The Waning and Stability of the Filibuster*

Gleason Judd† Lawrence S. Rothenberg‡

July 31, 2026

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 to both activities. We show that this pattern can arise from how 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 median legislator may strictly prefer majority voting for appointments alongside supermajority voting for lawmaking under sufficiently similar conditions, but never the reverse combination. Moreover, increased polarization can widen the range of conditions producing 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.

*We thank Peter Bils, Nathan Monroe, and Anthony Taboni for comments and suggestions.

†Assistant Professor, Dept. of Politics, Princeton University (gleason.judd@princeton.edu).

‡Corrigan-Minehan Professor of Political Science, Dept. of Political Science, University of Rochester (lawrence.rothenberg@rochester.edu).

On November 21, 2013, the Democratic-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. Thus, the Senate's "march toward majority rule" (Binder, 2022) has been uneven across its different activities.

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—seem warranted for both activities. Indeed, it is plausible that judicial appointments could warrant greater procedural caution, not less, given appointees' lifetime tenure. However, despite substantial pressure, the same legislators who eliminated the appointment filibuster continue to staunchly defend its legislative counterpart.[1]

To address this question, we focus on a more fundamental question about institutional organization that extends beyond the Senate: why might a collective body choose different voting thresholds for different activities? Across many settings, we observe systematic variation in procedural rules across activities. We focus on two common activities—lawmaking and appointments—and account for how appointees are constrained by other actors, reflecting our judicial application.

Our main insight is that this procedural divergence can stem from the distinction that judicial appointees operate within the constraints set by continuing justices, 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 McConnell, 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] Both senators emphasize the potential persistence of judicial appointments

[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).

[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-

relative to legislation. However, lifetime tenure also limits how far policy can move, since the persistence of sitting justices can constrain the effect of a new appointee. We highlight how this constraint can make supermajority rules less valuable for appointments than for lawmaking.

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 strict procedural preferences 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' procedural incentives: constraining a proposer's ability to shift policy versus preserving sufficient flexibility for beneficial changes. We prove that the conditions favoring supermajoritarian appointments are a subset of those favoring supermajoritarian lawmaking, and strictly so if the reformist justice is more moderate than the proposer. Consequently, the opposite divergence in strict preferences—majoritarian lawmaking with supermajoritarian appointments—does not arise under sufficiently similar conditions. This result aligns with contemporary Senate behavior, where senators from both parties have opposed eliminating the legislative filibuster while supporting majoritarian judicial appointments. This discrepancy can arise because the court's collective structure constrains any individual appointee, so that the inherent potential for extreme policy shifts is lower than for lawmaking.

Second, we show that higher polarization among legislators can expand 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 activities, but this constraint is often excessive for appointments, because policy movement is

over-judicial-nominees-support-overturning-obamacare/

already limited by the sitting justices. 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 excessive for appointments where court composition already limits policy shifts.

Third, we show how the ideological composition among sitting justices impacts the occurrence of divergent voting rules. When the *reformist justice*—the continuing vacancy median in the proposer's direction—is close to the median legislator, even majoritarian appointments cannot shift policy far past the median. This makes supermajority rules less attractive for appointments, but does not change their appeal for lawmaking. Our framework therefore highlights that periods with ideologically cohesive courts may be conducive to divergent procedural voting rules. Substantively, the timing of filibuster elimination across different courts—first for lower courts in 2013 and later for Supreme Court nominations in 2017—is consistent with this logic to the extent that individual appointments shift policy less in larger courts.

Together, our results follow from focusing on core differences in policy flexibility across activities. 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 suggests systematic patterns in how polarization and court composition can affect voting rule choices through a clear and tractable mechanism.

Related Literature

Our analysis connects to work on legislative organization, institutional design, and legislative-judicial interactions. We focus specifically on why and when legislatures choose different voting rules across activities.

Our key contribution is 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 be used 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

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

this logic also explains why these pivotal legislators are less committed to the filibuster for judicial appointments. Additionally, it has implications for how political conditions affect procedural choice that align with observed changes in Senate behavior.

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 can arise and 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 (Messner 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 activities, demonstrating 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

weaken-the-filibuster/

[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.

[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.

formal models of legislative organization and judicial politics, our framework considers 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 majority-preferred rules. Thus, rather than procedural details or dynamic considerations, we study how institutional structures across activities shape voting rule choices. While existing 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 pivotal legislators' preferred 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: (i) an agenda-setter lawmaking game (Romer and Rosenthal, 1978) and (ii) a judicial appointment into a move-the-median game (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.[8]

The policy space is $X = \mathbb{R}$. 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

[8]In principle there is also a right supermajority pivot, $R > M$. Since our analysis centers on status quos opposite the proposer, R never binds and we omit it. The appendix includes R for completeness.

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 of the vacancy court, 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*.[9]

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.[10] Without loss of generality, we normalize $M = 0$ and focus on $S < 0 < P$.[11]

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 and supermajority rule in canonical models of lawmaking (Romer and Rosenthal, 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

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

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

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

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,[12] 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 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.[13]

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.

[12] We incorporate party influence in an extension.

[13] 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).

In evaluating judicial nominees, players focus solely on court outcomes, following Moraski and Shipan (1999) and Rohde and Shepsle (2007), but our main results can extend to settings where players care about both court outcomes and appointee ideology (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 M's equilibrium payoff from majority rule ($\mathcal{M}$) versus supermajority rule ($\mathcal{S}$). When M is indifferent, either rule choice is consistent with equilibrium. Accordingly, our claims about divergent procedures refer to M's strict procedural preferences unless otherwise indicated. Under either voting rule, equilibrium behavior for each activity is well-known from existing work.[14]

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.

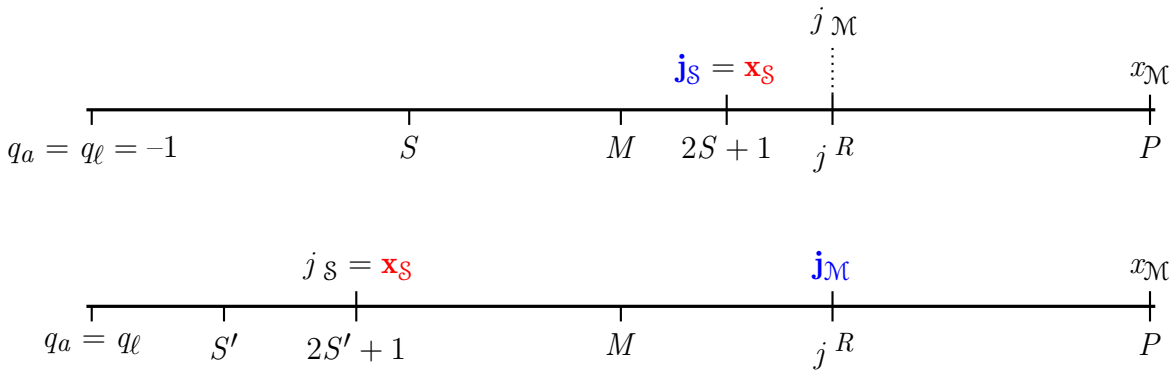
Consider cases where $q_a = q_\ell = -1 < M = 0 < P = 1$, with vacancy median justices $j^R = 0.4$ and $j^L \leq -1$, varying only the location of the supermajority pivot from a moderate $S = -0.4$ (top panel of Figure 1) to a more extreme $S' = -0.75$ (bottom panel).[15] For both activities, M is the veto player under majority rule, while under supermajority rule S is the *de facto* veto player in equilibrium.

