Exceptions to the Rule: Majoritarian Procedures and Majority Party Power in the United States Senate

by

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Dedication

For my family, the one I was fortunate to be born into, and the one I was lucky enough to choose.

Acknowledgments

As much as I've wished otherwise, dissertations don't write themselves, and this one would not have been completed without the support—financial, intellectual, moral, and otherwise—of numerous individuals. They can take credit for contributing to all the good in the pages to follow, while all remaining errors are my own.

First and foremost, thanks are due to my dissertation committee, beginning with my co-chairs. From my first weeks on campus at Michigan, Rick Hall has been exceedingly generous with his time, resources, and expertise. Much of what I know about how to see a research project from start to finish was learned during our rewarding collaboration as co-authors, and this dissertation is better for Rick's continual encouragement, especially to consider the broader theoretical implications of each portion of my argument. The project also bears the fingerprints of Chuck Shipan's careful and consistent feedback and advice, always delivered with just the right balance of support and criticism. The fact this project suffered no ill effects from the 9,500 miles and nine time zones that separated Chuck and me for its last year is testament to his unwavering dedication to great advising. My other two committee members have also made important contributions to the development of this project specifically and my life as a scholar more generally. I would have spent significantly more time in various patches of dissertation weeds without the outlet created by Ken Kollman's weekly dissertation group, which was equal parts workshop, support group, commitment device, and genuine good time. Elisabeth Gerber provided exceedingly valuable professional advice at several key intervals—guidance without which this project and my ensuing career would likely look much different.

The roots of this project stretch back to 2006, when Tom Mann hired me to work as his research assistant at the Brookings Institution. Very little about my life—professionally and personally—would be the same had Tom not taken that chance on me, and for that, I am deeply thankful. Tom not only bears responsibility for getting me interested in budget reconciliation (thanks to a research assignment in 2009), but he also taught me that serious academic work can

be brought to bear on real public policy questions and that one can get still get far as a genuinely nice and compassionate human being. I am also grateful to Tom for showing me, through his long-time collaboration with Norm Ornstein, that one's greatest professional relationships can be formed in graduate school. At Brookings, I was also lucky enough to get to know Sarah Binder; this project is much stronger thanks to both Sarah's intellectual influence on me and to her generous feedback, especially on Chapter 5.

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Finally, my deepest thanks are owed to Joel Ruhter. Early in my time at Michigan, a faculty member told a room full of graduate students that the most important thing we could do to achieve work-life balance was to find a partner who valued and was interested in our work. At the time, I joked to the student seated next to me that "I think my partner might be too interested in my work." Five-plus years later, however, I realize how lucky I am to have found such a person. Joel has supported me in every way I could imagine—and then some—with love, enthusiasm, and a genuine commitment to my success as a scholar. He has believed in me when I have not believed in myself, and I hope this project lives up to those expectations. It is only fitting that I will close this chapter of my life as we start on the next one of our lives together.

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Chapter 1: Introduction

But every schoolboy in the United States knows that [the Senate] is practically the only parliamentary body in the world where the majority cannot transact the public business, and where the minority instead of the majority transacts the business of the country.

-Senator William E. Mason (R-IL), 21 April 1897[1]

The Senate is not a majoritarian body.

-Senator Chuck Schumer (D-NY), 10 May 2005[2]

In many other ways—including the issues on its agenda and the demographic composition of its membership—the United States Senate at the end of the 20th century would have been unrecognizable to a member of the body at the end of the 19th. The prevailing interpretation of the chamber as non-majoritarian, however, is a rare point of consensus across both time and party. The notion that the Senate is to be a slower-moving, more deliberate body than the House of Representatives dates to the Constitutional Convention, where Madison characterized the chamber as proceeding with "more coolness… [and] more system."[3] Since abolishing the previous question motion in 1806, the chamber has been unable to end debate by simple majority vote (Binder and Smith 1997); it took nearly a century of increasing obstruction (Koger 2010) before the cloture rule provided a supermajority solution in 1917 (Wawro and Schickler 2006). The subsequent routinization of the filibuster as a procedural tool over the course of the twentieth century has been well-documented (Koger 2010; Smith 2014).

While scholars continue to debate the reasons for the persistence of the filibuster (Binder and Smith 1997; Wawro and Schickler 2006), the existence of the supermajority vote rule

[1] 30 Congressional Record S779.
[2] 151 Congressional Record S4801.
[3] See *Notes of Debates in the Federal Convention of 1787* (New York: W.W. Norton & Company, 1987), p. 83.

imbues our understanding of deliberation and activity in Congress. The filibuster sits at the center of Krehbiel's (1998) well-known model of lawmaking in the separation of powers system in the form of the filibuster pivot—that is, the senator who, based on his ideological location, must consent for change to be enacted. Work on gridlock and legislative productivity (Binder 2003; Brady and Volden 2006; Chiou and Rothenberg 2003) and executive nominations (Rohde and Shepsle 2007; Primo, Binder, and Maltzman 2008) has similarly embraced the notion that the filibuster dictates what the Senate, and by extension, the House and the president, can achieve.

There exists, however, a set of procedures in the Senate that complicate this account. Over the past nearly fifty years, Congress has repeatedly included in statutory law provisions that I call "majoritarian exceptions." By reallocating power within the chamber in three different ways, these special rules make operations of the Senate more majoritarian. Some prior work on these procedures explores them only in the context of broader arguments and not as an independent object of interest (e.g. Brady and Volden 2006; Den Hartog and Monroe 2011; Binder 1997; Binder and Smith 1997). In other instances, the rules are explored in-depth, but only as specific, substantive case studies (e.g. Mayer 1995; O'Halloran 1994; Becker 2005). Here, then, I begin to fill this gap in the literature between the narrow and the broad by analyzing systematically the creation, use, and consequences of these special procedures in the Senate.

What Constitutes a Majoritarian Exception?

Since 1969, Congress has created 113 "majoritarian exceptions;" a full list of these provisions, and the bills in which they were included, appears in Appendix Table A1.1. They cover a wide range of policy areas, including trade (such as the multiple provisions providing the president with fast-track trade authority); foreign policy (including rules for the adoption and/or waiving of international sanctions); defense matters (such as procedures for closing military bases); the federal budget (including the process for developing and passing the congressional budget resolution); and health care (such as the provisions governing the adoption of proposed cuts in Medicare spending).

The process by which these observations are identified and coded is described at length in Chapter 2, but for the purposes of definition here, I will highlight three relevant components of

an exception using an illustrative example.[4] In 1970, Congress passed the Federal Pay Comparability Act of 1970, making permanent a system of automatic annual adjustments to federal employee pay and eliminating the need for Congress to continually revisit the question of whether to increase federal salaries each year.[5] As part of the legislation, Congress delegated responsibility for developing recommendations about the adjustment rate necessary to keep federal pay "comparable" to a combination of actors in the executive branch, including a Federal Employee Pay Council (comprised of representatives from the major federal employee unions) and the Advisory Committee on Federal Pay (consisting of three non-federal employees). The president would then either act on those recommendations, or submit an alternative plan to Congress.[6] If he chose the latter option, Congress could disapprove of the proposal, using special, expedited procedures—the "majoritarian exception." The section of the bill defining those rules has several relevant components. Of most importance is the following:

> *Debate on the resolution is limited to not more than 2 hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable.*[7]

This stipulation that debate on the resolution can last no longer than two hours has the effect of preventing the measure from being filibustered and represents the defining component of a majoritarian exception:

> **Definition of Majoritarian Exception:** A majoritarian exception is a provision, included in statutory law, that exempts some future piece of legislation from a filibuster on the floor of the Senate by limiting debate on that measure.

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[4] Indeed, this example represents the earliest enacted exception in the dataset explored in Chapters 1 and 2. Other majoritarian exceptions were created prior to 1969, but because limited data availability for various independent variables used in Chapters 1 and 2, I limit this study to the period from the 91st to 112th Congresses.
[5] See "Report on the Federal Salary Comparability Act of 1969," H. Rpt. 91-480, 91st Congress, 1st Session.
[6] An alternative plan was permitted in the event of "national emergency or economic conditions affecting the general welfare" (Public Law 91-656, §3(c)(1)). Because this exception takes a power previously reserved for Congress, gives it to an external actor, and then grants a subsequent proposal procedural protections, it is considered a "delegation exception" and is explored in Chapter 3.
[7] Public Law 91-656, §3(i).

In examining the exceptions described in Table A1.1, we see that this debate cap may be as short as two hours (such as the federal employee pay recommendations provision, or the provision by which Congress can disapprove oil and gas leases negotiated by the Secretary of Energy) or as long as 50 hours (as is the case with the annual congressional budget resolution). Regardless of its length, the maximum threshold eliminates the need for the measure's proponents to marshal 60 votes in order to end debate and proceed to a final vote. The number of votes needed to prevent policy change, then, is larger (51) than under regular order (41).

Two additional provisions in the 1970 federal employee pay legislation illustrate other common, but not required, components of majoritarian exceptions. Many majoritarian exceptions contain provisions similar to these, but a set of legislative procedures need not do either of the following in order to constitute a majoritarian exception:

> *An amendment to, or motion to recommit, the resolution is not in order.*[8]

> *If the committee, to which has been referred a resolution disapproving the alternative plan of the President, has not reported the resolution at the end of 10 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee, from further consideration of any other resolution with respect to the same plan which has been referred to the committee. A motion to discharge may be made only by an individual favoring the resolution, is highly privileged.*[9]

The first of these corresponds to the fact that any majoritarian exceptions prevent the designated legislation from being amended, either in committee or on the floor. Of the 531 proposals in my dataset, 85 percent prevent amendments to the filibuster-proof measure on the floor. An additional 5 percent permit only germane amendments. Both of these restrictions on amendments represent a significant departure from the Senate's usual procedures, which allow for amendments to bills regardless of topic (see Senate Rule XVI). As we will see in both

[8] Public Law 91-656, §3(i).
[9] Public Law 91-656, §3(e) and Public Law 91-656, §3(f).

Chapters 2 and 4, this feature of majoritarian exceptions plays a substantial role in explaining both the development and use of the procedures.

The second provision, meanwhile, reflects the fact that many majoritarian exceptions provide a mechanism to prevent obstruction of the legislation by the committee with jurisdiction over the measure. In some cases, the time the panel can spend deliberating over the legislation is often limited by a firm day limit. After a prescribed number of days have elapsed, the bill is either automatically placed on the Senate calendar for debate or can be forcibly discharged from the committee by a privileged, filibuster-proof motion. Other instances, moreover, stipulate that the protected measure be reported directly to the floor, bypassing committee consideration altogether.[10]

These three conditions not only define the set of procedures under study here, but they also help us distinguish "majoritarian exceptions" from other similar procedures that fall outside the scope of this analysis. First, majoritarian exceptions are not the same thing as legislative vetoes, defined as "statutory provisions that reserve for Congress the ability to overrule or otherwise affect policy-making powers that have been delegated to executive officials without having to pass subsequent legislation" (Berry 2009, p. 247). Some majoritarian exceptions—especially the oversight exceptions discussed in Chapter 2—could be considered legislative vetoes, but not all legislative vetoes involve protecting future legislation from a filibuster on the floor of the Senate. Second, majoritarian exceptions are not the same as "Statutory Legislative Procedures," a categorization included in the *House Rules Manual* that includes procedures roughly analogous to those considered "legislative vetoes." Again, not all of these rules exempt future measures from a filibuster; in addition, some only apply to consideration in the House, not the Senate. Finally, majoritarian exceptions are also not equivalent to what Elizabeth Garrett calls "framework legislation," or "laws about lawmaking in a particular area…[that] supplement, and sometimes supplant, ordinary rules of procedure only for a defined set of future decisions" (Garrett 2004, p. 1). In this case, all majoritarian exceptions could be considered "framework legislation," but only a subset of "framework legislation" would meet our definition of majoritarian exceptions.[11]

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[10] See, for example, the procedures for approving alternative sequester proposals generated by Congress in the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119), §105.

[11] Thanks are due to Richard Beth of the Congressional Research Service for suggesting I clarify these distinctions.

An additional relevant distinction between majoritarian exceptions and other kinds of procedural change involves the process by which the former are enacted. Majoritarian exceptions represent changes, made through statutory legislation approved by both houses of Congress and signed by the president, with "the same force and effect as the standing rules either house adopts by simple House or Senate resolution to govern its own organization and procedure" (Davis 2003).[12] The 2013 modification made for judicial and executive branch nominations (Peters 2013), meanwhile, involved "reform-by-ruling" (Koger 2010); the Senate's presiding officer ruled on a question of precedent (i.e., the implementation of the chamber's rules) and a subsequent vote by a simple majority of that chamber sustained that ruling. This latter kind of rule change is easier to achieve from a coalition-building perspective, as a simple majority coalition is sufficient. The majoritarian procedural changes under study here, meanwhile, not only require supporters to overcome the threat of a filibuster in the Senate, but also to gain the support of a majority in the House of Representatives and the signature of the president.

What Do Majoritarian Exceptions Do? Central Claims and Assumptions

Throughout this dissertation, I document one way in which Senate policymaking is actively, rather than remotely (Krehbiel 1991), majoritarian. In particular, I make two principal arguments about the ends produced by this particular form of majoritarianism. While the four ensuing substantive chapters take up different substantive matter, it is these two basic claims that unite both their theoretical accounts and the accompanying empirical tests. First, majoritarian exceptions ease the passage of the bills to which they apply. Each of the three potential components of a majoritarian exception—the protection from a filibuster, the prohibition on amendments, and the preclusion of committee obstruction—reduces the hurdles that the measure must clear on its way to passage. Put differently, majoritarian exceptions expand the size of the coalition needed to block changes away from the status quo. In terms of voting rules, exempting a bill from the filibuster and thus reducing the number of votes needed to prevent policy change is larger (51) than under the current regime (41). The committee-related provisions reduce the

[12] This status has consequences for how the observations in the empirical tests in Chapters 2 and 3 are identified; see the *Data* section of Chapter 2 for more information.

ability of a simple majority of a committee to prevent a measure from coming to the floor. When a committee is automatically discharged, or when the protected legislation is placed directly on the calendar, no number of votes can prevent a proposal that changes the status quo from coming to the floor. For the exceptions that include a privileged motion to discharge, meanwhile, rather than a simple majority of the committee being able to prevent a proposal to change the status quo from making it out of committee, a floor majority must be formed to vote down the discharge petition. Decisions about when exceptions should be created and used, then, are shaped by the fact that it will be more difficult to engage in future obstruction on the underlying legislation.

The second goal of majoritarian exceptions, I argue, is to deliver benefits to the Senate's majority party; this applies to both the rules' creation and to their use. Much of the contemporary literature on the Senate portrays the chamber as the home of two competing partisan 'teams' that work together to achieve shared goals as the expense of their partisan opponents (e.g. Koger 2010; Lee 2009). The majority team attempts to pass legislation it favors, while the minority team works to obstruct those initiatives. For proponents of this account, it would follow that making obstruction more difficult—as majoritarian exceptions do—should help the majority party achieve its policy goals. At the same time, however, if the Senate's parties are weak and/or diverse, the simple majorities empowered by majoritarian exceptions may not be composed of co-partisans working together to achieve shared goals (Krehbiel 1993).

Here, I come down in favor of the former characterization of the Senate. To build my argument about exactly *how* majoritarian exceptions advantage the majority party, I rely on several familiar assumptions. First, I assume that the individual members that comprise the majority caucus are seekers of re-election (Mayhew 1974). Second, I assume that the majority party acts as a procedural cartel (Cox and McCubbins 1993, 2005); that is, rank-and-file members delegate some of their power to the leaders of their party, who, in turn, assume fiduciary responsibility for acting in the party's favor. In this context, leaders must satisfy this fiduciary responsibility both when new rules are created, as well as when they are used. Finally, I assume that the proximate shared goal of majority party senators is for their party to maintain its majority status (Cox and McCubbins 1993, 2005; Aldrich and Rohde 2000; Balla, et. al. 2002; Lee 2009); the benefits to a party's members of having their party hold majority status are well-documented empirically (Albouy 2013; Cox and Magar 1999). Convincing voters to return majority party members to office requires both collaboration between co-partisans to enact a

popular legislative agenda (Cox and McCubbins 1993; Matthews and Stimson 1975) and creating opportunities for individual members to claim credit for accomplishments (Mayhew 1974; Fiorina 1989) and to avoid blame for negative events (Weaver 1987).

Because the creation and use of majoritarian exceptions has been largely neglected by the literature, as I make these arguments, I begin to fill an important substantive gap. We have little systematic knowledge of these procedures' creation and use, and documenting these patterns is particularly important given their wide-ranging policy implications. In Chapter 5, I explore at length how the use of one particular exception (the budget reconciliation process) has had wide-ranging consequences for mandatory spending programs such as Medicare, Medicaid, food stamps, and farm price supports, but the list of provisions in Table A1.1 demonstrates that these special rules have consequences for how policy is made in many other policy areas. The examples discussed in Chapters 2, 3, and 4, moreover, include proposed and enacted exceptions involving the conduct of the war in Iraq, the sale of weapons to other countries, the negotiation of international trade agreements, the closing of military bases, and the review by Congress of regulations promulgated by executive branch agencies. The wide reach of this final exception alone suggests the breadth of the procedures' potential policy consequences.

In addition to addressing this substantive gap, my account builds on important previous work on how both parties in Senate use procedural tactics to either enact policies they prefer and obstruct ones they oppose, while also bolstering their electoral fortunes (Koger 2010; Lee 2009; Den Hartog and Monroe 2011; Sinclair 2000; Smith 2014). It also contributes to our understanding of from where institutions come. On one hand, a number of important accounts of Senate policymaking (e.g. Krehbiel 1998) assume that institutions like the filibuster are exogenous and immutable; both my theoretical and empirical investigations here demonstrate the limitations of that assumption.

Instead, I join others who have illustrated how new procedures are *created* to achieve proximate political goals; indeed, notable works on the evolution of the filibuster have argued that Senate rules are changed in response to short-term political forces, rather than principled commitment to supermajoritarianism. One prominent account of the creation of the cloture rule (Rule XXII) in 1917, for example, examines the political circumstances surrounding the measure whose passage was facilitated by the existence of new procedures for ending debate. Senate (majority) Democrats and President Wilson framed that bill, which permitted the arming of

merchant ships during World War I, as a "national security measure," portraying the procedural question as a matter of policy. The new rules, they argued, were needed if the Senate was going to enact a popular and salient policy change (Binder and Smith 1997).

This account of Rule XXII's creation is, of course, but one example of how short-term political considerations may have shaped choices about procedural change; indeed, others have offered competing narratives explaining the same decision that de-emphasize the role of public opinion (Wawro and Schickler 2006). Some might argue, moreover, that the policy-specific nature of majoritarian exceptions makes this claim less plausible. If the current Senate majority seeks a rule change in order to help it achieve some partisan goal, it must reasonably expect that the situation anticipated by the exception will come to pass in short order. Put differently, the new procedures are of little value to the current Senate majority party if the measure they protect does not appear on the agenda in the near future.

The amount of ambiguity about when any partisan advantages might accrue varies across exceptions. On one end are exceptions that, in delegating responsibility for developing a policy proposal to a set of internal or external actors, provide a hard deadline for when that proposal is to arrive in the Senate for consideration. The statute authorizing the most recent round of military base closings, for example, carried a deadline for reporting to the recommendations to Congress of September 8, 2005.[13] Any electoral consequences of the base closings, then, could reasonably be expected to be felt in the 2006 Senate elections.

A second relevant example is more recent. The Budget Control Act (BCA) of 2011—best known for ending a showdown between Congress and the president over whether to raise the debt ceiling—contained a provision creating the Joint Select Committee on Deficit Reduction, a congressional entity tasked with developing a proposal to cut the federal deficit by $1.2 trillion over ten years. This package of budgetary reforms was to be completed in the fall of 2011 and then approved by both chambers by January 2012 (Labonte and Levit 2012); in the Senate, the measure was covered by a procedural exception with a limit on floor debate of 30 hours. The Committee failed, however, to reach agreement on a set of cuts (Steinhauer, Cooper, and Pear 2011), rendering the existence of the special rules to consider them on the Senate floor moot. Despite the fact that choices by the members of Congress developing the proposal meant that the procedures were never actually used, only a few months elapsed between when they

[13] Public Law 107-107 §2914.

were created and when they *would have been* deployed. For Senators hoping for the ability to claim credit for cutting the deficit and/or for forestalling the "sequester," or the deep automatic spending cuts realized in the absence of a congressional proposal under the BCA, it was clear that any potential electoral gains of revisiting the issue would come before the 2012 elections.

On the opposite end of the spectrum, meanwhile, are exceptions that increase the capacity of the Senate to check the unilateral power of the president, but for which the timing of the president's next relevant action is uncertain. Various provisions of the Arms Export Control Act (AECA) of 1976, for example, provide Congress with the opportunity to prohibit proposed arms sales from proceeding. The president is not required, however, to sell defense articles on a prescribed timetable—or ever, if he wishes to take U.S. security policy in a particular direction. While creating the exception ensures that Congress will be able to weigh in on the president's decisions in the future, it does not necessarily increase the institution's knowledge of when that opportunity for input will be.

For these more uncertain policy areas, it is difficult, if not impossible, to measure the beliefs of the Senate at the time of the passage of the rule change about when the topic would re-emerge on the congressional agenda. To investigate the reasonableness of my claim that the chamber assumes that issues will recur quickly, I examined each enacted rule change to determine how quickly after its creation it could have been used to by Congress to affect policy outcomes. In the most straightforward cases, this "date of first relevance" represents the actual introduction of a resolution under the special, filibuster-proof rules prescribed in the legislation. In the case of the AECA, for example, the first attempt by Congress to halt an arms sale proposed by the president occurred in September 1976, when Senator Gaylord Nelson (D-WI) introduced a resolution that would have prevented a proposed sale of defense articles to Saudi Arabia.[14] While Nelson's effort to use the new procedural exception was unsuccessful, the brief period of time that elapsed between the rule's creation—less than three months—suggests that, prior to the AECA's passage, senators would likely have believed that opportunities to weigh in on arms sale policy would be soon in coming.

Similarly, in September 1996, Senator Trent Lott (R-TN) introduced the first resolution to overturn a rule proposed by the executive branch (regarding hospital reimbursement under

[14] See S. Con. Res. 150, 94th Congress. See also companion legislation in the House: H. Con. Res. 740, H. Con. Res. 757, H. Con. Res. 766, H. Con. Res. 770, and H. Con. Res. 777, all 94th Congress.

Medicare) under the provisions of the Congressional Review Act (CRA), which had been enacted five months prior.[15] While that resolution was not successful—indeed, only one measure exercising Congress's authority under the CRA has even been signed into law (Rosenberg 2008)—its existence is a reliable indicator of the return of the underlying issue to the congressional agenda. The fact that it only took five months for a senator to utilize the new oversight powers afforded to him under the CRA suggests that, prior to the law's enactment, members of the Senate could have reasonably expected that any electoral rewards could be quickly realized.

In other cases, a policy change to which an exception could apply is proposed, but Congress declines to take the procedurally-privileged action afforded to it in response. If these situations arise close to the enactment of the rule change, even absent affirmative steps by the Senate to use the new procedures, the re-emergence of the issue implies that legislators could have sensibly assumed that any electoral gains from revisiting the topic would be quick in coming. Take, for example, the provision included in the International Security and Development Cooperation Act of 1980 that endowed Congress with a procedurally-protected resolution of disapproval of export licenses for commercial sales of defense articles or services valued at over $100 million to other, non-NATO countries.[16] Prior to the legislation, arms sales carried out by the government were subject to potential veto by Congress, but the 1980 law gave the legislature the same authority to prevent wholly private transactions.[17] The first deal eligible to be reviewed by Congress under this law was a proposed aircraft-related sale to Indonesia in 1982, but the legislature chose to let the sale proceed unimpeded.[18] The mere existence of the transaction, however, provides a reliable indication of the frequency with which the issue—large defense deals, executed by private companies—is likely to recur on the congressional agenda.

A second illustrative example of this dynamic involves U.S. counter-narcotics efforts in Colombia, which, since the mid-1990s, have involved aid to both the Colombian National Police and the Colombian military. In 2000, when President Clinton proposed funneling increased aid to the Colombian military as part of this program (a proposal designated "Plan Colombia"), some

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[15] See S. J. Res. 60, 104th Congress.
[16] See Public Law 96-533, § 107.
[17] See President Jimmy Carter, "Statement on Signing H.R. 6942, the International Security and Development Cooperation Act of 1980, Into Law," 16 December 1980.
[18] Journal of the House of Representatives of the United States, 97th Congress, 2nd Session, Part 2, p. 1559; see also Colin Campbell, "Indonesia Seeks to Keep Pace in Arms," *New York Times* 30 July 1982.

members of the Senate were concerned about increasing American involvement in what they characterized as an internal civil war (Marquis 2000). To ensure that the president did not expend more resources on Plan Colombia than expressly authorized, the measure allocating funds for Plan Colombia for 2001 included a provision that prohibited the executive branch from expending any additional resources in fiscal year 2001 unless Congress explicitly approved as such in a joint resolution; that measure, moreover, would be exempt from a filibuster on the floor of the Senate. Ultimately, President Clinton did not seek these supplemental funds. One possibility is that the funds appropriated in the original bill were sufficient to achieve the country's strategic goals for the year. Alternatively, however, the Senate could have used the new special rules to prevent the president from accessing additional funds. In other words, as with presidential vetoes (Cameron 2000), the fact that we did not observe the Senate utilizing this particular procedural exception did not mean that the procedure was irrelevant for U.S. policy towards Colombia in late 2000 and early 2001. In addition, because the exception covered a clearly defined period of time, the members of Congress who created it in the summer of 2000 knew that if they were going to get an opportunity to claim credit for revisiting policy towards Colombia, that opportunity would come after the 2000 election and before the 2002 midterms.

These examples illustrate a set of three general, hierarchical principles that guided my collection of information on when a procedural exception first became relevant following its creation:

1. Did the exception contain a specific date by which the proposal covered by the special rule was to be introduced?
2. If no specific date was included, when was the first resolution under the auspices of the procedural exception introduced?
3. If no formal resolution was introduced, when did the first policy change to which an exception *could* have been applied occur?

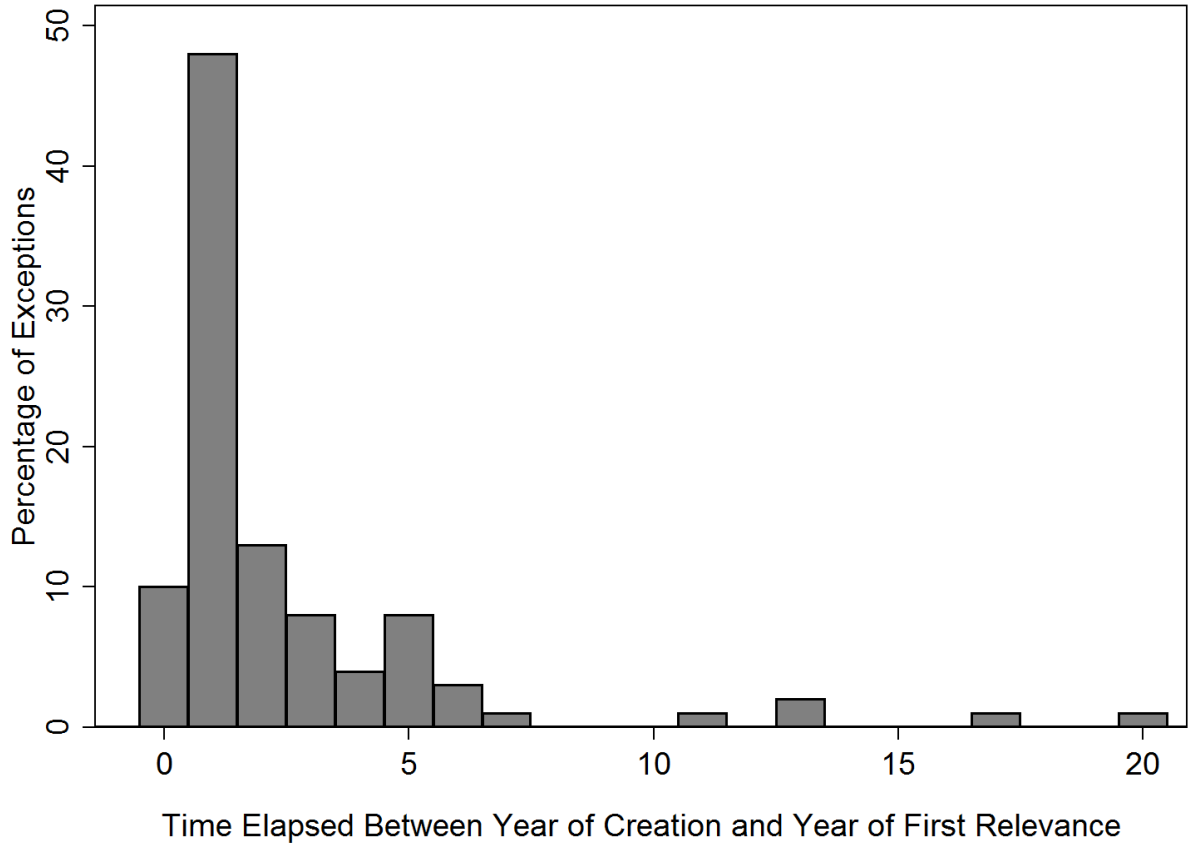
Using a combination of congressional documents, such as the *Congressional Record*; other federal government resources, such as reports from the General Accounting (now Government Accountability) Office; academic articles; and other secondary source publications, I was able to

identify the year after the successful creation of an exception in which it first became relevant to decisions in the policy area to which it applied. A complete list of these situations, and the sources from which I identified them, appears in Appendix Table A1.2.

Of the 113 successfully-created exceptions, I was able to identify a date of first relevance using the criteria outlined above for 99 of the procedures. In general, the remaining 13 involve some sort of exogenous trigger, the occurrence of which is nearly unpredictable; they include, for example, provisions requiring Congress to approve of compensation plans for victims of nuclear and commercial space accidents.[19] For the median rule that has become pertinent to policymaking, meanwhile, only a year passes between creation and relevance; the distribution of this elapsed time appears in Figure 1. As Figure 1 indicates, the majority of procedural exceptions become relevant for policymaking quite soon after they are created; indeed, 63 percent are either originally slated to be used, actually used, or have the potential to be used within two years of their enactment. While this data is descriptive (and prone to some measurement error) rather than causal, at the very least, it provides a useful foundation for the argument about the role of majority party electoral considerations that unfolds in the ensuing chapters.

[19] For the former, see Public Law 100-408, §7. For the latter, see Public Law 103-272, §70113.

Figure 1.1: Years Elapsed Between Creation and Year of First Relevance for Majoritarian Exceptions



Plan of the Dissertation

An initial review of the majoritarian exceptions defined above suggests that they can be divided into two general categories, largely based on the content of the underlying legislative proposal that they shepherd to and through floor consideration. One category of exceptions seeks to limit unilateral actions by the president in the face of a range of disincentives to do so. Depending on preference divergence between Congress and the president, the legislative branch may disapprove of a unilateral action taken by the president, either through an executive order, signing statement, or other method. By creating an "oversight" exception, Congress can make a specifically delineated unilateral action by the president subject to legislative approval. Because the measure acceding to the president's action is privileged for consideration and cannot be

amended or filibustered, Congress is guaranteeing, through a legislative check, that it has increased input in a particular policy area. Take, for example, the provision of the International Security Assistance and Arms Export Control Act of 1976 that allows Congress the opportunity to disapprove of presidentially-proposed sales of major defense equipment totaling more than $1,000,000[20]. The resolution rejecting such a deal can be compelled out of committee by a highly privileged resolution after ten days and is limited to ten hours of debate on the floor of the Senate. Prior to the enactment of these provisions, arms sales could be handled entirely within the executive branch, provided the president certified that the sale would "strengthen the security of the United States and promote world peace"—a determination that was made for all proposed transactions by both Presidents Johnson and Nixon.[21] Congress certainly had the power to respond to this act by the president through its regular legislative procedures prior to the creation of the procedural exception. By changing its internal procedures for this particular policy choice, however, Congress made it easier for itself to exert power in the policy area by creating opportunities for majority rule. Exceptions of this kind are explored in Chapter 2 using a spatial model of these strategic inter-branch interactions and an accompanying empirical test using a novel dataset of proposed and enacted majoritarian exceptions.

The second kind of exception involves efforts by the Senate to delegate some of its power to one or more actors, either within or outside the chamber. The actor or actors to whom this power is delegated are tasked with drafting a change to the status quo, and then that proposal comes to the floor of the Senate under expedited legislative procedures. The process for closing military bases is a well-known case of this kind of exception. An independent Base Realignment and Closing Commission (BRAC) is authorized by Congress to select bases for closure, and the legislation approving those selections cannot be filibustered or amended. These "delegation" procedures are explored in Chapter 3. Because there are important substantive differences between the oversight exceptions investigated in Chapter 2 and the delegation ones discussed in Chapter 3, I begin the latter chapter with a separate, theoretical account of exception creation; instead of focusing on how rule change creates opportunities for majority party gain in inter-branch interactions, I describe how new procedures can benefit the majority party by helping it to

[20] This threshold has been increased over time to $14 million (Grimmett 2012).
[21] See Senate Committee on Foreign Relations, Subcommittee on Foreign Assistance, "Foreign Assistance Authorization: Arms Sales Issues: Hearings Before the Subcommittee on Foreign Assistance," 94th Congress, 1st session, especially pp.14-15.

solve internal collective action problems. This discussion is followed by an empirical test of exception creation similar in scope to the one presented in Chapter 2.

Beginning in Chapter 4, I focus on one particular majoritarian exception: the budget reconciliation procedures. Created in 1974, the reconciliation process allows for changes to mandatory federal programs and revenue-raising instruments to be made through a filibuster-proof process that also restricts amendments. The history and development of the rules are described in Chapter 4, followed by a theoretical account that highlights how these particular features of the procedures can be leveraged to produce policy outcomes that reflect the preferences of the party's median member, making the caucus appear competent and enhance its reputation in the eyes of voters. An empirical test and series of brief case studies then illustrate how these dynamics have played out over the past 30 years.

In Chapter 5, I explore whether the reconciliation rules are actually used in a way that should help the majority party achieve its goal of maintaining its status. I argue that the reconciliation process generates opportunities for majority party members to claim credit and avoid blame. Because the majority party's ability to maintain its status involves defending different sets of seats in different electoral cycles, we should expect the programmatic changes made through the process to reflect these varying strategic concerns. I test this hypothesis using new data on programmatic reforms made using the rules. Finally, in Chapter 6, I summarize my findings and offer several implications of this work for the prospects of further procedural change in Congress.

Appendix 1.1

Table A1.1: Majoritarian Exceptions Enacted, 91st-112th Congress (1969-2012)

Congress Created	Year Created	Bill Name and Public Law Number	Majoritarian Exception
91	1971	Federal Pay Comparability Act of 1970 (91-656)	Disapprove of alternative rate increase in federal pay proposed by president
93	1973	War Powers Resolution (93-148)	Approve of removal of armed forces engaged outside United States
93	1973	District of Columbia Self-Government and Governmental Reorganization Act (93-198)	Approving of bills passed by Washington D.C. City Council
93	1974	Employee Retirement Income Security Act (93-406)	Disapprove of certain federal contractor regulations
93	1974	Employee Retirement Income Security Act (93-406)	Disapprove of new multiemployer pension schedules
93	1974	Congressional Budget and Impoundment Control Act of 1974 (93-344)	Approve congressional budget resolution
93	1974	Congressional Budget and Impoundment Control Act of 1974 (93-344)	Approve presidential impoundment/rescission requests
93	1974	Congressional Budget and Impoundment Control Act of 1974 (93-344)	Approve reconciliation bills
93	1974	Trade Act of 1974 (93-618)	Approve trade agreements and non-tariff barriers
93	1974	Trade Act of 1974 (93-618)	Disapprove President's certification of that drug-producing countries have met requirements to engage in trade with United States
93	1974	Trade Act of 1974 (93-618)	Disapprove president's extension of Most-Favored-Nation trade status
93	1974	Trade Act of 1974 (93-618)	Disapprove president's proposal to remedy injurious effect of imports
93	1974	Trade Act of 1974 (93-618)	Disapprove president's proposal to waive prohibition on trade with country that restricts emigration by its citizens

Congress Created	Year Created	Bill Name and Public Law Number	Majoritarian Exception
94	1975	Social Security Act Amendments (94-88)	Disapprove of certain standards under the Social Security Act
94	1975	Energy Policy and Conservation Act (94-163)	Disapprove of presidential energy actions, including tapping the Strategic Petroleum Reserve
94	1976	Fishery Conservation and Management Act (94-265)	Approve of international fishery agreement negotiated by president
94	1976	National Emergencies Act (94-412)	Terminate national emergency initiated by the president
94	1976	International Security Assistance and Arms Export Control Act (94-329)	Approve commercial manufacturing agreements
94	1976	International Security Assistance and Arms Export Control Act (94-329)	Approve resolution ending arms sales because of human rights abuses
94	1976	International Security Assistance and Arms Export Control Act (94-329)	Approve resolution ending military assistance because of discrimination
94	1976	International Security Assistance and Arms Export Control Act (94-329)	Approve resolution terminating assistance to countries transferring nuclear material to other countries
94	1976	International Security Assistance and Arms Export Control Act (94-329)	Disapprove of sale of defense articles or services and major defense equipment
94	1976	Railroad Revitalization and Regulatory Reform Act (94-210)	Disapprove of certain decisions regarding debentures/preferred stock in Amtrak and Conrail
94	1976	Alaska Natural Gas Transportation Act (94-586)	Approve president's proposed natural gas transportation system for Alaska
95	1977	International Security Assistance Act (95-92)	Approve limits on economic and military assistance to countries selling nuclear technology to other countries
95	1977	Reorganization Act (95-17)	Disapprove reorganization plan for the executive branch
95	1978	Public Utility Regulatory Policies Act (95-617)	Approve waiver of energy laws to facilitate construction of Long Beach-Midland project
95	1978	Power Plant and Industrial Fuel Use Act (95-620)	Disapprove of president's emergency prohibition on use of natural gas or petroleum during severe energy supply interruption
95	1978	Nuclear Anti-Proliferation Act (95-242)	Disapprove of presidential recommendations to cut off nuclear exports or export licenses

Congress Created	Year Created	Bill Name and Public Law Number	Majoritarian Exception
95	1978	Outer Continental Shelf Lands Act Amendments (95-372)	Disapprove bidding system for oil and gas leases proposed by Secretary of Energy
95	1978	Department of Energy Act - Civilian Applications (95-238)	Disapprove of executive branch plan for storing spent nuclear fuel
96	1979	Trade Agreements Act of 1979 (96-39)	Approve trade agreements and non-tariff barriers
96	1980	Alaska National Interest Lands Conservation Act (96-487)	Approve application for transportation/utility systems in Alaska's National Wilderness Preservation System
96	1980	Federal Trade Commission Improvements Act of 1980 (96-252)	Disapprove regulations promulgated by the FTC
96	1980	Multiemployer Pension Plan Amendments Act of 1980 (96-364)	Approve PBGC recommendations on premium increases necessary to support current pension guarantees
96	1980	International Security and Development Cooperation Act of 1980 (96-533)	Disapprove of export licenses for commercial sale of defense articles and services
96	1980	International Security and Development Cooperation Act of 1980 (96-533)	Disapprove of military assistance to Angola
96	1980	International Security and Development Cooperation Act of 1980 (96-533)	Disapprove sales of military design or construction services
96	1980	Energy Security Act (96-294)	Approve Department of Energy authorization bill containing energy targets
96	1980	Energy Security Act (96-294)	Approve comprehensive synthetic fuel strategy
96	1980	Energy Security Act (96-294)	Disapprove synthetic fuel action
97	1981	Department of Defense Authorization Act, 1982 (97-86)	Disapprove of basing mode for MX missiles
97	1981	Department of Defense Authorization Act, 1982 (97-86)	Disapprove of president's decision on long-range combat aircraft
97	1981	International Security and Development Cooperation Act of 1981 (97-113)	Disapprove of assistance to state that gives nuclear weapon to non-nuclear weapon state
97	1981	International Security and Development Cooperation Act of 1981 (97-113)	Disapprove of defense leases

Congress Created	Year Created	Bill Name and Public Law Number	Majoritarian Exception
97	1981	Czechoslovakian Claims Settlement Act of 1981 (97-127)	Approve extension of implementation period for agreement with Czechoslovakia
97	1982	Further Continuing Appropriations Act, 1983 (97-377)	Approve expenditures for MX missiles
97	1982	Nuclear Waste Policy Act of 1982 (97-245)	Approve selection of nuclear waste storage site
97	1982	Nuclear Waste Policy Act of 1982 (97-245)	Disapprove changes to nuclear waste fee schedule
97	1982	Nuclear Waste Policy Act of 1982 (97-245)	Disapprove selection of interim storage site for nuclear waste
98	1983	Department of State Authorization Act, Fiscal Years 1984 and 1985 (98-164)	Approve of removal of armed forces engaged outside United States
98	1984	Continuing Appropriations, FY 1985 (98-473)	Approve funds for Nicaragua
98	1984	Continuing Appropriations, FY 1985 (98-473)	Approve spending on MX missiles
98	1984	Omnibus Tariff and Trade Act of 1984 (98-573)	Approve of agreements modifying tariffs
98	1984	Department of Defense Authorization Act, 1985 (98-525)	Approve of president's decision to acquire additional MX missiles
99	1985	Balanced Budget and Emergency Deficit Control Act of 1985 (99-177)	Suspending deficit reduction provisions in the event of low growth
99	1985	Balanced Budget and Emergency Deficit Control Act of 1985 (99-177)	Approve sequester if process invalidated by courts
99	1985	Further Continuing Appropriations Act, 1986 (99-190)	Disapprove of arms sales to Jordan
99	1985	Energy Policy and Conservation Amendments Act of 1985 (99-58)	Disapprove of antitrust exemption for oil companies granted by president
99	1985	Export Administration Amendments Act of 1985 (99-64)	Approve agricultural export controls

Congress Created	Year Created	Bill Name and Public Law Number	Majoritarian Exception
99	1985	Export Administration Amendments Act of 1985 (99-64)	Approve nuclear cooperation agreements
99	1985	International Security and Development Cooperation Act of 1985 (99-83)	Approve additional aid to Central American peace process
99	1985	International Security and Development Cooperation Act of 1985 (99-83)	Approve aid to Nicaraguan democratic resistance
99	1986	Compact of Free Association Act of 1985 (99-239)	Disapprove of presidential agreements with Federated States of Micronesia and Marshall Islands
99	1986	Comprehensive Anti-Apartheid Act of 1986 (99-440)	Approve additional sanctions against South Africa
99	1986	Comprehensive Anti-Apartheid Act of 1986 (99-440)	Approve agreement reached with other industrialized countries to impose sanctions against South Africa
99	1986	Comprehensive Anti-Apartheid Act of 1986 (99-440)	Disapprove of president's decision to suspend sanctions against South Africa
99	1986	Anti-Drug Abuse Act of 1986 (99-570)	Disapprove presidential waiver of required cuts in aid to major drug producing countries
99	1986	Immigration Reform and Control Act of 1986 (99-603)	Approve termination of immigration-related employer sanctions program if evidence of nationality-related discrimination
100	1987	Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (100-119)	Approve sequester if process invalidated by courts
100	1987	Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (100-119)	Approve alternative sequester proposal generated by Congress
100	1987	Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (100-119)	Approve alternative sequester proposal for Department of Defense generated by president
100	1988	Price-Anderson Amendments Act of 1988 (100-408)	Approve compensation plan following nuclear accident

Congress Created	Year Created	Bill Name and Public Law Number	Majoritarian Exception
100	1988	Department of Defense Appropriations Act, 1989 (100-463)	Approve additional aid to Nicaraguan resistance
100	1988	Omnibus Trade and Competitiveness Act of 1988 (100-418)	Disapprove of extension of fast track authority beyond period authorized
100	1988	Omnibus Trade and Competitiveness Act of 1988 (100-418)	Revoke fast track authority if president does not consult with Congress
100	1988	Omnibus Trade and Competitiveness Act of 1988 (100-418)	Approve trade agreements
100	1988	Anti-Drug Abuse Act of 1988 (100-690)	Disapprove presidential proposal for aid to drug producing country
100	1988	Defense Authorization Amendments and Base Closure and Realignment Act (100-526)	Disapprove base closing recommendations
101	1990	National Defense Authorization Act for Fiscal Year 1991 (101-510)	Disapprove base closing recommendations
102	1991	Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (102-138)	Disapprove of presidential decision to rescind a prohibition on exporting arms to terrorist countries
102	1991	Intermodal Surface Transportation Efficiency Act of 1991 (102-240)	Disapprove of certain actions by the Metropolitan Washington Airports Authority
102	1992	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (102-391)	Disapprove president's decision to suspend loan guarantee to Israel program
102	1992	International Narcotics Control Act of 1992 (102-583)	Disapproving presidential waiver of prohibition on assistance to countries with substantial narcotics production
103	1993	To provide authority for the President to enter into trade agreements to conclude the Uruguay Round of multilateral trade negotiations (103-49)	Approve trade agreements (temporary extension of power delegated as part of Omnibus Trade and Competitiveness Act of 1988)

Congress Created	Year Created	Bill Name and Public Law Number	Majoritarian Exception
103	1994	To revise, codify, and enact without substantive change certain general and permanent laws, related to transportation (103-272)	Approve compensation plan for claim exceeding liability requirements
103	1994	Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (103-236)	Approve of waiver of sanctions against nuclear weapons states transferring material to non-nuclear weapons states
103	1994	Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (103-236)	Disapprove of president's decision to provide aid to certain countries enriching nuclear material
103	1994	Uruguay Round Agreements Act (103-465)	Approve subsidies agreement
103	1994	Uruguay Round Agreements Act (103-465)	Disapproval of US participation in the World Trade Organization
104	1996	Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (104-114)	Disapprove of president's decision to suspend Cuban embargo
104	1996	To amend the Foreign Assistance Act of 1961 and the Arms Export Control Act (104-164)	Disapprove third country transfers of military equipment
104	1996	Contract with America Advancement Act of 1996 (104-121)	Disapprove of proposed regulation
104	1996	Omnibus Consolidated Appropriations Act, 1997 (104-208)	Approve presidential determination that limits on population planning program are onerous
104	1996	Line Item Veto Act (104-130)	Disapprove of proposed budgetary cancellation (“line item veto”)
105	1997	Amtrak Reform and Accountability Act of 1997 (105-304)	Disapprove of recommendations to liquidate Amtrak from Amtrak Reform Council
106	1999	Consolidated Appropriations Act, 2000 (106-113)	Disapprove presidential request for waiver of UN reimbursement requirement

Congress Created	Year Created	Bill Name and Public Law Number	Majoritarian Exception
106	2000	Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001 (106-246)	Approve presidential request for additional funds for Plan Colombia
107	2001	USA PATRIOT Act (107-56)	Approve the repeal of provisions on international money laundering
107	2001	National Defense Authorization Act for Fiscal Year 2002 (107-107)	Disapprove of base closing commission recommendations
107	2002	Trade Act of 2002 (107-210)	Disapprove extension of "fast track" trade authority beyond period authorized
107	2002	Trade Act of 2002 (107-210)	Disapprove of use of "fast track" if no consultation between president and Congress
107	2002	Trade Act of 2002 (107-210)	Approve trade agreements
108	2003	Burmese Freedom and Democracy Act of 2003 (108-61)	Approve renewal of sanctions against Burma
108	2004	Intelligence Reform and Terrorism Prevention Act of 2004 (108-458)	Approval of proposed minimum identification standards
109	2006	Henry J. Hyde United States and India Nuclear Cooperation Promotion Act of 2006 (109-401)	Approve presidential waiver of agreement with India from certain provisions of the Atomic Energy Act
110	2008	Emergency Economic Stabilization Act of 2008 (110-343)	Disapprove proposal to exceed cap on funds to be lent under TARP
111	2010	Patient Protection and Affordable Care Act (111-148)	Approve legislation implementing IPAB recommendations
111	2010	Patient Protection and Affordable Care Act (111-148)	Approve legislation to discontinue IPAB
111	2010	Dodd-Frank Wall Street Reform and Consumer Protection Act (111-203)	Approve emergency plan to ensure bank solvency
112	2011	Budget Control Act of 2011 (112-25)	Approve installment increases to debt ceiling

Congress Created	Year Created	Bill Name and Public Law Number	Majoritarian Exception
112	2011	Budget Control Act of 2011 (112-25)	Approve recommendations of Joint Committee on Deficit Reduction
112	2011	Budget Control Act of 2011 (112-25)	Approve balanced budget amendment to the Constitution

Table A1.2: Information on Date of First Relevance for Enacted Majoritarian Exceptions

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1971	Disapprove of alternative rate increase in federal pay proposed by president	1971	Recommendations submitted to Congress	"Background Paper No. 4: Federal Pay: Its Budgetary Implications," Congressional Budget Office, 10 March 1976. p. 4.
1973	Approve of removal of armed forces engaged outside United States	1975	First action taken by the president covered by the rule	Grimmett, Richard F., "The War Powers Resolution: After Thirty-Six Years," Congressional Research Service, 22 April 2010.
1973	Approving of bills passed by Washington D.C. City Council	1975	First legislation passed by D.C. council under home rule charter	Schrag, Philip G., "The Future of District of Columbia Home Rule," *Catholic University Law Review* 39 (1990): 311-371.
1974	Disapprove of certain federal contractor regulations	1977	Legislation included a requirement that regulations be issued within three years	"Pension Losses of Contractor Employees at Federal Installations Can Be Reduced," U.S. Government Accounting Office, 3 September 1981, p. 6.
1974	Disapprove of new multiemployer pension schedules	1977	Resolution of disapproval introduced	H. Con. Res. 369, 95th Congress; introduced October 5, 1977.
1974	Approve congressional budget resolution	1975	Resolution introduced	H. Con. Res. 218, 94th Congress; introduced April 14, 1975.
1974	Approve presidential impoundment/rescission requests	1975	Congressional action on funds impounded by president	"Hearings Before the Task Force on Budget Process," Committee on the Budget, U.S. House of Representatives, 96th Congress, 1st Session, 11-12 December 1979, p. 252.
1974	Approve reconciliation bills	1975	Reconciliation bill introduced	Keith, Robert, and Bill Heniff, Jr., "The Budget Reconciliation Process: House and Senate Procedures," Congressional Research Service, August 2005, fn. 7.

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1974	Approve trade agreements and non-tariff barriers	1979	Trade implementing bill introduced	Cooper, William H., "Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy," Congressional Research Service, January 2014, p. 5.
1974	Disapprove president's certification of that drug-producing countries have met requirements to engage in trade with United States	1987	Resolution introduced	S. J. Res. 93, 100th Congress; introduced March 17, 1987.
1974	Disapprove president's extension of Most-Favored-Nation trade status	1975	Resolution introduced	H. Con. Res. 252, 94th Congress; introduced April 24, 1975.
1974	Disapprove president's proposal to remedy injurious effect of imports	1976	Resolution introduced	S. Con. Res. 213, 94th Congress; introduced October 1, 1976.
1974	Disapprove president's proposal to waive prohibition on trade with country that restricts emigration by its citizens	1975	Resolution introduced	S. Res. 219, 94th Congress; introduced July 24, 1975.
1975	Disapprove of certain standards under the Social Security Act	1977	Resolution introduced	S. Res. 416, 95th Congress; introduced March 14, 1978.
1975	Disapprove of presidential energy actions, including tapping the Strategic Petroleum Reserve	1976	First action taken by the president covered by the rule	Chubb, John H., *Interest Groups and the Bureaucracy: The Politics of Energy* (Palo Alto, CA: Stanford University Press, 1983), p. 154.
1976	Approve of international fishery agreement negotiated by president	1977	Resolution introduced	H. J. Res. 240, 95th Congress; introduced February 7, 1977.

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1976	Terminate national emergency initiated by the president	1980	First requested extension of national emergency following rule creation	Original national emergency declared by Executive Order 12170, 14 November 1979; first requested extension transmitted 12 November 1980 (see 45 FR 75159).
1976	Approve commercial manufacturing agreements	1978	First proposed agreement following creation of rule	"Letter from the Acting Assistant Secretary of State for Congressional Relations, transmitting notice of the proposed issuance of licenses for the export of major defense equipment sold commercially to Argentina (MC-35-78), pursuant to section 36(c) of the Arms Export Control Act of 1961, as amended; to the Committee on International Relations," 95th Congress, 2nd Session, 1978.
1976	Approve resolution ending arms sales because of human rights abuses	1977	House Committee on International Relations hearing on implementation of the provision	"Foreign Assistance Legislation for Fiscal Year 1978 (Part 1): Hearings Before the House Committee on International Relations," 95th Congress, 1st Session (1977); see also Cohen, Stephen B., "Conditioning U.S. Security Assistance on Human Rights Practices," *American Journal of International Law* 76.2 (April 1982): 246-279, esp. p. 254.
1976	Approve resolution ending military assistance because of discrimination		No resolution introduced	
1976	Approve resolution terminating assistance to countries transferring nuclear material to other countries	1979	First situation in which country (Pakistan) is found in violation of prohibition	Hathaway, Robert M., "Confrontation and Retreat: The U.S. Congress and the South Asian Nuclear Tests," *Arms Control Today* January/February 2000.

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1976	Disapprove of sale of defense articles or services and major defense equipment	1976	Resolution introduced	S. Con. Res. 150, 94th Congress; September 7, 1976.
1976	Disapprove of certain decisions regarding debentures/preferred stock in Amtrak and Conrail	1978	Purchase of debentures and stock for Conrail authorized as part of larger legislation	S. 2788, 95th Congress; see "Memo from Senator H. John Heinz," 2 August 1978 <http://digitalcollections.library.cmu.edu/awweb/awarchive?type=file&item=562320> for discussion.
1976	Approve president's proposed natural gas transportation system for Alaska	1977	First action taken by the president covered by the rule	"Alaska Natural Gas Pipeline Project History," Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects, October 2013 <http://www.arcticgas.gov/sites/default/files/documents/alaska-natural-gas-pipeline-project-history.pdf>.
1977	Approve limits on economic and military assistance to countries selling nuclear technology to other countries	1979	First situation in which country (Pakistan) is found in violation of prohibition	Rudolph, Lloyd I., and Susanne Hoeber Rudolph, *Making U.S. Foreign Policy Toward South Asia: Regional Imperatives and the Imperial Presidency* (Bloomington, IN: Indiana University Press, 2008), p. 186.
1977	Disapprove reorganization plan for the executive branch	1978	Plan submitted by president to Congress	"Reorganization Plan No. 1 of 1978, Message from the President, February 23, 1978," 95th Congress, 2nd Session.
1978	Approve waiver of energy laws to facilitate construction of Long Beach-Midland project	1979	Project abandoned before waiver was necessary	"The Review Process for Priority Energy Projects Should Be Expedited," U.S. Government Accounting Office, 15 October 1979.

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1978	Disapprove of president's emergency prohibition on use of natural gas or petroleum during severe energy supply interruption	1979	First applicable energy situation during which president could declare prohibition	Presidential Proclamation 4667, 10 July 1979.
1978	Disapprove of presidential recommendations to cut off nuclear exports or export licenses	1985	Resolution introduced	S. J. Res. 238, 99th Congress; introduced November 14, 1985.
1978	Disapprove bidding system for oil and gas leases proposed by Secretary of Energy	1981	First action by the Secretary of the Energy covered by the rule	Provision was challenged as part of *Watt v. Energy Action Education Foundation* 454 U.S. 151 (1981)
1978	Disapprove of executive branch plan for storing spent nuclear fuel	1978	First action taken by executive branch covered by the rule	"Federal Facilities for Storing Spent Nuclear Fuel--Are They Needed?" U.S. Government Accounting Office, 27 June 1979.
1979	Approve trade agreements and non-tariff barriers	1980	Trade implementing bill introduced	H.R. 7942, 96th Congress, 2nd Session; introduced August 18, 1980.
1980	Approve application for transportation/utility systems in Alaska's National Wilderness Preservation System	1985	Approval sought as part of broader Alaska legislation	H.R. 1902, 99th Congress, 1st Session; see also "Measures to Alaska Lands," Subcommittee on Public Lands and the Subcommittee on National Parks and Recreation of the Committee on Interior and Insular Affairs, 99th Congress, 1st Session, 23 May 1985.
1980	Disapprove regulations promulgated by the FTC	1981	Resolution introduced	H. Con. Res. 178, 97th Congress, 1st Session; introduced December 16, 1981.
1980	Approve PBGC recommendations on premium increases necessary to support current pension guarantees	1985	Deadline for recommendations included in bill	Public Law 96-364, Section 4022A

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1980	Disapprove of export licenses for commercial sale of defense articles and services	1982	First proposed agreement following creation of rule	"Letter from the Acting Assistant Secretary of State for Congressional Relations, transmitting notice of the proposed issuance of licenses for the export of major defense equipment sold commercially to Indonesia (Transmittal No. MC-18-82), pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs," 97th Congress, 2nd Session, 1982.
1980	Disapprove of military assistance to Angola	1981	Announcement by Reagan administration that it would seek repeal of the rule	Copson, Raymond W., *The Congressional Black Caucus and Foreign Policy* (Hauppauge, NY: Nova Publishers, 2003), p. 25.
1980	Disapprove sales of military design or construction services	1981	Resolution introduced	S. Con. Res. 37, 97th Congress; introduced October 1, 1981.
1980	Approve Department of Energy authorization bill containing energy targets	1981	Legislation introduced	S. 1021, 97th Congress, 1st Session; introduced May 15, 1981.
1980	Approve comprehensive synthetic fuel strategy		Corporation disbanded before undertaking any actions	Bayrer, Ralph. *The Saga of the U.S. Synthetic Fuels Corporation: A Cautionary Tale* (Washington, D.C.: New Academia Publishing, 2011).
1980	Disapprove synthetic fuel action		Corporation disbanded before undertaking any actions	Bayrer, Ralph. *The Saga of the U.S. Synthetic Fuels Corporation: A Cautionary Tale* (Washington, D.C.: New Academia Publishing, 2011).
1981	Disapprove of basing mode for MX missiles	1982	Legislation introduced	Amendment to H.R. 7355, 97th Congress, 2nd Session; considered December 7, 1982.

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1981	Disapprove of president's decision on long-range combat aircraft	1982	No resolution introduced by deadline included with rule creation	Mitchell, Douglas D., "Issue Brief Number IBB81107: Bomber Options for Replacing B-52S," Congressional Research Service, 3 May 1982.
1981	Disapprove of assistance to state that gives nuclear weapon to non-nuclear weapon state	1982	Legislation specified timeline for waiver authority to which rule applied (1982-1987)	McGoldrick, Fred, *Nuclear Trade Controls: Minding the Gaps* (Washington, D.C.: Center for Strategic and International Studies, 2013), fn. 42.
1981	Disapprove of defense leases	1982	First action taken by the president covered by the rule	Public Law 97-342, 97th Congress, 2nd Session; enacted October 15, 1982.
1981	Approve extension of implementation period for agreement with Czechoslovakia	1982	If extension was required, would have been sought within 60 days of law's enactment	Public Law 97-127 §7, 97th Congress, 1st Session; enacted December 29, 1981.
1982	Approve expenditures for MX missiles	1983	Resolution introduced	S. Con. Res. 26, 98th Congress, 1st Session; introduced April 20, 1983.
1982	Approve selection of nuclear waste storage site	2002	Resolution introduced	H. J. Res. 87, 107th Congress, 2nd Session; introduced April 11, 2002.
1982	Disapprove changes to nuclear waste fee schedule		No changes have been made to fee schedule since initial legislation	"News Release: NEI Hails Nuclear Waste Fund Fee Decision," Nuclear Energy Institute, 19 November 2013 <http://www.nei.org/News-Media/Media-Room/News-Releases/NEI-Hails-Nuclear-Waste-Fund-Fee-Decision>.
1982	Disapprove selection of interim storage site for nuclear waste		Legislative authority expired before selection was made.	"Office of Civilian Radioactive Waste Management; Nuclear Waste Acceptance Issues," 60 *Federal Register* 85 (3 May 1995), pp. 21793-21798.

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1983	Approve of removal of armed forces engaged outside United States	1987	First action taken by the president covered by the rule	Grimmett, Richard F., "The War Powers Resolution: After Thirty-Six Years," Congressional Research Service, 22 April 2010.
1984	Approve funds for Nicaragua	1985	Resolution introduced	H. J. Res. 239, 99th Congress, 1st Session; introduced April 15, 1985.
1984	Approve spending on MX missiles	1985	Resolution introduced	S. J. Res. 71, 99th Congress, 1st Session; introduced March 5, 1985.
1984	Approve of agreements modifying tariffs	1985	Trade implementing bill introduced	H.R. 2268, 99th Congress, 1st Session; introduced April 29, 1985
1984	Approve of president's decision to acquire additional MX missiles	1985	Resolution introduced	S. J. Res. 71, 99th Congress, 1st Session; introduced March 5, 1985.
1985	Suspending deficit reduction provisions in the event of low growth	1991	Resolution introduced	S. J. Res. 44, 102nd Congress, 1st Session; introduced January 24, 1991.
1985	Approve sequester if process invalidated by courts	1986	Procedures invalidated by courts	*Bowsher v. Synar* 478 U.S. 714 (1986)
1985	Disapprove of arms sales to Jordan	1986	First action taken by the president covered by the rule	Middleton, Drew, "Jordanians Irked by Delay in U.S. Arms Sale," *New York Times* 23 February 1986.
1985	Disapprove of antitrust exemption for oil companies granted by president	1987	First action taken by the president covered by the rule	"International Energy Agency: Plan to Provide Legal Defenses to Participating Oil Companies," U.S. Government Accounting Office, February 1988.
1985	Approve agricultural export controls	1986	First action taken by the president covered by the rule	Cooke, John F., "The United States' 1986 Emergency Economic Sanctions Against Libya--Have They Worked?" *Maryland Journal of International Law* 14 (1990): 195-232.

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1985	Approve nuclear cooperation agreements	1985	First action taken by the president covered by the rule	"Statement by President Reagan on Signing the Export Administration Amendments Act of 1985," 12 July 1985.
1985	Approve additional aid to Central American peace process	1986	Provision expired with conclusion of 99th Congress	Public Law 99-83, Section 722(k)
1985	Approve aid to Nicaraguan democratic resistance	1986	Resolution introduced	S. J. Res. 283, 99th Congress, 2nd Session; introduced February 27, 1986.
1986	Disapprove of presidential agreements with Federated States of Micronesia and Marshall Islands	2003	Resolution introduced	H. J. Res. 63, 108th Congress, 1st Session; introduced September 15, 2003.
1986	Approve additional sanctions against South Africa	1987	First report from president that could have triggered additional sanctions	Copson, Raymond W., "South Africa: President's Report on Progress Toward Ending Apartheid," Congressional Research Service, 19 October 1987, p.1
1986	Approve agreement reached with other industrialized countries to impose sanctions against South Africa	1987	First report from State Department regarding possible agreement that would have been covered by provision	Copson, Raymond W. and Jeanne S. Affelder, "South Africa: International Sanctions," Congressional Research Service, 22 September 1987, p. 5.
1986	Disapprove of president's decision to suspend sanctions against South Africa	1991	Presidential certification that all criteria allowing suspension of sanctions had been met	"The Termination of Economic Sanctions Against South Africa," Joint Hearing Before the Subcommittees on Economic Policy and Trade and Africa, Committee on Foreign Affairs, House of Representatives, 102nd Congress, 1st Session, 31 July 1991 , pp. 15-16.
1986	Disapprove presidential waiver of required cuts in aid to major drug producing countries	1988	Resolution introduced	H. J. Res. 493, 100th Congress, 2nd Session; introduced March 15, 1988.

