

# Understanding the Fate of the Judicial Caseload Crisis

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# Understanding the Fate of the Judicial Caseload Crisis

## **Abstract**

Over the past thirty years, many of those who follow the federal courts have expressed concern over mounting dockets. As early as the mid-1980s, scholars have decried the “crisis” of elevated caseloads. In recent years, many have expressed dismay over the added pressures on judges fostered by prolonged vacancies resulting from delays in confirming nominees. Taxing workloads for federal judges could have a variety of consequences, perhaps leading potential judges to pursue alternative career options, or curbing judges’ desire to retain office. However, to assess such consequences requires the use of appropriate measures of judges’ caseload. In this paper, we introduce scholars and practitioners to new measures of caseload for the district courts available over a substantial period of time, 1964 through 2010. We detail the methodology for constructing our measures, which is followed by an assessment of changes in caseload over time, both within specific courts and across all courts. We follow with a replication of an earlier study with one of our measures, and we conclude by pointing scholars toward additional research projects that can be undertaken.

# 1 Introduction

Many have raised the alarm over mounting caseloads in the federal courts. In his seminal work in the mid-1980s, Judge Richard Posner referred to the increasing volume of cases that federal judges oversee as fostering a “crisis” in the courts, necessitating swift institutional reform (Posner 1985). Judge Newman shared a similar sentiment a few years later, writing, “We have now reached, and may have passed, the point where the increase in federal court cases poses a serious and substantial risk to the nature and quality of the federal judicial system” (p.762-763). Indeed a significant number of commissions, committees, and conferences have been commenced over the past three decades related to concerns over judges’ work environment.<sup>2</sup>

Many scholars and practitioners have pointed to several pernicious consequences of high caseload. According to Judge Newman (1989), rising caseloads have threatened “...three distinct though related aspects of the federal court system: the quality of federal judges, the quality of their work, and the functioning of the federal court system” (p. 763). Concerning work quality and function, Judge Diarmuid O’Scannlain noted that responsibilities that have in the past fallen on judges have in recent years been relegated to their staff. O’Scannlain stated, “Impossibly large dockets and administrative responsibilities have forced us to create a system that might be called, with only slight exaggeration, “assembly-line justice”” (p. 476). Some have questioned whether the added stress and toll born by judges in high caseload courts

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<sup>2</sup>Baker 2006 references “...the Freund Committee, the Hruska Commission, the Estreicher and Sexton study, various ABA committee reports, the Federal Courts Study Committee, the Federal Judicial Center Report,’ the Long Range Plan of the Judicial Conference, and the White Commission,’ to mention a few” (p. 103-104).

creates morale problems, or possibly even drives judges to retire earlier than they otherwise have, seeking career opportunities elsewhere (Yoon 2003, Yoon 2005). Spriggs & Wahlbeck (1995) observed caseloads were a statistically significant cause of appeals court judges exits from office, and Barrow & Zuk (1990) and Hansford, Savchak, and Songer (2010) observed similar consequences for for district court judges.

Alternatively, some have argued that mounting caseloads have not resulted in a crisis for the courts. Indeed almost 30 years have passed since Judge Posner’s admonitions, and yet the courts continue to function today at a seemingly high level. Perhaps it was the case that judges were *underworked* in decades prior to the 1980s, rather than overburdened since that time (Baker 2006). Moreover, subsequent gains in efficiency may have mitigated concerns over higher case volumes (Baker 2006, Posner 2006). And in this perspective, reliance on more and better trained staff is not perceived to be to the detriment of the system of justice. (See Baker 2006 for an overview of this literature.)

Some of these disagreements stem, at least in part, from how scholars and practitioners have understood and measured caseload. Conceptually, quantitative measures of caseload should capture the workload of a judge. Scholars, however, have not settled on how to assess this workload. We introduce multiple indicators of caseload for the federal district courts available over a substantial period of time, permitting scholars either to employ more than one measure of the concept in their models when lacking strong theory, or to use the single measure most theoretically appropriate. We then provide summary statistics for our measures and draw comparisons across court and over time, comparisons that speak to the concerns over the “caseload cri-

sis” in the federal courts. We next employ one of our new measures in a replication of a previous study to further demonstrate the utility of our approach. We conclude by offering avenues for future research.

## 2 Measuring Caseload

In order to understand how and why the work environment of judges affects the federal judicial system, scholars must rely upon valid and reliable measures of caseload. That is, one cannot assess, for example, the extent to which more burdensome work loads affect the quality of judges’ decisions without accurate measures of the concept. Unfortunately, the measures that have been used, at least at times, have been beguiled by measurement error. This has been especially true at the district court level, where the multiplicity of courts and the variance in the size of these courts contribute to a great deal of variance in the work load of a judge. A judge serving in the District of South Dakota may not face the same pressures as one serving in the Southern District of California. And even among courts of the same size, judges may face different pressures in one part of the country than another. We begin by describing some of the measures that have been referenced in journals and law reviews. We raise concerns about several of these, drawing attention to the need for more valid and reliable metrics.

