−0.325 (0.032)***	−0.310 (0.034)***
Post-Reagan		0.391 (0.034)***	0.388 (0.035)***		
Republican × Post-Reagan		−0.738 (0.051)***	−0.739 (0.051)***		
Court of Appeals			0.071 (0.035)*	0.081 (0.045)+	0.161 (0.075)*
Age at confirmation			−0.001 (0.002)	−0.003 (0.002)	−0.003 (0.002)
Female			0.051 (0.036)	0.023 (0.040)	0.022 (0.040)
Non-White			−0.031 (0.035)	−0.044 (0.043)	−0.045 (0.043)
Republican × CoA					−0.125 (0.094)
Num.Obs	1553	1553	1551	966	966
R2	0.001	0.123	0.127	0.104	0.106
F	1.368	72.486	31.963	22.297	18.890
RMSE	0.49	0.46	0.46	0.47	0.47

All models are linear probability models with strategic retirement (1) or not (0) as the outcome. District courts are the omitted court category.
$+ p < 0.1$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.

Republicans are about 32 percentage points less likely to retire strategically than judges appointed by Democrats in the same time period. As before, the results are robust to the inclusion of several key factors. In Column 5, we further interact party of appointing President with tier of court (district vs appeals court), so as to gauge whether, for example, these may be specific to higher courts. We find no significant evidence here that partisanship matters more according to tier.

In sum, the practice of strategic retirement is common for appointees of both parties, but is more common for Republican appointees pre-Reagan and more common for Democratic appointees post-Reagan. In looking at the older, pre-Reagan trends, a possible explanation might be the long stretch of Republican control of the White House in which Democrats controlled the White House only for three terms, from 1960 to 1968 (Kennedy and Johnson Administrations) and then from 1972 to 1976 (Carter Administration). Thus, a Kennedy or Johnson appointee realistically only had one four-year term in which to retire strategically, whereas Republican appointees could retire strategically at any point besides the four years of Carter's single term. This phenomenon, more an artifact of who controlled the White House than the tendencies of judges, likely drives pre-Reagan Republican strategic retirements up and Democratic strategic retirements down. Post-Reagan, there has been a more

consistent alternation between Democratic and Republican Administrations (as of our writing 6 Republican presidential terms once we include Trump's single term compared to 5 Democratic presidential terms once we include Biden's). The slight White House advantage in Republicans' favor post-Reagan does mean that, if anything, Republican appointees have had slightly more temporal bandwidth to retire strategically than Democratic appointees have had. This makes the patterns we see regarding partisan differences even more interesting.

We note two important considerations. First, as mentioned above, these models count deaths as retirements. As we discuss in more detail in the Appendix, deaths on the bench are rare: only 45 of the 1745 judges appointed since Reagan's term began died while still holding their initial position on the federal bench. Although these cannot always be considered completely un-strategic actions (as the example of Ruth Bader Ginsburg illustrates), we show in the Appendix that we cannot reject the null that deaths are distributed randomly across parties. In addition, Appendix removing judges who died from our analysis does not affect the substantive inferences.

Second, the models also drop from the analysis judges who were "promoted" to a different judicial position. Around 18% percent of judges are promoted, mostly from a district court to a court of appeals (Table 1). Although this is a smaller share than the percent who are not promoted (and thus retire, take senior status, or die), judges are overwhelmingly promoted by Presidents of the same party. This means that the vast majority of promotions would be considered "strategic" (if not necessarily "retirements"), since they allow the incumbent President the ability to fill the vacancies left behind. That said, we are mindful of biasing our results by excluding these judges. In the Appendix, we address this by considering *final appointments*, not initial appointments. By focusing on a judge's final appointment, we include the judges who were promoted, while keeping all the judges who were not promoted, in our analysis (as their first and final appointments were the same). Appendix The negative post-Reagan relationship between Republican appointment and strategic retirement remains when we subset the data in this way.

Ideology and Strategic Retirement

The above results only consider the relationship between the party of appointing President, not the ideology of the judge, and a judge's strategic retirement. We now turn to incorporating the fine-grained judicial ideology measures introduced and validated in Bonica and Sen (2017) and updated in Bonica and Sen (2021). These DIME CFscores are scaled from −2.0 (the most liberal) to +2.0 (the most conservative), with Democratic appointees mostly in the negative side and Republican ones mostly on the positive side (though not always, as shown in Figure 1(a)).

As a starting matter, does partisanship matter at all when ideology is factored in? The answer for post-Reagan appointees, presented in Column 1 of Table 3, is yes. As before, the unit of analysis is the individual judge and the outcome is whether the judge retired strategically (under the same-party President) or not from their initial appointment. As before, we employ a linear probability model and include simple covariates: type of court, gender, race (non-white), and age at confirmation. Column 1 includes the CFscore as a control, and shows that party of appointing President continues to be a significant predictor with, on average, Republican appointees being around a third less likely to retire strategically even conditional on ideology.

These analyses are confirmed visually by Figure 2, which plots simple locally estimated scatterplot smoothing charts (LOESS) of the probability of a judge retiring strategically against their DIME CFscore, separated out by party of appointing President (these do not include include any control variables). We present this graph in two ways: the left panel's X-axis is scaled the same as DIME CFscore, with liberals to the left and conservatives to the right. In the right panel, the scores for Democrats are reflected across the vertical Y = 0 line, so moderates of both parties are to the left and extremists of both parties to the right. These plots indicate that, across all levels of ideology, Democratic appointees are more likely to retire strategically than Republican appointees: the Democratic (blue) line is always above the Republican (red) line. This is consistent with our findings in Table 2. Interestingly, Figure 2 indicates that an extremely conservative Democratic appointee, by DIME CFscore, is about as likely to retire under a Democratic President as a similarly conservative Republican is to retire under a Republican President.

What does this mean for the relationship between ideology and strategic retirement, and how it may vary by party? To see this, note again that DIME CFscores are scaled from −2 (the most liberal) to 2 (the most conservative). If we assumed that more ideologically extreme judges (i.e., the most liberal Democrats and the most conservative Republicans) are the ones most likely to retire strategically, then we would expect to see a *negative coefficient on the CFscore variable for Democratic-appointed judges* and a *positive coefficient for Republican-appointed judges*. These analyses are presented in Table 3, Columns 2 and 3. In these columns, we repeat the analyses for Republican appointments only (Column 2) and Democratic appointments only (Column 3) to highlight the way in which more extreme ideology may influence retirements differently for appointments of each party. We again only look at appointments since Reagan's inauguration.

For Republicans (Column 2), the coefficient on CFscore is positive and significant, which suggests that, if a Republican appointee is more conservative, he or she is more likely to retire strategically under a Republican President.

Table 3. Relationship Between Ideology and Strategic Retirements.