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1986	Approve termination of immigration-related employer sanctions program if evidence of nationality-related discrimination	1987	First GAO report that could have triggered termination of program	"Immigration Reform: Status of Implementing Employer Sanctions After One Year," United States General Accounting Office, 5 November 1987.
1987	Approve sequester if process invalidated by courts		Not challenged in court	
1987	Approve alternative sequester proposal generated by Congress	1987	First sequester put in place under law	Keith, Robert, "Budget Sequesters: A Brief Review," Congressional Research Service, 8 March 2004.
1987	Approve alternative sequester proposal for Department of Defense generated by president	1987	First proposal submitted by the president	"Proposed Alternative Sequestration Reductions, Department of Defense, FY88, Message from the President," House Committee on Appropriations, 24 November 1987.
1988	Approve compensation plan following nuclear accident		Requires nuclear accident to be relevant	
1988	Approve additional aid to Nicaraguan resistance	1990	First action taken by the president covered by the rule	"Chamorro Win Ensures Aid to Nicaragua," *CQ Almanac 1990, 46th ed. (Washington, D.C.: Congressional Quarterly, 1991), 770-774.*
1988	Disapprove of extension of fast track authority beyond period authorized	1991	Extension disapproval resolution introduced	Smith, Carolyn C., "Trade Promotion Authority and Fast-Track Negotiating Authority for Trade Agreements: Major Votes," Congressional Research Service, 12 January 2011, p. 3.
1988	Revoke fast track authority if president does not consult with Congress	1993	Trade implementing bill introduced	Cooper, William H., "Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy," Congressional Research Service, January 2014, p. 5.

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1988	Approve trade agreements	1993	Trade implementing bill introduced	Smith, Carolyn C., "Trade Promotion Authority and Fast-Track Negotiating Authority for Trade Agreements: Major Votes," Congressional Research Service, 12 January 2011, p. 5.
1988	Disapprove presidential proposal for aid to drug producing country	1989	Resolution introduced	S. J. Res. 82, 101st Congress, 1st Session; introduced March 21, 1989.
1988	Disapprove base closing recommendations	1989	Resolution introduced	H. J. Res, 165, 101st Congress, 1st Session; introduced March 3, 1989.
1990	Disapprove base closing recommendations	1991	Resolution introduced	H. J. Res. 308, 102nd Congress, 1st Session; introduced July 19, 1991.
1991	Disapprove of presidential decision to rescind a prohibition on exporting arms to terrorist countries	2004	First action taken by the president covered by the rule	"Department of State; Rescission of Determination Regarding Iraq," 69 *Federal Register* 202 (20 October 2004), p. 61702.
1991	Disapprove of certain actions by the Metropolitan Washington Airports Authority	1994	First action by MWAA covered by rule	Provision was challenged as part of *Hechinger vs. Metropolitan Washington Airports Authority* 39 F.3d 97 (308 U.S.App.D.C. 283).
1992	Disapprove president's decision to suspend loan guarantee to Israel program	2003	First action taken by the president covered by the rule	Mark, Clyde R., "Israeli-United States Relations," Congressional Research Service, 28 April 2005.
1992	Disapproving presidential waiver of prohibition on assistance to countries with substantial narcotics production	1993	First action taken by the president covered by the rule	"Letter from President Clinton to Congressional Leaders on Certification of Major Narcotics Producing and Transit Countries," 5 February 1993.

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1993	Approve trade agreements (temporary extension of power delegated as part of Omnibus Trade and Competitiveness Act of 1988)	1994	Trade implementing bill introduced	Smith, Carolyn C., "Trade Promotion Authority and Fast-Track Negotiating Authority for Trade Agreements: Major Votes," Congressional Research Service, 12 January 2011, p. 5.
1994	Approve compensation plan for claim exceeding liability requirements		Requires commercial space accident to be relevant	
1994	Approve of waiver of sanctions against nuclear weapons states transferring material to non-nuclear weapons states	1996	First situation in which countries (China and Pakistan) are in potential violation of provision	"China's Nuclear Exports and Assistance to Pakistan," Center for Non-Proliferation Studies, Monterey Institute of International Studies, August 1999.
1994	Disapprove of president's decision to provide aid to certain countries enriching nuclear material	1999	First action taken by the president covered by the rule	"Presidential Determination No. 2000-04: Memorandum on India and Pakistan," 27 October 1999.
1994	Approve subsidies agreement	1999	Legislation included a deadline of December 31, 1999	"2003 Trade Policy Agenda and 2002 Annual Report on the Trade Agreements Program," Office of the United States Trade Representative, 2003.
1994	Disapproval of US participation in the World Trade Organization	2000	Resolution introduced	H.J. Res. 90, 106th Congress, 2nd Session; introduced March 6, 2000.
1996	Disapprove of president's decision to suspend Cuban embargo		President has not sought suspension of embargo	

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
1996	Disapprove third country transfers of military equipment	2002	First action taken by the president covered by the rule	"Letter from the Assistant Secretary for Legislative Affairs, Department of State, Transmitting notification of a proposed transfer of major defense equipment pursuant to Section 3 (d) of the Arms Export Control Act (AECA) from the Government of Switzerland [Transmittal No. RSAT-4-02]; to the Committee on International Relations," 107th Congress, 2nd Session, October 2002.
1996	Disapprove of proposed regulation	1996	Resolution introduced	S. J. Res. 60, 104th Congress, 2nd Session; introduced September 17, 1996.
1996	Approve presidential determination that limits on population planning program are onerous	1997	Resolution introduced	H. J. Res. 36, 105th Congress, 1st Session; introduced February 4, 1997.
1996	Disapprove of proposed budgetary cancellation ("line item veto")	1997	Resolution introduced	S. 1144, 105th Congress, 1st Session; introduced September 3, 1997
1997	Disapprove of recommendations to liquidate Amtrak from Amtrak Reform Council	2000	First report that could have triggered resolution	"Brief History of the Amtrak Reform Council," 30 April 2002 <http://govinfo.library.unt.edu/arc/#history>.
1999	Disapprove presidential request for waiver of UN reimbursement requirement		President has not sought waiver	
2000	Approve presidential request for additional funds for Plan Colombia	2000	No resolution introduced by deadline included with rule creation	Serafino, Nina M., "Colombia: Plan Colombia Legislation and Assistance (FY2000-FY2001)," Congressional Research Service, 5 July 2001.

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
2001	Approve the repeal of provisions on international money laundering	2005	Legislation includes requirement for review under rule after four years	Public Law 107-56 §303
2001	Disapprove of base closing commission recommendations	2005	First action taken covered by the rule	Mason, R. Chuck, "Base Realignment and Closure (BRAC): Transfer and Disposal of Military Property," Congressional Research Service, 28 February 2013.
2002	Disapprove extension of "fast track" trade authority beyond period authorized	2005	Resolution introduced	S. Res. 100, 109th Congress, 1st Session; introduced April 6, 2005.
2002	Disapprove of use of "fast track" if no consultation between president and Congress	2003	First action taken by the president covered by the rule	Smith, Carolyn C., "Trade Promotion Authority and Fast-Track Negotiating Authority for Trade Agreements: Major Votes," Congressional Research Service, 12 January 2011.
2002	Approve trade agreements	2003	First action taken by the president covered by the rule	Smith, Carolyn C., "Trade Promotion Authority and Fast-Track Negotiating Authority for Trade Agreements: Major Votes," Congressional Research Service, 12 January 2011.
2003	Approve renewal of sanctions against Burma	2004	Resolution introduced	H. J. Res. 97, 108th Congress, 2nd Session; introduced June 3, 2004.
2004	Approval of proposed minimum identification standards	2005	Legislation included six-month deadline for promulgation of regulations subject to rule	Public Law 108-458 §7220
2006	Approve presidential waiver of agreement with India from certain provisions of the Atomic Energy Act	2008	First action taken by the president covered by the rule	Kerr, Paul K., "U.S. Nuclear Cooperation with India: Issues for Congress," Congressional Research Service. 26 June 2012.

Year Created	Procedural Exception	Year First Relevant	Circumstances	Source
2008	Disapprove proposal to exceed cap on funds to be lent under TARP	2009	Resolution introduced	S. J. Res. 5, 111th Congress, 1st Session; introduced January 13, 2009.
2010	Approve legislation implementing IPAB recommendations		Requires Medicare growth rate to reach certain level before rule is triggered	
2010	Approve legislation to discontinue IPAB		Legislation cannot be introduced until 2017	
2010	Approve emergency plan to ensure bank solvency		Requires bank crisis to be relevant	
2011	Approve installment increases to debt ceiling	2012	Resolution introduced	S. J. Res. 34, 112th Congress, 2nd Session; introduced January 23, 2012.
2011	Approve recommendations of Joint Committee on Deficit Reduction	2011	No resolution introduced by deadline included with rule creation	Steinhauer, Jennifer, Helene Cooper, and Robert Pear, "Panel Fails to Reach Deal on Plan for Deficit Reduction," *New York Times* 21 November 2011.
2011	Approve balanced budget amendment to the Constitution	2011	Vote on resolution	S. J. Res. 10, 112th Congress, 1st Session; 14 December 2011.

Chapter 2: Facilitating Policy Gain: Creating Oversight Exceptions

Following the 2006 congressional elections, both houses of Congress were under Democratic control for the first time since 1994. President George W. Bush remained in the White House for the duration of the Congress, however, and congressional Democrats were faced with a dilemma: the war in Iraq was increasingly unpopular with core Democratic constituencies, but their ability to circumscribe the conduct of those military campaigns was limited, given the president's substantial institutional advantage in the defense policy arena (e.g. Canes-Wrone, Howell, and Lewis 2008). In addition to attempts to defund the wars outright (e.g. Murray 2007), the congressional majority also sought a less familiar solution, introducing three separate bills that would create explicit legislative checks on the ability of the president to unilaterally conduct the war. Under one of these proposals, for example, any future aid to Iraq could only be dispersed if the president certified that the government of Iraq had met certain security benchmarks. Both houses of Congress, moreover, would have to affirm that determination by passing a "joint resolution of approval"—a measure that would receive various procedural protections on the floor of the Senate. It would be referred to the Senate Appropriations Committee, from which it would be automatically discharged at four days. Once reported out of committee, a motion to proceed to consideration of the resolution would be highly privileged, not debatable, and not amendable. Debate on the measure, which itself could not be amended, would be limited to 10 hours.[1]

This approach was ultimately unsuccessful for the Democrats in the 110th Congress; the provision described above was removed from the underlying bill by the Senate, and similar standalone legislation died in committee in both chambers.[2] The prospect of changing its internal procedures in order to increase its capacity to oversee the executive branch, however, was not new territory for the Senate. Throughout the 20th century, Congress has periodically

[1] See §1331, H.R. 2206, U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, as passed by the House of Representatives, May 2007.
[2] See H.R. 1263, the Iraq Benchmarks Act, and S. 433, the Iraq War De-Escalation Act.

created this kind of legislative check on the president's ability to exercise discretion, ensuring that the chamber has input into decisions ordinarily left to the executive branch. These special rules represent the first of two kinds of majoritarian exceptions, which I call "oversight exceptions."

The legislature is not, however, the only branch potentially made better off by granting these oversight measures procedural protections. From the president's perspective, the privileged status of these measures actually induces actions that he would otherwise avoid. For certain status quo policies, the fact that the legislation reviewing the executive's action cannot be amended on the floor of the Senate provides him with more discretion than if his unilateral policy choices were subject to revision through the regular legislative process.

This logic—that it is occasionally Pareto superior to protect certain proposals from obstruction in the Senate—flows directly from a model, laid out below, of the strategic interaction between the Senate and the president in an issue area in which the president possesses substantial authority to act unilaterally. Comparing the expectations about policy outcomes under a set of baseline conditions without special rules to the predicted results in the presence of majoritarian procedures illustrates one of my principal claims about majoritarian exceptions: they enable particular policy changes that would, absent the special rule, be substantially more difficult (if not impossible) to enact. After outlining the expectations generated by the model, I describe how my other claim about majoritarian exceptions—that they benefit the majority party in the Senate—has consequences for the issue areas in which we should observe their creation. I then test both the model- and issue-based predictions on original data, finding support for both central claims.

The Unilateral Power of the President and Congress's Ability to Respond

Unilateral action on the part of the president takes a range of forms. Many scholars of the presidency emphasize the specific instruments in the executive's "tool box." Executive orders are used to direct specific federal government officials and agencies to either take or avoid a given action. Presidential proclamations perform a similar function, but are directed towards individuals and groups outside of government, making them less consequential. National security directives, meanwhile, serve as classified instruments for directing policy, usually in the

foreign or military policy arena. Executive agreements are alternatives to formal treaties, which require the advice and consent of the Senate. Signing statements, finally, describe the president's interpretation of statutory language and how that understanding is likely to play out in the executive branch's implementation of the law (Cooper 2005; Howell 2003).

From where does the president's power to engage in these kinds of action come? Article II of the U.S. Constitution grants the president "executive power" and directs him to "take care that the laws be faithfully executed." A series of 20th century Supreme Court cases (*United States v. Curtiss-Wright* (1936), *United States v. Belmont* (1937), and *United States v. Pink* (1942)) solidified the president's ability to issue directives regarding "external affairs," but that notion has evolved to include many areas of both foreign and domestic policy (Howell 2003). Within this legal context, moreover, the president both has an incentive to push the boundaries of his authority and is well-equipped to do so. Unlike members of Congress, presidents serve a national constituency and have a firm, two-term limit for establishing a legacy. Rather than being motivated by re-election (Mayhew 1974), then, presidents are interested in expanding the institutional power of their office (Moe 1999). The fact that presidents serve as executives, moreover, means they have organizational resources and informational advantages that facilitate this growth in power (Moe and Howell 1999b).

For our purposes here, however, presidential action is not limited to these specific policy instruments. Congress has also fed the president's desire for expanding power by delegating authority to the executive branch, essentially creating another envelope for the president to push. The factors affecting Congress's decision to delegate responsibility to the president have been well-documented. These include, for example, the costs of subsequent oversight and legislator risk aversion (Bendor and Meirowitz 2004), the similarity of preferences between the executive and Congress, the degree of uncertainty over eventual policy outcomes, and the expertise of legislators vis-à-vis agencies (Epstein and O'Halloran 1999), and the political capacity of legislators and the bargaining environment in which they operate (Huber and Shipan 2002). In making these delegation decisions, Congress has various tools available to attempt to monitor the executive branch's exercise of its discretion, including administrative procedures (McCubbins, Noll, and Weingast 1987; 1989), writing detailed statutes (Huber and Shipan 2002), and other oversight mechanisms (McCubbins and Schwartz 1984; Lupia and McCubbins 1998). While the efficacy of congressional actors' efforts using these instruments vary, they are at least sometimes

able to ensure the production of policy outcomes closer to their preferences (e.g. Weingast and Moran 1983).

In general, however, once the executive has established a certain level of discretion in a policy area—either through explicit delegation or an exercise of his constitutional authority—it is exceedingly difficult for Congress to claw back that power (Volden 2002). Indeed, scholars of the presidency have argued that Congress's ineffectiveness at this task only augments the president's ability to undertake unilateral action (Moe and Howell 1999a, 1999b). The chamber and its members are plagued by a range of collective action problems, each of which springs from the fact that its members, as seekers of re-election (Mayhew 1974) have an incentive to engage in individual behaviors that jeopardize the collective body's ability to enact legislation. A long and wide literature explores how different internal structures, especially committees (e.g. Hall and Grofman 1990; Gilligan and Krehbiel 1990) and parties (Aldrich 1995; Cox and McCubbins 1993), are meant to help solve these collective dilemmas. These issues are especially acute in the Senate, where the ability of individual members to engage in obstruction is greater than the House (Binder and Smith 1997; Koger 2010; Wawro and Schickler 2006; Ainsworth and Flathman 1995; Smith and Flathman 1989; Smith and Gamm 2002; Evans and Lipinski 2005). Even if Congress is able to overcome these internal challenges to work o collectively, their individual re-election incentives suggest that they should be paying more attention specific, constituency-centered interests than to maintaining the overall power and influence of the institution (Howell 2003). The voters that House members and senators must face every two or six years, respectively, are unlikely to reward or punish incumbents based on their work protecting the body's place in the separation of powers system. The president, then, has good reason to expect that the likelihood of a legislative reprisal for an action he has taken is low, so why should he worry about the prospect of these checks on his power?

Indeed, empirical work on legislative *responses* to unilateral action by the president suggests that it is possible in only limited circumstances. Moe and Howell (1999a) and Howell (2003) argue that any such successful legislative reactions must be rooted in concerns on the part of individual legislators about the constituency effects of the precipitating presidential action. Black et al. (2011), meanwhile, test a version of this claim using evidence from congressional responses to recess appointments under President George W. Bush; they argue that Congress will only be able to overcome its internal collective action problems to check the president's action

on a particular issue when the executive's maneuver creates high political costs for a sufficient number of members. In addition to these constituency-level political concerns, other work points to the role of partisan conflict. Howell and Pevehouse (2011) find that, in the war powers context, members of Congress are less likely to check the actions of a co-partisan president than an executive of the opposite party. MacDonald (2010; 2013) documents a similar pattern in the use of limitation riders, or specific legislative provisions included in appropriations bills that restrict the executive branch's ability to promulgate regulations on particular topics, finding they are more common under divided government.

Limitation riders also illustrate well another important dynamic of Congress's difficulty in limiting executive discretion. Historically, we have associate increased presidential power with the foreign policy arena (e.g. Canes-Wrone, Howell, and Lewis 2008). Over the course of the 20th century, however, the executive's ability to act unilaterally has expanded into a wide range of domestic policy areas as well. The media made much of high-profile actions by President Barack Obama in 2014 and 2015 on immigration (Shear 2014) and climate change (Davis 2015), but such exercises of power are hardly new. Comprehensive surveys of executive orders issued during the 20th century, for example, reveal activity in areas such as social welfare, natural resources and public lands, and agriculture, as well as trade, defense, and foreign aid (King and Ragsdale 1988; Mayer and Price 2002; Howell 2003). Other work finds that while the president is more likely to issue signing statements regarding provisions that deal with foreign affairs, he also uses the tool to counter proposed congressional oversight (Evans 2011). Even the president's ability to direct the federal government's procurement and contracting policies have allowed him to make headway on important domestic policy goals (Gitterman 2013).

This broad discretion on the part of the president to act unilaterally in a wide range of policy areas, and the fact that Congress is generally ill-equipped to assert institutional influence against the executive branch might leave us skeptical that we should ever observe the creation of oversight exceptions. After all, when the president signs a bill containing this kind of rule change, he is surrendering some of his unilateral power. The individual possible components of an oversight exception, meanwhile, also reallocate power within the Senate. First, the senators with preferences between the chamber median and the filibuster pivot are also giving up some of their ability to dictate the content of a proposal; now, any legislative response to an action by the president need not accommodate their preferences, since their consent is not needed for passage

under simple majority rule. Second, the fact that the procedures generally prohibit amendments, limits the capacity of individual legislators to affect the content of the bill. Finally, in an oversight exception includes a mechanism by which a proposal can be forced out of committee, the members of that committee will also have their influence over the underlying measure's content reduced. Intuitively, then, we might then expect certain actors to be made worse off by this kind of majoritarian procedural change, the model outlined below tells a different story.

A Spatial Model of Exception Creation

To determine the conditions under which we should observe this kind of rule change, I rely on a spatial model of a legislature and a president (P), which incorporates the following assumptions. First, the legislature's rules permit a filibuster, effectively creating a supermajority voting rule for both votes to change the rules (i.e., to create a majoritarian exception) and to pass bills.[3] Second, I assume that bills come to the floor of the legislature under an open rule. Third, all actors have continuous, single-peaked preferences in a one-dimensional policy space. In addition to P, the legislature contains a veto pivot (V), a filibuster pivot (F), and a median voter (M) (Krehbiel 1998). Throughout the model explicated here, without loss of generality, I assume that $P < M$.

To this point, the model bears a close resemblance to Howell's (2003) theory of unilateral action by the president. Several additional assumptions, however, distinguish my approach from his. First, rather than parameterizing the amount of discretion possessed by the president, I assume P faces no existing legal and/or constitutional constraints on his unilateral action. Put differently, the specific policy area under consideration here is one in which the president has substantial authority to undertake policy change. Because the president is unconstrained in my setup, I depart from Howell by eliminating the judiciary as an actor. Finally, I also introduce the majority party median (L), who possesses unique agenda setting/gatekeeping power; this assumption follows Chiou and Rothenberg (2003) as a way of incorporating majority party

[3] Here, a majoritarian exception is defined as a legislative procedure that provides for a.) an unamendable proposal made by the president (P) to change the status quo and b.) a simple majority vote on that proposal by that legislature. If that vote fails, the proposal does not take effect.

influence and is consistent with the actual powers of the Senate majority leader (Heitshusen 2013).

Baseline Game

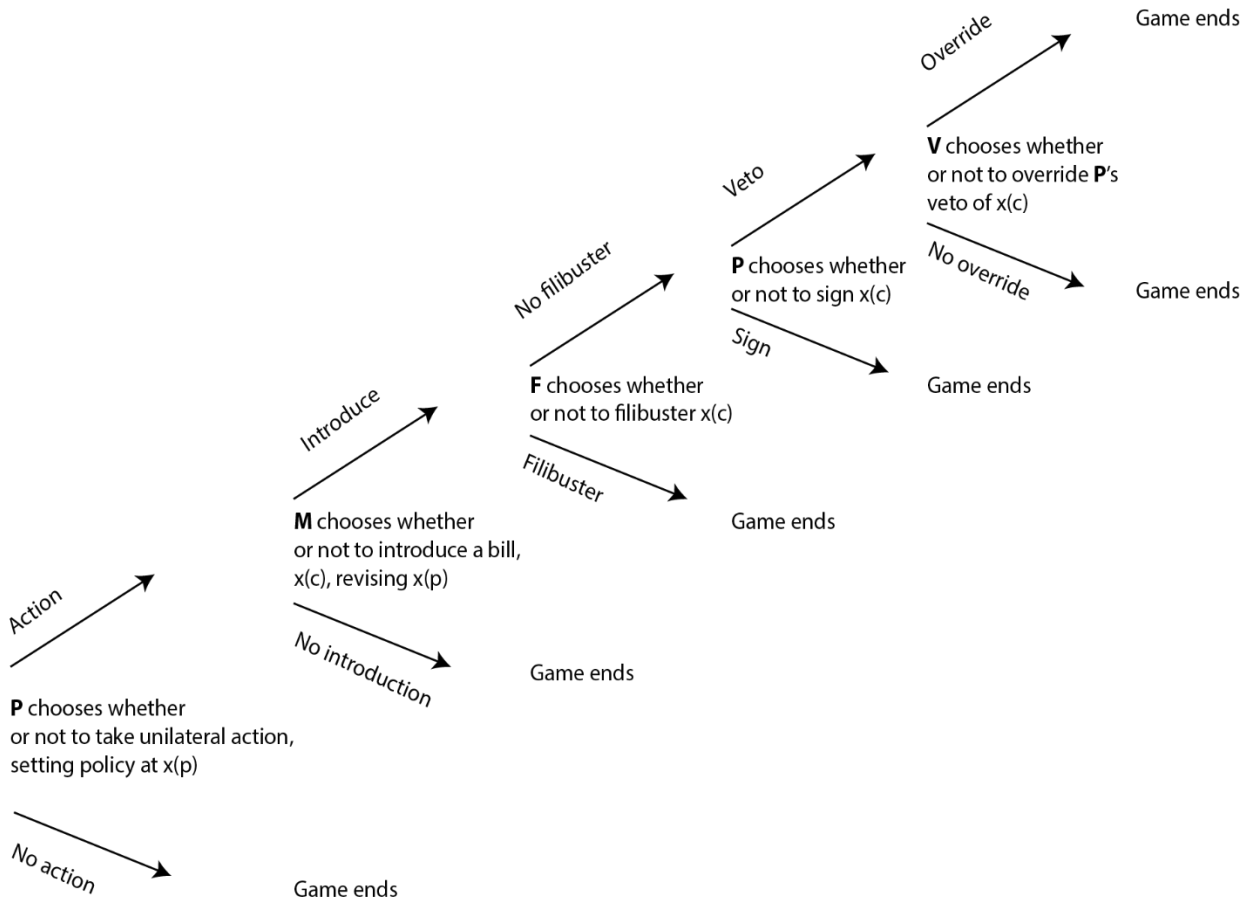
To illustrate most clearly the situations in which we should observe exception creation, I first describe a "baseline" game in which changing the rules is not an option for Congress. The baseline notation is summarized in Table 2.1. Play of this game proceeds as follows, as depicted in Figure 2.1. P moves first, choosing whether or not to take a unilateral action moving the status quo, Q, to a new location, x(p). Importantly, the legislature does not have the ability to revise the status quo *before* the president moves; the legislature is only empowered to revise unilateral actions taken by P.[4] If P does take a unilateral action moving Q to x(p), L chooses whether or not to introduce a bill revising P's action from x(p) to yet another new location, x(c). If L introduces a bill revising P's action to x(c), F chooses whether or not to filibuster L's proposal. If F does not filibuster L's proposal, the legislature votes on x(c) and P chooses whether or not to sign it. If P vetoes the bill, V chooses whether or not to override the veto. If V overrides the veto, x(c) is the policy. If the legislature does not override the veto, x(p) remains the policy.

[4] This assumption may seem strong and, to some, implausible. In the policy areas where the president has broad unilateral powers, however, it is often because Congress has previously delegated those powers to the president and, in doing so, has limited or willingly abdicated its own ability to make the first move. Take, for example, trade policy. In 1934, Congress delegated to the president the authority to make trade agreements with foreign countries and to reduce tariffs by up to 50 percent—authority that was subject to reauthorization every three years. Congress raised and lowered this 50 percent threshold periodically before returning it to 50 percent with the Trade Expansion Act of 1962. Under the authority of this law, U.S. trade negotiators returned from the Kennedy Round with agreements on *non-tariff* items, Congress reacted harshly and threatened to withhold implementing legislation for the non-tariff components—one on chemicals and one on grains. Because the president realized that future international agreements would likely need to extend beyond just tariffs, and because Congress was concerned about ever-expanding congressional efforts in the area, the two branches sought a new balance of power on trade, culminating with the Trade Act of 1974, containing a majoritarian exception (Aaronson 2001; Stokes and Choate 2001).

Table 2.1: Model Notation, Baseline Game

P: president; p: president's ideal point
V: veto pivot; v: veto pivot's ideal point
M: floor median; m: median's ideal point
L: majority party median; l: majority party median's ideal point
F: filibuster pivot; f: filibuster pivot's ideal point
Q: status quo at beginning of game
Q′: new policy at end of game
x(p): new policy set by president
x(c): new policy set by legislature

Figure 2.1: Baseline Game Extended Form



Given the sequential character of the game, I solve it using subgame perfection. The full solution to both the baseline game and the rule change alternative is presented in Appendix 2.1; here, I provide the basic intuition of the underlying strategic behavior. First, let us consider Case 1, where the majority leader L is of the same party as the president P, and both L and P are more extreme than V. (Each case is depicted visually in Figure 2.2.) This is a common arrangement of preferences, occurring, for example, in 11 out of 29 congresses between 1955 and 2012 when preferences are measured using DW-NOMINATE scores (Poole and Rosenthal 1997). In this situation, P has full latitude to set x(p) at his ideal point, p, in the baseline game. To respond to this action, L would have to introduce x(c), *which comes to the floor under regular order*. Thus, under an open rule, M would be able to amend x(c) away from L's ideal point, making L worse off. As a result, L avoids introducing a legislative response. The final outcome, then, is $Q'=p$.

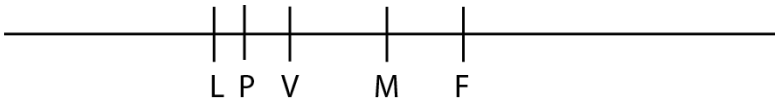
Next, let us consider Case 2, where the president is exceptionally moderate, i.e., when $V < P$. This is a relatively rare arrangement; since 1955, for example, it has only characterized the preferences of the Senate and the president for four years, between 1965 and 1968. In this situation, P is able to set $x(p)=p$; the congressional constraint does not bind. P would veto any x(c) that moves x(p) away from p, and V will not consent to an override. Again, policy is ultimately set at $Q'=p$.

Finally, for the baseline game, let us consider Case 3, when $L > V$ and $P \leq V$. In practice, this arrangement characterizes divided government; only in the presence of very large Senate majorities is this condition possible under unified government.[5] Here, P will set $x(p)=v$ if $q > v$. P cannot move q any farther left than v without provoking a congressional response, x(c), that would make P worse off. If $q \leq v$, P will not make a proposal x(p). Any proposal that would make P better off will trigger a congressional response—and because $L > V$, L is now willing to introduce that such a measure, x(c). The exact location of the proposal x(c) that induces P's equilibrium behavior varies based on the location of L (see Proposition 1 in Appendix 2.1 for a full definition of L's proposal strategy).

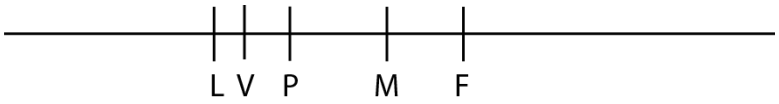
[5] Mathematically, the Senate majority party must have 66 or more members for the median member of the majority party to be more moderate than the veto pivot under unified government. Since 1955, this has been true only twice (the 88th and 89th Congresses, 1963-1967).

Figure 2.2: Possible Arrangements of Preferences, Spatial Model of Oversight Exception Creation

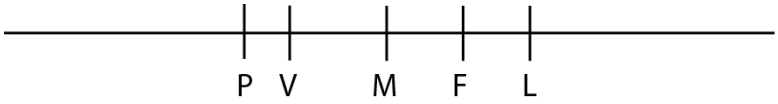
Case 1



Case 2



Case 3



In the baseline game, then, we often observe P getting exactly what he wants; in Cases 1 and 2, he is able to move policy to his ideal point without provoking a congressional response. In Case 3, for most values of Q, P can accomplish most of what he wants, as he is only constrained by the existence of the veto pivot. Both these predictions are consistent with the empirical literature discussed above that documents how the president is often able to move policy closer to his preferences with little concern about Congress's response.

The only exception to this pattern occurs under divided government (Case 3) when the status quo is also quite extreme on the same side of the policy space as the president. In this situation, the president avoids taking any sort of unilateral action because if he does so, it will provoke a congressional response that produces a final policy that is farther from P's ideal point than the current status quo. As we will see below, however, when we introduce the possibility of rule change, Congress can actually induce revisions to these extreme policies that are Pareto superior.

Rule Change Alternative

Now, let us suppose that Congress also has the ability to change its rules and, specifically, the option of creating an oversight exception. This second component of the game commences when any of the following occur in the baseline game:

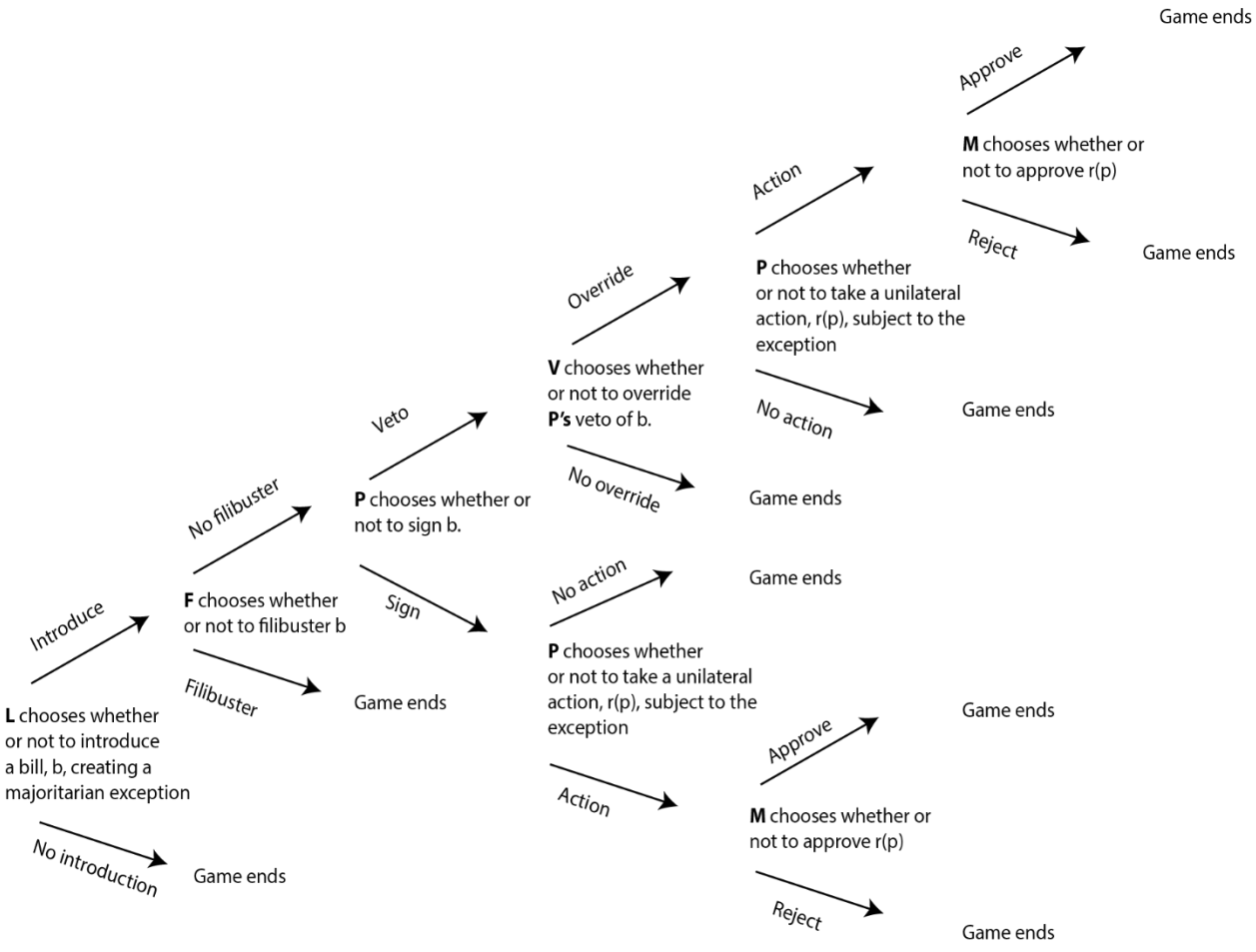
1. The president chooses not to take a unilateral action, setting policy at x(p) OR
2. L chooses not to introduce a bill revising x(p) OR
3. F chooses to filibuster x(c) OR
4. P signs the bill revising x(p) to x(c) OR
5. Once V has chosen whether or not to override P's veto of x(c).

Once any of those events have taken place, we proceed to the action depicted in Figure 2.3. (Relevant additional notation is summarized in Table 2.2.) L chooses whether or not to introduce b, a bill changing the rules. If L does not introduce b, the game ends. If L introduces b, F chooses whether or not to filibuster b. If F filibusters b, the game ends. If F does not filibuster b, the legislature votes on b and P chooses whether or not to sign it. If P vetoes b, V chooses whether or not to override the veto. If V does not override the veto, the game ends.

Table 2.2: Model Notation, Rule Change Alternative

P: president; p: president's ideal point
V: veto pivot; v: veto pivot's ideal point
M: floor median; m: median's ideal point
L: majority party median; l: majority party median's ideal point
F: filibuster pivot; f: filibuster pivot's ideal point
Q: status quo at beginning of game
Q′: new policy at end of game
x(p): new policy set by president
x(c): new policy set by legislature
b: bill containing majoritarian exception
r(p): proposal made by P under a majoritarian exception

Figure 2.3: Rule Change Alternative Extended Form



If b has been successfully enacted—either because P has signed it into law, or because V has overridden P's veto—the president has the opportunity to undertake unilateral action by proposing r(p). Importantly, r(p) differs from x(p) in the baseline game in that r(p) is subject to congressional approval under the new procedures. If P does not introduce r(p), the game ends. If P introduces r(p), the legislature votes on r(p). If the legislature approves r(p), policy is set at r(p) and the game ends. If the legislature does not approve r(p), policy remains at Q′.[6]

Let us now consider the same three cases discussed above. Recall that in Case 1, P is able to set Q′=p. Can the congressional actors make themselves better off by creating new rules? While there are circumstances under which L, V, M, and F would be better off under b's new rules, there is no unilateral action, r(p), that P would take under the new rules that would improve his standing AND to which M would consent. In other words, the new rules do not empower P to take any actions he was previously avoiding, so creating them produces no gain for the legislature.[7] As a result, policy will ultimately remain at Q′=p. The same is true in Case 2, wherecreating a majoritarian exception has no effect on policy, which will end up at x(p)=Q′=p. There are no circumstances in which all pivotal actors are better off under policy made at b than under the existing rules, so there is no incentive for the legislature to create a majoritarian exception.

So far, adding the option of rule change does nothing to change the ultimate outcome of policymaking in the game. In the divided government world of Case 3, however, we will observe oversight exceptions being created in some circumstances—namely, when $Q < p$. In addition, actors will be indifferent about enacting one if $p \leq Q < v$. When $Q < p$, we saw that, in the baseline game, P does not want to propose x(p). This is because any x(p) would trigger a response, x(c), at 2v-x(p), which makes P worse off than Q. Under a rule change, however, P would have the power to set r(p) at p. Recall that r(p) cannot be amended, and comes to the floor for a simple majority vote. At least M and all members to the right of M will approve of a

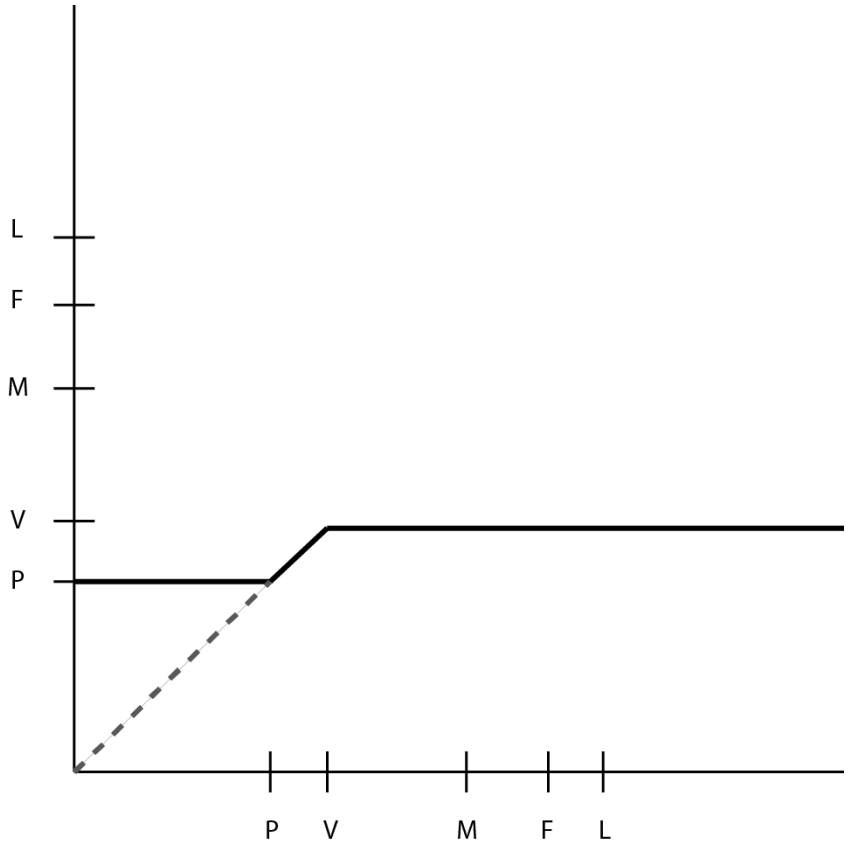
[6] This interaction, as modeled, represents a simplification of reality in two important ways. First, in practice, the oversight exception can involve Congress enacting either a resolution of approval or of disapproval. Second, the Supreme Court's ruling in *INS v. Chadha* held a one-house veto of presidential action unconstitutional in 1981. The one-period, complete information nature of the game here, however, means that neither of these dynamics affect the equilibrium outcome. See Appendix 2.2 for a further description.

[7] In reality, we might expect the legislature to go ahead and create the new rules anyway, as they look forward to possible new presidential administrations. In the one-period version of the model, however, the legislature considers only possibilities in the current period. The discussion in the Chapter 1 of the fact that majoritarian exceptions are often deployed quite soon after initial enactment supports this modeling choice.

movement to p. Because all pivotal actors (L, M, V, and F) in the legislature are better off under the new rules, P will reserve his right to take unilateral action until *after* the rules have been changed.

When $p \leq Q < v$, L will be indifferent about proposing b. P did not move Q in the first part of the game, because he did not want to provoke a response, x(c), that made him worse off. If L does introduce b in the rule change round, V would override P's veto of b. There is no proposal, r(p), however, that both makes P better off and to which M would consent. Therefore, policy remains at the original status quo, Q. Finally, when $v \leq Q'$, there will be regions in which L will propose b, but in which b will not pass. Policy, then, will remain at $Q'=x(p)=v$, which is the closest P can get policy to his ideal point without prompting a successful revision, x(c). (See Definition 8 in Appendix 1 for a full description of L's proposal strategy for b.) The equilibrium results when $L > V$ and $P \leq V$ are depicted by the solid line in Figure 2.4; the dotted line represents, for reference, the values of Q that P does not change in the first stage of the game, waiting instead for the legislature to change the rules.

Figure 2.4: Policy Equilibrium with Creation of Majoritarian Exception



In sum, we should expect to observe majoritarian exceptions successfully created only in the following circumstance:

$$P \leq V \text{ and } Q \leq p \text{ and } L > V$$

Under these conditions, waiting for the legislature to change the rules empowers the president to take unilateral actions on a set of policies that, under the existing procedures, he prefers to leave unchanged lest Congress respond with a regular, amendable piece of legislation. All pivotal actors in Congress, meanwhile, also prefer the policies achievable under the new rules to the status quo.

These results suggest several testable implications of the model. First, we will observe rule change when the status quo is extreme on the same side of the policy space as P. Second,

majoritarian exceptions should only be created when L is to the right of V. In the period covered by the empirical tests below, this condition is always associated with divided government. Third, as P becomes more extreme in the policy space, the region in which P will be better off waiting to take a unilateral action until after a rule change has been enacted gets smaller, as is illustrated by the triangle on the left side of the policy space in Figure 2.4. (A fourth implication—that V is more moderate than P—is always satisfied for the period under study here, making it difficult to test.) We can restate these predictions in the form of hypotheses as follows:

Status Quo Hypothesis: Majoritarian exceptions will be created only if the status quo policy is extreme on the same side of the policy space as the president.

Divided Government Hypothesis: Majoritarian exceptions will only be created under divided government.

Presidential Preferences Hypothesis: The probability that a majoritarian exception is created decreases as the president becomes more extreme in the policy space.

The (Partisan) Issue Politics of Oversight Exceptions

The model described above provides valuable insight into the arrangements of preferences, both within the Senate and between the Senate and the president, under which we should observe the creation of oversight exceptions. By relying on the spatial distances between the relevant actors, however, the model's predictions are all at the Congress level. Clearly, however, even if preferences are arranged such that we would expect rule change, we do not observe new rules in every possible policy area.

How might issue-level dynamics also affect whether an oversight exception is created? Here, it is helpful to recall my second fundamental claim about majoritarian exceptions: they are created and used in ways that further the goals of the majority party in the Senate—aims that exist on two levels. The individual members that comprise the majority caucus are assumed to be seekers of re-election (Mayhew 1974), and collectively, they work to maintain that status in

future congresses (Cox and McCubbins 1993, 2005; Aldrich and Rohde 2000; Balla, et. al. 2002; Lee 2009). Convincing voters to return majority party members to office requires both collaboration between co-partisans to enact a popular legislative agenda (Cox and McCubbins 1993; Matthews and Stimson 1975) and opportunities for individual members to claim credit for accomplishments (Mayhew 1974; Fiorina 1989) and to avoid blame for negative events (Weaver 1987).

In one sense, the pursuit of these goals is captured by the strategic interaction in the model described above. The unique power of the majority leader (modeled as L, the median member of the majority party) to set the agenda means that he will never propose changing the rules when a majority of the majority caucus's preferences would be better reflected in the policy produced by the chamber's regular procedures. At the same time, the stylized nature of the model does not capture the degree to which the majority leader must choose between many potential changes to the rules that would facilitate policy changes that help his party and its members achieve their electoral goals.

For which issues, then, should the majority leader expend scarce floor time changing the rules (Adler and Wilkerson 2012)? One possibility is that the public's preferences on the issue matter. The model predicts that, if an oversight exception is to have consequences for the ultimate outcome of the policymaking process, it will be to bring policy from an extreme status quo on the opposite side of the policy space from the Senate majority party to a location closer to their preferences. Depending on the public's attitudes, such a change may or may not be popular. If moving policy closer to the preferences of the majority is popular, then we should be more likely to observe rule change. If, however, the potential policy change is unpopular, the majority party has no electoral incentive to create procedures that make it easier to adopt a change that is out of favor with the public. This suggests the following hypothesis:

Public Preferences Hypothesis: The probability that an oversight exception is created increases as public support for the underlying proposal increases.

Among these popular policy changes, the electoral value to the majority party of creating special rules is also likely to depend on the salience of the underlying issue to the public. Spending scarce agenda space enacting special procedures that facilitate a new policy about

which the public cares little will pay far fewer dividends than using that same floor time to pass new rules that apply to a salient issue area. For unpopular policy changes, we should expect exactly the opposite. The majority party, in its attempt to avoid blame for negative events, should be especially careful to avoid enabling unwelcome policy change when the public is paying substantial attention to an issue. As a result, we would expect the following:

Salience Hypothesis: If an oversight exception facilitates an unpopular policy change, the probability that it is enacted into law decreases when the issue is more salient. If a proposed oversight exception facilitates a popular policy change, the probability that it is enacted into law increases when the issue is more salient.

Both the *Public Preferences* and *Salience* hypotheses assume that the audience of electoral value when choosing issues on which to pursue rule change is the overall set of voters who might vote in the next election, when the majority party is attempting to retain its status. Suppose, however, that the majority is better served by targeting the specific issues that matter to its loyalists, especially party activists, because it is those actors who play an outsized role in ensuring future electoral success for the majority's candidates (e.g. Bawn et al. 2012; Bailey, Mummolo, and Noel 2012). How might we define this set of issues important to these key supporters, which may or may not overlap with the set of policy changes that are popular and/or salient among the public as a whole? Empirical evidence suggests that activists and loyal partisan voters expect action by their congressional co-partisans on the issues the party "owns"—that is, issues on which there is a long-term positive association between voters and the party (Petrocik 1996; Egan 2013). Under this logic, a Democratic Senate majority party should be more likely to introduce a change to the procedures for enacting pension rules than to those for reviewing military contracting procedures,[8] as its core constituents care more about the former issue than the latter, and creating the oversight exception will increase the probability of successful policy change. We can state this in the form of a hypothesis as follows:

[8] See, for example, H.R. 2, the Employee Retirement Income Security Act of 1974, 93rd Congress, and H.R. 3899, the Contract Accountability for Taxpayers Act, 108th Congress.

Issue Ownership Hypothesis: The probability that an oversight exception is created increases when the issue with which the rule change deals is owned by the majority party.

The preferences and attitudes of the voters and activists in front of which the Senate majority party must compete certainly play a role in how the caucus leadership selects among issues on which to pursue rule change. At the same time, the process of actually changing policy under an oversight exception does not involve only the Senate, or even Congress. Once the special rules are created, the president must take a subsequent unilateral action for Congress to review. At any given point in time, the president will have topics he chooses to prioritize over others (e.g. Beckmann 2010; Rudalevige 2002). If the executive is unlikely to actually take advantage of the new latitude afforded to him under the exception, it makes little sense to spend scarce agenda time creating special rules that will have no effect on the ultimate location of policy. At the same time, if the president is prioritizing certain issues, the Senate majority party may infer that he is likely to exploit the new procedures—to the ultimate benefit, from a policy perspective, of all the actors involved.

When the presidency and the Senate are controlled by opposite parties, moreover, the majority caucus may have an additional incentive to change the rules. Lee (2009) documents empirically the way in which Senate majority parties opposite initiatives championed by oppose party presidents in an attempt to build their own brand. Because delegation exceptions give the appearance of limiting the unilateral power of the presidency, it may be electorally useful to impose an additional legislative check on the conduct of an opposite party executive—even if the policy change made possible by the special rules makes actors in both branches better off. The Senate majority party, in other words, can claim credit for both aggressively overseeing a counter-partisan president AND enabling a new policy it prefers. This logic suggests the following hypothesis:

Presidential Priority Hypothesis: Oversight exceptions are more likely to be created on issues prioritized by the president.

Data and Estimation

To test these hypotheses, I turn to novel data on majoritarian procedural exceptions proposed and enacted from 1969 to 2012 (the 91st to 112th Congresses), and deploy it in two ways. First, I analyze whether the factors outlined above predict which introduced proposals are passed and signed into law. Second, because we may be concerned that the results of the first analysis are affected by examining only those rule changes that a legislator has formally proposed, I investigate whether each procedural change in each of a set of issue areas occurred in each Congress.

Identifying Rule Change Proposals

Previous work on procedural change in Congress that explores multiple instance across time tends to examine whether or not we observe new rules being created in a given Congress (Binder 1997; Dion 1997; Schickler 2000). By comparing sessions in which procedures were altered to counterfactual observations in which the rules were left alone, these accounts test whether various Congress-level factors, such as the relative strength of the majority and minority parties, are the determinants of rule change.

The unique status of majoritarian exceptions within the body of congressional procedure, however, allows us to identify an alternative set of counterfactual observations: changes to the rules that were actually introduced but that were not successfully enacted into law. Unlike other procedural innovations, which often rely on rulings from the presiding officer that are subsequently sustained by a vote of the chamber (Koger 2010), majoritarian exceptions' path to creation goes through the regular legislative process with an ordinary piece of legislation as the vehicle.

Within the set of all proposed bills, then, how might we determine which ones include these kinds of changes to the rules? In general, the measures enacting them carry special language making clear the constitutional source of the authority used to change Congress's internal procedures through the legislative process. One clause signaling the existence of an exception in a bill states that a given provision in the bill is enacted "as an exercise of the

rulemaking power of the Senate and House of Representatives."[9] A second clause indicates that the exception is adopted "with full recognition of the constitutional right of either House to change the rules"—a right that comes from Article 1, Section 5 of the Constitution, which states that "each House may determine the Rules of its Proceedings."[10] Several slight variations of these phrases exist—i.e., reversing the order of the chambers in the first phrase or substituting "change its rules" in the second. Using these as search terms in the ProQuest Congressional database of all full-text bills introduced in both the House and Senate dating back to 1789, I can identify legislation that is likely to contain a majoritarian exception.

To confirm that these two "legal status" clauses would identify the relevant universe of cases, I relied first on two sources delineating known, successful exceptions. Chapter XXX of the *House Manual* contains a section entitled "Legislative Procedures Enacted Into Law," many of which meet my definition of a majoritarian exception. In addition, in their brief case study of enacted limitations on debate in the Senate, Binder and Smith (1997) provide a list of examples of these provisions.[11] Neither source serves as a comprehensive list of successful enactments for our purposes. The House list, for example, omits previously created procedures that are no longer in force. Binder and Smith, moreover, note that their list is comprised of "selected laws." Nonetheless, known cases serve as a useful benchmark for evaluating the success of the legal clauses as initial search terms.

Using the legal status clauses as search terms located 83 percent of the laws containing Senate-related provisions included in the *House Manual's* list. While this coverage rate is reasonable, I improved it by leveraging the fact that many majoritarian exceptions refer to other, existing provisions. In particular, rather than stating specifically the debate limit for a future, protected bill, new exceptions often cite the existing rules enacted in an entirely separate context. For example, rather than stating that debate on a protected bill is capped at 20 hours, a measure might say "the provisions of section 151 of the Trade Act of 1974" apply to the future resolution.[12] To identify additional terms, then, I consulted the legislation located using the first-stage, legal status clauses search, compiling a list of other bills to which they referred to establish

[9] See, for example, Public Law 112-25, the Budget Control Act of 2011, Section 301A(g).
[10] See, for example, Public Law 94-265, Magnuson-Stevens Fishery Conservation and Management Act, Section 203(c)(1)(B).
[11] See Binder and Smith (1997), Table 6-2.
[12] See, for example, §1103(b)(1)(A) of Public Law 100-418, the Omnibus Trade and Competitiveness Act of 1988.

the particulars of a new set of procedures. Both the variations on the legal status clauses and these additional, bill-referent search terms are listed in Table 2.3.

Table 2.3: Search Terms Used in ProQuest Congressional Database to Identify Majoritarian Exceptions

"as an exercise of the rulemaking power of the Senate and House of Representatives"
"as an exercise of the rulemaking power of the House of Representatives and the Senate"
"as an exercise of the rulemaking power of the Senate and the House of Representatives"
"as an exercise of the rulemaking power of the House of Representatives and Senate"
"as an exercise of the rulemaking power of the Senate"
"with full recognition of the constitutional right of either House to change the rules"
"with full recognition of the constitutional right of either House to change its rules"
"with full recognition of the constitutional right of either House to change such rules"
"with full recognition of the constitutional right of the Senate to change the rules"
"with full recognition of the constitutional right of the Senate to change such rules"
Other reference provisions:
Congressional Budget and Impoundment Control Act, Sections 305(b), 310(b), and 1017
Trade Act of 1974, Sections 151, 152, and 153
Energy Policy and Conservation Act, Section 551
Alaskan Natural Gas Transportation Act, Section 8
Public Law 98-473/Department of Defense Appropriations Act for Fiscal Year 1985, Section 8066(c)
Arms Export Control Act of 1976/Public Law 94-329, Section 601(b)
Title 5, Sections 909, 911, and 912
National Emergencies Act, Section 202
Reorganization Act of 1949, Title II

For each bill identified using these two search strategies, I next needed to clarify that the rule change contained in the bill actually imposed a limit on debate in the Senate; some procedural changes, for example, only provide a mechanism for forcing a bill out of committee. Because our fundamental question of interest here is about exceptions to the filibuster rule, imposing a limit on floor debate was the minimum requirement a bill must meet to be included in the dataset. Finally, because our unit of interest is the rule change, measured at the Congress-level, I identified duplicate observations—that is, identical sets of procedures included in multiple bills in a single Congress, including instances where the same change to the rules was included in both a House and Senate bill. This pruning process ultimately yielded 531 majoritarian exceptions proposed between the 91st and 112th Congresses. Each of these 531 exceptions was then categorized as either increasing Congress's ability to oversee the executive branch (the focus of this chapter) or protecting a proposal generated by a special agenda setter (delegation exceptions, the focus of Chapter 3).[34] Since the analysis below is concerned with predicting successful enactment, we can utilize Adler and Wilkerson's Congressional Bills Project (2012) data to determine whether the bill containing each exception was ultimately enacted into law.[35] Finally, because several of the key independent variables described below are measured at the level of the policy area, we need to be able categorize each proposed rule change by the topic with which it deals. Adler and Wilkerson apply Baumgartner and Jones's (2014) Policy Agendas Project coding scheme to accomplish this for each bill.[36] Because the provisions creating special procedures are often contained in broader pieces of legislation, I examined each individual provision to ensure that the coding of the entire bill reflected the content of the specific rule change, making changes when appropriate. In addition, to better reflect the variation in the substance of the exceptions and match the issue ownership data discussed below (Egan 2013), I break out several additional issues from within Baumgartner and

[34] There were two additional, small residual categories: one for increasing Congress's internal oversight capacity and one for observations that could not be otherwise categorized. Together, these residual observations comprise only 7 percent of all proposed exceptions.

[35] E. Scott Adler and John Wilkerson, Congressional Bills Project: 1969-2012, NSF 00880066 and 00880061. The views expressed are those of the authors and not the National Science Foundation.

[36] The data used here were originally collected by Frank R. Baumgartner and Bryan D. Jones, with the support of National Science Foundation grant numbers SBR 9320922 and 0111611, and were distributed through the Department of Government at the University of Texas at Austin. Neither NSF nor the original collectors of the data bear any responsibility for the analysis reported here.

Jones's macroeconomics major topic using the supplemental, minor topic codes: deficit/debt reduction; Social Security; inflation; and taxes.[37]

Key Independent Variables

The independent variables needed to test the theoretical account offered above can be divided into two groups, the first of which comprises those items required to test the model's predictions. The *Status Quo* hypothesis requires an estimate of the current location of policy, which is difficult to obtain. A reasonable proxy is the a *Switch in Control* variable, which takes on the value of 1 if party control of either the presidency or the Senate has switched from the previous Congress and 0 otherwise. These switches in control should be associated with more extreme status quo points, and the *Status Quo* hypothesis predicts we will only observe rule change in the presence of an extreme status quo. The second model-based hypothesis is more straightforward: oversight exceptions should only be created under divided government. Thus, I use an indicator variable, *Divided Government*, equal to 1 if the Senate and the presidency are controlled by opposite political parties and 0 if the president and the Senate majority party are co-partisans. Because both the *Status Quo* hypothesis and the *Divided Government* hypothesis concern necessary conditions generated by the model, I also interact the two measures. Put differently, an extreme status quo should only increase the likelihood of rule change in the presence of divided government. If the Senate and the presidency are controlled by the same party, on the other hand, the location of the status quo should not affect the probability that a proposal is successful.[38]

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[37] In general, the coding changes made to the Policy Agendas Project (PAP) data can be summarized as follows. For approximately 60 percent of the observations, the original PAP coding was retained. Of the changed observations, roughly 44 percent were changed in order to reflect the decomposition of the "macroeconomics" major topic to better reflect the issue ownership data. Another approximately 32 percent of the changes were aimed at harmonizing coding across provisions included in bills in the defense, trade, and foreign affairs topics. Take, for example, oversight exceptions related to international sanctions against countries like Cuba, South Africa, and Iran. Depending on the larger bill in which the exception was included, the native PAP coding might code very similar rule changes in any one of the three categories, so changes were needed to ensure similar observations received the same topic coding (in this case, as part of the foreign trade category). Other examples of analogous issues involved nuclear non-proliferation and military assistance.

[38] Careful readers will note that an extreme status quo, divided government, and an extreme president are together necessary conditions for rule change. One way to address this would be to include a three-way interaction term; given the relatively small number of observations, I choose instead to use two conventional interaction terms and estimate predicted effects and probabilities given that the third condition is satisfied. For more on this, see the *Results* section below.

The final testable prediction generated by the model concerns the extremity of the president within the policy space. Under divided government and in the presence of an extreme status quo, a more extreme president has fewer policies on which he avoids taking unilateral action until Congress has created special rules. Testing the *Presidential Preferences* hypothesis, then, requires first a measure of the president's ideal point. To measure *Presidential Extremity*, I use the absolute value of the president's DW-NOMINATE score (Poole and Rosenthal 1997), which approaches 1 when the president is either extremely liberal or extremely conservative. Because the extremity of the president's preferences only matter under divided government, moreover, I interact the *Divided Government* and *Presidential Extremity* variables.

In addition to these model-based predictions, we also require variables to test the four issue-based hypotheses outlined above. To investigate the *Public Preferences* hypothesis, I turn to the *Policy Mood* data, originally collected by Stimson and Coggins and made available by the Policy Agendas Project. Using a wide range of survey data, the *Policy Mood* data captures the public's overall mood about a given issue on a conservative-to-liberal spectrum, as well as what Stimson and Coggins refer to as the "global mood," or how liberal the public is generally in a given year. I use these two quantities to construct, in each congress, a relative measure, capturing the difference between the issue-specific mood and the global mood. If the public's mood in a particular policy area is more conservative than its overall mood, this variable takes on a positive value. If the public's issue-specific mood is more liberal than its global attitude, the value is negative. Finally, if the public's mood about a given policy is the same as its overall mood, the variable is zero.[39]

This relative measurement allows me to better capture the majority party's calculus in selecting among issues on which to pursue rule change than an absolute measure would for two reasons. To illustrate the first, take two congresses, the 105th and 111th, with similar policy-specific moods on a given issue, immigration (48.7 and 48.4, respectively). The public's global mood, meanwhile, became eight points more liberal over the period between those two congresses. The public, then, was relatively more conservative on immigration in 2009 and 2010

[39] To address periods for which policy-level data is not available, I take two steps. If the issue-specific mood was measured in a previous congress, I assume that the issue-specific mood has evolved similarly to the global mood and use the last available value for the difference variable. The results are robust to carrying forward the last measurement of the issue-specific mood and calculating the difference between that value and the current year's global mood. For policies in which no data is available, I assume that the public's preferences on that specific issue are equivalent to the global mood.

than in 1997 and 1998—a meaningful distinction that is masked by the absolute level of the issue-specific mood. An immigration policy change favored by Senate majority Democrats in the later period, then, would likely have been less popular with the public than a similar change proposed in the early period. In addition, many of the questions used in calculating the *Public Mood* measures make reference to the current status quo, asking respondents whether they would prefer to increase, decrease, or keep about the same spending in a given policy area. By anchoring each policy-specific observation to the overall mood in each congress, I address, at least partially, concerns about comparability over time.[40]

This measure tells us how relatively conservative or liberal the public's mood is on a specific issue, but for the purposes of testing the *Public Preferences* hypothesis, it also matters whether those liberal-conservative preferences are in line with the kind of policy change advocated by individual legislators seeking re-election. Since we are only exploring delegation exceptions proposed by majority party members, we need a measure of whether the majority party's preferences on the issue are likely to be similar to the public's attitudes. If the public and the majority party agree, a policy change offered by a member of the majority party is more likely to be popular and there is less incentive to minimize traceability. If they disagree, however, the incentives on the part of re-election-minded legislators to obscure their actions are higher.

To measure probable agreement, I first assume that Democratic legislators prefer more liberal policies and Republican representatives prefer more conservative policies. Thus, for issues on which the public's relative mood is negative, I assume their preferences are closer to those of the congressional Democrats. For policies on which the relative mood is positive, conversely, I assume attitudes are closer to those of congressional Republicans. By extension, when the Senate is controlled by Democrats, policy changes on issues with negative relative mood values would be more popular than policy changes on issues with positive relative mood values. Take, for example, the 112th Congress. On defense, the public's mood was roughly 15 percentage points more conservative than their overall mood. On health issues, however, the public's mood was roughly 13 percentage points more liberal. Any policy changes advocated by Democrats on military issues, then, should be less popular than measures dealing with health care.

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[40] Thanks are due to Greg Wolf for this observation about the *Policy Mood* data.

The opposite holds true for Republicans: any policy change for which the mood is positive would be more popular than changes in policy areas with negative values. To illustrate, consider again defense and health issues, this time in the 109th Congress, when Republicans held a majority in the Senate. The public's mood on military policy was roughly 28 percentage points more conservative than its overall mood, so Republican-sponsored policy proposals on defense issues should have been more popular than majority-offered measures on health issues, for which the policy-specific mood was 15 percentage points more liberal. In sum, then, the public preferences variable takes on positive values when the public's issue-specific mood is biased in favor of the Senate's majority party and negative values when the public's mood in a given policy area is biased away from the Senate's majority party. I rescale the *Public Preferences* variable to ease explication, assigning values of -1 to the policy-congress pairs when the public's mood diverges most from that of the Senate's majority party and +1 to the issue-congress pairs for which the public's mood is most similar to that of the majority caucus.

For the *Salience* hypothesis, I use another dataset made available by the Policy Agendas Project. Their compilation of the Gallup *Most Important Problem* data indicates, in each year, the proportion of respondents in the Gallup Poll who reported a given policy area as "the most important problem" facing the nation. To get a measure for every policy area for each congress, I average across the two annual averages reported by Baumgartner and Jones. Again, to ease exposition, I rescale the *Salience* variable from 0 to 1; a value of 0 corresponds to the least salient issue in the dataset while a 1 indicates the most.

To test the *Issue Ownership* hypothesis, I turn to the results of Egan's (2013) analysis of survey data since 1970 on which party respondents believe is better equipped to handle each of a set of consensus issues. If respondents, in the aggregate, indicate a statistically significant preference for one party to address the issue, the policy is considered owned by that party; if neither party has an advantage, the issue is considered non-owned. I then create an indicator variable, coded 1 if the Senate majority party owns the issue and zero if it does not. Finally, to test the *Presidential Priority* hypothesis, I turn to yet another Policy Agendas Project data source, here on the composition of the president's State of the Union address. Each speech is decomposed into "quasi-statements," which are, in turn, coded for their policy content. To measure the degree to which the president prioritized a particular issue in a given congress, I count up the number of quasi-statements in that policy area in the two speeches delivered during

a congressional term and divide it by the total number of quasi-statements in the two speeches. This *Presidential Priority* variable ranges from 0, when the president did not discuss a given policy area in either of the State of the Union addresses given during a particular congress, to 0.37, which occurred when the president spent over a third of the speeches he delivered during the 96th and 108th Congresses on foreign policy issues.