This comparison highlights three core points. First, it shows how the existing court composition acts as a natural constraint on appointments that 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, since no appointee can move policy beyond j^R regardless of the voting rule.

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

[15] Under these conditions, j^L never binds and is therefore omitted from the figure.

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



Note: Figure 1 depicts two examples illustrating how the majority-preferred voting rules for lawmaking and appointments can diverge and vary with political conditions. In both panels, $q_a = q_\ell = -1 < M = 0 < P = 1$, with vacancy medians $j^R = 0.4$ and $j^L \leq -1$ (required for feasibility of q_a but never binds). The top panel depicts a moderate supermajority pivot ($S = -0.4$); the bottom panel, a more extreme pivot ($S' = -0.75$). The majority-rule lawmaking outcome is $x_{\mathcal{M}}$ and the supermajority-rule outcome is $x_{\mathcal{S}}$. The analogous appointment outcomes are $j_{\mathcal{M}}$ and $j_{\mathcal{S}}$. For each activity, the majority-preferred rule is the one whose outcome is closest to M, depicted in red for lawmaking and blue for appointments. There are two key insights: (i) court composition (j^R) inherently constrains the appointee's impact—no appointment can move policy past $j^R = 0.4$—whereas lawmaking faces no such constraint; and (ii) a more extreme pivot produces divergent rules, maintaining supermajoritarian lawmaking ($x_{\mathcal{S}} = -0.5$ beats $x_{\mathcal{M}} = 1$) alongside majoritarian appointments ($j_{\mathcal{M}} = 0.4$ beats $j_{\mathcal{S}} = -0.5$), while the moderate pivot yields supermajoritarianism for both activities.

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 illustrates how the conditions producing divergent rules depend on key political variables. Majoritarian appointments arise only when the pivot is sufficiently far from M: strict preference requires $2S' + 1 < -j^R$, i.e., $S' < -0.7$ here. Additionally, a more moderate reformist justice makes majoritarian appointments more appealing—lowering j^R increases this threshold toward $-\frac{1}{2}$—because 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 procedural preferences is possible: strictly favoring supermajoritarian lawmaking and majoritarian appointments, never the reverse. Third, this pattern holds if conditions are sufficiently similar across the two activities.

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. Our main result shows that, under sufficiently similar political conditions, divergent strict procedural preferences can only take one form: supermajoritarian lawmaking with majoritarian appointments.[16] All proofs are in the appendix.

Proposition 1. *If the ideology of each politician and the status quo are identical across activities, then M strictly prefers supermajoritarian appointments only if M strictly prefers supermajoritarian lawmaking. Moreover, if M strictly prefers supermajoritarian appointments, then M strictly prefers supermajoritarian lawmaking under all sufficiently similar political conditions.*

Proposition 1 contains two important messages. First, M strictly prefers supermajoritarian lawmaking under broader conditions than supermajoritarian appointments, and, conversely, weakly prefers majoritarian appointments under broader conditions than majoritarian lawmaking. Second, strict preferences for supermajoritarian lawmaking and majoritarian appointments can coincide under similar conditions, but the opposite combination cannot.

Corollary 1.1. *If M's strict procedural preferences diverge across activities under sufficiently similar political conditions, then they favor supermajoritarian lawmaking and majoritarian appointments.*

Substantively, Proposition 1 provides a simple logic for the Senate maintaining the filibuster for lawmaking while abandoning it for appointments. It also suggests that the opposite arrangement would be surprising. It cannot arise under identical conditions, and small differences across activities can produce it only if M is nearly indifferent between the rules in both activities. Any robust preference for supermajoritarian appointments alongside majoritarian lawmaking therefore requires commensurate differences across activities in the status quo or in the ideologies of the agenda setter and pivots.

[16] 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.

The intuition flows from the tradeoff M faces in our analysis of procedural choice: 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 strictly prefers supermajoritarian appointments is a subset of the set of q_ℓ for which M strictly 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 endpoints of these preference regions vary continuously with politicians' ideal points. Therefore, whenever M strictly prefers supermajoritarian appointments, minor differences in political conditions between activities—politician preferences or status quo policy—cannot overturn the accompanying strict preference for supermajoritarian lawmaking.

Before comparing the rules across activities, 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.[17]

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.[18] 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 and 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 $\mathcal{S} \succ_\ell \mathcal{M}$. 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.[19] Finally, M is indifferent in the most centrist region

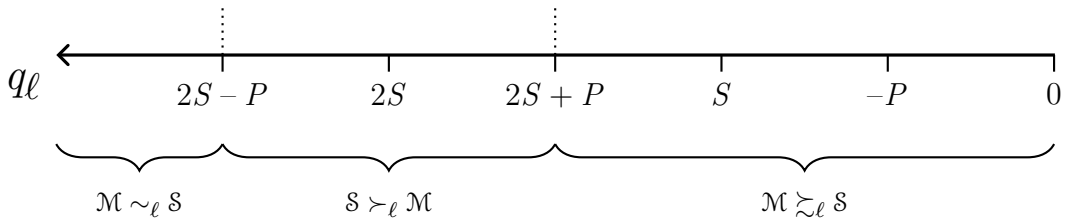
[17] If $q \in (0, P]$, then the equilibrium policy outcome is q under either voting rule for both activities. If $q > P$, then M weakly prefers the equilibrium policy under majority rule for each activity. See the Appendix for more details.

[18] Here and in Figures 2 and 3, we assume the supermajority pivot is more extreme than the proposer ($|S| > P$), so that $2S + \min\{P, |S|\} = 2S + P$. The appendix characterizations in Lemmas A.4 and A.5 cover the general case.

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

$[-P, 0]$ 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 $q_\ell \in [2S + P, 0]$.