Scholars have assessed the work load of judges in several ways. One convention is to refer to the total number of filings, or terminated cases, or pending cases across all district courts over time. The use of such data highlight that the number of cases

has increased substantially over time (as an example, see Figures 1-5 of Posner 2006). Such measures of caseload, however, are problematic. Although the number of cases has increased over the past several decades, so too has the number of judges. A better method, then, is to divide any one of these measures by the total number of judges (see Figures 5 and 6 of Posner 2006, or Figure 2 of Yoon 2000). Such annual averages across all courts have been used to study the question of what drives judges to leave the federal bench (Barrow & Zuk 1990). This usage is also problematic, as it applies averages across courts to individual judges making decisions related to the work environment of their respective court. Averages across all courts mask the fact that the caseload for any given court could be considerably higher or lower than the mean.

At least two of the district courts have adopted subnational measures of caseload, an improvement over these averages for addressing certain questions. First, Hansford, Savchak, and Songer (2010) utilize caseloads measures at a subnational level to address why individual judges exit the bench. Here the authors use state-wide measures of the number of pending cases divided by authorized judgeships. Where districts and states overlap, these measures offer a reasonable assessment of a judges work load. However, where there are multiple district courts per state, one must assume that judges across districts work the same number of cases. Undoubtedly judges in the Western District of New York, for example, face different docket pressures than those in the Southern District.

Binder and Maltzmann (2009) rely on weighted case filings per court as their measure of workload to assess the politics of the nomination and confirmation pro-

cess. This is the measure used by Congress to assess the need for more judgeships in a court (Jenkins Jr. 2003). The Binder and Maltzmann data represent the most theoretically appropriate measures to date, as weighted filings are tabulated by the Judicial Conference of the United States to reflect the disproportionate time involved in handling certain types of cases. However, when relying on this measure, one must recognize that weighted filings do not take into account vacancies or the service of senior status judges. Vacancies could drive the work load higher for those on the bench, while the service of senior status judges could mitigate the effect of vacancies. Moreover, where there are no vacancies and a large number of senior status judges, full-time judges workloads could be relatively light. Finally, related to weighted filings, some have questioned the generalizability of the weightings across courts in a given year (Gillespie 1974); moreover, because the weights have changed, the Administrative Office of the U.S. Courts urges some caution when making inferences over time.

Ideally, caseload measures would exist that speak to the actual number of cases a given judge commenced, terminated, or left pending, or similar measures weighted according to the time invested in each case. Unfortunately, no such data at the individual level are reported. However, annual measures are available by court, and one can then also compile information on the number of authorized judgeships, the number of vacancies, and the number of senior status judges serving. These annual measures include commenced, terminated, and pending decisions (both for civil and criminal cases) and weighted filings measures.

To understand our caseload measures, it is helpful to consider the tabulation of the

numerator and denominator independently. Concerning the numerator, we collect several measures for each district court for years 1964 through 2010. The annual reports of the Administrative Office of the U.S. Courts offer the following for each district court for each year: total cases commenced (filings), total cases terminated, total cases pending, and weighted case filings.<sup>3</sup> For commenced, terminated, and pending, the data are available broken down by civil cases (Table C-1) and criminal cases (Table D-1).<sup>4</sup> We record each of these series annually per district court.<sup>5</sup> Unlike the other measures, the weighted case filing is recorded per authorized judge, not per court. One can derive the weighted filings per court by multiplying the weighted case filings reported by the number of authorized judgeships.

To better understand the workload of judges, we develop three denominators for each measure. We first compile information on the number of authorized judgeships per court, which is available through the aforementioned annual Director's Report. Our second denominator takes into consideration the effect of vacancies, by recording the actual number of full-time judges on each court per year. Our third measure adds to this the service of senior status judges, who are assumed to work the minimum 0.25

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<sup>3</sup>We report the data for the year of the publication. That is, for the 1999 publication, we report pending data for June 30, 1999.

<sup>4</sup>Concerning Table D-1, criminal data are available for both cases and for defendants each year, with the number of defendants always equalling or exceeding the number of cases. We report criminal cases.