Additional Control Variables

In addition to the independent variables required to test our theoretical predictions, I control for several other factors likely to affect the probability that a proposed oversight exception is enacted into law. First, following previous work on the determinants of congressional rule changes that advantage the majority party (Binder 1997, Schickler 2000), I control for the majority party's *Capacity*. As the majority party becomes stronger relative to the minority party, we should observe more procedural innovation that makes it easier for the majority party to achieve its goals. Following Schickler (2000), *Capacity* is measured by taking the difference between the strength of the majority party and the strength of the minority party. Each individual party strength measure has two components. The first is the share of seats in the chamber held by the party. The second is that party's cohesion, calculated as $1/\sigma$, where σ is the standard deviation of that party's first dimension DW-NOMINATE scores. Each party's strength is the product of its seat share and its cohesion, and then *Capacity* is the difference between the two strength measures.

Second, I control for whether the rule change was proposed by a member of the Senate's *Majority* party;[41] we would expect the partisanship of the member who offered the legislation to affect its probability of enactment for several reasons. Building a strong brand, argues Lee (2009), involves not only appearing effective and passing policy changes that a party expects will be popular, but also engaging in actions that make the minority party appear incompetent in the eyes of critical voters. From the perspective of the majority party, both of these objectives are achieved when it considers and enacts legislation sponsored by its own members over bills advocated for by members of the minority party. From a preference perspective, majority-

[41] For proposals that originated in the Senate, this measurement is straightforward. For proposals that originated in the House during periods of divided congressional control, I include them as having been introduced by the majority if they were introduced by a member of the *Senate's* majority party.

sponsored measures are more likely to embody the kinds of policy changes that are popular among the voters the majority party is courting. Shepherding a bill sponsored by a co-partisan all the way to passage also makes the majority party appear more competent in an increasingly chaotic legislative process. At the same time, denying these reputation-building benefits to the minority party by keeping its bills off the agenda should also help the majority party achieve its ultimate goal of remaining the majority party. Indeed, the Senate's majority party leadership enjoys a range of procedural advantages over its peers in the minority party that make this process easier. These include a preferential right of recognition on the floor for the Majority Leader, as well as his ability to fill the amendment tree, restricting potential changes to the underlying bill. These advantages translate, for example, into majority-sponsored bills being more likely to be scheduled for consideration and overcome filibusters; majority-sponsored amendments also have a higher probability of being adopted (Den Hartog and Monroe 2011). Finally, I control for whether the House is also controlled by the same party as the Senate. Because majoritarian exceptions are enacted as part of statutory law, they also need to gain the approval of the House of Representatives in order to be created successfully.

To estimate the probability that a proposed oversight exception will be enacted into law, I use a logistic regression. Because the proposal observations are clustered within congresses, I estimate random intercepts by year. In addition, because most congresses feature multiple proposals of different kinds, we might expect the errors to be correlated across all bills in a given session, so I cluster the standard errors by congress.

Results

Column 1 of Table 2.4 below presents the results of an estimation examining only the model-generated hypotheses; the three additional control variables (*Majority Party Capacity*, *Majority Party Sponsorship*, and *House Control*) are also included. While the coefficient estimates are difficult to interpret directly because of both the binary dependent variable and the presence of an interaction term, an initial review suggests that the variables testing the models predictions are, at the very least, in the expected direction. The coefficient on the *Switch in Party Control* variable—testing the *Status Quo* Hypothesis—is positive, though it does not achieve conventional levels of statistical significance. Similarly, the coefficient on the *Divided*

Government measure is positive and statistically significant—though, because that measure is also interacted with the *Presidential Extremity* and *Switch in Control* variables, the main effect coefficient only indicates that rule change would be more likely under divided government when the president is moderate. Finally, the effect of *Presidential Extremity* appears to be negative in the presence of divided government, since interaction between *Presidential Extremity* and *Divided Government* is negative and statistically significant—exactly as the model would predict.

Table 2.4: Probability of Oversight Exception Enactment, Proposal-Level Analysis, 91st to 112th Congress

	(1)	(2)
Switch in Control	0.288	0.092
	(1.698)	(1.851)
Divided Government	31.380**	32.034**
	(13.535)	(15.084)
Switch in Control*Divided Government	1.914	2.775
	(2.398)	(2.551)
Presidential Extremity	31.247	29.809
	(22.323)	(26.551)
Presidential Extremity*Divided Government	-71.856**	-73.549**
	(28.729)	(31.706)
Public Preferences		-0.579
		(1.247)
Salience		-5.374***
		(1.610)
Public Preferences*Salience		8.345*
		(4.513)
Issue Ownership		1.550**
		(0.647)
Presidential Priority		2.805
		(3.905)
Majority Party Sponsorship	1.872***	2.127***
	(0.418)	(0.469)
Majority Party Capacity	0.656**	0.868***
	(0.304)	(0.330)
House Control	-1.762	-2.245
	(1.321)	(1.517)
Var (Year RE)	2.513	2.986
	(1.982)	(2.349)
Constant	-15.919	-15.616
	(11.267)	(13.407)
Log Pseudolikelihood	-108.852	-102.533
Observations	249	249

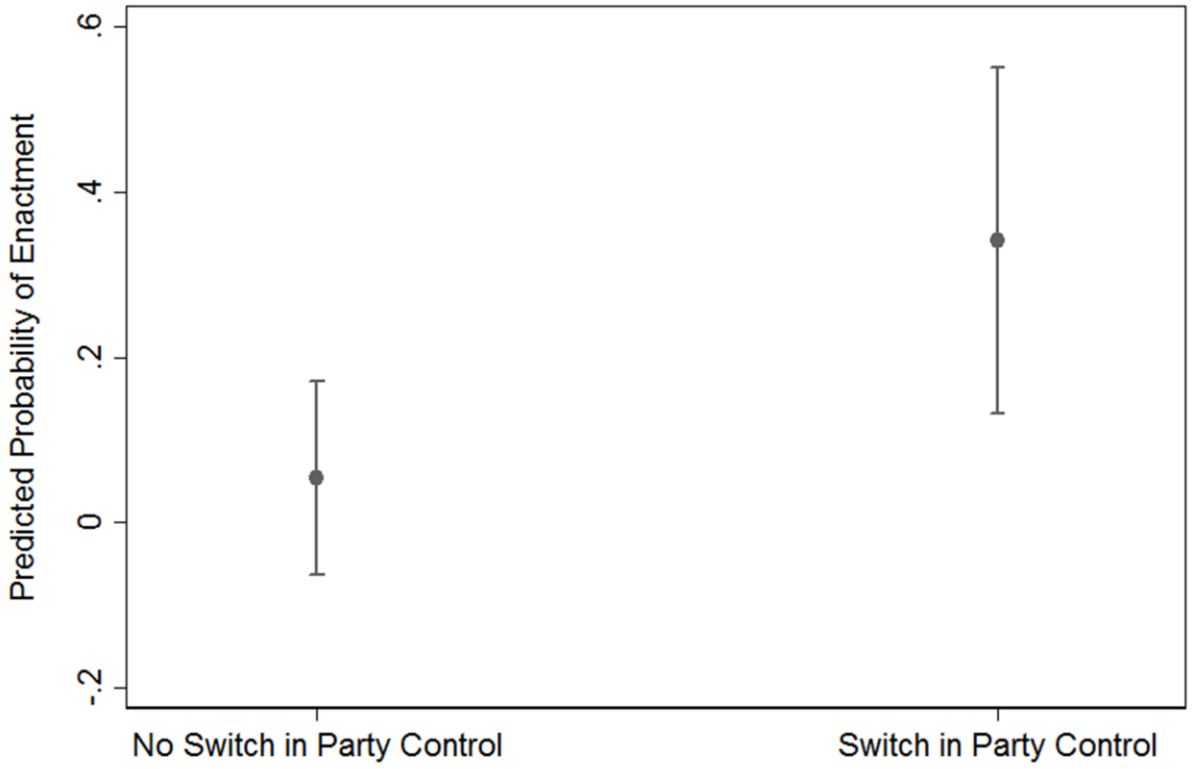
Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Given the difficulty of interpreting these coefficients directly, comparisons of predicted probabilities are more useful in examining how closely these results align with the model's predictions. To explore both the *Status Quo* and the *Divided Government* hypotheses generated by the model, it is helpful to remember that both involve *necessary* conditions for producing rule change. This has consequences for selecting the right counterfactual condition against which to evaluate the effects of both the *Switch in Party Control* and *Divided Government* variables. To determine if conditions that suggest an extreme status quo are more likely to produce rule change, we want to compare the predicted probability of a proposed change being enacted *under divided government* when a party switch has occurred to estimated probability when there has been no change in party control of either the Senate or presidency. Similarly, to evaluate the effects of divided government, the appropriate comparison is between the predicted probability of a change when the Senate and presidency are controlled by opposite parties to the expected probability when the two institutions are controlled by co-partisans *when there has been a switch in party control.*

Figures 2.5 and 2.6 present these two comparisons graphically. In Figure 2.5, we see the predicted probability of a proposed rule change being enacted under divided government when a switch in party control has occurred (on the right) versus when no switch in party control has occurred (on the left). The increase in probability is clear. When no switch in control has occurred, the chance that a proposed exception is successful is not statistically from zero under divided government.[42] After a switch in party control, however, the probability increases to approximately 34 percent. The p-value on a Wald test of whether these probabilities are equal is 0.04, allowing us to reject the null hypothesis that they are equal. The results, then, are consistent with the *Status Quo* hypothesis.

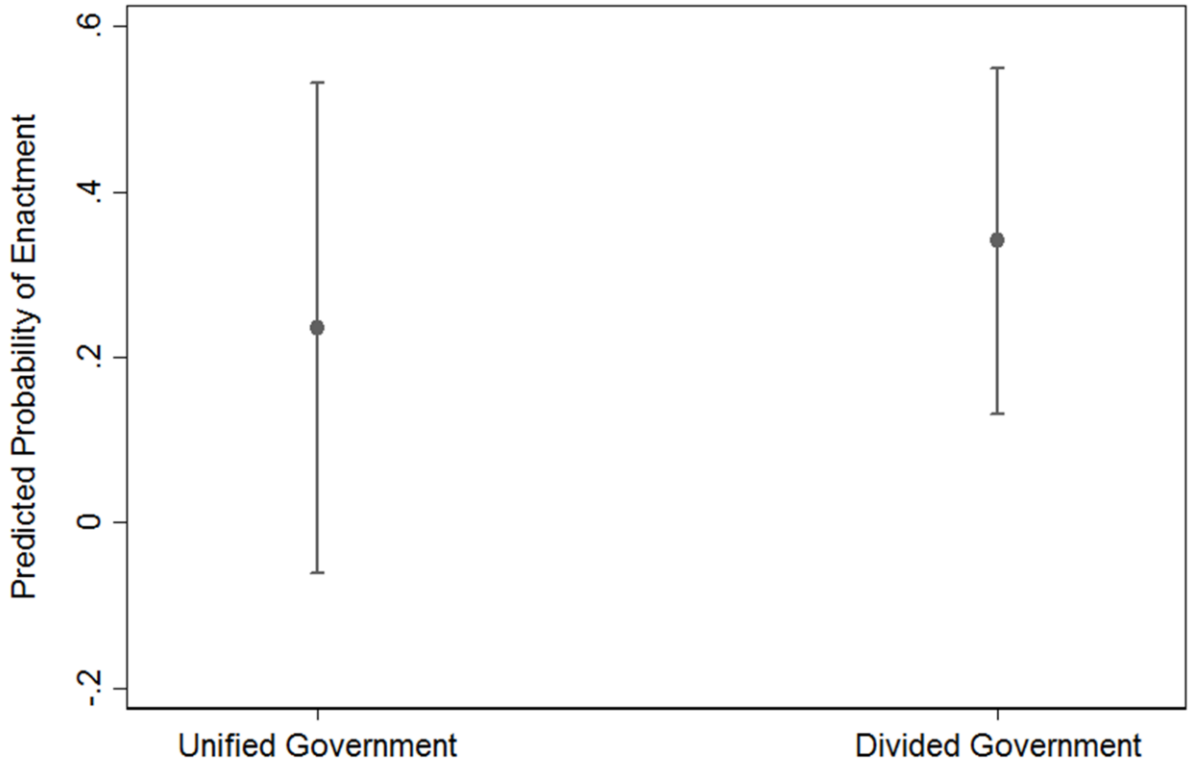
[42] Here, and for all other predicted probabilities, all other covariates are held at their means. I also assume that the mean value of the random component of the intercept is zero, its expected value (Bartels 2015).

Figure 2.5: Predicted Probability of Enactment by Status Quo Extremity, No Issue-Level Variables



In Figure 2.6, we see comparable predictions, with *Divided Government* status varied and holding constant that there has been a switch in party control. Here, we see that when a switch in party control has occurred and the Senate and presidency are controlled by the same party, the predicted probability that a proposed rule change is successful is not statistically different from zero. When a switch has occurred and party control is divided, the predicted probability is approximately 34 percent. Unlike the comparison illuminating the effect of an extreme status quo, however, the difference between these two predictions is not statistically different from zero, as the p-value on a Wald test of equality carries a p-value of 0.57. While we cannot reject the null hypothesis that rule change is more likely under divided government, conditional on a change in party control, the direction of the effect is consistent with our expectations.

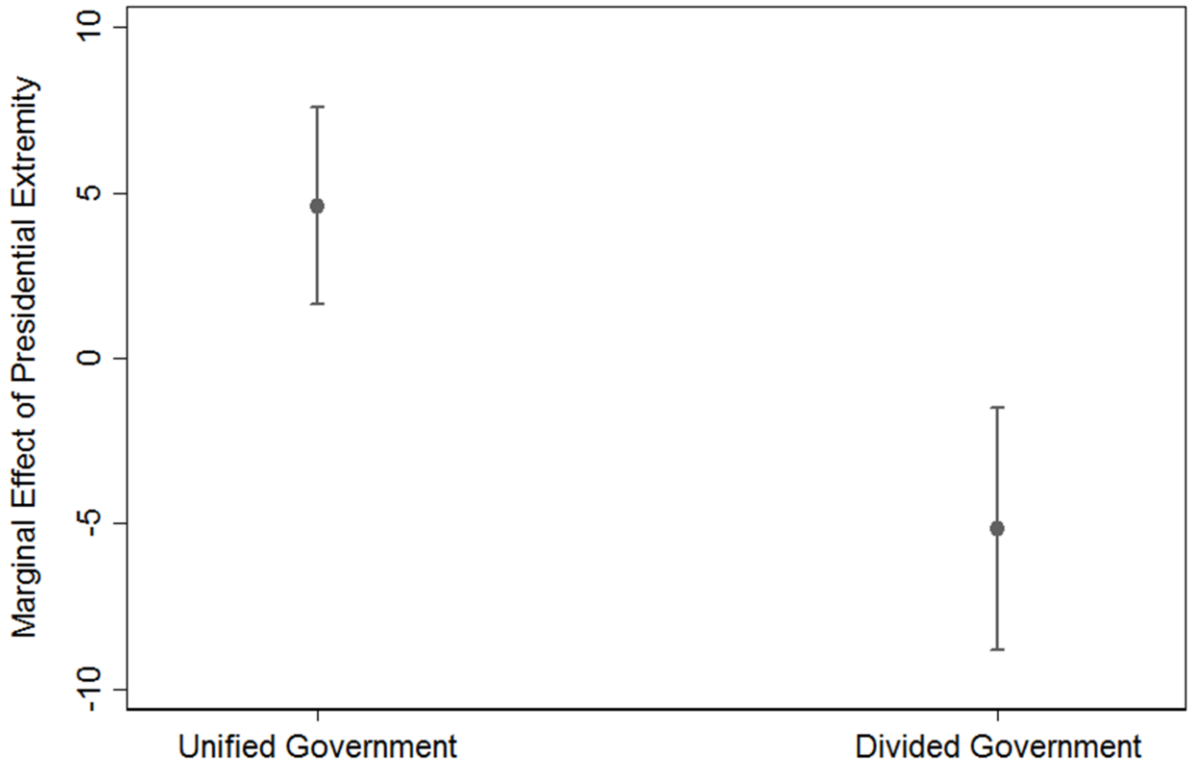
Figure 2.6: Predicted Probability of Enactment by Divided Government Status, No Issue-Level Variables



Finally, to examine the effect of *Presidential Extremity*, Figure 2.7 displays the marginal effect of *Presidential Extremity* under both divided and unified government. Here, we see that the model's prediction about the relationship between the president's preferences and the probability of enactment is borne out: under divided government, the more extreme the president, the less likely a given proposal is to be enacted into law. We also observe that, when the presidency and the Senate are controlled by the same party, presidential extremity has a positive effect on the probability of passage. Because these cases—successful rule change under unified government—are off the equilibrium path behavior in the model, we did not have any expectations about this relationship. One possibility, however, involves the fact that, when the president is more extreme under unified government, members of the minority party might be more willing to support an oversight exception. The model tells us that the ultimate policy

outcome will be the same regardless of the new rules, but minority members may want to *appear* to be opposing the president more aggressively, especially as he becomes more extreme. Empirical evidence suggests that the Senate minority party is more unified in opposition to presidential priorities (Lee 2009), and this positive effect of presidential extremity under unified government might indicate that a similar dynamic affects rule change decisions.

Figure 2.7: Marginal Effect of Presidential Extremity, by Divided Government Status, No Issue-Level Variables

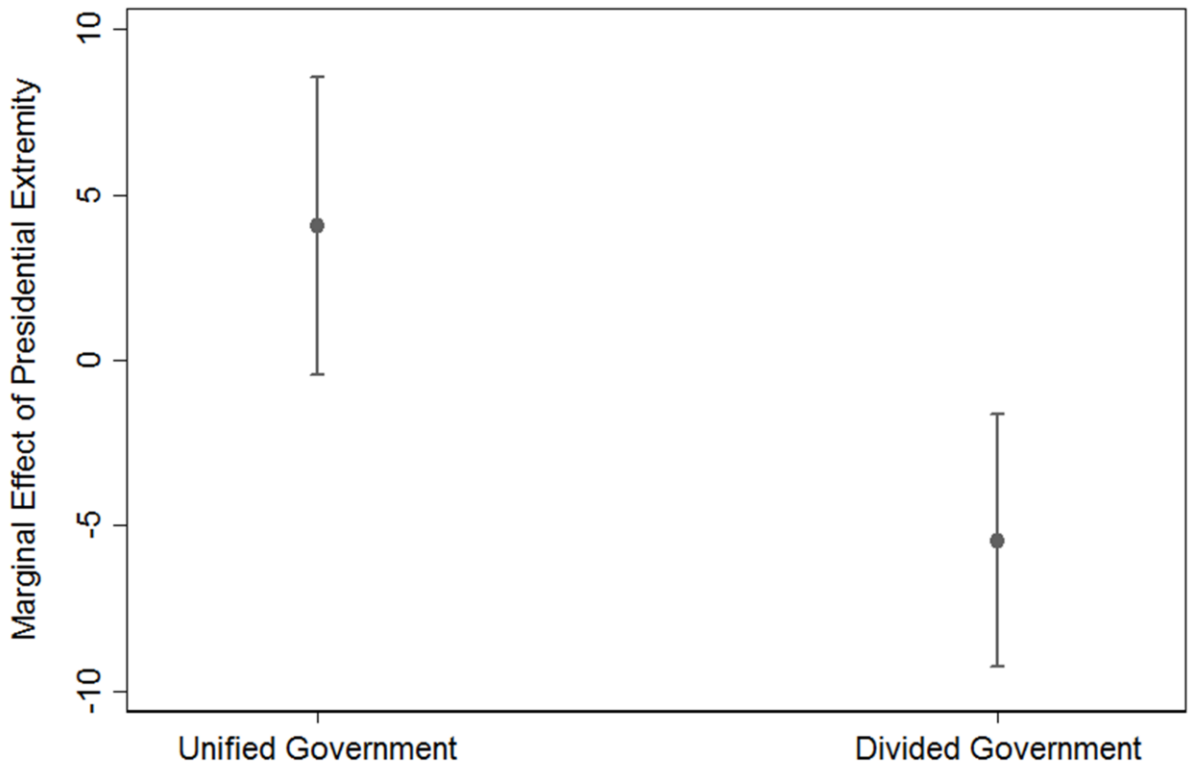


It is also worth noting that several of the control variables behave as expected. Proposals made by the majority party are roughly seven times more likely to be enacted into law than procedural changes made by the minority party. The *Majority Party's Capacity* is also positively associated with success, indicating that as its caucus becomes stronger relative that of its minority opponents, rule change is more likely. The coefficient on the variable measuring

whether the *House* is controlled by the same party as the Senate, meanwhile, is negative. It does not achieve conventional levels of statistical significance (p=0.18), but the unexpected direction of the coefficient is still notable. One possible explanation is that when the Senate and House are controlled by the same party, their ability to oversee jointly the president's actions through other avenues, such as regular legislation or limitation riders, is more robust, reducing the need to resort to rule change, even if new procedures will facilitate policy change the president is otherwise avoiding.

Having first explored the hypotheses generated by the model, I now introduce the variables necessary to test our additional, issue-level expectations about *Public Preferences, Salience,* and *Presidential Priority*. The results for an estimation including these variables appear in Column 2 of Table 2.4. The results on the model-based hypotheses are similar to those presented above. When government is divided, the probability of rule change when there has been a *Switch in Control* is roughly 41 percent versus not distinguishable from zero otherwise; these predictions, as before, are statistically different from one another (p=0.01). Also as before, when we hold fixed the expected extremity of the status quo and vary *Divided Government*, the rule change is more likely under divided than unified control, though, again, the difference in predictions does not reach conventional levels of statistical significance (p=0.18). The model's predictions about *Presidential Extremity* are also borne out in the estimation controlling for issue-level factors and are displayed in Figure 2.8. Holding all other variables at their means, the estimated effect of a one-unit change on the probability of enactment is negative and statistically significant under divided government. Under unified government, the effect is statistically significant and positive, as before.

Figure 2.8: Marginal Effect of Presidential Extremity, by Divided Government Status, Including Issue-Level Variables



Moving next to the first of the issue-specific hypotheses, *Public Preferences* do not appear to be a statistically significant predictor of rule change success. Holding all other variables at their means, the average marginal effect of the *Public Preferences* variable is not statistically significant (0.004, with a p-value of 0.991). Comparing the predicted probabilities of passage at various values of the *Public Preferences* measure, moreover, there is no statistically significant difference between the expected chance of enactment for unpopular and popular policies.[43] The effects for the *Salience* hypothesis are similarly null. While the average marginal effect of *Salience* is negative for unpopular policies and positive for popular ones, the two quantities are not statistically different from one another (p=0.34). While a failure to reject the

[43] Holding the public preferences variable at two standard deviations above and below zero, neither predicted probability is statistically different from zero (unpopular=.14, p=0.21; popular=.14, p=0.18).

null does not confirm that an explanation is false, taken together, these two findings do little to suggest that voters' preferences are playing a role in determining rule change.

For the *Issue Ownership* hypothesis, which tests whether the majority party is appealing to its core activist constituents with its selection of issues on which to pursue procedural change, the results are more promising. The coefficient on the *Issue Ownership* variable in Table 4 is statistically significant. Holding all other variables at their means, an exception proposed on an owned issue has a roughly 33 percent chance of being enacted, as compared to a 10 percent chance for non-owned issues.[44] Our final issue-based hypothesis, meanwhile, concerns the role of the presidential agenda. For policy consequences to be realized from creating an oversight exception, the president must take subsequent action once the new rules are created. The coefficient on the *Presidential Priority* variable, while in the expected direction, is not statistically significant, providing little evidence that expectations about whether the new rules will actually be deployed affects the probability of enactment.

As in the estimation exploring only the model-generated hypotheses, we see that the control variables behave as expected. Stronger majority parties, as measured by the *Majority Party Capacity* variable, appear to produce more rule changes, and new procedures proposed by the majority party are roughly 8.5 times as likely to be enacted into law as those offered by members of minority party. Both of these effects are in the anticipated direction. The relationship between the partisan control of the *House* and the probability of success, meanwhile, is negative. While it does not achieve conventional levels of statistical significance (p=0.14), it does suggest that perhaps Congress is less likely to turn to new rules when its capacity to oversee the executive is enhanced in other ways, like unified partisan control of both chambers.

Accounting for Potential Selection Bias

The empirical results presented in Table 2.4, then, suggest that the strategic dynamics presented in the model, coupled with a desire on the party of the majority party to please its core, engaged supporters, affects which proposed oversight exceptions are successfully enacted into law. The data used in these analyses, however, represents only part of the universe of *possible* exceptions; they leave unaccounted for the rules changes that members of Congress could have

[44] This difference is significant (p=0.09).

proposed but did not. To address this potential selection issue, I conduct a second analysis, where each observation is a policy area in a given congress. This approach is an adaptation of earlier work on procedural change (Binder 1997, Dion 1997, Schickler 2000), which takes as its unit of analysis each congressional term. Because I am also interested in the issue-level dynamics of rule change, I create a dataset of issue-congress pairs.

The issues are taken from the Policy Agendas Project, with the inclusion of the additional issues from Egan (2013) described above. The dependent variable is still dichotomous, but now takes on the value of 1 if an oversight exception was created in that policy area in a given session and zero otherwise. The independent variables are measured as described above, with one exception. The measure of whether a rule change was proposed by a member of the *Majority* party, previously measured at the bill level, is now captured at the congress level as an indicator variable where 1 indicates that the majority party proposed new procedures in the policy area during that term and 0 otherwise.[45] The estimation is again carried out by logistic regression with both random intercepts and standard errors clustered by congress.

The results of this analysis at the level of the issue-congress pair are presented in Table 2.5. Moving first through the model-generated hypotheses, we see that, when the conditions favor an extreme status quo and the Senate and presidency are controlled by opposite parties, the probability of creating an oversight exception in a particular policy area is roughly 1.5 percent; given the relative rarity of these rule changes, this small probability is not unexpected. Under *Divided Government* without a *Switch in Control*, however, the expected probability of procedural innovation is not statistically different from zero. This positive effect of a *Switch in Control* is the same as in the proposal-level analysis discussed above; it is also statistically different from zero and depicted in Figure 2.9. The results for the *Divided Government* hypothesis are similarly consistent with the earlier results; they are in the expected direction (that is, positive) but not statistically significant. The predicted probability of creating an oversight exception after a switch in party control under *Divided Government* is roughly 2 percent, but not different from zero under unified government.[46]

[45] Of the 528 observations analyzed below, approximately 15 percent (81) take on a value of 1 for this variable.
[46] The p-value on a Wald test of whether these quantities are equal is 0.26.

Table 2.5: Probability of Oversight Exception Enactment, Issue-Level Analysis, 91st to 112th Congress

Switch in Control	0.727
	(1.589)
Divided Government	26.796**
	(12.224)
Switch in Control*Divided Government	1.966
	(2.110)
Presidential Extremity	30.118
	(23.487)
Presidential Extremity*Divided Government	-61.211**
	(26.700)
Public Preferences	0.063
	(0.812)
Salience	-5.616***
	(1.519)
Public Preferences*Salience	11.954**
	(5.345)
Issue Ownership	1.539**
	(0.6)
Presidential Priority	7.817
	(5.695)
Majority Party Sponsorship	5.646***
	(0.903)
Majority Party Capacity	0.607**
	(0.276)
House Control	-2.490*
	(1.470)
Var (RE)	2.080
	(1.792)
Constant	-18.939
	(11.917)
Log Pseudolikelihood	-70.978
Observations	528

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Figure 2.9: Predicted Probability of Enactment by Status Quo Extremity, Issue-Level Analysis

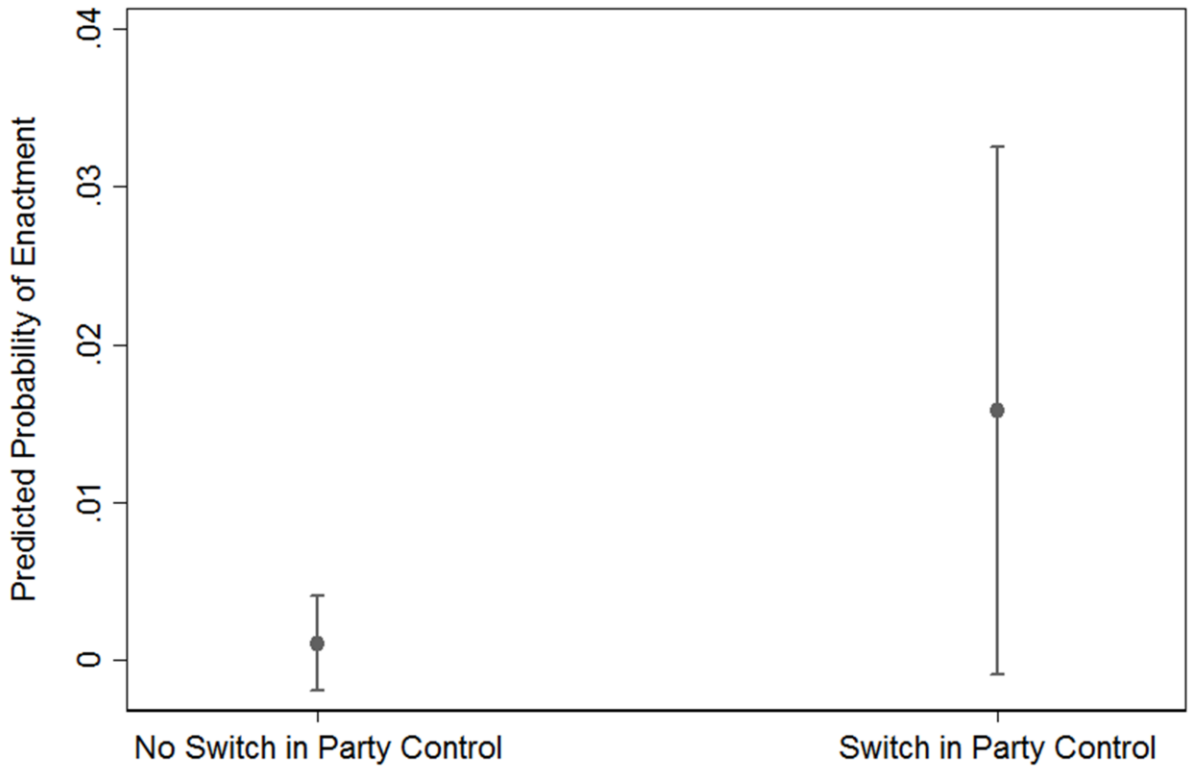
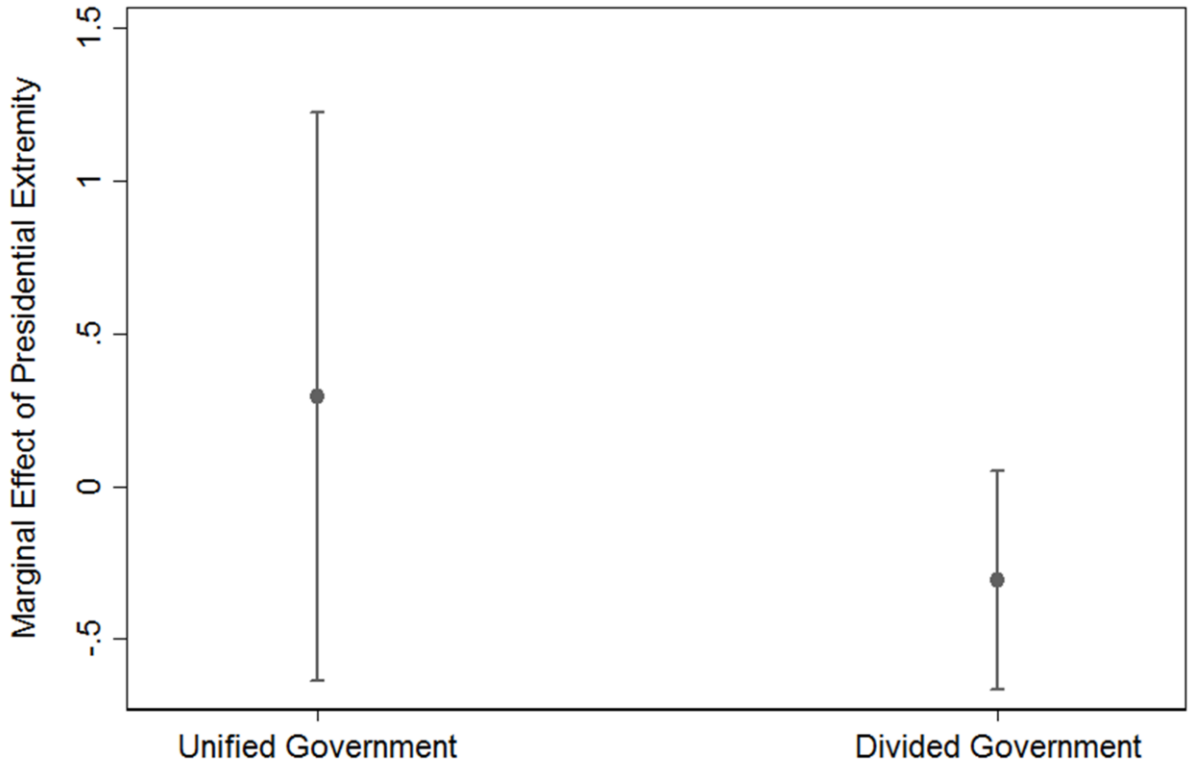


Figure 2.10, meanwhile, displays the effect of *Presidential Extremity*. Under *Divided Government*, the average marginal effect of the variable is negative and statistically significant, just as before. Here, however, the effect under unified government is not statistically different from zero, and the p-value on a Wald test of whether these average marginal effects are equal is 0.21. Thus, we cannot reject the null hypothesis that the effect of *Presidential Extremity* is different under divided and unified government. Taken together with the results from the proposal-based analysis—where the effect under unified government is positive and statistically significant—these estimates suggest that, while part of the process that generates rule changes is captured by the strategic logic of the model, other factors involving presidential extremity are also at play.

Figure 2.10: Marginal Effect of Presidential Extremity, by Divided Government Status, Issue-Level Analysis



Continuing to the issue-based hypotheses, there is suggestive evidence that issues matter for the likelihood of creating special rules. Here, when we examine the incidence of rule change at the level of the congress-issue pair, we see that the average marginal effect of *Public Preferences* is positive (0.007), and while the p-value does not allow us to reject the null hypothesis (p=0.13), it is substantially smaller than the equivalent statistic for the *Public Preferences* measure in Table 2.4. For *Issue Ownership*, we see that the coefficient is also positive and statistically significant; it indicates that, holding all else equal, special rules are about 4.5 times more likely for issues owned by the majority party than other policies. Recall that in the proposal-level analysis, both estimated effects were positive, but only for *Issue Ownership* could we reject the null hypothesis. How might we make sense of this difference between the two sets of results? One possibility is that the influence of the popularity of the policy change ushered in by an oversight exception is felt more as rule change proposals are

developed, whereas the demands of a party's core constituencies play a larger role in determining which new procedures make it through the entire legislative process to enactment.[47]

The results for our other issue-based hypotheses, meanwhile, are the largely the same as in the proposal-level analysis. Though the relationship is in the expected direction, we cannot reject the null for the *Salience* hypothesis, as the p-value on a Wald test of whether the marginal effect of *Salience* is equal when *Public Preferences* are at their minimum and maximum is 0.27. Similarly, while the effect of the *Presidential Priority* of an issue in a given congress is in expected direction (positive), it is not statistically different from zero (p=0.17). The control variables also behave identically as they do in the proposal-level analysis above. If the majority party proposed at least one oversight exception in a given policy area, the chance of enacting new rules is roughly 33 percent, as compared to virtually zero when the majority does not make such a proposal. In addition, as the majority's *Capacity* increases, so does the likelihood of new rules. The effect of co-partisan control of the *House* and Senate, finally, is again negative, but is now statistically significant at the 0.10 level, adding some suggestive evidence to our earlier supposition that the creation of oversight exceptions are best understood in a broader context of the Senate majority party's capacity to oversee the president. Rule changes—even ones that ease the passage of policies and that benefit the majority party—still represent a reasonably drastic measure, and if the House and Senate are able to cooperate on overseeing the president, they may prefer to use existing legislative procedures, such as regular legislation or limitation riders, to do so.

Conclusion

How do these findings, both at the proposal- and issue-level, help us make sense of the new Democratic majority's attempt to influence the president's conduct of the Iraq War in 2007? Recall that the model yields several necessary conditions for the creation of an oversight exception. One of these—divided government—was present. While another—an extreme status quo on the same side of the policy space as the president—is much more difficult to measure, a

[47] One way to test this directly would be to estimate a Heckman selection model with some covariates predicting proposals, and another set predicting enactment. Here, however, we lack strong theoretical expectations about which covariates are relevant at each stage and without exclusion restrictions, Heckman results are very sensitive to distributional assumptions.

vote in the Senate on the prior year's defense authorization bill suggests that the status quo on the Iraq War was not extreme enough to satisfy this condition. In June 2006, 38 of the 44 members of the Democratic caucus voted for a provision that urged President Bush to begin withdrawing troops by the end of 2006. The most conservative member of the Senate to support the proposal was Senator Lincoln Chafee (R-RI), who, in the NOMINATE space, was just slightly to the right of the chamber median with a DW-NOMINATE score of -0.052. President Bush, meanwhile, had an estimated DW-NOMINATE score of 0.52. Any proposal to change a status quo to his right—which is where it would have needed to be located for the model to predict successful passage—would have likely garnered the support of many additional senators.

Though we find some evidence that partisan issue politics can influence when we observe the creation of oversight exceptions, the Democrats' experience in in 2007 also illustrates how the spatial constraints can trump issue-based factors. President Bush's conduct of the Iraq War was both salient and unpopular by 2007 and, indeed, the new 2007 majority had ridden to victory the previous November on the back of intense opposition to it (Jacobson 2007). If there was an occasion on which the Senate majority was motivated to create special rules that would facilitate policy change to please both the voters overall, and its activist base, this was it. At the end of the day, however, the party's issue-based incentives could not overcome the fact that in only limited circumstances will key actors' preferences and the status quo be arranged to favor rule change. Put in the language of my two central claims, the desire of the majority party to create rules that would benefit it was undermined by the fact that members of the minority party, knowing that the new procedures would make it easier to pass the underlying policy change, were not willing to go along.

When the spatial stars align, however, we can expect Congress and the president to work together to institute special procedures that enable policy change that is otherwise difficult to enact. Take, for example, Congress's experience with arms sales in the mid-1970s. In 1968, Congress had delegated wide discretion over arms sales to the president—power of which President Nixon took substantial advantage to sell sophisticated weapons to Saudi Arabia, Kuwait, and Iran. Concerned about this conservative drift in arms policy, congressional Democrats, led by Senator Gaylord Nelson (D-WI), began to seek legislative mechanisms to ensure packages that better reflected their preferences (Tompa 1986). The conflict between the executive branch and Congress came to a head in 1975, when President Ford was forced to put

restrictions on the deployment of Hawk missile batteries being sold to Jordan in the face of threats to block the sale in Congress (CQ Almanac 1975). The following year, however, Congress and President Ford agreed on an oversight exception, enacted as part of the International Security Assistance and Arms Export Control Act of 1976 (AECA), which allowed Congress to disapprove of government-to-government arms sales of "major defense equipment." Under this new power-sharing arrangement, Ford was able to propose a $6 billion package that sent arms to Iran, Saudi Arabia, Israel, and eight other countries. The House did not challenge the proposal, and a disapproval resolution was withdrawn from the Senate calendar before floor debate (CQ Almanac 1976). While we cannot draw definitive conclusions from a single case, Ford's ability to sell weapons more easily following the creation of the new rules as part of the AECA is consistent with our central claim that majoritarian exceptions facilitate the enactment of new policies. For further evidence on the other dynamic at play—that the procedures are developed consistent with the goals of the majority party—we turn, in Chapter 3, to an analysis of delegation exceptions.

Appendix 2.1

Baseline Model Solution

Following Howell (2003), I begin by defining a set of proposals for which each legislative actor (M, F, and V) will **not** obstruct further progress on the measure at hand. For the floor median (M), I define the set of proposals that he will approve in a floor vote. For the filibuster pivot (F), I define the set of proposals he will not filibuster. Finally, for the veto pivot (V), I define the set of proposals on which he will approve an override of the president's (P) veto.

Beginning in the final stage of the baseline game, we first consider when V will override P's veto of x(c), a measure introduced by L that revises a unilateral action, x(p), taken by P:

Definition 1: Let V's veto-override set for x(c) be:

$$O[x(p), v] = \begin{Bmatrix} [x(p), 2v - x(p)] \text{ if } x(p) < v \\ [2v - x(p), x(p)] \text{ if } x(p) \geq v \end{Bmatrix}$$

V will only have the option of overriding the veto of x(c) if P actually vetoes it:

Definition 2: Let P's sign (no-veto) set for x(c) be:

$$S[x(p), p] = \begin{Bmatrix} [x(p), 2p - x(p)] \text{ if } x(p) < p \\ [2p - x(p), x(p)] \text{ if } x(p) \geq p \end{Bmatrix}$$

P will only have the option of signing or vetoing x(c) if F chooses not to filibuster x(c):

Definition 3: Let F's no-filibuster set for x(c) be:

$$N[x(p), f] = \begin{Bmatrix} [x(p), 2f - x(p)] \text{ if } x(p) < f \\ [2f - x(p), x(p)] \text{ if } x(p) \geq f \end{Bmatrix}$$

With his knowledge of these subsequent actions by F, P, and V, L will do the following:

Proposition 1: In equilibrium, L will make the following proposal to revise the prior unilateral action, x(p), taken by P:

$$x(c)^* = \left\{ \begin{array}{c} \emptyset \text{ if } x(p) < f \text{ and } L \leq V \\ 2f - x(p) \text{ if } f < x(p) \leq 2f - m \text{ and } L \leq V \\ m \text{ if } x(p) > 2f - m \text{ and } L \leq V \\ \\ m \text{ if } x(p) \leq 2v - m \text{ and } V < L \leq F \\ 2v - x(p) \text{ if } 2v - m < x(p) \leq v \text{ and } V < L \leq F \\ \emptyset \text{ if } v < x(p) \leq f \text{ and } V < L \leq F \\ 2f - x(p) \text{ if } f < x(p) \leq 2f - m \text{ and } V < L \leq F \\ m \text{ if } x(p) > 2f - m \text{ and } V < L \leq F \\ \\ m \text{ if } x(p) \leq 2v - m \text{ and } F < L \\ 2v - x(p) \text{ if } 2v - m < x(p) \leq v \text{ and } F < L \\ \emptyset \text{ if } v < x(p) \leq l \text{ and } F < L \\ 2l - x(p) \text{ if } l < x(p) \leq 2l - m \text{ and } F < L \\ m \text{ if } x(p) > 2l - m \text{ and } F < L \end{array} \right\}$$

Each proposal x(c)* represents the outcome that moves policy as close to L's ideal point as possible, subject to the constraints of V and F. Consider first Case 1, where L is on the extreme left side of the policy space. For most values of x(p), he will be worse off if he introduces x(c) since it comes to the floor under an open rule and can be amended by the floor to a point far from l, L's ideal point. If, however, x(p) is to the right of F, L will be better off with a new policy. He will propose either the policy closest to l that F will not filibuster (2f – x(p)), or for very extreme values of x(p), he will propose policy at M.

Next, consider Case 2, where L is moderate in the policy space, between V and F. Here, his proposals x(c)* will follow the predictions of Krehbiel (1998): propose policy at M when x(p) is extreme on either side of the policy space; propose policy as close to M as possible when x(p) is less extreme but not yet in the gridlock interval; and make no proposal when x(p) is in the gridlock interval (between V and F).

Finally, in Case 3, L is on the extreme right side of the policy space. Here, L will behave the same as his moderate counterpart for much of the policy space. The gridlock interval, however,

extends all the way to l, rather than stopping at f. For values of x(p) to the right of L, however, L will propose a value of x(c)* of which V and F approve but that makes L no worse off.

Empirically, P is almost always more extreme than V. If V is more extreme than P, however, L's proposal behavior for x(c) is nearly identical. In Cases 2 and 3, p is the left bound of the gridlock interval, rather than v.

Finally, with knowledge of where L will propose x(c)*, P will make the following choices about where to set x(p) with his initial move of the game:

Proposition 2: In equilibrium, in the first stage of the game, P will take the following unilateral action, x(p)*:

$$x(p)^* = \begin{cases} \emptyset \text{ if } P \leq V \text{ and } Q \leq v \text{ and } L > V \\ v \text{ if } P \leq V \text{ and } Q > v \text{ and } L > V \\ p \text{ if } P > V \text{ or } P \leq V \text{ and } L \leq V \end{cases}$$

When P is to the right of V, he is able to set x(p) at his ideal point, p, without concern for a successful challenge from the legislature; any x(c) that would make L better off would be vetoed by P, and V would not override that veto. When P and L are both to the left of V, the same is true. L would not introduce x(c), since it could be amended away from l, L's ideal point, with the support of both V and F.

If P is to the left of V but L is to V's right, x(p)* depends on the location of Q, the original status quo. If Q is to the right of V, P will set x(p)* at V's ideal point, v. This represents the closest P can get to p without invoking a challenge from the legislature that both F and V would support. If, however, Q is to the left of V—that is, extreme in the policy space—P is better off not proposing x(p)*. Doing so would provoke a congressional response, and given the preferences of L, V, and F, that response would place x(c)* farther from p than Q.

Proposition 3 summarizes the expected location of policy, Q′, at the conclusion of the baseline game:

Proposition 3: In equilibrium, policy will be located at:

$$p^* = \begin{Bmatrix} p \text{ if } P \leq V \text{ and } L \leq V \\ p \text{ if } P > V \\ Q \text{ if } P \leq V \text{ and } Q \leq v \text{ and } L > V \\ v \text{ if } P \leq V \text{ and } Q \leq v \text{ and } L > V \end{Bmatrix}$$

The first line of Proposition 3 corresponds to Case 1, the second to Case 2, and the third and fourth to Case 3. These outcomes are depicted graphically in Appendix Figure A2.1. (Note that the predictions are the same for Cases 1 and 2.)

Rule Change Alternative Solution

The rule change alternative solution is also solved using backwards induction, so beginning in its final stage:

Definition 4: Let M's approval set for r(p) be:

$$A[r(p), m] = \begin{Bmatrix} [Q', 2m - Q'] \text{ if } Q' < m \\ [2m - Q', Q'] \text{ if } m \geq Q' \end{Bmatrix}$$

Here, M will approve any proposal that comes to the floor under a majoritarian exception if it makes him at least as well off as the current policy, Q′. Knowing this set of proposals of which the median will approve, the president will engage in the following equilibrium behavior:

Proposition 4: In equilibrium, in the third stage, P will take the following unilateral action, subject to congressional approval under a majoritarian exception:

$$r(p)^* = \begin{Bmatrix} p \text{ if } Q' < p \text{ or } Q' > 2m - p \\ 2m - Q' \text{ if } m \leq Q' \leq 2m - p \\ \emptyset \text{ if } p \leq Q' < m \end{Bmatrix}$$

The majoritarian exception allows P to move policy all the way to his ideal point if the status quo, Q′, is extreme on either side of the policy spectrum. If Q′ is to the left of P, P can set r(p)* at his ideal point and M, unable to amend the proposal further, will approve the change. If Q′ is beyond the point at which M is indifferent between Q′ and P (that is, beyond 2m – p), P is also able to set r(p)* at his ideal point. For all intermediate points to the right of M, P is able to move policy towards his ideal point, but only as far as the point at which M is indifferent between Q′ and r(p)*. For all intermediate points to the left of M, there is no proposal to which M will consent that also makes P better off. Thus, P will not introduce r(p)*.

P is only presented with the option of proposing r(p) if the L has proposed, and the legislature and P have enacted, b, the bill containing the majoritarian exception. Suppose first that the legislature has passed b, but P has vetoed it. In this situation, V will override a veto of b if his expectations about how a new proposal r(p) would alter Q′ make him no worse off than remaining at Q′. Knowing how M and P will behave in the final stage of the game, V's preferences are as follows:

Definition 5: Let V's override set for b be:

$$O[Q', v] = \begin{Bmatrix} [-\infty, 2v - p] \text{or } [3v - 2p, \infty] \text{ if } L \leq V \text{ and } P \leq V \\ [-\infty, p] \text{or } [2m - p, \infty] \text{ if } P > V \\ [-\infty, v] \text{ if } L > V \text{ and } P \leq V \end{Bmatrix}$$

Here, V compares the eventual outcome until the existing rules and the potential outcome under b's new rules when choosing whether or not to override. In Case 1, where L and P are both to the left of V, the only area for which V is better off leaving policy at Q′ is between 2v – p and 3v – 2p in the middle of the policy space. In Case 2, when P is to the right of V, V will override a veto for values of Q′ in the extremes of the policy space, where the eventual policy outcome is not affected by whether it is enacted under the old or new rules. Finally, in Case 3, when L is to the right of V but P to the left of V, V is only better off under b's new rules for values of Q′ that

are also to its left; otherwise, V is better off with the outcome produced by policymaking in the first period.

V is only presented with the option to override if P was presented with b and chose to veto it. P's preferences over whether to sign b are as follows:

Definition 6: Let P's sign set for b be:

$$S[Q', p] = \begin{Bmatrix} [-\infty, p] \text{ or } [2m - p, \infty] \text{ if } L \leq V \text{ and } P \leq V \\ [-\infty, p] \text{ or } [2m - p, \infty] \text{ if } P > V \\ [-\infty, v] \text{ or } [2m - v, \infty] \text{ if } L > V \text{ and } P \leq V \end{Bmatrix}$$

As with V, P compares the outcomes of subsequent policymaking via r(p) current policy at Q′. In Cases 1 and 2, P is no worse off under the new rules values of Q′ to the left of p and to the right 2m – p. In Case 3, the region where P is no worse off is similar, but slightly larger, bounded by v on the left and 2m – v on the right.

For b to reach the president for his signature or veto, F must first choose not to filibuster. F will avoid filibustering b if his expectations about how r(p) would alter Q′ make him no worse off than remaining at Q′:

Definition 7: Let F's no-filibuster set for b be:

$$N[Q', f] = \begin{Bmatrix} always \text{ if } L \leq V \text{ and } P \leq V \\ always \text{ if } P > V \\ [-\infty, 2v - m] \text{ if } L > V \text{ and } P \leq V \end{Bmatrix}$$

F will only filibuster in Case 3, when L is to the right of V but P is to the left of V. Here, F is only better off with policies chosen using the new rules under b for values Q′ to the left of 2v – m. For all other arrangements of L, V, and P, F would also be better off under new policies enacted under b, so he will never filibuster

F's choice to filibuster or not will only materialize if L chooses to introduce b. L will introduce b if a new policy enacted under b, r(p), makes him better off than Q′:

Definition 8: Let L's proposal set for b be:

$$I[Q', l] = \left\{ \begin{array}{c} [-\infty, p] \text{ or } [2m - p, \infty] \text{ if } P \leq V \text{ and } L < P \\ [-\infty, 2l - p] \text{ or } [2(m - l) + p, \infty] \text{ if } P \leq V \text{ and } P \leq L < V \\ [-\infty, 2l - v] \text{ if } P \leq V \text{ and } V \leq L < M \\ [-\infty, 2m - v] \text{ if } P \leq V \text{ and } M \leq L \\ \\ [-\infty, p] \text{ or } [2m - p, \infty] \text{ if } P > V \text{ and } L < P \\ [-\infty, 2l - p] \text{ or } [2m - p, \infty] \text{ if } P > V \text{ and } P \leq L < M \\ always \text{ if } P > V \text{ and } M \leq L \end{array} \right\}$$

Note that L's proposal set depends not only on the relationship between P and V, but also between L, P, and M. First, we will consider situations where P is to the left of V. Here, if L is also to the left of P, L is no worse off in the extremes of the policy space under the new rules. If L is between P and V, he is no worse off in the extreme areas, and better off in some intermediate regions—those where policy under the new rules will be no further from his ideal point, l, than the president's ideal point, p. If L is between V and M, meanwhile, he is better off under the new rules for all values of Q′ to the left of 2l – v. This proposal region expands to all values to the left of 2m – v if L is instead to the right of M.

Now we will consider situations where P is to the right of V. If L is to the left of P, L is no worse off under the new rules in the extremes of the policy space. When L is between P and M, the proposal region is the same on the right end of the policy space, but slightly smaller on the left end of the policy space. Finally, if L is to the right of M, L is either better off or no worse off under the new rules for all values of Q′, so he will always propose b.

Given Proposition 4, then, we should expect to see the successful passage of b in the following situations, and the following final policy outcomes:

Proposition 5a: In equilibrium, a bill (b) creating a majoritarian exception will be enacted if:

$$P \leq V \text{ and } Q \leq p \text{ and } L > V$$

Proposition 5b: In equilibrium, the actors will be indifferent about enacting a bill (b) creating a majoritarian exception if:

$$P \leq V \text{ and } p < Q \leq v \text{ and } L > V$$
$$P \leq V \text{ and } L \leq V \text{ and } Q < p$$
$$P \leq V \text{ and } L \leq V \text{ and } Q > 2m - p$$
$$V < P \text{ and } Q < p \text{ and } L \geq M$$
$$V < P \text{ and } Q < p \text{ and } L < P$$
$$V < P \text{ and } Q > 2m - p$$

Proposition 6: In equilibrium, policy will be located at:

$$p^* = \left\{ \begin{array}{c} p \text{ if } P \leq V \text{ and } L \leq V \\ p \text{ if } P > V \\ p \text{ if } Q \leq p \text{ and } P \leq V \text{ and } L > V \\ Q \text{ if } p < Q \leq v \text{ and } P \leq V \text{ and } L > V \\ v \text{ if } v < Q \text{ and } P \leq V \text{ and } L > V \end{array} \right\}$$

The first line of Proposition 6 corresponds to Case 1. Line 2 corresponds to Case 2. Lines 3, 4, and 5 correspond to Case 3. See Figure A2.2 for a depiction of this equilibria. For Q ≤ p, the outcome is the same in all three cases. In Cases 1 and 2, the outcome is the same for all values of Q.

Figure A2.1: Equilibrium Policy Outcomes, Baseline Game

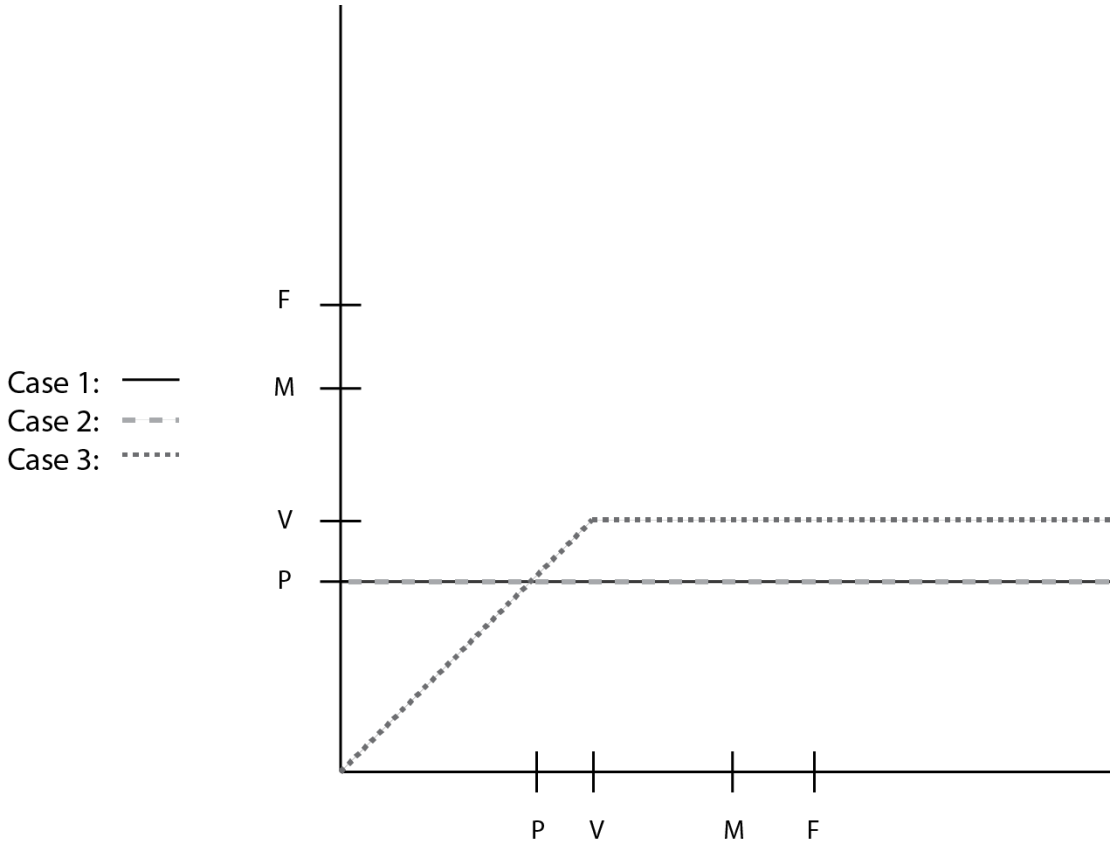
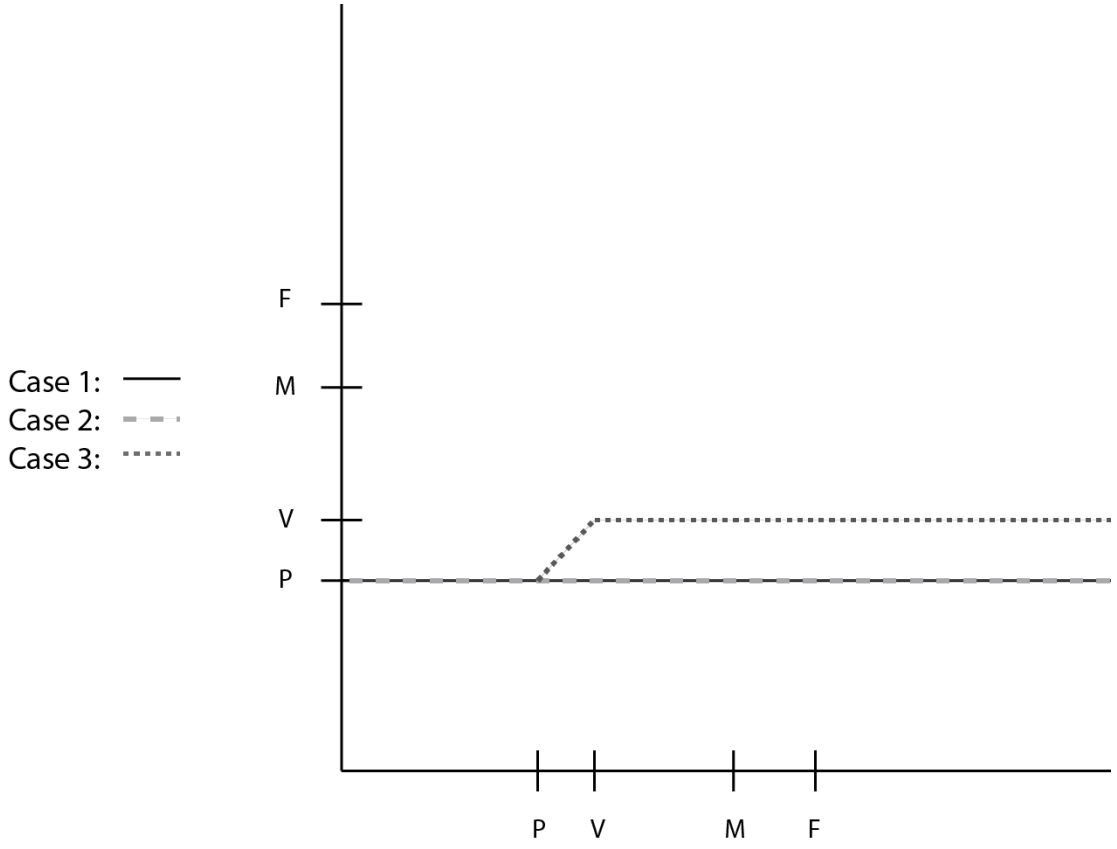


Figure A2.2: Equilibrium Policy Outcomes, Rule Change Alternative



Appendix 2.2

As described in footnote 6 on page 55, the model outlined in this chapter ignores the existence of two additional dynamics that affect the strategic interaction between the president and the legislature in the decision to create a majoritarian exception. In this Appendix, I provide additional detail on both features and illustrate how, in a one-period, complete information environment, neither affects the equilibrium outcomes described above.

Disapproval Resolutions

The resolutions in the Senate that receive procedural protections under an oversight exception may either approve the unilateral action taken by president—as modeled above—or disapprove of it. In the period covered by the empirical tests above, roughly half of the oversight exceptions fall into each category. Indeed, the two examples provide in the chapter's conclusion typify this distinction. The Iraq War exception would have required affirmative congressional approval of the president's report on various benchmarks before additional funds could be expended, while the provisions of the AECA provide an opportunity for Congress to pass a resolution disapproving of an arms sale.

How does the presence of a disapproval resolution affect the strategic interaction in the model? In the face of a resolution disapproving r(p), the president is still faced with the task of bringing policy as close as possible to his ideal point without prompting a congressional response. Recall also that L cannot obstruct r(p) from coming to the floor—it does so automatically.[48] Under a simple majority voting rule, then, the constraint on this location is identical whether the vote in the legislature is on either approval or disapproval. If $p \leq Q < m$, any r(p) that P prefers to Q would garner a majority of votes on a question of disapproval. For $m \leq Q < 2m - v$, meanwhile, P would be able to move Q closer to p without a vote of disapproval from M, but P is better off with the outcome he was able to achieve before the rules were changed (which is either at p or v, depending on which case applies). Finally, if $2m - v \leq Q$, P would again be able to move Q closer to p without a vote of disapproval from M, but now F is

[48] Chapter 1 discusses the various specific ways in which the bill covered by a majoritarian exception reaches the floor is protected from pre-floor obstruction.

better off under the policy outcome without rule change, so he will obstruct b and no majoritarian exception will be created. In sum, then, if the oversight exception includes provisions for a disapproval resolution rather than a question of affirmation, our expectations about exception creation are the same in equilibrium.

Presidential Approval of Congressional Action

In the model outlined above, once the legislature has taken action on r(p), the game ends. If the legislature approves of r(p), it takes effect. Under the extension discussed in the previous section, meanwhile, r(p) would take effect as long as the legislature did not pass a resolution of disapproval.

Since the Supreme Court's decision in *INS v. Chadha*, 462 U.S. 919 (1983), however, there has been an additional step that follows r(p) for some majoritarian exceptions. In the *Chadha* case, the Supreme Court declared the legislative veto, defined as a provision requiring "congressional review, deferral, approval, or disapproval of proposed executive actions" (Norton 1976, p. 1), unconstitutional. The universe of legislative vetoes is substantially larger than that of majoritarian exceptions, as it includes actions by both congressional committees acting alone and resolutions not protected by expedited procedures in the Senate (Berry 2008, 2009). Some exceptions enacted pre-*Chadha*, however, did fall into this category, as they took the form of simple or concurrent resolutions of disapproval that did not need to be signed by the president and/or required action by only one chamber. Since *Chadha*, oversight exceptions that would prevent an executive action have generally involved a joint resolution of disapproval, which must be signed by the president (Fisher 2005).

How does this requirement affect the model's predictions? For the kind of r(p) explicitly modeled above, where the legislature must approve a presidential action, there is no effect; since r(p) cannot be amended, the president would never propose a version of r(p) for which he would subsequently veto an approval resolution sent to him by Congress.