	(1) All post-Reagan	(2) Republicans post-Reagan	(3) Democrats post-Reagan
(Intercept)	0.962 (0.132)***	0.594 (0.170)***	0.773 (0.198)***
Republican-appointed	−0.361 (0.049)***		
DIME CFscore	0.033 (0.034)	0.107 (0.046)*	−0.080 (0.048)+
Court of Appeals	0.078 (0.045)+	0.013 (0.061)	0.162 (0.065)*
Age at confirmation	−0.003 (0.002)	−0.003 (0.003)	−0.001 (0.004)
Female	0.031 (0.041)	0.017 (0.064)	0.058 (0.050)
Non-White	−0.037 (0.044)	−0.105 (0.069)	0.027 (0.054)
Num.Obs	966	609	357
R2	0.105	0.018	0.034
F	18.733	2.252	2.461
RMSE	0.47	0.49	0.40

All models are linear probability models with strategic retirement (1) or not (0) as the outcome. District courts are the omitted court category.
$+ p < 0.1$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.
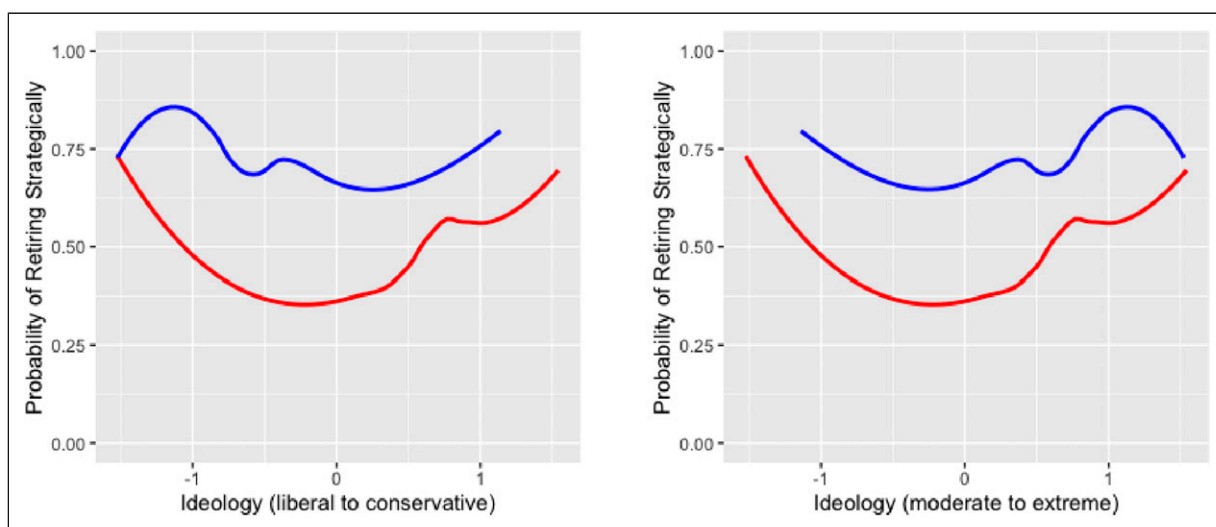
Figure 2. Probability of strategic retirement by ideology and party for all judges appointed since Reagan's election. The left panel's X-axis is simple DIME CFscore, on the [−2,2] scale of liberal to conservative. The right panel's X-axis is flipped only for Democratic appointees, so moderates of both parties are on the left side of the graph, and extremists of both parties on the right. Smoothing is done via LOESS with $\alpha =$ 0.75.

Taken together, the insights from this table match Figure 2, where Republican appointees see a large increase in the probability of a strategic retirement as their DIME CFscores move from 0 towards 2 (the range in which the bulk of Republican-appointed judges fall).

For Democrats (Column 3), though the signs on the coefficients for each model match expectations, the coefficient on the CFscore variable is not statistically significant at the $p < .05$ level (p-value of .094). This represents at most suggestive evidence that more ideologically extreme Democrats are more likely to retire strategically. That said, comparing the coefficients on DIME CFscore in Columns 2 and 3 and their standard errors shows that we would also be unable to reject the null hypothesis that the coefficient on the ideology measure for Democratic appointees differs from the coefficient for Republican appointees.[14] As such, we can neither conclude that the relevant coefficient for Democratic appointees differs from 0, or differs from its counterpart for Republican appointees. Partly for this reason, we focus the rest of our attention on Republican appointees, for whom we are more certain that ideology plays a significant role in the decision to strategically retire.

The Case of the Missing Moderate Republicans

These results suggest that, since Reagan's term began, Democratic appointees across the ideological spectrum have been more likely to retire strategically than their Republican counterparts (a significant difference) and that the gap suggestively is widest between the moderates appointed by each

party, as shown in Figure 2. In other words, moderate Republican appointees are strategically retiring at lower rates than their more conservative Republican peers, and Republican appointees across all ideologies are strategically retiring at lower rates than Democratic ones.

What is happening with these more moderate Republican appointees, and why are they strategically retiring at lower rates than their more conservative Republican counterparts? We look more closely at this narrow subset of judges in Table 4. This table looks only at Republican appointments made by Reagan, George H.W. Bush, George W. Bush, and Trump. As the outcome, we take whether the individual judge retired under Democrat Barack Obama (Column 1, two terms), Republican Donald Trump (Column 2, one term), or Democrat Joe Biden (Column 3, through January of 2024). In all of the the analyses we regress this outcome (0 or 1) on ideology. In addition, since older people will generally retire earlier, the analyses also include a simple numeric control for birth year.[15]

As the table shows, more moderate Republican appointees were not necessarily more likely to retire under Obama: in Column 1, the coefficient on CFscore is negative but fairly close to 0 and not significant. However, they have been more likely to retire under Biden (Column 3), as shown by the negative, significant coefficient on the CFscore ideology variable. Additionally, Column 2 confirms that Republican-appointed judges who are more conservative are more likely to have retired (strategically) under Trump, with a positive and significant coefficient on the CFscore variable. Put another way, Column 2 shows that moderate Republican appointees were *less likely* to retire under Trump, at the same time as they appear *more likely* to retire under Biden. Since Trump judges are too recently appointed to be retiring under Biden (and none in the FJC dataset have), we take this evidence as consistent with the idea that more older, moderate Republican appointees made the decision to "wait out" the Trump regime and retire under Biden. This may be due to a belief that Biden would be more likely than Trump to appoint a replacement close to a moderate Republican's ideal point.

We also note that the fact that retiring under Biden positively correlates with moderate ideology has implications for Republican appointees to the courts, who have moved in a more conservative direction over time (Bonica & Sen, 2021). Table 5, for example, shows the results of two regressions with judges' DIME CFScore as the outcome regressed separately on the identity of the appointing President, separating out the two parties. Being appointed by Reagan is the omitted category in Column 1 and being appointed by Clinton is the omitted category in Column 2 (Biden's appointees are not yet included in DIME.).

