The Waning and Stability of the Filibuster*

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Abstract

Why has the U.S. Senate eliminated the filibuster for judicial appointments while maintaining it for legislation? This divergence is puzzling because traditional arguments for supermajority rules—protecting minority rights, ensuring deliberation, promoting stability—seemingly apply equally to both domains. We develop a game-theoretic model that reveals how this pattern emerges from a fundamental difference between these activities: collective judicial decision-making inherently constrains policy shifts from appointments, while lawmaking allows greater flexibility. This distinction explains why supermajority rules, which act as a veto constraint, are less crucial for appointments than for lawmaking. We find that the Senate may adopt majority voting for appointments alongside supermajority voting for lawmaking—but not the reverse combination. Moreover, increased polarization expands the likelihood of divergent rules by making supermajority constraints excessive for appointments where court composition also limits policy movement. Our model sheds light on Senate rule choices and their evolution under changing political conditions.

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On November 21, 2013, the Democrat-controlled Senate voted 52-48 to eliminate the filibuster for most presidential nominations. This *nuclear option* marked a dramatic shift in Senate procedure, ending the supermajority requirement for executive and lower court appointments. Four years later, the Republican majority extended this change to Supreme Court nominations, allowing Neil Gorsuch's confirmation by a simple majority. However, throughout these changes, both parties have steadfastly maintained the legislative filibuster. Although the Senate's "march toward majority rule" has gained momentum (Binder, 2022), it has been uneven across domains, and its ultimate trajectory remains uncertain.

This divergence presents a puzzle: why has the Senate maintained the filibuster for legislation while abandoning it for judicial appointments? Traditional arguments for supermajority rules—protecting minority rights, ensuring deliberation, promoting stability—seemingly apply equally to both domains. Indeed, one might expect judicial appointments to warrant greater procedural constraints given their lifetime tenure. However, despite substantial pressure, the same legislators who eliminated the appointment filibuster continue to staunchly defend its legislative counterpart.[1]

Our main insight is that this procedural divergence can stem from a fundamental difference between lawmaking and appointments: judicial appointees operate within the constraints set by continuing justices and existing precedent, whereas new legislation does not face the same inherent structural constraints. This distinction appears to be important in practice, as concerns about policy volatility appear to be central to the calculus of key politicians. As emphasized by Senate Majority Leader Mitch Mc-

[1]President Trump once tweeted: "[w]ith the ridiculous Filibuster Rule in the Senate, Republicans need 60 votes to pass legislation, rather than 51. Can't get votes, END NOW!" (https://x.com/realDonaldTrump/status/908640949605163010). Unmoved, Senator Mitch McConnell stated in 2021 that "[n]o short-term policy win justifies destroying the Senate as we know it" (https://www.republicanleader.senate.gov/newsroom/remarks/mcconnell-on-preserving-the-legislative-filibuster-for-both-parties).

Connell, eliminating the legislative filibuster could have the consequence that "laws would become so brittle and reversible."[2] And, distinguishing between the activities, Senator Susan Collins noted: "Legislation is different from nominations. Legislation can be repealed... But judges are there for life."[3] Due to that persistence, single appointments rarely produce dramatic shifts because court decisions reflect collective choices that are impacted by continuing justices.

To analyze how these institutional differences shape voting rule choices, we develop a formal framework comparing procedural choice between majority and supermajority rules across lawmaking and judicial appointments. We analyze a game-theoretic model with a proposer (P), median legislator (M), and supermajority pivot (S), where M first chooses between majority and supermajority voting rules. In both lawmaking and appointments, P then makes a take-it-or-leave-it offer that is voted on under the chosen rule: majority rule requires only M's approval, while supermajority rule requires approval from both M and S. The key distinction lies in how approved proposals affect policy: in lawmaking, passed legislation directly implements the proposed policy, while in appointments, a confirmed nominee must work within the existing court structure. Specifically, a confirmed appointee shifts the court's median and thus policy, but only within bounds set by continuing justices.

Our model generates several key predictions about the coincidence of divergent voting rules for lawmaking and appointments. First, our main result shows that divergent voting rules can only take one form: majoritarian appointments coinciding with supermajoritarian lawmaking. This discrepancy arises because these activities feature different degrees of a key strategic tension that can impact legislators' proce-

[2] https://www.republicanleader.senate.gov/newsroom/remarks/mcconnell-on-preserving-the-legislative-filibuster-for-both-parties

[3] https://www.washingtonpost.com/politics/2019/03/05/shame-democrats-slam-republicans-over-judicial-nominees-support-overturning-obamacare/

dural incentives: balancing constraints on a proposer's ability to shift policy against preserving sufficient flexibility for beneficial changes. We prove that the conditions favoring supermajoritarian appointments are a strict subset of those favoring supermajoritarian lawmaking, making the opposite divergence—majoritarian lawmaking and supermajoritarian appointments—impossible unless political conditions differ substantially across domains.

Second, we show that higher polarization among legislators expands the scope for divergent voting rules. As ideological distances grow, the value of constraints increases more rapidly for lawmaking than for appointments because lawmaking allows greater policy shifts. A supermajority pivot who is far from the median provides strong constraints in both domains, but this constraint is often excessive for appointments, because policy movement is already limited by the sitting justices.

Third, we show how the ideological composition among sitting justices impacts the occurrence of divergent voting rules. Smaller ideological gaps on courts discourage supermajority appointments. Specifically, if there is a small ideological gap between the existing court median and potential appointees, then even majoritarian appointments cannot dramatically shift policy. This makes supermajority rules less attractive for appointments, but does not change their appeal for lawmaking. Our framework suggests that periods with ideologically cohesive courts may be especially likely to feature divergent voting rules.

Together, our results naturally follow from focusing on core differences in policy flexibility across domains. More complex models incorporating detailed procedures, informational asymmetries, or dynamic considerations might add richness to these predictions. However, by isolating essential constraints on policy movement, our framework reveals systematic patterns in how polarization and court composition affect voting rule choices through a clear and tractable mechanism.

Our key contribution a parsimonious strategic rationale for divergent voting rules across lawmaking and appointments. Although extensive research examines the emergence and persistence of the filibuster through path dependence (Binder, Madonna and Smith, 2007) or dynamic considerations (Wawro and Schickler, 2018), and others study strategic behavior in judicial appointments (Moraski and Shipan, 1999; Rohde and Shepsle, 2007; Krehbiel, 2007), we explain why different rules would emerge across these activities. Like Krehbiel and Krehbiel (2023), we show why pivotal median voters might support supermajority rules to constrain large policy shifts—which they call a *Manchin paradox*—due to concerns that eliminating the lawmaking filibuster would produce "political whiplash."[4] We highlight how this logic also explains why these pivotal legislators are less committed to the filibuster for judicial appointments.

Our result that only one form of voting rule divergence is possible aligns with contemporary Senate behavior, where senators from both parties have opposed eliminating the legislative filibuster while supporting majoritarian judicial appointments. Our analysis provides a logic for why such positions are internally consistent: judicial decision-making provides inherent safeguards against extreme policy shifts that have no direct parallel in lawmaking.

Finally, our predictions about how political conditions affect procedural choice align with observed changes in Senate behavior. We connect insights on how polarization affects legislative behavior (Lee, 2015; McCarty, 2019) with models of judicial appointments (Krehbiel, 2007; Cameron and Kastellec, 2016) to shed light on institutional changes. The 2013 elimination of the appointment filibuster occurred amid increased partisan polarization that had pushed pivotal senators further from the median than in the 1990s. Thus, supermajoritarian constraints may have become

[4] https://thehill.com/homenews/senate/589653-manchin-says-he-wont-vote-to-eliminate-or-weaken-the-filibuster/

excessive for appointments where court composition already limits policy shifts. Similarly, the timing of filibuster elimination across different courts—first for lower courts in 2013 and later for Supreme Court nominations in 2017—aligns with an implication of our results that larger courts, where individual appointments are less likely to dramatically shift policy, are more amenable to majoritarian appointments.

Related Literature

Our analysis bridges multiple strands of literature on legislative organization, institutional design, and legislative-judicial interactions. We focus specifically on why and when legislatures choose different voting rules across domains.

