
Restoring the Regular Order in Congressional Appropriations
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Restoring the Regular Order in Congressional Appropriations

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Summary

Each year, Congress must exercise its power over the purse by adopting legislation to fund the operation of the federal government. It traditionally met this responsibility by adopting a dozen appropriations bills covering different policy domains such as agriculture or defense. Today, the annual appropriations process is crumbling. In this paper, I analyze the reasons for this change and its consequences. I conclude by evaluating a set of reforms that may restore appropriations to health.

The primary symptom of the decline of appropriations is the collapse of “regular order.” The regular order is a textbook legislative process in which each appropriations bill is brought to the floor of the House and Senate for debate, amendment and passage. It is advantageous because it permits scrutiny over spending by bringing the budget to the floor in separate bills small enough to read and digest. Rank-and-file members can shape spending decisions through their opportunity to offer amendments and debate bills. It is an important way for members to oversee federal agencies and carry out the preferences of their constituents.

Currently, Congress routinely fails to follow the regular order. Between 1975 and 2012, the House of Representatives failed to bring 12 percent of bills to a vote in the regular order, while the Senate failed to bring 26 percent to a vote. Congress adopted a full 39 percent of bills as part of an omnibus package or yearlong continuing resolution. In recent years, it has become common for one or both chambers to fail to vote on any spending bills in the regular order and to bundle all of them into a package. For example, only one of the FY2015 appropriations bills received an individual vote in the Senate, and 11 of 12 bills were included in an omnibus package.

This paper draws on political science research to explain why this change has occurred and offers a set of reforms to help members of Congress return to the regular order. A major cause of the change is the Senate majority party’s inability to manage the floor in today’s complex legislative environment. Reforming the filibuster to allow a simple majority of senators to adopt spending bills would help to restore the regular order and reduce the likelihood and size of omnibus packages. It would improve deliberation in Congress and expand the capacity of members to act.

Specifically, it would lead to:

- Improved management of federal agencies;
- Greater scrutiny and accountability for spending decisions;
- More orderly, and potentially timely, passage of appropriations bills;
- Decreased reliance on temporary continuing resolutions; and
- Fewer, and smaller, last minute budget deals.

The intended audience of this paper includes a broad range of policymakers, journalists and scholars. Its emphasis is on reforms that are likely to be given serious consideration in Congress. Members of
Congress are only likely to adopt reforms that they perceive to be in their electoral self-interest and thus proposals that fail to take this into account are likely to be ignored. The paper evaluates a set of reforms including:

- Altering the Senate’s rules to limit or eliminate the filibuster;
- Removing the “House acts first” sequence in appropriating;
- Easing restrictions on earmarking;
- Restricting the use of temporary continuing resolutions; and
- Easing transparency requirements to improve negotiations.

This paper also evaluates an alternative view: that the current approach of negotiating omnibus appropriations bills behind closed doors is beneficial because it gives members the privacy and space they need to make difficult compromises in today’s highly polarized political environment.

**Regular Order in Appropriations**

The annual appropriations process should concern all who are interested in the effective management of the United States government. Appropriations bills provide annual authority for all the discretionary spending of the federal government, including funding for national defense, scientific research, student loans, foreign aid, law enforcement and other vital matters. The once orderly process for adopting appropriations bills has collapsed. Congress now routinely combines all the regular appropriations bills into single packages that are often adopted with little scrutiny. Appropriations bills are routinely passed after the beginning of the fiscal year, forcing federal agencies to rely on temporary continuing resolutions (CRs), creating uncertainties that disrupt programs and lead to wasteful spending. Disputes over appropriations bills have led to two costly government shutdowns since 1995. The collapse of appropriations has undermined the ability of federal agencies to meet their responsibilities and for Congress to respond to new challenges in a timely manner.

The reforms proposed in this paper are designed to restore regular order and establish a more stable and predictable system for adopting spending bills. A smoothly functioning appropriations process would prevent disruptions in the lives of many Americans if Congress fails to pass spending legislation and government agencies shut down. It would give federal agencies the stability they need to make effective management decisions. It would improve oversight over federal spending by building on incentives members already have to debate the budget. Effectively managed debate would allow members to monitor programs, adjust spending levels and issue guidance to federal agencies. It would provide the opportunity for members to strike unwise or wasteful provisions from spending bills.