For Republicans, Reagan appeared to nominate significantly more moderate individuals than Trump and significantly more conservative judges than George H.W. Bush (shown in Column 1). Separate pairwise *t*-tests confirm that George H.W. Bush nominated significantly more moderate judges than the next two Republican Presidents (p-value = .021 compared to Bush II, p-value = .001 compared to Trump). Also interesting is the fact that, among Democrats, Barack Obama appointed more liberal judges than Bill Clinton (p-value = .001), although this matters less for strategic retirement, as seen in Table 3. That Republicans Presidents have appointed more conservatives over time is confirmed in Table 6, in which moderates and conservatives are delineated using the median DIME CFscore of Republican-appointed judges appointed since Reagan. Here we can see that moderates made up 52% of Reagan's nominees and 61% of George W. Bush's nominees, but only 33% of Trump's nominees. This is again confirmed by Figure 3, which shows a rightward drift in judge DIME CFscores across the last four Republican presidencies [for a similar plot comparing Presidents from both parties, see Bonica and Sen (2021), Figure 2].

A closer look at the individuals involved is consistent with a general intuition that older, more moderate Republican appointees have "waited out" Trump's term. As of our writing (in January of 2024), 44 Republican appointees have "unstrategically" left the bench during the Biden Administration, going along with the 143 who did so during the 8 years of the Obama Administration. By contrast, only 32 Democratic appointees retired during the entirety of the Trump Administration. The fact that that moderate Republican appointees

Table 4. Relationship Between Retiring Under Obama, Trump, and Biden, Among Initial Republican Appointments Since Reagan.

	Obama Retirement	Trump Retirement	Biden Retirement
(Intercept)	−25.391 (3.403)***	−31.838 (2.915)***	−17.151 (2.049)***
DIME CFscore	−0.018 (0.036)	0.074 (0.031)*	−0.064 (0.022)**
Judge's birth year	0.013 (0.002)***	0.016 (0.002)***	0.009 (0.001)***
Num.Obs	609	609	609
R2	0.086	0.172	0.116
F	28.481	63.106	39.829
RMSE	0.40	0.35	0.24

All models are linear probability models. The outcome is retirement under the President identified in each column versus a different President (1 or 0). Only post-Reagan judges are included.
+ p < 0.1, *p < 0.05, **p < 0.01, ***p < 0.001.

Table 5. Relationship Between DIME CFscore and Appointing President, for Democrats and Republicans Separately.

	(1) Republicans post Reagan	(2) Democrats post Reagan
(Intercept)	0.587 (0.024)***	−0.579 (0.026)***
Appointed by Donald J. Trump	0.096 (0.045)*	
Appointed by George H.W. Bush	−0.086 (0.043)*	
Appointed by George W. Bush	0.018 (0.036)	
Appointed by Barack Obama		−0.130 (0.039)***
Num.Obs	1041	685
R2	0.012	0.016
F	4.223	11.056
RMSE	0.48	0.51

All models are linear probability models with DIME CFscore as the outcome. Reagan appointments are the omitted category in Column (1) and Clinton appointments are the omitted category in Column (2). Only post-Reagan judges are included.
$+ p < 0.1$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.

Table 6. Moderate and Conservative Appointments by Republican President.

	Reagan	H.W. Bush	W. Bush	Trump
Moderates	51.5%	60.8%	50.2%	33.3%
Conservatives	48.5%	39.2%	49.8%	66.7%
Total	388	181	313	159

have a higher probability of retiring under Biden and less so under Obama (shown in Table 4) again suggests a pattern consistent with older, more moderate appointees "waiting out" the Trump Administration.

Discussion: What Our Findings Mean for the Federal Judiciary Moving Forward

In this paper, we investigate the widespread phenomenon of strategic retirement among federal judges. We largely confirm the practice's existence: overall, about 57% percent of judges in our sample of Article III judges appointed since 1960 retired strategically – i.e., somehow left the bench and created a vacancy for a President of the same party to fill. But we also document important partisan and ideological practices that have changed over time and that contribute to our broader understanding of judicial behavior. First, as we show, Democratic appointees are now more likely to retire strategically than Republican ones. This pattern holds even accounting for ideology, suggesting that, on average, Democratic appointees of all ideologies are more likely to retire under copartisans than are Republicans appointees.

Second, however, ideology matters in important ways for lower court appointees. For Democratic appointees, there is suggestive evidence of a relationship between ideology and the probability of retiring strategically. But for judges appointed by Republican Presidents, ideology is positively and statistically significantly predictive of strategic retirements, with more conservative Republican appointees being more

likely to retire under another Republican President. We posit that a reason behind this pattern may be in increased ideological distance between older, more moderate Republican appointees and more conservative recent Republican Presidents, such as Donald Trump. As evidence for this hypothesis, we show that more moderate Republican appointees were more likely to retire under Joe Biden, even after controlling for their age, which is suggestive evidence of them "waiting out" the Trump presidency.

These results offer key insight into how judges might approach the decision to retire. While other scholars documented the important influence of political and personal considerations (Nixon & Haskin, 2000), our results offer the insight that *ideology is an important motivation that may function in tandem with partisan concerns*. This insight has substantive implications, given current trends in party polarization and asymmetric polarization. Take the current composition of the Republican Party, for example. As has been noted by scholars as well as by public commentators, Republican Party elites have generally moved in a more conservative direction (Grossmann & Hopkins, 2016). The shift to the right includes recent Republican Presidents and, at the time of our writing, rank-and-file Senate Republicans as well as the front runner for the 2024 Republican presidential nomination (Trump). This rightward drift creates an ideological distance between older, more moderate Republican judicial appointees and current Republican Party leadership. For these individuals, this increased ideological gap may well be a reason to retire under a perceived moderate, such as Democrat Joe Biden, and thus may help explain some of the patterns we see here.