A rich literature studies legislative obstruction and the filibuster (Binder and Smith, 1996; Dion, 1997; Wawro and Schickler, 2006; Koger, 2010; Den Hartog and Monroe, 2011; Reynolds, 2017). This work broadly divides into two perspectives on why supermajority rules persist in a majoritarian institution: (i) path dependence explanations emphasize how existing rules shape subsequent choices, while (ii) preference-based explanations emphasize legislators' strategic interests.[5] While not aiming to adjudicate this debate, our analysis is preference-based.[6]

Within the preference-based tradition, we follow game-theoretic studies of endogenous voting rules (e.g., Dal Bó, 2006). Previous work has identified various rationales for supermajority rules, including balancing executive power (Aghion, Alesina and Trebbi, 2004), insulating future policy (Gradstein, 1999), or thwarting reform (Mess-

[5]Additionally, other perspectives emphasize agenda control (Peress, 2009), information transmission (Dion et al., 2016; Kishishita, 2019)), and obstruction as fostering compromise (Fong and Krehbiel, 2018). Recent empirical and theoretical analyses have further expanded our understanding of Senate procedures, with Fu and Howell (2023) testing whether the filibuster enhances legislative discussion and Fong (2024) examining strategic consequences of specific reform proposals.

[6]See Wawro and Schickler (2018) for a recent discussion assessing this debate with respect to the Senate's elimination of the filibuster for nominations and claiming that, while neither perspective is fully consistent, the preference view is superior.

ner and Polborn, 2004). These studies examine voting rules within particular institutions, whereas we explicitly compare rules across related but distinct activities. To make this comparison, we analyze procedural choice using canonical models of lawmaking (Romer and Rosenthal, 1978) and judicial appointments (Krehbiel, 2007).[7]

Our comparison of lawmaking and judicial appointments bridges two recent efforts to understand Senate supermajoritarianism. Krehbiel and Krehbiel (2023) explain why a pivotal senator under majority rule might paradoxically prefer supermajority rule for lawmaking. We show how the same strategic logic produces systematically different outcomes across domains—revealing that inherent constraints in judicial decision-making can make supermajority rules excessive for appointments. Similarly, while Nash and Shepherd (2020) develop a model of judicial appointments and demonstrate empirically that eliminating the filibuster led to more liberal appointments and polarizing effects on sitting judges, they do not analyze fundamental differences between lawmaking and appointments. By bridging formal models of legislative organization and judicial politics, our framework reveals how institutional constraints in one domain can rationalize seemingly inconsistent procedural choices across domains.

Our approach also relates to work on strategic delegation (Klumpp, 2010; Gailmard and Hammond, 2011; Kang, 2017) where players prefer delegates who favorably constrain proposers. In our setup, choosing the voting rule pins down the binding pivot (similar to delegating to a veto player), but this constraint interacts with domain-specific policy flexibility to produce different optimal rules. By focusing on core strategic tensions rather than procedural details or dynamic considerations, we reveal how institutional structures shape voting rule choices. While existing

[7]Although other theoretical models question or alter these frameworks (see, e.g., Lewis (2008) and Jo, Primo and Sekiya (2017) for appointments; and Chiou and Rothenberg (2003); Cox and McCubbins (2007); and Den Hartog and Monroe (2011) for legislating), we use them because of their comparability and prominence.

work examines legislative and electoral considerations in judicial appointments (e.g., Cameron and Kastellec, 2016; Bils, Judd and Smith, 2024) and legislative-judicial interactions more broadly (Clark, 2009), we provide the first systematic analysis of how inherent constraints in appointments influence optimal voting rules in ways that help explain the Senate's puzzling combination of procedures.

Model

We analyze strategic procedural choice in lawmaking and appointments through two related games. For lawmaking, we employ an agenda-setter framework following Romer and Rosenthal (1978), while for judicial appointments, we utilize a move-the-median framework in the spirit of (Krehbiel, 2007).

Players. There are three key players: a proposer (P), a median legislator (M), and a supermajority pivot (S).

Game Form. We analyze two distinct game forms to compare and contrast the two activities of interest: *lawmaking* and *judicial appointment*. We first describe their common structure in our framework and then clarify their key distinction.

Each game proceeds in two stages. First, M selects between two voting rules: majority ($\mathcal{M}$) or supermajority ($\mathcal{S}$). Second, P makes a take-it-or-leave-it proposal that M and S vote on simultaneously. Under majority rule ($\mathcal{M}$), the proposal passes if and only if M approves. Under supermajority rule ($\mathcal{S}$), both M and S must approve passage.

The key distinction between the two activities is how proposals affect policy outcomes.

Lawmaking: P proposes a policy $x \in X$ that, if passed, is implemented exactly as specified. If rejected, the policy is the status quo $q_\ell \in X$.

Judicial Appointment: P nominates a justice $j \in X$ who, if confirmed, fills the vacancy on a court. If the nominee is approved, then the court's resulting policy is set at the court's new median justice; otherwise, the court's policy remains at the pre-vacancy median, denoted q_a. Thus, the relevant sitting justices are the two medians, with ideal points $j^L < j^R$, and we have $q_a \in [j^L, j^R]$. Formally, if a nominee j is approved, then the resulting court policy is:

$$j^M(j) = \begin{cases} j^L & \text{if } j < j^L \\ j & \text{if } j \in [j^L, j^R] \\ j^R & \text{if } j > j^R. \end{cases}$$

For brevity, we refer to the vacancy median justice who is opposite q_a from P as the *traditionalist justice* and the other vacancy median as the *reformist justice*.[8]

Preferences. Players have single-peaked preferences over outcomes, represented by absolute-loss utility functions $u_i(y) = -|y - i|$, where i denotes player i's ideal point and y the policy outcome.[9] Without loss of generality, we normalize $M = 0$ and focus on $S < 0 < P$.[10]

Equilibrium Concept. We analyze subgame perfect Nash equilibria (SPE) in each procedural choice game, requiring that legislators play weakly undominated voting strategies to ensure they vote as if pivotal (Baron and Kalai, 1993).

Model Discussion. Our analysis compares the procedural choice between majority or supermajority rule in canonical models of lawmaking (Romer and Rosenthal,

[8] For example, if $j^L \leq q_a < P$ then the traditionalist justice is j^L and the reformist justice is j^R.

[9] Absolute-loss utility is standard (see, e.g., Cameron and Kastellec, 2016) and facilitates comparative statics, but is not essential. Our main result holds if legislators have policy preferences that satisfy the strict single-crossing property and can be represented by strictly quasi-concave utility functions.

[10] We acknowledge, but do not focus on, the knife-edge case $P = 0 = M$. In this case, majority rule always prevails for appointments and lawmaking.

1978) and judicial appointments (Krehbiel, 2007). Thus, similar to Krehbiel and Krehbiel (2023), we focus on using parsimonious models to isolate key strategic tensions and show how classic static incentives can explain seemingly paradoxical procedural choices.

Our setup emphasizes three key elements. First, by modeling strategic interactions between proposer, median, and pivot, we capture key aspects of Senate decision-making while abstracting from more intricate procedural details. Second, our explicit treatment of policy movement in each domain formalizes how institutional structures constrain appointments but not lawmaking—a fundamental distinction where judicial nominees must operate within constraints set by continuing justices, while new legislation faces no such inherent limitations. Third, by explicitly incorporating court composition, we analyze how the ideological distribution of continuing justices affects voting rule choices.

The models of lawmaking and appointments that we use share important structural features that facilitate comparison. Each stipulates a one-shot game with a one-dimensional policy space and takes as given the filibuster pivots, status quo, and configuration of existing decision-makers. Both treat individual preferences as central, with party influence left implicit,[11] and are essentially unicameral—move-the-median by definition and the setter model by not explicitly modeling bicameral bargaining.

These models are canonical and have offered important insight within their respective domains. Their key features and forces are well-known, and substantial overlap in their structure narrows the scope of potential differences that could generate distinct rules. Despite these similarities, our approach identifies a key distinction: the feasible scope for shifting the status quo. By using these well-studied models, we show that contemporary Senate procedures are natural byproducts of fundamental

[11] We incorporate party influence in an extension.

strategic environments, allowing us to draw sharp conclusions about differences in filibuster persistence even without introducing additional features.

Our streamlined representation of the legislature captures essential features of larger bodies, with the median legislator's procedural choice aligning with majoritarian preferences under broad conditions. Although we maintain constant player positions (P, M, and S) across activities for simplicity, this assumption is not required for our main results. Two apparent differences—the president's veto power in lawmaking and proposal power for appointments—are readily addressed by generalizing the proposer (capturing bargaining that might affect formal nominations) and gridlock intervals (through which the presidential veto shapes pivotal politics). This approach allows us to remain agnostic about real-world analogues for each player, acknowledging that presidents may influence legislative proposals despite lacking formal power, while their nomination power for judicial appointments may be constrained by unmodeled negotiations.[12]

Several modeling choices help isolate how fundamental differences between lawmaking and appointments can drive divergent voting rules through basic strategic logic. We abstract from detailed amendment procedures, because the fundamental asymmetry in policy flexibility exists regardless of specific rules. We assume complete information to focus on how domain-specific constraints affect voting rule choices rather than information problems. Our static setting suffices to demonstrate how basic differences between lawmaking and appointments influence strategic behavior.