These reforms are practical, achievable and would offer substantial benefits to the country. Some budget reformers may find them unsatisfying because they do not take on broader goals, such as reducing the deficit or reforming entitlement programs. While such goals are worthy, there is no shortage of work on those subjects. Deficit reduction and entitlement reform are favorite topics of policy analysts. The real roadblock for such reforms is not a lack of ideas but the lack of interest in Congress in pursuing them. In contrast, restoring the regular order offers concrete budgetary benefits and would likely be embraced by members of Congress. Putting the annual appropriations process on a more stable footing would be a significant accomplishment.

**The Origins of Regular Order**

The power of the purse is granted to Congress by the Constitution, which states that, “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law.” The modern appropriations process dates back to passage of the Budget and Accounting Act of 1921 (LeLoup 2005,
That act granted the president the power to propose a budget. At about the same time, Congress consolidated authority over spending decisions within the Appropriations Committee and gave it the responsibility for responding to the president's budget request.

Richard Fenno's seminal study (1966) of the appropriations process in the wake of this change observed that Congress followed a carefully structured sequence to adopt spending legislation. This sequence is commonly referred to as the "regular order." In Fenno's account, the House of Representatives acted first. Each House subcommittee wrote an appropriations bill. The full committee then approved each bill, and sent it to the floor for debate, amendment and a vote. The Senate took up the bills second. The Senate subcommittees amended the work of the House, and its full Appropriations Committee then approved each bill and sent it to the floor for debate, amendment and a vote. Finally, the two chambers resolved their disagreements and sent the final version of the bill to the president. This practice has been somewhat modified in modern times, but it is similar in spirit and still regarded by members as the preferred way to do business (Schick 2007).

The Collapse of Regular Order

The regular order began to break down in the late 1970s as Congress slowly transitioned to the routine use of omnibus spending bills. Congress abandoned the regular order in two waves between 1975 and 2012 (Hanson 2014a, Hanson 2014b). The first lasted from 1979 to 1987, while the second began in 1995 and continues today. Over the full period, the House failed to bring 12 percent of bills to a vote in the regular order and the Senate failed to bring 26 percent of bills to a vote. A full 39 percent were adopted as part of package of bills. Congress now fails to vote on a larger proportion of regular appropriations bills than it did in the past, and it is more likely to include all or most of the bills in a package. See Figure 1 for more information.

Figure 1

The immediate reason for the collapse of the regular order is that members have had a harder time reaching agreement on spending bills, and packaging the bills together has proved to be an effective way
to address this difficulty (Hanson 2014a). Members began failing to pass all of the appropriations bills starting in the late 1970s because of disputes over spending. To avoid a government shutdown, they modified the longstanding practice of passing temporary CRs. For years, Congress had passed temporary CRs extending the previous year’s appropriations bills when it needed a few additional weeks or months to pass the regular appropriations bills. Stymied by disagreement, members innovated by passing CRs incorporating any bills that did not pass on time and providing spending authority for those programs for the remainder of the fiscal year, typically at the previous year’s levels and with the same terms and conditions. The virtue of this approach was that it prevented a shutdown of government agencies. It also kept the peace by maintaining the status quo in policy.

Full-year CRs proved to be only a temporary solution. Members still wanted to change policies, and they needed a way to adopt new legislation, even if it was controversial. Their next step was to adapt CRs by adding the full texts of appropriations bills to them. Members found that bundling problematic bills together with more popular bills quelled opposition because the resulting package contained something every member wanted. Over time, the practice of packaging the bills together became common, and the House and Senate became less likely to consider bills on an individual basis in the regular order.

Why did it become harder for Congress to adopt spending bills? Broadly speaking, the norms that supported the regular order were eroded by various reforms and changes in the environment of Congress. These include the congressional reform movement of the 1970s; the growth of “sunshine” laws; passage of the Congressional Budget and Impoundment Control Act of 1974; and, the rise of partisan polarization. They made the Senate floor more contentious, and so it became more difficult for Senate leaders to adopt appropriations bills.

1. Congressional Reform Movement

The legislative environment changed considerably in the years following Fenno’s study. These changes reshaped the legislative environment in which appropriations bills were considered and made the path through the Senate much more challenging.