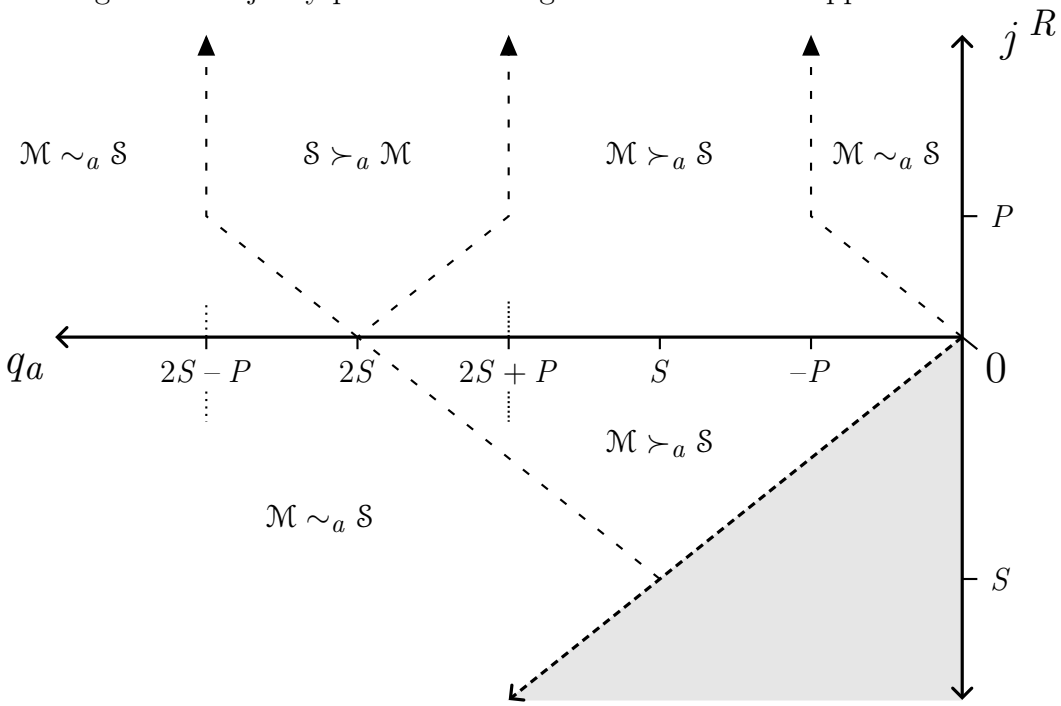
Figure 2. Majority-preferred Voting Rule for Lawmaking



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 ($\mathcal{M} \succsim_\ell \mathcal{S}$).

Figure 3 depicts the procedural preference of M for appointments, which depends on q_a and j^R. Comparing against Figure 2 illustrates that, regardless of j^R, the conditions that produce supermajoritarian appointments are a subset of those that generate supermajoritarian lawmaking, and strictly so if $j^R < P$. If $j^R \geq P$, then appointments are strategically equivalent to lawmaking for the status quos depicted ($q_a \leq M$), and the procedural preferences of M are identical to those described above 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 from $(2S - P, 2S + P)$ to $(2S - j^R, 2S + j^R)$ and collapses to the empty interval at $j^R = 0$, while the interval in which M strictly prefers majoritarianism expands 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.

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., if $j^R \in (0, P)$, then $\mathcal{M} \succ_a \mathcal{S}$ for $q_a \in (2S + j^R, -j^R)$. This difference reflects the inherent constraints that court composition places on policy movement. The shaded region is not relevant because $q_a > j^R$, which violates the condition that $q_a \leq j^R$.

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 the range of conditions that induce divergent rules. 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 can encourage divergent rules (Proposition 2) and encourages majoritarian appointments (Proposition 3). Our third result analyzes the court's ideological spread, showing that moving the reformist justice toward the median legislator 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, under conditions such that the traditionalist justice does not bind, a more extreme pivot widens the range of status quos that induce divergent procedural preferences across the two activities.

Proposition 2. *Consider supermajority pivots $S' < S < 0$, holding all other parameters equal for both activities. If the traditionalist justice does not bind at the more extreme pivot, $j^L \leq 2S' + \min\{|j^R|, |S'|\}$, then the interval of status quos for which M strictly prefers majoritarian appointments ($\mathcal{M} \succ_a \mathcal{S}$) and supermajoritarian lawmaking ($\mathcal{S} \succ_\ell \mathcal{M}$) is weakly larger under S' than under S.*

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, as the range of status quos under which (i) and (ii) hold weakly lengthens. That set also shifts with S, however, so the expansion does not guarantee set inclusion. Relatedly, because the status quo is a court median, it cannot lie left of the traditionalist justice, and the proposition's condition on j^L ensures this feasibility constraint does not bind.[20] 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. Since procedural divergence does not depend on the gridlock pivot aligned with P, i.e., the right pivot R, Proposition 2 immediately implies that widening the gridlock interval on the status quo's side of M weakly widens the range of status quos producing divergent rules.

[20] If j^L binds, then further extremism eventually shrinks the interval of feasible status quos producing divergent rules, because that interval translates leftward past j^L.

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. Define $\zeta \equiv \max\left\{-j^R, \min\{P, |j^R|\}\right\}$, which is the distance from M to the majoritarian appointment outcome when the pre-vacancy median is sufficiently extreme.

Proposition 3. *If the supermajority pivot is sufficiently extreme, $S \leq \max\left\{q_a, \frac{q_a - \zeta}{2}\right\}$, then M weakly prefers majoritarian appointments ($\mathcal{M} \succsim_a \mathcal{S}$). If, in addition, this pivot condition holds strictly and $q_a < \min\left\{-\min\{P, |j^R|\}, j^R\right\}$, so that q_a is farther from M than whichever of the proposer and the reformist justice is closer to M, 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. Under the condition on S, the supermajoritarian outcome is farther from M than the majoritarian outcome. Furthermore, it is strictly farther from M under the additional condition on q_a. Note that supermajority will not necessarily produce gridlock under these conditions, as it may allow an outcome that M prefers to q_a, but it constrains such adjustment more than M would prefer. 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 supermajority 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 analyzing how the court's ideological composition shapes procedural choice. The key insight is that when the reformist justice sits closer to the median legislator, court composition 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. *Holding fixed the legislators' ideal points and the traditionalist justice* j^L*, shifting the reformist justice* j^R *toward* M *weakly shrinks, in the set-inclusion sense, the set of pre-vacancy court medians* q_a *for 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).[21]

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 our core insights: our main results are robust under broad conditions, and examining party strength generates additional predictions about the conditions under which divergent voting rules can arise.

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

Our first observation is that our main insights can extend to this setting. Since party pressure in this formulation simply relocates each politician's induced ideal point while

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

[22] 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.

preserving absolute-loss preferences, our baseline analysis applies directly if the profile of induced ideal points does not depend on the chosen voting rule, maintains the ordering of the underlying ideal points, and is sufficiently similar across the activities. Then, Proposition 1 holds for this setting.[23]

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, provided that the traditionalist justice does not bind. For instance, suppose the supermajority pivot S belongs to the party aligned with the status quo. If that party's locus of power is more centrist than S's ideal point, then weakening the party's influence shifts S's induced position further from M and thus produces weakly more conditions where majoritarian appointments coincide with supermajoritarian lawmaking. Conversely, the opposite relationship holds if the party's locus of power is more extreme than S. Proposition 3 can be restated 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 anticipate future developments.

