

ABSTRACT

PIVOTAL POLITICS, APPOINTMENTS GRIDLOCK, AND THE NUCLEAR OPTION

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In this paper, we employ simple formal models drawn from political science to explain the occurrence of gridlock in the federal judicial selection process, and to explore the implications of the “nuclear option,” by which a bare majority of senators employs parliamentary tactics to abolish the filibuster with respect to judicial nominations. Our application of a pivotal politics model leads us to reject the notion that appointments gridlock is a straightforward consequence of divided government. Instead, meaningful changes to the ideological balance of the federal bench require a more demanding ideological alignment of multiple veto players relative to the status quo. This conclusion is broadly consistent with the recent history of the federal judicial appointments process.

We then adapt the pivotal politics model to the existence of the nuclear option by introducing a new player, the *nuclear pivot*, who supplies the last vote needed to trigger the nuclear option, and whose precise identity is uncertain – perhaps even to the nuclear pivot herself. Introduction of the nuclear pivot curtails the extent of gridlock and makes possible some change in the status quo, albeit less change than would be possible in the outright absence of the filibuster. We conclude not only that the threat of the nuclear option works to the detriment of the minority Democrats, but also that the Democrats have gained nothing of substance from the agreement reached by a group of moderate senators – the so-called “Gang of 14” – that has indefinitely forestalled actual exercise of the nuclear option. However, both uncertainty over the location of the nuclear pivot and the degree to which the Democrats have successfully prolonged the confrontation over judicial nominees may hinder the President from capitalizing upon the advantage otherwise conferred by the threat of the nuclear option.