In evaluating judicial nominees, players focus solely on court outcomes, following Moraski and Shipan (1999) and Rohde and Shepsle (2007), but our main results extend to settings where players care about both court outcomes and appointee ideology

[12]For instance, while home-state Senators historically wielded influence through blue slip procedures (e.g., Black, Madonna and Owens (2014)), these informal practices typically had modest, mitigated effects (e.g., Binder and Maltzman (2004)).

(as in Cameron and Kastellec, 2016). More broadly, although skeptics might counter that other forces are prominent, we extend our analysis to allow for political parties to influence co-partisans, showing that our main findings are robust while generating additional insights.

Analysis

Using our framework, we derive conditions under which the median legislator prefers different voting rules across activities and show how these conditions respond to changes in polarization and court composition. Much of our analysis consists of comparing the equilibrium payoff for M's from majority rule ($\mathcal{M}$) versus supermajority rule ($\mathcal{S}$). Under either voting rule, equilibrium behavior for each activity is well-known from existing work.[13]

Illustrative Example

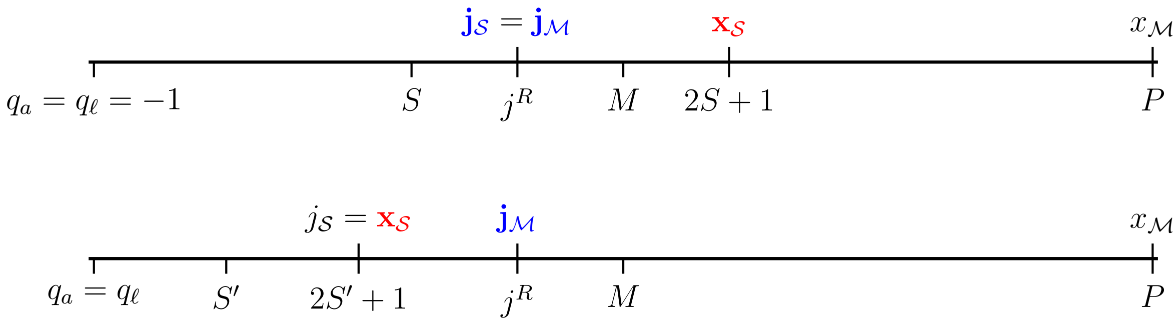
Before presenting our general analysis, we examine two related cases that illustrate our key mechanisms. These examples demonstrate why supermajority rule might be valuable for lawmaking but excessive for appointments, and how this varies.

Consider cases where $q_a = q_\ell = -1 < S < M = 0 < P = 1$, varying only the location of the supermajority pivot from S to a more extreme position S'. For both activities, M is the veto player under majority rule, while under supermajority rule S is the *de facto* veto player in equilibrium.

This comparison reveals three fundamental aspects of our theory. First, it shows how the existing court composition acts as a natural constraint on appointments that

[13] In the Appendix, Lemmas A.1—A.3 provide the complete characterizations of equilibrium behavior required for our analysis.

Figure 1: How Majority-preferred Voting Rules can Diverge and Vary



Note: Figure 1 depicts two examples to illustrate key insights into how the majority-preferred voting rules for both lawmaking and appointments can diverge and vary with political conditions. For both, we fix $q_a = q_\ell = -1 < M = 0 < P = 1$. The example in the top panel depicts a moderate supermajority pivot (S), while the bottom panel depicts a more extreme pivot (S'). In each example, the majority-rule lawmaking outcome is denoted $x_\mathcal{M}$ and the supermajority-rule outcome is $x_\mathcal{S}$, while the analogous judicial appointee ideal points are $j_\mathcal{M}$ and $j_\mathcal{S}$. For each activity, the majority-preferred voting rule is associated with the outcome closest to M, which are depicted in red for lawmaking and blue for judicial appointments. There are two key insights: (i) court composition (j^R) inherently constrains the appointees impact but there is no such constraint in lawmaking, and (ii) more extreme pivots can produce divergent voting rules, maintaining supermajoritarian lawmaking alongside majoritarian appointments.

has no analogue in lawmaking. For lawmaking, majority rule allows policy to move to P, while supermajority constrains movement to $2S+1$ (or $2S'+1$ in the bottom panel). However, for appointments, reformist justice j^R provides an additional constraint: no appointee can move policy beyond j^R, regardless of the voting rule.

Second, the comparison demonstrates why supermajoritarian lawmaking and majoritarian appointments can naturally coincide. In the top panel, with moderate S, M prefers supermajority rule for both activities as it prevents excessive rightward movement. However, shifting to more extreme S' in the bottom panel produces divergent preferences—supermajority for lawmaking but majority for appointments. This occurs because the more extreme pivot constrains policy too severely in appointments where j^R already bounds rightward movement.

Third, comparing the panels reveals how the conditions producing divergent rules depend on key political variables. Majoritarian appointments arise only when the pivot is sufficiently far from M ($S' < -\frac{1}{2}$). Additionally, a narrower gap between the pre-vacancy median (q_a) and reformist justice (j^R) makes majoritarian appointments more appealing, as the court's composition already provides adequate constraint.

Main Results

Our main analysis formalizes three key insights. First, supermajority rules are less valuable for appointments because that domain has inherent constraints. Second, this institutional difference means only one form of divergent rules is possible: supermajoritarian lawmaking with majoritarian appointments, never the reverse. Third, this pattern is robust unless the political conditions differ substantially between domains.

A broad insight from the example is that M is less inclined to use supermajority rule to constrain appointments because that activity features an additional built-in constraint: the existing justices. We now strengthen that observation to show that supermajoritarian lawmaking and majoritarian appointments can both be optimal under similar conditions, but the opposite combination cannot coexist. Specifically, our main result shows that divergent rules must be supermajoritarian lawmaking and majoritarian appointments unless political conditions are sufficiently different.[14] All proofs are in the appendix.

Proposition 1. *If (i) the ideology of each politician is sufficiently similar across activities and (ii) q_a is sufficiently close to q_ℓ, then appointments are supermajoritarian only if lawmaking is supermajoritarian.*

[14]One obvious difference that could occur if we explicitly integrated bicameralism is that the gridlock interval could be wider for lawmaking than appointments, as the left or right pivots might be more extreme in the House. Unless this difference is substantial, our results carry over.

Proposition 1 contains two important messages. First, lawmaking is supermajoritarian under broader conditions than appointments, and, conversely, appointments are majoritarian under broader conditions than lawmaking. Second, supermajoritarian lawmaking and majoritarian appointments can coincide under similar conditions, but the opposite combination cannot.

Corollary 1.1. *If voting rules diverge under similar conditions, then there is supermajoritarian policymaking and majoritarian appointments.*

Substantively, Proposition 1 makes sense of the Senate maintaining the filibuster for policymaking and abandoning it for appointments. But it also suggests that the opposite arrangement would be surprising, as it requires substantial environmental differences in either status quo or ideology of agenda-setter/pivots

The intuition flows from the potential tradeoff for M in our analysis of procedural choice is whether to give P more or less flexibility to change the status quo. In equilibrium, the degree of constraint imposed on P can vary between activities (appointments constrain P more than lawmaking) and voting rules (supermajority rule constrains more than majority rule). These differences produce the basic logic for Proposition 1: P can always shift policy weakly further in lawmaking than appointments, so supermajoritarian constraints for appointments are less valuable to M. Thus, M prefers supermajoritarian appointments under fewer conditions.

More precisely, Proposition 1 builds on the observation that the set of q_a for which M prefers supermajoritarian appointments is a subset of the set of q_ℓ for which M prefers supermajoritarian lawmaking. Figures 2 and 3 illustrate this property for a particular ideological profile of P, M, and S, but it holds for any profile. Thus, the conditions that produce supermajority appointments are a subset of those that produce supermajority lawmaking. Furthermore, the continuity properties of the equilibrium policy ensure that M's equilibrium value is continuous for both. Therefore, strict preferences over procedural choice are not sensitive to minor differences in political conditions between activities, i.e., politician preferences or status quo policy.