<sup>5</sup>This is according to the fiscal year beginning July 1 and ending June 30 for cases commenced, terminated, and pending. For weighted case filings, for the period of 1964 through 1991, the data were published according to the fiscal year. Beginning in 1992, data were published for the period October 1 through September 30. For commenced, terminated, and pending cases, data were transcribed from the Director's Annual Report for years 1964 through 1991. In 1992, the Director's Annual Report switched from a June 30 reporting end date to September 30. In order to be consistent over time, we collected data from 1992 through 2010 using other publications that maintained a June 30 end date. We include only those district courts within the United States. That is, we exclude Guam, the Virgin Islands, and Puerto Rico from our data collection.

caseload. To tabulate the number of full-time judges and senior status judges per year, we relied on detailed biographical descriptions for each judge’s service available from the Federal Judicial Center. The FJC records the date of commission for each district court judge, the date of their transition to senior status (if applicable), and the date of termination from the district courts.<sup>6</sup> Thus we can monitor the history of each judge’s service over time and record precisely the length of their tenure on the courts. For example, if a judge serves six months during a given year, we record her service as 0.5 for that year.<sup>7</sup> And if a judge transitions from full-time service to senior status during the course of one year, we incorporate both the number of months serving full-time months and those in senior status.<sup>8</sup>

To reiterate, because the actual number of cases taken on by each district judge is not made publicly available, several assumptions are necessary. We assume that each full-time judge on a given court in a given year works the equivalent of any other full-time judge on that court. That is, age or status as chief judge do not affect one’s workload. Second, we assume that senior status judges work a one-quarter load, the minimum required by law. That is, from the time a judge takes senior status to the time of their departure from the court, they are recorded as serving 0.25, rather

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<sup>6</sup>For the vast majority of judges, we use the commission date as the start of service. But we also include the service of judges who were recess appointments and were not ultimately confirmed. As an example, we record the service of Judge Walter Meheula Heen for the District of Hawaii, whom President Carter appointed in January of 1981. Judge Heen served until December of 1981, when his service was terminated due to a lack of Senate confirmation.

<sup>7</sup>We record service by month, not by day. That is, if a judge begins service in January—regardless of the date—and ends service in June—again, regardless of the date—this judge is recorded as serving 6 months, or 0.5 for that year.

<sup>8</sup>In order to maintain consistency with our numerator, we record service using the beginning date of July 1 and end date of June 30 of the subsequent calendar year for the cases commenced, pending, and terminated; for weighted case filings, we record service using the July 1 and June 30 dates through 1991, and then October 1 and September 30 for years after.

than 1.0. Of course we recognize that many senior status judges work more than this minimal 0.25, but in the absence of data that show precisely how many cases these judges take on, we deem it best to estimate service conservatively. Finally, if a judge is appointed to more than court, we assume that the judge works an equal share in each court. For example, a full-time judge appointed to the Eastern and Western Districts of Missouri is assumed to work 0.5 load in each court for each year of full-time service.

To illustrate how we tabulate our denominator, it is useful to consider an example. Although any of the two thousand plus judges serving between 1964 and 2010 would be appropriate, consider Judge Aubrey Eugene Robinson Jr. from the District of Columbia. Judge Robinson Jr. was commissioned on November 3, 1966, and served full-time until March 1, 1992, when he transitioned to senior status. The judge's service was terminated on February 27, 2000, due to death. To tabulate this judge's service, we would do the following: 0.667 service for the year July 1, 1966 to June 30, 1967 (i.e., 8 months full-time service); 1.0 service for each fiscal year through June 30, 1991; 0.833 service for the year July 1, 1991 to June 30, 1992 (i.e., 9 months full time service plus 3 months one-quarter time service); 0.25 service for the period July 1, 1992 to June 30, 1999; .167 service for the period July 1, 1999 to February 27, 2000 (i.e., 8 months senior status service). The virtue of this method for calculating the denominator is that we are able to account for vacancies, senior status judges, and those who served less than full-time due to midyear confirmations, transfers to senior status, or exits from office.

We report a variety of indicators for each district court for each year from 1964

through 2010. These data are provided for purposes of subsequent scholarly investigation. Our compiled data, which can be used as numerators or as reported, include numerators:

- Civil Cases Commenced
- Criminal Cases Commenced
- Total Cases Commenced
- Civil Cases Terminated
- Criminal Cases Terminated
- Total Cases Terminated
- Civil Cases Pending
- Criminal Cases Pending
- Total Cases Pending
- Weighted Case Filings

Our denominators for each of the above measures include:

- Authorized Judgeships
- Full-Time Judges Serving (accounts for vacancies, but not the work of senior status judges)
- Actual Judges Serving (includes both senior status judges and accounts for vacancies)

Using information from our numerator and denominator, we can tabulate multiple caseload measures per court. We now move to highlighting findings from these data.

### 3 Findings

Having introduced the tabulation of our new caseload measures, we now move to showcasing several interesting findings. Because our numerous caseload measures are available for each district court across a broad time period, one could easily overwhelm the reader with even summary statistics including means and standard deviations by court for a given year, or over time, or by circuit. Here, we choose to offer a select set of figures that provide unique insight on the workload of federal judges.