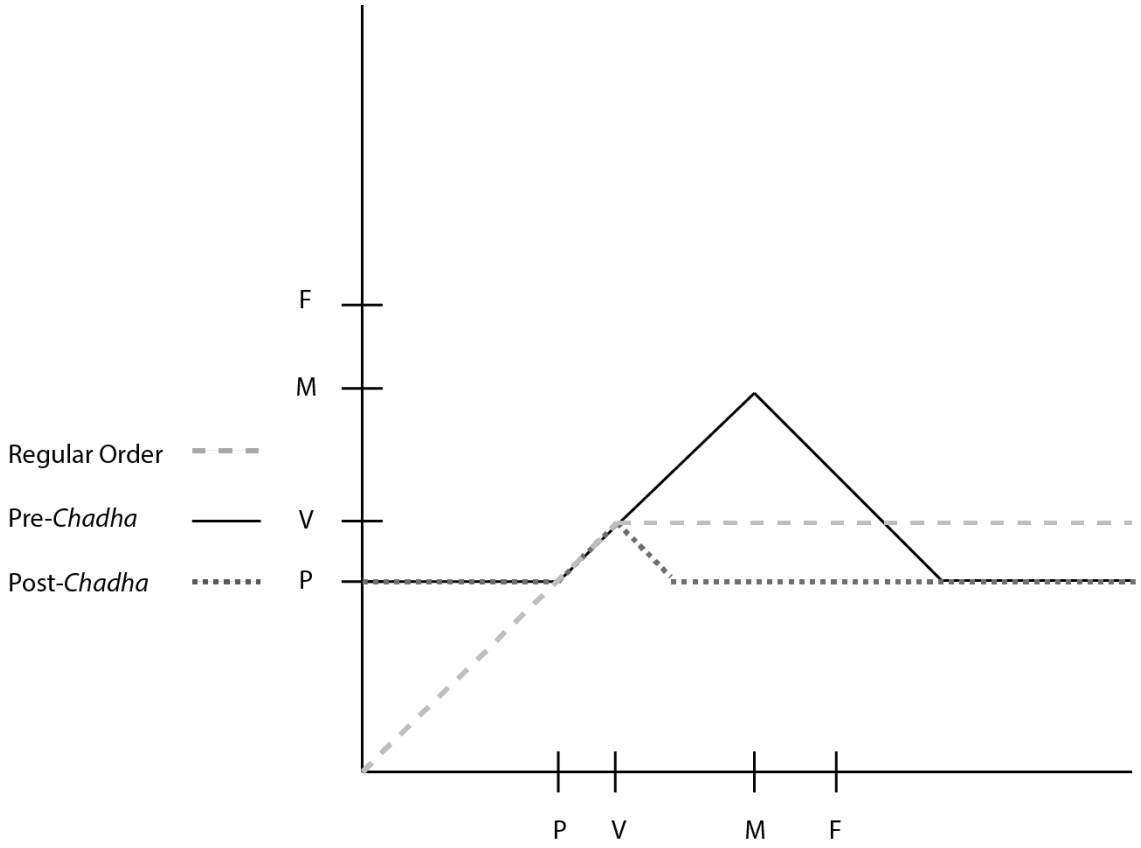
For disapproval resolutions, however, *Chadha's* requirement changes the outcomes achievable by the president in the presence of an oversight exception. This difference is illustrated in Figure A2.3. The solid line represents the policy outcomes the president can obtain without *Chadha's* requirement, while the dark grey dotted line depicts those possible when the

president must sign a resolution of disapproval; the light grey dashed line, meanwhile, is the policy outcome without creating an oversight exception. Note that these are not equilibrium outcomes of a version of the model that embodies *Chadha*. Rather, the figure allows us to determine whether the situations in which all pivotal actors are better off under the new rules are different pre- and post-*Chadha.*

We can see that for extreme status quo points on the same side of the policy space ($Q \leq v$), the outcome is the same pre- and post-*Chadha*, and it is Pareto superior to the outcome under regular order. For extreme status quo points on the opposite side of the policy space from the president ($2m - p \leq Q$), the outcomes are identical pre- and post-*Chadha*, but they are Pareto inferior to the outcome under regular order.

For status quo points $v \leq Q < 2m - p$, the outcomes are different. Post-*Chadha*, the president is able to bring policy substantially closer to his ideal point in the presence of a disapproval resolution than prior to the decision. Throughout this region, however, M and F—pivotal actors for creating the exception—are better off under the regular rules, so they would not support enacting b in the first place. While, then, *Chadha's* requirements may affect the ultimate location of policy once an oversight exception is in place, we should not expect the restrictions of legislative vetoes to alter the equilibrium outcomes described above.

Figure A2.3: Outcomes Under Regular Order and Oversight Exceptions, Pre- and Post-*Chadha*



Chapter 3: Obscuring the Causal Chain: Creating Delegation Exceptions

From the start, it appeared that 2014 would be, legislatively, like the year before, which had set the record as Congress's least productive year in recent history (DeSilver 2013). President Obama began the year highlighting the ways he would attempt to make policy without congressional cooperation, pledging to use his "pen and…[his] phone" during his first Cabinet meeting.[1] Early on, however, one bright spot for potential bipartisanship emerged: the possible renewal of the president's lapsed fast-track trade authority, allowing him to negotiate trade deals that, once completed, would come to the Senate floor for approval ineligible for amendment and exempt from the possibility of a filibuster. Obama had repeatedly articulated his support for the renewal, and Senate Finance Committee chairman Max Baucus (D-MT) was among the measure's original sponsors. It was hugely popular with the business community, and House Republican Whip Kevin McCarthy (R-CA) even suggested that Obama's first call with his aforementioned phone should be to Congress to talk about trade (Lowrey 2014). But barely four weeks into the year, the legislation was dead on arrival, thanks in large part to opposition from the president's own congressional co-partisans, especially Senate Majority Leader Harry Reid (D-NV). Following a mention of the proposal by Obama in his State of the Union address, Reid announced that he would prevent the legislation from coming to the floor of the Senate, saying "'everyone would be well-advised to not push this right now'" (Bradner and Raju 2014). His House Democratic leadership counterpart, Minority Leader Nancy Pelosi (D-CA) expressed similar opposition, saying the plan was "'out of the question'" (Babington 2014).

Given its swift failure, why did Obama request that Congress create special procedures for handling new trade legislation? An extensive political economy literature emphasizes the inherent collective action problems present in trade policymaking. The benefits of protectionist policies are concentrated in the hands of a few firms while the costs are widely dispersed across

[1] "Remarks by the President Before Cabinet Meeting," 14 January 2014 <http://www.whitehouse.gov/the-press-office/2014/01/14/remarks-president-cabinet-meeting>.

the consumer population (e.g. Alt and Gilligan 1994). Relaxing these protectionist policies through the kinds of free trade agreements that fast track authority promotes, then, has the opposite effect: the benefits are diffuse but the costs are felt deeply by those companies now competing with cheaper imported goods. Put differently, the gains from freer trade are general while the losses are focused on specific individuals (Arnold 1990). Because electorally-minded legislators from the areas in which costs accrue will attempt to undo any bargain reached to deliver the broad-based benefits, the regular legislative process is ill-equipped to address these kinds of issues.

Indeed, the renewal of fast track trade authority is but one example of the second kind of majoritarian exception. I refer to these special procedures as "delegation exceptions," and they represent instances in which the chamber uses procedural change to resolve collective action problems for which the regular legislative process is ill-equipped.[2] Previous work on the creation of delegation exceptions, while deeply descriptive, has not offered and tested a cross-policy area account of when we should observe this kind of rule change. Beginning from the two basic premises about majoritarian exceptions laid out in the Chapter 1, I begin to close that gap here. First, I document the set of delegation exceptions proposed in Congress since the late 1960s, emphasizing the near-universal existence of concentrated costs and diffuse benefits within the policy questions they address. Next, I offer an account of how, in situations characterized by these kinds of collective action problems, the electoral needs of the Senate's majority party affects the success of proposals to create a delegation exception. Because the potential electoral benefits of the underlying policy change are diffuse, and the possible electoral costs concentrated, the enactment of special rules only occurs when the majority party's need to minimize traceability (Arnold 1990) is extremely high. This need to obscure its actions, I argue, is determined by voters' preferences about a given issue; the salience of that issue among the public; and the overall electoral landscape facing the majority party. Using a novel dataset on

[2] It is important to note that fast track trade authority illustrates an important dynamic in the creation of majoritarian exceptions: the nature of the rule change is highly contingent on the current rules for handling the policy area. The initial creation of fast track in 1974 represented an oversight exception: the President had exerted substantial unilateral authority to negotiate agreements concerning both tariffs and non-tariff barriers. In response, Congress wished to exert more influence in that policy area by increasing its oversight over behavior in which the president was already engaging. Subsequent renewals of fast track authority, however, represent delegation exceptions. Absent active congressional action to renew fast track authority, the president may continue to engage in negotiations, but the proposal has no special status on the floor of either chamber; it is merely considered like any other piece of legislation.

proposed and enacted majoritarian exceptions, I then test these theoretical expectations at the aggregate level. I conclude by exploring how the Senate majority party's changing electoral needs can also affect when it *proposes* delegation exceptions using a particular case—military base closings—where procedural change has been attempted repeatedly throughout the past quarter-century.

The Landscape of Delegation Exceptions

In the Chapter 1, I outlined our operational definition of a majoritarian exception: a provision, enacted as part of statutory law, that designates some future piece of legislation as exempt from a filibuster (as the result of a specified limit on debate). In addition, majoritarian exceptions also may include provisions related to committee consideration, to allowable amendments, and to other aspects of floor consideration.

Delegation exceptions are distinguished by one additional, important feature: they reallocate agenda setting power by explicitly granting new power to an actor or actors who do not already have it to develop the proposal that receives procedural protections. This special agenda setter can take a variety of forms. Within the institution, it may be a new committee, the Senate Budget Committee, created and charged with developing the yearly budget resolution by the Congressional Budget Act of 1974. Existing committees may also be empowered by delegation exceptions, as is the case with the budget reconciliation process, where individual standing committees are given the authority to develop proposals making changes to mandatory spending programs that come to the floor protected from a filibuster.[3]

Outside of the institution, the new agenda setter may be entirely in the executive branch. As part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, for example, the president was granted the power to develop a proposal to address pending Medicare shortfalls.[4] Presidents may, however, be required to consult with Congress during the development of the proposal, as is the case with fast-track trade authority. Finally, the specific identity of the actor may be jointly determined by the president and Congress. The Independent

[3] The use and consequences of the reconciliation rules are explored at length in Chapters 4 and 5.
[4] Specifically, if general revenue funding for Medicare is expected to exceed 45 percent of Medicare outlays for the current fiscal year or any of the next six fiscal years, the president is required to submit a legislative proposal to Congress to lower that ratio to 45 percent.

Payment Advisory Board, created by the 2010 Patient Protection and Affordable Care Act and empowered to make changes to Medicare, has fifteen members nominated by the president and confirmed by the Senate. In particular, the president is required to consult on the selection of three members with each of the Senate Majority Leader, the Speaker of the House, and the Senate and House Minority Leaders. Regardless of the identity of the special agenda setter, however, their power is largely the same across all delegation exceptions: develop a proposal to make a specified kind of policy change, and then watch that measure come to the floor of the Senate under procedural protections from amendment and filibuster.[5]

Most existing work on when Congress creates this kind of procedural change tends to focus on one specific policy area, be it military base closures (Mayer 1995), trade (O'Halloran 1994), or both (Becker 2005).[6] As Table 3.1 makes clear, however, delegation exceptions have been proposed in a wide range of policy areas since 1969.[7] Roughly 40 percent fall into just two categories: proposals to address the deficit or national debt and plans to reform government operations. In the case of deficit reduction, the collective action problem that a delegation exception might solve is well-documented. A conflict arises between the macroeconomically beneficial goal of balancing the budget and shrinking the national debt and the steps necessary to achieve that end—that is, cutting or eliminating individual federal programs. While programs will vary in the political engagement of their beneficiaries and the quality of their representation by organized interests, Congress has repeatedly struggled to enact meaningful deficit reduction as individual legislators seek to avoid reductions in programs that benefit their constituents (Gilmour 1990; LeLoup 1980; Schick 1981).

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[5] Readers may be curious as to why I consider all types of delegation exceptions under one heading; put differently, why group together delegation exceptions that delegate power inside the chamber with those that send it outside? I consider the precise decision of where to locate the special agenda setter as part of the overall political calculus, described in detail below, of choosing to use a delegation exception to maximize the electoral party's electoral chances. In some situations, such as the creation of the congressional budget process, a simultaneous institutional desire to keep power within the chamber meant that delegating to a new committee was optimal. In the case of military base closings, however, the best electoral strategy requires maximum distance between lawmakers and the individuals developing the unamendable proposal. Because the choice of where to locate the special agenda setter is driven by the same political calculations, I consider all kinds of delegation exceptions together.

[6] Two notable exceptions to this trend are limited in other ways, either in that it examines only one kind of special agenda setter, such as commissions (Campbell 1998), or offers a broad set of theoretical expectations without accompanying empirical tests (Garrett 2004; 2005).

[7] The categories here are drawn from Baumgartner and Jones's (2014) Policy Agendas Project classification scheme, subject to the changes described in Chapter 2.

Table 3.1: Distribution of Proposed Delegation Exceptions Across Policy Areas, 1969-2012[8]

Policy Area	Number of Proposed Exceptions	Share of All Exceptions
Deficit/Debt	47	23%
Government Operations	40	19%
Health	24	12%
Foreign Trade	24	12%
Taxes	14	7%
Energy	12	6%
Defense	11	5%
Social Security	11	5%
Transportation	8	4%
Banking, Finance, and Domestic Commerce	5	2%
Macroeconomics	4	2%
Immigration	3	1%
Labor and Employment	2	1%
Public Lands and Water Management	2	1%
Law, Crime, and Family Issues	1	0.5%

The collective action problems present in reforming federal operations is less intuitive, but an example of a typical delegation exception from that policy area is illustrative of how improving the government's ability to function is similarly hampered by a tension between collective benefits and individualized costs. Efforts to improve and reorganize the process by which the federal government implements its programs date to the early 20th century, and by the late 1970s, these efforts became increasingly imbued with a distrust of government (Light 1997, 2006). The answer, reorganization proponents argued, was to eliminate "unnecessary" government functions, and, beginning in the early 1990s, delegation exceptions represented a part of this overall strategy. Taking names such as the Commission to Eliminate Waste, Fraud, and Abuse, the Federal Government Streamlining Commission, and the Commission on the Accountability and Review of Federal Agencies, the proposals, none of which were ultimately

[8] The coding in Table 3.1 is based on the Policy Agendas Project, subject to the changes described in Chapter 2, footnote 37.

successful, varied in their specifics but shared a general framework. Each would delegate power to an independent commission that would identify agencies or programs that could be eliminated, based on criteria such as whether an initiative was "'duplicative…wasteful…inefficient… outdated…irrelevant…or failed'" (Brass 2006). As with deficit reduction, using a delegation exception would allow the proponents of the overall goal of reducing the size of the federal government to achieve the broad benefits associated with smaller, more efficient operations while also preventing individual legislators whose constituents relied on the "wasteful and inefficient" programs from derailing the reform effort.

Continuing to move through Table 3.1 further, we observe, across the next six rows, that nearly half of the proposals involve health, trade, energy, taxes, defense, and Social Security. As before, for some of these issues, the underlying collective action problem is readily apparent. In the case of trade policy, for example, reducing barriers to trade delivers benefits to consumers in the form of lower prices, and to exporters through increased access to markets abroad, but potentially imposes steep costs on specific domestic firms who have to compete with cheaper imports. The proposed delegation exceptions dealing with trade would help resolve this tension by easing ratification of free trade agreements and other pacts negotiated by the president; by granting procedural protections to these proposals, it becomes more difficult for individual legislators with constituents who would feel the downstream effects of suffering firms to defeat the package. Similarly, experts have long observed the need to reform Social Security to prevent outlays from exceeding payments into the current system (e.g. Soneji and King 2012), but individual members of Congress have a history of opposing vigorously any cuts to the program in order to protect their constituents. In 2014, for example, congressional Democrats even persuaded President Obama to remove a proposal limiting cost-of-living increases from his non-binding, annual budget request (Sink and Wasson 2014).

In other policy areas, meanwhile, a closer examination of these proposals reveals that, while we might not associate overall policy area with the presence of collective action problems, delegation exceptions are being proposed to address *specific* aspects of the issue where any negative consequences of policy change are likely to be felt keenly by individual constituents of specific senators. Even in the case of defense—which is usually considered to be among the most collective of goods—delegation exceptions have been proposed, and occasionally enacted, in order to close unneeded military installations. For the senators representing the states in

which bases had the potential to be shuttered, then, even generally collective policy areas have particularistic components.

Similar dynamics are present in the energy proposals. Between 1993 and 2001, eight separate bills were introduced that would create a special commission to make recommendations on restructuring the Department of Energy's (DOE) National Laboratories; the proposal would be subject to congressional approval, but it could not be amended and could not be filibustered in the Senate.[9] Originally created as part of the large federal investment in basic science prior to World War II, the Labs were the sites of important nuclear weapons research during the Cold War but subsequently expanded to also cover work in all of DOE's mission areas (science and technology, national security, energy resources, and environmental quality). Beginning in the early 1990s, DOE generally, and the National Labs specifically, came under increasing criticism for mismanagement, misplaced focus, and performing functions that could be better handled by other federal research and development programs or in the private sector (Boesman 2000).

There were 22 facilities in the National Labs system in 1993, and any regular legislative proposal to close them would have been met with strong opposition from members in places where they were located, including like California, Illinois, New Mexico, and New York. In 1996, for example, the member representing California's 10th district, home to the Lawrence Livermore National Laboratory, took to the floor of the chamber to defend the facility. "These workers," argued Representative William P. Baker (R-CA), "are truly national assets…[and] while budgetary bottom lines may sometimes seem cold, a responsible government treats its workers as national assets to be valued and esteemed."[10] None of the eight proposals to create a delegation exception for restructuring the National Labs were ultimately enacted, and an attempt in 2003 to consolidate the operations of the Idaho National Laboratory and the Oak Ridge National Laboratory was unsuccessful, thanks to ongoing lobbying by Idaho's all-Republican congressional delegation, Representative Mike Simpson and Senators Larry Craig and Mike Crapo (Swanson and Reed 2012).

[9] In 2014, Congress created the Commission to Review the Effectiveness of the National Energy Laboratories, which is meant to accomplish this same underlying goal, but the proposal generated by the Commission is not subject to a procedural exception, so it may be amended or filibustered in the Senate. See Public Law 113-76, section 319.

[10] 142 Congressional Record 46, 29 March 1996, pp. E500-E501.

Delegation exceptions, then, are clearly targeted at policy areas, or specific components thereof, where a tension between broad-based benefits and narrowly-imposed costs makes the regular legislative process ill-equipped for enacting changes to the status quo. This descriptive evidence only tells part of the story, however. Collective action problems appear to affect the generation of *proposed* delegation exceptions, but once a rule change is proposed, the tension between costs and benefits does not necessarily explain whether it is successfully enacted into law. To make predictions about whether a given rule change is likely to be approved once proposed, we need to explore other features of the underlying policy change that it would shepherd to passage in the future.

Obscuring the Causal Chain through Procedural Change

To generate expectations about which proposed delegation exceptions will actually be enacted into law, recall first my central claim that exceptions benefit the majority party. Recall also my two basic assumptions about legislators' goals, each of which will have consequences for whether a proposal is successful. First, we will assume that legislators are, individually, single-minded seekers of re-election (Mayhew 1974). Second, let us assume that the primary shared goal of co-partisan legislators is for their party to attain or retain the majority in their chamber (Cox and McCubbins 1993, 2005; Aldrich and Rohde 2000).

Before outlining how these goals affect the chances that a delegation exception is enacted into law, it is worth explaining why the formal model described in Chapter 2 does not also generate predictions that apply here in Chapter 3. While the procedures under study in the two chapters are the same in how they reallocate power within the chamber, and in how they help the majority party and its members achieve electoral goals, there are important substantive differences between the two. Oversight exceptions address Congress's desire to maintain influence in a separation of powers system, while delegation exceptions help Congress solve internal collective action problems. In both cases, patterns of creation should be in line with our expectations about the majority's electoral goals, but the relevance of different actors in the different situations for which procedural solutions are being sought necessitates two separate theoretical accounts.

Here, in the case of delegation exceptions, it is helpful to turn to Arnold's (1990) work on how voters reward or punish incumbents for previous actions in office. For a given policy choice to affect an electoral outcome, voters must be able to "plausibly trace an observed effect first back to a governmental action and then back to a representative's individual contribution" (47). Arnold argues that for something to be traceable, three conditions must hold: voters must *perceive* the effect of a policy; they must attribute those results to an *identifiable* action; and their legislator must have made *visible* contribution to that decision. If voters recognize positive effects of a specific governmental action to which a representative clearly contributed, the account goes, they can reward the incumbent with re-election; if the traceable consequences are negative, however, the incumbent is apt to be punished.

For the kinds of issues covered by delegation exceptions—where the costs of policy change are noticeable and the benefits negligible—any perceptible effects are, on average, negative. "Wasteful" government programs, for example, have beneficiaries who will feel the effects of their elimination. Along the same lines, when military bases are shuttered, the communities in which they are located may experience less overall economic activity, spillover job losses, and/or decreased government revenue (Cowan 2012). It is in the interest of individual, re-election-minded members, then, to *minimize* the traceability of the kinds of policy changes with which delegation exceptions generally deal. These incentives, argues Arnold, are exactly what motivates coalition leaders to use procedural strategies—like granting the ability to make a protected proposal to a special agenda setter—in pursuit of the underlying policy change.

Delegation exceptions reduce the visibility of individual contributions to the decision in several ways. First, by giving a special agenda setter the ability to develop the proposal that changes the status quo, the delegation exception reduces the number of legislators that can be identified as having had a hand in the development of the proposal, either as the original sponsor, as co-sponsors, or as members of the committee that worked on the measure. This is especially true if, as is often the case, the agenda setter is outside the chamber. Second, by protecting the proposal from amendments and filibusters on the floor of the Senate, delegation exceptions eliminate the expectation that individual members will exploit their various procedural rights to the benefit of their constituents—a presumption that has only grown in the Senate over the course of the 20th century (Binder and Smith 1997; Smith 2014)—because their ability to do so has been severely curtailed. If legislators are limited in their ability to change or obstruct the

proposal, they cannot make visible contributions to its passage or its defeat. At their most extreme, some delegation exceptions dictate that the underlying policy change will take effect unless Congress disapproves, thus reducing even further the possibility that constituents detect individual contributions by their representatives. The special procedures for closing military bases, for example, dictate that the proposal developed by the Base Realignment and Closure (BRAC) Commission will be implemented by the Department of Defense unless Congress enacts a joint resolution vetoing the recommendations in total.[11]

If delegation exceptions minimize traceability, then, we should expect the probability of a proposed rule change being enacted to be increasing as the desire for traceability on the part of individual members also decreases. Put differently, we should observe successful delegation exceptions when individual legislators' desire to hide their actions, or avoid blame (Weaver 1987), is highest. Certainly, the existence of an issue for which the solution requires specific costs in pursuit of diffuse benefits is part of this calculation, but the existence of such collective problems defines nearly all proposed delegation exceptions.

At a given point in time, however, the preferences of voters about these underlying policy issues are likely to vary in multiple ways. As I argued in Chapter 2, the substantive content of citizens' attitudes may matter. If a policy change facilitated by the delegation exception is unpopular with voters, then incumbent representatives will want to minimize the traceability of their actions. Conversely, if the underlying measure is popular, members of Congress will want to claim credit for their actions on it. To make that subsequent credit claim credible, legislators will want to have as many opportunities to put their fingerprints on the decision. Thus, for popular policy changes, they will want to use the regular legislative process; there is no reason to minimize traceability. This suggests the following hypothesis:

Public Preferences Hypothesis*:* The probability that a proposed delegation exception is enacted into law decreases as public support for the proposal increases.

In addition to voters' preferences, the salience of an issue is likely to affect the probability that a proposed rule change is successful—but only conditional on the public's underlying preferences. The role of issue salience in legislators' decision-making has been

[11] See, for example, Public Law 101-510, §2908.

explored widely, with an emphasis on how member behavior on highly salient issues increases the probability that constituents reward or punish the representative for his contributions to a given decision (e.g. Kingdon 1984). Fiorina (1974) argues that issue salience is especially important when some or all of a legislator's constituents are likely to oppose his action on an issue—just as we would expect here, where the perceptible effects of solving a collective action problem are, on average, negative.

How might this play out in the case of delegation exceptions? Take, for example, the procedures, created in December 2001, that facilitated an additional round of military base closings. Enacted shortly after the terrorist attacks of September 11, 2001, defense issues were highly salient among the public; between October and November 2001, the average share of respondents in the monthly Gallup poll rating "defense" issues as the most important problem facing the country stood at 43 percent. In addition, reducing expenditures on the military was an unpopular policy position. In one October 2001 survey, only 7 percent of respondents indicated that spending on national defense should be cut back (Pew Research Center 2001). Embedding an unpopular policy choice in a highly salient issue domain within a delegation exception, then, was especially attractive in terms of minimizing the traceability of the action. For popular reforms, however, the opposite should be true. If a decision is both highly salient AND highly popular, legislators will prefer to make their actions more, not less, public in order to lay the groundwork for future credit-claiming. We can summarize these two observations as follows:

Salience Hypothesis*:* If a proposed delegation exception facilitates an unpopular policy change, the probability that it is enacted into law increases when the issue is more salient. If a proposed delegation exception facilitates a popular policy change, the probability that it is enacted into law decreases when the issue is more salient.

These two features of an issue—the content of the public's preferences about it and the salience among those voters of it—help us understand when individual, re-election-minded legislators will prefer to see proposed delegation exceptions enacted into law. Recall, however, that we also expect the shared interests of congressional parties to affect the success of these prospective changes to the rules. Both parties are attempting to gain or maintain majority status—the benefits of which are well-documented (Albouy 2013; Cox and Magar 1999). To

achieve this goal, each must balance two considerations: building a strong, positive party brand (Cox and McCubbins 1993, 2005; Lee 2009) and ensuring the individual re-election of its incumbent members.

First, let us consider how procedural change, in the form of delegation exceptions, might build a party's reputation. Building a strong brand, argues Lee (2009), involves not only appearing effective and passing policy changes that a party expects will be popular, but also engaging in actions that make the minority party appear incompetent in the eyes of critical voters. From the perspective of the majority party, both of these objectives are achieved when it considers and enacts legislation sponsored by its own members over bills advocated for by members of the minority party. From a preference perspective, majority-sponsored measures are more likely to embody the kinds of policy changes that are popular among the voters the majority party is courting. Shepherding a bill sponsored by a co-partisan all the way to passage also makes the majority party appear more competent in an increasingly chaotic legislative process. At the same time, denying these reputation-building benefits to the minority party by keeping its bills off the agenda should also help the majority party achieve its ultimate goal of remaining the majority party. Indeed, the Senate's majority party leadership enjoys a range of procedural advantages over its peers in the minority party that this process easier. These include a preferential right of recognition on the floor for the Majority Leader, as well as his ability to fill the amendment tree, restricting potential changes to the underlying bill. These advantages translate, for example, into majority-sponsored bills being more likely to be scheduled for consideration and overcome filibusters; majority-sponsored amendments also have a higher probability of being adopted (Den Hartog and Monroe 2011). Together, this suggests the following:

Majority Proposal Hypothesis: A proposed delegation exception is more likely to be enacted into law if it is proposed by a member of the majority party.

An additional partisan concern arises if we think that the audience of concern in terms of minimizing traceability is not voters, as assumed by the *Public Preferences* and *Salience* hypotheses, but rather interest groups or party elites. In Chapter 2, we saw that those latter actors' preferences about which issues on which the congressional majority should be active

affected the probability that a proposed oversight exception was successful. Oversight exceptions on issues owned by the majority party were more likely to be enacted into law, and policy areas owned by the majority party had a higher probability of being the target of successful rule change.

How might these elite-level issue concerns manifest in the creation of delegation exceptions? If activists and interest groups allied with the majority party oppose the underlying policy change covered by the delegation exception, the party leadership should want to minimize traceability—just as they would in front of voters. In this case, using special procedures reduces the chance that the party members are confronted with an individual vote on which they must choose either to solve a collective action problem or side with important group allies. If, on the other hand, activists and organized interests *support* the policy change, the fact that they are already engaged in the process lessens the need for creating credible credit claiming opportunities by using the regular legislative process. Put differently, active supporters who are already paying attention are likely to know that their partisan allies have accomplished a particular policy change regardless of which legislative procedures are used. Indeed, some have argued that organized interests expect their congressional allies to engage in procedural innovation in order to accomplish their preferred policy change (Binder and Smith 1997). Together, this logic suggests:

Issue Ownership Hypothesis: A proposed delegation exception is more likely to be enacted into law if it deals with an issue owned by the majority party.

Finally, if the majority party is also working to ensure the electoral success of its incumbents, it must consider the aggregate electoral situation facing that set of members. In the Senate—where the procedural deck is reshuffled most significantly by delegation exceptions—this aggregation from the electoral incentives faced by individual members to those confronting the party as a whole is shaped by the chamber's staggered, six-year terms. In a given session of Congress, some members—those whose seats are being contested in the next election year—feel electoral pressures more acutely. Other work finds that this electoral structure has important consequences for the distribution of earmarks (Shepsle, van Houweling, Abrams, and Hansen 2009) and the timing of programmatic policy changes (see Chapter 4), and we should expect the

same in the case of rule change—especially of the kind that aims to help individual legislators avoid blame for potentially unpopular policy choices. The more seats the majority party has to defend in the next election, the more important minimizing traceability is for the caucus's share goal of retaining its status. In addition, previous work on the use of delegation exceptions suggests that electoral considerations can affect the actual content of the policy change subsequently considered by Congress under the new, expedited procedures. In the case of both trade policy and base closings, for example, Kriner and Reeves (2015) find that the special agenda setter develops proposals that serve the president's electoral needs. The majority leader, then, may also be cognizant of the possible electoral consequences of the actual policy change covered by the exception, and the more seats his caucus is defending, the more acute these concerns should be. As a result, we should expect the following:

Majority Electoral Need Hypothesis: The probability that a proposed delegation exception is enacted into law increases as the share of the seats held by the majority party that are up for re-election also increases.

Data and Estimation

To evaluate these possible explanations, I return to the data on the universe of proposed majoritarian exceptions described in Chapter 2. Here, I use only the data on proposed rule changes that would delegate authority to a special agenda setter and grant that proposal privileged procedural rights. First, I code each observation for whether or not it was enacted into law. Between 1969 and 2012 (the 91st-112th Congresses), 208 such proposals were introduced, with 27 being successfully enacted into law; a full list of these enacted rule changes in appears in Appendix Table A3.1. To determine which proposals were enacted into law, I use Adler and Wilkerson's (2012) Congressional Bills Project dataset. It is worth noting that this success rate of just over 10 percent indicates that a proposed delegation exception is less likely to be enacted into law than an oversight exception; the latter category of exceptions have a success rate of roughly 30 percent. Senators, in other words, are quite unwilling to give up some of their power over developing, amending, and ultimately passing a proposal even when the solving the

underlying policy problem involves confronting distributional issues that make it unlikely that the regular procedures are sufficient.

An initial survey of these 208 proposals sheds immediate insight into one of four expectations outlined above: the *Majority Proposal Hypothesis*. Of the 27 successful delegation exceptions, 26 had, as their lead sponsor, a member of the Senate's majority party.[12] (The only enacted exception with a member of the Senate's minority as its lead proponent was the reauthorization of fast track authority contained in the Trade Act of 2002, which was considered during the 18-month period between mid-2001 and late 2002 when the Democrats briefly controlled the chamber.) Given the overwhelming bias towards the majority party sponsorship within the set of successful exceptions, the empirical test outlined below is restricted to those rule changes offered by members of the majority party only. Put differently, because majority party sponsorship appears to be a near-necessary condition for success, we will instead rely only on variation *within* that set of proposals to explore our other expectations.

Of the four remaining hypotheses, two—the ones involving public preferences and issue salience—require measurement at the level of the issue with which the exception deals. I use the same measurement, involving the Policy Agendas Project *Most Important Problem* and *Public Mood* data, discussed in Chapter 2. The *Most Important Problem* variable measures *Salience* and is scaled from 0 to 1; a value of 0 corresponds to the least salient issue in the dataset while a 1 indicates the most. The *Policy Mood* data, meanwhile, ranges from -1 for the policy-congress pairs where the public's mood diverges most from that of the Senate's majority party and +1 to the issue-congress pairs for which the public's mood is most similar to that of the majority caucus.

For the *Issue Ownership* hypothesis, I return to Egan's (2013) analysis of survey data since 1970 on which party respondents believe is better equipped to handle each of a set of consensus issues. If respondents, in the aggregate, indicate a statistically significant preference for one party to address the issue, the policy is considered owned by that party; if neither party has an advantage, the issue is considered non-owned. I then create an indicator variable, coded 1 if the Senate majority party owns the issue and zero if it does not.

[12] For proposals that originated in the Senate, this measurement is straightforward. For proposals that originated in the House during periods of divided congressional control, I include them as having been introduced by the majority if they were introduced by a member of the Senate's majority party.

Finally, to test the *Majority Electoral Need* hypothesis, I simply calculate the share of the seats held by the majority party that are up for re-election in the next election. In some years, this proportion is relatively small; during the 110th Congress, for example, the majority Democrats were preparing to defend only 12 of their 51 seats in the 2008 election. Just four years later, however, this share was much larger, as the Democrats spent the 112th Congress in anticipation of defending 23 of their 53 seats in the 2012 election.

In addition to the independent variables required to test the theoretical predictions, I control for two other factors—both also discussed in Chapter 2—likely to affect the probability that a proposed delegation exception is enacted into law. First, I control for the *Majority Party Capacity*. As the majority party becomes stronger relative to the minority party, we should observe more procedural innovation that makes it easier for the majority party to achieve its goals. Following Schickler (2000), *Majority Party Capacity* is measured by taking the difference between the strength of the majority party and the strength of the minority party. Each individual party strength measure has two components. The first is the share of seats in the chamber held by the party. The second is that party's cohesion, calculated as $1/\sigma$, where σ is the standard deviation of that party's first dimension DW-NOMINATE scores. Each party's strength is the product of its seat share and its cohesion, and then *Majority Party Capacity* is the difference between the two strength measures. Finally, I control for *House Control*, that is, whether the House is also controlled by the same party as the Senate. Because majoritarian exceptions are enacted as part of statutory law, they also need to gain the approval of the House of Representatives in order to be created successfully.

Because the dependent variable—whether a proposed delegation exception was enacted into law—is dichotomous, I estimate a logistic regression model. Because the proposal observations are clustered within congresses, I estimate random intercepts by year. In addition, because most congresses feature multiple proposals of different kinds, we might expect the errors to be correlated across all bills in a given session, so I cluster the standard errors by congress. Lastly, since the *Salience* hypothesis is conditional, with the expectations about the effect of an issue's salience depending on the underlying popularity of the proposal, I interact the Gallup *Most Important Problem* variable with the measure based on the public's relative mood in the policy area.

Results

The results of this estimation appear in Table 3.2. At first glance, the results for the *Public Preferences* variable appear contrary to our expectations; the coefficient is positive, while the hypothesis outlined above anticipated a negative effect. To get an accurate picture of the relationship between the popularity of a majority party proposal and the probability that a delegation exception is successfully enacted into law, we must also take into account the interaction between *Public Preferences* and *Salience*. To ease this interpretation, Figure 3.1 depicts the predicted probability of passage for a proposed delegation exception in policy areas where majority party proposals are likely to be less versus more popular. As we move from left to right on the x-axis, policies go from less to more popular vis-à-vis the Senate majority party; the values on the x-axis range from two standard deviations below zero to two standard deviations above zero. The y-axis, meanwhile, displays the predicted probability of passage for a proposed delegation exception at each level of public preferences, holding all other independent variables at their means.[13] The negative slope of the line is consistent with the *Public Preferences* hypothesis, as it indicates that less popular policies—those for which the incentive to minimize traceability is greater—are more likely to be the subject of successful delegation exceptions. The difference in the predicted probabilities across the values, however, is not statistically significant at conventional levels; a Wald test of whether the predicted probabilities at -0.75 and 0.75 are equal carries a p-value of 0.16. While this means we are unable to reject the null for the *Public Preferences* hypothesis, Figure 3.1 indicates that the relationship between the public's relative mood on a given issue and the probability of a delegated exception dealing with that issue being enacted is at least in the expected direction.

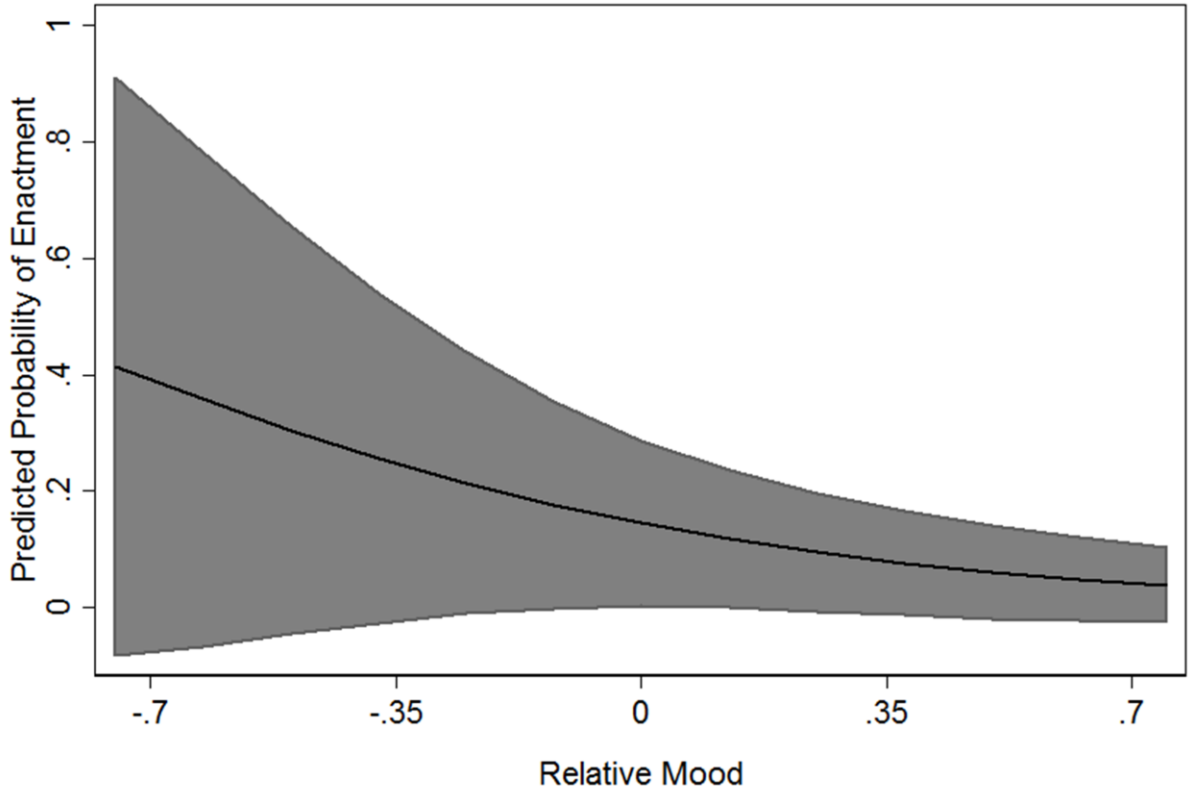
[13] I also assume that the mean value of the random component of the intercept is zero, its expected value (Bartels 2015).

Table 3.2: Probability of Enactment, Delegation Exceptions Proposed by Majority Party, Proposal Level Analysis, 91st to 112th Congresses

Public Preferences	1.067
	(1.975)
Salience	0.954
	(1.912)
Preferences*Salience	-16.022**
	(8.703)
Share of Seats Majority Party is Defending in Next Election	22.044**
	(12.876)
Issue Ownership	-0.474
	(0.788)
Majority Party Capacity	0.506
	(0.341)
House Control	-1.221
	(1.634)
Constant	-8.494*
	(4.176)
Var (Year RE)	4.080
	(2.731)
Log Pseudolikelihood	-47.636
Observations	135

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

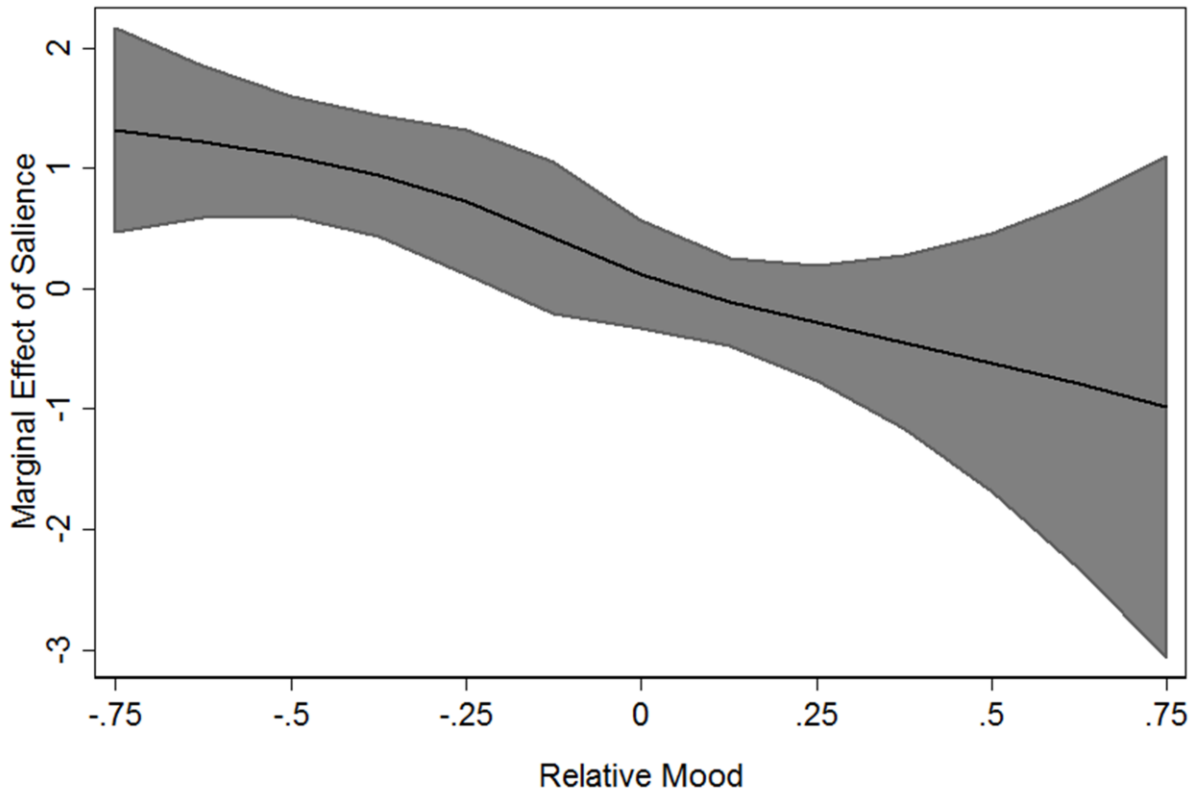
Figure 3.1: Predicted Probability of Enactment by Public Preferences



On the other hand, the estimated effect of public salience, conditional on public preferences, provides much stronger support for the *Salience* hypothesis. In Figure 3.2, the x-axis indicates various levels of the relative public mood measure, and the y-axis displays the marginal effects of the salience variable at each of value of the popularity variable. The strong negative slope of the line suggests that, for policy areas where public preferences are biased away from the Senate majority party, delegation exceptions dealing with more salient issues are more likely to be enacted into law than those concerning less salient issues.[14]

[14] The kink in the confidence intervals at 0 in Figure 3.2 is likely due to the fact that roughly of a quarter of the observations have values of zero for the Public Preferences measure, indicating that the public's preferences on the issue are roughly equivalent to their overall mood.

Figure 3.2: Marginal Effect of Issue Salience on Probability of Enactment, by Public Preferences



At a value of -0.75 (roughly two standard deviations below zero), for example, the probability of a rule change that concerns a minimally-salient issue is not statistically different from zero. For a delegation exception dealing with a similarly unpopular issue that is maximally salient, however, the chance of success is nearly 100 percent; the p-value on a Wald test of whether these predictions are equal is p=0.000. On the other side of the popularity spectrum—a relative mood variable of 0.75—the effect is in the opposite direction, though the difference is not statistically significant. These probabilities of passage are consistent with the predictions of the *Salience* hypothesis. When the majority party's members have the incentive to make its actions as minimally traceable as possible—that is, when an issue is salient AND the party's position is likely to be unpopular—a proposed delegation exception is very likely to be enacted into law. If, on other hand, the individual legislators in the majority caucus want to be able to

claim credit for their actions in the future because they are popular and important to voters, the chance that a delegation exception is created is quite low.

Next, note the coefficient on the *Issue Ownership* measure. Not only can we not reject the null hypothesis at a conventional level of statistical significance (p=0.55), but the coefficient is in the opposite direction than anticipated by the *Issue Ownership* hypothesis. While it is impossible to draw affirmative conclusions from null results, the absence of a relationship here is less surprising when we consider the nature of the problems being solved by delegation exceptions. Even if we expect voters to be paying little attention to congressional activity generally (Baumgartner and Jones 1993; Bartels 2002), a policy change that imposes concentrated costs in exchange for diffuse benefits is perhaps the exception to that trend. Put differently, if legislators are ever going to be concerned about punishment from constituents for policy decisions, it will be when those voters are facing perceptible negative consequences—whether it be in the case of a closed military base, fewer jobs because of a free trade agreement, or less generous social programs because of deficit reduction. Interest groups and other elite allies, however, are likely to be aware of lawmaking behavior regardless of the procedures used; attempts to minimize traceability may simply be less successful in front of those audiences. The null results for the *Issue Ownership* measure, then, may suggest that constituency-level concerns are trumping the concerns of activists in this particular case.

Finally, let us consider the *Majority Electoral Need* hypothesis, comparing an issue typical in terms of popularity and salience at the minimum and maximum values of electoral need. Holding the relative mood and salience variables at their means, if the majority party is defending 24 percent of its seats in the next election (the minimum observed value in the data), the chance that special rules are created is not statistically different from zero. If, however, 44 percent of the majority party's seats (the maximum observed value) will be contested in the next cycle, the probability that a given delegation exception is successful is roughly 59 percent. While the p-value on a Wald-type test of whether these predicted probabilities are equal does not achieve conventional levels of statistical significance (p=0.13), the trend is clearly in the expected direction. This suggests that the majority party turns to procedural change more often when it must defend more seats in the next election in order to maintain its majority, requiring minimized traceability.

While our primary interest is in the variables testing the hypotheses outlined in the theoretical section, the effects of the control variables—or lack thereof—are also worth noting. The coefficient on the majority party *Capacity* variable is positive, but not statistically significant (p=0.14). The variable measuring co-partisan control of the *House*, meanwhile, is negative, though not statistically significant (p=0.46). On one hand, this is surprising; we would expect it to be easier to create a delegation exception when both houses are controlled by the same party. At the same time, the effects of shared *House* control were also negative in Chapter 2. There, I argued that shared control makes regular order more attractive, reducing the need to resort to rule change; that is also a possibility here.

In conclusion, while we are only able to reject the null hypothesis for two of the four sets of expectations tested in Table 3.2 at a conventional level of statistical significance, some results are broadly consistent with the theoretical account outlined above. Indeed, because majority party authorship appears to be a nearly-necessary but not sufficient condition for proposal enactment, we are left with a relatively small number of observations—only 135. In addition, in order to provide an over-time, cross-issue analysis of when Congress creates delegation exceptions—a major gap in the existing literature on this kind of procedural change—we are forced to use relatively coarse measurement, at the level of the general topic being handled by the delegation exception. For some issues, the fact that only some aspects of the policy area are afflicted by the kind of collective action problems that these special rules aim to solve may attenuate some of the effects anticipated above. Minimizing traceability is far more important when the anticipated, perceptible effects of governmental action impose specific costs on a defined population. This condition is more likely to hold for any policy change in, for example, the trade arena than in military affairs. If only some components of an issue require minimized traceability, that should work against us finding evidence consistent with the theoretical account outlined above.

Another concern about the results presented in Table 3.2 is the possibility of selection bias. As in Chapter 2, we might be concerned about the fact the data analyzed here represents only part of the universe of *possible* exceptions; they leave unaccounted for the rules changes that members of Congress could have proposed but did not. On one hand, many would argue that the cost of introducing legislation is non-existent or so minimal as to not be prohibitive (e.g. Balla 2000); if there are no hurdles to proposing delegation exceptions, then the universe of

observed cases should be roughly equivalent to the universe of all possible cases. Others have argued, meanwhile, that a legislator who chooses to sponsor a bill incurs a variety of costs (Krehbiel 1995), including the resource costs of developing the proposal, the opportunity costs of spending time on the measure in lieu of other activities, and the political costs of potential opposition to the legislation (Schiller 1995). In the case of delegation exceptions, however, because many of the proposals analyzed above are identical to unsuccessful measures from previous congresses, the resource costs of their development is quite small. If opportunity and political costs exist, moreover, they should work against the prospect of finding the effects anticipated above. The same impulse that leads legislators to use delegation exceptions—a desire to minimize traceability—may persuade them not to introduce the legislation at all. If anything, then, the sample may be missing some hypothetical proposals that enact unpopular policy changes on salient issue—exactly the kind of measures we expect to be successful.

Even if our concerns about selection bias are minimal, it is worth exploring an issue-level analysis similar to the one in Chapter 2. In Table 3.3, I present the results of a second analysis, where each observation is a policy area in a given congress. The dependent variable is still dichotomous, but now takes on the value of 1 if a delegation exception was created in that policy area in a given session and zero otherwise. The independent variables are measured as described above, with one exception. The measure of whether a rule change was proposed by a member of the *Majority* party, previously measured at the bill level, is now captured at the congress level as an indicator variable where 1 indicates that the majority party proposed new procedures in the policy area during that term and 0 otherwise. The estimation is again carried out by logistic regression with both random intercepts and standard errors clustered by congress.

Table 3.3: Probability of Delegation Exception Enactment, Issue-Level Analysis, 91st to 112th Congress

Public Preferences	0.686
	(1.668)
Salience	0.058
	(1.326)
Preferences*Salience	-13.257**
	(4.890)
Share of Seats Majority Party is Defending in Next Election	10.367
	(8.103)
Majority Party Proposal	6.657***
	(2.036)
Issue Ownership	-0.669
	(0.717)
Majority Party Capacity	0.466*
	(0.244)
House Control	-1.397
	(0.962)
Constant	-10.297**
	(4.200)
Var (Year RE)	1.169
	(1.276)
Log Pseudolikelihood	-42.524
Observations	528

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

The results are largely similar to those presented in Table 3.2, though they are attenuated by addressing possible selection bias. As before, there is no evidence of an independent effect of *Public Preferences* on the likelihood that a delegation exception is created in a given policy area. Conditional on *Public Preferences*, *Salience* continues to predict rule change, but the effect is now smaller. For example, for unpopular policies, the average marginal effect of *Salience* is 0.19 here, as opposed to 1.32 in the proposal-level analysis. For popular policies, meanwhile, the average marginal effect is now indistinguishable from zero. The coefficient on the *Majority Electoral Need* hypothesis is still in the expected direction (positive) but now fails to meet

conventional levels of statistical significance (p=0.20). The presence of a proposal offered by a member of the majority party is a statistically significant predictor of success—as we would expect, given that all but one of the successful proposals explored above were offered by members of the majority party. There is still no evidence that *Issue Ownership* or co-partisan control of the House are related to a greater probability of rule change. Finally, Senate *Majority Party Capacity* is again a statistically significant predictor of the creation of a delegation exception in a given issue area.

Accounting for possible selection concerns, then, tempers the evidence in support of our theoretical account here to a greater degree than it did in Chapter 2. How might we explain this difference? One possibility is simply the rarity of delegation exceptions as compared to oversight exceptions. Recall that there have nearly three times as many oversight exceptions successfully created (72) as compared to delegation exceptions (27). Because several congresses saw multiple delegation exceptions created in the same issue area, moreover, there are only 22 non-zero observations (out of 528) in the issue-level analysis for delegation exceptions.

A second possible explanation is substantive, rather than statistical. The evidence presented above suggests that constituency-level issue concerns are more relevant in the creation of delegation exceptions than in the development of oversight exceptions, where elite-level policy considerations (as captured by issue ownership) are more relevant.[15] When coupled with the realities of the Senate's electoral structure, this difference may help us understand the different role of proposal selection across the two kinds of rule changes. As the set of seats that the Senate majority party must defend in a given cycle changes, so will the set of issues on which minimizing traceability is most important. We should not, however, expect the same to be true when the majority party is responding to elite-level issue concerns; the variance across elections in the issues about which interest group allies, for example, care should be much more consistent. The need to be strategic about when to pursue a given rule change is more acute, then, for delegation exceptions than for oversight exceptions. For evidence of how these calculations might play out, we turn to the case of a particular delegation exception: the procedures for closing military bases.

[15] Further evidence of this difference is presented in Appendix Table A3.2, where I present the main, proposal-level analysis from Chapter 2, now including the *Majority Electoral Need* variable described above. We had no theoretical reason for including this variable in the estimation in Chapter 2, and we see here that it is not a statistically significant predictor of oversight exception success.

Anticipating Electoral Effects: The Case of Closing Military Bases

The history of military base closings has been explored at length elsewhere (e.g. Becker 2005; Mayer 1995, 2007; Twight 1979), but a brief summary of the basic details is useful here. Beginning in the early 1960s, the Department of Defense's efforts to close military bases were met with substantial resistance in Congress, but attempts to act on those frustrations were largely unsuccessful. A 1965 announcement that the Pentagon intended to close 149 bases, for example, led both houses of Congress to pass restrictions on the closure process, including a one-house legislative veto. President Johnson subsequently vetoed the measure, however, and the Department of Defense managed to execute many of its plans.

By the early 1970s, Congress began to gain more influence on the issue, thanks to a deteriorating public reputation for the Pentagon; an increasing ability by Congress to invest in the expertise needed to stand up to the defense bureaucracy; evidence that the Defense Department was actively deceiving members of Congress about closure plans; and declining economic conditions that made members even more concerned about possible effects in their districts. Conflict between the Pentagon and congressional leadership came to a head in 1976, when Congress passed, and President Ford ultimately signed, a measure vastly limiting the Department's ability to close bases unilaterally, effective for one year. In 1977, these procedures were made permanent, and in 1978, they were extended to cover all military installations employing over three hundred people (Becker 2005).

The consequences of these new restrictions were stark: between 1977 and 1991, not a single military installation was closed. Beginning in the mid-1980s, however, momentum began to build around using an alternative system to reduce the military's footprint. In February 1984, however, the report of the President's Private Sector Survey on Cost Control (also known as the Grace Commission) recommended that an alternative mechanism—a special commission—be used to select bases for closure, as improving relations with the Soviet Union made some installations unnecessary, and shuttering them appeared to be an attractive option for reducing a growing budget deficit (President's Private Sector Survey on Cost Control 1984). By 1987, the idea had made its way to a group of congressional Republicans, led by Representative Richard Armey (R-TX); that year, Armey came within seven votes in the House of passing an amendment to the 1988 defense authorization bill that would create a special, congressionally-

appointed commission to develop a list of bases to be closed. Those changes would take effect automatically, without subsequent review by Congress.

By the following year, momentum around the idea of a special base closing commission had continued to grow, with support from House Armed Services Chairman Les Aspin (D-WI), Senate Armed Services Chairman Sam Nunn (D-GA), and Secretary of Defense James Carlucci. In October 1988, both chambers passed a conference report on the following year's defense authorization bill that would create a twelve-member commission, appointed by Carlucci, which would have until December 31, 1988 to develop a proposed list of closures and realignments. The Secretary could accept or reject the proposal in its entirety by January 16, 1989, and then Congress would have until March 1 to do the same; any vote on rejecting the changes would be exempt from a filibuster in the Senate.

The results of the 1988 round were sweeping: 86 bases were closed, saving approximately $693.6 million a year (CQ Almanac 1988). The commission's authorization expired once its process was complete, so when a new Defense Secretary, Richard Cheney, wanted to pursue base closures in 1990, he was forced to use the 1978 congressional notification and review procedures. Aspin, arguing that Cheney's list disproportionately affected Democratic districts, called for another commission-based effort. Congress responded by enacting the Defense Base Closure and Realignment Act of 1990, which authorized three subsequent rounds of closures, in 1991, 1993, and 1995. The commission would be smaller, with eight members selected jointly by Congress and the president, rather than by the Secretary of Defense. The process would begin with the Secretary of Defense, whose suggestions would be reviewed by the commission. The commission would then pass its proposal along to the president for approval, who would forward it on to Congress; both actors could only accept or reject the package in toto. As before, a resolution to reject the proposal in the Senate could not be filibustered.

As with the 1988 round, the 1991, 1993, and 1995 iterations made major changes to the military base landscape, affecting 82, 175, and 132 installations, respectively (Lockwood and Siehl 2004). Following the completion of the third round in 1995, the Department of Defense continued to seek authorization to close bases. Secretary of Defense William Cohen lobbied Congress for new commissions throughout the Clinton administration and while proposals were introduced in 1997, 1998, 1999, and 2000, they were ultimately unsuccessful (Schlossberg 2012). In 2001, Donald Rumsfeld, after assuming the position when President George W. Bush

took office, finally convinced the House and Senate to authorize an additional round, completed in 2005 and operating under the same procedures as the 1991-1995 iterations. Between 2001 and 2009, despite the fact that a surplus in domestic military infrastructure remained even following the implementation of the reductions authorized in 2001 (Government Accountability Office 2013), no additional special procedures were proposed by members of the Senate's majority party.[16]

Clearly, while the issue of closing military bases has been on the agenda consistently since the mid-1980s, only periodically has the Senate majority party attempted to actually enact the associated delegation exception.[17] Are these choices about when to attempt rule change consistent with the idea that the majority party is attempting not only to minimize traceability, but to do so in electorally optimal years? If the majority party is defending many seats from states with large military populations in the next election, then majority party members should avoid proposing rule change on the issue. Even with the minimized traceability that comes with a delegation exception, the party's current electoral landscape suggests that deferring the proposal until a year in the future when the negative, perceptible consequences of the policy change will do less to jeopardize the majority's chances to retain its status. Because individual members of the majority party have a shared interest in this collective goal, moreover, any given majority party legislator has an incentive to avoid making the proposal even if he himself is not facing re-election and/or does not have a large military population in his district. All majority party legislators, then, are better off waiting to pursue the creation of special procedures in a different, and less electorally damaging, year.

Using data from the United States Census Bureau and the Department of Defense,[18] we are able to document the share of each state's population in a given year that is comprised of

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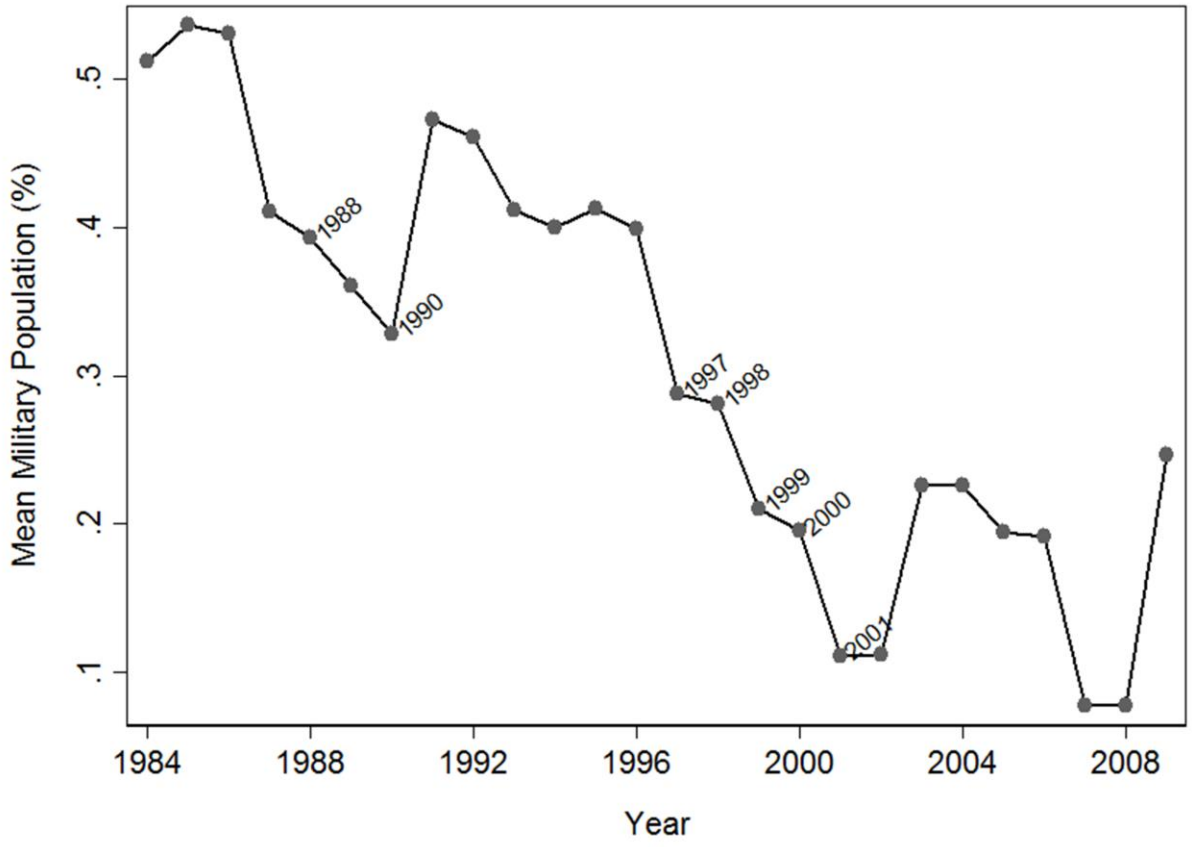
[16] Since 2012, three additional rounds of base closings, to be reviewed using expedited procedures in the Senate, have been proposed by members of the Senate's majority party. In each case, Senate Armed Services Chair Carl Levin (D-MI) included the provision in the yearly defense authorization bill (S. 2467 in 2012, S. 1034 in 2013, and S. 2289 in 2014). The data on the distribution of military populations by state, however, is only available through 2009, so I omit these bills from the analysis below.

[17] In each case, the provision was included as part of the annual Department of Defense authorization bill, which in each applicable year, had a member of the majority party as its lead sponsor (Senator Sam Nunn (D-GA) in 1988 and 1990; Senator Strom Thurmond (R-SC) in 1997 and 1998; Senator John Warner (R-VA) in 1999 and 2000; and Senator Carl Levin (D-MI) in 2001), In addition, important amendments supportive of the proposal were spearheaded by Senator John McCain (R-AZ) in 1997, 1998, 1999, and 2000.

[18] For 1988, 1989, 1992, 1994, 1996-2006, and 2009, the data is from the "National Security and Veterans Affairs" section of the *Statistical Abstract of the United States* (Washington, DC: U.S. Census Bureau). For 1990, 1991, 1993, 1995, 2007, and 2008, the data is from the *Atlas/Data Abstract for the United States and Selected Areas*

either active duty soldiers or civilian military employees. Figure 3.3 presents, for each year between 1984 and 2009, the average value of this measure for the states in which the Senate majority party was defending seats in the next election, with the years in which a rule change was proposed indicated with labels. The higher the average military-connected population, the greater the incentive for both the typical majority party senator to avoid having military bases closed, and for the majority caucus as a whole to keep the issue off the agenda in order to protect its status.

Figure 3.3: Mean Military Population in States Where Majority Party is Defending Seats in Next Election, 1984-2009



(Washington, DC: Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports).

In those years in which a member of the majority party proposed new, expedited procedures for closing military bases (noted in Figure 3.3), the average share of the population in the states in which the party was defending seats in the next election was 0.75 percent. For the years in which no member of the majority party offered a rule change, the mean value is 0.95 percent; the p-value on a difference of means test of whether these quantities are equal is 0.07. The majority party in the Senate, then, appears to have been at least somewhat strategic, avoiding not only enacting, but also proposing, the creation of special procedures in the years when doing so would have been electorally sub-optimal.

Figure 3.3 and the accompanying difference of means test are not evidence that a desire to time these proposals when they would do the least electoral damage was the only factor that determined when they were offered. Indeed, the fact that the actual policy changes authorized by each successful measure occurred one or more years after the enactment of measure meant that Congress may have considered the problem at least temporarily "solved" and turned its attention to other matters. In addition, the current Senate majority's uncertainty about whether it will still be in the majority in the next session may affect its ability to defer action until a future, hypothetical congress when its electoral situation is more favorable. Despite the fact that Figure 3.3 does not establish a causal effect, it does offer some illustrative evidence of how strategic timing concerns might play a role in the creation of delegation exceptions; this, in turn, helps us understand why accounting for possible selection effects had a larger effect on the analysis presented in this chapter than in Chapter 2.