Fenno’s account describes the appropriations process during a distinct era in the mid-20th century. Majority party leadership was weakened then by ideological divisions within the parties. Congress was dominated by an informal “conservative coalition” of Democrats and Republicans. True power rested with committees, and committee leadership was determined by seniority. Conservative southern Democrats were especially likely to be chairs due to the lack of two-party competition in the South. The regular order flourished in this environment because members often deferred to the decisions of powerful committee chairs during floor debates.

In the House of Representatives, a reform effort was led in the 1970s by a contingent of left-leaning Democrats eager to topple conservative chairs in order to clear the path for more liberal legislation (Rohde 1991, Polsby 2004). Reformers reduced the power of committees by requiring the full Democratic caucus to approve the appointment of chairs rather than relying on seniority. The reform era of the 1970s initially led to a decentralization of power in the House as power was more broadly distributed among subcommittees, but it was followed in the 1980s by efforts to centralize power within party leadership as both parties became more ideologically homogeneous. The net effect of these changes was to limit the power of the Appropriations Committee as the majority party leadership took a greater role in selecting the committee’s members, leadership and spending priorities (Aldrich and Rohde 2000). The committee’s norms of bipartisanship and frugality were eroded, but it continued to most pass spending bills in the regular order.

The Senate did not have a reform movement similar to the House, but the norms of behavior in the chamber changed substantially. In the mid-20th century, senators were expected to specialize in a particular policy area (Matthews 1959). Members received the deference of the chamber in their areas of
expertise, and deferred to other senators on matters outside their specialty. Fenno remarked on the relative lack of debate on appropriations bills on the Senate floor and on the “disposition of Senators to accept the recommendations of their committees” (1966, 593). By the 1980s, observers of the Senate noted that the norm of deference had been replaced with one of individual activism. Senators were likely to get involved in many issues regardless of their degree of expertise and far less likely to defer to the recommendations of senior members (Sinclair 1986, Fenno 1989). They were also more likely to challenge appropriations bills or to offer amendments that might be opposed by the chair or ranking member.

2. Growth in Transparency

Reformers in the 1970s also sought to increase transparency in Congress through “sunshine laws” so that the public could more easily observe the actions of members and hold them accountable for their decisions. These changes may have had the unintended consequence of making it more difficult for members to reach compromises and negotiate solutions.

Congress adopted a series of important sunshine laws in the 1970s (Rieselbach 1986, Wolfensberger 2000). Previously, committees had routinely met behind closed doors, allowing members to hash out their differences in private. The Legislative Reorganization Act of 1970 opened committee proceedings to media broadcasts to make them visible to the public. The House and Senate also required that committee sessions, including critical mark-ups of legislation, be open to the public unless the panel voted to close them. A second reform targeted voting. The House ended its practice of reporting vote tallies rather than the votes of individual members. Reporting tallies allowed members to keep their vote secret from their constituents. Reformers wanted member votes to be public in order to ensure members could be held accountable for their actions. Finally, the House and the Senate both allowed the proceedings on the floor to be televised on C-SPAN.

Sunshine laws are generally regarded as a public good on the grounds that transparency allows the public to hold politicians accountable for their actions. However, some research finds that transparency may actually harm democratic deliberation by making it more difficult to reach compromises. Congressional scholars Sarah Binder and Frances Lee observe that transparency in Congress is a “double-edged sword” that raises the costs of deal-making and interferes with the search for solutions (Binder and Lee 2013, 63-64). It is costly for members to compromise on a position important to interest groups and voters, and public negotiations may undermine the horse-trading common to successful agreements. From this perspective, secrecy and privacy are required for members to resolve their differences, and sunshine laws may have had the unintended consequence of making the passage of appropriations bills more difficult.

3. Budget Act

The adoption of the Congressional Budget and Impoundment Control Act of 1974 was a direct effort to change the way in which Congress developed the budget. Fenno found that the adoption of spending bills was orderly and bipartisan, and that the members of the Appropriations Committee shared a norm of frugality that helped to constrain federal spending (Fenno 1966). Nonetheless, the system of the 1960s was criticized because rank-and-file members only considered the budget in a piecemeal fashion. Members had no opportunity to debate overall spending levels or whether to shift money between budget categories, like defense and social spending.