As we have noted, many have expressed concern about the increasing caseloads taken on by district court judges. Thus we begin by charting the annual averages of total (civil + criminal) commenced, terminated, and pending caseloads across all courts and over time, with our denominator as the actual judges serving (which considers both vacancies and senior status judges). Figure 1 plots these means from 1964 through 2010.

[Insert Figure 1 about here.]

As we see in the figure, there was good reason to be concerned about the mounting caseloads across the district courts from the mid-1960s until the mid-1980s. All three series point to a steady increase. However, caseloads began to fall after the mid-1980s, and generally speaking, plateau. We do observe some differences in each the series that are worth noting. Throughout much of the period, commenced cases reflects the highest value, but in recent years, pending cases have increased. The most recent years show the average for pending cases to be considerably higher than

commenced and terminated ones.

We follow this figure by focusing on the difference in pending cases for two courts over time, where the total pending series serves as the numerator, and authorized judgeships as the denominator. We compare the Middle District of Louisiana against the District of South Dakota. We observe marked differences in the number of pending cases in these two courts. Figure 2 charts the series.

[Insert Figure 2 about here.]

As shown in the graph, one is immediately taken aback by the number of pending cases in Louisiana Middle from the mid-1990s to the mid-2000s. And the relatively low-level at the courts' onset in the early 1970s and the low level today is also striking. In contrast, judges in South Dakota have not dealt with a large number of pending cases at any point in time. It is always true that judges in the Middle District of Louisiana were faced with more pending cases than judges in South Dakota, but the difference is far greater in certain years than others.

Figure 2 also highlights some of the limitations of using total filings, pendings, and terminations as measures of federal judicial workload. Consider that a class action suit with more than 9,900 plaintiffs filing in the Middle District of Louisiana (exposure to toxic substances at a Superfund site) started in 1996, and many of those plaintiffs remained pending until the case was settled in 2007. The 9,900 cases, though filed individually, were litigated jointly, a common practice in the federal courts in class action and multidistrict litigation. Counting the total number of plaintiffs in these cases does not capture workload of the courts adjudicating these

cases, where weighted filings measures can more accurately reflect the workload of the judiciary.

Accordingly, Figure 3 examines the means of the three weighted average series, the first divided by authorized judgeships, the second by actual judges serving, and the third by full-time judges. To return to our earlier discussion, the authorized judgeships series—used to assess the need for new judges—reflects work load if there were no vacancies nor senior status judges. Thus the dashed line of the figure helps serve as somewhat of a baseline for comparison. In contrast, the heavy bolded line reflects both vacancies and senior judges' service.

[Insert Figure 3 about here.]

We see in Figure 3 that although the series are collinear, the differences in the means of the three series grows considerably over time. This likely reflects the fact that nominations to the district courts became more contentious and politicized over time (Binder & Maltzman 2009). Early in the period of analysis, we see only small differences between the three series, but by the early 1990s, these differences are considerable.

Finally, we turn to a geographical display of the difference between the two weighted filings series, showing the difference between the weighted filings measure per authorized judgeship against the weighted measure per actual judge serving. We subtract these measures from one another, and portray the data for 2008. Higher values (displayed in red on Figure 4) suggest that the assistance of senior judges decreased the workload of the full-time judges considerably in that year. Alternatively, the districts represented in green on Figure 4 were ones that were particularly

affected by vacancies and a lack of senior judges to offer assistance. The need for full-time judges is most pronounced in these dark green and lighter green districts.

[Insert Figure 4 about here.]

## 4 Replication

We lastly turn our attention to an application of our caseload measures, replicating a previously published study and employing our measure of weighted caseload per actual judge serving. Although not the substantive focus of their paper, and modeled merely as a control variable, Hansford, Savchak, and Songer (2010) find that caseloads are a statistically significant predictor of district court judges leaving the bench. As we discussed earlier, their measure of caseload is the number of pending court cases per authorized judgeship, but measured at the state, rather than district court level (see page 997 for a description).

We offer three models for the replication. First, we replicate the original findings—Table 2, page 999, of Hansford et. al.—in the first column of our table. Second, because the Hansford et. al. data cover the period from 1946 through 1995, and our data begin in 1964, we reestimate the same model for the period 1964-1995, as displayed in column 2 of our table. Finally, we reestimate the model using the weighted case filings per judge serving, which takes into consideration the work of senior status judges (assumed to contribute a 0.25 caseload) and vacancies on the court. The results are presented in Table 1.

[Insert Table 1 about here.]