This raises the important point that the patterns we observe in our data may not necessarily be permanent, even though they point to the underlying – and likely enduring – importance of ideology in predicting judicial retirements. As we show here, and as shown by other scholarship, Republican appointees to the federal courts have grown more conservative over time, reflecting the right-leaning trends in Republican Party politics since at least 2016 (Bonica & Sen,
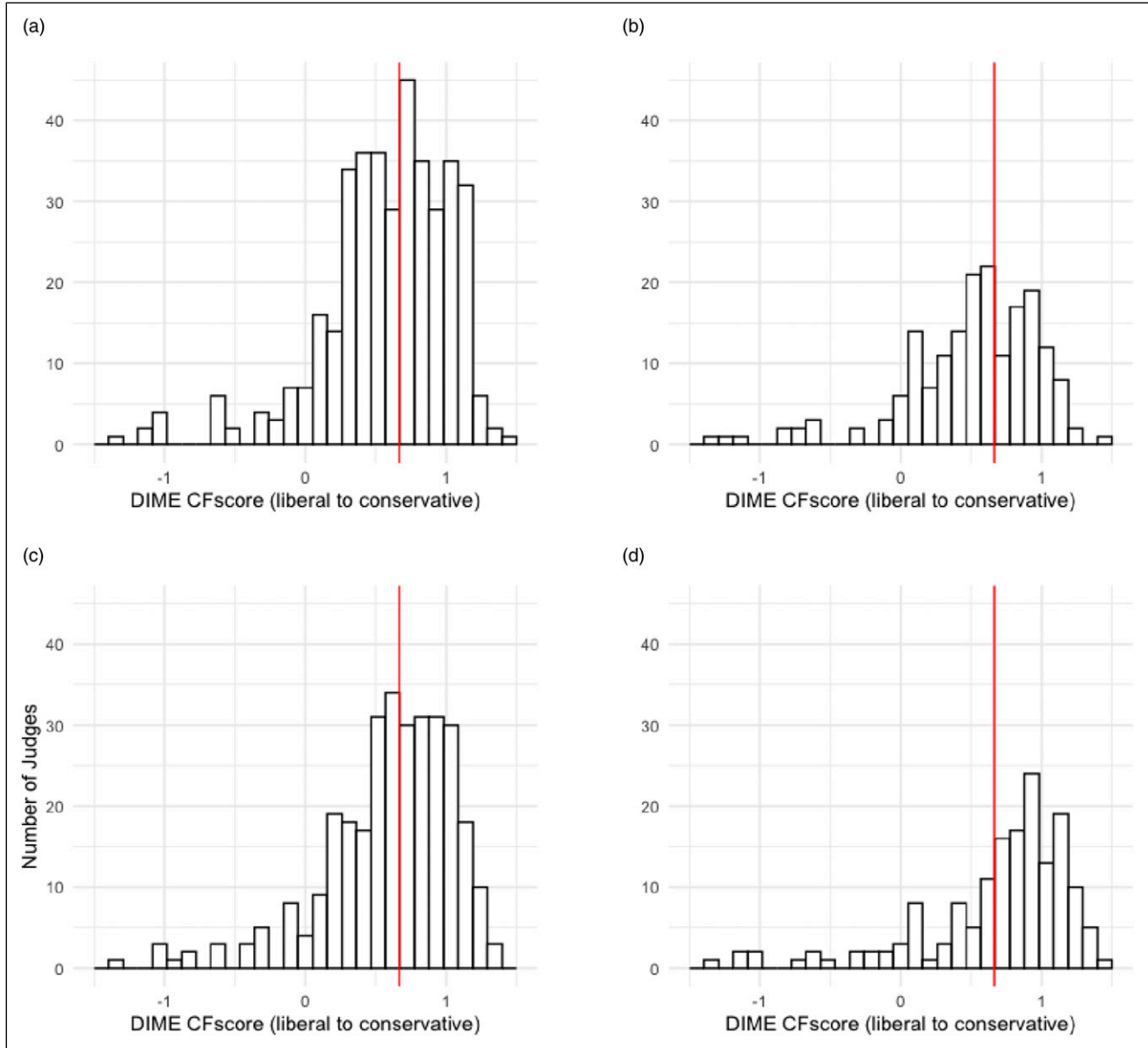
Figure 3. DIME CFscore distribution by appointing Republican President. The median DIME CFscore of all Republican appointees since Reagan is marked with a vertical line on each plot. (a) Ronald Reagan (b) George H. W. Bush (c) George W. Bush (d) Donald J. Trump. Source: FJC, DIME.

2021). Should this trend continue, this will result in relatively fewer moderate Republican appointments moving forward; accordingly, over time, our findings on moderate Republicans "waiting out" more conservative Republican Presidents may attenuate as these moderate Republicans are slowly replaced. Such a phenomenon may have implications for circuit court control, as Republicans appointing more conservative judges, who then are more likely to retire strategically, could calcify the party's supermajorities in circuits like the Fifth and Eighth Circuits.

We also consider our top-line findings that Democratic appointees are more likely to retire strategically than Republican ones, even conditional on ideology. This runs counter to some

contemporary commentary, which has focused mostly on Supreme Court justices. Although this might change over time, this too appears driven in part by the current ideological landscape. While moderate Republican appointees might be ideologically proximate to a Democrat such as Joe Biden, even moderate Democratic appointees are unlikely to find much common policy ground with Donald Trump or Republican elected officials with national profiles, such as Rep. Mike Johnson (R-LA), Sen. Josh Hawley (R-MO) or Sen. Ted Cruz (R-TX). Thus, for Democratic appointees, it seems straightforward that there would be less crossover in retirements (i.e., non-strategic retirement), while this may be an occasional pattern for Republican appointees.

We conclude by noting areas of future research. First, our results imply that the ideology of the judge should be incorporated into future studies of strategic retirement. Second, and relatedly, our measures of ideology rely on pre-investiture information (political donations), which makes estimating the influence of intellectual drift on retirement decisions challenging. Future research could analyze the relationship between ideology and retirement outcomes by incorporating vote-based measures into an analysis, for example.

Third, our study stopped short of considering the policy ramifications of these shifts, including analyses of how the composition of the federal courts could change over time or how the patterns we see here could shape judicial rulings. An implication of our work and that of others is that we may see a long-term attenuation in the proportion of center-right Republican-appointed judges, as they are more likely to retire under Democratic Presidents and, if they retire under Republicans, will be more likely to be replaced by more conservative Republican appointees. Future research could help shed light on these patterns and connect these to long-term policy outcomes.

Appendix

This appendix includes additional findings and robustness checks for the paper "The Role of Judge Ideology in Strategic Retirements in the Federal Courts."

Deaths on the Bench

Our analysis operationalizes a "retirement" as the point at which a judge leaves the federal bench regardless of the reason. This means that we treat a judge dying on the bench (without

having taken senior status) as a form of retirement that is either strategic or non-strategic. This can make sense as a substantive matter. For example, Justice Ruth Bader Ginsburg by nearly all accounts was not acting strategically in choosing to stay on the bench when she could have retired under Obama, so it makes sense that someone like her would be coded as a "0" in considering whether they retired strategically.

That said, deaths on the bench are rare. According to the FJC data, only 45 (3%) of all 1745 judges appointed since Reagan took office have died on the bench while holding their initial appointment. Of these 45, slightly more than half (26) were "un-strategic deaths" that allowed the opposing party to appoint a judge's successor.

Even so, we may be concerned that possibly exogenous non-strategic factors like deaths may be driving our results. Table 7 therefore removes deaths from the main analyses. Columns 1 and 2 replicate Columns 3 and 4 from Table 2, and confirm the main finding that, following Reagan's election, Democratic appointees strategically retire at higher rates than Republican appointees. Notably, all coefficients on all non-controls have the same signs and significance. Columns 3 and 4 replicate Columns 2 and 3 of Table 3 and demonstrates that, when judge deaths are removed, ideology (in the form of DIME CFscore) is a significant predictor for a Republican-appointed judge's likelihood of strategic retirement, while for Democratic-appointments we have suggestive evidence of the same. (For Democrats, we cannot reject the null of no relationship at $p < .05$.) These are consistent with findings from the main text.

Of the 45 deaths on the bench (during an initial appointment), 26 befell judges appointed by Republican Presidents, of which 17 came during a Democratic Presidency. A t-test of the "strategic timing" of the deaths of judges appointed by Republicans compared to those appointed by Democrats demonstrates no evidence to reject the null hypothesis that there is no significant difference in the

Table 7. Relationship Between Ideology and Strategic Retirements, With Judge Deaths Removed.