When the most recent set of special procedures for closing military bases were enacted as part of the Fiscal Year 2002 defense authorization bill, the Senate ushered in yet another sweeping policy change enabled by a delegation exception. When the BRAC Commission's list of base closures under that act were promulgated in 2005, they closed 22 major military installations, accompanied by an estimated 18,000 lost civilian jobs (CQ Almanac 2005). This was but one example of the large policy changes that have been facilitated by the creation of delegation exceptions by Congress. Congress continues, moreover, to enact these special rules, suggesting continued significant effects in the future. The Independent Payment Advisory Board—created by the 2010 Patient Protection and Affordable Care Act—is, for example, projected to save $3.1 billion by 2022 (Congressional Budget Office 2012). By vesting a special agenda setter with the power to make an unamendable proposal, and then granting that proposal

protection from a filibuster on the floor of the Senate, this kind of procedural change—like the oversight exceptions discussed in Chapter 2—creates opportunities for majority rule in a non-majoritarian body.

The results presented above, moreover, suggest that these majority rule situations arise in a systematic way—one that benefits the majority party in the Senate, the chamber where the procedural deck is most profoundly reshuffled by delegation exceptions. As previous literature suggests, the presence of collective action problems may plant the seeds for this kind of procedural change, but the aggregate analysis of the factors predicting whether a proposed rule change is enacted into law indicates that conflict between group policy goals and individual legislator motivations is not a sufficient condition for special procedures to be created. Indeed, the relative rarity with which the proposals are successful suggests that senators are generally quite unwilling to give up some of their influence to ease the coalition-building task of their party leadership. Rather, it appears that the Senate majority party turns to these special procedures only in the most pressing of circumstances—when it is facing an unpopular policy choice in an issue area that is salient with the public. By changing the rules, the majority caucus is able to minimize the traceability of its actions on issues where the perceptible effects of policy change are likely to do electoral damage.

How does this account help us understand fast track's failure in 2014? Conventional wisdom might suggest that the kinds of free trade agreements shepherded to passage by those special procedures are unpopular with the core constituencies of the Senate's Democratic majority party—and certainly, such concerns may have played a role. At the same time, the public was largely inattentive to trade policy issues: in 2012, trade policy ranked 16th out of 20 policy areas in terms of issue salience on the Gallup poll. There is also little evidence that free trade agreements were unpopular among the electorate as a whole; in a February 2014 Pew Research Center poll, for example, a majority of respondents (55 percent) indicated they thought the very pact for which President Obama was seeking fast track authority (the Trans-Pacific Partnership) would be a "good thing for [the] country" (Pew Research Center 2014). The issue was not salient, and the underlying policy change was not unpopular, so it satisfied neither of the conditions outlined above for minimizing traceability. By placing this failure to renew fast-track in a broader context, across both issues and time, then, we are able to see forcing individual

senators to give up some of their influence over the policy process simply may not have been worth the majority party's trouble.

Here, and in Chapter 2, we have explored patterns in the creation of two kinds of majoritarian exceptions, arguing that they are enacted in order to ease the passage of policies that benefit the majority party. Once they are created, however, are they actually deployed for these intended purposes? I explore that question beginning in Chapter 4.

Appendix 3.1

Table A3.1: List of Delegation Exceptions Enacted into Law, 1970-2012

Congress	Bill Number	Bill Name	Measure Receiving Procedural Protections
91	HR 13000	Federal Pay Comparability Act of 1970	Resolution approving alternative recommendations about federal pay
93	HR 7130	Congressional Budget and Impoundment Control Act of 1974	Reconciliation bills
93	HR 7130	Congressional Budget and Impoundment Control Act of 1974	Budget resolution
93	S 1435	District of Columbia Self-Government and Governmental Reorganization Act	Bills passed by DC City Council
96	HR 4537	Trade Agreements Act of 1979	Agreements on tariffs and non-tariff barriers
96	S 932	Energy Security Act	Resolution approving energy targets
98	HR 3398	Trade and Tariff Act of 1984	Agreements on tariff modifications
99	H J Res 372	Balanced Budget and Emergency Deficit Control Act of 1985	Resolution suspending deficit reduction provisions
99	H J Res 372	Balanced Budget and Emergency Deficit Control Act of 1985	Resolution approving proposed sequester if sequester process is invalidated by federal court
100	HR 1414	Price-Anderson Amendments Act of 1988	Resolution approving a compensation plan following nuclear accident
100	HR 4848	Omnibus Trade and Competitiveness Act of 1988	Trade agreements
100	S 2749	Defense Authorization Amendments and Base Closure and Realignment Act	Resolution disapproving of base closing recommendations
100	H J Res 324	Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987	Alternative sequester proposal

Congress	Bill Number	Bill Name	Measure Receiving Procedural Protections
100	H J Res 324	Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987	Resolution approving proposed sequester if sequester process is invalidated by federal court
100	H J Res 324	Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987	Alternative sequester proposal for Department of Defense generated by president
101	HR 4739	National Defense Authorization for Fiscal Year 1991	Resolution disapproving of base closing recommendations
102	HR 2950	Intermodal Surface Transportation Efficiency Act of 1991	Resolution disapproving of action by the Metropolitan Washington Airports Authority
103	HR 1876	To provide authority for the President to enter into trade agreements to conclude the Uruguay Round of multilateral trade negotiations	Trade agreements (temporary extension of power delegated as part of Omnibus Trade and Competitiveness Act of 1988)
104	S 4	Line Item Veto Act	Resolution disapproving of rescission
105	S 738	Amtrak Reform and Accountability Act of 1997	Resolution disapproving of recommendations to liquidate Amtrak from Amtrak Reform Council
107	HR 3009	Trade Act of 2002	Trade agreements
107	S 1438	National Defense Authorization Act for FY 2002	Resolution disapproving of action by the Metropolitan Washington Airports Authority
111	HR 3590	Patient Protection and Affordable Care Act	Resolution discontinuing the Independent Payment Advisory Board (IPAB)
111	HR 3590	Patient Protection and Affordable Care Act	Resolution implementing IPAB recommendations
111	HR 4173	Wall Street Reform and Consumer Protection Act of 2009	Resolution approving emergency plan to ensure bank solvency
112	S 365	Budget Control Act of 2011	Recommendations of Joint Committee on Deficit Reduction
112	S 365	Budget Control Act of 2011	Installment increases to debt ceiling

Table A3.2: Results from Chapter 2 (Oversight Exceptions Analysis) Controlling for Majority Party Electoral Need

Presidential Extremity	29.012
	(26.743)
Divided Government	31.888**
	(15.108)
Presidential Extremity*Divided Government	-73.402**
	(31.729)
Switch in Control	-0.011
	(1.900)
Switch in Control*Divided Government	2.874
	(2.478)
Majority Party Sponsorship	2.130***
	(0.462)
Public Preferences	-0.587
	(1.252)
Salience	-5.374***
	(1.604)
Public Preferences*Salience	8.315*
	(4.599)
Issue Ownership	1.553**
	(0.644)
Majority Party Capacity	0.873***
	(0.331)
House Control	-2.256
	(1.497)
Presidential Priority	2.769
	(3.897)
Share of Seats Majority Party is Defending in Next Election	-1.280
	(8.391)
Var (Year RE)	2.966
	(2.404)
Constant	-14.753
	(14.300)
Observations	249

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Chapter 4: Employing the Exceptions: The Case of Budget Reconciliation

Dating to President John Adams's famous "midnight judges," outgoing presidents have a long tradition of attempting to squeeze a range of executive policymaking activity in between the election of their successor and their own departure from office (Howell and Mayer 2005). Promulgating regulations represents one tool in this arsenal (O'Connell 2008), and in late 2000, President Bill Clinton took full advantage of that option, overseeing the publication of nearly 26,000 pages' worth of new regulations in the *Federal Register* (Kolbert 2008). When President George W. Bush and congressional Republicans assumed office in January 2001, however, they had a response option not available to their predecessors after an opposite-party presidential transition: the Congressional Review Act.

Enacted in 1996, the CRA provided Congress with 60 days of continuous session to introduce a joint resolution disapproving of an agency rule, with the measure subsequently protected from a filibuster in the Senate.[1] This resolution requires a presidential signature, making the CRA an unlikely tool for addressing policy disagreement between the president and Congress, except in the periods after a presidential transition. Indeed, Congress's ability to overturn regulations is slightly enhanced in these periods, as the CRA resets the 60-day clock in a new session of Congress if the rule in question was received in Congress within 60 days of adjournment *sine die* (Carey 2012). In March 2001, Congress successfully exercised its CRA power for the first—and, to date, only—time, overturning ergonomics regulations promulgated by the Department of Labor.[2]

Eight years later, in early 2009, a Democratic Congress and a new Democratic president, Barack Obama, faced a variant of the same situation. The Bush administration had issued a number of late-term regulations, but had issued them early enough in 2008 that they had already taken effect by the time Obama assumed office, preventing Obama from simply freezing them by executive action. Notable among these was a regulation allowing concealed weapons in national

[1] See Public Law 104-121 § 251.
[2] See Public Law 107-5.

parks (Savage 2009). Despite their large majorities in both houses of Congress, the CRA represented a potentially appealing way to overturn the concealed carry rule. Instead, the Obama administration pursued a legal challenge, and a federal judge blocked the regulation in March 2009 (Eilperin and Wilber 2009).[3]

Why did Congress and the president use one strategy in 2001 and a different approach in 2009? Evidence in Chapters 2 and 3 suggest that the majority party in the Senate will create majoritarian exceptions, like the CRA, when doing so facilitates policy changes that are not otherwise achievable and that benefit the majority party. Creating new rules, it appears, is largely driven by short-term political calculations.

The results discussed in Chapters 2 and 3 shed little light, however, on when Congress chooses to use the majoritarian exceptions it has already created. Even if their initial creation is the result of near-sighted concerns, the rules remain as procedural tactics on which future Congresses to draw to accomplish policy and political goals. To determine whether the use of majoritarian exceptions is dictated by a similar pursuit of its goals by the majority party in the Senate, I turn to a case study of one particular exception: the budget reconciliation process.

A Brief History of Reconciliation

The reconciliation process was originally created as part of the Congressional Budget and Impoundment Control Act (hereafter, CBA) in 1974. The CBA itself sought to solve a particularly pernicious collective action problem: both parties in Congress agreed that the overall federal budget was too large, but no coalition of individual members was willing to support the combination of tax increases and cuts to popular programs necessary to achieve deficit reduction.

This issue was not new in 1974. In 1921, Congress, after nearly doubling annual federal expenditures between 1899 and 1912, created the modern budget process with the Budget and Accounting Act, which created the Bureau of the Budget (now the Office of Management and Budget) and required the president to submit a budget proposal to Congress by the beginning of February each year (Shuman 1988). Following World War II, Congress sought to roll back some budget authority asserted by the executive branch during the war by creating its own Joint

[3] Subsequent legislative action by Congress in May 2009 authorized concealed carry in national parks for individuals otherwise licensed to carry them (Hulse 2009a).

Committee on the Budget as part of the Legislative Reorganization Act of 1946, which was to respond to the president's request with a concurrent resolution specifying a ceiling on expenditures and on the size of the deficit. Congress attempts to use this new institution to respond to the president's submission failed four times between 1947 and 1950, ensuring that most of the action in congressional budgeting continued to be carried out through the appropriations process (LeLoup 2005).

Now-classic works by Fenno (1966) and Wildavsky (1964) describe the congressional Appropriations Committees in this mid-twentieth century period as responsible guardians of public resources. New committee members, especially in the House, were socialized by their more senior colleagues into a norm of reducing agency requests. Subcommittee chairs were often from safe districts, and markups were usually closed to avoid public scrutiny. The committees were certainly not single-minded seekers of cuts—often they would approve spending increases over the previous year, just at a lower level than the president's request, especially in the Senate—and were undoubtedly aided in their ability to keep deficits low by robust economic growth, but they kept the appropriations process relatively smooth until the mid-1960s.

Beginning in 1966, however, as unemployment and inflation grew along with the cost of the Vietnam War, Congress began to confront more acute budget pressures. Reforms to the House Appropriations Committee meant the panel featured more liberal, younger members, a less powerful chairman, and self-selected subcommittees—all of which eroded the norms that had made the panel effective in the previous decade (LeLoup 2005). Also contributing to the situation—and particularly relevant for the eventual creation of the reconciliation process—was the growth in mandatory expenditures; between 1968 and 1972, the share of the federal budget consumed by these kinds of expenditures grew from 60 percent to 72 percent (Schick 1980). Mandatory spending programs differ from discretionary programs in that the funding for the latter is handled through the annual appropriations process, while spending on the former is not; funding for mandatory programs is usually provided through multi-year authorization bills and thus does not depend on annual congressional action. Entitlement programs in which individuals meeting certain eligibility criteria are guaranteed benefits, such as Social Security and Medicare, comprise a majority of mandatory spending by expenditures at present, but other non-entitlement mandatory programs include Temporary Assistance for Needy Families,

unemployment insurance, and the Children's Health Insurance Program. Mandatory programs made it more difficult for congressional budgeteers to control overall spending levels for two reasons. First, because their funding is outside the purview of the Appropriations Committees, it was not subject to the processes those panels used to rein in deficits in the preceding decade (Gilmour 1990). Second, in many cases, the benefits associated with mandatory programs are indexed to the Consumer Price Index or a similar benchmark. As a result, total expenditures on these programs will increase as the number of beneficiaries grows unless Congress wants to make the difficult choice to cut benefits (Schick 1980).

The budget issues of the late 1960s and early 1970s were not only the result of Congress's internal difficulties in dealing with growing deficits. In 1972, President Richard Nixon made the federal budget a centerpiece of his campaign, and after winning re-election, he attempted to cancel several programs for which Congress had already appropriated funds. In previous years, he had successfully deferred the release of appropriated funds until certain requirements were met, but his impoundments in late 1972 and 1973 sought to impound funds permanently for several programs, including programs providing rural environmental assistance, rural water and sewer grants, rural electrification, and subsidizing housing (Schick 1980).

Concerned about this exercise of unilateral power by the president, Congress responded by creating a Joint Study Committee on Budget Control (JSC) comprised of members of the House and Senate Appropriations Committees, the House Ways and Means Committee, and the Senate Finance Committee to develop a coordinating mechanism between the spending and revenue sides of the process. The representatives from each panel were particularly concerned about maintain their current jurisdictions, which led to the superimposition of new budget committees over the existing structure in each chamber.[4] Under the new budget process, each Budget Committee would receive information from the authorizing committees in its chamber describing the expected outlays and revenues from that committee's programs for the coming year by March 1.[5]

By April 15, the Budget Committees were required to report a first concurrent resolution on the budget to their floors of their respective houses. Committees would respond to this resolution by reporting all legislation authorizing new budget authority by May 15. May 15

[4] For a thorough description of the development of and debate over the CBA, see Schick 1980, chapter 3.
[5] The newly created Congressional Budget Office would also provide analysis of these estimates.

would also serve as the deadline for enacting that first budget resolution, which would provide allocations to the various Appropriations subcommittees. Action on each of these spending measures was to be completed by seven days after Labor Day, followed by a second budget resolution, with a passage deadline of September 15, reiterating or changing the totals from the first budget resolution. If any discrepancies remained between the second budget resolution and the annual spending bills or other statutory law, Congress had until September 25 to adopt legislation "reconciling" the various components before the new fiscal year begins October 1 (LeLoup 2005). In the years since 1974, the process has been streamlined somewhat, featuring only a single budget resolution with an enactment deadline of April 15 (which Congress regularly misses), but the basic parameters of the process remain in place today.

Reconciliation, however, has evolved significantly since its initial inclusion in the CBA. The process is described in detail below, but it is modeled after a procedure used at the time by OMB to ensure that executive branch agencies have complied with the overall, agreed-upon spending totals before the president's budget is submitted to Congress (Shuman 1988). Its initial inclusion in the CBA was as a way to address the fact that the first resolution was intended to be a target for spending and revenue. The CBA's drafters were cognizant of the fact that circumstances and priorities might change between the adoption of the first and second resolutions. They also knew that if their colleagues were likely to miss the target of the first resolution, it would be by spending too much and not too little. This was especially true in the context of mandatory spending, where the first resolution often assumed that Congress would make changes to entitlement programs during the course of the year. The authorizing committees were wary of making cuts to the programs they oversaw, so the hope was that a delegation exception, in the form of reconciliation, could be used to force them to do so (Schick 1981).

In reconciliation's early years, the tool went unused, largely because of its timing. As outlined in the CBA, the reconciliation process would be initiated by a set of instructions, delineating a set of committees and the size of budgetary changes those committees needed to make to bring statutory law in line with intended outlays and revenues.[6] These instructions, however, were included in the second resolution, meaning that Congress had but five days for committees to respond to instructions, have each chamber consider an omnibus measure

[6] The reconciliation instructions are described in greater detail in the next section.

aggregating all committees' proposals, and resolve the differences between the House and Senate. In 1979, Democrats attempted to include reconciliation instruction in the second budget resolution, but the resistance with which the effort was met delayed the enactment of the resolution enough that the directives were pulled from the measure (Shuman 1988). In 1980, responding to recommendations made to a special panel formed after the 1979 failure, Congress addressed this issue by moving the reconciliation instructions to the first budget resolution. In December 1980, President Jimmy Carter signed the first budget reconciliation bill, making changes to a range of programs, including child nutrition, student loans, Medicare, and Medicaid, that totaled roughly $8.2 billion in savings in 1981 (CQ Almanac 1980).

While this 1980 legislation was notable—especially in that it established future precedent for a reconciliation bill in tandem with the first budget resolution rather than the second (Gilmour 1990)—it was a reconciliation bill enacted the following year that cemented the role of the procedures in development of the budget specifically and the legislative process more generally. Ronald Reagan had made balancing the federal budget a component of his 1980 platform, and when he assumed office accompanied by the first Republican-controlled chamber of Congress since 1957 (the Senate), he intended to make good on the promise. His economic team, headed by Office of Management and Budget Director David Stockman, was committed not only to a large tax cut expected to have positive supply-side effects on the economy, but also to major spending cuts, especially in entitlement programs (LeLoup 2005). In the development of Reagan's fiscal year 1981 budget, for example, Stockman pushed for eliminating Social Security minimum benefits, restricting eligibility for food stamps, and cutting both unemployment benefits and trade adjustment assistance for industrial workers (Greider 1981).

While Reagan's Republican allies in the Senate agreed in principle with his desire for sweeping budget cuts, they were faced with the prospect of getting them over the filibuster hurdle and through the Democratically-controlled House. For Senate Budget Committee staffers, the key to success appeared to be minimizing the number of votes that a package would have to face, given that it would certainly contain changes to programs under the jurisdiction of many committees. Put in the language of my argument laid out in the introduction, then, a decision about the use of an exception was clearly affected by the rule's ability to ease the passage of the underlying measure. In a memo dated February 13, 1981—approximately a week before the first public mention of the possibility of using reconciliation in the *Washington Post*

(Dewar 1981)—Budget Minority Staff Director Steve Bell offered reconciliation as "option 1" for solving this problem. Using reconciliation, he wrote, "limits the number of floor votes, in each House to two. One vote would be necessary on the reconciliation instructions, and one on the reconciliation bill."[7] The advantages of reconciliation, Bell wrote, included the ability to maintain a singular focus on the president's initiatives through a process well-specified by the CBA that did not represent an incursion into the jurisdictions of various standing committees. The previous year's experience with reconciliation, moreover, could be pointed to as "the most significant success we have had in enforcing reductions in direct spending."[8] While Bell also offered several additional options, including a temporary committee charged with reporting an omnibus bill by a given deadline; having the Budget Committees report reconciliation bills without having gone through the instructions process; or expanding the president's rescission powers, he ultimately recommended the reconciliation route. All options would require at least two floor votes, and "reconciliation, at least, has the advantage that the process has been agreed to…and, we know from experience, that through this process it is possible to get one vote on the question: shall we save, or shall we not save?"[9]

On February 24, Senate Budget Committee Chairman Pete Domenici (R-NM) initiated the reconciliation process by introducing a resolution that included instructions to 13 Senate committees. By the time the measure was reported out of the Senate Budget Committee on March 19, the size of the reductions had been set at $36.4 billion (LeLoup 2005). The full Senate passed the resolution including the instructions 80-10 on April 2; Republicans successfully defeated a range of Democratic amendments to lessen the proposed cuts, and lost only one member, Lowell Weicker (R-CT), on the final vote (Shuman 1988). The vote on the

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[7] "Alternative Legislative Process for Reducing Federal Spending," Steve Bell, Majority Staff Director, Senate Committee on the Budget, to Carol Cox, Majority Legislative Director, Senate Committee on the Budget, February 13, 1981; Box No. 7; Senate Budget Committee Republicans, Constitutional Convention, Beilenson's Budget Act Reconciliation 1981-82; Records of the United States Senate, 98th Congress, Record Group 46; National Archives Building, Washington, DC, p. 1.

[8] "Alternative Legislative Process for Reducing Federal Spending," Steve Bell, Majority Staff Director, Senate Committee on the Budget, to Carol Cox, Majority Legislative Director, Senate Committee on the Budget, February 13, 1981; Box No. 7; Senate Budget Committee Republicans, Constitutional Convention, Beilenson's Budget Act Reconciliation 1981-82; Records of the United States Senate, 98th Congress, Record Group 46; National Archives Building, Washington, DC, p. 2.

[9] "Alternative Legislative Process for Reducing Federal Spending," Steve Bell, Majority Staff Director, Senate Committee on the Budget, to Carol Cox, Majority Legislative Director, Senate Committee on the Budget, February 13, 1981; Box No. 7; Senate Budget Committee Republicans, Constitutional Convention, Beilenson's Budget Act Reconciliation 1981-82; Records of the United States Senate, 98th Congress, Record Group 46; National Archives Building, Washington, DC, p. 5.

instructions was, of course, only the first of Bell's two necessary votes. The process of generating the actual reconciliation package faced several hurdles, most notably in the House, where it took a coalition of Republicans and Southern Democrats to overrule the Rules Committee's plan to consider that chamber's reconciliation package in six separate pieces (LeLoup 2005). Ultimately, the Omnibus Budget Reconciliation Act of 1981 was signed into law by President Reagan on August 13, 1981, making roughly $130.6 billion in cuts over three years to major domestic discretionary programs, including welfare and food stamps and ushering in the use of a new legislative tool that, as Table 4.1 indicates, has been used consistently since.

Table 4.1: Reconciliation Measures Enacted Into Law, 1980-2010

Bill	**Major Purposes**
Omnibus Reconciliation Act of 1980	First use of reconciliation process.
Omnibus Budget Reconciliation Act of 1981	Made significant cuts to discretionary programs, including welfare and food stamps.
Omnibus Budget Reconciliation Act of 1982	Reauthorized and made changes to food stamp program. Made changes to federal employee pay formula and to the farm support program.
Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)	Rescinded some provisions of the previous year's Kemp-Roth tax cuts.
Omnibus Reconciliation Act of 1983	Made changes to federal employee pay and retirement formulas.
Consolidated Omnibus Budget Reconciliation Act of 1985	Mandated an insurance program giving some employees the ability to continue health insurance coverage after leaving employment (COBRA) and amended the Internal Revenue Code to deny income tax deductions to employers for contributions to a group health plan unless such plan meets certain continuing coverage requirements.
Omnibus Budget Reconciliation Act of 1986	Ordered the sale of Conrail. Made minor changes to Medicare hospital provisions.
Omnibus Budget Reconciliation Act of 1987	Created federal standards for nursing homes under Medicare and expanded Medicaid eligibility
Omnibus Budget Reconciliation Act of 1989	Made approximately $10 billion in spending cuts

Bill	Major Purposes
Omnibus Budget Reconciliation Act of 1990	Established Pay-As-You-Go (PAYGO) rules for the first time and implemented a range of tax increases
Omnibus Budget Reconciliation Act of 1993	Created two new personal income tax rates and a new tax rate for corporations. The cap on Medicare taxes was repealed, and gas taxes were raised. The taxable portion of Social Security benefits was increased. The phase-out of the personal exemption and limit on itemized deductions were permanently extended, and the earned income tax credit was expanded.
Personal Responsibility and Work Opportunity Act (1996)	Clinton's welfare reform bill
Balanced Budget Act of 1997	Contained first portion of Clinton's plan to balance the federal budget by FY 2002. Created the Children's Health Insurance Program. Made changes to Medicare hospital payment policy.
Taxpayer Relief Act of 1997	Clinton's tax cut package
Economic Growth and Tax Relief Reconciliation Act of 2001	First Bush 43 tax cuts
Jobs and Growth Tax Relief Reconciliation Act of 2003	Second Bush 43 tax cuts
Deficit Reduction Act of 2005	Reduced Medicare and Medicaid spending, changed student loan formulas, and reauthorized the Temporary Assistance for Needy Families program.
Tax Increase Prevention and Reconciliation Act of 2005	Extended several of the earlier Bush tax cuts, including the reduced tax rates on capital gains and dividends and the alternative minimum tax (AMT) tax reduction.
College Cost Reduction and Access Act of 2007	$20 billion student aid reform package. Included grant increases, loan rate reductions, and created public service loan forgiveness program.
Health Care and Education Reconciliation Act of 2010	Major pieces of Obama's health care reform, as well as ending subsidies to private lenders as part of the federal student aid program.

Source: Thomas E. Mann, Norman J. Ornstein, Raffaela Wakeman, and Fogelson-Lubliner, "Reconciling with the Past," *New York Times* 6 March 2010. Additional reconciliation bills were vetoed in 1995, 1999, and 2000.

The Nuts and Bolts of the Reconciliation Procedures

Today, budget reconciliation remains an optional component of the congressional budget process. Since 1982, Congress has considered only a single budget resolution that sets out broad guidelines for the amounts of revenue and spending in which Congress should engage for the coming fiscal year. Because much of the actual raising of this revenue and outlay of these funds is carried out through other statutes, changes may need to be made to existing law in order to bring it into line with the budget resolution. If, for example, the budget resolution specifies higher levels of revenue for a given year, changes may be needed to the tax code to actually raise that revenue. If such changes need to be made, Congress has two options. One, it can leave the changes to be made through the normal legislative process. Alternatively, Congress may delineate the size (in dollars) of the necessary changes to existing law are as part of the budget resolution, and then grant the measures making those changes advantaged procedural rights on the floor of both the House and Senate; these rights resemble closing those described in earlier chapters. Floor debate on a reconciliation bill is capped at 20 hours and thus the measure is protected from a filibuster; rather than needing 60 votes to end debate and proceed to final passage, only 51 are required. There are also limitations—described in detail below—on allowable amendments and motions that can be made during debate.

Use of the procedures involves a series of distinct decisions. Before choices are made about which programs to change using the procedures, the House and Senate Budget Committees, as part of the development of the yearly budget resolution, draft reconciliation instructions; these take the form of list of committees in each chamber and accompanying dollar figures.[10] These directives outline the magnitude of budgetary changes that a committee or set of committees must make—i.e., "the Senate Committee on Finance shall report changes in laws within its jurisdiction to reduce the deficit by $1,000,000,000 for the period of fiscal years 2009

[10] It is theoretically possible for the House Budget Committee to influence the selection of Senate committees in the instructions by including Senate committees in the House version of the budget resolution. In practice, however, the House panel leaves the drafting of the Senate instructions to its Senate counterpart. Of the years since 1980 in which reconciliation instructions were ultimately included in the final budget resolution, only twice did the House Budget Committee include Senate committees (1981 and 1989) and in neither case did the House committee include Senate committees that the Senate had not also chosen to include in its own draft budget resolution. The House Budget Committee occasionally goes as far as formalizing this deference. In 2009, for example, the House draft budget resolution included language specifically stating "Senate reconciliation instructions to be supplied by the Senate" (see Section 202, H. Con. Res 85, 111th Congress, 1st session).

through 2014."[11] At times, the instructions are specific as to whether the stipulated changes should be achieved through revenue-side or expenditure-side reforms. In 2005, for example, the Finance Committee was directed to reduce outlays by $10 billion and to reduce revenues by $70 billion, each over five years.[12] For revenue increases and spending cuts, the prescribed amount is considered a floor on changes, while for revenue reductions and spending increases, it is a ceiling. In addition, compliance with these levels is judged on a net basis, meaning that even if it is under a directive to reduce the deficit, a given committee may still use reconciliation to expand existing programs in its jurisdiction—or even to create new initiatives—as long as it also makes offsetting adjustments elsewhere.

Once a budget resolution including a set of committees passes both houses of Congress, the process shifts to determining exactly which programmatic changes will be contained within a reconciliation bill. A committee may choose to authorize a new program, or it may make changes to the existing programs that it oversees. For these existing initiatives, the committee can either increase or decrease spending. Revenue adjustments are generally made through changes to the tax code, though they can also be made through changing fees. While the CBA does not prohibit changes to discretionary programs in a reconciliation bill, the procedures have, since the early 1980s, generally been applied only to direct or mandatory spending (Keith and Heniff 2005).

In directing committees to make difficult policy changes and then protecting the legislation implementing those reforms from amendment and obstruction on the floor of the Senate, the reconciliation process reflects well the underlying logic of delegation exceptions presented in Chapter 3. Individual committees do not have the incentive to make cuts to the programs in their jurisdictions. Motivating them to do so, then, requires the kind of special agenda-setting powers associated with delegation exceptions. At the same time, the instructions mechanism ensures that the majority party does not abdicate all control over how the collective dilemma of deficit reduction is solved. The instructions take power that generally rests with committee chairs—selecting the issues on which their committees will be active (Evans 1991; Gold 2004; Oleszek 2007)—and opens it up to formal input from the full Senate via the budget resolution. Because the budget resolution is itself exempt from a filibuster, in principle, the

[11] S. Con. Res. 13, 111th Congress.
[12] H. Con. Res. 95, 109th Congress.

pivotal actor in approving it is the floor median. The reconciliation instructions, then, give a simple majority of senators the ability to tell committees what to do, rather than leaving the committees the discretion to set their own agendas.

While the drafters of the original CBA were careful to avoid a process by which committees were told explicitly to which programs they should recommend changes (Gilmour 1990; Schick 1981), there are several specific mechanisms by which a simple majority on the floor can direct committee behavior. In some cases, the instructions will mention particular policy areas—i.e., "health care reform" and "investing in education" in 2009—without delineating specific programs (i.e., "Medicare" or "the Direct Loan Program"). In addition, revenue-side directions to the Finance Committee in the Senate and the Ways and Means Committee in the House are almost always intended to initiate tax cuts, such as Finance's $1.25 trillion instruction in 2001 that produced the Economic Growth and Tax Relief Reconciliation Act, better known as the first round of Bush tax cuts.[13] Finally, a given committee may have jurisdiction only one or two programs large enough to yield the changes required by the instructions (Gilmour 1990).

This allocation of power—committees get to make protected proposals, but only subject to the underlying goals of the majority party—suggests that the actual use of reconciliation, as initiated by the reconciliation instructions, will be constrained by the preferences of the various actors involved. To derive more precise predictions about when we should observe this particular majoritarian exception being used, then, I offer the following spatial model of the reconciliation instructions.

A Spatial Model of the Reconciliation Instructions

The game involves the following actors. First, the median member of the Senate is denoted M. Second, the filibuster pivot (Krehbiel 1998) is represented by F.[14] Third, the Senate

[13] H. Con. Res. 83, 107th Congress.

[14] In Krehbiel's original model, F is defined as being on the opposite side of the floor median from the president. Because the president is not part of the spatial model described here, we are left to define the filibuster pivot relative to the actor with positive agenda power—the majority party leader, operationalized here as the majority party median. For a discussion of the measurement of the filibuster pivot in a world of negative agenda control, see Gailmard and Jenkins (2007).

has one standing committee (c) with a median member, denoted C. Finally, I indicate the leader of the Senate's majority party as L.

I make several assumptions about these actors and their procedural rights in the Senate. First, I assume all actors have continuous, single-peaked preferences in a one-dimensional policy space with liberal policies and preferences on the left and conservative policies and preferences on the right. Second, in the version presented here, I assume that M < F; substantively, this means the results describe a Senate controlled by the Democrats. Second, when considering a bill outside of the reconciliation procedures—a condition I refer to as "regular order"—a filibuster is permitted. On the other hand, when a measure is considered under the reconciliation rules, I assume it cannot be filibustered; again, the Congressional Budget Act caps debate on reconciliation legislation at twenty hours, eliminating the possibility of unlimited debate. Third, per Senate Rule XXVI, I assume that c's decision to report out a measure (reconciliation or otherwise) requires the votes of a simple majority on that committee.[15]

Fourth, I make three assumptions about the Senate majority leader. First, I assume that he is located spatially at the median of his party.[16] This assumption is common in theoretical models of Congress that examine the effects of parties (e.g. Chiou and Rothenberg 2003; Lawrence, Maltzman, and Smith 2006). In addition, in the specific context of the Senate, it has been documented empirically that majority leaders are generally located in the ideological middle of their party caucus, if not the exact median of the party (Hatcher 2010). In the version of the model presented here, assuming that L is at the median of the majority party also means that, by definition, L < M. Second, I assume he has gatekeeping powers over which legislation comes to the floor. This assumption is justified by the assignment to the majority leader of wide-ranging procedural rights, including scheduling power, a preferential right of recognition, and the ability to fill the amendment tree (Heitshusen 2013). Finally, I assume that he has the power to decide which committees are named in the reconciliation instructions. While it is technically the Budget Committee that drafts the budget resolution, which contains the instructions, the procedures used by both parties to select members of that committee suggest that its members are likely to behave as agents of the majority party leader. If the Republicans are in the majority, the Republican Conference's rules explicitly state that Budget Committee members are selected

[15] See Senate Rule XXVI, clause 7(a)(3).
[16] Indeed, I use "majority leader" and "majority party median" interchangeably in discussing the model and its results.

by the majority leader, rather than the Conference's committee on committees. On the Democratic side, all committee assignments are left to the Democratic Steering and Outreach Committee of the Democratic Conference, but that group focuses its energy on appointment to the "A" committees, of which the Budget Committee is not one (Schneider 2006), leaving the majority leader substantial discretion over its membership. In addition, the budget resolution increasingly functions as a statement of the majority party's priorities that is negotiated on increasingly partisan terms (Garrett 2000; LeLoup 2005), suggesting that the majority leader is likely to have significant influence over its content.

Finally, I make an important assumption about the ability of senators to amend bills on the floor of the chamber. If a measure is brought to the floor under regular order, I assume that it is considered under an open rule. The Senate lacks an equivalent to the House's Rules Committee, and Senate Rule XVI outlines the limited circumstances under which amendments must be germane; these conditions do not include general debate on typical measures. Among the situations in which germaneness *is* required, however, is reconciliation; per Section 310(e)(1) of the Congressional Budget Act, all amendments to a reconciliation measure must be germane. This requirement dramatically limits the scope of possible amendments and thus substantially increases the ability of the committee to ensure that the final bill reflects its preferences. Thus, I assume that reconciliation bills that are generated by committees responding to their directives come to the floor under a closed rule.

Strictly speaking, this is not true in practice. Committee-produced reconciliation measures can be amended, but the specific definition of germaneness suggests that the committee's preferences are likely to rule the day, even in the context of amendments. The Senate's precedent on the question of germaneness to reconciliation bills indicate that "amendments reported by or offered by the authority of the committee of jurisdiction are germane *per se*, and such amendments form part of the basis for determining germaneness."[17] Guidance from the Parliamentarian before reconciliation's first use in 1981, moreover, indicates that amendments "interject[ing] new subject matter not included" in a committee's reported legislation would be out of order,[18] with "new subject matter" including programs not originally

[17] See Riddick's Senate Procedure: Precedents and Practices, S. Doc. 101-28, p. 626.
[18] "Procedure for Consideration of Reconciliation," Carol Cox, Majority Legislative Director, and Andrew Ellis, Majority Counsel, Senate Committee on the Budget, to Steve Bell, Majority Staff Director, Senate Committee on the Budget, and Robert Fulton, Chief Majority Counsel, Senate Committee on the Budget, June 8, 1981; Box No. 7;

addressed in a committee submission.[19] Even the Budget Committee, in the process of aggregating the committees' proposals, cannot amend them without running afoul of Senate Rule XV, which "prohibits committee amendments containing significant subject matter within the jurisdiction of another committee…[and] cannot be waived."[20]

The addition of the Byrd Rule to the reconciliation process in 1985 further restricted the permissible amendments to a reconciliation bill on the floor. Originally offered as an amendment during consideration of the Consolidated Omnibus Budget Reconciliation Act of 1985, the rule is meant to prevent the inclusion of "extraneous matter"—that is, substance unrelated to the budget process—in a reconciliation bill (Heniff 2010a).[21] In its current form, the rule specifies six conditions under which a provision may be declared extraneous and thus stricken from the bill (unless a supermajority votes to retain the item), including that it "does not produce a change in outlays or revenues," is "outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure," "produces a change in outlays or revenues which is merely incidental to the non-budgetary components of the provision," and "it would increase the deficit for a fiscal year beyond the 'budget window' covered by the reconciliation measure."[22] Because these provisions apply not only to the proposal generated by the various committees included in the instructions, but also to any amendments proposed to the bill, the Byrd Rule makes it even more difficult to expand the scope of a reconciliation bill once it reaches the floor of the Senate.

What does the application of the Byrd Rule to the amendment process for reconciliation bills in the Senate look like in practice? An example from the 2010 consideration of the Health Care and Education Reconciliation Act of 2010 is illustrative. Senator Tom Coburn (R-OK)

Senate Budget Committee Republicans, Constitutional Convention, Beilenson's Budget Act Reconciliation 1981-82; Records of the United States Senate, 98th Congress, Record Group 46; National Archives Building, Washington, DC, p. 2.

[19] Andrew Ellis, Majority Counsel, Senate Committee on the Budget, to Steve Bell, Majority Staff Director, Senate Committee on the Budget, and Robert Fulton, Chief Majority Counsel, Senate Committee on the Budget, June 1, 1981; Box No. 7; Senate Budget Committee Republicans, Constitutional Convention, Beilenson's Budget Act Reconciliation 1981-82; Records of the United States Senate, 98th Congress, Record Group 46; National Archives Building, Washington, DC.

[20] "Reconciliation Bill Procedure," Martin B. Gold, Counsel to the Senate Republican Leader, to Howard Baker, Senate Majority Leader, June 3, 1981; Box No. 7; Senate Budget Committee Republicans, Constitutional Convention, Beilenson's Budget Act Reconciliation 1981-82; Records of the United States Senate, 98th Congress, Record Group 46; National Archives Building, Washington, DC, p. 1.

[21] The rule was initially set to expire in 1987 and was extended twice (in 1986 and 1987) before being incorporated into statutory law as part of the Budget Enforcement Act of 1990 (Heniff 2010a).

[22] See Section 313(b)(1) of the Congressional Budget Act of 1974, as amended.

sought to offer an amendment to the measure that would have changed the process for determining whether a veteran is mentally unfit to purchase firearms, making it more difficult to classify a veteran as such.[23] Senator Max Baucus (D-MT), who, as Senate Finance Committee chair, was managing debate on the bill, raised a point of order in response, claiming the amendment was prohibited because it was outside the jurisdiction of the committee that reported the measure. A vote of the full chamber sustained Baucus's point of order, and Coburn was prohibited from offering his amendment.[24] By comparison, in December 2012, without the Byrd Rule's germaneness restriction limiting him, Coburn was able to use the same amendment to successfully obstruct consideration of the Fiscal Year 2013 National Defense Authorization Act (Cox 2012).

This amendment regime—germaneness plus the Byrd Rule—applies when a reconciliation bill is generated by the committees named in the instructions reporting out proposals that are aggregated by the Budget Committee and sent to the floor. Recall, however, that if a committee fails to comply with its reconciliation directive, a reconciliation bill addressing programs in that committee's jurisdiction can still be considered. A senator may offer a motion to recommit the overall reconciliation legislation with instructions to the non-compliant committee. The proposed policy changes to that committee's programs would be the content of the instructions, and if the motion directed the committee to return the bill to the floor "forthwith," the additional provisions, developed by the floor, would be brought up for immediate consideration (Lynch 2013). If this motion to recommit approach is used, however, the proposal need not satisfy the germaneness requirement, which has the effect of reducing the influence of the named committee over the content of the proposal (Garrett, Graddy, and Jackson 2008). This understanding of the germaneness requirement has existed for reconciliation's entire history. In 1981, in preparation for the first major use of the reconciliation rules, the Republican majority staff of the Senate Committee on the Budget sought the advice of the Parliamentarian on what would happen if a committee did not report out a proposal that satisfied its instructions. The Parliamentarian, the staff was told, "is prepared to rule that, where a committee is not in

[23] The amendment was based on S. 669, the Veterans' 2nd Amendment Protection Act. See Senate Report 111-27 for a full discussion of the measure.
[24] See 156 Congressional Record S2069, 25 March 2010.

compliance, a motion that would have the ultimate effect of placing the committee in compliance would not be subject to the germaneness point of order."[25]

While it is rare for Senate committees to ignore reconciliation directives, and even rarer for the Senate to consider a reconciliation bill that has not been generated by one of its committees,[26] this difference in the treatment of amendments between the committee-initiated approach and the motion to recommit tactic does have consequences for the model outlined below. If a committee has been named in the instructions and does not report out a reconciliation proposal, I assume that a reconciliation bill in that committee's jurisdiction is considered on the floor under an open rule. While the results suggest that this difference in the treatment of amendments does not appear to have consequences for which committees are named, it remains a sufficiently important feature of the procedures that I incorporate it into the model.

Game play proceeds as follows, as depicted in Figure 4.1. The notation used is summarized in Table 4.2. The game has two parts, or phases. The reconciliation phase appears in the left panel of Figure 1. The first move is made by L, who chooses whether or not to introduce a budget resolution (b) that contains reconciliation instructions directing the committee (c) to report out a reconciliation bill. If L introduces such a resolution, the floor considers that resolution with a simple majority voting rule. If the floor passes b, then c chooses whether or not to comply with its directives. If c reports out a reconciliation bill, r(p), L chooses whether or not to schedule it on the floor. If L schedules r(p), the Senate chooses whether or not to pass r(p)

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[25] Andrew Ellis, Majority Counsel, Senate Committee on the Budget, to Steve Bell, Majority Staff Director, Senate Committee on the Budget, and Robert Fulton, Chief Majority Counsel, Senate Committee on the Budget, June 1, 1981; Box No. 7; Senate Budget Committee Republicans, Constitutional Convention, Beilenson's Budget Act Reconciliation 1981-82; Records of the United States Senate, 98th Congress, Record Group 46; National Archives Building, Washington, DC.

[26] In the case of the former, in three instances since 1989 (the Committee on Banking, Housing, and Urban Affairs in 1989 and the Finance and Health, Education, Labor, and Pensions Committees in 2009) have Senate committees ignored reconciliation directives in such a way that would have clearly allowed the Senate floor to use the motion to recommit approach. In 1996, a number of committees did not report out reconciliation proposals, but the Senate had enacted a full reconciliation bill before the deadline provided to those committees. Because the deadline provided in the instructions must have elapsed before a committee can be considered out of compliance, the motion to recommit approach could not have been used to incorporate proposals regarding those committees' programs in the July 1996 reconciliation bill (Lynch 2013). In that year, the Republican leadership intended to handle multiple reconciliation bills (CQ Almanac 1996a), but it is unclear if such a move would have been permitted by the Parliamentarian (Heniff 2010b). In the case of the latter, meanwhile, only once has the Senate actually considered a reconciliation bill not generated by one of its committees. The Health Care and Education Reconciliation Act of 2010 was generated by House committees. During debate over the measure, Senate Minority Leader Mitch McConnell (R-KY) inquired as to whether "this [was] the first time in history the Senate will consider a reconciliation even though no Senate committee has reported a bill to the Senate?" In his capacity as Acting President Pro Tempore, Senator Tom Udall (D-NM) replied, "It is the first time that the Chair is aware of it." See 156 Congressional Record S1821.

using a simple majority voting rule. If the Senate passes r(p), the game ends, with policy being moved from Q to r(p).

If c has been named in the reconciliation instructions but elects not to comply with that directive, then L has the option of using the motion to recommit approach to introduce its own reconciliation proposal, r(o). If L introduces r(o), then the Senate chooses whether or not to pass r(o) using a simple majority voting rule. If the Senate passes r(o), the game ends and policy moves from Q to r(o).

There is a separate phase of the game, the regular order phase, in which the Senate may consider a measure, o, under regular order; this phase is triggered if any of the following occur:

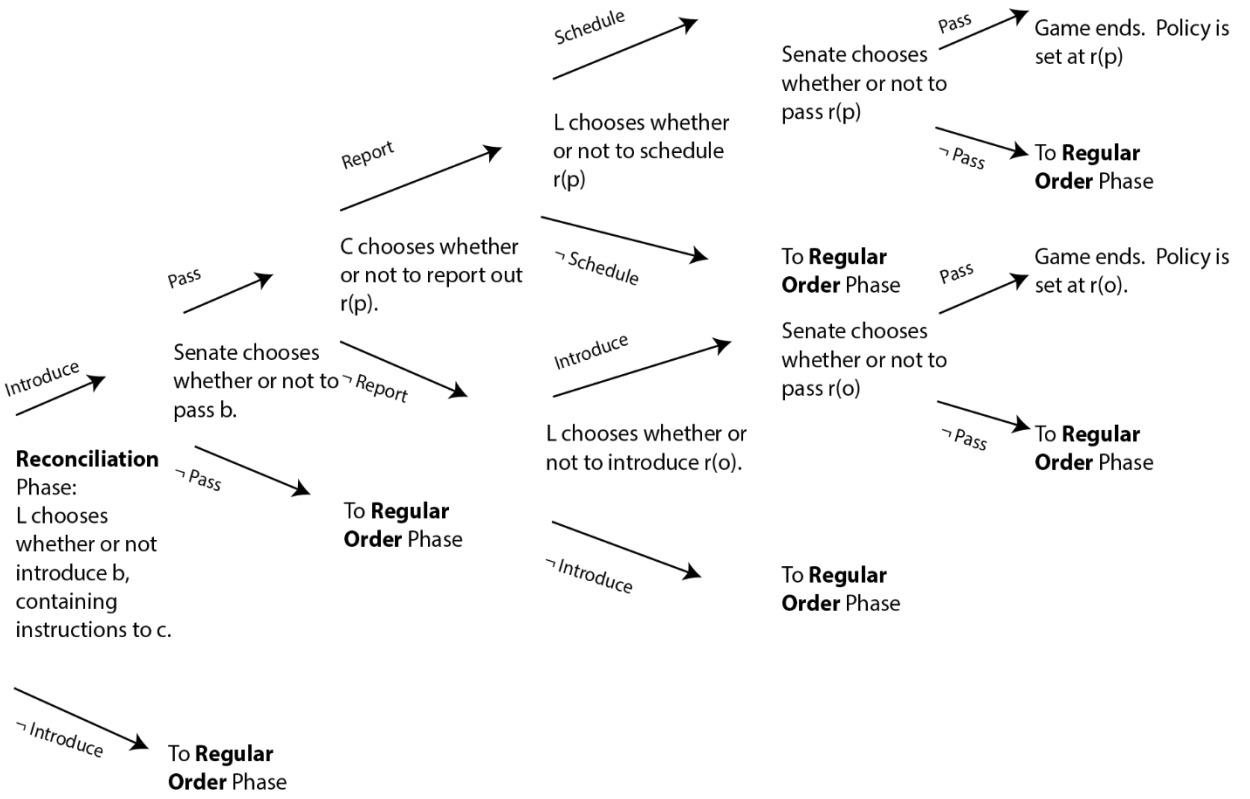
1. L has chosen not to draft b OR
2. The Senate chooses not to pass b OR
3. c chooses not to report out r(p) AND L chooses not to introduce r(o) OR
4. c reports r(p) but L does not schedule it OR
5. L introduces r(o) but the Senate does not pass r(o).

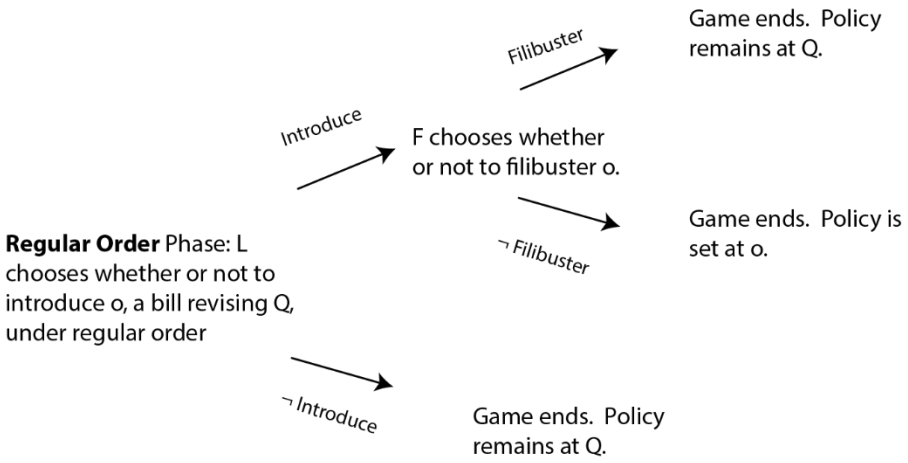
Under any of these scenarios, F chooses whether or not to filibuster the proposal. If F filibusters the proposal, the game ends with policy remaining at Q. If F does not filibuster the proposal, policy is shifted to the proposal's location and the game ends.

Table 4.2: Model Notation

L: Senate Majority Leader/median member of the Senate majority party; l: Majority Leader's ideal point
C: Median member of Senate committee; t: committee's ideal point; c: Senate committee
M: Floor median in the Senate; m: floor median's ideal point
F: Filibuster pivot; f: filibuster pivot's ideal point
Q: status quo policy
Q*: policy outcome at the conclusion of the game
b: Budget resolution
r(p): Reconciliation proposal generated by c
r(o): Reconciliation proposal generated by L via a motion to recommit
o: Bill considered under regular order

Figure 4.1: Model Extended Form





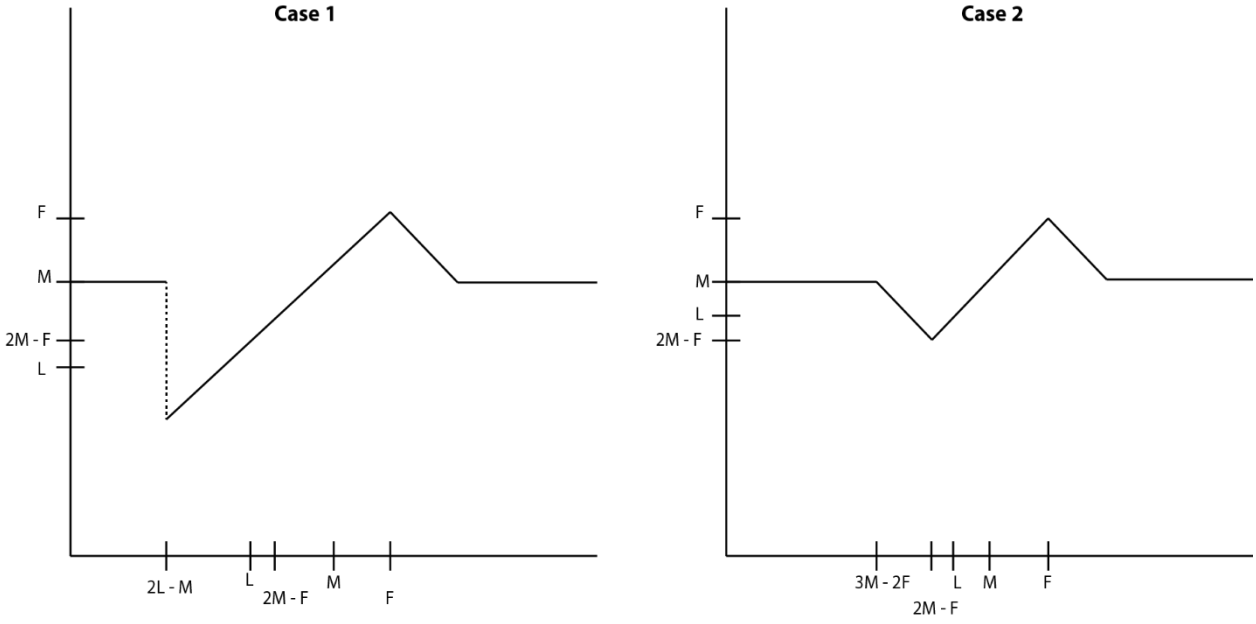
Given the sequential nature of the game, I solve it using subgame perfection. The full solution to the game is presented in the Appendix. Here, I provide the basic intuition of the model and sketch out the circumstances under which we should expect to observe two different procedural conditions: first, when we should see a committee named in the reconciliation instructions and second, when we should anticipate a committee that has been named in the instructions responding to that directive by reporting out a reconciliation bill.

First, it is helpful to establish what outcomes we would expect under regular order in the presence of a gatekeeper (L, the majority leader) and the option of a filibuster. The outcome of the regular order phase of the game is displayed in Figure 4.2. In the panel on the left (Case 1), $L < 2M - F$, while in the panel on the right (Case 2), $L > 2M - F$. In practice, which case is observed depends on both the size of the majority party coalition, as well as the distribution of actors through the policy space. In both Case 1 and Case 2, the ultimate policy outcome is the same for all values of $Q > 2M - F$. Values $2M - F < Q < F$ comprise the familiar gridlock interval. When $Q > F$, meanwhile, L will always introduce o, knowing that it will be amended to either M or as close to M as F will allow; L is better off with these outcomes, since they are closer to his ideal point.

The difference between the two cases occurs for values $Q < 2M - F$. In Case 1, for many of these status quo points ($2L - M < Q < 2M - F$), L exercises his gatekeeping power. If L were to introduce o, it would be amended (under the open rule) away from L's ideal point. For very extreme values of Q ($Q < 2L - M$), the eventual outcome at M makes L better off than he is under Q, so he is willing to introduce o.

In Case 2, meanwhile, L will always introduce o, since the ultimate policy outcome will bring policy closer to L's ideal point. The constraint here, however, is $2M - F$; since any change to Q requires 60 votes, o can only be amended such that the actor at $2M - F$ is indifferent between Q and o. Finally, for extreme values of Q ($Q < 3M - 2F$), all pivotal actors will accept policy at M.

Figure 4.2: Outcomes Under Regular Order

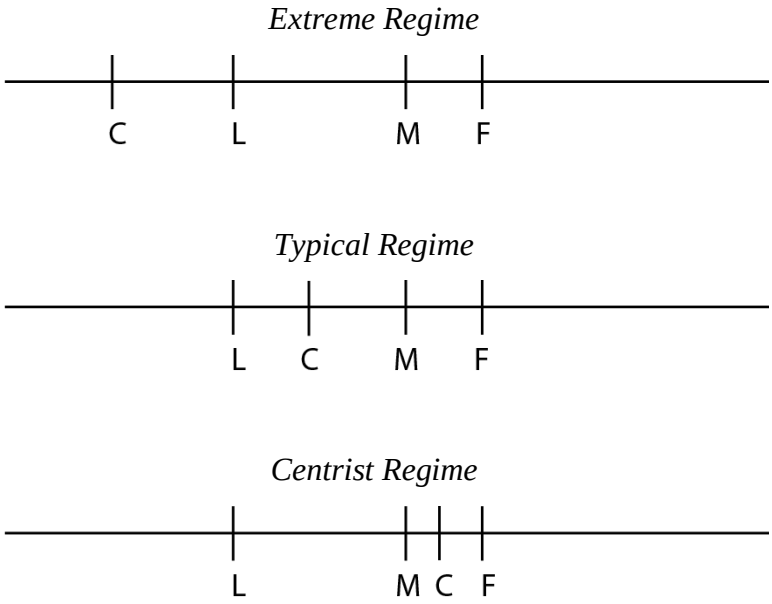


Given these two cases, we can now compare these regular order outcomes to those achievable if c is named in the reconciliation instructions. We should observe committees being named when the pivotal actors for that decision—L, due to his unique proposal power, and M, because of the simple majority voting rule—are made better off by a reconciliation bill reported out by c than by a measure handled under regular order changing the same status quo. Because c's decision rule for reporting a bill is majority rule, C is the pivotal actor for that decision. F's preferences are relevant only for the comparison version of the legislation that would be generated under regular order, since he cannot filibuster either the budget resolution naming c or the reconciliation measure itself.

To provide this overview of the results, it is helpful to first define three "regimes," each capturing the location of C relative to L, M, and F. First, if C < L < M < F—that is, if the median member of the committee is more liberal than all three other actors—I denote it as the Extreme Regime. Second, I refer to committees whose medians are located between the majority party median and the floor median (L < C < M < F) as being in the Typical Regime. Finally, I designate L < M < C < F as the Centrist Regime.[27] Each of these regimes is displayed visually in Figure 4.3.

[27] In the presence of an extremely large majority coalition, it is possible for L < M < F < C. Because this condition is not observed in any of the Congresses under study here, I do not consider that possibility here.

Figure 4.3: Committee Regimes



For each regime, we will compare the outcomes under reconciliation to those under each case of regular order; in each case, the solid black line will indicate the outcome under regular order and the grey dotted line will indicate the outcome under reconciliation. In text, I illustrate the basic logic of the model assuming that $L < 2M - F$ (Case 1 above); in the period of time under study, the committee-year observations are spread roughly evenly across the two cases. Equivalent figures for Case 2 appear in the Appendix.

We begin in Figure 4.4 with the Extreme Regime. There are two regions of status quo points where the reconciliation-pivotal actors (C, L, and M) are at least no worse off under reconciliation than under regular order; these regions are shaded. The first of these is bounded on the left by $2L - M$. For values of $Q < 2L - M$, while L and C are better off under reconciliation, M is not. This is because, for very extreme status quo points under regular order, L will not exercise his gatekeeping power, since the final outcome under an open rule makes him better off than Q. Because M is better off under regular order, he will not approve b, and we will not observe instructions.

For values $2L - M \leq Q < C$, however, L would avoid introducing o under regular order because the open rule that would govern the bill would allow M to amend the measure all the

way to his ideal point, making L worse off. Under reconciliation, however, r(p) is protected by a closed rule. C is able to introduce r(p) that sets policy at C's ideal point; such a policy makes both L and M better off than remaining at Q, so L will name C and M will support a version of b that includes the committee. The size of this region, moreover, will decrease as C becomes more extreme.

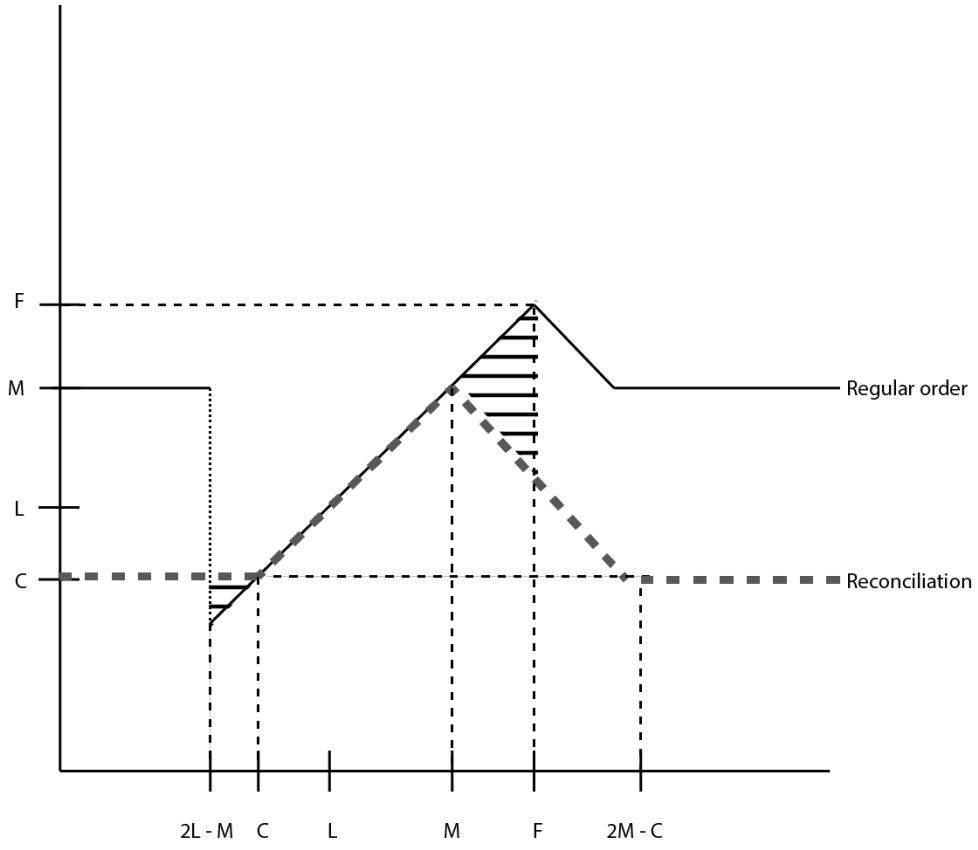
We should also expect to observe the committee being named for some moderate values of Q—i.e. when M < Q < F. For these values of Q, any proposal that will bring policy closer to C's ideal point will also make L better off, so he would always schedule the committee's bill, r(p). To get M's support for r(p), however, M must be at least as happy with r(p) as he would be with o, the regular order alternative, or Q. The best C can do, then, is to introduce an r(p) that makes M indifferent between r(p) and Q AND between r(p) and o. Because M knows that C's eventual version of r(p) will be positioned to ensure M's support, M will approve b naming the committee in the previous step of the game. L, meanwhile, will include c in b's instructions, since he is made better off by the ultimate policy outcome achieved using reconciliation—an outcome that makes C and L strictly better off, and M no worse off than either o or Q.

For values of Q between L and M, meanwhile, the outcome achieved under regular order and reconciliation is the same: gridlock. Even under the reconciliation rules, C could not get majority support for a version of r(p) that also moves policy closer to C's ideal point. L would schedule such a measure, but M would not support it on the floor. At the same time, any version of o that L would introduce would meet a similar fate; any proposal that makes L better off makes M and F worse off, preventing its enactment. Because the ultimate policy outcome is the same under both sets of procedures, L will be indifferent to including c in b's instructions, and M will be indifferent to approving that version of b.

Finally, for extreme right values of Q (that is, Q > F), M will actively oppose including c in the instructions because it will generate a final policy outcome that makes M worse off than using regular order to enact o. This result is driven by the fact that r(p) is protected by a closed rule. C is able to draft a version of r(p) that L will schedule and that M will pass on the floor because they prefer it to Q. If, however, M could amend the proposal on the floor—as he can when regular order is used—M would be able to bring policy much closer to his own ideal point. M, then, will not pass a version of b that includes instructions to c, since doing so locks him into an eventual policy outcome that is less preferred than the one achievable using the regular rules.

While L still prefers to include c in the instructions, he knows that doing so will lead M to oppose b and thus avoids doing so.