Our results reveal that there are differences in the effect of caseload depending on the measure. The first column of Table 1— which accurately captures the results presented on page 999 of Hansford et. al—reveals that caseload is a statistically significant predictor of exit. The second column, using the original caseload measure over the more limited time period of 1964-1995, also shows that caseload matters for whether judges leave the court early. However, our caseload measure—weighted filings per judge serving, presented in the third column—is not statistically significant. Here we find that caseloads have little bearing on whether judges leave the federal bench.

## 5 Discussion

Our paper provides scholars with new and valuable measures of caseload. These measures allow students of the courts to test theoretical questions at the district court level across time, questions ranging from concerns over the “crisis in caseload” to whether judges are leaving the bench due to docket pressures. Our data permit scholars to select a variety of indicators of caseload in their models, or to choose those indicators most theoretically appropriate.

Future work remains. The wealth of indicators offered here have not yet been made available at the courts of appeals level, where concerns over mounting caseloads have been acknowledged for some time. A future study should undertake the task of data collection for scholars’ benefit.

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## Tables and Figures

Figure 1: Means Across All District Courts of Measures of Commenced, Terminated and Pending Cases per Actual Judge Serving, 1964-2010

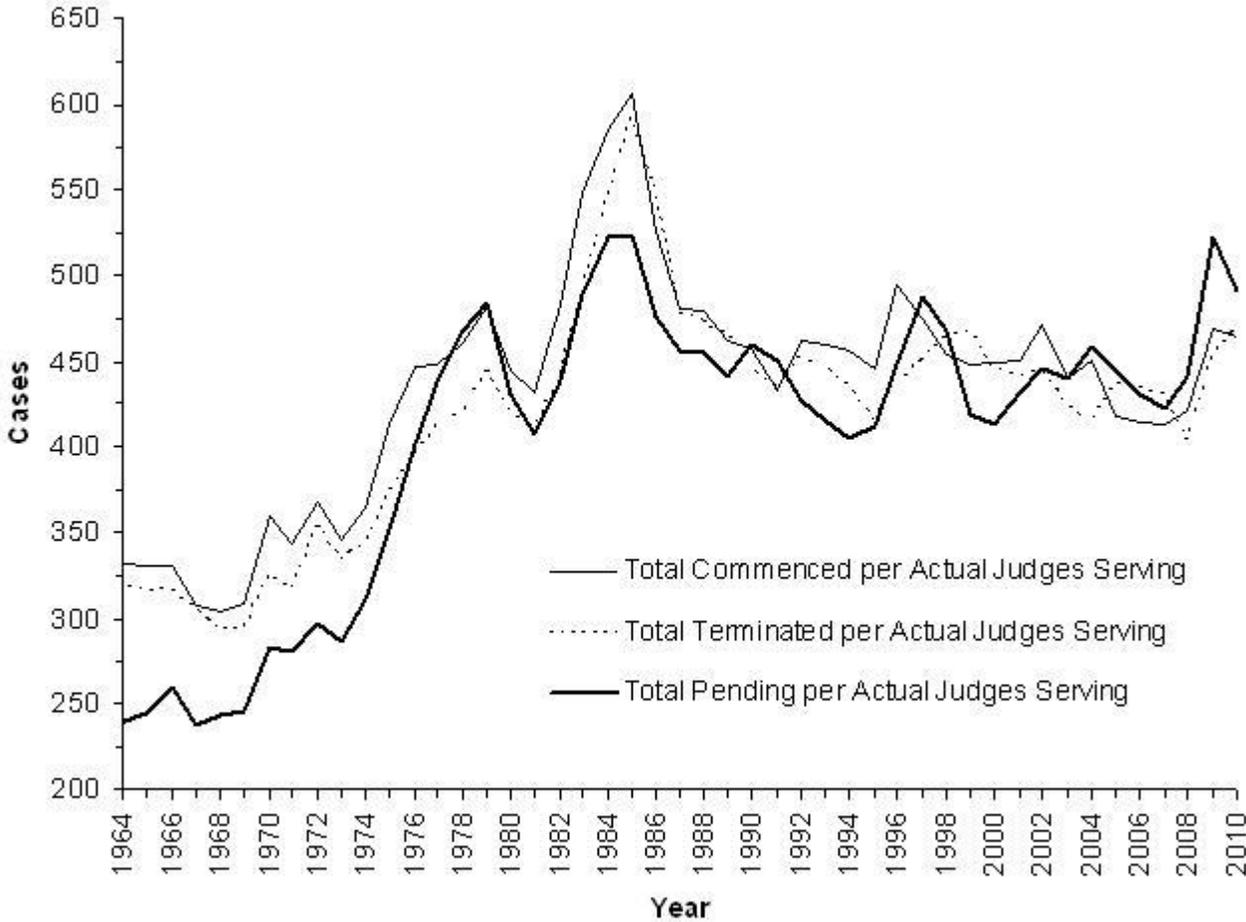


Figure 2: A Comparison of Pending Cases per Authorized Judgeship, 1964-2010

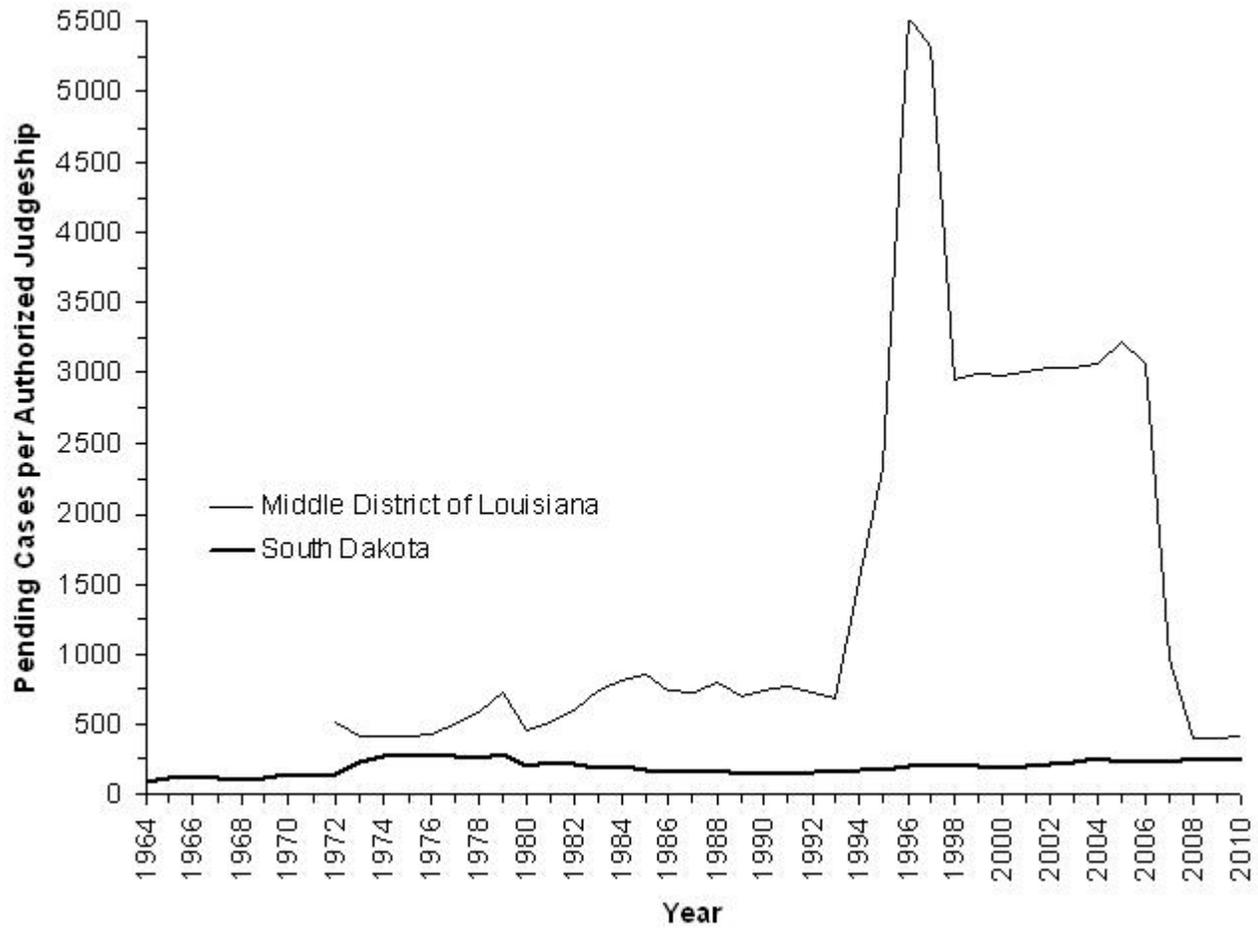


Figure 3: Means Across All District Courts of Three Measures of Weighted Case Filings, 1964-2010