Our central finding—that, under similar political conditions, strict procedural preferences can diverge only in the observed way—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 widen the scope for eliminating appointment constraints while retaining the legislative filibuster, consistent with the observed sequence. 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

[23] If P and M share the same party-induced ideal point, then majority rule weakly prevails for both activities. This knife-edge condition can arise, for instance, if P and M are co-partisans in a party that has total influence over both of them, or if one is a party leader with total influence over the other. If party pressure varies with the voting rule, then procedural choice compares outcomes generated under different induced profiles, which we leave for future work.

was not only less polarized by conventional measures in 1993, but the Republican filibuster pivot was substantially more moderate.[24] Moreover, 1993 incumbent president Bill Clinton was to the left of 2013 incumbent Barack Obama (the most centrist post-war Democratic president) using standard preference measures. The model suggests these conditions made eliminating the filibuster 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. Focusing on judicial appointments, this timing is consistent with our framework. To the extent that an individual lower-court appointment has less potential for shifting policy than a Supreme Court appointment, supermajority constraints are less valuable there.[25]

Our analysis also suggests several insights about future institutional reforms. Lawmaking lacks the inherent constraints present in judicial appointments, so eliminating the legislative filibuster would require overcoming greater resistance—even from moderate 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 scope for 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.

Conclusion

In the modern Senate, both parties have embraced majoritarian appointments while steadfastly defending supermajoritarian lawmaking rules. At different times in recent years, Republicans and Democrats each rejected the cloture requirement for appointees. However, neither has eliminated the legislative filibuster.

Our analysis highlights how this procedural divergence can arise due to the inherent

[24] Using DW-NOMINATE, where scores roughly from –1 to 1 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.

[25] Of course, there are various important differences, such as that lower courts do not decide as a single collective body.

constraints of collective judicial decision-making. By comparing canonical models of these activities, 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 strict procedural preferences can diverge only by favoring majoritarian appointments while favoring supermajority lawmaking under sufficiently similar political conditions, but never the reverse. Third, our framework identifies conditions that widen the scope for such divergence, such as high polarization among politicians or courts in which sitting justices already provide adequate constraints.

These findings stem 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 can make 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 procedural hurdles.

References

Aghion, Philippe, Alberto Alesina and Francesco Trebbi. 2004. "Endogenous Political Institutions." *Quarterly Journal of Economics* 119(2):565–611.

Baron, David and Ehud Kalai. 1993. "The Simplest Equilibrium of a Majority-Rule Division Game." *Journal of Economic Theory* 61(2):290–301.

Bils, Peter, Gleason Judd and Bradley C Smith. 2024. "Policy Making and Appointments under Electoral and Judicial Constraints." *Journal of Politics* 86(3):968–982.

Binder, Sarah. 2022. Marching (Senate Style) Towards Majority Rule. In *The Forum*. Vol. 19 De Gruyter pp. 663–684.

Binder, Sarah A., Anthony A. Madonna and Steven S. Smith. 2007. "Going Nuclear, Senate Style." *Perspectives on Politics* 5(4):729–40.

Binder, Sarah A. and Forrest Maltzman. 2004. "The Limits of Senatorial Courtesy." *Legislative Studies Quarterly* 29(1):5–22.

Binder, Sarah A. and Steven S. Smith. 1996. *Politics or Principle? Filibustering in the United States Senate*. Brookings.

Black, Ryan C., Anthony J. Madonna and Ryan J. Owens. 2014. "Qualifications or Philosophy? The Use of Blue Slips in a Polarized Era." *Presidential Studies Quarterly* 44(2):290–308.

Cameron, Charles M. and Jonathan P. Kastellec. 2016. "Are Supreme Court Nominations a Move-the-Median Game?" *American Political Science Review* 110(4):778–97.

Chiou, Fang-Yi and Lawrence S. Rothenberg. 2003. "When Pivotal Politics Meets Partisan Politics." *American Journal of Political Science* 47(3):503–22.

Chiou, Fang-Yi and Lawrence S. Rothenberg. 2009. "A Unified Theory of US Lawmaking: Preferences, Institutions, and Party Discipline." *Journal of Politics* 71(4):1257–72.

Clark, Tom S. 2009. "The Separation of Powers, Court Curbing, and Judicial Legitimacy." *American Journal of Political Science* 53(4):971–989.

Cox, Gary W. and Matthew D. McCubbins. 2007. *Legislative Leviathan: Party Government in the House*. 2nd ed. Cambridge.

Dal Bó, Ernesto. 2006. "Committees with Supermajority Voting Yield Commitment with Flexibility." *Journal of Public Economics* 90(4):573–99.

Den Hartog, Chris and Nathan W. Monroe. 2011. *Agenda Setting in the U.S. Senate: Costly Consideration and Majority Party Advantage*. Cambridge.

Dion, Douglas. 1997. *Turning the Legislative Thumbscrew: Minority Rights and Procedural Change in Legislative Politics*. Michigan.

Dion, Douglas, Frederick J. Boehmke, William MacMillan and Charles R. Shipan. 2016. "The Filibuster as a War of Attrition." *Journal of Law & Economics* 59(3):569–95.

Fong, Christian. 2024. Anticipating the Consequences of Filibuster Reforms. In *The Forum*. Vol. 21 De Gruyter pp. 505–527.

Fong, Christian and Keith Krehbiel. 2018. "Limited Obstruction." *American Political Science Review* 112(1):1—14.

Fu, Shu and William G. Howell. 2023. "The Filibuster and Legislative Discussion." *Journal of Politics* 85(4):1575–1580.

Gailmard, Sean and Thomas Hammond. 2011. "Intercameral bargaining and intracameral organization in legislatures." *The Journal of Politics* 73(2):535–546.

Gradstein, Mark. 1999. "Optimal Taxation and Fiscal Constitution." *Journal of Public Economics* 72(3):471–85.

Jo, Jinhee, David M. Primo and Yoji Sekiya. 2017. "Policy Dynamics and Electoral Uncertainty in the Appointments Process." *Journal of Theoretical Politics* 29(1):124–48.

Kang, Myunghoon. 2017. "Representation, Sophisticated Voting, and the Size of the Gridlock Region." *Journal of Theoretical Politics* 29(4):623–46.

Kishishita, Daiki. 2019. "An Informational Role of Supermajority Rules in Monitoring the Majority Party's Activities." *Journal of Public Economic Theory* 21(1):167–96.

Klumpp, Tilman. 2010. "Strategic Voting and Conservatism in Legislative Elections." *Unpublished manuscript* .
URL: *https://sites.ualberta.ca/ klumpp/docs/representation.pdf*

Koger, Gregory. 2010. *Filibuster: A Political History of Obstruction in the House and Senate*. Chicago.

Krehbiel, Keith. 2007. "Supreme Court Appointments as a Move-the-Median Game." *American Journal of Political Science* 51(2):231–40.

Krehbiel, Keith and Sara Krehbiel. 2023. "The Manchin Paradox." *Quarterly Journal of Political Science* 18(2).

Lewis, David E. 2008. *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance*. Princeton.