	(1) All Judges	(2) Post Reagan	(3) Republicans	(4) Democrats
(Intercept)	0.435 (0.104)***	0.950 (0.134)***	0.607 (0.174)***	0.727 (0.199)***
Republican-appointed	0.430 (0.042)***	−0.331 (0.033)***		
Post-Reagan	0.398 (0.036)***			
Court of Appeals	0.057 (0.035)	0.070 (0.046)	0.007 (0.062)	0.143 (0.065)*
Age at confirmation	−0.001 (0.002)	−0.003 (0.002)	−0.003 (0.003)	0.000 (0.004)
Female	0.046 (0.037)	0.020 (0.041)	−0.002 (0.066)	0.063 (0.050)
Non-White	−0.031 (0.036)	−0.052 (0.044)	−0.098 (0.070)	0.009 (0.054)
Republican × Post-Reagan	−0.753 (0.053)***			
DIME CFscore			0.095 (0.047)*	−0.087 (0.048)+
Num.Obs	1473	921	582	339
R2	0.131	0.107	0.016	0.033
F	31.430	21.990	1.864	2.258
RMSE	0.46	0.46	0.50	0.39

All models are linear probability models with strategic retirement (1) or not (0) as the outcome. District courts are the omitted court category. Columns (3) and (4) only include post-Reagan judges.
$+ p < 0.1$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.

likelihood of "strategic death" by party of appointment (*p*-value = .152). A *t*-test also confirms that there is no evidence to reject the null hypothesis that the DIME CFscores of judges who died on the bench are randomly distributed across both parties combined (*p*-value = .616). Broken down by party, we neither find evidence to suggest that Democratic-apppointed judges who died on the bench tended to be more liberal by DIME CFscore than their counterparts who did not (*p*-value = .471), nor the equivalent for Republican-appointed judges (*p*-value = .538). The results of these *t*-tests are consistent with deaths being randomly distributed, both with respect to the party of appointing president and strategic timing.

Replicating the Analyses Using Logistic Regressions

Below, we replicate the tables from our main results section using logistic regressions rather than linear probability models. As can be seen by comparing the signs and significance of the coefficients, using this specification does not change our substantive conclusions. Using logistic regression, we still observe that (1) Democratic-appointed judges are more likely to retire strategically than Republican-appointed judges since Reagan's Presidency, (2) more ideologically extreme Republican appointees are significantly more likely to retire strategically than their moderate counterparts, and (3) ideology does not have a significant effect at the $p < .05$ level for Democrat-appointed judges, only a suggestive one at $p < .10$.

Table 8 replicates Table 2, and Table 9 replicates Table 3.

Replicating the Analyses Using Judicial Common Space Scores

Table 10 replicates Table 3, which contains our main findings regarding the effect of ideology on strategic

retirements using the Judicial Common Space scores from Giles et al. (2001) and Epstein et al. (2007). We use data from Boyd (2015) to analyze district courts as well as circuit courts. The correlation between JCS scores and DIME CFscores is $\rho = 0.668$, which is similar to the correlation found in Bonica and Sen (2017).

We replicate our first main finding, that Democratic appointees across all ideological positions retire strategically more often, using JCS scores in Column 1. In Column 2, we see a difference using JCS scores, which is the coefficient on JCS score for Republican appointees is not significant – so we cannot rule out that there is no relationship between ideology and probability of strategic retirement. We note, however, that the sign is in the direction we would expect. That said, this represents a difference from our findings in Table 3. (The slight sample size difference in Columns (1) and (2) is due to a small number of Republican-appointed judges not being included in the JCS datasets.)

Why might this be the case? We hypothesize that this is due to differences in the ways that JCS scores and DIME CFscores are constructed, especially for moderates of each party. JCS scores assign an appointed judge a combination of the first dimension DW-NOMINATE score of the appointing President and any co-party home state senators (Giles et al., 2001). Thus, Democratic appointees will almost never have positive JCS scores, and Republican appointees will almost never have negative JCS scores. This artifact of the measurement structure essentially cuts off the "moderate-tail" of the distribution of JCS scores for appointments of each party at zero. Visually, this can be seen in Figure 4, which plots the distribution of JCS scores using dotted lines and shows the truncation at zero, which is to the right of the distribution for Democratic appointees and to the left for Republican ones.

Importantly, the JCS methodology does not simply impute 0 for any judge in the moderate tail. This feature may be particularly important when a President and the home-state senators are of different parties. In these cases, JCS scores

Table 8. Relationship Between Partisanship and Strategic Retirements, Logistic Regressions.

	(1) All	(2) All	(3) All	(4) Post-Reagan	(5) Post-Reagan
(Intercept)	0.347 (0.074)***	−0.412 (0.104)***	−0.279 (0.471)	2.087 (0.608)***	2.049 (0.609)***
Republican-appointed	−0.120 (0.103)	1.916 (0.211)***	1.935 (0.213)***	−1.478 (0.160)***	−1.376 (0.166)***
Post-Reagan		1.736 (0.166)***	1.731 (0.170)***		
Republican × post-Reagan		−3.355 (0.261)***	−3.373 (0.263)***		
Court of Appeals			0.328 (0.162)*	0.377 (0.213)+	1.403 (0.614)*
Age at confirmation			−0.004 (0.009)	−0.015 (0.011)	−0.016 (0.011)
Female			0.246 (0.170)	0.124 (0.193)	0.115 (0.194)
Non-White			−0.151 (0.165)	−0.214 (0.203)	−0.218 (0.203)
Republican × CoA					−1.262 (0.660)+
Num.Obs	1553	1553	1551	966	966
F	1.368	58.323	25.565	18.655	14.929
RMSE	0.49	0.46	0.46	0.47	0.47

All models are logistic regression models with strategic retirement (1) or not (0) as the outcome. District courts are the omitted court catgory.
+ $p < 0.1$, *$p < 0.05$, **$p < 0.01$, ***$p < 0.001$.

Table 9. Relationship Between Ideology and Strategic Retirements, Logistic Regressions.

|	(1) All post-Reagan	(2) Republicans post-Reagan	(3) Democrats post-Reagan
(Intercept)	2.059 (0.610)***	0.395 (0.693)	1.285 (1.239)
Republican-appointed	−1.547 (0.239)***		
DIME CFscore	0.130 (0.160)	0.440 (0.194)*	−0.552 (0.286)+
Court of Appeals	0.373 (0.213)+	0.043 (0.245)	1.514 (0.617)*
Age at confirmation	−0.015 (0.011)	−0.014 (0.013)	−0.012 (0.023)
Female	0.155 (0.197)	0.055 (0.261)	0.405 (0.336)
Non-White	−0.176 (0.209)	−0.418 (0.290)	0.159 (0.346)
Num.Obs	946	606	340
F	14.116	2.097	2.554
RMSE	0.47	0.49	0.41

All models are logistic regression models with strategic retirement (1) or not (0) as the outcome. District courts are the omitted court category.
$+ p < 0.1$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.