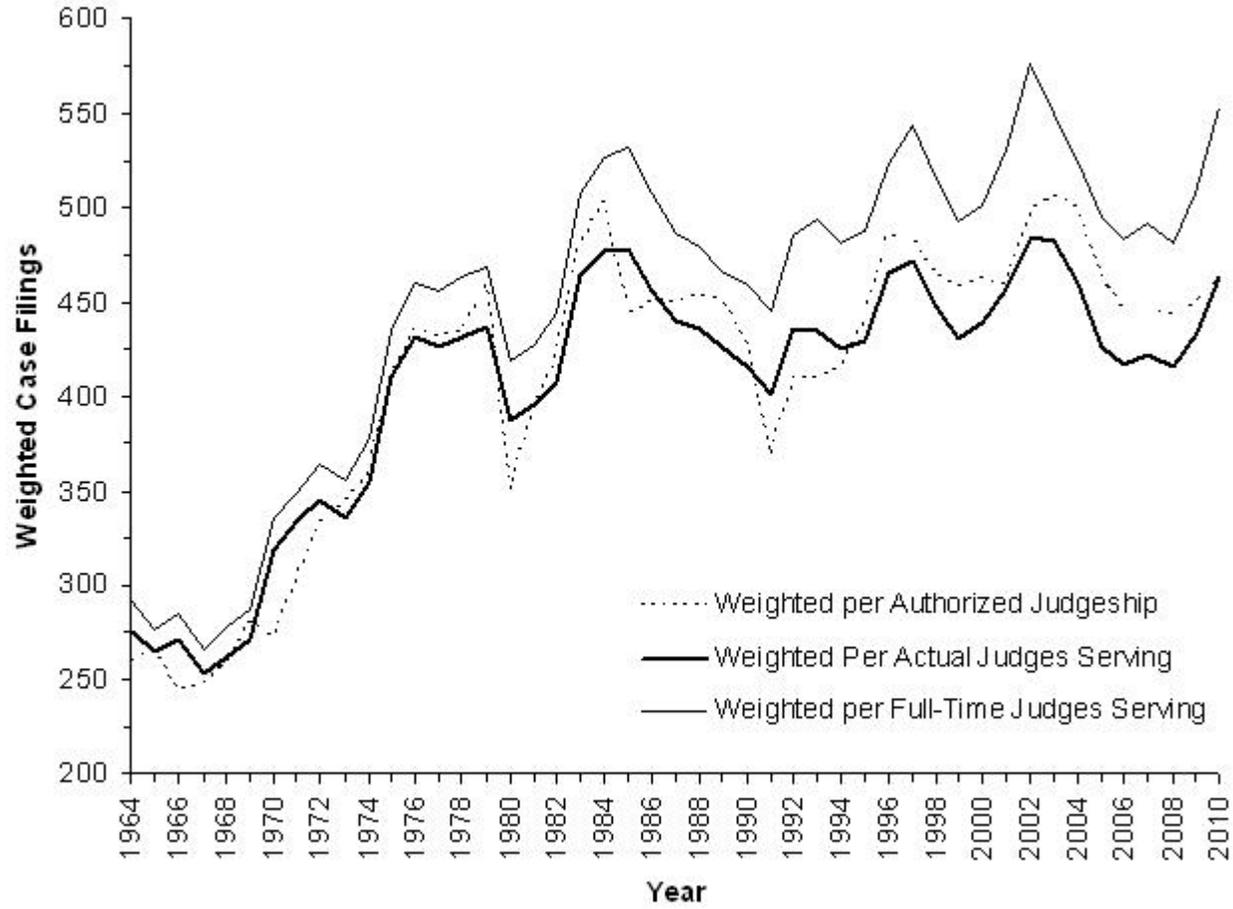


Figure 4: A Comparison of the Difference in Weighted Case Filings per Authorized Judge against Per Actual Judges Serving, 2008