Figure 4.4: Regular Order vs. Reconciliation, Extreme Regime, Case 1



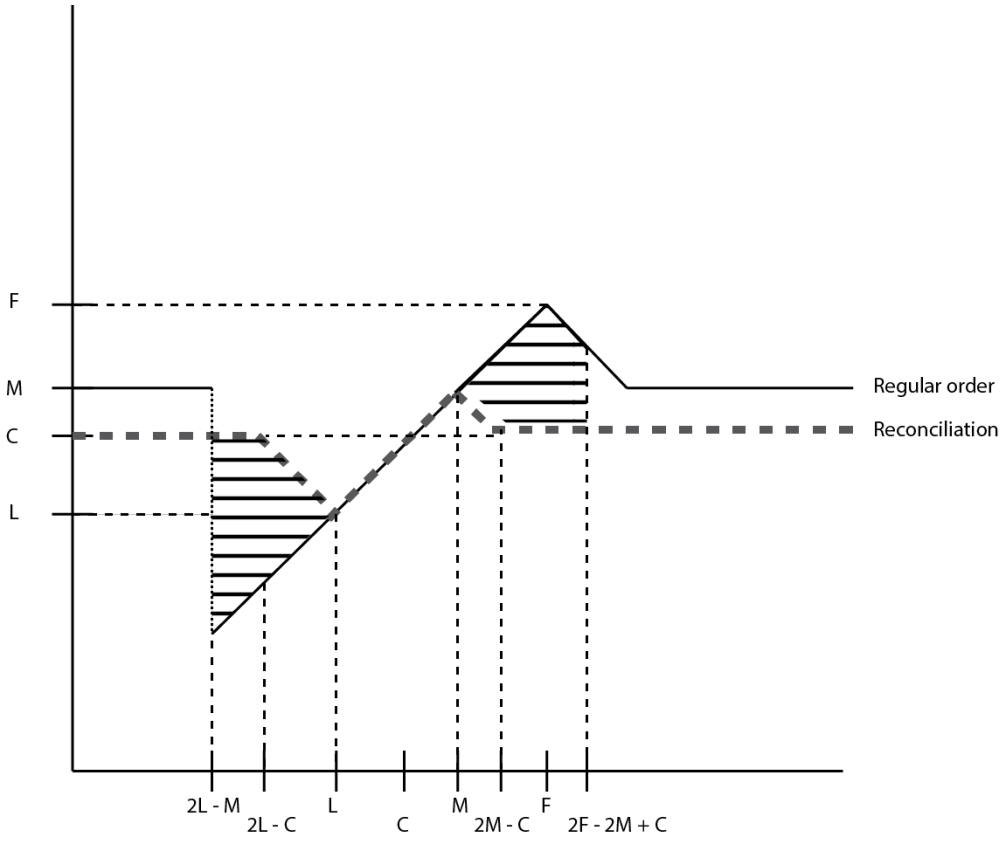
Next, let us consider the Typical Regime, when L < C < M < F, in Figure 4.5. Again, there are two regions in which the range of status quo points makes the reconciliation-pivotal actors no worse off under reconciliation than under regular order: in the extreme left of the policy space, and in the middle of the policy space. As in the Extreme Regime, the farther left of these areas is generated by the fact that there are values of Q for which L chooses to exercise his gatekeeping rights; if L introduces o, M can take advantage of the open rule to amend it all the way to his own ideal point. Under reconciliation, however, L's ability to decide whether or not to schedule r(p) once the committee has produced it means the committee must accommodate L's preferences. Thus, if named, the committee will generate a version of r(p) that gets as close

as possible to C's ideal point without making L strictly worse off. All such versions of r(p) will make M better off, so M will support naming the committee in b.

In the middle of the policy space, the left bound of the region in which we should observe the committee being named is still at M, but the right bound may now be beyond F, farther to the right than in the Extreme Regime. Specifically, if C is closer to M than M is to F, the right bound is at 2F – 2M + C; this arrangement is depicted in Figure 4.5. If M is closer to F than C is to M, however, the right bound is at F. This range of moderate values of the status quo under which we should observe the committee being named will increase, moreover, as C gets closer to M; put differently, the more similar C and M's preferences are, the more M will benefit from the committee's proposal coming to the floor under a closed rule.

For all other values of Q, the end result is the same under the Extreme and Typical Regimes. When L < Q < M, we again observe gridlock and indifference towards naming the committee. Under regular order, this stalemate is caused by the fact that there is no policy change preferred by pivotal actors L and F. Under reconciliation, meanwhile, there are two possible sources of that stalemate. If L < Q < C, L is the pivotal actor preventing policy change under reconciliation; any change that C and M would prefer makes L worse off. When C < Q < M, on the other hand, there are changes that C and L would prefer, but these make M worse off. Finally, if Q is on the right extreme of the policy spectrum, M is able to bring policy closer to his ideal point under regular order than under reconciliation, and thus he does not support naming the committee in b.

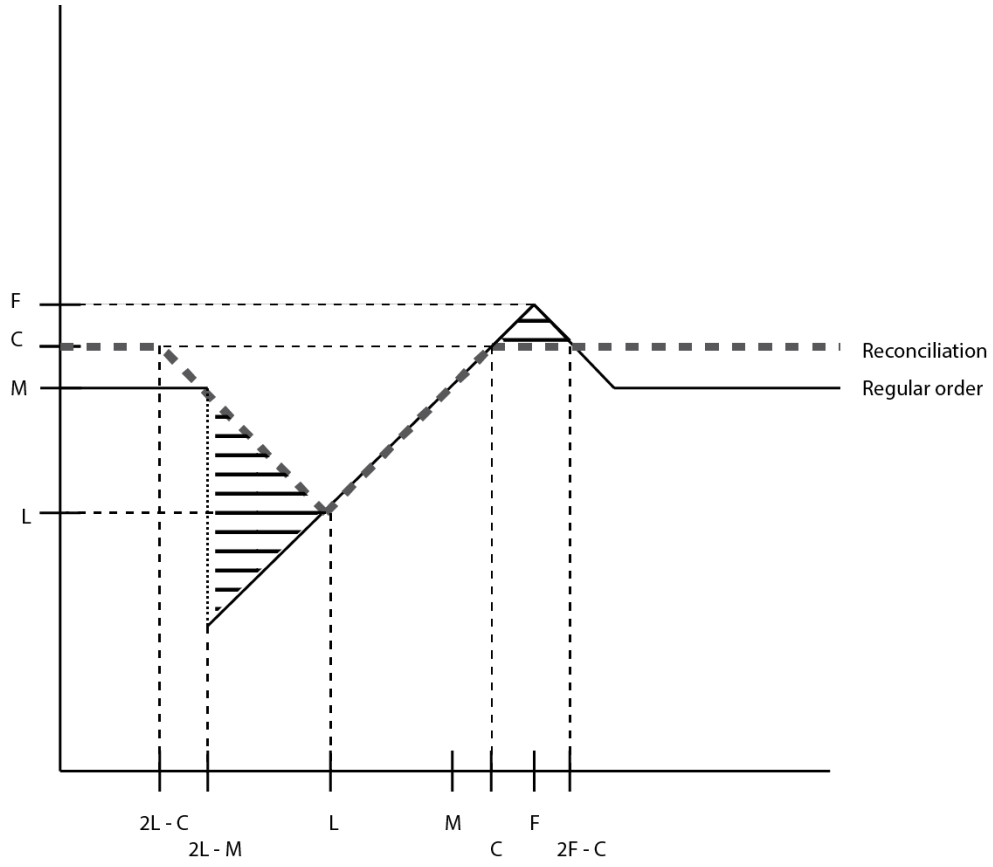
Figure 4.5: Regular Order vs. Reconciliation, Typical Regime, Case 1



Finally, let us consider the Centrist Regime, presented in Figure 4.6 and where M < C < F. Just as in the other two regimes, there are two ranges of values of Q that should generate a committee being named in the instructions. The first of these is on the extreme left-hand side of the policy space, and is identical to the equivalent area in the Centrist Regime in that its right bound is L. In the middle of the policy space, meanwhile, the left bound of the inclusion region is now C, rather than M, and the right bound is 2F – C. There are now fewer values of Q for which C's ideal point—which he can achieve under reconciliation—is closer to M's ideal point than the outcome obtainable under regular order. As C gets farther away from M in this regime, moreover, the region in which M is willing to name the committee because doing so will make him at least no worse off gets smaller as well. In the extreme case of C = F, for example, M would never strictly prefer to name the committee. For values Q < F in this situation, gridlock occurs regardless of the rules used, and for values Q > F, M is better off under regular order. For

all other values of Q (i.e., L < Q < C or Q > 2F – C), the committee will not be named, under the same basic logic as in the other two regimes.

Figure 4.6: Regular Order vs. Reconciliation, Centrist Regime, Case 1



In each of these three cases, we observe both of our fundamental claims about majoritarian exceptions at work. First, we see that the procedures are used to produce policy changes that we would not observe under the chamber's regular rules. In each regime, there are status quo points that fall in the gridlock interval under regular order on which action is possible using the reconciliation rules. Second, we observe the reconciliation procedures being used in a way that benefits the majority party. More specifically, committees are named in the instructions only when the preferences of the panel and of the majority party are similar enough that a majority of the majority party also favors the change advocated by the committee. Put differently, because committee proposals are privileged by the procedures, the majority leader will only initiate the process if the ultimate policy outcome is to the benefit of his party. In

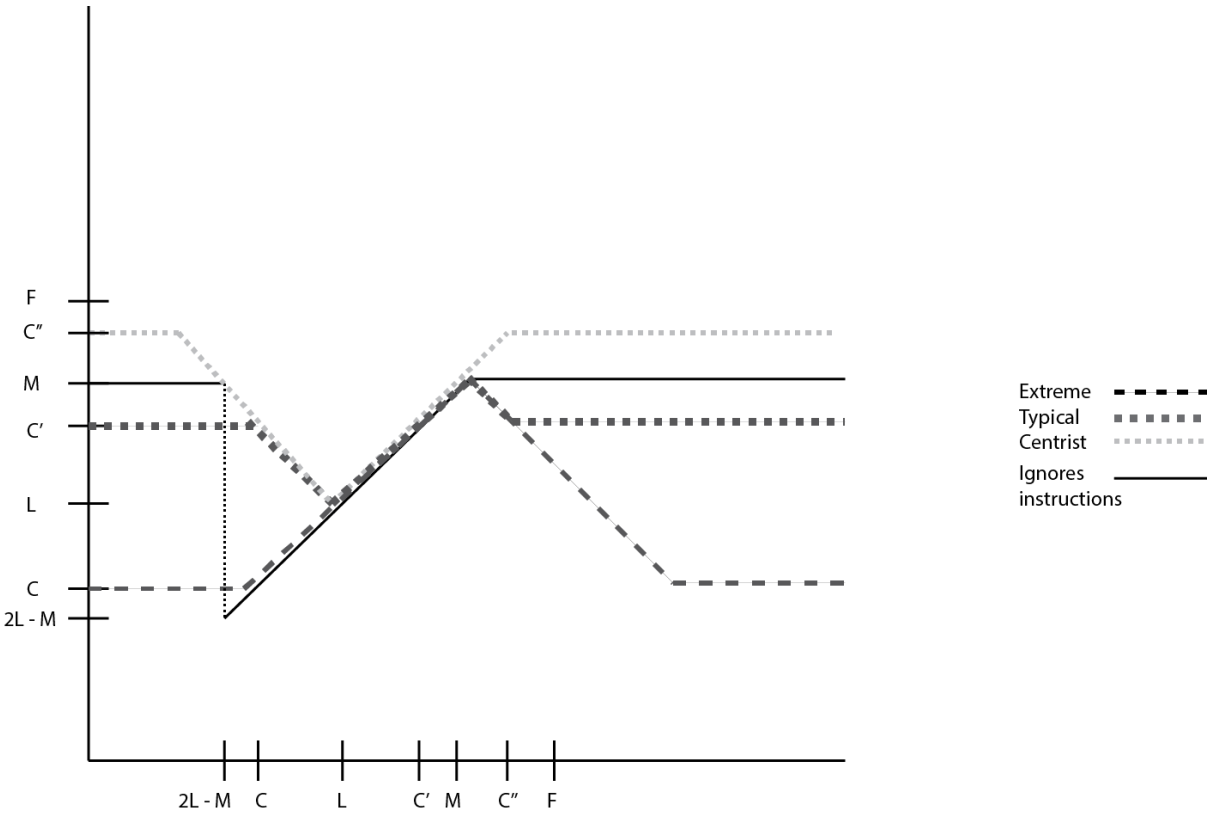
addition, because the floor median has input into the content of the instructions—since a simple majority must approve the budget resolution—there are some situations where the majority leader is limited in his ability to leverage the procedures to his full advantage.

The results in Figures 4.4, 4.5, and 4.6 leverage comparisons between the final policy outcomes obtainable under regular order and under reconciliation *when the committee responds to the directive* to ascertain when we should observe committees being included in the reconciliation instructions. Recall, however, that the instructions are not binding on a committee; a panel cannot be forced to report out a reconciliation proposal. If it fails to do so, however, the majority leader has the right to use a motion to recommit to bring his own proposal covering the committee's programs to the floor under an open rule.

Does this contingency ever incentivize a named committee to ignore its directives? In short, no. Figure 4.7 displays the final policy outcome is named but does not respond to the instructions, as well as the outcomes if the committee follows its directive in each regime.[28] The solid line represents the final outcome if the committee ignores its directive, while C indicates an Extreme Committee, C′ denotes a Typical Committee, and C″ represents a Centrist Committee. Note first that, when the committee ignores its instructions, the outcome does not vary based on the location of the committee. In the event that the committee ignores its directive, M is empowered by a combination of the simple majority voting rule and the possibility of unlimited amendments, constrained only by L's unique proposal rights.

[28] Because r(o) cannot be filibustered, the outcomes in Figure 4.7 do not depend on whether we are in Case 1 or Case 2.

Figure 4.7: Policy Outcome if Committee Ignores Instructions



If the committee ignores its instructions, L is faced first with the decision of whether to introduce r(o). Importantly, because r(o) is considered under an open rule, it can be amended. The outcomes are not, however, identical to those under regular order, since r(o) cannot be filibustered. If $Q < 2L - M$, L would introduce r(o), because he is at least as well off with an ultimate policy outcome at M as he is with Q. In each regime, however, the *committee* is made worse off by this final outcome than it would be if it had responded to the instructions.

When $2L - M < Q < L$, meanwhile, gridlock ensues if c ignores its directive. L will exercise his gatekeeping rights over r(o), since any proposal he introduced would be amended away from his ideal point by M. The committee, then, has an incentive to report out a reconciliation proposal. In the Typical and Centrist regimes, reporting rather than ignoring makes the committee strictly better off for the entire interval $[2L - M, L]$. For the Centrist Regime, c is strictly better off in the interval $[2L - M, C]$ and no worse off in $[C, L]$. Gridlock also results, regardless of c's decision, if $L < Q < M$.

For extreme status quo points on the other side of the policy space ($Q > 2F - M$), meanwhile, if the committee disregards its instructions, the ultimate policy outcome is again the same if L introduces r(o) or o: policy is set at M. In either case, L prefers the outcome achievable under the relevant rules to Q. If, however, C does not ignore the directive, he is able to introduce a version of r(p) that brings policy either all the way to his own ideal point (see Figures 4 and 5) or to the point at which L is indifferent between r(p) and Q. While C will not be named in equilibrium for these values of Q, if off-the-equilibrium-path behavior produces instructions, it is in his interest to respond to them.

Finally, then, we must consider whether C will ever ignore its instructions when $M < Q < 2F - M$. As Figure 4.6 shows, if C does not comply for status quos in this range, policy will end up at M; L will introduce r(o), and M will amend that proposal to his own ideal point. Compliance by the committee, however, always produces an outcome that C prefers to policy at M. When $M < Q < 2F - M$, the committee is able to set policy either at C's ideal point or as close to C's ideal point as makes another relevant pivotal actor indifferent. In the Extreme Regime, this additional actor is L, and in the Typical and Centrist Regimes, it is M. The committee, then, is never better off ignoring the instructions and allowing L to develop his own reconciliation proposal that is introduced using a motion to recommit.

In sum, the model outlined above suggests that we should observe committees being named in the reconciliation instructions when the status quo in a policy area is in one of 'instruction zones.' In both these zones, all reconciliation pivotal actors are made no worse off by using the procedures to enact policy change.[29] The first (Zone 1) is when the status quo is more extreme on the same side of the policy space than the median member of the majority party (here, the left side), but not so extreme that the floor median would be able to amend a proposal all the way to its ideal point under regular order. The second (Zone 2) is when the status quo is moderate, with the exact bounds of the region varying slightly depending on which regime characterizes the arrangement of the committee, majority party, and floor medians.

The model does not only, however, yield predictions that depend on measuring the precise location of the status quo. Assuming a uniform distribution of status quo points (Chiou and Rothenberg 2003; Lawrence, Maltzman, and Smith 2006; Jenkins and Monroe 2012), as

[29] Technically, this is also true for the gridlock zone in the middle of the policy space ([min(L,C), M]). Given that agenda space is a scarce resource, I assume that Congress will not go through the trouble of creating reconciliation instructions that would be of no consequence.

each zone gets larger, the number of current policies that fall within the zone should increase. The likelihood that a committee is named in the instructions, then, should also get larger.[30] We can define the zones as follows:

Table 4.3: Instruction Zones, by Regime

	Zone 1 (Extreme)	**Zone 2 (Center)**
Extreme		
Case 1	[2L - M, C]	[M, F]
Case 2		
if C < 2M – F	[∅]	[M, F]
if C > 2M – F	[4M – 2F – C, C]	[M, 2F – 2M + C]
Typical		
Case 1		
if |C – M| < |M – F|	[2L – M, L]	[M, 2F – 2M + C]
if |C – M| > |M – F|	[2L - M, L]	[M, F]
Case 2		
if |C – L| < |(2M – F) – L| & |C – M| < |M – F|	[4M – 2F – 2L + C, L]	[M, 2F – 2M + C]
if |C – L| < |(2M – F) – L| & |C – M| > |M – F|	[4M – 2F – 2L + C, L]	[M, F]
if |C – L| > |(2M – F) – L| & |C – M| < |M – F|	[2M – F, L]	[M, 2F – 2M + C]
if |C – L| > |(2M – F) – L| & |C – M| > |M – F|	[2M – F, L]	[M, F]
Centrist		

[30] This approach to testing the predictions of a spatial model follows that taken by Primo, Binder, and Maltzman (2008).

Case 1	[2L - M, L]	[C, 2F – C]
Case 2		
if |C – L| < |(2M – F) – L|	[4M – 2F – 2L + C, L]	[C, 2F – C]
if |C – L| > |(2M – F) – L|	[2M – F, L]	[C, 2F – C]

We can also summarize the predictions in the form of hypotheses:

Zone 1 Hypothesis: As the size of Zone 1 (in the extreme of the policy space) increases, the probability that a committee is named in the reconciliation instructions also increases.

Zone 2 Hypothesis: As the size of Zone 2 (in the center of the policy space) increases, the probability that a committee is named in the reconciliation instructions also increases.

Testing the Model's Predictions Empirically

Using these definitions of the instructions zones, we can test the model's predictions empirically. For some zones in some regimes, the boundaries do not vary within a given year; for example, in the Typical and Centrist regimes, the right boundary of Zone 1 is always the median member of the majority party and is thus constant across committees. For other zone-regime pairs, however, the boundaries are determined in part by the location of the committee and there is substantial within-year variation. Occasionally, for example, the floor median and the median member of a given committee are identical. At other points, however, they are quite far apart. The maximum observed distance on the DW-NOMINATE scale between a committee median and the floor median is 0.26 (the Senate Banking Committee in 2001); this represents about one-eighth of the possible range of the variable. In all, the average distance between the median members of a committee and the floor is 0.07, with a standard deviation of 0.06.

To determine which Senate committees were named in the reconciliation instructions in each year, I reviewed each final budget resolution enacted by Congress between 1980 and 2012.[31] A committee was coded 1 if it was mentioned in the instructions, and zero otherwise;

[31] For full citations for each budget resolution, see Heniff 2014. For a full list of which committees were named in which years, see Appendix Table A4.1.

this represents the dependent variable in the analysis. The zero cases can be divided into three groups. The first are committees that were left out of the instructions in years in which some other committees were named. The second arises in years in which Congress successfully passes a budget resolution, but chooses not to name any committees in the instructions. The final group consists of committees in years in which Congress fails to enact a budget resolution entirely.

This heterogeneity among the zero cases has implications for our estimation strategy. If we ignore the difference between zeroes generated because Congress fails to pass a budget resolution and those that result from the choice not to include committees in an otherwise successful budget resolution, our results may be biased. To address this issue, I estimate a Heckman selection model (Heckman 1979) where the first stage predicts whether or not Congress passes a budget resolution in a given year. Conditional, then, on a successful budget resolution, the second stage models which committees are named in that measure's reconciliation instructions.[32]

To predict the probability of a budget resolution, I first control for the general budgetary environment (Binder 2003), as measured by the budget deficit in the previous calendar year (Howell and Jackman 2013).[33] Next, because the Senate does not operate in a vacuum in constructing the budget resolution, I include separate measures accounting for the preferences of the House and the president. Previous work has found that Congress has more difficulty passing a budget resolution when there are substantial bicameral differences in preferences, as well as when Congress and the executive branch are controlled by different parties (Binder 2003; LeLoup 2005). In the case of the House, because both legislative chambers must agree on a resolution for it to take effect, we would expect fewer budget resolutions when the House and Senate's preferences diverge; to account for this, I control for whether the House and Senate are controlled by the same party.

In the case of the president, meanwhile, it may be the case, as Binder (2003) argues, that when the congressional majority and the White House share partisanship, they have a shared interested in demonstrating their capacity for effective budgeting. The president, then, may

[32] The zero observations in the second stage include both non-named committees in years where some committees were named AND all committees in years in which the resolution contained no instructions at all.
[33] The budget deficit is measured as the total surplus or deficit over total federal outlays, as measured in constant 2009 dollars. See "Table 1.1: Summary of Receipts, Outlays, and Surpluses or Deficits: 1789-2017," *Fiscal Year 2015 Historical Tables, Budget of the U.S. Government* (Washington, D.C.: Office of Management and Budget, 2014).

become more involved behind the scenes in working for the resolution's passage. At the same time, when the president and the Senate majority are not co-partisans, the budget resolution may be a particularly attractive vehicle in which senators can achieve political goals because it does not require the executive's signature.

Dynamics within the Senate may also affect the probability that a budget resolution is adopted. As a result, I include a variable measuring congressional polarization, defined as the difference between the 1st-dimension DW-NOMINATE scores of the median members of the Senate majority and minority parties (e.g. Schickler 2000; Brady and Han 2007).[34] Previous work has also suggested that polarization has affected Congress's ability to budget effectively, increasing the amount of delay in the passage of appropriations bills (Klarner, Phillips, and Muckler 2012) and affecting the internal dynamics of the Senate Budget Committee in ways that have made it more difficult for the panel to successfully generate a proposal (Bafumi 2012). In addition, I control for the extremity of the median member of the Budget Committee (as measured by the absolute value of his DW-NOMINATE score). This choice may seem puzzling, given that in the model, I assume that the Budget Committee acts as a perfect agent of the majority leader. At the same time, the extremity of the committee may affect the efficiency with which the process operates; even if a more extreme committee eventually conforms to the preferences of the median member of the majority party, the delay introduced in the negotiating process may affect the overall probability that a resolution is ultimately produced. In addition, while null results for this measure in the empirical specification would not confirm our choice to model the Budget Committee as agent of the majority leader, statistically significant effects might cause us to revisit that choice.

The second stage of the selection model, then, tests the predictions from the model. The dependent variable in this stage takes on a value of 1 if a committee is named in the reconciliation instructions and 0 otherwise. For the independent variables, I use 1st-dimension DW-NOMINATE scores, to define, for each committee-year pair, the two reconciliation zones

[34] For all NOMINATE-based variables that measure only Senate preferences, I prefer DW-NOMINATE to the Common Space scores because the former allows for change over time in the ideal points of individual members.

described in Table 4.3 above.[35] Per the Zone 1 and Zone 2 Hypotheses, as the interval gets larger, so should the probability of a committee being named in the reconciliation instructions.[36]

In the second stage, I also control for two additional factors that are likely to affect the probability that a committee is included in the instructions. First, we would anticipate that, in addition to influencing the decision to pass a budget resolution, the size of the budget deficit would also play a role in the drafting of the instructions. As the budget deficit grows, so should the pressure to reduce spending and, as a result, the probability that any given committee is included in the instructions. Second, I control for the logged size of a committee's mandatory portfolio in the previous year (as measured in constant 2009 dollars). We would expect that, in pursuit of deficit reduction, the instruction writers might be particularly attracted to committees with much larger mandatory portfolios; these committees have more programmatic levers to pull in pursuit of their budgetary goals. The process by which I determine the size of the committee's mandatory portfolio is described in detail in Chapter 5, but for the purposes of this analysis, it is worth noting that underlying expenditure data comes from the Census Bureau's *Consolidated Federal Funds Report*. That data are available from 1983 to 2010, limiting my analysis here to years between 1984 and 2011. Thus, the analysis below has 308 committee-year observations.

The model is estimated as two separate probit equations using Stata's *heckprobit* command. The parameter estimates from the first stage are used to calculate an additional regressor (known as the inverse Mills ratio) that is included in the second stage.[37] The results of

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[35] I exclude from the analysis the Senate Budget Committee, which has no programmatic jurisdiction, and the Senate Appropriations Committee, since only mandatory, and not discretionary, programs can be changed through the reconciliation process. In addition, I exclude three committees for which I lack reliable committee-level spending data for much of the time series: Rules, Foreign Relations, and Armed Services. The source of this data limitation is described in detail in Chapter 5.

[36] The intervals in Table 4.3 rely, in many cases, on indifference points that are a function of the relative distance between two or more actors. Measuring the size of the intervals by combining ideal point estimates and the expressions listed in Table 3 assumes that a legislator is actually located at that indifference point. Because legislators are not evenly distributed across the policy space, this assumption may not be true in practice. I address this concern in two ways. First, controlling for polarization in the first stage accounts for the underlying distribution of member preferences. Second, in Appendix Table A4.2, I take advantage that one of the indifference points (2M – F) can be measured more directly by using the filibuster pivot on the same side of the policy space as the majority median. The empirical results are robust to this substitution.

[37] While Stata corrects for several issues related to the calculation of standard errors in selection models automatically, we might also be concerned about clustering, since the data are grouped both within years and across committees. Unfortunately, guidance on how to cluster in two stage models is limited in the applied econometrics literature. Karaca-Mandic and Train (2003) suggest clustering on first-stage observations, while Kuksov and Villas-Boas (2008) recommend clustering on second-stage observations. Appendix Table A4.3 includes estimations that cluster on the first stage (years) and second stage (committees), which are largely similar to the results that appear in Table 4.4

this estimation appear in Table 4.4, with the first stage results (predicting passage of the budget resolution) in the lower panel and the second stage results (predicting the naming of a committee in the instructions) in the upper panel. First, it is worth noting that the chi-squared statistic for a likelihood-ratio test of whether the errors are correlated across the two stages is 14.86, which carries a p-value of 0.0001; this suggests that our choice of a selection model is appropriate for the dynamics in the data.

While our theoretical interest is in the second stage results, it is worth noting that several of the first stage results behave as expected. As intra-congressional preferences diverge, the probability of a budget resolution decreases, as reflected in the negative and statistically significant coefficient on the variable measuring whether the House and Senate are controlled by the same party. In terms of co-partisanship with the president, the effect of divided executive branch-Senate control on the probability of enacting a budget resolution is positive and marginally statistically significant (p=0.011). Previous work that has suggested that budget resolutions are more difficult to enact when the president and Congress are controlled by opposite parties has generally covered an earlier time period than the one under study here. This result, then, suggests that perhaps, in more recent years, the budget resolution has become an important way for the president and Congress to go on record with their respective partisan priorities (Garrett 2000; LeLoup 2005).

Within the chamber, meanwhile, higher levels of polarization also mean a budget resolution is less likely to be enacted; despite the fact that the resolution itself cannot be filibustered, it is possible that larger partisan divides affect the overall legislative environment. Finally, the results do not provide evidence of a relationship between either the extremity of the Budget Committee or the deficit and the adoption of the budget resolution. In the case of the Budget Committee, this result is unsurprising, since we expect the committee to act as an agent of the majority leader, leaving little room for its own preferences in the process.

Table 4.4: Probability of Committee Inclusion in Reconciliation Instructions, 1984-2011

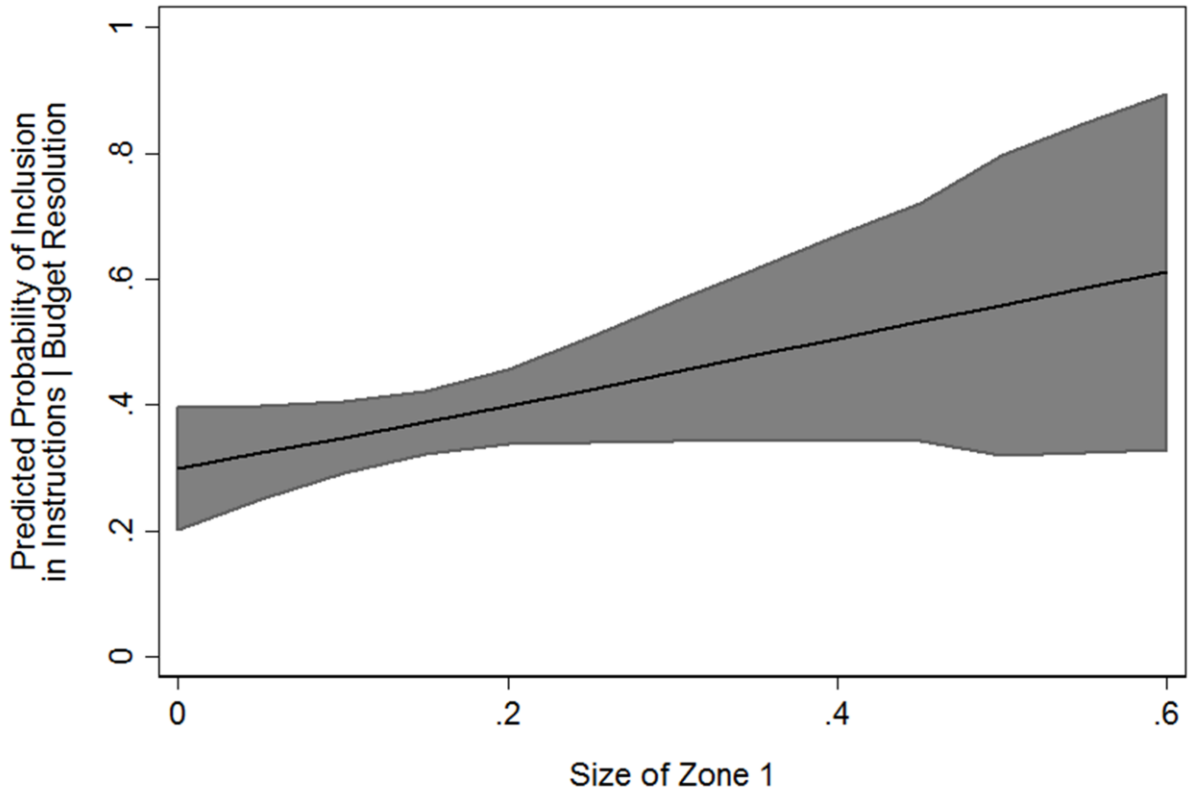
Instructions Stage	
$Deficit_{t-1}$	-4.566***
	(0.837)
Zone 1 Size	1.206*
	(0.723)
Zone 2 Size	0.875**
	(0.432)
Total Committee Mandatory $Spending_{t-1}$	0.060***
	(0.012)
Constant	-2.524***
	(0.401)
Observations	242
Budget Resolution Stage	
$Deficit_{t-1}$	0.044
	(0.820)
Divided Control, House-Senate	-1.707***
	(0.368)
Divided Control, Senate-President	0.220
	(0.137)
Polarization	-15.672***
	(3.130)
Budget Committee Median	0.226
	(1.858)
Constant	12.463***
	(2.075)
Observations	308

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1
Chi-Square, LR Test of Independent Equations: 14.86 (p=.0001)
Log likelihood: -243.833

In the top panel of Table 4.4, then, are the results for the test of the model's predictions. In the case of both the Zone 1 and Zone 2 Hypotheses, we see the expected relationship between

the size of the reconciliation zone and the probability that a committee is included in the instructions in a given year. As the region in which the majority party is better off under the reconciliation procedures grows, so does the likelihood that a committee is named. Figures 4.8 and 4.9 illustrate the size of this effect visually. The x-axis in each figure runs from the minimum size of the relevant Zone to the maximum, while the y-axis indicates the predicted probability that a committee is included, conditional on observing a budget resolution and holding other second-stage explanatory variables at their means. In Figure 4.8, the minimum size of Zone 1 (0) corresponds to the most extreme committee median in the dataset (-0.377, for the HELP Committee in 1989); the extremity of this committee, relative to the other actors, meant there was no region in the extreme of the policy space for which reconciliation was Pareto optimal for all reconciliation pivotal actors. The maximum value of Zone 1 (0.595), meanwhile, is associated with the Judiciary Committee in 2011, thanks to a very large distance between the floor median and the filibuster pivot. When Zone 1 is at its smallest, the predicted probability of a committee being included in the instructions is roughly 30 percent. By comparison, the likelihood doubles—to approximately 61 percent—when Zone 1 is at its largest.

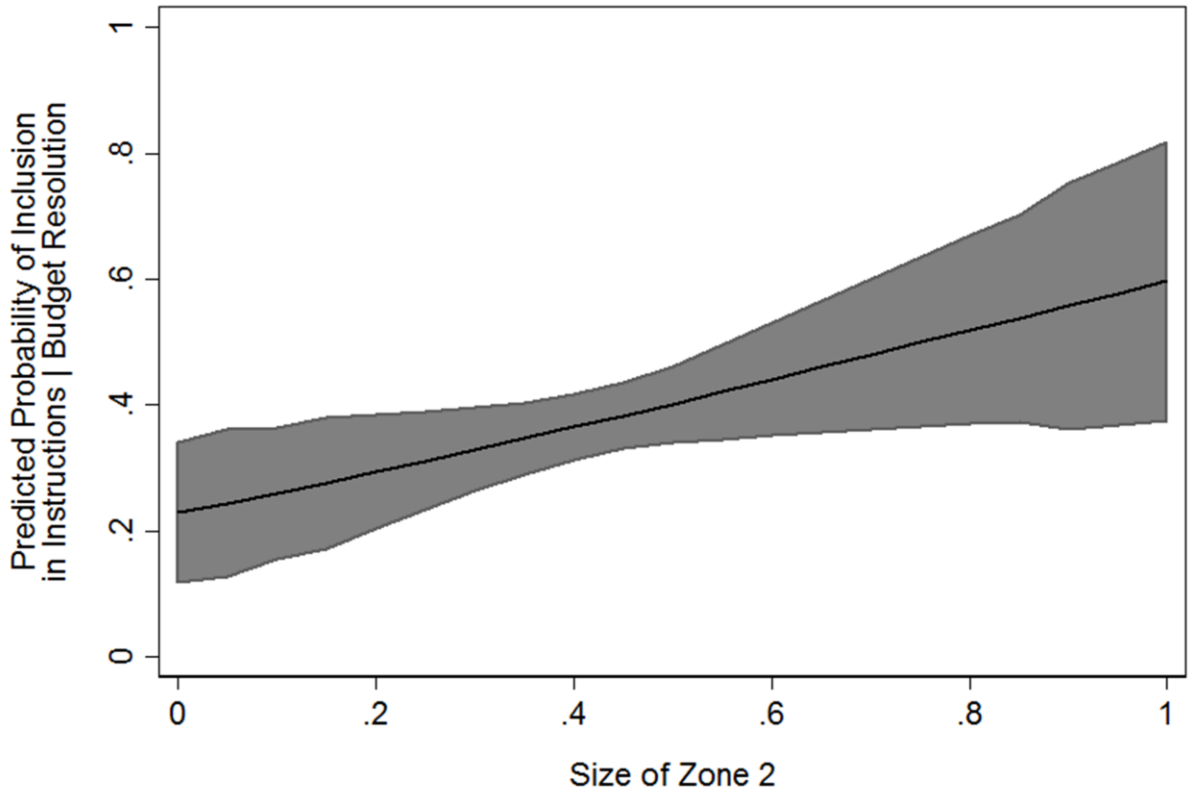
Figure 4.8: Probability of Inclusion in Reconciliation Instructions, by Zone 1 Size



We see similar results in Figure 4.9, which displays the predicted probability of inclusion by Zone 2 size. The minimum size of Zone 2 (0.052) occurred for the Energy and Natural Resources Committee in 1994, which features the most centrist committee median in the period under study.[38] Zone 2 is at is largest, meanwhile, in 2011, when nine of the eleven committees analyzed have observations between 0.9 and 1 because of the relative extremity of the filibuster pivot. Here, we see that moving the from the minimum observed value to the maximum observed value again nearly triples the predicted probability of inclusion, conditional on a budget resolution, from 23 percent to 60 percent.

[38] The senator associated with this ideal point was Richard Shelby of Alabama. The 103rd Congress was Shelby's final term in the Democratic Party.

Figure 4.9: Probability of Inclusion in Reconciliation Instructions, by Zone 2 Size



In addition, the two control variables included in the second stage also behave as expected. As the deficit gets smaller and eventually becomes a surplus, each committee is less likely to be named. This is consistent with reconciliation's underlying purpose as a deficit reduction tool; the smaller the deficit, the less need on the part of Congress to cut it. In addition, committees with larger mandatory portfolios, and thus more programmatic levers to pull, are also more likely to be named. Exactly how those programmatic levers are pulled—and to whose advantage—is taken up in the next chapter, but in sum, we find results consistent with the model's testable implications. When the size of the regions in which the majority party can benefit from using reconciliation increases, so does the probability that a committee is included in the reconciliation instructions.

Additional Insights from the Theoretical Model

While the results in Table 4.4 are encouraging for the model's account of how reconciliation can benefit the majority party, a large-N empirical test can only tell part of our story. The difficulty in measuring the status quo, however, prevents us from systematically testing any hypotheses regarding the naming of committees based on the current policy location. Here, I present two cases that illustrate how, when we can reasonably approximate the location of the status quo, we observe behavior that is consistent with the model's predictions, even if it might appear puzzling at first.

The inability to locate the status quo systematically is not, however, the only limitation of the model. Like all models, it represents a stylized version of reality and does not capture various nuances of the process. In a final case study, I introduce an additional possible dynamic—that there may be costs to using reconciliation—and discuss how other features of the reconciliation process might help us understand one of the most prominent uses of reconciliation in recent history to achieve the majority party's goals: the Patient Protection and Affordable Care Act of 2010.

Wither Cap-and-Trade: The Senate Environment and Public Works Committee, 2009

At the start of the 111th Congress in January 2009, the Democratic Party found itself in a situation not seen since 1995: unified control of the House of Representatives, the Senate, and the presidency. The 58 seats they held in the Senate was the largest majority held by either party since 1980, which, combined with a new president's governing mandate, put them in an unusually strong position to enact policy change in several priority areas, including health care, education, tax reform, and the environment.

The fate of several of these legislative goals quickly became tied up with the congressional budget process when Congressional Democrats began drafting their budget resolution for Fiscal Year 2010. While the president lacks a formal mechanism to influence the congressional budget resolution—it does not require the executive's signature—the majority leadership in both chambers found itself under substantial pressure from the White House to

draft reconciliation instructions that would allow for the use of the procedures to enact health care reform, changes to federal student loan programs, and a new cap-and-trade initiative to address climate change. The House Budget Committee responded to the president's request in-kind, instructing the House Energy and Commerce and Ways and Means Committees to generate a proposal to enact "health care reform" and the House Education and Labor Committee to do the same for a plan to "investing in education."[39]

In the Senate, meanwhile, the initial budget resolution reported out by Budget Committee contained no reconciliation instructions, but Senate Majority Leader Harry Reid (D-NV) remained committed to "exploring all options" (Harwood 2009) during the chamber's consideration of the measure. Indeed, the final compromise of the budget resolution passed by both chambers included instructions to both the Senate Finance and Health, Education, and Labor Committees, allowing for the eventual use of the rules to enact major policy change in those two high-profile areas (Hulse 2009b).

Cap-and-trade, however, was a different matter. Reid, having stated publicly when asked about the prospect of using reconciliation to enact such legislation that "I love 51 compared to 60" (Samuelsohn and Ling 2009), was clearly open to the idea. Senator Barbara Boxer (D-CA), chair of the Senate committee that would have needed to be named in the instructions to make cap-and-trade reconciliation-eligible (the Environment and Public Works Committees), was openly in favor of the plan. When it became clear, however, that a straight inclusion of the committee in the instructions was unlikely to clear the Senate floor, she partnered with the fellow committee member Senator Sheldon Whitehouse (D-RI) to introduce an alternative version that would have allowed for the use of reconciliation to enact a cap-and-trade proposal if the Senate found that doing so would have "a positive impact on the country's economy, environment, or energy security" (Kaplun 2009). When that amendment failed, Boxer turned her efforts to defeating an additional amendment on the topic, offered by Senator Mike Johanns (R-NE), which would have made it nearly impossible for the Senate to use reconciliation to pass cap-and-trade.[40]

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[39] See H. Con. Res. 85, 111th Congress, 1st session.

[40] Specifically, the amendment prohibited Congress from using the "reserve fund" for climate change legislation, also included in the budget resolution, if the Senate passed a reconciliation bill containing cap-and-trade. "Reserve funds" are provisions in the budget resolution that allow the House and Senate Budget Committees to permit other committees to spend more than their original budgetary allocation if other conditions are met (Lynch 2009). Without the reserve fund, any legislation that spends more than the committee's original allocation is subject to a

A review of the floor debate over the amendments might lead an observer to conclude that the 2009 budget resolution failed to include the Senate Committee on Environment and Public Works because senators felt that using the reconciliation process to enact cap-and-trade legislation was against the principles of the Senate. Senator Lindsay Graham (R-SC), for example, claimed that "if you took climate change…and put [it] on the reconciliation track, you would basically be doing a lot of damage to the role of the Senate in a constitutional democracy."[41] Senator Mike Enzi (R-ID) compared using reconciliation for policy change, including on the environment, to a "shotgun wedding."[42] On the opposite side, meanwhile, Whitehouse emphasized that using reconciliation in this way was nothing new and entirely consistent with the history of the chamber. "The party of reconciliation," he claimed, "is the Republican Party. They have used it 13 times."[43] Boxer argued similarly; "it is perfectly in order," she asserted, "to use something called reconciliation, which is a way to get around a filibuster, and it is a way to govern with a majority."[44]

Previous work on procedural choice in the Senate, however, suggests that senators rarely make procedural choices—like whether to use reconciliation—based on principles alone (Binder and Smith 1997). Indeed, in this particular case, Graham, Enzi, and their allies objected just as strenuously to including reconciliation instructions that mentioned the Senate Finance Committee in order to permit the procedures' use to enact health care reform. When asked about the potential handling of health and environment measures through reconciliation, Senator Judd Gregg (R-NH) claimed that doing so would be equivalent to "running over the minority, putting them in cement, and throwing them in the Chicago River" (Montgomery 2009). Despite this opposition, in their final budget compromise with the House, the Senate accepted instructions to the Finance Committee—a decision that, as is clear in the case study, proved pivotal to the package's eventual passage.

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point of order under the Congressional Budget Act, which requires 60 votes to waive. In this case, the budget resolution included a reserve fund that allowed the Senate Budget Committee to revise committee allocations if "climate change legislation" was enacted. The Johanns amendment would have prohibited any Senate committees from spending more than originally allocated on various environmental initiatives if the underlying "climate change legislation" was enacted through reconciliation. In practice, this amendment made it so difficult for the Senate to use reconciliation to enact a cap-and-trade program as to essentially prohibit the procedures' use (Kaplun 2009).

[41] Congressional Record S4143, 1 April 2009.

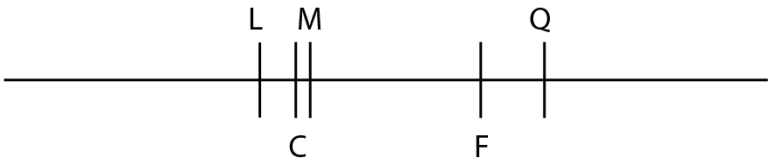
[42] Congressional Record S4140, 1 April 2009.

[43] Congressional Record S4141, 1 April 2009.

[44] Congressional Record S4141, 1 April 2009.

Given that there was also vocal opposition to naming the Finance Committee, what made the Environment and Public Works Committee different? The spatial model outlined above provides some useful insight. Figure 4.10 provides a visual depiction of the regime (Typical) that characterized the relevant actors in 2009. Using DW-NOMINATE scores, Senator Amy Klobuchar (D-MN) was the median member of the Environment and Public Works Committee (C), Senator Kay Hagan (D-NC) was the median member of the full chamber (M), and Senator Olympia Snowe (R-ME) was the filibuster pivot (F). The median of the Democratic (majority) party (L) fell between Senator Jay Rockefeller (D-WV) and Senator Daniel Inouye (D-HI).

Figure 4.10: Regime Describing Cap-and-Trade Policy, March 2009



Identifying the location of the status quo on cap-and-trade is more difficult. On one hand, no program of tradable credits as a means to combat greenhouse gas emissions existed in 2009, and we might consider the complete absence of such a system to be the most conservative possible status quo. Under this logic, creating any sort of cap-and-trade regime would represent a more liberal policy, with the exact location depending on various aspects of the policy, such as the restrictiveness of the emissions cap. If, however, we think about cap-and-trade as part of the nation's broader environmental policy, we can use previous Senate action to speculate in more concrete way about the location of the status quo. In June 2008, the Senate spent three-and-a-half days considering the Lieberman-Warner Climate Security Act of 2008—including nine hours spent reading the full text of the bill aloud (Montgomery and Birnbaum 2008)—before failing to invoke cloture on the measure (Herszenhorn 2008). The legislation, which was the first proposal on cap-and-trade to reach the Senate under regular order, would have reduced greenhouse gas emissions by 70 percent below 2005 levels by 2050 (Pew Center 2008).

While the Senate's consideration of the Lieberman-Warner measure in 2008 does not allow us to pinpoint the exact location of the status quo on cap-and-trade in 2009, the positions of various senators—specifically, Republicans—provides us with a rough sense of where policy

was relative to their preferences. Seven Republican senators voted for cloture on the bill: Senators Susan Collins (R-ME), Elizabeth Dole (R-NC), Mel Martinez (R-FL), Gordon Smith (R-OR), John Sununu (R-NH), Olympia Snowe (R-ME), and John Warner (R-VA).[45] Because the Lieberman-Warner bill would have made environmental policy more liberal, the support of these seven senators suggests that the status quo on the issue was to their right; otherwise, they would not have supported a measure moving policy in a liberal direction. Again, we cannot identify precisely how far to the right the status quo was, but the average of these seven members' DW-NOMINATE scores (0.342) suggests that it was moderately conservative, as indicated by Q in Figure 4.10.

Given this arrangement of preferences and the approximate location of the status quo, what fate does my spatial model predict for the Senate Environment and Public Works Committee in the 2009 reconciliation instructions? Because we are in the Typical Regime, the majority party leader (again, captured as the majority party median) will always favor including the committee in the instructions for status quo points that are to his right, because he is never made worse off, and often made better off, by enacting policy change through reconciliation rather than under regular order. The support by Majority Leader Reid for naming the committee, then, is consistent with our model-based expectations.

The floor median, however, does not always agree with the majority leader. When the status quo is extreme on either side of the policy space, he prefers to use regular order to reconciliation because the procedural advantages afforded to the committee-generated proposal under reconciliation mean he is forced to accept a policy change that he prefers to the status quo, but that brings him less utility than the policy he could achieve under the Senate's regular rules. In 2009, the absolute distance between the median member of the Environment and Public Works Committee and the floor median (0.026) was less than the absolute distance between the floor median and the filibuster pivot (0.289). According to the results of the model, then, the floor median will oppose including the committee in the reconciliation instructions if $Q > 2F - 2M + C$. Did this condition hold in 2009? Again, because we cannot precisely locate Q, it is impossible to be certain, but in 2009, $2F - 2M + C = 0.308$, a moderately conservative point. It is plausible, then, the status quo on cap-and-trade was sufficiently conservative that floor median preferred attempting policy change under regular order, rather than through reconciliation.

[45] See Vote Report #145, 6 June 2008.

Following the passage of the Johanns amendment to the budget resolution, this was indeed the path the Senate took during the 111th Congress, ultimately failing to pass a cap-and-trade bill in the summer of 2010 (Lizza 2010).

Rejecting the Rules: The Senate Committee on Agriculture, Nutrition, and Forestry, 1995-96

The case of the Senate Environment and Public Works Committee in 2009 is not the only example of how the location of the status quo can make reconciliation suboptimal from the perspective of the floor median. Fifteen years prior, another Senate committee encountered a similar situation—but with a twist. In 1995, the Senate Committee on Agriculture, Nutrition, and Forestry began its periodic reauthorization of the farm bill—a wide-ranging piece of legislation that includes such disparate policies as farm subsidies, soil conservation programs, food stamps, and child nutrition initiatives—through the reconciliation process. By April 1996, however, the farm bill had taken a major procedural detour, with the ultimate legislation reauthorizing the farm bill's programs handled through regular order by both chambers.

What explains this particular path? The 1995-96 farm bill's journey with reconciliation began two years earlier. In 1993, the Agriculture Committee was under a reconciliation directive to cut $3.2 billion from the programs in its jurisdiction over the next five years.[46] Concerned about Democratic priorities—such as President Clinton's proposal to means-test subsidies to commodity producers (Palmer 1993), the minority Republicans on the committee contemplated attempting to prevent committee action on a reconciliation measure. The Republican leadership, wanting to make sure reconciliation remained available to them as a procedural tool in the future, sought to prevent this kind of obstruction. In a letter to Senator Richard Lugar (R-IN), the Ranking Republican Member of the Agriculture Committee, Senator Pete Domenici (R-NM) cautioned Lugar:

> *…we as Republican's [sic] have used reconciliation to advance our policy objectives effectively over the years. If we as Republicans choose this year to undermine the reconciliation process by claiming, as an example, that the reconciliation instructions are unenforceable or meaningless, that tool may not be available to us in the future. We*

[46] See H. Con. Res. 64, 103rd Congress.

> *must be careful in our strategy. While advancing a Republican alternative, we must not jeopardize the tool that could help us achieve that alternative.*[47]

When Republicans regained control of both houses of Congress following the 1994 elections, it appeared this chance to use the expedited procedures to reform the nation's system of farm price supports had arrived. The wide-ranging farm bill was up for reauthorization, having last been tackled by the Democratic Congress in 1990. Substantial cuts to existing farm programs were attractive to the new majority, with Domenici trumpeting reductions as a key piece of the Republicans' pledge to balance the budget by 2002 and House Majority Leader Dick Armey (R-TX) arguing that there was no place for subsidies in a free market agricultural economy (Hosansky 1995c). At the same time, however, many rank-and-file Republicans in both houses—especially those from farm districts and states—vigorously opposed the proposed cuts. When asked about his opposition to a proposal that would transition the farm support system to one in which recipients would get gradually diminishing fixed payments, rather than subsidies related to farm prices, Representative Saxby Chambliss (R-GA) responded "'when asked why I wasn't voting with the team, I said, "My team is my farmers and the good folks back home in central and south Georgia."'" (Bradsher 1995).

Given that the Republican leadership was facing possible dissent from its own members, reconciliation appeared a particularly attractive vehicle for enacting the farm bill, especially to Senator Majority Leader Bob Dole (R-KS). Despite a preference from both Lugar—now the chair of the Senate Agriculture Committee—and his House counterpart, Representative Pat Roberts (R-KS) to handle the legislation separately, as a standalone bill, the fiscal year 1996 budget resolution included a reconciliation directive for both houses' Agriculture committees, keeping the possibility of reauthorizing the farm bill's programs through reconciliation alive (Hosansky 1995a).

Lugar, then, was confronted with a directive to reduce outlays by $48.4 billion over five years.[48] By late September, he had managed to wrangle enough votes on his committee to respond to those instructions with a reconciliation proposal that would cut agriculture programs

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[47] Pete Domenici, Ranking Republican Member, Senate Committee on the Budget, to Richard G. Lugar, Ranking Republican Member, Senate Committee on Agriculture, Nutrition, and Forestry, April 28, 1993; UC 8/4/77, Box No. 4; , Senate Budget Committee Republicans, FY 83-87 Budget Reconciliation; Records of the United States Senate, 100th Congress, Record Group 46; National Archives Building, Washington, DC.

[48] See H. Con. Res. 67, 104th Congress.

by $13.6 billion and nutrition initiatives by $35.7 billion. Sources of major savings in the measure included doubling the acreage of farmland that would be disqualified from receiving subsidies, shrinking the dairy price support program, cutting export subsidies, reducing the allowable deductions in calculating food stamp eligibility, and lowering payments to school lunch programs (Hosansky 1995b). Once the proposal reached the Senate floor as part of the larger reconciliation measure, it was largely uncontroversial, facing only one major amendment, to create a farmer-financed price support program for dry milk and butter. The debate turned contentious again when the reconciliation measure went to conference, with the dairy provisions removed from the bill altogether and additional cuts to the peanut and sugar programs (CQ Almanac 1995). In the end, this carefully negotiated compromise on the farm bill's programs proved moot, as Clinton vetoed the broader reconciliation measure on December 7, 1995; the White House provided 82 reasons for the veto, including provisions that would reduce Medicare and Medicaid spending, cut taxes, open the Arctic National Wildlife Refuge to oil drilling, and allow corporations to tap pension funds in order to make available funds for other priorities (Purdum 1995).

While the veto generally dampened the prospects for many of the Republicans' policy initiatives included in the bill, it was perilous for farmers because of the structure of several key programs in the bill. While some, like crop insurance, are permanently authorized, most are subject to periodic reauthorization. If Congress does not reapprove this latter category of programs, the effects vary. Some, like the bill's nutrition programs, can be kept operating by appropriations (Johnson and Monke 2014), but this is not the case for the bill's commodity programs. Those initiatives were originally created by two laws, the Agricultural Adjustment of 1938 and the Agriculture Act of 1949. Each subsequent reauthorization of the commodity programs has been a suspension of these "permanent laws," which means that if the reauthorization expires, the programs are again governed by the legislation that initially created them (U.S. Department of Agriculture 2008).

In the 1995 case, the first effects of reversion to permanent law would be felt in the corn and wheat markets. The original authorizing legislation for supports for these commodities directed the Secretary of Agriculture to set corn prices between $2.94 and $5.39 per bushel and wheat prices between $5.64 and $7.82 per bushel. At the end of 1995, these crops were at $3.33 and $5.22 per bushel, respectively—prices high enough that under the provisions enacted in

1990, the federal government was providing no subsidies. If those conditions were allowed to expire, and permanent law took effect, it was projected that the government would have to purchase all of the 1996 wheat crop and nearly all of the corn haul—exactly the opposite outcome from that desired by Republicans pushing to decrease the federal role in agriculture (Gugliotta 1995). Without a reauthorization, the cotton, sugar, and dairy markets would also be affected in 1997 and 1998.

In the words of one expert, the looming specter of permanent law was "'somebody's holding a gun to the head of Congress on this one'" (Hosansky 1996d). When Congress returned for the second session of the 104th Congress in January 1996, they had an estimated 90 days to respond to this threat and reauthorize commodity programs. By late April, Southern growers would begin harvesting their winter wheat, triggering government purchases at the 1949 prices (CQ Almanac 1995). Both chambers managed to clear this deadline by about a month, passing another five-year farm bill, the Federal Agriculture Improvement and Reform Act of 1996, in late March under the chambers' regular procedures.[49] Despite the looming prospect of budget-busting payments to farmers, the road to enactment was not smooth. Initial passage in both chambers required significant maneuvering and swapping of amendments in both chambers (Hosansky 1996a; Hosansky 1996c). The final measure was hammered out in a marathon fifteen hour meeting of conferees on March 20 and 21, during which members resolved nearly 500 differences between the House and Senate versions of the bill on issues including peanuts, dairy, and the question of whether to keep the current permanent law plus suspension approach to enacting the farm bill (Hosansky 1996b).

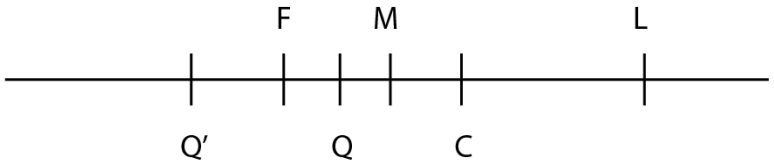
Given the difficulty of passing the 1996 farm bill—even under the threat of a massive increase in government obligations—why did the Republican leadership choose to forgo the reconciliation procedures for regular order? One possibility is that because current interpretation of the rules limits Congress to a single reconciliation bill dealing with outlays each year (Heniff 2010b), Republicans wished to reserve the special rules for enacting welfare reform, an initiative they did not expect to complete in time to avoid the reversion to permanent law with the farm bill. Indeed, the welfare package enacted in August 1996 was handled through the reconciliation procedures—but under the auspices of a new set of reconciliation instructions, provided for by a

[49] The only exception was the food stamp program, which was reauthorized for only two years by the 1996 farm bill and subsequently reauthorized through FY2002 by the 1996 welfare reform law, which was passed using the reconciliation procedures (Aussenberg 2013, fn. 17).

new budget resolution for fiscal year 1997, enacted in June 1996 (Heniff 2014). Senate parliamentarians have generally interpreted reconciliation instructions as remaining viable until the end of the Congress rather than the end of fiscal year (Binder 2010). Because no reconciliation bill initiated by the fiscal year 1996 instructions had been signed into law by the time Congress resumed work on the farm bill in early 1996, using reconciliation remained plausible, at least parliamentarily.

The model suggests another possible explanation. In 1995 and 1996, the Agriculture Committee was in the Typical Regime, with the committee median between the floor median and the median member of the majority party. This arrangement is depicted in Figure 4.11; note that since the Republicans controlled the Senate, the filibuster pivot is now to the left of the floor median. While we cannot specify the status quo on agricultural policy precisely, it is reasonable to assume it to be slightly liberal, given the vigorous support among many members of the Republican Party for altering the existing system of subsidies and prices supports. Thus, I place the status quo—that is, policy under the 1990 farm bill, due to expire at the end of 1995—at Q.

Figure 4.11: Regime Describing the Senate Committee on Agriculture, Nutrition, and Forestry, 1995-96



The reversion to permanent law at the start of 1996, however, moved the status quo in a more liberal direction, as it ushered in the prospect of far more generous agricultural spending; this shift is indicated in Figure 4.11 by Q′. Recall that, in the Typical Regime, there are some extreme status quo points for which reconciliation produces a policy that is less preferred by the floor median than the outcome achieved under regular order. Under the Senate's regular procedures, the floor median has amendment power that allows extreme status quo points to be moved to its ideal point. Under reconciliation, however, the influence of the committee, generated in part by the Byrd Rule, makes it much more difficult to amend a proposal, resulting

in a bill that is more reflective of the committee's preferences. In the case of the farm bill in 1995 and 1996, it is likely that the mid-stream shift in the status quo made reconciliation a less attractive option than it was at the start of the debate. Here, rules and the underlying structure of the policy interacted in a particular way to shape the Senate majority's incentives surrounding procedural choice. Indeed, one of the final points of compromise before the final passage of the 1996 farm bill was over whether to maintain the permanent law plus suspension approach. Democrats, concerned that a repeal of the underlying statute would make it easier for Republicans to eliminate entire portions of the farm safety net when the law next expired in 2002, pushed hard to retain the core 1938 and 1949 laws. They were ultimately successful (CQ Almanac 1996b), setting up the possibility of future showdowns on shifting procedural ground.[50]

How Much Policy Gain for the Procedural Buck? The Senate Finance Committee, 2009-10

In the two cases described above, we saw situations in which reconciliation was avoided, since using it would actually make a reconciliation-pivotal actor (the floor median) worse off. Another example from 2009 and 2010, meanwhile, provides a different kind of insight. Given that the model represents a simplified, stylized version of the reality, how might it help us understand situations that at first appear to be off the equilibrium path?

For proponents of the comprehensive health care reform measure being championed by President Barack Obama during the first fifteen months of his presidency, there was perhaps no darker day than January 19, 2010. Following Republican Scott Brown's victory in a special Senate election in Massachusetts, the Democratic majority in the Senate was down to 59 members, losing its ability to invoke cloture by relying solely on votes from within its own party (Cooper 2010). Without that key, 60th member of the caucus, Senate Democrats now required the support of at least one Republican to pass a conference report on the Patient Protection and Affordable Care Act (ACA). The House had passed its version of the president's health care initiative in November 2009 (Hulse and Pear 2009a), and the Senate had responded by enacting

[50] Indeed, in 2012, Congress was faced with a similar situation, as the 2008 farm bill expired (Steinhauer 2012). Because no budget resolution had been passed by both houses during the 112th Congress (for either the 2012 or 2013 fiscal years), there were no available reconciliation instructions, eliminating the possibility of using the procedures to handle a reauthorization.

its version just before Christmas (Herszenhorn and Hulse 2009)—but little progress had been made on resolving the two chambers' difference before Brown's victory.

Why hadn't the House and Senate been able to accomplish the president's signature legislative priority more quickly? While developing and shepherding a bill as complex as the ACA to passage is inevitably a lengthy process, the speed of progress in the Senate was partially the result of the approach utilized by Senator Max Baucus (D-MT), the chair of the Senate Finance Committee, to develop his committee's parts of the measure. As the chair of the committee with jurisdiction over Medicare, Medicaid, the State Children's Health Insurance Program, and other mandatory health programs, Baucus was ensured a central role in the drafting of the legislation, but his profile grew with Senate Health, Education, Labor, and Pensions Committee Chairman Edward Kennedy (D-MA) sidelined by a battle with cancer. Baucus was committed to producing a bipartisan bill, working with a so-called "Gang of Six"—a group of three Democratic senators (Baucus, Senator Kent Conrad (D-ND), and Senator Jeff Bingaman (D-NM)) and three Republicans (Senator Chuck Grassley (R-IA), Senator Michael Enzi (R-WY), and Senator Olympia Snow (R-ME)) (Herszenhorn and Pear 2009). His slow, methodical approach in pursuit of compromise proved troublesome, however. By the time that version of the bill was released publicly and scheduled for markup in early September, the underlying politics of the debate had shifted significantly with, among other factors, the emergence of the pernicious "death panel" rumor during the congressional recess in August (Rutenberg and Calmes 2009). Baucus lost the support of Enzi and Grassley before the measure was officially rolled out, and some of his own Democratic colleagues expressed concerns about the absence of a robust public option and insufficient subsidies for low-income individuals (Hulse and Pear 2009b; Pear and Herszenhorn 2009b). By October, Snowe was the only Republican to support the bill in committee (Pear and Herszenhorn 2009a) and when asked about the chances the measure would ultimately clear the full chamber, Baucus was left to report, "I don't know. I don't know. I don't know. I just really don't know."[51]

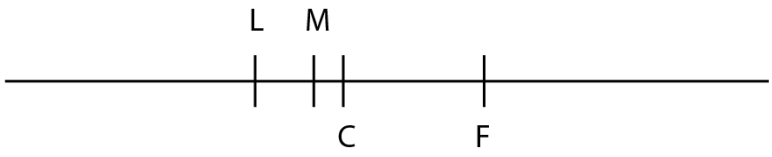
At various points in this journey, Reid pressured Baucus explicitly to speed up his efforts and threatened that if the Finance Committee failed to report out a health reform measure promptly, the majority leader would circumvent the committee chair and simply introduce a bill on the floor (Cohn 2010). The longer Baucus stalled, moreover, the more serious this threat

[51] "Quotation of the Day," *New York Times* 28 October 2009.

became—not only because Reid's frustration was increasing, but because the reconciliation instructions included in the fiscal year 2010 budget had given the Finance Committee a deadline of October 15, 2009 to report out "changes in laws within its jurisdiction to reduce the deficit by $1,000,000,000 for the period of fiscal years 2009 through 2014."[52] Starting on October 15, then, Reid would have gained another tool to shepherd health reform to passage: the ability to use a motion to recommit to bring a reconciliation bill dealing with programs in Finance's jurisdiction directly to the floor. Use of this maneuver would have been optional—the rules do not require that reconciliation be used, even conditional on the existence of instructions—but by waiting until October 12 to report Finance's bill, Baucus came awfully close to providing the majority leader with an extra procedural mechanism to get what he wanted.

Even if Reid lacked the ability to *force* the Senate to consider health reform through the budget reconciliation process before October 15, he was still widely blamed for, in the words of the *Washington Post's* Ezra Klein, "letting [Baucus] spend three months playing footsie with the Gang of Six" (Klein 2009). While there are a multitude of reasons why Reid might have pursued this strategy—a shared desire to produce a bipartisan bill or a commitment to deference to the wishes of his committee chairs, to name just two—the spatial model also provides a potential explanation. Figure 4.12 depicts the preferences of the various actors in 2009; the majority party median, floor median, and filibuster pivot are identical to those described in the Environment and Public Works case described above. The committee median in the Finance example, however, is Baucus himself. With a DW-NOMINATE score of -0.194, this places the committee in the Centrist regime.