Table 10. Relationship Between Ideology and Strategic Retirements as as the Outcome Using Judicial Common Space Scores.

	(1) All post Reagan	(2) Republicans post Reagan	(3) Democrats post Reagan
(Intercept)	0.996 (0.136)***	0.675 (0.169)***	0.775 (0.215)***
Republican-appointed	−0.381 (0.073)***		
JCS score	0.072 (0.086)	0.102 (0.098)	−0.001 (0.234)
Court of Appeals	0.077 (0.046)+	0.018 (0.063)	0.163 (0.065)*
Age at confirmation	−0.004 (0.002)	−0.005 (0.003)	−0.001 (0.004)
Female	0.020 (0.041)	−0.017 (0.063)	0.076 (0.050)
Non-White	−0.046 (0.043)	−0.135 (0.068)*	0.046 (0.053)
Num.Obs	959	602	357
R2	0.106	0.012	0.026
F	18.722	1.407	1.883
RMSE	0.47	0.50	0.40

All models are linear probability models with strategic retirement (1) or not (0) as the outcome. District courts are the omitted court category.
$+ p < 0.1$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.
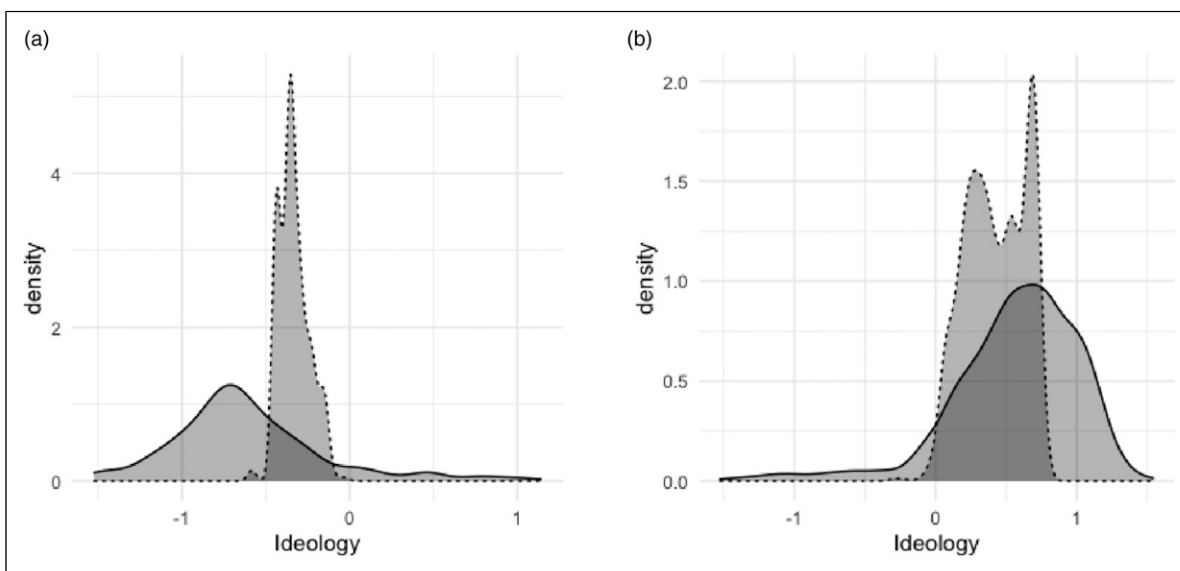
Figure 4. Densities of the distribution of DIME CFscores (solid lines) and JCS scores (dotted lines) for Democratic and Republican appointees, respectively. (a) Democratic Appointees (b) Republican Appointees. Source: DIME, Boyd (2015).

simply assign the appointee the President's NOMINATE first dimension score. Thus, for example, if President Obama named a moderate, or even a conservative Democrat to a state like Wyoming, which has two Republican senators, the JCS methodology would assign that judge Obama's own NOMINATE score. Since Obama's own NOMINATE score is to the left of the median point, this would suggest a liberal-leaning (not moderate or even conservative) appointee.[16] DIME CFscores do not truncate the measures at 0, resulting in much larger "moderate tails." We believe this could be contributing to Table 10, Column 2 not showing a significant relationship between JCS scores and strategic retirements. This relationship between ideology and strategic retirements is thus one that could be missed without using more fine-grained data, such as DIME.

Court-Level Interactions

Table 3 suggests a potential interaction between party, and possibly ideology, and a judge being on an appeals court. To investigate whether this is the case, we interact court of appeals status with party, and then we separate out Democratic and Republican appointees and interact ideology and court level. For the former, we find that judges on the Courts of Appeals are significantly more likely to retire strategically than District Court judges, but there is no significant interaction with party (Column 1). For the latter, as can be seen in Table 11, we see no significant interactive relationship between ideology and strategic retirements for either Democratic or Republican appointees.

Final Appointment

Our main analysis focuses on judges' retirements from their *first* judicial appointment, implicitly dropping judges who were promoted from one court to another. For example, our main analysis would drop a judge like Anthony Kennedy, who first served on the 9th Circuit Court of Appeals before being promoted to the Supreme Court, since his first "retirement" was actually a promotion, and so not a death, retirement, or a shift to senior status. His second appointment, to the U.S. Supreme Court, would also not be included as we focused only on initial appointments. However, as the example of Kennedy shows, many judges are promoted from district courts to appeals courts, and all but one Supreme Court justice (Elena Kagan) served on a Court of Appeals prior to being "promoted" to the high court.

To ensure that this choice does not influence the results, in this section we focus on *final* appointments after any promotions have occurred. Since this are judges' final appointments, this includes any individual who has been promoted.

The table below replicates key models in Tables 2 and 3 from the main text. In this table, the court type controls are based on final appointment, rather than initial appointment. Since we focus on final appointment, we introduce one more category of court, the Supreme Court. This is because individuals such as Anthony Kennedy now remain in the analysis. Note that we keep our focus on initial appointments in the main text, since this is logically what most people think of when we consider appointments; in addition, because only a fraction (around 18%) of judges are ever promoted, we would expect the analyses to bear out the same results.

Indeed, Table 12 demonstrates that our results remain largely the same. Columns 1 and 2 replicate Columns 3 and 4 from Table 2, and confirm the main findings that, after Reagan's election, Democratic appointees strategically retired at higher rates than Republican appointees. The coefficients on all non-controls have the same direction and significance. Table 12 likewise confirms our findings that

Table 11. Linear Models Predicting Strategic Retirement Incorporating an Interaction Term With the Court Level.