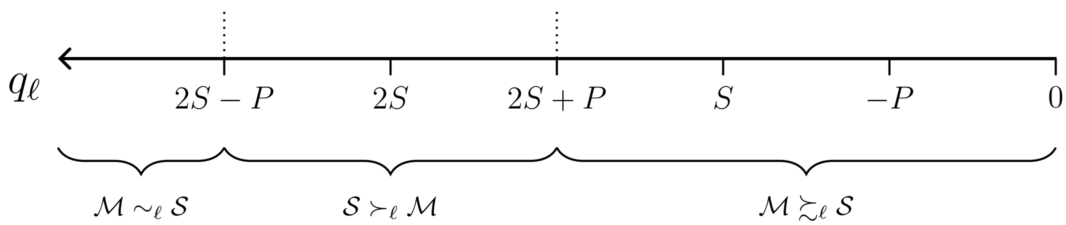
Before comparing the rules across domains, note that our analysis focuses on cases where P leans away from q. When P leans toward q, M prefers majority rule for both activities—an uninteresting case for understanding why rules might diverge.[15]

To understand how the inherent constraints in appointments affect voting rule preferences, we first characterize M's preferences in each domain separately and then compare them. Figure 2 depicts the preferred lawmaking voting rule of M for each q_ℓ. In the leftmost region, $q_\ell \leq 2S - P$, the proposer can shift the policy to P regardless of the voting rule, so M is indifferent between supermajoritarianism or simple majoritarianism, denoted formally as $\mathcal{M} \sim_\ell \mathcal{S}$. For an intermediate region, $q_\ell \in (2S - P, 2S + P)$, the proposer can shift the policy to P under majority rule, but S constrains her under supermajority rule so that the equilibrium policy is in $(-P, P)$. Thus, M strictly prefers supermajoritarian lawmaking, denoted $S \succ_\ell \mathcal{M}$. In the more centrist region $q_\ell \in (2S + P, P)$, majority rule allows the proposer to shift policy to P but supermajority rule constrains the proposer to policy left of $-P$, so M strictly prefers majority rule.[16] Finally, M is indifferent in the most centrist region $[-P, 0]$ because the proposer passes $-q_\ell$ under majority rule and q_ℓ under supermajority rule. Combining the last two observations, M weakly prefers majoritarian lawmaking, denoted $\mathcal{M} \succsim_\ell \mathcal{S}$, if $q_\ell \in [2S + P, 0]$.

[15]If $q \in (0, P]$, then the equilibrium policy outcome is q under either voting rule for both activities. If $q > P$, then M weakly prefers the equilibrium policy under majority rule for each activity. See the Appendix for more details.

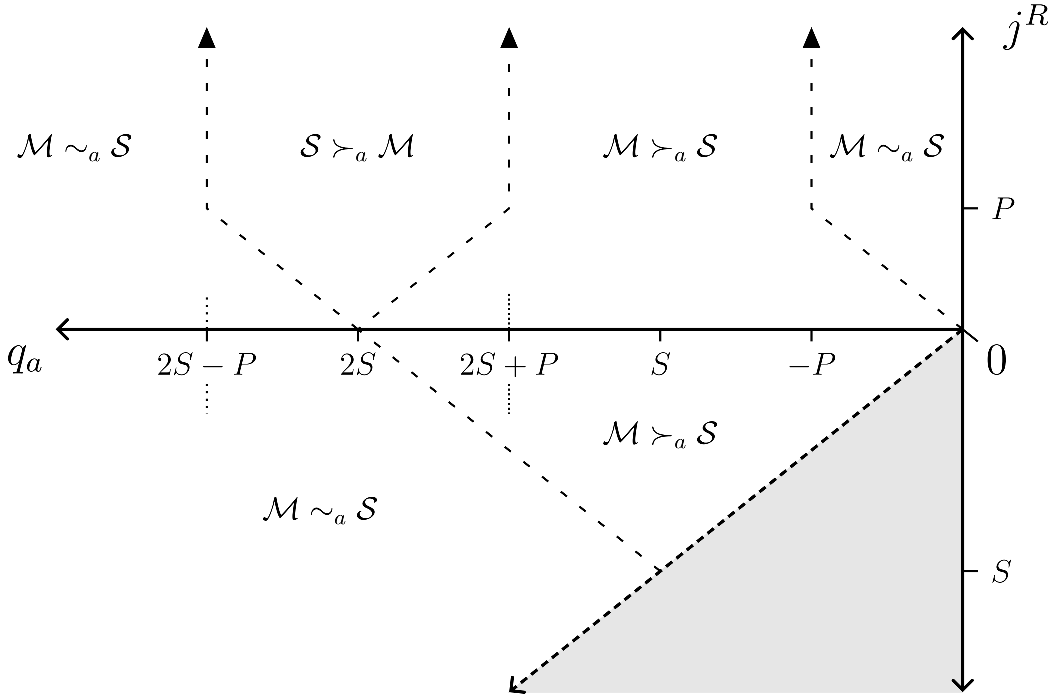
[16]If $q_\ell = 2S + P$, then $\mathcal{M} \sim_\ell \mathcal{S}$.

Figure 2: Majority-preferred Voting Rule for Lawmaking



Note: Figure 2 displays the median politician's (M's) preference between majority ($\mathcal{M}$) and supermajority ($\mathcal{S}$) rules for lawmaking across different status quo (q_ℓ). The notation $\mathcal{M} \sim_\ell \mathcal{S}$ indicates M's indifference between rules, whereas $\mathcal{S} \succ_\ell \mathcal{M}$ indicates M's strict preference for supermajority rule. For moderate q_ℓ, we see that M weakly prefers majority rule ($\mathcal{M} \succeq_\ell \mathcal{S}$).

Figure 3: Majority-preferred Voting Rule for Judicial Appointments



Note: Figure 3 displays the median politician's (M's) preference between majority ($\mathcal{M}$) and supermajority ($\mathcal{S}$) rules for judicial appointments across different combinations of status quo (q_a) and reformist justice (j^R). Unlike in lawmaking, M's procedural preference depends on both the status quo *and* ideologies of sitting justices. The conditions where M strictly prefers supermajority rule ($\mathcal{S} \succ_a \mathcal{M}$) are consistently smaller than in lawmaking. Comparing against Figure 2, $\mathcal{S} \succ_a \mathcal{M}$ does not always hold for $q_a \in (2S-P, 2S+P)$ because, e.g., $\mathcal{M} \succ_a \mathcal{S}$ for $q_a \in (2S, 2S+P)$ if $j^R \in (-P, P)$. This difference reflects the inherent constraints that court composition places on policy movement. The shaded region is not relevant because $q_a \geq j^R$, which violates the condition that $q_a \leq j^R$.

Figure 3 depicts the procedural preference of M for appointments, which depends on q_a and j^R. The key insight emerges from comparing against Figure 2: regardless of j^R, the conditions that produce supermajoritarian appointments are a (possibly strict) subset of those that generate supermajoritarian lawmaking. If $j^R \geq P$, then appointments are strategically equivalent to lawmaking, and the procedural preferences of M are identical to those just described and depicted in Figure 2. As j^R shifts inward over $[0, P)$, the proposer cannot shift policy as far past M under either voting rule, so supermajority rule is less appealing to M. Figure 3 illustrates how procedural choice changes: the interval of q_a in which M strictly prefers supermajoritarianism shrinks steadily from $(2S - P, 2S + P)$ and vanishes at $2P$ for $j^R = 0$, while the interval in which M strictly prefers majoritarianism expands steadily from $(2S + P, -P)$ to $(2S, 0)$. Finally, $j^R < 0$ constrains the proposer so much that she cannot shift policy past 0 under either voting rule. Therefore, supermajority has no appeal to M and procedural choice weakly favors majority rule regardless of q_a.

Effects of Ideology on Procedural Choice

Having established our main result about which voting rules can rationally coincide, we now analyze how key political variables affect when divergent rules are most likely to emerge. We examine the effects of two factors: the ideological extremism of the supermajority pivot and the ideological composition of the court. Our first two results analyze the effects of extremism, showing that it encourages divergent rules (Proposition 2) and majoritarian appointments (Proposition 3). Our third result analyzes the court's ideological spread, showing that a smaller ideological gap between vacancy median justices discourages supermajority appointments. Together, these results have implications for the impact of polarization among legislators or justices.

More broadly, they shed light on the broad patterns and specific mechanisms through which procedural choices can depend on the ideological positions of both legislators and justices.

Legislative Extremism & Divergent Rules. First, we study how the coincidence of divergent voting rules is affected by legislators' extremism, which is frequently referenced in calls for majoritarian rules. Specifically, we vary the extremism of the supermajority pivot, S. We show that a more extreme pivot encourages divergent rules, expanding the conditions with majoritarian appointments and supermajoritarian lawmaking.