Figure 4.12: Regime Describing the Senate Finance Committee, 2009



Recall from the model's predictions that, in the Centrist Regime, there is a relatively small range of status quo points for which the majority party median and the floor median are made better off

[52] See S. Con. Res. 13, 111th Congress, 1st Session.

by the use of reconciliation than regular order—that is, when $C < Q < 2F - C$. If the status quo is beyond $2F - C$, both the floor median and the majority party median prefer the outcome under regular order. Even when Q is in the reconciliation zone—that is, even when the majority party median and the floor median prefer the outcome achieved under reconciliation—the magnitude of those policy gains from using reconciliation may be quite small; this is depicted by the size of the triangle that is shaded in the middle of Figure 4.6. Put differently, in the Centrist regime, the bill produced by the committee under the reconciliation rules is not all that different from the measure the entire chamber would craft using regular order because of the committee's own moderate preferences.

Given this similarity, if the majority party leader perceives any possible costs of using reconciliation that might wipe out the small policy gains, he might simply opt to forgo use of the procedures. While I do not model the potential costs explicitly, it is not hard to imagine from where they might arise. In the particular case of health reform in 2009, two sources are immediately evident. Obama had sought office in 2008 as the "change" candidate, rejecting the "partisanship…that has poisoned our politics for so long."[53] While using reconciliation to enact his signature legislative achievement was by no means unprecedented, the president's Senate allies may have been wary of abandoning his desire for bipartisanship right out of the gate. Alternatively, and more substantively, congressional Democrats and the president alike had myriad goals for health reform that involved large amounts of discretionary spending—approximately $100 billon between 2011 and 2022 (Redhead et al. 2014)—non-budgetary policy change, which would have been difficult maintain as part of the bill in the face of Byrd Rule challenges from Republicans. The final version of the ACA authorized discretionary appropriations of $106 billion over ten years (Redhead et al. 2011). It is entirely possible, then, that in 2009, when armed with a filibuster-proof majority, the costs to Reid of foregoing these discretionary changes simply outweighed the relatively small amount of additional gains on mandatory health programs and health-related provisions of the tax code that would have been realized as part of a reconciliation bill generated by the Centrist Finance Committee. While using the reconciliation procedures from the start might have shepherded the measure to enactment more quickly, the finished product would have certainly looked much different.

[53] http://abcnews.go.com/Politics/Vote2008/story?id=6181477&page=1&singlePage=true

Conclusion

In 1996, during debate over the reconciliation instructions to be included in the congressional budget resolution, Senate Minority Leader Tom Daschle (D-SD) claimed that if the budget reconciliation process was used to enact tax cuts, "and this precedent is pushed to its logical conclusion, I suspect there will come a day when all legislation will be done through reconciliation."[54] Senate party leaders are occupationally disposed to hyperbole, and this statement is no exception. The theoretical model presented above predicts that we should observe committees being named in the reconciliation instructions in only limited circumstances—that is, for a set of status quo policies more extreme than median member of the majority party, as well as when policy is such that the floor median prefers policy change but the filibuster pivot would obstruct change under regular order. In both these cases, using reconciliation produces a policy that is more preferred by a majority of the members of the majority party than the policy achievable under the chamber's regular rules. For the more extreme status quos, this advantage results from the closed rule protections of reconciliation bills, preventing the floor median from amending the proposal away from the preferences of the majority party median. When the status quo is moderate, on the other hand, the advantage to the majority party is driven by the simple elimination of the possibility of a filibuster.

In addition, for both the sets of status quo policies described above, our expectations about committee inclusion are consistent with the central claims laid out in the Introduction. Because the rules both limit amendments and preclude the possibility of a filibuster, they facilitate the passage of policy changes that would not otherwise be possible—the first stated goal of majoritarian exceptions. In addition, the fact that the outcomes produced by the procedures' use bring policy closer to the preferences of the majority party median is consistent with my second central claim: that majoritarian exceptions make the majority party in the Senate better off.

Observational data about reconciliation's use also suggests that Daschle's concerns were overblown. As Table A4.1 makes clear, even since 1996, only some committees have been mentioned in the reconciliation instructions. As the large-N empirical test demonstrates, the patterns in committee inclusion are largely consistent with the predictions of the theoretical

[54] 142 Congressional Record 11941, 21 May 1996.

model. Committees are directed to report reconciliation bills, the results suggest, when the members of the majority party are made better off by the ultimate policy outcome; these policy outcomes help the majority party appear competent and enhance its reputation in the eyes of voters. Finally, the model also helps us understand a series of other empirical observations about reconciliation's use. Three incidents—one from 1995 and 1996, and two from 2009 and 2010—that may appear puzzling at first blush are largely consistent with the majority party-centric expectations generated by the theoretical account.

The reconciliation process, then, appears to be initiated in such a way that should advantage members of the majority party in the Senate. Are the policy changes made under its auspices similarly directed? Chapter 5 explores that very question.

Appendix 4.1

Model Solution

I begin by defining a set of proposals for which each legislative actor (L, M, and F) will **not** obstruct further progress on the measure at hand. For the floor median (M), I define the set of proposals, b, r(p), r(o), and o, that he will approve in a floor vote. For the majority leader (L), I define the set of proposals, r(p), that he will schedule. Finally, for the filibuster pivot (F), I define the set of proposals, o, that he will not filibuster.

Beginning, then, in the final stage of the regular order phase:

Definition 1: Let F's no-filibuster set for o be:

$$N[Q,f] = \begin{Bmatrix} [Q, 2f-Q] \text{ if } Q \leq f \\ [2f-Q, Q] \text{ if } Q > f \end{Bmatrix}$$

Under regular order, F will filibuster any proposal that makes him worse off than the status quo, Q. Knowing the proposals that F will not filibuster, L will engage in the following equilibrium behavior in the regular order phase:

Proposition 1: In equilibrium, in the regular order phase, L will introduce the following proposal, o*:

$$o^* = \left\{ \begin{array}{c} m \text{ if } Q < 2l - m \text{ and } l < 2m - f \\ \emptyset \text{ if } 2l - m \leq Q < f \text{ and } l < 2m - f \\ \\ m \text{ if } Q < 3m - 2f \text{ and } 2m - f < l \\ 4m - 2f - Q \text{ if } 3m - 2f < Q < 2m - f \text{ and } 2m - f < l \\ \emptyset \text{ if } 2m - f < Q < f \text{ and } 2m - f < l \\ \\ 2f - Q \text{ if } f \leq Q < 2f - m \\ m \text{ if } Q \geq f \end{array} \right\}$$

L will introduce the proposal, o, which brings policy as close as possible to L's ideal point that within F's no-filibuster set. Recall, however, that L only makes a choice about whether or not introduce o if the reconciliation phase of the game is either not played or fails in some way. To consider what happens in that phase of the game, let us define M's approval sets for r(p) and r(o):

Definition 2: Let M's approval sets for r(p) and r(o) be:

$$A[Q,m] = \begin{Bmatrix} [Q, 2m-Q] \text{ if } Q < m \\ [2m-Q, Q] \text{ if } Q \geq m \end{Bmatrix}$$

M will approve any reconciliation bill, either r(p) or r(o), if doing so makes him at least as well off as the status quo, Q. There are two possible ways that M is given the choice of whether or not to approve such a bill. The first occurs if L chooses the schedule r(p) after it has been reported out by the committee. L will introduce r(p) if the following holds:

Definition 3: Let L's schedule set for r(p) be:

$$S[Q,l] = \begin{Bmatrix} [Q, 2l-Q] \text{ if } Q < l \\ [2l-Q, Q] \text{ if } Q \geq l \end{Bmatrix}$$

Because r(p) comes to the floor under a closed rule, L is willing to schedule any version of it that makes him at least as well off as Q; he is not concerned that r(p) will be amended on the floor in such a way that results in an outcome that makes L worse off than Q. Because r(o) comes to the floor under an open rule, however, L's proposal set for r(o) is more limited:

Proposition 2: In equilibrium, L will introduce the following proposal, r(o)*:

$$r(o)^* = \begin{Bmatrix} m \text{ if } Q < 2l-m \\ \emptyset \text{ if } 2l-m \leq Q < m \\ m \text{ if } Q \geq m \end{Bmatrix}$$

If Q < 2l - m, L introduces r(o) with the expectation that it will be amended to m; L is at least as well off under this outcome as under the status quo. If 2l – m ≤ Q < m, however, the ultimate location of policy is away from L's ideal point, making him worse off. Finally, if Q ≥ m, however, ending up at M's ideal point is as well as L can do, so he is willing to make the proposal. Of course, deliberation about r(o) only occurs if a committee (c) receives reconciliation instructions but does not comply with them. Given Definitions 2 and 3, we should expect c to produce the following proposals, r(p):

Proposition 3: In equilibrium, c will report out the following proposal, r(p)*:

$$r(p)^* = \left\{ \begin{array}{c} t \text{ if } Q < t \text{ or } Q \geq 2m - t \text{ and } C < L \\ \emptyset \text{ if } C \leq Q < m \text{ and } C < L \\ 2m - Q \text{ if } m \leq Q < 2m - t \\ \\ t \text{ if } Q < 2l - t \text{ and } L \leq C < M \\ 2l - Q \text{ if } 2l - t \leq Q < l \text{ and } L \leq C < M \\ \emptyset \text{ if } l \leq Q < m \text{ and } L \leq C < M \\ 2m - Q \text{ if } M \leq Q < 2m - C \text{ and } L \leq C < M \\ t \text{ if } Q \geq 2m - C \text{ and } L \leq C < M \\ \\ t \text{ if } Q < 2l - t \text{ and } M \leq C \\ 2l - Q \text{ if } 2l - t \leq Q < l \text{ and } M \leq C \\ \emptyset \text{ if } l \leq Q < t \text{ and } M \leq C \\ t \text{ if } t \leq Q \text{ and } M \leq C \end{array} \right\}$$

When charged with a set of reconciliation instructions, c will introduce a proposal—protected by a closed rule—that brings policy as close as possible to the ideal point, t, of its median member, C, while still getting the consent of M and L. In order for c to have the opportunity to report out r(p)*, though, the floor must have approved a budget resolution, b, that names c in its reconciliation instructions. Given Proposition 3, we can define M's approval set for b as follows:

Definition 4: Let M's approval set for b be:

$$A[Q,m] = \left\{ \begin{array}{c} [2l-m, f] \text{ if } C < L \text{ and } l < 2m - f \\ [m, f] \text{ if } C < L \text{ and } l > 2m - f \text{ and } t < 2m - f \\ [4m - 2f - c, 2f - 2m + c] \text{ if } C < L \text{ and } l > 2m - f \text{ and } t > 2m - f \\ \\ [2l - m, 2f - 2m + t] \text{ if } L \leq C < M \text{ and } |M - C| < |M - F| \text{ and } l < 2m - f \\ [2l - m, f] \text{ if } L \leq C < M \text{ and } |M - C| \geq |M - F| \text{ and } l < 2m - f \\ [4m - 2f - c\ , 2f - 2m + t] \text{ if } L \leq C < M \text{ and } |M - C| < |M - F| \\ \text{and } l > 2m - f \text{ and } |C - L| < |(2M - F) - L| \\ [4m - 2f - c, f] \text{ if } L \leq C < M \text{ and } |M - C| \geq |M - F| \\ \text{and } l > 2m - f \text{ and } |C - L| < |(2M - F) - L| \\ [4m - 2f - c, 2f - 2m + t] \text{ if } L \leq C < M \text{ and } |M - C| < |M - F| \\ \text{and } l > 2m - f \text{ and } |C - L| > |(2M - F) - L| \\ [4m - 2f - c, f] \text{ if if } L \leq C < M \text{ and } |M - C| \geq |M - F| \\ \text{and } l > 2m - f \text{ and } |C - L| > |(2M - F) - L| \\ \\ [2l - m, 2f - c] \text{ if } M \leq C \text{ and } l < 2m - f \\ [2m - 2f + c, 2f - c] \text{ if } M \leq C \text{ and } l > 2m - f \end{array} \right\}$$

For these values of Q, M is no worse off under the eventual policy change, enacted via r(p) and the reconciliation rules, than he would be by avoiding the reconciliation process and moving to the regular order phase. The final choice in the game is L's, over whether to draft a set of instructions in b that name c. Given Proposition 3 and Definition 4, L will draft b* naming c in equilibrium under the following conditions:

Proposition 4: L will introduce b* naming C under the following values of Q:

$$[2l - m, \infty] \text{ if } C < L \text{ and } l < 2m - f$$
$$[2m - f, 2f - 2l + t\ ] \text{ if } C < L \text{ and } l > 2m - f \text{ and } t < 2m - f$$
$$[-\infty, 4m - 2f - 2l + t] \text{ if } C < L \text{ and } l > 2m - f \text{ and } t > 2m - f$$
$$[4m - 2f - c, 2f - 2m + l] \text{ if } C < L \text{ and } l > 2m - f \text{ and } t > 2m - f$$

$$[2l - m, \infty] \text{ if } L \leq C < M \text{ and } l < 2m - f$$
$$[-\infty, 4m - 2f - t] \text{ if } L \leq C < M \text{ and } l > 2m - f$$
$$[4m - 2f - 2l + t, \infty] \text{ if } L \leq C < M \text{ and } l > 2m - f \text{ and } |C - L| < |(2M - F) - L|$$
$$[2m - f, \infty] \text{ if } L \leq C < M \text{ and } l > 2m - f \text{ and } |C - L| > |(2M - F) - L|$$

$$[2l - m, 2f - t] \text{ if } M \leq C \text{ and } l < 2m - f$$
$$[4m - 2f - 2l + t, 2f - t] \text{ if } M \leq C \text{ and } l > 2m - f \text{ and } |C - L| < |(2M - F) - L|$$
$$[2m - f, 2f - t] \text{ if } M \leq C \text{ and } l > 2m - f \text{ and } |C - L| > |(2M - F) - L|$$

L is almost always willing to name c, since he is almost always made better off by r(p) than by o; the principal constraint on the frequency c's inclusion is M, who is made better off less often. Given Propositions 1-5, then, we should expect to observe c being named in the reconciliation instructions under the following conditions:

Proposition 5: Committee c will be named in the reconciliation instructions under the following conditions:

$$[2l - m, f] \text{ if } C < L \text{ and } l < 2m - f$$
$$[m, f] \text{ if } C < L \text{ and } l > 2m - f \text{ and } t < 2m - f$$
$$[4m - 2f - t, 2f - 2m + t] \text{ if } l > 2m - f \text{ and } t > 2m - f$$

$$[2l - m, 2f - 2m + t] \text{ if } L \leq C < M \text{ and } l < 2m - f \text{ and } |M - C| < |M - F|$$
$$[2l - m, f] \text{ if } L \leq C < M \text{ and } l < 2m - f \text{ and } |M - C| > |M - F|$$
$$[4m - 2f - 2l + t, 2f - 2m + t] \text{ if } L \leq C < M \text{ and } l < 2m - f$$
$$\text{and } |M - C| < |M - F| \text{ and } |C - L| < |\,(2M - F) - L|$$
$$[4m - 2f - 2l + t, f] \text{ if } L \leq C < M \text{ and } l < 2m - f$$
$$\text{and } |M - C| > |M - F| \text{ and } |C - L| < |\,(2M - F) - L|$$
$$[2m - f, 2f - 2m + t] \text{ if } L \leq C < M \text{ and } l < 2m - f$$
$$\text{and } |M - C| < |M - F| \text{ and } |C - L| > |\,(2M - F) - L|$$
$$[2m - f, f] \text{ if } L \leq C < M \text{ and } l < 2m - f$$
$$\text{and } |M - C| < |M - F| \text{ and } |C - L| > |\,(2M - F) - L|$$

$$[2l - m, 2f - t] \text{ if } M \leq C \text{ and } l < 2m - f$$
$$[4m - 2f - 2l + t, 2f - t] \text{ if } M \leq C \text{ and } l > 2m - f \text{ and } |C - L| < |\,(2M - F) - L|$$
$$[2m - f, 2f - t] \text{ if } M \leq C \text{ and } l > 2m - f \text{ and } |C - L| > |\,(2M - F) - L|$$

Finally, given Propositions 1-5, we should expect the following ultimate policy outcomes, Q*, at the end of the game:

Proposition 6: In equilibrium, policy will be located at:

Case 1:

$$Q^* = \left\{ \begin{array}{c} m \text{ if } Q < 2l - m \text{ and } C < L \\ t \text{ if } 2l - m \leq Q < t \text{ and } C < L \\ Q \text{ if } t \leq Q < m \text{ and } C < L \\ 2m - Q \text{ if } m \leq Q < f \text{ and } C < L \\ 2f - Q \text{ if } f \leq Q < 2f - m \text{ and } C < L \\ m \text{ if } 2f - m \leq Q \text{ and } C < L \\ \\ m \text{ if } Q < 2l - m \text{ and } L \leq C < M \\ t \text{ if } 2l - m \leq Q < 2l - t \text{ and } L \leq C < M \\ 2l - Q \text{ if } 2l - t \leq Q < l \text{ and } L \leq C < M \\ Q \text{ if } l \leq Q < m \text{ and } L \leq C < M \\ 2m - Q \text{ if } M \leq Q < 2m - t \text{ and } L \leq C < M \\ t \text{ if } 2m - t \ \leq Q < 2f - 2m + t \text{ and } L \ \leq C < M \text{ and } |M - C| < |M - F| \\ t \text{ if } 2m - t \leq Q < 2f - t \text{ and } L \leq C \leq M \text{ and } |M - C| > |M - F| \\ 2f - Q \text{ if } 2f - 2m + t \leq Q < 2f - m \text{ and } L \ \leq C < M \text{ and } |M - C| < |M - F| \\ 2f - Q \text{ if } 2f - t \leq Q < 2f - m \text{ and } L \leq C \leq M \text{ and } |M - C| > |M - F| \\ m \text{ if } 2f - m \leq Q \text{ and } L \ \leq C < M \\ \\ m \text{ if } Q < 2l - m \text{ and } M \leq C \\ 2l - Q \text{ if } 2l - m \leq Q < l \text{ and } M \leq C \\ Q \text{ if } l \leq Q < t \text{ and } M \leq C \\ t \text{ if } t \leq Q < 2f - t \text{ and } M \leq C \\ 2f - Q \text{ if } 2f - t \leq Q < 2f - m \text{ and } M \leq C \\ m \text{ if } 2f - m \leq Q \text{ and } M \leq C \end{array} \right\}$$

Case 2:

$$Q^*$$

$$= \left\{ \begin{array}{c} m \text{ if } Q \le 3m - 2f \text{ and } C < L \\ 4m - 2f - Q \text{ if } 3m - 2f \le Q < 2m - f \text{ and } C < L \text{ and } t < 2m - f \\ 4m - 2f - Q \text{ if } 3m - 2f \le Q < 4m - 2f - t \text{ and } C < L \text{ and } t > 2m - f \\ t \text{ if } 4m - 2f - t \le Q < t \text{ and } C < L \text{ and } t > 2m - f \\ Q \text{ if } t \le Q < m \text{ and } C < L \\ 2m - Q \text{ if } m \le Q < 2m - t \text{ and } C < L \text{ and } t > 2m - f \\ t \text{ if } 2m - t \le Q < 2f - 2m + t \text{ and } C < L \text{ and } t > 2m - f \\ 2f - Q \text{ if } 2f - 2m + t \le Q < 2f - m \text{ and } C < L \text{ and } t > 2m - f \\ m \text{ if } 2f - m \le Q \text{ and } C < L \text{ and } t > 2m - f \\ 2m - Q \text{ if } m \le Q < t \text{ if } C < L \text{ and } t < 2m - f \\ 2f - Q \text{ if } 2f - 2m + t \le Q < 2f - m \text{ and } C < L \text{ and } t < 2m - f \\ m \text{ if } 2f - m \le Q \text{ and } C < L \text{ and } t < 2m - f \end{array} \right.$$

$$\left\{ \begin{array}{c} m \text{ if } Q \le 3m - 2f \text{ and } L \le C < M \\ 4m - 2f - Q \text{ if } 3m - 2f \le Q < 4m - 2f - 2l + t \text{ and } L \le C < M \text{ and } |C - L| < |(2M - F) - L| \\ 4m - 2f - Q \text{ if } 3m - 2f \le Q < 2m - f \text{ and } L \le C < M \text{ and } |C - L| > |(2M - F) - L| \\ t \text{ if } 4m - 2f - 2l + t \le Q < 2l - t \text{ and } L \le C < M \text{ and } |C - L| < |(2M - F) - L| \\ 2l - Q \text{ if } 2l - t \le Q < l \text{ and } L \le C < M \text{ and } |C - L| < |(2M - F) - L| \\ 2l - Q \text{ if } 2m - f \le Q < l \text{ and } L \le C < M \text{ and } |C - L| > |(2M - F) - L| \\ Q \text{ if } l \le Q < m \text{ and } L \le C < M \\ 2m - Q \text{ if } M \le Q < 2m - t \text{ and } L \le C < M \\ t \text{ if } 2m - t \le Q < 2f - 2m + t \text{ and } L \le C < M \text{ and } |M - C| < |M - F| \\ 2f - Q \text{ if } 2f - 2m + t \le Q < 2f - m \text{ and } L \le C < M \text{ and } |M - C| < |M - F| \\ 2f - Q \text{ if } 2f - t \le Q < 2f - m \text{ and } L \le C \le M \text{ and } |M - C| > |M - F| \\ m \text{ if } 2f - m \le Q \text{ and } L \le C < M \end{array} \right.$$

$$\left\{ \begin{array}{c} m \text{ if } Q \le 3m - 2f \text{ and } M \le C \\ 4m - 2f - Q \text{ if } 3m - 2f \le Q < 4m - 2f - 2l + t \text{ and } M \le C \text{ and } |C - L| < |(2M - F) - L| \\ 4m - 2f - Q \text{ if } 3m - 2f \le Q < 2m - f \text{ and } M \le C \text{ and } |C - L| > |(2M - F) - L| \\ 2l - t \text{ if } 4m - 2f - 2l + t \le Q < l \text{ and } M \le C \text{ and } |C - L| < |(2M - F) - L| \\ 2l - t \text{ if } 2m - f \le Q < l \text{ and } M \le C \text{ and } |C - L| > |(2M - F) - L| \\ Q \text{ if } l \le Q < m \text{ and } M \le C \\ t \text{ if } t \le Q < 2f - t \text{ and } M \le C \\ 2f - Q \text{ if } 2f - t \le Q < 2f - m \text{ and } M \le C \\ m \text{ if } 2f - m \le Q \text{ and } M \le C \end{array} \right.$$

Figures A4.1 and A4.2 display these outcomes graphically. The solid line depicts outcomes in the Extreme Regime. The medium gray dotted line depicts outcomes in the Typical Regime. The light gray dotted line depicts outcomes in the Centrist Regime. In the Extreme and Typical Regimes, the vertical dotted lines indicate discontinuities in the prediction. Outcomes are identical in all three regimes when $Q \leq 2l - m$, $l \leq Q < m$, and $2f - m \leq Q$ for Case 1. For Case 2, as depicted here, outcomes are the same when $Q \leq 2m - f$, $l \leq Q < m$, and $2f - m \leq Q$.

Figure A4.1: Final Policy Outcomes, by Regime, Case 1

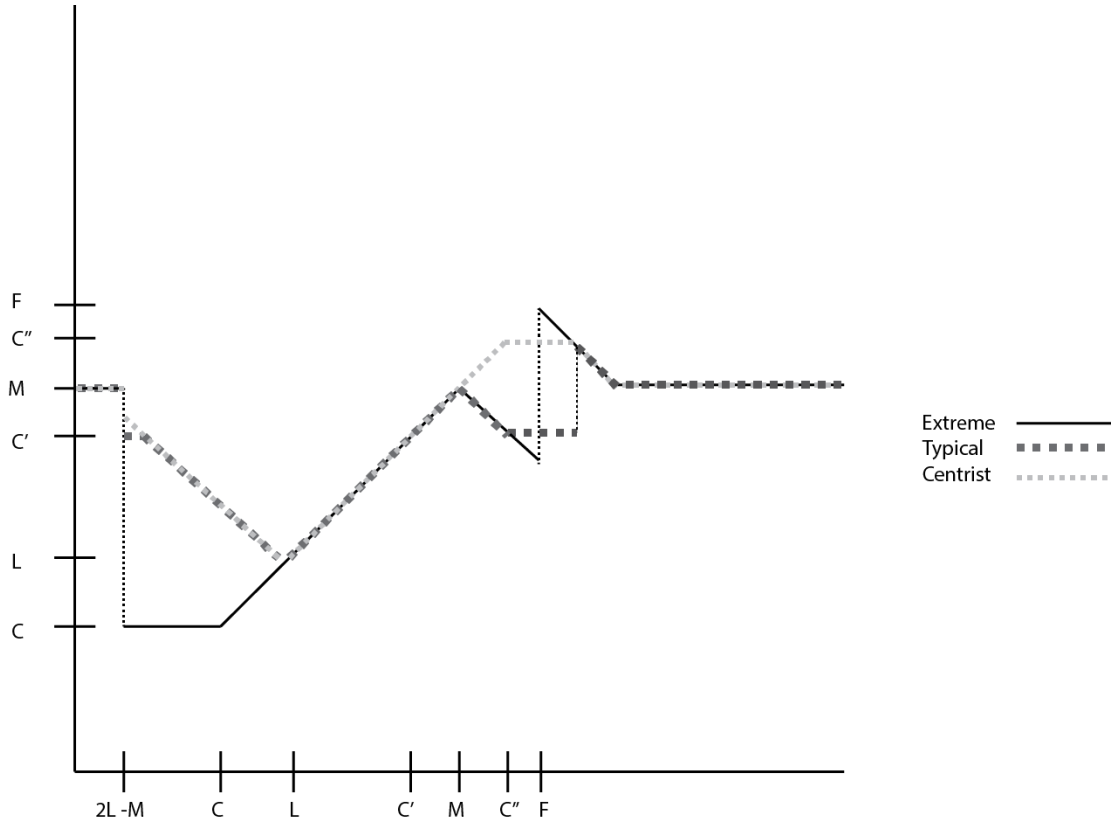
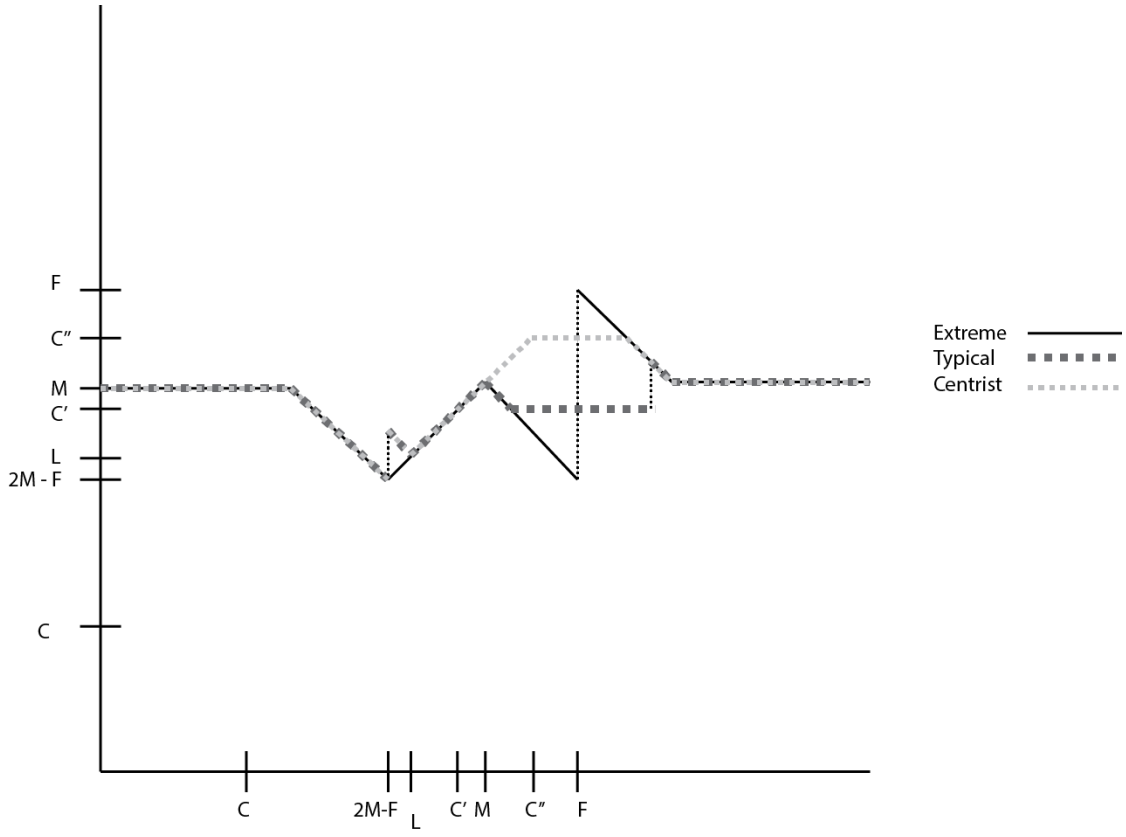


Figure A4.2: Final Policy Outcomes, by Regime, Case 2



Case 2 Illustrations:

The basic logic of Case 2 (L > 2M – F) is identical to Case 1: we will observe reconciliation instructions naming c when the eventual policy outcome produced by this choice makes L and M, the pivotal actors for that choice, better off than proceeding under regular order. Indeed, many of the outcomes are also identical. The principal difference is that, on the left side of the policy space, the boundary of the reconciliation zone is no longer 2L – M. Because L > 2M – F, there are no longer outcomes under regular order for which L wishes to gatekeep. Rather, 2M – F (the reflection of F about M) is now the binding constraint on the left side of the policy space. For any values 2M – F < Q < M, we now observe gridlock under reconciliation; by comparison, in Case 1, the gridlock interval under reconciliation was min(L, C) < M. This has the effect of reducing the size of Zone 1, the reconciliation zone on the left side of the policy space.

The left bound of Zone 1 is now either the point at which L or M is indifferent between the reconciliation outcome and the regular order outcome, whichever is larger. Formally, if $L \leq C$, we can define this as $\max(4M - 2F - C, 4M - 2F - 2L + C)$ if $| C - L | < | (2M - F) - L |$ and as $2M - F$ if $| C - L | > | (2M - F) - L |$. If $C < L$ and $2M - F < C$, then the boundary is also $4M - 2F - C$. If $C < L$ and $2M - F > C$, there is no Zone 1 (see Figure A4.2 for an illustration of this.) These alternative boundaries are reflected in the definitions and propositions described above, and Figures A4.3, A4.4, and A4.5 display the comparison between regular order and reconciliation graphically.

Figure A4.3: Reconciliation vs. Regular Order, Extreme Regime, Case 2

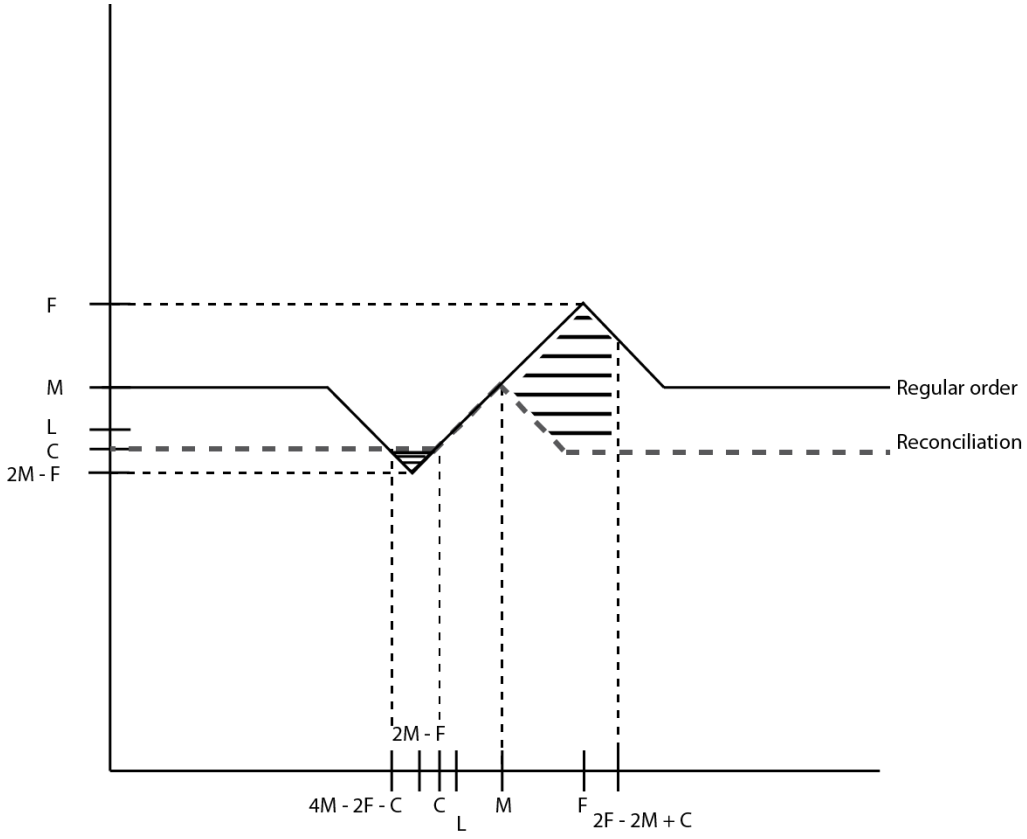


Figure A4.4: Reconciliation vs. Regular Order, Typical Regime, Case 2

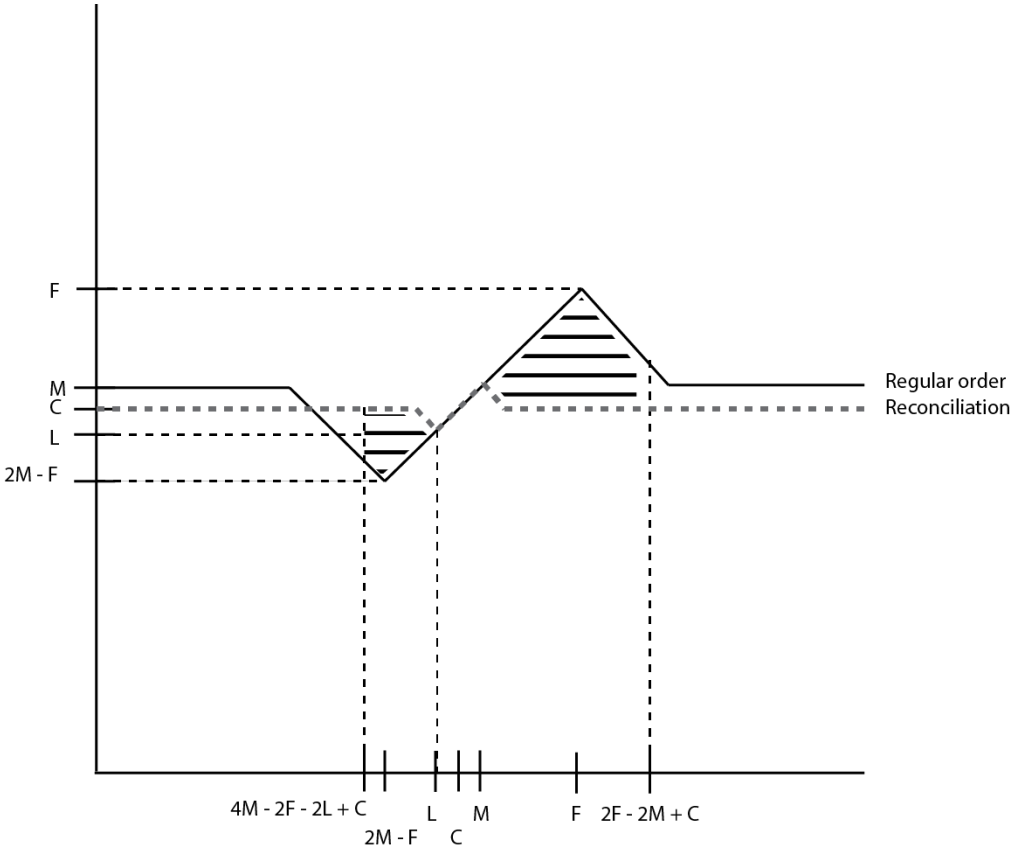


Figure A4.5: Reconciliation vs. Regular Order, Centrist Regime, Case 2

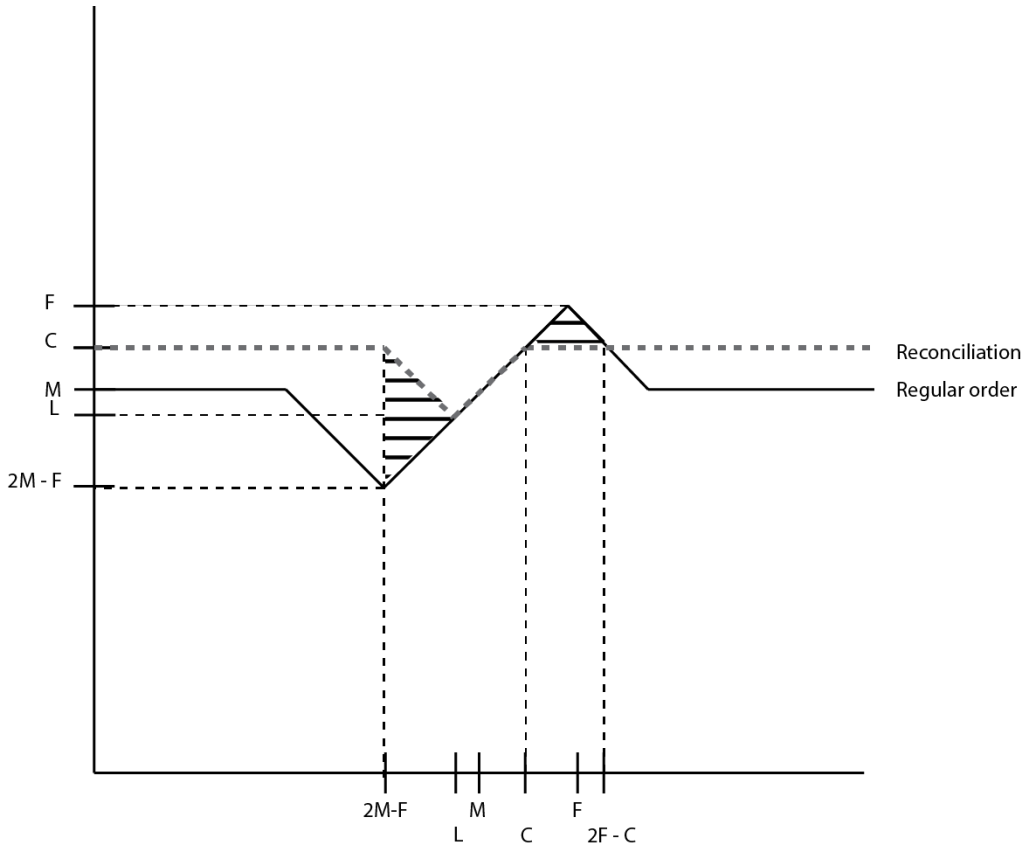


Table A4.1: Senate Committees Mentioned in Reconciliation Instructions, 1980-2012

Calendar Year	Fiscal Year	Committees Mentioned in Instructions
1980	1981	Appropriations, Agriculture, Armed Services, Commerce, Environment and Public Works (EPW), Finance, Governmental Affairs, Labor and Human Resources, Small Business, Veterans' Affairs
1981	1982	Agriculture, Armed Services, Banking, Commerce, Energy, EPW, Finance, Foreign Relations, Governmental Affairs, Judiciary, Labor and Human Resources, Small Business, Veterans' Affairs
1982	1983	Agriculture, Armed Services, Banking, Commerce, Foreign Relations, Governmental Affairs, Veterans' Affairs
1983	1984	Finance, Governmental Affairs, Small Business, Veterans' Affairs
1984	1985	No reconciliation instructions in budget resolution
1985	1986	Agriculture, Armed Services, Banking, Commerce, Energy, EPW, Finance, Government Affairs, Small Business, Labor and Human Resources, Veterans' Affairs
1986	1987	Agriculture, Banking, Commerce, Energy, EPW, Finance, Governmental Affairs, Labor and Human Resources, Small Business
1987	1988	Agriculture, Banking, Commerce, Energy, EPW, Finance, Governmental Affairs, Labor and Human Resources, Veterans' Affairs
1988	1989	No reconciliation instructions in budget resolution
1989	1990	Agriculture, Banking, Commerce, EPW, Finance, Government Affairs, Labor and Human Resources, Veterans' Affairs
1990	1991	Agriculture, Banking, Commerce, Energy, EPW, Government Affairs, Veterans' Affairs, Finance, Labor and Human Resources, Judiciary

1991	1992	No reconciliation instructions in budget resolution
1992	1993	No reconciliation instructions in budget resolution
1993	1994	Finance, Agriculture, Armed Services, Banking, Commerce, Energy, EPW, Foreign Relations, Governmental Affairs, Judiciary, Labor and Human Resources, Veterans' Affairs
1994	1995	No reconciliation instructions in budget resolution
1995	1996	Agriculture, Armed Services, Banking, Commerce, Energy, EPW, Finance, Government Affairs, Judiciary, Labor and Human Resources, Veterans' Affairs
1996	1997	Finance, Agriculture, Armed Services, Banking, Commerce, Energy, EPW, Governmental Affairs, Judiciary, Labor and Human Resources, Veterans' Affairs
1997	1998	Agriculture, Banking, Commerce, Energy, Finance, Governmental Affairs, Labor and Human Resources, Veterans' Affairs
1998	1999	No budget resolution
1999	2000	Finance
2000	2001	Finance
2001	2002	Finance
2002	2003	No budget resolution
2003	2004	Finance
2004	2005	No budget resolution

2005	2006	Agriculture, Banking, Commerce, Energy and Natural Resources, Environment, Finance, Health, Education, Labor and Pensions (HELP), Judiciary
2006	2007	No budget resolution
2007	2008	HELP
2008	2009	No reconciliation instructions in budget resolution
2009	2010	Finance, HELP
2010	2011	No budget resolution
2011	2012	No budget resolution
2012	2013	No budget resolution

Sources*:* Yearly congressional budget resolutions. For a list, see "Table 1: Congressional Budget Resolutions, FY1976-FY2012," in Bill Heniff Jr., "Congressional Budget Resolutions: Historical Information," *Congressional Research Service*, 7 February 2014.

Table A4.2: Probability of Inclusion in Reconciliation Instructions, 1984-2011, Alternative Interval Measurement

Instructions Stage	
$Deficit_{t-1}$	-6.029***
	(1.108)
Zone 1 Size	3.692***
	(1.274)
Zone 2 Size	0.888*
	(0.537)
Total Committee Mandatory $Spending_{t-1}$	0.062***
	(0.019)
Constant	-3.449***
	(0.650)
Observations	
Budget Resolution Stage	
$Deficit_{t-1}$	0.485
	(0.963)
Divided Control, House-Senate	-1.661***
	(0.336)
Divided Control, Senate-President	-0.060
	(0.211)
Polarization	-13.983***
	(2.660)
Budget Committee Median	-1.549
	(1.656)
Constant	11.719***
	(1.790)
Observations	

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Chi-Square, LR Test of Independent Equations: 15.69 (p=.0001)

Table A4.3: Probability of Inclusion in Reconciliation Instructions, 1984-2011, with Clustered Standard Errors

Instructions Stage	(1)	(2)
$Deficit_{t-1}$	-4.566***	-4.566**
	(0.404)	(2.223)
Zone 1 Size	1.206***	1.206
	(0.323)	(1.819)
Zone 2 Size	0.875**	0.875
	(0.406)	(0.943)
Total Committee Mandatory $Spending_{t-1}$	0.060***	0.060**
	(0.011)	(0.026)
Constant	-2.524***	-2.524***
	(0.364)	(0.831)
Observations	242	242
Budget Resolution Stage		
$Deficit_{t-1}$	0.044	0.044
	(0.283)	(2.077)
Divided Control, House-Senate	-1.707***	-1.707**
	(0.124)	(0.723)
Divided Control, Senate-President	0.220***	0.220
	(0.064)	(0.302)
Polarization	-15.672***	-15.672***
	(1.192)	(4.845)
Budget Committee Median	0.226	0.226
	(0.766)	(4.385)
Constant	12.463***	12.463***
	(0.806)	(3.309)
Observations	308	308
Robust standard errors in parentheses		
*** p<0.01, ** p<0.05, * p<0.1		
Chi-Square, LR Test of Independent Equations:	p=0.0000	p=0.0000

Column (1) displays results with errors clustered by committee, while column (2) does the same for errors clustered by year. For the statistically insignificant results in column 2, the p-value for Zone 1 is p=0.051. For Zone 2, it is p=0.353.

Chapter 5: The Policy Consequences of Procedural Choice: Programmatic Change Using Budget Reconciliation

As the clock neared midnight on December 31, 2012, the Congress was locked in a showdown over the so-called 'fiscal cliff.' Unless the two chambers and the president reached a deal, Americans would be subject to hundreds of billions of dollars in tax increases—an average of $3500 per household (Williams et al. 2012). Among the cuts set to end absent further action were reductions in individual rates, in rates for investment income, and in the estate tax. Expansions of several tax credits, including the child tax credit, were to lapse as well; extending all these expiring provisions was projected to cost $202 billion in 2013 alone (Bivens and Fieldhouse 2012). This fight was not new; Congress had been debating it in some form since 2010 (Herzenhorn and Calmes 2010).

How did this dramatic conflict arise? In part, this confrontation had its roots in the 2001 decision to use budget reconciliation to enact tax cuts at the initiative of President George W. Bush.[1] Faced with a narrow Republican majority in both instances, the Senate majority leadership chose to handle the legislation using this particular majoritarian exception, described at length in Chapter 4. Thanks to the Byrd Rule, the package was only eligible for reconciliation's procedural protections if it did not increase the deficit outside of the ten-year window covered by the then-current congressional budget resolution. To get the benefits of reconciliation's reduced vote threshold, the measure's authors had to pay the cost of a sunset provision. The tax cuts would expire at the end of 2010 and return to their 2000 levels; Paul Krugman, referencing the effect of this provision on the estate tax, famously referred to the bill as the "Throw Momma from the Train Act of 2001" (Krugman 2001). Had the cuts been enacted through the Senate's ordinary rules, however, the sunset provisions would not have been necessary and, a decade later, one component of the fiscal cliff would have never appeared.

[1] A second round was enacted using the same procedures in 2003.

The Bush tax cuts are but one example of how choices about congressional rules can have consequences for the policy outcomes Congress produces. Indeed, the existence of these effects has been anticipated by the accounts, both theoretical and empirical, offered in earlier chapters. In Chapters 2 and 3, I argued that the Senate should *create* special rules when doing so would ease the passage of policies in issue areas that should enhance the electoral fortunes of the majority party. The model and associated empirical tests in Chapter 4, meanwhile, suggest that the Senate should employ existing majoritarian procedures when doing so generates opportunities for policy change benefitting the majority party (that is, bringing policy closer to the ideal point of its median member) that are not achievable under regular order.

Up to this point, however, we have yet to explore whether the policy outcomes produced under the auspices of majoritarian exceptions are actually consistent with this expectation. Does the Senate use its special rules to enact policies that benefit its majority party? To answer that question, I again turn to the case of budget reconciliation. First, I propose a partisan electoral account of policy change in which a cartelized Senate majority party uses the reconciliation procedures to enhance its chances of remaining the majority in the future by delivering selective programmatic benefits to, and minimize selective programmatic costs borne by, the voters most critical to the Senate majority's electoral success. Using a new, comprehensive dataset of mandatory federal programs from 1984-2011, I test the predictions of this account, first independently and then against a plausible, non-partisan alternative hypothesis. The results suggest that reconciliation is, in fact, used by the majority party to benefit areas critical to its efforts to remain in control of the chamber.

Reconciliation as a Partisan Programmatic Tool

The theoretical account in Chapter 4 illustrates how the initiation of the reconciliation process should be governed by expectations about the kind of policy change achievable under the procedures. When the reconciliation-pivotal actors—the majority party median and the floor median—expect that the process will generate outcomes that make them better off than using regular order, we expect to observe reconciliation instructions directing particular committees to report out changes to mandatory programs in their jurisdictions.

Once a committee is named, however, the process of determining exactly which programmatic changes to make is left, largely, to the committee itself. At times, the instructions are specific as to whether the stipulated changes should be achieved through revenue-side or expenditure-side reforms.[2] For revenue increases and spending cuts, the amount prescribed in the instructions is considered a floor on changes, while for revenue reductions and spending increases, it is a ceiling. In addition, compliance with these levels is judged on a net basis, meaning that even if it is under a directive to reduce the deficit, a given committee may still use reconciliation to expand existing programs in its jurisdiction—or even to create new initiatives—as long as it also makes offsetting adjustments elsewhere (Lynch 2012).

What do these decisions look like in practice? A specific example of programmatic change through reconciliation is illustrative, and, indeed, suggestive of how the majority party might use the rules to help it achieve its goal of remaining the majority party. In 2003, the Senate Finance Committee was under a directive to increase outlays by $27 billion over ten years. Among the items on its agenda was an increase in the matching rate for Medicaid funds to states following the 2001 recession (Adams 2003). Another option was to alter the State Children's Health Insurance Program (CHIP) allocation formula to reallocate unspent funds to the other states instead of them reverting to the Treasury ("GOP Senate Leaders…" 2003). The former made it into the 2003 reconciliation bill, but the latter did not. This choice was consequential—the CHIP shortfalls were not addressed for another two years (Dennis 2006)—but its cause is not immediately obvious. Could changing Medicaid rather than CHIP have produced more electoral benefits for the majority party?

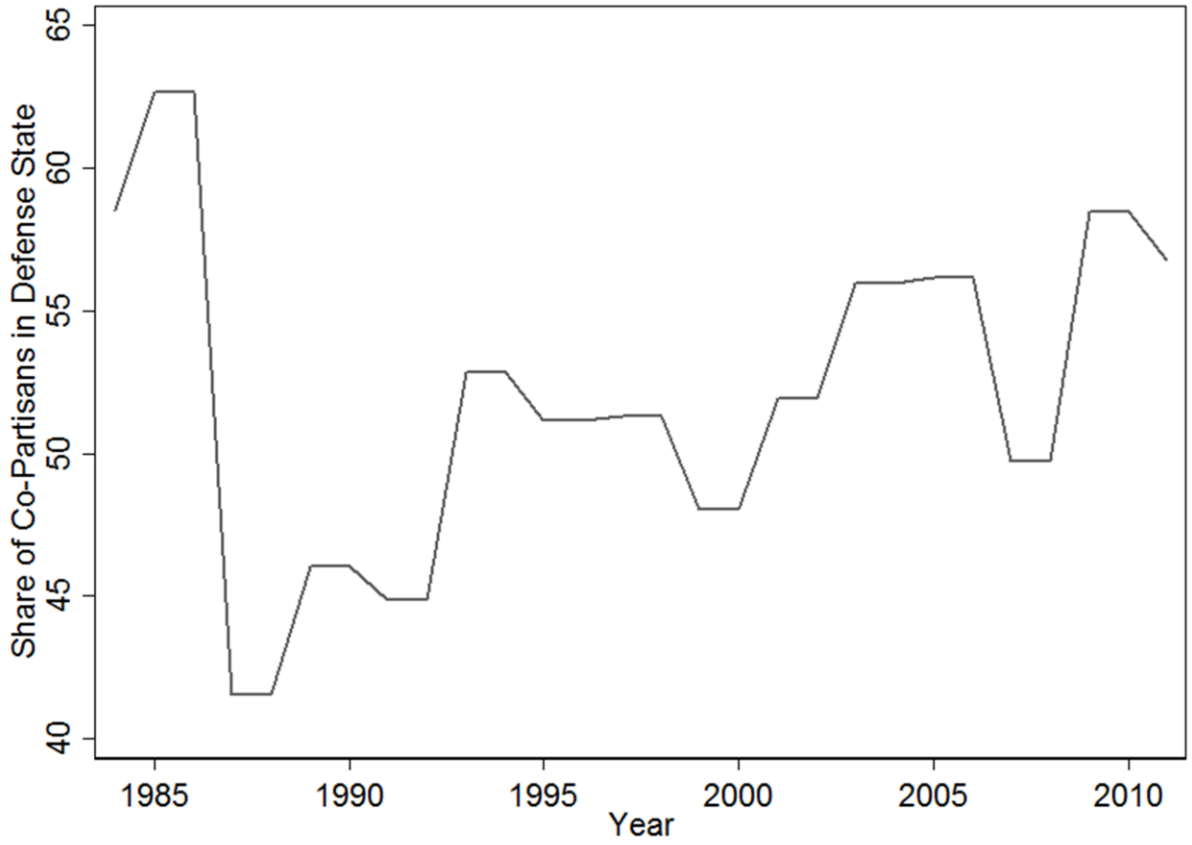
If reconciliation does facilitate partisan legislating, how might it do so? Here, I propose an account that relies on the two basic assumptions laid out in the Chapter 1. First, I assume that the Senate majority party acts as a procedural cartel (Cox and McCubbins 1993, 2005); that is, rank-and-file members delegate some of their power to the leaders of their party, who, in turn, assume fiduciary responsibility for acting in the party's favor. The result is a legislative process that is overwhelmingly biased in favor of the majority party in ways ranging from advantages in committee assignments to control over the agenda. Second, I assume that the proximate *shared* goal of majority party senators is for their party to maintain its majority status (Cox and

[2] See, for example, H. Con. Res. 95, 108th Congress, 1st session.

McCubbins 1993, 2005; Aldrich and Rohde 2000); the benefits of holding such status are well-documented empirically (Albouy 2013; Cox and Magar 1999).

Previous work on how cartelized majority parties seek to remain as such focuses on the House of Representatives, emphasizing the need to create a positive shared brand that bolsters the reputation of all members equally (Cox and McCubbins 1993, 2005). In the House, to retain the majority, party leaders must defend all the seats they currently hold; a common reputation of legislative accomplishment represents an efficient way to bolster the fortunes of the entire coalition. The Senate—the chamber in which reconciliation reshuffles the procedural deck to the majority party's advantage—has an entirely different electoral structure. The chamber's staggered, six-year terms mean that the specific building blocks of a continued majority vary across elections, both in terms of the number of contested seats and the particular characteristics of the critical constituents. Indeed, we know that this electoral structure has consequences for the issues on which individual members are active (Sulkin 2005). From the perspective of the party as a whole, the crucial voters in the *next* election may look very different from their counterparts in the *following* contest in many ways. In a given election, for example, the Senate majority party may be defending seats in states with many friendly voters or with relatively few. Figure 5.1 illustrates this variance; it displays the mean share of co-partisans (as measured by the share of the two-party vote received by the Senate majority party's presidential candidate in the previous election) in the states where the majority party is defending seats in the next election. Even two senators from the same state, moreover, running in consecutive elections, may have distinctive electoral bases to which they must appeal (Schiller 2000). In addition, the complicated dynamics of challenger entry and incumbent retirement decisions that transpire over the six years of a Senate electoral cycle (King 2013) make it exceedingly difficult to predict exactly which seats are likely to be the most competitive more than two years in the future. This uncertainty, coupled with the election-specific variation in constituency factors, means that the Senate majority party is best served by a specific and individualized focus on the seats it holds that are being contested in the next election.

Figure 5.1: Variation in Senate Electoral Constituencies, 1984-2011



The chances of successfully defending each of these Senate seats are affected by a range of factors, but I assume that opportunities for party members to claim credit for accomplishments (Mayhew 1974; Fiorina 1989) and to avoid blame for negative events (Weaver 1987) will increase the probability that the majority continues to the hold the seats it currently occupies. Indeed, the positive effects of these strategies have been established by a wealth of empirical work (e.g. Bickers and Stein 1996; Grimmer, Messing, and Westwood 2012; Levitt and Snyder 1997; McGraw 1990). The potential for simple majority rule, moreover, makes reconciliation a procedurally efficient way to create these kinds of opportunities through the legislative process.

The implication of this account is straightforward: the majority party should use reconciliation to enact program expansions in those states where it will be defending seats in the next election. At the same time, it should seek to minimize the costs in those states of policy reforms made through the reconciliation process. Expanding programs in these areas provides the majority party's candidates with an opportunity to claim credit for changes that benefit that

state's voters. Avoiding cuts, meanwhile, deprives the minority party's challengers of an issue with which they can attack their opponents of the incumbent majority party. This combination of credit-claiming and denial of issue ammunition increases the likelihood that voters critical for the party's proximate electoral success will reward majority candidates.

This sort of electorally-motivated distribution credit claiming and blame avoidance opportunities is consistent with existing empirical work on earmarks in both the House (e.g. Engstrom and Vanberg 2010) and the Senate (e.g. Balla et. al., 2002; Shepsle et. al. 2009). By delivering selective benefits to, and minimizing selective costs in, states in which contests are imminent, the majority party is able to most efficiently match a fixed set of governmental resources to the places where they are likely to do the most electoral good. This need to balance targeting for political gain with a recognition of resource constraints is especially acute in the case of reconciliation, since reconciliation bills are prohibited from increasing the deficit over a period longer than ten years. In addition, by focusing on states with imminent contests where it already holds the seats, the majority can avoid the possibility that a minority member up for re-election claims credit or avoids blame. Together, this logic generates my primary hypothesis:

Partisan Electoral Hypothesis: In reconciliation bills, programs that benefit voters in states in which the majority party is defending seats in the next election are expanded more and cut less.

While the ways in which reconciliation alters the Senate's procedural environment should allow the majority party to make advantageous changes using the procedures, the existing literature on programmatic change suggests several other factors that might affect the structure of reconciliation bills as well—some of which are also related to partisan concerns. In the empirical test below, we will control for these various considerations, so it is worth explaining them here. A given Congress, with a particular partisan makeup, inherits a wealth of existing programs from its predecessors. Each of these programs, in turn, was the product of a set of negotiations between Congress and the president. The composition of that coalition might affect the program's durability in a number of ways. If the enacting coalition was unified in terms of party, we might expect a program to be more robust and better immune to repeal. Laws passed under unified control might be more internally consistent, be more likely to contain self-executing provisions that protect them from future intrusion, and have delegated more authority for implementation to the bureaucracy, reducing the need for Congress to revisit the underlying

legislation as conditions change (Maltzman and Shipan 2008). Conversely, measures enacted under divided government might live longer lives, as they may have required more policy deliberation, be more moderate or bipartisan, and be less prone to attack from the opposite party as a campaign issue (Ragusa 2010).

While the empirical evidence on whether programs created under unified government or divided government are more likely to be repealed is mixed, these accounts share a focus on the composition of the enacting coalition, both across chambers and branches, as well as an emphasis on the determinants of policy repeal. A related but distinct explanation allows also for program expansion by emphasizing not only the partisanship of the actors that authored a measure, but also the difference between the enacting coalition and its successors. Berry, Burden, and Howell (2010) argue that any given Congress might be more likely to cut those programs that were created by predecessors with distinctly different preferences. Conversely, that same chamber might also expand those initiatives that were developed by forerunners with similar priorities. The difference between the enacting and current coalition, then, is the principal determinant of policy change—rather than simply the makeup of the former.

A final relevant account of coalition formation in the lawmaking process comes from work that emphasizes the way in which equal representation of the states in the Senate shapes the distributive policies produced by the chamber (Lee and Oppenheimer 1999; Lee 2000). All states may be represented by two senators, but the value of given programmatic changes to those senators is not equal across states. An equal-sized grant, for example, would have a greater per capita impact on the constituents of a small-state senator than on those of his colleague from a larger state. From the perspective of a senator attempting to build a coalition in support of a particular change, this disparity means that the small-state senator's vote is easier to obtain; the absolute size of the grant needed to achieve the same per capita benefit is decidedly smaller when the senator in question represents fewer constituents. Assuming a rational coalition leader will seek to build the least expensive winning coalition, small-state senators will have an advantage over their colleagues from large states in the allocation of the distributive resources.

Just as a coalition builder in the Senate can get more mileage out of expanding a program benefitting small-state senators, he can also get more mileage out of increasing funding for a program whose benefits are highly targeted as opposed to one in which they are broadly dispersed. Take, for example, a mandatory program of the U.S. Forest Service that compensated

several Minnesota counties for the appraised value of the National Forest lands between 1980 and 1995.[3] If one or both of Minnesota's senators were wavering on a reconciliation bill, a more generous formula for determining the allocation of those resources would likely shore up their support for the measure and would be of relatively low cost. Suppose, by contrast, that one or both of those same senators felt that Minnesota's doctors should receive higher reimbursements for care delivered to Medicare beneficiaries. The change to that formula necessary to bring Minnesota's senators on board might solidify their support in the same way that a change of equivalent size to the Forest Service program would, but it would come at a far higher cost, as it would apply to all doctors treating Medicare beneficiaries in all areas of the country.

Data and Estimation

Reconciliation has represented a frequent and substantial tool in the process of programmatic change since 1980. Used sixteen times since 1980, the average annual deficit reduction achieved by a reconciliation bill is roughly $7.4 billion,[4] suggesting that that the reconciliation rules are not just relatively minor procedures, as some have argued (Schick 2004). Table 5.1 illustrates this significance, showing the changes made through reconciliation to three major mandatory spending programs: Medicaid, student loans, and agricultural commodity price supports. Each has been altered significantly through reconciliation, with notable variance in the magnitude of the change over time; Medicaid, notably, has been both cut and expanded.

[3] See, for example, "Catalog of Federal Domestic Assistance," 1994, volume 1, p. 100.
[4] See Appendix Table A5.1 for the size of the deficit reduction achieved by reconciliation bills.

Table 5.1: Changes Made through Reconciliation, Selected Programs, 1984-2009

Year	Estimated budgetary change, Medicaid	Estimated budgetary change, federal student loans	Estimated budgetary change, USDA commodity price supports
1985	-$40 million (one year)	-$1.3 billion (five years)	-$235 million (three years)
1986	+$170 million (one year)	-$644 million (one year)	
1987	-$360 million (one year)	-$250 million (one year)	-$215 million (two years)
1989	+$183 million (one year)	-$185 million (three years)	-$52 million (one year)
1990	-$1.7 billion (five years)		-$2.9 billion (five years)
1993	-$7.2 billion (five years)	-$3.6 billion (five years)	-$460 million (five years)
1995	-$163.4 billion (seven years)	-$3.5 billion (seven years)	
1996	-$4.1 billion (seven years)		-$486 million (seven years)
1997	-$10.4 billion (five years)	-$1.8 billion (five years)	
2005	-$6.9 billion (five years)	-$11.9 billion (five years)	
2007		-$13.8 billion (five years)	
2009	+$174.5 billion (ten years)	-$5 billion (five years)	

For source information, see Appendix Table A5.1. Figures have been rounded. Different time windows for different estimates are due to available source material and changes in Congressional Budget Office procedures for cost estimates.

To test whether these changes—and those made to countless other mandatory programs—are consistent with my theory of majority party power, I construct a comprehensive dataset of domestic mandatory spending programs in existence between 1984 and 2011, representing all the programs with the potential to be altered via reconciliation. The data come from the *Catalog of Federal Domestic Assistance* and represent an extension of the data used by Berry, Burden, and Howell (2010).[5] Like any data source, the CFDA has limitations, omitting some kinds of mandatory spending. First, it does not contain any mandatory foreign activities, nor does it contain any benefits or assistance that are only available to current employees of the federal government, either civilian or military. This latter category also contains military and civilian retirement benefits, which comprised roughly 7% of mandatory spending in 2011 (Austin and Levit 2012).[6] Second, the CFDA does not contain information on mandatory components of the budget that flow only to other federal entities, like the Postal Service and

[5] See https://www.cfda.gov/. I expand the data to cover programs created prior to 1971, as well as those initiated since 2004. The Berry, Burden, and Howell data is itself an expansion of data assembled by Bickers and Stein (1991) that has been widely use to study spending on federal programs (e.g. Stein and Bickers 1995; Lowry and Potoski 2004).

[6] Other excluded categories of funding are: solicited contracts under procurement laws; personnel recruitment programs of individual federal departments; new programs proposed in the Budget for which appropriations have not been enacted; and programs that are no longer active due to expired authorization or appropriation.