	(1) All judges	(2) Democrats	(3) Republicans
(Intercept)	0.956 (0.132)***	0.772 (0.201)***	0.605 (0.170)***
Republican-appointed	−0.310 (0.034)***		
Court of Appeals	0.161 (0.075)*	0.166 (0.109)	−0.108 (0.126)
Age at confirmation	−0.003 (0.002)	−0.001 (0.004)	−0.003 (0.003)
Female	0.022 (0.040)	0.058 (0.051)	0.017 (0.064)
Non-White	−0.045 (0.043)	0.027 (0.054)	−0.110 (0.069)
Republican × Court of Appeals	−0.125 (0.094)		
DIME CFscore		−0.080 (0.050)	0.091 (0.048)+
DIME CFscore × Court of Appeals		0.006 (0.147)	0.173 (0.157)
Num.Obs	966	357	609
R2	0.106	0.034	0.020
F	18.890	2.045	2.078
RMSE	0.47	0.40	0.49

All models are linear probability models with strategic retirement (1) or not (0) as the outcome. District courts are the omitted court category. Only post-Reagan judges are included.
+ $p < 0.1$, *$p < 0.05$, **$p < 0.01$, ***$p < 0.001$.

more extreme ideology predicts the retirement of Republican appointees but only suggestively for Democratic ones – see Columns 3 and 4, which recreate Columns 2 and 3 of Table 3. Overall, our main findings are the same whether we examine (1) initial appointments without promotions (i.e., only those who retired in some fashion or died), or (2) final appointments that include promoted individuals.

Super Strategic Retirements

In this section, we investigate whether the trends we find in strategic retirement extend to what we call "super strategic" retirements, by which we mean that a judge has retired under a same-party President *and the same party controls the U.S.*

Senate as well. A super strategic retirement thus ensures both that a co-partisan President can appoint a judge's successor and also that the successor is likely to be confirmed in a straightforward fashion by a co-partisan-controlled Senate. A super strategic retirement is by our definition also a strategic retirement, but not all strategic retirements are super strategic.

Importantly, we find that, among those who have vacated their initial position, only 38% of judges retire super strategically, compared to roughly 56% who retire strategically. (However, since Reagan's election, almost 44% of appointed judges have retired super strategically, compared to 57% retiring strategically.) The lower rates compared to regular strategic retirements make intuitive sense: there are fewer opportunities for a judge to retire super strategically than

Table 12. Relationships Between Partisanship, Ideology, and Strategic Retirements From Final Position.

	(1) All	(2) Post Reagan	(3) Republicans	(4) Democrats
(Intercept)	0.442 (0.092)***	0.946 (0.118)***	0.639 (0.151)***	0.625 (0.175)***
Republican-appointed	0.397 (0.036)***	−0.323 (0.030)***		
Post-Reagan	0.389 (0.032)***			
Supreme Court	0.127 (0.126)	0.127 (0.143)	0.124 (0.160)	0.132 (0.401)
Court of Appeals	0.062 (0.025)*	0.088 (0.032)**	0.056 (0.042)	0.135 (0.048)**
Age at confirmation	−0.001 (0.002)	−0.003 (0.002)	−0.005 (0.003)+	0.001 (0.003)
Female	0.075 (0.031)*	0.050 (0.035)	0.060 (0.054)	0.072 (0.045)
Non-White	−0.030 (0.031)	−0.041 (0.038)	−0.084 (0.062)	0.027 (0.046)
Republican × Post-Reagan	−0.712 (0.046)***			
DIME CFscore			0.117 (0.040)**	−0.081 (0.043)+
Num.Obs	1890	1178	755	423
R2	0.125	0.109	0.028	0.044
F	33.729	23.874	3.586	3.166
RMSE	0.46	0.46	0.49	0.39

All models are linear probability models with strategic retirement (1) or not (0) as the outcome. District courts are the omitted court category. Columns (3) and (4) include only post-Reagan judges.
+ $p < 0.1$, *$p < 0.05$, **$p < 0.01$, ***$p < 0.001$.

Table 13. Relationships Between Partisanship, Ideology, and "Super" Strategic Retirements.

	(1) All	(2) Post Reagan	(3) Republicans	(4) Democrats
(Intercept)	−0.129 (0.102)	0.394 (0.135)**	0.064 (0.161)	0.143 (0.244)
Republican-appointed	0.220 (0.040)***	−0.316 (0.034)***		
Post-Reagan	0.420 (0.035)***			
Court of appeals	0.096 (0.035)**	0.109 (0.046)*	0.057 (0.057)	0.166 (0.079)*
Age at confirmation	0.006 (0.002)***	0.004 (0.002)+	0.003 (0.003)	0.008 (0.005)+
Female	0.093 (0.036)*	0.094 (0.042)*	0.128 (0.061)*	0.083 (0.061)
Non-White	0.022(0.036)	0.039 (0.045)	0.042 (0.066)	0.060 (0.065)
Republican × Post-Reagan	−0.536 (0.051)***			
DIME CFscore			0.120 (0.044)**	−0.072 (0.059)
Num.Obs	1507	922	601	321
R2	0.119	0.118	0.020	0.039
F	28.924	24.473	2.460	2.524
RMSE	0.46	0.47	0.47	0.46

All models are linear probability models with super strategic retirement (1) or not (0) as the outcome. District courts are the omitted court category. Columns (3) and (4) only include post-Reagan judges.
+ $p < 0.1$, *$p < 0.05$, **$p < 0.01$, ***$p < 0.001$.

Table 14. Relationships Between Partisanship, Ideology, and "Super" Strategic Retirements, *Conditional on Retiring Strategically*.

	(1) All	(2) Post Reagan	(3) Republicans	(4) Democrats
(Intercept)	−0.248 (0.138)+	0.094 (0.158)	−0.052 (0.229)	0.062 (0.201)
Republican-appointed	−0.043 (0.049)	−0.126 (0.037)***		
Post-Reagan	0.256 (0.046)***			
Court of Appeals	0.068 (0.042)	0.057 (0.049)	0.089 (0.077)	−0.002 (0.058)
Age at confirmation	0.016 (0.003)***	0.014 (0.003)***	0.013 (0.004)**	0.015 (0.004)***
Female	0.090 (0.044)*	0.108 (0.045)*	0.224 (0.086)**	0.038 (0.047)
Non-White	0.077 (0.046)+	0.117 (0.050)*	0.242 (0.103)*	0.051 (0.051)
Republican × Post-Reagan	−0.089 (0.062)			
DIME CFscore			0.072 (0.061)	0.009 (0.047)
Num.Obs	849	533	287	246
R2	0.124	0.099	0.077	0.065
F		11.527	4.686	3.329
RMSE	0.43	0.40	0.44	0.32

All models are linear probability models with super strategic retirement (1) or not (0) as the outcome. District courts are the omitted court category. Columns (3) and (4) only include post-Reagan judges.
+ $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

strategically. For example, Democrats controlled the Senate for 6 of the 8 years of the Obama Administration, and Republicans for 6 of the 8 years of the George W. Bush Administration.

To investigate the relationship between ideology and this kind of retirement, we replicate our key models from above with super strategic retirement as the outcome variable, rather than simple strategic retirement, in Table 13. Note that this is an unconditional analysis: we simply look at the probability of super strategic retirement versus not-super strategic retirement; thus, the 0's here include "regular" strategic retirements.