Proposition 2. *As the supermajority pivot becomes more extreme, there are weakly more conditions under which majoritarian appointments coincide with supermajoritarian lawmaking.*

We have seen that divergent rules coincide when supermajority rule (i) usefully constrains lawmaking but (ii) is excessive for appointments because the vacancy median justices provide enough constraint. Proposition 2 shows that shifting the supermajority pivot, S, outward expands the conditions under which both (i) and (ii) hold. For sufficiently centrist S, i.e., close to M, the vacancy court does not constrain appointments enough for divergent rules to coexist. Specifically, the vacancy court does not constrain P in majoritarian appointments unless M already prefers supermajority rule for both activities. Once S is sufficiently far from M, however, there are conditions where (i) and (ii) hold: under supermajority, P cannot substantially shift policy in either activity; under majority rule, P can shift policy far past 0 in lawmaking but cannot do so in appointments due to the vacancy medians. And as S shifts further outward, supermajority rule increasingly constrains P in both activities but the vacancy median constraint does not change. Thus, divergent rules coexist more broadly. That is, there are weakly more condition under which (i) and (ii) hold. Yet, there is a limit to the scope for divergent rules: if S is extreme enough, then further extremism does not change the size of the set of parameters producing divergent rules, as can be seen by comparing Figures 2 and 3.

Note that the gridlock interval expands as S gets more extreme. Because procedural divergence does not depend on the (unmodeled) gridlock pivot who is aligned with P, Proposition 2 immediately yields the implies that a larger gridlock interval expands the conditions producing divergent rules.

Corollary 2.1. *Expanding the gridlock interval produces weakly more conditions under which majoritarian appointments coincide with supermajoritarian lawmaking.*

Legislative Extremism & Majoritarian Appointments. Building on Proposition 2, we show that an extreme supermajority pivot encourages majoritarian appointments, especially if the pre-vacancy median justice (q_a) is also relatively extreme.

Proposition 3. *If the supermajority pivot is sufficiently extreme, then the median legislator, M, weakly prefers majoritarian appointments ($\mathcal{M} \succsim_a \mathcal{S}$). And if, in addition, q_a is more extreme than the proposer or reformist justice, then M strictly prefers majoritarian appointments ($\mathcal{M} \succ_a \mathcal{S}$).*

Proposition 3 builds directly on the earlier intuition that supermajority rule can benefit M by preventing policy from swinging too far past 0. Shifting S away from M strengthens the supermajoritarian constraint, which decreases P's latitude to shift policy in equilibrium, and supermajority loses its appeal if S is sufficiently extreme. Essentially, M is relatively close to P, enough to prefer to relax the supermajority constraint in favor of majoritarianism.

To describe the logic more precisely, suppose $q_a < 0$. Regardless of the voting rule, M weakly prefers the equilibrium outcome over q_a. However, under supermajority rule when S is sufficiently extreme, P cannot pass the policy that M *strictly* prefers to q_a. And if q_a is sufficiently extreme relative to P and j^R, then M strictly prefers the majoritarian outcome to q_a. In the starkest example, supermajority fully constrains P and produces gridlock if S is more extreme than q_a. Gridlock is not necessary for Proposition 3, however, as it can hold for traditionalist pivots more centrist than q_a if either: P is relatively centrist, or the reformist vacancy median is centrist enough.

Substantively, Proposition 3 indicates that a polarized Senate, particularly one with a substantial portion of staunchly status quo biased members, is inclined toward majoritarian appointments. And this inclination is especially strong if the anticipated change to court policy is not too drastic for the median, either because (i) the proposer is centrist or (ii) the existing composition of justices constrains how far the appointment can swing court policy past the median Senator.

Court Composition & Procedural Choice. We conclude our main analysis by examining how the court's ideological composition shapes procedural choice. The key insight is that when the gap between the reformist justice and the departing median (q_a) narrows, it inherently constrains the proposer's ability to shift policy through appointments. This institutional constraint makes supermajority rules less valuable for appointments, because the court's composition already provides a natural check on policy movement. Under majority rule, the flexibility to adjust to the court's existing ideological structure becomes more appealing. This reasoning leads to our final main result, on the effects of court composition on voting rule preferences.

Proposition 4. *Decreasing the ideological gap between reformist justice and departing median justice (q_a) weakly shrinks the conditions under which M strictly prefers supermajoritarian appointments.*

Substantively, Proposition 4 suggests that majority rule is more enticing for judicial appointments in courts with a crowded center, particularly on the reformist side (biased away from q_a). This description roughly matches observations before the appointment filibuster was eliminated, at least for the Supreme Court (other courts being more difficult to aggregate). Differences between the Court median at the time (e.g., Justice Kennedy) and the reformist justices were not especially dramatic relative to, for example, the days of Justices Douglas or Marshall.[17]

Party Influence. While our baseline model captures key institutional differences between lawmaking and appointments, skeptics might emphasize other important political forces—particularly party influence. We therefore extend our analysis to examine how party pressure on co-partisans affects voting rule choice. We find that party influence complements rather than undermines our core insights: our main results are robust under broad conditions, and examining party strength generates additional predictions about when divergent voting rules are most likely.

We can incorporate party influence straightforwardly, following existing work that has incorporated partisan forces into our baseline policymaking environment (Volden and Bergman, 2006; Chiou and Rothenberg, 2009). These analyses posit that individual politicians have primitive policy preferences, but that party *pressure* shifts their induced preferences toward a locus of party power, such as a party leader or its median.[18] Effectively, party pressure is a microfoundation for particular types of shifts in individual ideal points. Depending on who is pressured and by how much, these shifts can potentially alter proposals or voting behavior. Through these channels, party influence can shape the legislative constraints on the proposer, and these changes can depend on the environment or voting rule. Crucially, for anticipating how

[17]We make these assessments using the canonical Martin-Quinn scores.

[18]Specifically, the extent to which an individual's ideal point shifts towards a party-based ideology is a function of the amount of pressure. Other than this adjustment, the individual's utility function is unchanged.

party influence interacts with our previous analyses, however, judicial constraints are unaffected by variations in party pressures.

Our first observation is that, under broad conditions, our results are robust. Specifically, Proposition 1 holds unless P and M share the same party-induced ideal point. This knife-edge condition requires either that P and M are co-partisans in a party that has total influence over both of them, or that one is a party leader with total influence over the other. Otherwise, our main results extend to this setting.

Our second observation is that several comparative statics can be restated in terms of changes in party influence. The insights of Proposition 2 about extremism extend directly if party influence shifts S further from M. For instance, if the traditionalist party's locus of power is more centrist than the traditionalist pivot, then weakening the party's influence produces weakly more conditions where majoritarian appointments coincide with supermajoritarian lawmaking. Conversely, the opposite relationship holds if the traditionalist party's locus of power is more extreme than the traditionalist pivot. Proposition 3 can be re-expressed similarly.

Substantive Implications

Our theoretical framework illuminates both historical patterns in Senate behavior and potential trajectories of future reform. We now discuss how our main insights help to understand observed institutional changes and anticipating future developments.

Our central finding—that only the observed pattern of divergence is possible—helps explain why the Senate has steadily shifted towards majoritarian appointments more rapidly than for lawmaking (Binder, 2022). The logic is straightforward: court composition provides inherent constraints on policy shifts that have no parallel in lawmaking, making supermajority rules potentially excessive for appointments while remaining valuable for unconstrained legislation.

The observed evolution of Senate procedures aligns with the implications of our model about polarization's effects. Our results suggest that mounting partisan tensions would increase pressure to eliminate appointment constraints first, exactly as observed. By 2013, increased partisan polarization had pushed pivotal senators further from the median, strengthening supermajoritarian constraints in both domains. A comparison of November 1993 with November 2013 is illustrative—in both instances, the president's party had a Senate majority but not a supermajority. The Senate was not only less polarized by conventional measures in 1993, but the Republican filibuster pivot was substantially more moderate.[19] Moreover, 1993 incumbent president Bill Clinton was to the left of 2013 incumbent Barack Obama (who was more centrist than any post-war Democratic president) using standard preference measures. These conditions made eliminating the filibuster far more attractive for Senate Majority Leader Harry Reid in 2013 than for Leader George Mitchell in 1993.

Furthermore, the observed sequence of reforms aligns with our implications about court composition effects. The filibuster was eliminated first for lower court and executive appointments in 2013, then extended to Supreme Court nominations in 2017. This timing follows naturally from our framework: lower courts' larger size means that individual appointments have less potential for dramatic policy shifts, making supermajority constraints less valuable. In contrast, Supreme Court appointments can have larger effects, explaining the later elimination of supermajority requirements.