Amtrak. Third, because its focus is on programmatic assistance, the CFDA does not contain information about non-programmatic components of the federal budget, such as user fees and refundable tax credits. Substantively, however, the CFDA-based compilation of programs covered the 89% of the outlays on programs identified by the Congressional Budget Office as major mandatory spending programs in 2011.[7]

In addition to these data limitations, my analysis of patterns of programmatic change, while wide-ranging, is constrained in several other ways worth noting. First, I can only speak to *changes to existing programs*; I cannot analyze *programs created* by reconciliation bills. To do the latter would require a universe of all possible mandatory spending programs that *could have been* created in a given year. Other efforts at constructing such a universe of potential actions (e.g. Binder 2003) have involved general issues (i.e., farm subsidies) rather than the specific programs (i.e., dairy price supports). Second, my analysis does not speak to the revenue side of the reconciliation process. The majority of the federal government's revenue comes via taxes, and because no tractable list of individual tax provisions exists, I cannot create a list of tax issues on the reconciliation agenda at the same level of detail as I can for the spending programs. Finally, I am only able to speak to whether or not a given reconciliation bill cut, expanded, or did not change a particular program; I cannot analyze the magnitude of changes for two reasons. First, the Congressional Budget Office's (CBO) estimates of budgetary changes are made over a multiple year window, but the amount spent on each program is measured annually. As a result, the predicted size of the programmatic change is not directly comparable to the overall spending on the program. In addition, prior to 1997, the window used by the CBO was generally five years; more recently, it has generally been ten (Graetz and Shapiro 2005). This variation prevents me from obtaining consistent, annual measures of the magnitude of each programmatic change.

Even with these limitations, I am able to assemble information on 3,211 separate programs, both mandatory and discretionary, in existence for all or part of period between 1984 and 2011. To determine which of these programs are mandatory, I match the programs to their corresponding budgetary accounts using the Office of Management and Budget's Public Budget

[7] See "Table 3.2: Mandatory Outlays Projected in CBO's Baseline," *The Budget and Economic Outlook: Fiscal Years 2012-2022* < http://www.cbo.gov/sites/default/files/cbofiles/attachments/01-31-2012_Outlook.pdf>. The programs listed by the CBO not included in the CFDA are: MERHCF (military health insurance); earned income and child tax credits; Making Work Pay and other tax credits; Federal Civilian and Military Retirement; Fannie Mae and Freddie Mac; and TARP. The "Other Programs: Other" category, which comprises 3.5% of mandatory outlays, was not included in the calculation above.

Database (Office of Management and Budget 2012), which classifies each account as "discretionary," "mandatory," or both.[8] Next, using CBO data, I map each mandatory account to the Senate committee that authorizes its programs. The result is a list of 539 programs and 7,054 program-year observations.

To construct the final dependent variable for the analysis, I assemble a list of all programs that were 'reconciliation-eligible' in a given year; to be eligible, a program must be authorized by a committee mentioned in that year's reconciliation instructions. For each such program, I then consult that year's final reconciliation bill to determine if the measure altered the program.[9] Finally, for all changed programs, I use information from the CBO to determine whether the reconciliation bill increased or decreased the size of the program. If, on net, the changes made to a program would *increase* the deficit, I consider that an expansion. Conversely, if the CBO predicts a net *decrease* in the deficit, I interpret that as a cut.[10] The result of this coding is a trichotomous variable by which each of the 2,292 reconciliation-eligible program-year observations are coded as either cut, expanded, or not changed.[11]

Testing my principal hypothesis about the role of partisan electoral considerations in program change requires measuring the degree to which each program benefits voters in states where the majority party is defending a seat in the next election. To do this, I use data from the Census Bureau's *Consolidated Federal Funds Report* (CFFR), which tabulates federal expenditures and obligations on individual programs at the state level, to calculate state-by-state spending for approximately 69 percent of the mandatory program-year observations described

[8] Accounts containing both types of budget authority are classified as mandatory if more than half of their budget authority was mandatory (Government Accountability Office 2006). For programs where this classification produces a coding that varies across years, I count the program as mandatory for all years if in more than half of the years it is classified as mandatory.

[9] Information on instructions collected from each congressional budget resolution as listed in Heniff (2014). Citations for each reconciliation bill are provided in Lynch (2010). In the analyses below, I include the changes made in the final congressional versions of the three reconciliation measures that were vetoed by the president (1995, 1999, and 2000) since we would expect the Senate to have used the rules to make programmatic changes benefitting the majority party regardless of the bill's final outcome. The results in Table 5.2 are robust to counting reconciliation-eligible programs in those years as unchanged.

[10] Information on deficit implications comes from the CBO's cost estimates, or from the *CQ Almanac* summaries of each reconciliation bill. See Appendix Table A5.2 for a full list of citations.

[11] The dataset also contains an additional 4,762 program-year observations. These are programs that could not be altered through reconciliation because their authorizing committees were not named in the reconciliation instructions. Because the process of generating the instructions might produce selection bias in the sample, I estimate a Heckman selection model in Appendix Table A5.3 using the independent variables from the instructions model in Chapter 4 as the first stage predictors. The results are consistent with those in Table 5.2, but a Wald test indicating selection bias carries a p-value of 0.26; thus, a selection model is not indicated. The results are also robust to treating reconciliation-ineligible programs as 'not changed;' see Appendix Table A5.4.

above.[12] To test my primary, partisan electoral hypothesis, I determine the share of that spending that went, in the previous year, to states in which the Senate majority party would be defending a seat in the next election. Program-years demonstrate ample variation on this measure, ranging from no spending in 'defense' states (approximately 3% of reconciliation-eligible observations) to all spending in such areas (roughly 1% of observations); on average, roughly 34% of a program's funding goes to 'defense' states.

The CFDA data also allows me to construct Gini coefficients for each program to control for geographic dispersion; a value of 1 indicates all spending is concentrated in a single state, and a value of a 0 reflects all states receiving equal amounts. I use authorization information provided in the CFDA to establish whether the program was created under unified or divided government and, following Berry, Burden, and Howell (2010), I calculate the share of seats held by the majority party at the time of enactment and compare that with the share of seats held by that same party in each year. This difference is included as either a seat gain or seat loss.[13]

In addition, contextual factors at the year, committee, and program levels may influence decisions over which programs to alter. I include the current year budget deficit/surplus as a share of total outlays, with the expectation that larger deficits will correspond to higher likelihoods of programmatic change. At the committee level, a larger reconciliation directive might also increase the probability that a program is altered, so I include the logged dollar size of the committee's instructions. Finally, at the program level, I include the log of the total spending on the program in the previous year and the share of the funds spent in states represented on the committee of jurisdiction, to control for program-level dynamics.[14]

[12] Of the remaining 30.7%, approximately 3% are observations for which there is no spending data from the previous year because the program is in its first year. The remaining observations are program-years for which the CFDA indicates that the program existed, but the CFFR does not indicate spending. Of these, roughly 8% of the total are gaps in the data; the CFFR indicates funding in year t and year t+2 but not t+1, while the CFDA indicates uninterrupted funding. The results presented below in Table 2 are robust to both assigning zeroes to key independent variables in the first year of a program's life and to carrying forward prior observations to address gaps (i.e., using the value from year t in year t+1 to fill the gap between years t and t+2); see Appendix Table A5.5.

[13] In 1965, for example, the Democrats held 68% of the Senate's seats. In 2011, they held 53%. In 2011, then, seat loss would be 15% for Medicare, while seat gain would be zero.

[14] All monetary variables are measured in 2009 dollars.

Results

Because the dependent variable in this analysis is trichotomous—cut, no change, expand—I first estimate an ordered logit model with "no change" as the middle value. To address the structure of the data (programs nested in committees, with observations across multiple years), I follow Cameron, Gelbach, and Miller (2011)'s scheme for clustering within one dimension (here, programs) across time, as well as within that dimension in a given year.[15]

The results are presented in Table 5.2, Model 1. Since these are ordered logit coefficients, a negative coefficient indicates that increases in that independent variable correspond to a decrease in the likelihood of achieving a higher value of the dependent variable. Here, that move from a lower value to a higher value would be moving from a cut to no change, or from no change to an expansion. Conversely, for positive coefficients, the likelihood of observing a higher level of the dependent variable increases with each one unit increase in the independent variable.

[15] The results are also robust to two-way clustering by year and committee. To address concerns that clustered errors are insufficient to deal with the multi-level structure of the data, the Appendix contains two crossed random effects specifications: one with committee and year effects, and one with an additional program-level effect nested within the committee-level effect. The results are robust; see Appendix Table A5.6.

Table 5.2: Probability of Change via Reconciliation, 1984-2011

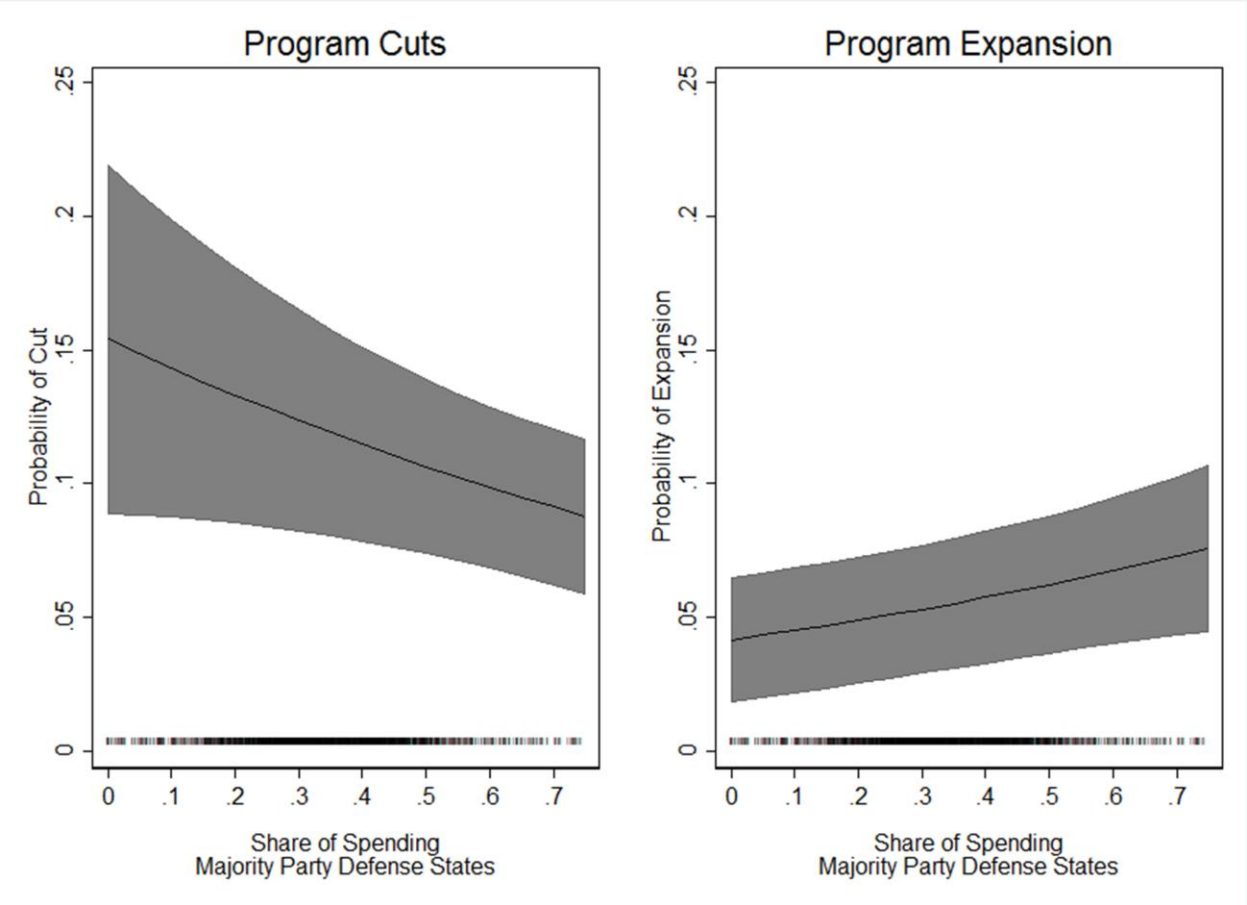
	(1)	(2)
Share of Spending to Areas Where Majority Party is Defending a Seat	0.848***	-0.821**
	(0.328)	(0.374)
Divided Government at Enactment	0.250	-0.216
	(0.188)	(0.181)
Enacting Majority Seat Gain	0.226	-8.256
	(8.310)	(9.812)
Enacting Majority Seat Loss	-0.102	1.662*
	(1.231)	(0.875)
Gini Coefficient	-0.529*	0.835
	(0.302)	(0.670)
Share of Spending to Committee Members	0.043	-0.451
	(0.256)	(0.511)
Logged Spending on Program	-0.068	0.319***
	(0.048)	(0.058)
Size of Reconciliation Instructions (Log)	-0.042**	1.096***
	(0.020)	(0.254)
Current Budget Deficit	-1.234	-4.372***
	(1.301)	(1.558)
Cut (1)	-4.087***	
	(1.144)	
Cut (2)	0.752	
	(1.117)	
Constant		-35.821***
		(6.988)
Log Pseudolikelihood	-919.661	-610.875
Pseudo-R^2	0.014	0.188
Observations	1,589	1,589

Two-way clustered standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

The results are consistent with the *Partisan Electoral Hypothesis*: as the share of spending on a given program in the Senate majority party's 'defense' states increases, that program is more likely to be expanded in a reconciliation bill and less likely to be cut. The left panel of Figure 5.2 presents the predicted probability of cuts in a program as the percentage of spending on that program in 'defense' states goes from zero to 75%, and right panel does the

same for the predicted probability of expansion; the rug plot across the bottom of each figure depicts the actual distribution of the ‘defense’ variable, and all other independent variables are held at their means. Clearly, as constituents in these states benefit more from a given program, that program is more likely to be expanded and less likely to be cut. The probability of an expansion is 4.2% when none of the funds are spent in ‘defense’ states and 7.6% when 75% are expended in those areas. Moving through the middle range of the variable, the comparison is smaller—a 5.1% chance of expansion when 25% of the funds go to ‘defense’ states versus a 6.5% chance when 55% of the spending does. While the difference in probabilities appears slight, the fact that program expansion through reconciliation is itself a rare event means that even small increases are notable; a program with 75% of its funds spent in ‘defense’ states is, after all, almost twice as likely to be expanded as one where no funds are.

Figure 5.2: Probability of Program Change, Ordered Logit Model



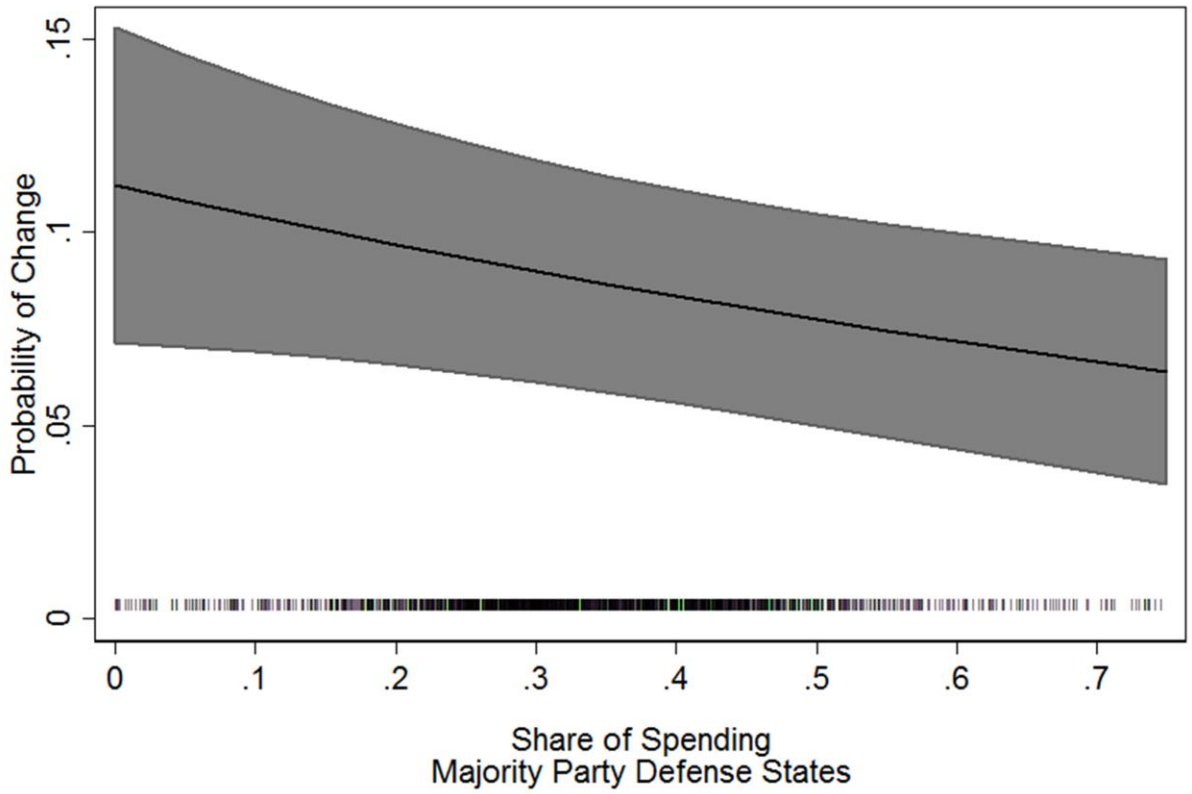
The results for program cuts are similar. Here, the probability of a cut for a program in which all funds go outside of ‘defense’ states is 15.4%, compared to 8.8% for one with 75% of expenditures in ‘defense’ states. Moving from 25% spent in ‘defense’ states to 55%, meanwhile,

corresponds to a shift in the likelihood of a cut from 12.8% to 10.2%. Again, the absolute difference between the probabilities is small, but the rarity of change through reconciliation makes even a shift of three or six percentage points notable.

Because the ordered nature of the dependent variable in Model 1 makes the results somewhat cumbersome to interpret, I also provide, in Model 2, a simpler analysis: a straightforward logit estimation, with the cut and expand categories collapsed as "change" and compared to those programs not changed.[16] Here, the coefficient on the variable measuring the share of spending going to 'defense' states is negative and statistically significant; this indicates that as more of a program's funds going to states where the majority party is defending a seat in the next election, the less likely the program is to be changed. Here, moving from zero percent of funds in 'defense' states to 75 percent decreases the probability of change by roughly half (11.2% versus 6.4%). Given that roughly 68% of the changes to programs through reconciliation represent cuts, this negative relationship is intuitive; most changes are reductions in spending, and we would expect fewer of these as the share of a program's funding going to 'defense' states increases. These results are depicted graphically in Figure 5.3.

[16] This also addresses another issue with ordered logit models: the proportional odds assumption, which supposes equal distance between each ordered category. This assumption, as tested using a Brant test, is frequently violated in applied work, and the estimation in Table 5.2 is no exception. One common response is to use a simpler dichotomous model (see Long and Freese 2006).

Figure 5.3: Probability of Program Change, Logit Model



The results in Table 5.2 are clearly consistent with the *Partisan Electoral Hypothesis*. While that evidence is of primary interest, it is also worth noting that the results provide some additional insight into the other accounts of programmatic change described above. In both Models 1 and 2, the variable measuring authorization under divided government does not achieve statistical significance (p= 0.19 and p=0.23, respectively), but is in a direction consistent with Ragusa (2010)'s account; creation under divided government may make programs more stable. Results for the partisan change account are similarly mixed. Neither the seat gain nor seat loss measures are statistically or substantively significant in Model 1. In Model 2, however, we see the same results for the seat gain measure, but a statistically significant effect for seat loss. Given that most of the changes made through the process represent reductions, this relationship is expected: when the enacting party's current coalition is smaller, a program is more likely to be cut through reconciliation. Finally, in Model 1, the Gini coefficient, measuring geographic concentration of spending, is negative and statistically significant. The negative

coefficient indicates that as a program benefits constituents in fewer states, it is less likely to be left alone or expanded, suggesting that the effect of spending has more to do with constituency effects than coalition-building. The more members affected, the greater the chance that some or all of those senators are up for re-election in the next cycle. (In Model 2, the coefficient is positive but does not reach conventional levels of significance (p=0.21).)

Finally, it is worth noting that several of the contextual controls behave intuitively. Larger programs are more likely to be cut, as are programs authorized by committees with larger reconciliation instructions. Lastly, programmatic cuts are more likely in years with larger projected budget deficits—precisely the periods when members of Congress should feel pressure to rein in spending. While the Senate majority party's electoral concerns affect policy change through reconciliation, decision-making does not exist in an economic vacuum.

The Role of Electoral Competition

Table 5.2, then, suggests that majority party 'defense' states fare better under reconciliation; within those states, however, not all seats are created equal. While inter-electoral uncertainty should lead Senate majority party to focus on the next election, the contested seats will vary in their competitiveness. The more competitive the race is expected to be, the more important are credit claiming and blame avoidance opportunities in increasing the probability that the seat is retained. To explore this implication of my theory, I divide 'defense' states into two groups: those in which the majority party seats being defended in the next election were won with less than 55 percent of the vote in the previous election (as competitive seats) and those won with greater than 55 percent of the vote (safe seats). The results of this analysis are presented in Table 5.3. The effect for the share of funds going to competitive states is positive and statistically significant; this suggests the majority party is indeed drawing an intuitive distinction among the seats it is defending and making policy change accordingly. (The effect of the share of resources going to safe states, meanwhile, is also positive, but carries a p-value of 0.15, preventing us from rejecting the null hypothesis at conventional significance thresholds.)

Table 5.3: Probability of Program Change via Reconciliation, Ordered Logit, Including Senate Electoral Competitiveness, 1984-2011

Share of Spending to Competitive Majority Party Defense States	1.316**
	(0.535)
Share of Spending to Non-Competitive Majority Party Defense States	0.554
	(0.382)
Divided Government at Enactment	0.244
	(0.187)
Enacting Majority Seat Gain	0.040
	(8.133)
Enacting Majority Seat Loss	0.113
	(1.221)
Gini Coefficient	-0.555*
	(0.293)
Share of Spending to Committee Members	0.048
	(0.258)
Logged Spending on Program	-0.068
	(0.047)
Size of Reconciliation Instructions (Log)	-0.045**
	(0.021)
Current Budget Deficit	-1.218
	(1.287)
Cut (1)	-4.206***
	(1.154)
Cut (2)	0.641
	(1.121)
Log Pseudolikelihood	-918.469
Pseudo-R^2	0.016
Observations	1,589

Two-way clustered standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Do Population Differences Matter?

One possible critique of the results in Tables 5.2 and 5.3 is that they do not account for population differences in calculating the relative spending that occurs in different categories of states. Could the effects that support the partisan electoral hypothesis be driven by the fact that

high population states are likely to have larger shares of spending on broad-based programs like Medicare? From a theoretical standpoint, we might argue that important variation is captured when a large amount of the funds for a program go to a state because that state has a large population. Suppose, for example, a Democratic Senate majority is trying to help an incumbent in California, like when Senator Barbara Boxer (D-CA) was running a reasonably close race against former Hewlett-Packard CEO Carly Fiorina in 2010. If a programmatic change through reconciliation was going to be made in order to help Boxer's electoral prospects, it will necessarily have to be one with large budgetary consequences, merely because the senator in question represents a large state. Even ignoring this theoretical concern, the question of measurement is also a vexing one. What is the appropriate denominator in a by-program population adjustment? Possibilities include total state population, the total population participating in the program in a given state, and the total population in the state eligible for the program.

Because only the first of these (total state population) is readily available, I elect to use it as a first attempt at addressing these concerns. In Table 5.4, I present an analysis where the spending-related variables (the share of spending going to 'defense' states; the Gini coefficient; and the share of spending to committee members) are all adjusted for population as follows. Before calculating the share of spending going to states in a given category, I multiply the amount in each state on each program by that state's share of the national population, yielding a weighted share.

Table 5.4: Probability of Program Change via Reconciliation, Ordered Logit, Weighting by Population, 1984-2011

Share of Spending to Areas Where Majority Party is Defending a Seat, Adjusted for Population	0.564**
	(0.282)
Divided Government at Enactment	0.276
	(0.189)
Enacting Majority Seat Gain	0.544
	(8.213)
Enacting Majority Seat Loss	-0.095
	(1.231)
Gini Coefficient	0.014
	(0.505)
Share of Spending to Committee Members	0.278
	(0.329)
Logged Spending on Program	-0.055
	(0.047)
Size of Reconciliation Instructions (Log)	-0.044**
	(0.020)
Current Budget Deficit	-1.094
	(1.339)
Cut (1)	-3.527***
	(1.332)
Cut (2)	1.301
	(1.262)
Log Pseudolikelihood	-921.220
Pseudo-R^2	0.013
Observations	1,589

Two-way clustered standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

As we can see, the results for the *Partisan Electoral Hypothesis* are robust to this population adjustment, though the coefficient is smaller than the comparable one in Table 5.2, Model 1. In Table 5.4, the difference in probability of a cut to a program where none of the funds go to majority party 'defense' states versus 75% is roughly 4.4 percentage points, as compared to 6.6 percentage points in Table 2. This suggests that the Senate majority party may be balancing a set of competing concerns in choosing which programs to change. On one hand,

having 51 members in the chamber bestows the benefits of being the majority, regardless of the composition of that majority; this suggests that each senator's seat is of equal value when building the majority coalition. On the other hand, the majority leadership may be concerned about the overall budgetary consequences of a particular set of programmatic changes, and may want to make strategic tradeoffs among programs, and the senators whose states benefit from those programs, in trying to increase the likelihood of retaining majority status. The notion, suggested by the smaller effect of partisan considerations when we adjust for population, that coalition leaders are cognizant of the overall cost of assembling a majority is consistent with the account, described above, of the distributional consequences of varying state sizes across senators (Lee and Oppenheimer 1999; Lee 2000).

A Non-Partisan Alternative Hypothesis

The results described thus far, both here and in earlier chapters, provide evidence consistent with the notion that majoritarian exceptions are created and used to the Senate majority party's advantage. I do not explore explicitly, however, what patterns might hold if my account were *not* true. That is, what patterns should we expect if decisions about the development and deployment of special rules are made in a non-partisan way?

Here, I am able to investigate one explicitly non-partisan alternative hypothesis which arises from the fact that the simple floor majority needed to enact a reconciliation bill in the Senate is not necessarily a unified coalition of majority party members. Thus, it is possible that reconciliation does not advantage the majority party, but rather the group of 51 senators with the most similar preferences. Indeed, Krehbiel's (1998; see also Brady and Volden 2006) pivotal politics theory makes straightforward predictions about which senators will be most affected by reconciliation—expectations unrelated to the partisanship of the legislators in question. Because reconciliation bills are exempt from a filibuster, the filibuster pivot—and the other members located spatially between him and the floor median—lack the ability to demand that policy reflect their preferences in exchange for their support. In other words, the senators in this portion of the ideological middle (that is, between the filibuster pivot and the floor median) are explicitly disadvantaged by the use of reconciliation, making programs that disproportionately benefit their

constituents more vulnerable to cuts than they are under regular order. If this non-partisan account of Senate organization is true, we should expect the following:

Pivotal Politics Hypothesis: In reconciliation bills, programs that benefit voters in states represented by senators with ideological locations between the floor median and the filibuster pivot are cut more and expanded less than programs that benefit senators outside that interval.

Results of a model specification including a variable measuring the share of a program's spending that goes to states where at least one senator is in the filibuster interval appear in Table 5.5. The results for the partisan electoral hypothesis are the same as in earlier models; as the share of spending to majority party 'defense' states increases, the probability that a program is expanded relative to being cut or left alone increases, and the chance that it is cut relative to being left unchanged or expanded decreases. In addition, we also see that, while the coefficient on the filibuster interval variable is in the expected direction, it is not statistically significant ($p=0.38$). While an inability to reject the null hypothesis does not constitute evidence that the hypothesis is false, the results in Table 5.5 provide no support for one important, non-partisan account of the patterns in reconciliation's use.

Table 5.5: Probability of Program Change via Reconciliation, Ordered Logit, Including Filibuster Interval Measure, 1984-2011

Share of Spending to Areas Where Majority Party is Defending a Seat	0.860***
	(0.318)
Share of Spending to Filibuster Interval States	-0.445
	(0.504)
Divided Government at Enactment	0.255
	(0.190)
Enacting Majority Seat Gain	0.264
	(8.291)
Enacting Majority Seat Loss	-0.142
	(1.224)
Gini Coefficient	-0.538*
	(0.304)
Share of Spending to Committee Members	0.049
	(0.257)
Logged Spending on Program	-0.067
	(0.048)
Size of Reconciliation Instructions (Log)	-0.042**
	(0.020)
Current Budget Deficit	-1.356
	(1.277)
Cut (1)	-4.129***
	(1.154)
Cut (2)	0.713
	(1.126)
Log Pseudolikelihood	-919.296
Pseudo-R^2	0.015
Observations	1,589

Two-way clustered standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Conclusion

While we cannot test whether the outcomes produced by reconciliation differ from those generated by an identical, counterfactual world in which the Senate is forced to continually

overcome the filibuster hurdle, the results presented above provide the first systematic evidence to date that the Senate majority party is able to translate majoritarian procedural exceptions like reconciliation into beneficial policy outcomes, with advantageous policy consequences defined with respect to constituents in states where its members are up for re-election. It also helps resolve the puzzle of why, in 2003, the Senate Finance Committee chose to expand Medicaid and not SCHIP. In 2002, 25% of Medicaid funding went to states in which the Republican Senate majority was defending seats in 2004, while only 19% of SCHIP funding did; expanding Medicaid gave the Republicans more electoral bang for their programmatic buck.

By providing evidence consistent with the notion that the majority party uses reconciliation to its advantage, these results provide additional support for the accounts offered in earlier chapters. Previously, we saw that majoritarian exceptions are created and deployed in ways that should benefit the majority party; here, we also observe that the *outcomes* achieved by using the procedures should also deliver partisan benefits. My results indicate that the majority party's influence extends to systematically directing governmental resources in its favor and, importantly, does not rely on the roll call record, avoiding longstanding debates over the ability to identify party effects on voting (e.g. Krehbiel 1993; Binder, Lawrence, and Maltzman 1999). In addition, my findings are in the context of a theoretical account that takes seriously the prospect of a cartelized majority party, but derives specific predictions about how such a coalition should behave in the unique electoral context of the Senate.

There is reason to believe, moreover, that reconciliation is actually a difficult test of the Senate majority's ability to leverage a majoritarian procedural exception. The required bargaining with the House and the president introduces competing goals, yet the Senate is still able to steer policy change in its preferred direction. This is true even when we control for two sets of House-related electoral variables, as we see in Table 5.6. In Model 1, I include a variable measuring the share of spending on a program going to states where the number of marginal House districts (i.e., those where the last election was decided by fewer than 10 points) is above the national mean number of such districts in a state. In Model 2, I include the share of spending to states where the House majority party controls a majority of the House delegation. In both cases, we see that the results for the share of spending going to majority party 'defense' states continues to predict the programmatic changes that my theoretical account anticipates.

Table 5.6: Probability of Program Change via Reconciliation, Controlling for House Characteristics, 1984-2011

	(1)	(2)
Share of Spending to Areas Where Majority Party is Defending a Seat	0.825***	0.799**
	(0.316)	(0.333)
Share of Spending to States with More Competitive Districts than National Average	0.145	
	(0.473)	
Share of Spending to States where House Majority Party Controls a Majority of the House Districts		-0.251
		(0.486)
Divided Government at Enactment	0.253	0.246
	(0.186)	(0.188)
Enacting Majority Seat Gain	0.254	0.131
	(8.331)	(8.267)
Enacting Majority Seat Loss	-0.149	0.005
	(1.170)	(1.142)
Gini Coefficient	-0.539*	-0.529*
	(0.300)	(0.298)
Share of Spending to Committee Members	0.048	0.061
	(0.265)	(0.268)
Logged Spending on Program	-0.069	-0.066
	(0.048)	(0.048)
Size of Reconciliation Instructions (Log)	-0.042**	-0.041**
	(0.020)	(0.019)
Current Budget Deficit	-1.095	-1.060
	(1.433)	(1.300)
Cut (1)	-4.028***	-4.159***
	(1.113)	(1.116)
Cut (2)	0.811	0.682
	(1.078)	(1.086)
Observations	1,589	1,589

Two-way clustered standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

In addition, current interpretation of the rules restricts the chamber to one reconciliation bill addressing outlays each year, preventing the majority from returning repeatedly to the procedures as changing political circumstances warrant (Keith and Heniff 2005). Similarly, Senate precedents interpret the limit on "debate" as a restriction on actual discussion, rather than

on consideration entirely. At the conclusion of the permitted 20 hours, senators may continue to offer and vote on amendments, provided no actual floor time is expended on debate; this allows members to vote on many alternative policy proposals that may be opposed by the majority party (Heniff 2010b). Finally, the Byrd Rule prevents reconciliation bills from including 'extraneous matter' for which the principal goal is not deficit reduction, such as a Republican-favored provision limiting cash benefits to women receiving public assistance who have additional children in 1996 (Keith 2010). Because each of these restrictions temper the ability of the majority party to leverage reconciliation, it is even more notable that I uncover a strong partisan trend in its use.

The results here offer evidence on questions of majority party power that is firmly anchored in choices about observable, programmatic policy choices. Often, our ability to draw conclusions about the policies on which Congress focuses is limited by an inability to define a relevant set of possible issues.[17] I address this problem in a new way, defining a set of policies on which Congress might be active as those domestic programs funded through mandatory spending. This universe is both broad in its scope and specific in its unit of analysis. It covers a sizable share of the ways in which citizens receive benefits from the federal government, and analyzes congressional choices at something close to the level at which lawmakers actually view them. These findings also, then, speak to other questions that have been plagued by selection issues, including how issues move from the systemic agenda, or the items on which there is broad agreement about the importance of attention, and a formal agenda, or the policy questions that are ripe for active consideration (Baumgartner and Jones 1993; Kingdon 1984).

The exploration in earlier chapters of majoritarian exceptions—of which reconciliation is but one case—certainly adds to our understanding of congressional lawmaking. Analyzing their creation and noting their existence is, however, somewhat unsatisfying unless we can also establish that their use matters for the kinds of policies that Congress is able to produce. Based on the evidence presented here, I argue that these majoritarian procedures can be translated into programmatic changes that advantage the majority party. What consequences might this pattern of outcomes have for efforts to reduce congressional obstruction? I take up that question, and several others about the implications of this work, in the concluding chapter.

[17] See Binder (2003) and Adler and Wilkerson (2012) for two existing approaches.

Appendix 5.1

Table A5.1: Effect of Budget Reconciliation Bills on the Federal Budget Deficit

Year	Estimated Net Effect on Federal Budget Deficit	Estimated Federal Budget Deficit/Surplus
1980	-$8.2 billion (one year)	-$73.1 billion
1981	-$130.6 billion (three years)	-$73.9 billion
1982	-$129.1 billion (three years)	-$120.6 billion
1985	-$24.9 billion (four years)	-$207.7 billion
1986	-$17.0 billion (three years)	-$237.9 billion
1987	-$39.6 billion (three years)	-$168.4 billion
1989	-$14.7 billion (one year)	-$205.4 billion
1990	-$236 billion (five years)	-$277.6 billion
1993	-$433 billion (five years)	-$300.4 billion
1996	-$54.6 billion (five years)	-$174 billion
1997	-$127.2 billion (five years)	-$103.2 billion
2001	+$552 billion (five years)	-$32.4 billion
2003	+$342.9 billion (five years)	-$538.4 billion
2005	+$31 billion (four years)	-$493.6 billion
2007	-$752 million (five years)	-$342.2 billion
2009	-$5.0 billion (five years)	-$1.5 trillion

Source: For reconciliation bills in years 1981-2007 excluding 1989, see Thomas E. Mann, Norman J. Ornstein, Raffaela Wakeman, and Fogelson-Lubliner, "Reconciling with the Past," *New York Times* 6 March 2010; for 1980, see "$8.2 Billion Reconciliation Bill Cleared," *CQ Almanac 1980*, 36th ed. (Washington, DC: Congressional Quarterly, 1981), 124-130; for 1989, see "Reconciliation Cuts Total $14.7 Billion," *CQ Almanac 1989*, 45th ed. (Washington, DC: Congressional Quarterly, 1990), 92-113; for 2009, see "Cost Estimate: H.R. 4872, the Reconciliation Act of 2010," *Congressional Budget Office*, 20 March 2010, <http://cbo.gov/sites/default/files/cbofiles/ftpdocs/113xx/doc11379/amendreconprop.pdf>, Table 7. For federal budget deficit/surplus data, see data supplement to "Updated Budget Projections: 2014 to 2024," *Congressional Budget Office*, 14 April 2014, Table 1 <http://www.cbo.gov/publication/45249>.

Table A5.2: Citations for Estimated Budget Effects of Reconciliation Bills

Year	Source
1985	S. Rpt. 99-146, "Report to Accompany S. 1730, Consolidated Omnibus Reconciliation Act of 1985," 99th Cong., 1st Sess. (1985); "Holdover Deficit-Reduction Bill Approved," *CQ Almanac 1986*, pp. 555-59; "Pension Safeguards Added to Deficit-Cut Bill," *CQ Almanac 1986*, pp. 592-94 (for additional information on pension insurance, unemployment insurance, and railroad benefits provisions); "Social Security Adjustments," *CQ Almanac 1986*, p. 594 (for Social Security); "Congress Enacts Sweeping Overhaul of Tax Law," *CQ Almanac 1986*, pp. 491-524 (for coal miners' disability); "Small Business Programs," *CQ Almanac 1986*, pp. 322-23.
1986	"$11.7 Billion Deficit-Reduction Bill Cleared," *CQ Almanac 1986*, pp. 559-576 (for all committees except Finance); "Key Provisions of Fiscal 1987 Reconciliation Bill." *CQ Weekly* (October 25, 1986): 2710 (for Finance Committee); "Major Medicare, Medicaid Changes Enacted," *CQ Almanac 1986*, pp. 252-59 (for additional information on Medicare and Medicaid)
1987	"Reconciliation Bill Raises Taxes, Cuts Spending," *CQ Almanac 1987*, pp. 615-627 (for Agriculture, Banking, Energy, and Environment and Public Works Committees); "Congress OKs Medicare Cuts, Medicaid Changes," *CQ Almanac 1987*, pp. 558-567 (for Finance Committee); Elizabeth Wehr, "Taxes, Medicare Among Key Disputes... ...As Reconciliation Bills Go to Conference," *CQ Weekly* (December 12, 1987): 3032-33 (for Labor and Human Resources Committee and additional information on Agriculture Committee); "Disability Appeals Protected," *CQ Almanac 1987*, p. 545 (for additional information on Social Security Disability Insurance)
1989	"Reconciliation Cuts Total $14.7 Billion," *CQ Almanac 1989*, pp. 92-113 (for all committees except Labor and Human Resources); Phil Kuntz, "Curbs on Loan Defaulters," *CQ Weekly* (December 9, 1989): 3369 (for Labor and Human Resources Committee); "Modest Expansion OK'd in Medicaid Coverage," *CQ Almanac 1989*, pp. 171-75 (for additional information on Medicaid); "Physician-Payment Overhaul Enacted," *CQ Almanac 1989*, pp. 157-67 (for additional information on Medicare); "Welfare in Reconciliation," *CQ Almanac 1989*, p. 224 (for additional information on Aid to Families with Dependent Children); "Congress Moves to Stem Student-Loan Losses," *CQ Almanac 189*, pp. 189-91 (for additional information on student loans)
1990	"Budget Adopted After Long Battle," *CQ Almanac 1990*, pp. 111-166; "Medicaid Expands To Aid Poor Children" *CQ Almanac 1990*, pp. 569-71 (for additional information on Medicaid); "Medicare Beneficiaries To Pay More," *CQ Almanac* 1990, pp. 563-68 (for additional information on Medicare); Carl W. Ek and Charles E. Hanrahan, "Agricultural Commodity and Trade Policy: The Farm Bill, the Budget, and the GATT," *Congressional Research Service* 25 February 1991 (for additional information on Agriculture Committee).
1993	"Deficit-Reduction Bill Nearly Passes," *CQ Almanac 1993*, pp. 107-124; Ralph M. Chite, "Agriculture and the Budget," *Congressional Research Service* 25 October 1993 (for additional information on Agriculture Committee).
1995	"No Winners in Budget Showdown," *CQ Almanac 1995*, pp. 2-44 – 2-63; "Plan to Cut Farm Programs Stalls," *CQ Almanac 1995*, pp. 3-47-3-56 (for additional information on farm subsidies); "Medicare Cuts Vetoed as Part of Budget Reconciliation," *CQ Almanac 1995*, pp. 7-3 – 7-15 (for additional information on Medicare); "Republicans Seek to Revamp Medicaid," *CQ Almanac 1995*, pp. 7-6 – 7-22 (for additional information on Medicaid)

1996	"After 60 Years, Most Control Sent to States," *CQ Almanac 1996*, pp. 6-3 – 6-24; "Congress Clears Hospital Construction, Deficit Reduction Targets, and Veterans' Benefits in Veterans Affairs Bill," *CQ Almanac 1995*, pp. 8-17 – 8-18.
1997	"Reconciliation Package: Spending Cuts," *CQ Almanac 1997*, pp. 2-47 – 2-52; "Budget Cuts," *CQ Almanac 1997*, pp. 7-31.
2005	"Budget Reconciliation Provisions," *CQ Almanac 2005*, pp. 4-18 – 4-24
2007	"Cost Estimate: H.R. 2669, College Cost Reduction and Access Act," *Congressional Budget Office*, 19 September 2007. <http://cbo.gov/sites/default/files/cbofiles/ftpdocs/86xx/doc8643/hr2669pago.pdf>.
2009	"Cost Estimate: H.R. 4872, the Reconciliation Act of 2010," *Congressional Budget Office*, 20 March 2010, <http://cbo.gov/sites/default/files/cbofiles/ftpdocs/113xx/doc11379/amendreconprop.pdf>. (See Tables 2, 5, 6, and 7)

For years not listed, either there was no reconciliation bill (1984, 1988, 1991, 1992, 1994, 1998, 2002, 2004, 2006, 2008, 2010, and 2011) or the reconciliation bill contained only revenue provisions (1999, 2000, 2001, and 2003).

Table A5.3: Probability of Program Change via Reconciliation, Heckman Selection Model, 1984-2011

Share of Spending to Areas Where Majority Party is Defending a Seat	0.508**
	(0.206)
Divided Government at Enactment	0.082
	(0.079)
Enacting Majority Seat Gain	-1.012
	(3.894)
Enacting Majority Seat Loss	0.156
	(0.628)
Gini Coefficient	-0.205
	(0.183)
Share of Spending to Committee Members	0.022
	(0.153)
Logged Spending on Program	-0.019
	(0.013)
Size of Reconciliation Instructions (Log)	-0.012
	(0.010)
Current Budget Deficit	-1.163*
	(0.644)
Cut (1)	-1.489***
	(0.456)
Cut (2)	1.251***
	(0.446)
Log Pseudolikelihood	-2197.515
Observations	1,589

Standard errors clustered by committee-year in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table A5.4: Probability of Program Change via Reconciliation, Ordered Logit, Including Non-Reconciliation-Eligible Programs, 1984-2011

Share of Spending to Areas Where Majority Party is Defending a Seat	0.699**
	(0.278)
Divided Government at Enactment	0.144
	(0.168)
Enacting Majority Seat Gain	-1.669
	(5.197)
Enacting Majority Seat Loss	0.959
	(1.137)
Gini Coefficient	-0.530*
	(0.273)
Share of Spending to Committee Members	-0.089
	(0.237)
Logged Spending on Program	-0.068
	(0.042)
Size of Reconciliation Instructions (Log)	-0.067
	(0.045)
Current Budget Deficit	-0.701
	(0.756)
Cut (1)	-6.191***
	(1.574)
Cut (2)	0.962
	(1.513)
Log Pseudolikelihood	-1248
Pseudo-R^2	0.013
Observations	4,695

Two-way clustered standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table A5.5: Probability of Program Change via Reconciliation, Ordered Logit, Including Imputed Values for Missing Data, 1984-2011

Share of Spending to Areas Where Majority Party is Defending a Seat	0.840***
	(0.273)
Divided Government at Enactment	0.326*
	(0.174)
Enacting Majority Seat Gain	0.154
	(8.597)
Enacting Majority Seat Loss	-0.316
	(1.054)
Gini Coefficient	-0.162
	(0.293)
Share of Spending to Committee Members	0.173
	(0.244)
Logged Spending on Program	-0.051
	(0.032)
Size of Reconciliation Instructions (Log)	-0.041**
	(0.021)
Current Budget Deficit	-1.147
	(1.300)
Cut (1)	-3.460***
	(0.543)
Cut (2)	1.641***
	(0.462)
Log Pseudolikelihood	-992.004
Psuedo-R^2	0.014
Observations	1,853

Two-way clustered standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table A5.6: Probability of Program Change via Reconciliation, Ordered Logit, Two-Way Clustered Standard Errors by Year and Committee, 1984-2011

Share of Spending to Areas Where Majority Party is Defending a Seat	0.848***
	(0.146)
Divided Government at Enactment	0.250**
	(0.115)
Enacting Majority Seat Gain	0.226
	(4.475)
Enacting Majority Seat Loss	-0.102
	(0.606)
Gini Coefficient	-0.529**
	(0.208)
Share of Spending to Committee Members	0.043
	(0.381)
Logged Spending on Program	-0.068
	(0.063)
Size of Reconciliation Instructions (Log)	-0.042*
	(0.022)
Current Budget Deficit	-1.234
	(0.850)
Cut (1)	-4.087**
	(1.920)
Cut (2)	0.752
	(1.284)
Log Pseudolikelihood	-919.661
Pseudo-R^2	0.015
Observations	1,589

Two-way clustered standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table A5.7: Probability of Program Change via Reconciliation, Crossed Random Effects (Year, Committee, and Program), 1984-2011

	(1)	(2)
Share of Spending to Areas Where Majority Party is Defending a Seat	0.791**	0.774*
	(0.392)	(0.411)
Divided Government at Enactment	0.151	0.147
	(0.174)	(0.205)
Enacting Majority Seat Gain	0.383	1.864
	(6.601)	(6.833)
Enacting Majority Seat Loss	0.224	-0.315
	(1.117)	(1.253)
Gini Coefficient	-1.057**	-0.907**
	(0.414)	(0.459)
Share of Spending to Committee Members	0.003	0.017
	(0.359)	(0.385)
Logged Spending on Program	-0.112***	-0.100***
	(0.024)	(0.026)
Cut (1)	-4.602***	-4.378***
	(0.677)	(0.701)
Cut (2)	0.599	1.124
	(0.657)	(0.693)
Var (Year RE)	0.143*	0.155*
	(0.076)	(0.082)
Var (Committee RE)	0.324*	0.328
	(0.196)	(0.208)
Var (Program RE)		0.372***
		(0.121)
Log Likelihood	-885.361	-876.647
Observations	1,589	1,589

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Column (1) included crossed random effects by year and committee. Column (2) includes crossed random effects by year and committee, with an additional random effect by program nested within the committee effect. Because the random effects term is assumed to be uncorrelated with the other explanatory variables, I omit several independent variables for which this concern is greatest.

Chapter 6: Conclusion

For most legislation, consideration in the U.S. Senate remains profoundly shaped by the need to build a 60-vote coalition to invoke cloture and end debate. As the preceding chapters make clear, however, the story is not that simple. Since 1969, Congress has created 111 separate special procedures that prevent a filibuster on specified measures; these debate limitations are often accompanied by provisions preventing both committee obstruction and amendments to the protected bills on the floor of the chamber. While many of these special rules date from the 1970s and 1980s, moreover, they are not merely a relic of years past. The ability to create new majoritarian exceptions continues to shape the lawmaking process. In the spring of 2015, for example, a majoritarian exception that would allow Congress to more easily approve the president's decision to reinstitute sanctions if Iran is found to be out of compliance with a nascent nuclear agreement proved to be a key chip in the broader bargaining between the two branches over related legislation (Wolfensberger 2015; DeYoung and DeBonis 2015).

In the preceding chapters, I explore the creation, use, and policy consequences of these rules. The Introduction lays out the two central purposes of majoritarian exceptions: to ease the passage of the policies they cover, and to deliver benefits, in the form of electoral advantages, to the majority party. These electoral advantages include both enacting favorable policy changes and creating opportunities for individual senators to both claim credit and avoid blame.

In Chapter 2, I explore one particular category of these procedures, called oversight exceptions. These are rules that not only increase Congress's ability to oversee the actions of the executive, but also, under certain alignments of key actors, can induce the president to take actions he would otherwise avoid; I illustrate these strategic dynamics using a spatial model. Building from the model's predictions, I also argue that Congress is more likely to create these particular procedures in policy areas on which elite allies of the Senate's majority party are demanding action. These policy changes facilitated by oversight exceptions both build the majority party's brand by moving policy in its preferred direction and generate credit claiming

opportunities for individual members who are seeking re-election; both of these dynamics help the Senate's majority party achieve its goal of continued majority status.

In Chapter 3, I turn to a second class of these procedures, known as delegation exceptions. Rather than limiting the president's ability to exercise existing authority, these rules explicitly delegate power to a special agenda setter, either inside or outside the chamber, and then grant that actor's proposal protected procedural status. Like the patterns in the creation of oversight exceptions documented in Chapter 2, Congress appears to adopt this latter kind of special procedure in response to partisan issue pressures—specifically, the Senate majority party's desire to minimize the traceability of certain actions. By reducing the chances that its members are blamed for negative events, the majority party is again able to enhance its chances of retaining its position in the future.

While Chapters 2 and 3 documented how exceptions are created with an eye towards helping the majority party, in Chapter 4, I begin to examine whether the same is true for the procedures' use. I describe in detail one particularly important majoritarian exception—the budget reconciliation process—and make the case that the process is initiated when key actors within the Senate's majority party expect that the policy results will make them better off. I formalize this argument using a spatial model and find support for its predictions using both a large-N empirical test and several key case studies. Just as creating the rules should help the majority party attain its goal of remaining the majority, the findings in Chapter 4 suggest the procedures' use should do the same by facilitating policy changes preferred by a majority of the majority party in the Senate.

Finally, in Chapter 5, I seek to move beyond an argument about exceptions being created and used in situations when the majority *expects* that the rules will beneficial. By examining the actual programmatic policy changes made using the reconciliation procedures since the mid-1980s, I am able to document how the majority party in the Senate actually uses the rules to generate the opportunities for credit claiming and blame avoidance that should help it maintain its status in future congresses.

Contributions

The contributions of these theoretical accounts and empirical findings are several. First among them is substantive; the procedures explored here have been largely neglected as an independent object of interest in research on the U.S. Senate. By documenting the creation of these procedures, the patterns in their use, and their potential policy consequences, my work here demonstrates an important majoritarian dynamic in a chamber otherwise considered to be supermajoritarian. Beyond this substantive impact, however, are several additional contributions to ongoing debates in the political science literature.

Explaining Rule Change in the Senate

First of all, both the theoretical accounts and empirical findings add to our understanding of the origins and evolution of the Senate's cloture rule. Wawro and Schickler (2006) argue that the persistence of the filibuster in the Senate is due to "remote majoritarianism"—that is, supermajority rule endures for most policymaking because a simple majority of senators prefer it that way. A simple majority, they argue, is capable of retaliating and engaging in "reform-by-ruling" (Koger 2010). This prospect looms large over minority decisions about obstruction, causing the minority party to avoid blocking some bills out of fear of reprisal. Binder and Smith (1997), meanwhile, argue that the evolution of supermajority rule in the Senate has been shaped by short-term political considerations and that efforts by the majority party to reduce the filibuster threshold have been constrained by vigorous minorities

How does the account provided above help us adjudicate between these competing explanations? First of all, because majoritarian exceptions are created as part of statutory law, they must clear the filibuster threshold in the Senate in order to be enacted. In that sense, they represent a departure from Wawro and Schickler's argument. The existence of majoritarian exceptions suggests that instances of majority rule result not only from situations where the majority party chooses not to exercise its "nuclear option." Rather, they represent situations where a sufficient number of senators, often from both parties, are made better off by alternative procedures in the short run.

Second, the patterns we observe in the issues for which majoritarian exceptions are created suggest that the short-term electoral interests of the majority party are playing a role, adding support to Binder and Smith's argument. Consistent with the notion that the majority party responds to policy demands from its activist members and interest group allies, we observe more oversight exceptions created on issues owned by the majority party. When, however, the policy object of the rule change will impose concentrated costs on potential voters—as is the case with delegation exceptions—we see the majority party behave in a way that should minimize the negative, mass-level response from voters.

The findings above also bear on the literature that examines rule change in Congress beyond just the Senate filibuster. The positive relationship between majority party capacity and the probability of procedural change are not our primary theoretical focus, but are consistent with earlier work arguing that stronger (Binder 1997), rather than weaker (Dion 1997), majority parties will reduce minority rights in the House of Representatives. The fact that the preferences of the House and the president appear to affect decisions about procedures in the Senate, moreover, echoes other work on the role of inter-chamber and inter-branch relations in determining the rules within a single chamber (Sin 2014).

Understanding Budget Reconciliation

A second contribution of this work is that it represents one of the first systematic explorations of the use and consequences of the budget reconciliation procedures. Several historical accounts examine the rules' creation and use, but in a largely descriptive way (Gilmour 1990; LeLoup 2005). Accounts of procedural change in Congress explore reconciliation only in broader context, either as an exception to prevailing evolutionary trends (Binder 1997) or as a component of the larger budget process (Schickler 2001). Studies of institutional gridlock (Binder 2003; Brady and Volden 1998; Krehbiel 1998; Mayhew 1991) generally ignore it as a possible solution to stalemate. Work on minority obstruction, meanwhile, explores reconciliation only as evidence for broader theoretical arguments about the role of the filibuster (Binder and Smith 1997; Wawro and Schickler 2006). In their work on majority party power in the Senate, finally, Den Hartog and Monroe (2011) use reconciliation bills to operationalize a component of their theory about party influence, but do not explore it as independent object of

interest.

In Chapters 4 and 5, I document two prevailing trends in the use of reconciliation. First, we see the process initiated—in the form of the reconciliation instructions—when key actors (the majority leader and the median member of the chamber) expect that the outcomes produced by using the procedures will be closer to their most preferred policy than what could be achieved under regular order. The fact that these expected products of reconciliation better reflect the preferences of the median member of the majority party is consistent with my argument that majoritarian exceptions are meant to help the majority party achieve its policy and political goals. Second, we observe that the changes made to mandatory programs using the procedures are systematically biased in favor of the majority party's electoral interests; programs where many benefits flow to states in which the majority party must defend seats in the next election are expanded more and cut less in reconciliation bills.

The Power of the Majority Party

Finally, my argument and supporting evidence on the influence of the majority party in creating and using majoritarian exceptions adds to a growing body of work challenging the long-held view that the Senate is dominated by individuals, not parties (e.g. Matthews 1960; Smith 1989; Sinclair 1989; Smith and Flathman 1989; Ainsworth and Flathman 1995; Krehbiel 1998); rather, the majority party is able to exercise influence in a number of important ways. My findings here join evidence that the majority party is quite successful at protecting committee-generated bills from amendment on the floor (Campbell, Cox, and McCubbins 2002), exercising negative agenda control (Gailmard and Jenkins 2007), and ensuring partisan cooperation on procedural votes (Lee 2009). More broadly, Den Hartog and Monroe (2011) demonstrate how a range of commonly observed Senate practices and procedures, such as committee gatekeeping rights, tabling motions, and filling the amendment tree, provide the majority party with a disproportionate advantage in influencing the agenda by affecting the 'consideration,' or opportunity, costs that the majority and minority parties must pay in order to shepherd their preferred to measures to final passage votes. They also, moreover, present evidence that bills that pass the chamber are more likely to move policy in the direction of the majority party than the minority. Here, I add evidence both that procedural change is undertaken on issues that

should benefit the majority party and that the majority party deploys these procedures to achieve electorally beneficial policy outcomes. In doing so, I contribute to this important literature without relying on the roll-call record, a concern that has plagued many previous studies of majority party influence.

Directions for Future Work

This project provides answers to several important questions but also leaves a number of others open for further investigation. First, while the analyses in Chapters 2 and 3 examine the aggregate decisions to create majoritarian exceptions, there may be additional implications of my theoretical account to be tested by exploring members' voting behavior on individual cases of procedural change. Of particular interest are rules that have been attempted or created more than once, such as the delegation exceptions for approving trade agreements or military base closings. We should expect, for example, that individual members who are up for re-election and/or have large constituencies that would feel the perceptible negative effects of the underlying policy change would be more likely to support the special procedures; their need to minimize traceability is greater than that of some of their legislative peers. In addition, further, case-based work is needed to illuminate the apparent—and interesting—differences in selection dynamics between oversight and delegation exceptions.

Chapters 4 and 5, meanwhile, contribute much to our understanding of the use and consequences of majoritarian exceptions, but they do so with evidence, rich as it may be, from just a single case. Reconciliation is not, of course, the only majoritarian exception that Congress has chosen to deploy at some eligible junctures and not at others. Balla (2000), for example, explores early uses of the oversight exception in the Congressional Review Act allowing Congress to disapprove of regulations promulgated by the executive branch, but his analysis is confined to the period immediately after the rules' creation. The list of enacted exceptions in Appendix Table A1.1 of the Chapter 1, moreover, provides several other cases that are ripe for similar investigation. For example, what helps explain the attempts to reject actions taken as part of delegation exceptions under the Trade Act, or instances in which Congress attempted to

exercise the oversight exceptions under the Arms Export Control Act?[1] Are these procedures used to produce policy outcomes that help the Senate's majority party achieve its policy and partisan electoral goals?

The unanswered questions generated by this project extend beyond just further exploration of majoritarian exceptions; they also include important topics in the study of budget reconciliation specifically and the congressional budget process more generally. While I draw important conclusions about the policy consequences of procedures from my aggregate analysis of reconciliation, an investigation at that level unavoidably obscures some interesting aspects of the decisions about altering specific programs in specific years. While the case studies in Chapter 4 begin to explore of this variation, a similar, case-based investigation of patterns of programmatic change in particular programs would add to our understanding of how the process is used to serve the majority party's electoral goals. Of particular interest are those programs that affect key partisan constituencies, such as Medicare, student loans, and farm subsidies.

In addition, my analysis of reconciliation's policy consequences finds evidence consistent with the notion that programmatic changes are made to maximize the majority's chances of retaining its status, but does not include systematic evidence of whether members of Congress and their staff are actually considering those potential electoral consequences when developing reconciliation bills. Preliminary archival evidence does suggest that the state-by-state consequences of policy changes have played a role in decisions about programmatic change. An example from 1986 is illustrative. One change considered for that year's reconciliation bill was a change to the Medicaid matching formula (FMAP), which also applies to other mandatory programs, including welfare, foster care support, and child support enforcement; specifically, the Senate Finance Committee was considering whether to alter the rules under which states would be "held harmless" against the loss of funds as the formula changed.[2] Among the states that would be hurt without a shift in the hold harmless rules was Georgia, where the Senate (majority) Republicans were defending a seat in a very close race between Senator Mack

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[1] Attempted uses of the Trade Act provisions in the Senate include: 94th Congress, S. Con. Res. 213; 101st Congress, S. J. Res. 382; 102nd Congress, S. J. Res. 153; 104th Congress, S. J. Res. 37 and S. J. Res. 56; 105th Congress, S. J. Res. 31 and S. J. Res. 47; 106th Congress, S. J. Res. 27, S. J. Res. 28, and S. J. Res. 47. Attempted uses of the Arms Control Export Act provisions in the Senate include: 101st Congress, S. J. Res. 378; 102nd Congress, S. J. Res. 165, S. J. Res. 177, and S. J. Res. 344.

[2] Letter from Senator Sam Nunn to Senator Russell Long, July 21, 1986; Box No. 2; Senate Finance Committee Democrats, Debt Limit & Budget Reconciliation Legislative Files, Records of the United States Senate, 95th-101st Congresses, Record Group 46; National Archives Building, Washington, DC.

Mattingly (R) and Representative Wyche Fowler (D). Fowler eventually won the race, but not before the provision benefitting Georgia made it into the final reconciliation bill.[3] This is obviously but one example, so further exploration in this vein would add to our understanding of how reconciliation is leveraged for political gain.

Finally, my findings about reconciliation suggest that other components of the budget process may be exploited by congressional majority parties for partisan gain. One potential avenue involves the increasing inclusion of "deficit neutral reserve funds" in the congressional budget resolution. These "reserve funds" represent provisions that "establish…procedures to revise budget levels…for certain legislation or if some condition is met" (Heniff 2014); they have the effect of designating areas for subsequent policymaking activity without having to specify, in the budget resolution, how Congress would pay for it. The inclusion of these funds in the budget resolution has grown precipitously over the past 30 years. The 1986 budget resolution included none, while the 2009 resolution included 37 (Matthews 2013). Another would involve examining the amendments offered to the budget resolution each year. The majoritarian exception used for the budget resolution functions similarly to the one that governs consideration of reconciliation bills, so at the conclusion of the 50 permissible hours of debate, the Senate votes on many amendments in quick succession. In 2015, for example, more than 700 amendments to the budget resolution were filed before consideration began (Associated Press 2015). Both reserve funds and amendments, then, might represent additional opportunities for the majority party in the Senate to leverage the budget process to its advantage, perhaps as mechanisms for sending messages to key interest group and elite constituencies about its policy priorities.

Implications for Procedural Reform in Congress

By documenting how rule changes are made to advantage the majority party, and how the majority party subsequently uses those procedures to achieve its policy and political goals, this project bears on broader questions about the difficulties of using rule change to reduce gridlock. Filibuster reform is often touted as a solution to obstruction by proponents of reform both inside

[3] See Omnibus Budget Reconciliation Act of 1986, § 9421.

(Harkin 2011; Shaheen 2013) and outside (Mann and Ornstein 2012) the chamber alike. What does this project say about the prospects for success of those efforts?

On one hand, neither my argument nor my evidence are sanguine on the possibilities for sweeping change to the Senate's filibuster rule, especially outside of the "reform-by-ruling" strategy pursued by Senate Democrats on judicial nominations in 2013. As we saw in Chapters 2 and 3, the conditions ripe for creating majoritarian exceptions are actually quite rare. For oversight exceptions, the spatial alignment of the relevant actors must be just right—a reality that sometimes prevents rule change on issues (like the conduct of the war in Iraq in 2007) that would otherwise seem ripe for policy change through procedural reform. For delegation exceptions, meanwhile, a relatively small share of the collective action problems for which the solutions require concentrated costs in exchange for diffuse benefits are actually the object of special procedures.

In addition, this era of increasingly polarized parties that are not wont to cooperate with one another means that the value of holding majority status in the Senate has only increased. The evidence in Chapters 4 and 5 suggests that existing exceptions are used in ways that should augment the majority's existing electoral advantages by facilitating policy gains and creating opportunities for credit claiming and blame avoidance. Because the legislation creating a majoritarian exception must itself clear the filibuster hurdle, a bipartisan coalition is needed for enactment, unless the majority party enjoys an unusually large size advantage. (Given that we saw no exceptions created during the period in which the Democrats held a filibuster-proof majority in the Senate in 2009, moreover, the ability for the majority party to accomplish this kind of procedural change without help from the minority does not appear to bolster its prospects significantly.) Knowing that the rules are both intended to be used to help the majority, and that there is evidence the procedures are actually deployed to in order to deliver policy and political gains to the majority party, why should the minority party engage in the coalitional cooperation required to exempt future legislation from a filibuster? This is especially true if we believe that members of both parties receive non-policy benefits from groups and individuals outside the chamber for exploiting their existing rights to obstruction (Binder and Smith 1997; Koger 2010). My results—both theoretical and empirical—suggest, then, that reformers are likely best served to look elsewhere to ameliorate the products of congressional polarization.

At the same time, all hope is not lost. Appendix Table A1.1 in the Chapter 1 demonstrates that, despite these incentives to the contrary, Congress has managed to enact procedural changes that facilitate otherwise difficult policy change more than 100 times in 45 years. Indeed, the theoretical account in Chapter 2 suggests that majoritarian exceptions may be a particularly important legislative tool under divided government, when we would otherwise be particularly worried about the gridlock (Binder 2003). The policy accomplishments achieved with the help of majoritarian exceptions—such as major trade deals, various foreign and military policy decisions executed by the president, and the products of the reconciliation process catalogued in Chapters 4 and 5—demonstrate, moreover, that even if the rules are rare, they matter for what the federal government can achieve. Certainly, Congress's experience with majoritarian exceptions over the past nearly 50 years does not foreshadow a Senate in which all business is conducted by majority rule. At the same time, it is likely that the Senate will continue to innovate procedurally in select circumstances. Put differently, majoritarian exceptions will continue, as their name suggests, to function as "exceptions to the rule."

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