Messner, Matthias and Mattias K. Polborn. 2004. "Voting on Majority Rules." *Review of Economic Studies* 71(1):115–32.

Moraski, Bryon J. and Charles R. Shipan. 1999. "The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices." *American Journal of Political Science* 43(4):1069–1095.

Nash, Jonathan Remy and Joanna Shepherd. 2020. "Filibuster Change and Judicial Appointments." *Journal of Empirical Legal Studies* 17(4):646–695.

Peress, Michael. 2009. "Optimal Supermajority Requirements in a Two-Party System." *Journal of Politics* 71(4):1379–93.

Reynolds, Molly E. 2017. *Exceptions to the Rule: The Politics of Filibuster Limitations in the U.S. Senate*. Brookings.

Rohde, David W. and Kenneth A. Shepsle. 2007. "Advising and Consenting in the 60-Vote Senate: Strategic Appointments to the Supreme Court." *Journal of Politics* 69(3):664–77.

Romer, Thomas and Howard Rosenthal. 1978. "Political Resource Allocation, Controlled Agendas, and the Status Quo." *Public Choice* 33(4):27–43.

Volden, Craig and Elizabeth Bergman. 2006. "How Strong Should our Party Be? Party Member Preferences over Party Cohesion." *Legislative Studies Quarterly* 31(1):71–104.

Wawro, Gregory J. and Eric Schickler. 2006. *Filibuster: Obstruction and Lawmaking in the U.S. Senate*. Princeton.

Wawro, Gregory J. and Eric Schickler. 2018. "Reid's Rules: Filibusters, the Nuclear Option, and Path Dependence." *Legislative Studies Quarterly* 43(4):619–47.

Appendix

Contents

A Baseline Analysis **A-1**

A.1 Proof of Proposition 1. . . . . A-1

A.2 Proof of Proposition 2. . . . . A-6

A.3 Proof of Proposition 3. . . . . A-8

A.4 Proof of Proposition 4. . . . . A-8

A Baseline Analysis

Without loss of generality, we prove all results for $P \geq 0$ and, except in the proof of Proposition 1(ii), maintain the normalization $M = 0$. 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 $x_\ell^*(q; \mathcal{V}) = \underset{x \in A^\ell(q;\mathcal{V})}{\arg\max}\ u_P(x)$. Note that each $A_i^\ell(q)$ is a closed interval containing q, so $A^\ell(q; \mathcal{V})$ is a nonempty closed interval containing q under either rule. For a nonempty closed interval $I \subseteq X$ and $z \in X$, let $\pi_I(z)$ denote the point of I closest to z. Under absolute-loss preferences, $\underset{x \in I}{\arg\max}\ u_P(x) = \pi_I(P)$. In particular, $x_\ell^*(q; \mathcal{V}) = \pi_{A^\ell(q;\mathcal{V})}(P)$ and $j^M(x) = \pi_{[j^L, j^R]}(x)$ for all 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 if and only if $u_M(x) \geq u_M(q)$. Thus, $A^\ell(q; \mathcal{M}) = [-|q|, |q|]$. Since $P \geq 0$, we have $x_\ell^*(q; \mathcal{M}) = \min\{P, |q|\}$. □

Lemma A.2 characterizes the equilibrium supermajoritarian lawmaking outcome.

Lemma A.2. *In lawmaking,*

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

PROOF. Under $\mathcal{S}$, $x \in X$ passes if and only if $u_i(x) \geq u_i(q)$ 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, $q \le 2S-P$ implies $P \in A^\ell(q;\mathcal{S})$ 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 $q \ge 2R-P$ implies $x^*_\ell(q;\mathcal{S}) = P$. Second, suppose $R \le P$. Then $x^*_\ell(q;\mathcal{S}) = \min\{P, q\}$. □

Next, we characterize equilibrium appointment outcomes. Let $q \in [j^L, j^R]$ denote the pre-vacancy median justice. Because $j^M(q) = q$, legislator i's acceptance set over nominees is $A^a_i(q) = \{x \in X \mid u_i(j^M(x)) \ge u_i(q)\}$ for $i \in \{S, M, R\}$. Thus, the sets of confirmable nominees are $A^a(q;\mathcal{M}) = A^a_M(q)$ and $A^a(q;\mathcal{S}) = \cap_{i\in\{S,M,R\}} A^a_i(q)$.

Since $j^M(x) = x$ for all $x \in [j^L, j^R]$, the achievable policy outcomes coincide across the two games on the court interval:

$$F(q;\mathcal{V}) \equiv A^a(q;\mathcal{V}) \cap [j^L, j^R] = A^\ell(q;\mathcal{V}) \cap [j^L, j^R]. \tag{A.1}$$

The set $F(q;\mathcal{V})$ is a nonempty closed interval derived from the intersection of two closed intervals that both contain q. Every nominee x maps to an outcome $j^M(x) \in [j^L, j^R]$, a rejected nominee yields $q \in F(q;\mathcal{V})$, and any $y \in F(q;\mathcal{V})$ is attainable by nominating y. Therefore the set of equilibrium-attainable outcomes is exactly $F(q;\mathcal{V})$, and P's equilibrium nominee is outcome equivalent to $x^*_a(q;\mathcal{V}) = \pi_{F(q;\mathcal{V})}(P)$.

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. Fix $\mathcal{V}$ and denote $I = A^\ell(q;\mathcal{V})$ and $J = [j^L, j^R]$. Both are closed intervals containing q, so $I \cap J = F(q;\mathcal{V}) \neq \emptyset$. We claim that for any $z \in X$, $\pi_J(\pi_I(z)) = \pi_{I\cap J}(z)$. Let $y = \pi_I(z)$. If $y \in J$, then $y \in I \cap J$ and, being the point of I closest to z, it is also the point of $I \cap J \subseteq I$ closest to z. If $y > \max J$, then some $w \in I \cap J$ satisfies $w \le \max J < y$. Since I is an interval, $\max J \in I$ and therefore $\max(I \cap J) = \max J$. Moreover, $y = \pi_I(z) > \min I$ implies $z \ge y > \max J$, so $\pi_{I\cap J}(z) = \max J = \pi_J(y)$. The case $y < \min J$ is symmetric. Applying the claim with $z = P$ yields $x^*_a(q;\mathcal{V}) = \pi_{I\cap J}(P) = \pi_J\big(\pi_I(P)\big) = j^M(x^*_\ell(q;\mathcal{V}))$. □

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

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

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

Case 1: Consider $q \le 2S-P$. Rearranging yields $P \le 2S-q < -q = |q|$, 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 $q < x_\ell^*(q;\mathcal{S}) \le -P$. Lemma A.1 implies $x_\ell^*(q;\mathcal{M}) = P$. Thus, $u_M(x_\ell^*(q;\mathcal{M})) \ge u_M(x_\ell^*(q;\mathcal{S}))$, so $\mathcal{M} \succsim_\ell \mathcal{S}$.