Our analysis also suggests several insights about future institutional reforms. Lawmaking lacks the inherent constraints present in appointments, so eliminating the legislator filibuster would require overcoming greater resistance—even from moder-

[19] Using DW-NOMINATE, where scores roughly from -1 to 4 span liberal to conservative, the November 1993 pivot, John Chafee of Rhode Island, had a 0.084 score, i.e., was quite moderate; the November 2013 pivot, Lamar Alexander of Tennessee, was a far more conservative 0.324.

ate senators who supported appointment reform. However, external constraints on legislation, such as divided government or strong oversight mechanisms, could potentially substitute for the filibuster's protective function. Consequently, filibuster reform might become more viable under institutional conditions that constrain policy movement. Moreover, the chances of continued divergence could vary over time with changes in political polarization or court composition (e.g., multiple vacancies arising simultaneously).

Overall, these implications suggest that while further procedural changes are possible, they may follow different patterns than previous reforms due to the fundamental institutional differences that our analysis highlights.

Conclusions

The contemporary Senate presents an institutional puzzle: both parties have embraced majoritarian appointments while steadfastly defending supermajoritarian lawmaking rules. At different times in recent years, the Senate's left and right each rejected the cloture requirement for appointees. However, neither seized these moments to eliminate the legislative filibuster.

Our analysis reveals how this procedural divergence can emerge from a fundamental difference between lawmaking and appointments: the inherent constraints of collective judicial decision-making. By comparing canonical models of these domains, we demonstrate three key results. First, the same supermajority rule that valuably constrains extreme policy shifts in lawmaking may be excessive for appointments where existing court composition already limits policy movement. This provides a strategic rationale for different rules that does not rely on historical accidents or dynamic considerations. Second, we prove that only the observed pattern of divergence is possible: majoritarian appointments can rationally coincide with supermajority lawmaking, but never the reverse. Third, our framework identifies when such divergence is most likely—particularly under high polarization and when the existing court composition provides adequate constraints.

These findings emerge naturally from a fundamental distinction between two otherwise similar canonical game-theoretic models: appointees must work with others to shape policy, while legislation faces no such constraint. Because favorably constraining proposals is supermajority rule's potential benefit in our analysis, it becomes less appealing for appointments. Moreover, we show that ideological polarization makes conditions more favorable for distinct rules, while providing plausible conditions where supermajoritarian hurdles might be eliminated altogether.

Although we have not proven why the Senate has made particular choices, our analysis provides a parsimonious rationale built on familiar foundations. By grounding our work in these foundations, we deliberately abstract from dynamic and informational considerations. Future work could fruitfully examine how these forces interact with the static incentives studied here.

Our findings have implications beyond Senate filibuster debates. The logic of domain-specific constraints suggests why other legislative bodies might rationally maintain different voting thresholds across activities. More broadly, our analysis suggests that proposals for institutional reform should carefully consider how existing structural constraints might substitute for or complement procedural hurdles.

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Appendix

Contents

Appendix A Baseline Analysis

Without loss of generality, we prove all results for $P \geq 0$ and focus on equilibria in which each legislator always accepts if indifferent. Additionally, for completeness we include the right supermajority pivot, $R > M$, who is superfluous for the analysis in the main text.

Given a lawmaking status quo $q \in X$, let $A_i^\ell(q) = \{x \in X \mid u_i(x) \geq u_i(q)\}$ denote the acceptance set in lawmaking for legislator $i \in \{S, M, R\}$. For voting rule $\mathcal{V} \in \{\mathcal{S}, \mathcal{M}\}$, let $A^\ell(q; \mathcal{V})$ denote the set of policies that pass given q. Then $A^\ell(q; \mathcal{M}) = A_M^\ell(q)$ and $A^\ell(q; \mathcal{S}) = \cap_{i \in \{S,M,R\}} A_i^\ell(q)$. Let $x_\ell^* : X \times \{\mathcal{M}, \mathcal{S}\} \to X$ denote the mapping from the status quo and voting rule to equilibrium lawmaking outcome. For all $(q, \mathcal{V}) \in X \times \{\mathcal{S}, \mathcal{M}\}$, P's equilibrium lawmaking proposal is outcome equivalent to $x_\ell^*(q; \mathcal{V}) = \underset{x \in A^\ell(q;\mathcal{V})}{\arg\max}\, u_P(x)$.

A.1 Proof of Proposition 1.

The argument proceeds in several lemmas. First, Lemma A.1 characterizes the equilibrium majoritarian lawmaking outcome.

Lemma A.1. *In lawmaking,* $x_\ell^*(q; \mathcal{M}) = \min\{P, |q|\}$.

Proof. Under $\mathcal{M}$, $x \in X$ passes iff $u_M(x) \geq u_M(q)$. Thus, $A^\ell(q; \mathcal{M}) = [-|q|, |q|]$. Because $P \geq 0$, we have $x_\ell^*(q; \mathcal{M}) = \min\{P, |q|\}$. □

Lemma A.2 characterizes the equilibrium supermajoritarian lawmaking outcome.

Lemma A.2. *In lawmaking,*

$$x_\ell^*(q;\mathcal{S}) = \begin{cases} q & \text{if } q \in [S,R] \cup [R,P] \\ 2S-q & \text{if } q \in (2S-P,S) \\ 2R-q & \text{if } q \in (R,2R-P) \\ P & \text{else.} \end{cases}$$

Proof. Under $\mathcal{S}$, $x \in X$ passes iff $u_i(x) \geq u_i(q)$ for all $i \in \{S,M,R\}$.

Case 1: If $q \in [S,R]$, then $A^\ell(q;\mathcal{S}) = \{q\}$. Thus, $x_\ell^*(q;\mathcal{S}) = q$.

Case 2: If $q < S$, then $A^\ell(q;\mathcal{S}) = [q, 2S-q]$. There are two subcases. First, $q \in (2S-P,S)$ implies $2S-q < P$ and thus $x_\ell^*(q;\mathcal{S}) = 2S-q$. Second, $q \leq 2S-P$ implies $P \in A(q;\mathcal{S})$ and thus $x_\ell^*(q;\mathcal{S}) = P$.

Case 3: If $q > R$, then $A^\ell(q;\mathcal{S}) = [2R-q, q]$. There are two subcases. First, suppose $R > P$. Then arguments symmetric to Case 2 show that $q \in (R, 2R-P)$ implies $x_\ell^*(q;\mathcal{S}) = 2R-q$, and $q \geq 2R-P$ implies $x_\ell^*(q;\mathcal{S}) = P$. Second, suppose $R \leq P$. Then $x_\ell^*(q;\mathcal{S}) = \min\{P,q\}$. □

Next, we state several preliminary observations used to characterize the equilibrium appointments outcome under each voting rule. Let $q \in [j^L, j^R]$ denote the pre-vacancy median justice.

Recall the function $j^M(x)$ that locates the median justice following approval of an appointee with ideal point x. Because $j^L \leq q \leq j^R$ implies $j^M(q) = q$, it follows that $A_i^a(q;\mathcal{V}) = \{x \in X | u_i(j^M(x)) \geq u_M(q)\}$ is the acceptance set for $i \in \{S,M,R\}$. Then $A^a(q;\mathcal{M}) = A_M^a(q;\mathcal{V})$ and $A^a(q;\mathcal{V}) = \cap_{i\in\{S,M,R\}} A_i^a(q;\mathcal{V})$. Note that $A^a(q;\mathcal{V}) \cap [j^L, j^R] \subseteq A^\ell(q;\mathcal{V})$ always holds.

For appointments, proposing $x \notin A^a(q;\mathcal{V}) \cap [j^L, j^R]$ produces the outcome $y \in \{q, j^L, j^R\} \subset A^a(q;\mathcal{V}) \cap [j^L, j^R]$ in equilibrium. Let $x_a^* : X \times \{\mathcal{M}, \mathcal{S}\} \to X$ denote the mapping from the status quo and voting rule to equilibrium outcome. For all $(q, \mathcal{V}) \in X \times \{\mathcal{S}, \mathcal{M}\}$, P's equilibrium nominee is outcome equivalent to $x_a^*(q;\mathcal{V}) = \underset{x \in A^a(q;\mathcal{V}) \cap [j^L, j^R]}{\arg\max} \; u_P(x)$.

Lemma A.3 characterizes the equilibrium outcome from appointments for each voting rule.

Lemma A.3. *For judicial appointments under voting rule* $\mathcal{V} \in \{\mathcal{M}, \mathcal{S}\}$*, the equilibrium policy outcome is* $x_a^*(q;\mathcal{V}) = j^M(x_\ell^*(q;\mathcal{V}))$.