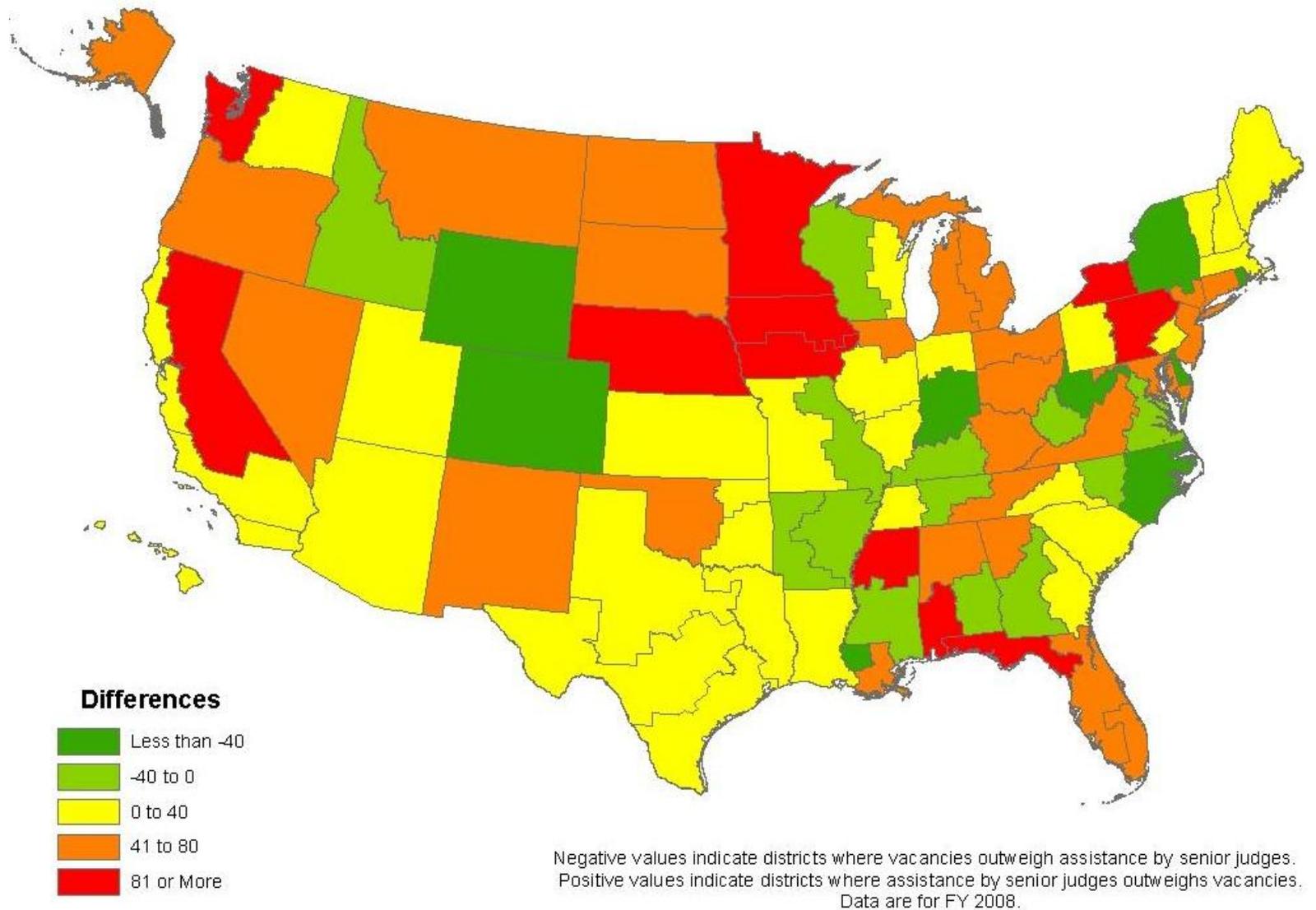


Table 1: Replication of Hansford, Savchak, and Songer 2010

	Replication of Original	Replication 1964-1995	New Caseload 1964-1995
Regime Varying Effects: Pre-Pension			
President-Judge Compatibility	-0.004 (0.006)	-0.002 (0.006)	-0.002 (0.006)
Appeals Court Vacancies	-1.937 (4.737)	-1.695 (4.838)	-1.201 (4.634)
Missed Elevation Opportunities	0.066 (0.035)	0.066 (0.035)	0.069* (0.035)
Prior Work in Private Practice	-0.064* (0.019)	-0.055* (0.019)	-0.055* (0.019)
Judicial Salary	-0.208* (0.089)	-0.221* (0.095)	-0.242* (0.095)
Seniority	0.356* (0.120)	0.334* (0.122)	0.334* (0.122)
Seniority <sup>2</sup>	-0.023* (0.007)	-0.022* (0.007)	-0.022* (0.007)
Regime-Specific Constant	0.782 (1.474)	0.849 (1.562)	1.400 (1.552)
Regime Varying Effects: Post-Pension			
President-Judge Compatibility	0.011* (0.004)	0.011* (0.004)	0.011* (0.004)
Appeals Court Vacancies	-5.534* (1.849)	-5.534* (1.867)	0.002 (0.011)
Missed Elevation Opportunities	-0.001 (0.011)	-0.002 (0.011)	-0.166* (0.068)
Prior Work in Private Practice	-0.010 (0.007)	-0.010 (0.007)	-0.011 (0.007)
Judicial Salary	0.026 (0.042)	0.019 (0.042)	0.007 (0.043)
Seniority	-0.170* (0.023)	-0.164* (0.023)	-0.169* (0.023)
Seniority <sup>2</sup>	.	.	.
Regime-Specific Constant	6.313* (1.335)	6.227* (1.343)	31.982* (15.968)
Regime-invariant Controls			
Age at Appointment	-0.091* (0.015)	-0.089* (0.016)	-0.090* (0.016)
Caseload	0.103* (0.040)	0.096* (0.041)	0.0003 (0.0004)
N	15406.0	14162.0	14162.0
Log-Likelihood	-1024.47	-999.76	-1002.06

Coefficients with robust standard errors in parenthesis

Two-tailed significance tests, where \*  $p < .05$