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

Case 6: Consider $q \ge 2R-\min\{P,R\}$. Note that $q>0$. If $R>P$, then $q \ge 2R-P > P$, so Lemmas A.1 and A.2 imply $x_\ell^*(q;\mathcal{M}) = P = x_\ell^*(q;\mathcal{S})$. If $R \le P$, then $q \ge R$ and both lemmas imply $x_\ell^*(q;\mathcal{M}) = \min\{P,q\} = x_\ell^*(q;\mathcal{S})$. In either case, $u_M(x_\ell^*(q;\mathcal{M})) = u_M(x_\ell^*(q;\mathcal{S}))$. Thus, $\mathcal{M} \sim_\ell \mathcal{S}$. □

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

Lemma A.5. *Let* $\zeta = \max\{-j^R, \min\{P, |j^R|\}\}$. *In the judicial appointment game,*
(i) $\mathcal{S} \succ_a \mathcal{M}$ *if and only if* $q \in \big(2S - \min\{P, j^R\},\ 2S + \min\{\zeta, |S|\}\big)$, *and*
(ii) $\mathcal{M} \succ_a \mathcal{S}$ *if and only if*

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

The term j^R in the upper endpoint of the first interval in (ii) binds only if $j^R < -P$. It excludes the knife-edge $q = j^R$, at which the departing median and the reformist justice coincide and both rules yield the outcome j^R.

PROOF. Throughout, $q \in [j^L, j^R]$ and, by Lemma A.3, $x_a^*(q;\mathcal{V}) = j^M(x_\ell^*(q;\mathcal{V}))$. It suffices to consider $j^R > S$. If $j^R \le S$, then every attainable outcome is weakly left of S, both

rules yield j^R, and $\mathcal{M} \sim_a \mathcal{S}$ for all q, consistent with (i)–(ii), whose intersections with the feasible domain $[j^L, j^R]$ are then empty.

Define $c_1 = 2S - \min\{P, j^R\}$, $c_2 = 2S + \min\{\zeta, |S|\}$, and $c_3 = \min\left\{-\min\{P, |j^R|\},\ j^R\right\}$. Note that $c_2 \le 2S + |S| = S < 0$ and $c_3 \le 0$, but the ordering of c_2 and c_3 is ambiguous. Case 4 therefore uses $\max\{c_2, c_3\}$. Cases 1–6 cover $[j^L, j^R]$ up to finitely many boundary points, and for all of them the two rules are payoff equivalent and thus $\mathcal{M} \sim_a \mathcal{S}$.

Case 1. Suppose $q \le c_1$. Since $j^R > S$, either $j^R \ge 0$ and therefore $c_1 \le 2S < S$, or $j^R \in (S, 0)$ and therefore $c_1 = 2S + |j^R| < 2S + |S| = S$. Thus, $q < S < 0$. By Lemma A.2, either $q \le 2S - P$ and $x_\ell^*(q; \mathcal{S}) = P$, or $q \in (2S - P, c_1]$ and $x_\ell^*(q; \mathcal{S}) = 2S - q \in [\min\{P, j^R\}, P)$. In both subcases, $x_\ell^*(q; \mathcal{S}) \in [\min\{P, j^R\}, P]$ and, since $j^L \le q < 0$, $x_a^*(q; \mathcal{S}) = \min\{P, j^R\}$. For majority rule, $|q| \ge \min\{P, j^R\} + 2|S| \ge \min\{P, j^R\}$ implies $x_\ell^*(q; \mathcal{M}) = \min\{P, |q|\} \in [\min\{P, j^R\}, P]$, so $x_a^*(q; \mathcal{M}) = \min\{P, j^R\}$ as well. Thus, $\mathcal{M} \sim_a \mathcal{S}$.

Case 2. Suppose $q \in (c_1, c_2)$. If $j^R \in (S, 0)$, then $\zeta = -j^R$ and $c_1 = 2S + \zeta \ge c_2$, so this case is vacuous. Henceforth $j^R \ge 0$, so $\zeta = \min\{P, j^R\}$ and $c_2 = 2S + \min\{P, j^R, |S|\}$. Because $c_2 \le S$, we have $q < S < 0$. By Lemma A.2 and using $2S - P \le c_1 < q < S$, we have $x_\ell^*(q; \mathcal{S}) = 2S - q$. The case bounds give $2S - q \in \left(-\min\{P, j^R, |S|\},\ \min\{P, j^R\}\right)$. Moreover, $2S - q > S > q \ge j^L$ and $2S - q < \min\{P, j^R\} \le j^R$, so $x_a^*(q; \mathcal{S}) = 2S - q$. Since $q < S < 0$, we also have $|2S - q| < |q|$. Combining, $|x_a^*(q; \mathcal{S})| < \min\{P, |q|, j^R\}$. For majority rule, $x_a^*(q; \mathcal{M}) = j^M(\min\{P, |q|\}) = \min\{P, |q|, j^R\}$. Therefore, $u_M(x_a^*(q; \mathcal{S})) > u_M(x_a^*(q; \mathcal{M}))$, so $\mathcal{S} \succ_a \mathcal{M}$.

Case 3. Suppose $q \in (c_2, c_3)$. Then, $q < c_3 \le 0$, $|q| > \min\{P, |j^R|\}$, and $q < j^R$. For majority rule, there are two subcases. First, if $j^R \ge 0$, then $\min\{P, |q|\} \ge \min\{P, j^R\}$, so $x_a^*(q; \mathcal{M}) = j^M(\min\{P, |q|\}) = \min\{P, j^R\}$. Second, if $j^R < 0$, then $\min\{P, |q|\} \ge 0 > j^R$, so $x_a^*(q; \mathcal{M}) = j^R$. In both, $u_M(x_a^*(q; \mathcal{M})) = -\zeta$. For supermajority rule, there are two subcases. First, if $q \ge S$, then $x_a^*(q; \mathcal{S}) = j^M(q) = q$. If $j^R \ge 0$, then $|q| > \min\{P, j^R\} = \zeta$. If $j^R < 0$, then $q < c_3 = j^R$ yields $|q| > |j^R| = \zeta$. Regardless, $u_M(x_a^*(q; \mathcal{S})) = -|q| < -\zeta$. Second, if $q < S$, then $c_2 < S$ requires $\min\{\zeta, |S|\} = \zeta$, and $q > c_2 \ge 2S > 2S - P$ implies $x_\ell^*(q; \mathcal{S}) = 2S - q \in (S, -\zeta)$. Since $-\zeta \le j^R$ by definition, and $2S - q > S > q \ge j^L$, we get $x_a^*(q; \mathcal{S}) = 2S - q$ with $|2S - q| > \zeta$, so $u_M(x_a^*(q; \mathcal{S})) < -\zeta$. In both subcases, $\mathcal{M} \succ_a \mathcal{S}$.