Proof. Consider voting rule $\mathcal{V} \in \{\mathcal{M}, \mathcal{S}\}$. Lemmas A.1 and A.2 imply $x_\ell^*(q;\mathcal{V}) \in A^a(q;\mathcal{V})$. Because $u_M(x) \geq u_M(q)$ for all $x \in A^a(q;\mathcal{V})$, we know $|x_\ell^*(q;\mathcal{V})| \leq |q|$. Next, $j^L \leq q \leq j^R$ and $q \in A^a(q;\mathcal{V})$ together imply $A^a(q;\mathcal{V}) \cap [j^L, j^R]$ is nonempty and convex. It follows that $j^M(x_\ell^*(q;\mathcal{V})) \in A^a(q;\mathcal{V})$. Moreover, it uniquely solves $x_a^*(q;\mathcal{V} = \underset{x \in A^a(q;\mathcal{V}) \cap [j^L, j^R]}{\arg\max} \; u_P(x)$. Thus, $x_a^*(q;\mathcal{V}) = j^M(x_\ell^*(q;\mathcal{V}))$. □

Lemma A.4 characterizes the set of status quo for which M strictly prefers supermajoritarian lawmaking.

Lemma A.4. *In lawmaking,* $\mathcal{S} \succ_\ell \mathcal{M}$ *iff* $q \in (2S - P, 2S + \min\{P, |S|\})$.

Proof. It suffices to show $u_M(x_\ell^*(q;\mathcal{S})) > u_M(x_\ell^*(q;\mathcal{M}))$ iff $q \in (2S - P, 2S + \min\{P, |S|\})$. There are six cases.

Case 1: Consider $q \leq 2S - P$. Rearranging yields $P \leq 2S - q < -q = |q|$, where $S < 0$ gives the strict inequality. Lemmas A.1 and A.2 imply $x_\ell^*(q;\mathcal{M}) = x_\ell^*(q;\mathcal{S}) = P$. Thus, $\mathcal{M} \sim_\ell \mathcal{S}$.

Case 2: Consider $q \in (2S - P, 2S + \min\{P, |S|\})$. Lemmas A.1 and A.2 imply $x_\ell^*(q;\mathcal{S}) = 2S - q$ and $x_\ell^*(q;\mathcal{M}) = \min\{P, |q|\}$. Because $|2S - q| < \min\{P, |q|\}$, we have $u_M(x_\ell^*(q;\mathcal{S})) > u_M(x_\ell^*(q;\mathcal{M}))$. Thus, $\mathcal{S} \succ_\ell \mathcal{M}$.

Case 3: Consider $q \in [2S+P, S)$. Lemma A.2 implies $x^*_\ell(q;\mathcal{S}) = 2S-q$. Therefore $q < x^*_\ell(q;\mathcal{S}) \leq -P$. Lemma A.1 implies $x^*_\ell(q;\mathcal{M}) = P$. Thus, $u_M(x^*_\ell(q;\mathcal{M})) \geq u_M(x^*_\ell(q;\mathcal{S}))$, so $\mathcal{M} \succsim_\ell \mathcal{S}$.

Case 4: Consider $q \in [S, R]$. Lemmas A.1 and A.2 imply $u_M(x^*_\ell(q;\mathcal{S})) = u_M(q) \leq u_M(\min\{P, |q|\}) = u_M(x^*_\ell(q;\mathcal{M}))$. Thus, $\mathcal{M} \succsim_\ell \mathcal{S}$.

Case 5: Consider $q \in (R, 2R-P)$, which requires $R > P$. Lemma A.2 implies $x^*_\ell(q;\mathcal{S}) = 2R - q > P$. By Lemma A.1 and $q > R > P$, we have $u_M(x^*_\ell(q;\mathcal{M})) = u_M(P) > u_M(x^*_P(q;\mathcal{S}))$. Thus, $\mathcal{M} \succ_\ell \mathcal{S}$.

Case 6: Consider $q \geq 2R - \min\{P, R\}$. Lemmas A.1 and A.2 imply $x^*_\ell(q;\mathcal{M}) = x^*_\ell(q;\mathcal{S}) = \max\{P, q\}$. Thus, $u_M(x^*_\ell(q;\mathcal{M})) = u_M(x^*_P(q;\mathcal{S}))$, so $\mathcal{M} \sim_\ell \mathcal{S}$. □

Lemma A.5 characterizes M's procedural preference for appointments as a function of the pre-vacancy median justice ideology.

Lemma A.5. *Let* $\zeta = \max\Big\{-j^R, \min\{P, |j^R|\}\Big\}$. *In the judicial appointment game,*

(i) $\mathcal{S} \succ_a \mathcal{M}$ *iff* $q \in \Big(2S - \min\{P, j^R\}, 2S + \min\{\zeta, |S|\}\Big)$, *and*

(ii) $\mathcal{M} \succ_a \mathcal{S}$ *iff*

$$q \in \Big(2S + \min\{\zeta, |S|\}, -\min\{P, |j^R|\}\Big) \cup \Big(\max\{P, j^L\}, 2R - \max\{P, j^L\}\Big).$$

Proof. Consider the judicial appointment game. There are six cases. In each, Lemmas A.1–A.3 pin down $x^*_a(q;\mathcal{M})$ and $x^*_a(q;\mathcal{S})$. We can focus on $j^R > S$ because $x^*_a(q;\mathcal{M}) = x^*_a(q;\mathcal{S})$ clearly holds otherwise.

Case 1: If $q \leq 2S - \min\{P, j^R\}$, then $u_M(x^*_a(q;\mathcal{M})) = u_M(\min\{P, j^R\}) = u_M(x^*_a(q;\mathcal{S}))$. Thus, $\mathcal{M} \sim_a \mathcal{S}$.

Case 2: Consider $q \in (2S - \min\{P, j^R\}, 2S + \min\{\zeta, |S|\})$. There are three subcases. We show $\mathcal{S} \succ_a \mathcal{M}$ for the first two. The third is vacuous.

(i) Suppose $j^R > P$. Then $\zeta = P$ and $x_a^*(q; \mathcal{S}) \in (\max\{S, -P\}, P)$. Thus, $u_M(x_a^*(q; \mathcal{S})) > u_M(x_a^*(q; \mathcal{M})) = u_M(P)$.

(ii) Suppose $j^R \in [0, P]$. Then $\zeta = j^R$ and $x_a^*(q; \mathcal{S}) \in (\max\{S, -j^R\}, j^R)$. Thus, $u_M(x_a^*(q; \mathcal{S})) > u_M(x_a^*(q; \mathcal{M})) = u_M(j^R)$.

(iii) Suppose $j^R \in (S, 0)$. Then $\zeta = -j^R$. But $2S + \min\{\zeta, |S|\} = 2S - j^R = 2S - \min\{P, j^R\}$ implies that this case is vacuous.

Case 3: Consider $q \in (2S + \min\{\zeta, |S|\}, -\min\{P, |j^R|\})$. First, if $q \geq S$, then $u_M(x_a^*(q; \mathcal{S})) = u_M(q) < u_M(\min\{P, |j^R|\}) = u_M(x_a^*(q; \mathcal{M}))$.

Next, if $q < S$, then $x_a^*(q; \mathcal{S}) = 2S - q$. There are three subcases. In each, $\mathcal{M} \succ_a \mathcal{S}$.

(i) First, $j^R > P$ implies $\zeta = P$ and therefore $x_a^*(q; \mathcal{S}) \in (S, -P)$. Thus, $u_M(x_a^*(q; \mathcal{S})) < u_M(x_a^*(q; \mathcal{M})) = u_M(P)$.

(ii) Next, $j^R \in [0, P]$ implies $\zeta = j^R$ and therefore $x_a^*(q; \mathcal{S}) \in (S, -j^R)$. Thus, $u_M(x_a^*(q; \mathcal{S})) < u_M(j^R) = u_M(x_a^*(q; \mathcal{M}))$.

(iii) Finally, $j^R \in (S, 0)$ implies $\zeta = -j^R$ and therefore $x_a^*(q; \mathcal{S}) \in (S, j^R)$. Thus, $u_M(x_a^*(q; \mathcal{S})) < u_M(j^R) = u_M(x_a^*(q; \mathcal{M}))$.

Case 4: Consider $q \in (-\min\{P, |j^R|\}, P]$. Given $j^R > S$, we know $q > S$. Thus, $\mathcal{M} \sim_a \mathcal{S}$ because $u_M(x_a^*(q; \mathcal{S})) = u_M(q) = u_M(|q|) = u_M(x_a^*(q; \mathcal{M})$.