We find that, like simple strategic retirement, prior to Reagan's election, Republican-appointed judges are more likely to have retired super strategically (Column 1), but Democratic appointees become more likely to do so in the years since (Column 2). This is again likely due to the lack of Democratic control of the White House in between 1968 and 1992, making it hard for Kennedy and Johnson appointees to retire super strategically, although Democrats did control the Senate for Jimmy Carter's full term. In Column 3, we again see the role of ideology: more conservative Republican appointees are more likely to retire super-strategically than their moderate counterparts, while there is no detectable effect of ideological extremity for Democratic appointees.

Additionally we test whether ideology relates to a judge's probability of retiring super-strategically, conditional on them retiring strategically. That is, among judges who retire strategically, do more extreme judges retire during same-party Senate control? As Table 14, which recreates Table 13 but restricts the data to judges who retired strategically, demonstrates, the answer appears to be "no." Once we subset the data only to judges who have strategically retired, the influence of ideology disappears. Column 2 still shows that, conditional on strategic retirement, Democratic appointees

are more likely to retire super-strategically than Republican appointees, but the coefficients on ideology in Columns 3 and 4 are not significant.

Even so, super strategic retirements may be worth exploring moving forward. In recent years, the Senate has flexed its muscles in opposing judicial appointments by delaying confirmations and, most famously, by refusing to allow Barack Obama to appoint a justice to the Supreme Court following the (un-strategic) death of Justice Antonin Scalia. Given this episode, Democratic appointees in particular may be especially keen to retire when their party controls both the White House and Senate. This phenomenon may be contributing to the early retirement of some Obama appointees while Joe Biden is in the White House and the Senate Democrats have a narrow majority.

Notes

1. Blackmun Oral Argument Notes, *Bath Iron Works v. Workers' Compensation Programs*, November 4, 1992 (Johnson, 2009).

2. Other retirements have been more puzzling from the perspective of ideological correspondence, highlighting the problem of making broad inferences about strategic retirements on the basis of a 9-member court's small sample size. For example, Thurgood Marshall, appointed by President Lyndon B. Johnson, retired under Bush I and was replaced by conservative Clarence Thomas. (Marshall then lived just long enough to see Democrat Bill Clinton sworn into the White House.) Another example is Ruth Bader Ginsburg, whose unwillingness to retire strategically under an Obama presidency solidified a 6-3 conservative majority that then overturned *Roe v. Wade* in 2022.

3. Combining the lower courts with the 9 judges on the Supreme Court and the 9 judges on the Court of International Trade yields 870 Article III judges.

4. There are fewer findings supporting strategic retirement in non-U.S. contexts. Massie et al. (2014) find no evidence of strategic retirements in high courts in Canada and the UK. Pérez-Liñán and Araya (2017) look at high courts in the United States and in five Latin American countries as a test of the practice in presidential systems. They find at most weak evidence of strategic retirements and that its use primarily correlates with the judge's age. A reason, the authors posit, is that younger judges may be more likely to be forced out by opposition-party presidential regimes.

5. Senior status is a term indicating that a judge is over 65, has served more than 15 years, and has decided to take a reduced caseload; this functional quasi-retirement creates a vacancy than can be filled by the current sitting President.

6. Age at confirmation is calculated by subtracting a judge's birth date from their confirmation as reported in the FJC dataset and turning the resulting number of days into years. Many judges only have birth years, and not birth dates or months, reported in the FJC dataset, though all do have birth years. In that case, we impute their birthday as June 1, roughly in the middle of the year in which they were born.

7. Sudden illnesses, heart conditions, or even mental conditions also create retirement choices that may not be strategic. We have no way of documenting the reasons or severity for every medical departure or making a determination on whether (from the individual's perspective) it was reflective of political concerns versus indifference to politics. However, we do note that the inclusion of purely medically related departures would be random noise, consistent with analyses we present in the Appendix.

8. Also, as noted by others, a potential issue with ideological measures that impute ideology using the identities of appointing politicians is that judicial nominees appointed in the same jurisdiction can often be assigned the same scores. For example, two judges appointed to the influential Southern District of Texas by Donald Trump would be assigned the same ideological score, since they share the same appointing President (Trump) and the same home-state same-party Senators (Republicans Ted Cruz and John Cornyn). Bonica and Woodruff (2013) have shown DIME scores to be a more reliable measure of ideology than surrogate and indirect measures like JCS scores.

9. An example of this might be Supreme Court Justice David Souter, who drifted in a liberal direction and retired under a Democratic President, but is assigned a relatively conservative CFscore of 0.634.

10. They explain: "We use the Amelia II package to impute missing values. We include in the multiple imputation model variables capturing the (1) observed DIME…scores, (2) court type, (3) law school, (4) birth year, (5) gender, (6) race/ethnicity, (7) employment history, (8) American Bar Association ratings, and (9) clerkships" (p. 117).

11. Republican Presidents have appointed 40 judges with CFscores more liberal than −1.0, and Democratic Presidents have appointed 13 judges with DIME CFscores more conservative than 1.0. This could partly be a function of the practice of "blue slips," in which a state's senators can exercise partial control over the appointment of district judges in their state. For example, Barack Obama appointed Scott Skavdahl (DIME CFscore of 1.177) to the U.S. District Court for the District of Wyoming, a state with two Republican senators.

12. As each judge is a unit of analysis, we do not double count judges – e.g., counting judges who served as both district court and court of appeals judges twice. Also note that, because we focus on a judge's initial appointment, by definition we do not analyze Supreme Court appointments: the only Supreme Court justice to be appointed to the Supreme Court since 1960 as an initial appointment, Elena Kagan, has yet to retire. In addition, taking the judge as the unit of analysis does present a departure from existing scholarship, much of which takes presidential terms (and, for example, the number of retirements in each) as the unit of analysis. We take the judge as the unit of analysis because it lends itself better to an inquiry regarding role of judicial ideology, which varies at the judge level.

13. Dropping judges who are still serving contrasts with what one would do if using an event history framework or survival analysis, in which the fact that a judge has not yet retired can be used as information about whether or not they will strategically retire. In our framework, we are concerned purely with the probability of retiring strategically, not with the time until retirement or years spent on the bench, and, if a judge is still serving, neither of their potential outcomes has yet been realized. For an application of an event history framework to strategic retirements in state high courts, see Curry and Hurwitz (2016).

14. As mentioned above, the relevant comparison here is magnitude, not value, as the nature of the DIME CFscore measurement is such that their signs *should* be opposite.

15. We use birth year rather than age on confirmation for this analysis because the outcome corresponds to retirement under specific Presidents, rather than retirement under a party. For example, a judge's birth year is more likely to impact whether they retire under Obama than their age at confirmation. In our other analyses, we control for age at confirmation because, across the time period, a judge's age when they are confirmed will more consistently limit their options regarding strategic retirement over the course of the judge's career on the bench.

16. Examples of these sorts of appointments include Judges Amos Mazzant (TX), George Hanks (TX), Scott Skavdahl (WY), and Leonard Strand (IA).

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