Case 4. Suppose $q \in (\max\{c_2, c_3\}, P]$. If $j^R < 0$, then $c_3 = j^R \ge q$, contradicting $q > c_3$. Therefore $j^R \ge 0$, $\zeta = \min\{P, j^R\}$, and $c_3 = -\min\{P, j^R\}$. We first verify $q > S$. Suppose $q \le S < 0$. Then $|q| \ge |S|$, while $q > c_3$ gives $|q| < \min\{P, j^R\} = \zeta$. Thus, $|S| < \zeta$, so $c_2 = 2S + |S| = S \ge q$, contradicting $q > c_2$. Therefore $q \in (S, P]$, and Lemmas A.2 and A.3 yield $x_a^*(q; \mathcal{S}) = j^M(q) = q$. For majority rule, $x_\ell^*(q; \mathcal{M}) = \min\{P, |q|\}$. If $q \ge 0$, then this equals q. If $q < 0$, then $|q| < \min\{P, j^R\}$ implies $\min\{P, |q|\} = |q| \in [0, j^R)$, so

$x_a^*(q;\mathcal{M}) = |q|$. In either case, $u_M(x_a^*(q;\mathcal{M})) = -|q| = u_M(x_a^*(q;\mathcal{S}))$. Thus, $\mathcal{M} \sim_a \mathcal{S}$.

Case 5. Suppose $q \in (\max\{P, j^L\}, 2R - \max\{P, j^L\})$. To be non-vacuous, this case requires $\max\{P, j^L\} < R$. Since $q > P$, Lemma A.1 yields $x_\ell^*(q;\mathcal{M}) = P$. Then, since $P < q \leq j^R$, projecting P onto $[j^L, j^R]$ yields $x_a^*(q;\mathcal{M}) = j^M(P) = \max\{P, j^L\}$. For supermajority rule, Lemma A.2 gives $x_\ell^*(q;\mathcal{S}) = q$ if $q \leq R$ and $2R - q$ if $q > R$. Note that the case bound gives $q < 2R - \max\{P, j^L\} \leq 2R - P$. Consequently, $x_\ell^*(q;\mathcal{S}) = \min\{q, 2R - q\}$. The case bounds imply $\min\{q, 2R - q\} \in (\max\{P, j^L\},\ j^R]$, so $x_a^*(q;\mathcal{S}) = \min\{q, 2R - q\} > \max\{P, j^L\} = x_a^*(q;\mathcal{M}) \geq 0$. Therefore, $u_M(x_a^*(q;\mathcal{M})) > u_M(x_a^*(q;\mathcal{S}))$. Thus, $\mathcal{M} \succ_a \mathcal{S}$.

Case 6. Suppose $q \geq \max\left\{P,\ 2R\text{–}\max\{P, j^L\}\right\}$. By Lemmas A.1 and A.2, $x_\ell^*(q;\mathcal{M}) = P$ and $x_\ell^*(q;\mathcal{S}) \in \left[P, \max\{P, j^L\}\right]$. Note that this is equal to P if $R \leq P$ or $q \geq 2R - P$, and to $2R - q \in (P, j^L]$ otherwise, which requires $j^L > P$ and $q \geq 2R - j^L$. Applying $j^M(\cdot)$, both rules yield $x_a^* = \max\{P, j^L\}$. 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 $\{q_a \mid \mathcal{S} \succ_a \mathcal{M}\} \subseteq \{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\}$. Moreover, if $P > 0$ and $j^R < P$, then the set inclusion is strict.*

PROOF. Lemma A.4 implies $\{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\} = (2S - P, 2S + \min\{P, |S|\})$. Lemma A.5 implies $\{q_a \mid \mathcal{S} \succ_a \mathcal{M}\} = \left(2S - \min\{P, j^R\}, 2S + \min\{\zeta, |S|\}\right) \cap [j^L, j^R]$, where the intersection reflects that q_a is a pre-vacancy court median. It therefore suffices to verify $\left(2S - \min\{P, j^R\},\ 2S + \min\{\zeta, |S|\}\right) \subseteq \{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\}$.

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 $\{q_a \mid \mathcal{S} \succ_a \mathcal{M}\} \subseteq \{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\}$.

Finally, suppose $P > 0$ and $j^R < P$. The $\{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\}$ is nonempty because $-P < \min\{P, |S|\}$. If $j^R \leq 0$, then $\zeta = -j^R$, so $\{q_a \mid \mathcal{S} \succ_a \mathcal{M}\}$ is empty by the previous step, and the inclusion is strict. If $j^R \in (0, P)$, then $2S - \min\{P, j^R\} = 2S - j^R > 2S - P$, so every $q \in (2S - P,\ 2S - j^R]$ is in $\{q_\ell \mid \mathcal{S} \succ_\ell \mathcal{M}\}$ but not $\{q_a \mid \mathcal{S} \succ_a \mathcal{M}\}$. □

Proposition 1. *(i) If $q_a = q_\ell$ and $(P_a, S_a, M_a, R_a) = (P_\ell, S_\ell, M_\ell, R_\ell)$, then $\mathcal{S} \succ_a \mathcal{M}$ only if $\mathcal{S} \succ_\ell \mathcal{M}$. (ii) If $\mathcal{S} \succ_a \mathcal{M}$ at appointment conditions $(q_a, P_a, S_a, M_a, R_a)$, then there*

exists $\varepsilon > 0$ *such that* $\mathcal{S} \succ_\ell \mathcal{M}$ *at all lawmaking conditions* $(q_\ell, P_\ell, S_\ell, M_\ell, R_\ell)$ *within* ε *of the appointment conditions.*

PROOF. Part (i) is immediate from Lemma A.6. For part (ii), let $\theta_j = (P_j, S_j, M_j, R_j)$ for activity $j \in \{\ell, a\}$.

For lawmaking, in the normalized case with $M_\ell = 0$, Lemma A.4 implies that $\mathcal{S} \succ_\ell \mathcal{M}$ if and only if $q_\ell \in \big(2S_\ell - P_\ell, 2S_\ell + \min\{P_\ell, |S_\ell|\}\big)$. We now generalize this to arbitrary M. Define $L(\theta_j) = 2S_j - P_j$ and $U(\theta_j) = 2S_j - M_j + \min\{P_j - M_j, M_j - S_j\}$. Then, since absolute-loss policy utility is translation invariant, we can use Lemma A.4 to derive that $\mathcal{S} \succ_\ell \mathcal{M}$ if and only if $q_\ell \in \big(L(\theta_\ell), U(\theta_\ell)$. This interval is continuous in θ_ℓ.

For the appointment game, translation invariance also applies, so Lemmas A.5 and A.6 extend to general M_a with all endpoints shifted accordingly. By Lemma A.5(i), $\mathcal{S} \succ_a \mathcal{M}$ for q_a in an open interval that, by Lemma A.6, is contained in $\big(L(\theta_a), U(\theta_a)\big)$. Thus, $L(\theta_a) < q_a < U(\theta_a)$.

Finally, continuity of L and U implies that there exists $\varepsilon > 0$ such that $L(\theta_\ell) < q_\ell < U(\theta_\ell)$ if (q_ℓ, θ_ℓ) is within ε of (q_a, θ_a). By Lemma A.4, $\mathcal{S} \succ_\ell \mathcal{M}$ at all such conditions. □

A.2 Proof of Proposition 2.