Case 5: Consider $q \in (P, 2R - \max\{P, j^L\})$. We can focus on $q > j^L$ because $q = j^L$ clearly implies $\mathcal{M} \sim_a \mathcal{S}$. Then, we must have $\max\{P, j^L\} < R$ for this case to be non-vacuous. Thus, $x_a^*(q;\mathcal{S}) = \min\{q, 2R - q\} > \max\{P, j^L\} = x_a^*(q;\mathcal{M})$, which implies $u_M(x_a^*(q;\mathcal{M})) > u_M(x_a^*(q;\mathcal{S}))$. Thus, $\mathcal{M} \succsim_a \mathcal{S}$.

Case 6: If $q \geq \max\left\{P, 2R{-}\max\{P, j^L\}\right\}$, then $u_M(x_a^*(q;\mathcal{S}) = u_M(\max\{P, j^L\}) = u_M(x_a^*(q;\mathcal{S}))$. Thus, $\mathcal{M} \sim_a \mathcal{S}$. □

Finally, Lemma A.6 shows that if each politician's ideal point is fixed across activities, then the set of q_a for which M prefers supermajoritarian appointments is a subset of the q_ℓ for which M prefers supermajoritarian lawmaking.

Lemma A.6. *If $(P_a, S_a, M_a, R_a) = (P_\ell, S_\ell, M_\ell, R_\ell)$, then $\{q_a \mid \mathcal{S} \succ_a \mathcal{M}\} \subseteq \{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\}$.*

Proof. Lemma A.4 implies $\{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\} = (2S - P, 2S + \min\{P, |S|\})$. Lemma A.5 implies $\{q_a \mid \mathcal{S} \succ_a \mathcal{M}\} = \left(2S - \min\{P, j^R\}, 2S + \min\{\zeta, |S|\}\right)$. We verify that $\{q_a \mid \mathcal{S} \succ_a \mathcal{M}\} \subseteq \{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\}$.

First, notice $2S - P \leq 2S - \min\{P, j^R\}$.

Next, $\zeta = \max\left\{-j^R, \min\{P, |j^R|\}\right\}$ implies that $2S + \min\{P, |S|\} < 2S + \min\{\zeta, |S|\}$ only if $\zeta = -j^R$. But $\zeta = -j^R$ implies $\{q_a \mid \mathcal{S} \succ_a \mathcal{M}\} = \emptyset$ because $2S - \min\{P, j^R\} = 2S - j^R \geq 2S + \min\{\zeta, |S|\}$.

It follows that $\{q_a \mid \mathcal{S} \succ_a \mathcal{M}\} \subseteq \{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\}$. □

Proposition 1. *There exists $\varepsilon > 0$ such that $(q_a - q_\ell, P_a - P_\ell, S_a - S_\ell, M_a - M_\ell, R_a - R_\ell) \in (-\varepsilon, \varepsilon)^5$ implies that $\mathcal{S} \succ_a \mathcal{M}$ only if $\mathcal{S} \succ_\ell \mathcal{M}$.*

Proof. By the characterization in Lemma A.4, we know $\{q_a \mid \mathcal{S} \succ_a \mathcal{M}\}$ is open and continuous with respect to (P_a, S_a, M_a, R_a). Similarly, Lemma A.5 implies $\{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\}$ is open and continuous in $(P_\ell, S_\ell, M_\ell, R_\ell)$. Because $(P_a, S_a, M_a, R_a) = (P_\ell, S_\ell, M_\ell, R_\ell)$ implies $\{q_a \mid \mathcal{S} \succ_a \mathcal{M}\} \subseteq \{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\}$ by Lemma A.6, the result follows. □

A.2 Proof of Proposition 2.

Proof. Let $\mathcal{Q}^o = \{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\} \cap \{q_a \mid \mathcal{M} \succ_a \mathcal{S}\}$. Note that $j^R \leq S$ clearly implies $\mathcal{M} \sim_a \mathcal{S}$. Henceforth, suppose $j^R > S$.

The proof has three parts. Part 1 provides a general characterization of $\mathcal{Q}^o$ by combining Lemmas A.4 and A.5. Part 2 characterizes a partition on S that sharpens the characterization from Part 1. Part 3 delivers the result.

Part 1. The lower bound of $\mathcal{Q}^o$ is

$$\max\left\{2S + \min\{\zeta, |S|\}, 2S - P\right\} = 2S + \min\{\zeta, |S|\}, \tag{1}$$

where the equality follows from $\zeta \geq 0$. Next, the upper bound of $\mathcal{Q}^o$ is

$$\min\left\{-\min\{P, |j^R|\}, 2S + \min\{P, |S|\}\right\}. \tag{2}$$

Together, (1) and (2) yield

$$\mathcal{Q}^o = \left(2S + \min\{\zeta, |S|\}, \min\left\{-\min\{P, |j^R|\}, 2S + \min\{P, |S|\}\right\}\right). \tag{3}$$

By (3) and the definition of ζ, we know $j^R \geq P$ implies $2S + \min\{\zeta, |S|\} = 2S + \min\{P, |S|\}$ and therefore $\mathcal{Q}^o = \emptyset$.

Henceforth, assume $j^R < P$. Then (3) simplifies to

$$\mathcal{Q}^o = \left(2S + \min\{|j^R|, |S|\}, \min\left\{-\min\{P, |j^R|\}, 2S + \min\{P, |S|\}\right\}\right). \tag{4}$$

Part 2. Next, we sharpen the characterization in (4) using two cases.

First, consider $S \in (-P, 0)$. Because $j^R \in (S, P)$, we have $|j^R| < P$. Then

(4) simplifies to $\mathcal{Q}^o = (2S + \min\{|j^R|, |S|\}, \min\{-|j^R|, S\})$, which is nonempty iff $S < -|j^R|$. Thus, $S \in (-|j^R|, 0)$ implies $\mathcal{Q}^0 = \emptyset$, and $S \in (-P, -|j^R|)$ implies $\mathcal{Q}^o = (2S + |j^R|, S)$.

Second, consider $S \leq -P$. Then $2S + \min\{P, |S|\} \leq S < j^R < P \leq |S|$, which implies that (4) simplifies to $\mathcal{Q}^o = (2S + |j^R|, 2S + P)$. Then, $\mathcal{Q}^0$ is nonempty iff $|j^R| < P$.

Part 3. To complete the proof, we use the characterizations from Part 2 to verify that $\mathcal{Q}^o$ expands as S decreases from 0. Note that $\mathcal{Q}^o \neq \emptyset$ only if $|j^R| < P$. We focus on that case because otherwise the result holds vacuously.

First, $S \in [-|j^R|, 0]$ implies $\mathcal{Q}^o = \emptyset$. Second, $S \in (-P, -|j^R|)$ implies $\mathcal{Q}^o = (2S + |j^R|, S)$, which expands as S decreases. Finally, $S \leq -P$ implies $\mathcal{Q}^o = (2S+|j^R|, 2S+P)$, which has constant size as S decreases. Because Q^o is a continuous correspondence at $S = -P$, we have shown that $\mathcal{Q}^o$ weakly expands as S decreases. □

A.3 Proof of Proposition 3.

Proof. Recall $\zeta = \max\{-j^R, \min\{P, |j^R|\}\}$ and let $q_a = q$. By Lemma A.5, we know $q \geq 2S + \min\{\zeta, |S|\}$ implies $\mathcal{M} \succsim_a \mathcal{S}$. Rearranging, $S \leq \max\{q, \frac{q-\zeta}{2}\}$ implies $\mathcal{M} \succsim_a \mathcal{S}$. Finally, if we also have $q < -\min\{P, |j^R|\}$, then Lemma A.5(ii) implies $\mathcal{M} \succ_a \mathcal{S}$. □

A.4 Proof of Proposition 4.

Proof. Recall $\zeta = \max\{-j^R, \min\{P, |j^R|\}\}$ and let $q_a = q$. Lemma A.5 implies $\mathcal{S} \succ_a \mathcal{M}$ iff $q \in (2S - \min\{P, j^R\}, 2S + \min\{\zeta, |S|\})$. There are three cases as j^R decreases over X. First, $j^R \geq P$ implies that $\mathcal{S} \succ_a \mathcal{M}$ holds iff $q \in (2S - P, 2S + \min\{P, |S|\})$, which does not depend on j^R. Second, $j^R \in (0, P)$ implies that $\mathcal{S} \succ_a \mathcal{M}$ holds iff $q \in (2S - j^R, 2S + \min\{j^R, |S|\})$, which (i) shrinks as j^R decreases over this range and (ii) is a subset of $(2S - P, 2S + \min\{P, |S|\})$. Finally, $j^R \leq 0$ implies $\{q \in X \mid \mathcal{S} \succ_a \mathcal{M}\} = \emptyset$. Thus, $\{q \in X \mid \mathcal{S} \succ_a \mathcal{M}\}$ shrinks weakly as j^R decreases towards q. $\square$