PROOF. We evaluate both activities at a common status quo, $q_a = q_\ell = q$. Let $\mathcal{Q}^o = \{q \mid \mathcal{S} \succ_\ell \mathcal{M}$ and $\mathcal{M} \succ_a \mathcal{S}\}$ denote the interval of status quos producing divergent strict preferences. We show its length weakly increases as S decreases. Note that if $j^R \leq S$ for a given pivot, then every feasible status quo satisfies $q \leq j^R \leq S$ and both voting rules yield the court outcome j^R, so $\mathcal{M} \sim_a \mathcal{S}$ for all feasible q and therefore $\mathcal{Q}^o = \emptyset$ for that pivot. Thus, if $j^R \leq S'$, then both divergence intervals are empty and the comparison is trivial. If $S' < j^R \leq S$, then the interval is empty under S and has weakly positive length under S', as desired.

Henceforth, suppose $j^R > S$, which implies $j^R > S'$, so the characterization below applies to both pivots. Since the common status quo is a pre-vacancy court median, the set of feasible divergent status quos is $\mathcal{Q}^o \cap [j^L, j^R]$. This intersection is redundant, for two reasons. First, in every case of the characterization derived in Parts 1–2 in which $\mathcal{Q}^o \neq \emptyset$, its upper endpoint is either S or $2S + P$, both weakly below j^R since $j^R > S$. Second, its lower endpoint in those cases, $2S + \min\{|j^R|, |S|\}$, is increasing in S, so the proposition's condition—which imposes $j^L \leq 2S' + \min\{|j^R|, |S'|\}$ at the more extreme pivot—ensures the lower endpoint is weakly above j^L for both pivots under comparison. Consequently, we suppress the intersection with $[j^L, j^R]$ throughout.

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. By Lemma A.4, every $q \in \mathcal{Q}^o$ lies below $2S + \min\{P, |S|\} \leq S < 0$, whereas the second interval in Lemma A.5(ii) has lower endpoint $\max\{P, j^L\} \geq P \geq 0$. That interval is therefore irrelevant for $\mathcal{Q}^o$, and we use only the first interval. The lower bound of $\mathcal{Q}^o$ is

$$\max\Big\{2S + \min\{\zeta, |S|\}, 2S - P\Big\} = 2S + \min\{\zeta, |S|\}, \tag{A.2}$$

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

$$\min\Big\{-\min\{P, |j^R|\}, 2S + \min\{P, |S|\}\Big\}. \tag{A.3}$$

By Lemma A.5(ii), the upper bound also includes the term j^R. We omit it here because $j^R > S \geq 2S + \min\{P, |S|\}$ implies that bound is slack. Together, (A.2) and (A.3) yield

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

By (A.4) 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 (A.4) simplifies to

$$\mathcal{Q}^o = \Big(2S + \min\{|j^R|, |S|\}, \min\Big\{-\min\{P, |j^R|\}, 2S + \min\{P, |S|\}\Big\}\Big). \tag{A.5}$$

Part 2. Next, we sharpen the characterization in (A.5) using two cases.

First, consider $S \in (-P, 0)$. Because $j^R \in (S, P)$, we have $|j^R| < P$. Then (A.5) simplifies to $\mathcal{Q}^o = (2S + \min\{|j^R|, |S|\}, \min\{-|j^R|, S\})$, which is nonempty if and only if $S < -|j^R|$. Thus, $S \in (-|j^R|, 0)$ implies $\mathcal{Q}^o = \emptyset$, 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 (A.5) simplifies to $\mathcal{Q}^o = (2S + |j^R|, 2S + P)$. Then, $\mathcal{Q}^o$ is nonempty if and only if $|j^R| < P$.

Part 3. To complete the proof, we use the characterizations from Part 2 to verify that the length of $\mathcal{Q}^o$, denoted $\lambda(\mathcal{Q}^o)$, weakly increases 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 $\mathcal{Q}^o = \emptyset$, so $\lambda(\mathcal{Q}^o) = 0$. Second, $S \in (-P, -|j^R|)$ implies $\mathcal{Q}^o = (2S + |j^R|, S)$, with $\lambda(\mathcal{Q}^o) = |S| - |j^R|$ strictly increasing as S decreases. Finally, $S \leq -P$ implies $\mathcal{Q}^o = (2S + |j^R|, 2S + P)$, with $\lambda(\mathcal{Q}^o) = P - |j^R|$ constant in S. Since $\lambda(\mathcal{Q}^o)$ is continuous at $S = -P$, it is weakly increasing as S decreases. □

A.3 Proof of Proposition 3.

PROOF. Recall $\zeta = \max\{-j^R, \min\{P, |j^R|\}\}$ and let $q_a = q$. First, $S \leq \max\{q, \frac{q-\zeta}{2}\}$ holds if and only if $q \geq 2S + \min\{\zeta, |S|\}$. If $S \leq q$ then $q \geq S \geq 2S + |S| \geq 2S + \min\{\zeta, |S|\}$. If $S \leq \frac{q-\zeta}{2}$ then $q \geq 2S + \zeta \geq 2S + \min\{\zeta, |S|\}$. The converse follows by rearranging whichever term attains the minimum. By Lemma A.5(i), $q \geq 2S + \min\{\zeta, |S|\}$ implies q is weakly above the interval in which $\mathcal{S} \succ_a \mathcal{M}$, so $\mathcal{M} \succsim_a \mathcal{S}$. If, in addition, the pivot condition holds strictly and $q < \min\{-\min\{P, |j^R|\}, j^R\}$, then q lies strictly inside the first interval of Lemma A.5(ii), so $\mathcal{M} \succ_a \mathcal{S}$. □

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 $\mathcal{S} \succ_a \mathcal{M}$ if and only if $q \in (2S - \min\{P, j^R\}, 2S + \min\{\zeta, |S|\})$. There are three cases as j^R decreases over X. First, $j^R \geq P$ implies that $\mathcal{S} \succ_a \mathcal{M}$ holds if and only if $q \in (2S - P, 2S + \min\{P, |S|\})$, which does not depend on j^R. Second, $j^R \in (0, P)$ implies that $\mathcal{S} \succ_a \mathcal{M}$ holds if and only if $q \in (2S - j^R, 2S + \min\{j^R, |S|\})$, 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 $\{q \mid \mathcal{S} \succ_a \mathcal{M}\} = \emptyset$. Thus, for $j^R \geq 0$, the sets $\{q \mid \mathcal{S} \succ_a \mathcal{M}\}$ are nested and shrink weakly, in the set-inclusion sense, as j^R decreases toward $M = 0$. For $j^R < 0$, the set is empty, so shifting j^R toward M trivially preserves the comparison. Intersecting with the feasible set $[j^L, j^R]$, which weakly shrinks as j^R decreases while j^L is fixed, preserves nestedness. □