These criticisms became more salient as the economic boom of the 1960s faded into the slump of the 1970s. Members were faced with sustained deficits for the first time in the postwar era, but they lacked the capacity to grapple with the budget as a whole. President Richard Nixon also sparked a fight with Congress when he ordered appropriated funds to be impounded rather than spent as Congress had directed. Congress responded to these challenges by passing the Budget and Impoundment Control Act of 1974.
The Act strengthened the institutional capacity of Congress to develop and evaluate its own budget by establishing the Congressional Budget Office and new Budget Committees in the House and Senate. The Budget Act superimposed a new budgetary framework on the appropriations process (Wildavsky and Caiden 2004, Schick 2007). The Act requires Congress to adopt a budget resolution establishing overall spending levels (for both annually appropriated and permanently authorized spending) by April 15th of each year. The resolution sets a “302(a) allocation” for the Appropriations Committee, which is the total amount of spending (budget authority) the committee may authorize for the budget year, named after the relevant section of the act. The 302(a) allocation is divided by the Appropriations committee among its subcommittees in a second distribution known as a 302(b) allocation. Under the Act’s timetable, the House and Senate must write and adopt appropriations bills between May and September so that funding authority is in place at the beginning of the new fiscal year on October 1.

Louis Fisher, a well-regarded scholar of Congress and longtime researcher in the Congressional Research Service, maintains that the Act’s requirement that Congress develop its own budget was a mistaken response to a misguided criticism (2000). In his account, the system of the 1960s, in which the president was responsible for developing a budget and Congress considered it on a piece-by-piece basis through the Appropriations committees, was effective and responsible. Criticisms of the congressional system were “greatly overdrawn,” he argued (Fisher 2000, 123).

There are two specific criticisms of the effect of the Budget Act on the ability of Congress to follow regular order. Neither has been evaluated systematically, and it is difficult to assess their validity. The first is that the Budget Act reduced deference to the Appropriations committees by reassigning their traditional role as guardians of the budget to the Budget committees (Fisher 2000, 127). As a consequence of this power shift, new members of the Appropriations committees were more likely than in the past to be advocates for programs rather than interested in cutting spending.

A second criticism is that the Budget Act complicated the passage of appropriations bills by requiring members to debate overall spending levels instead of dealing with the budget in a piecemeal fashion. The 302(a) allocation became a focal point of debate and partisan position-taking that often had unproductive results. Budget reduction hawks sometimes secured the passage of an unrealistically low ceiling for discretionary spending that made it impossible for underfunded appropriations bills to clear the floor on their own. At other times, the inability of members to adopt a budget resolution left appropriators uncertain about the total amount of money at their disposal for the year.

4. Growth in Partisan Polarization

Partisan polarization among members of Congress grew steadily in the years following Fenno’s study. Polarization refers to the fact that Democrats and Republicans in both chambers have grown more internally homogeneous and more distant from each other ideologically. The most common way to measure ideological differences between the parties is on the DW-Nominate scale developed by Keith Poole and Howard Rosenthal (McCarty, et al. 2006). Their method estimates the position of every member of Congress on a left-right scale based on their votes relative to every other member. The scale ranges from -1 to 1, with negative scores indicating liberalism and positive scores indicating conservatism in the modern era.

Figure 2 illustrates one measure of polarization, the ideological distance between the median Democrat and median Republican in the House and Senate from the 80th Congress (1947-48) to the 112th Congress (2011-12). It shows a steady increase in the distance between the two parties in both chambers during that period. These data show that the two parties are more distant than they have been at any time since Reconstruction (McCarty, et al. 2006). The growth in polarization has significant implications for the appropriations process, but these implications differ for the House and Senate due to the rules of each chamber.
Greater polarization in the House is likely to lead to more clashes between the parties without necessarily harming the ability of the House to adopt legislation. The rules of the House of Representatives permit the majority party to exercise strong control over the legislative agenda of the chamber, and to limit the ability of members to engage in dilatory tactics. For example, the House has a Rules Committee dominated by the majority party that issues a “rule” for each bill specifying how long debate will take place and whether amendments will be permitted. A standard expectation of partisan theories of the House is that the majority party will have a substantial ability to influence legislative outcomes when it is ideologically unified and distant from the minority (Aldrich 2011).

By contrast, polarization makes it more difficult to pass legislation in the Senate. The rules of the Senate empower individual members and the minority because they protect the right to unlimited debate and amendment (Sinclair 2002, Smith 2005). These rules generally mean that the majority party must seek to accommodate the minority party and individual members in order to pass legislation. A rise in polarization is likely to lead to gridlock because accommodations become more difficult to reach. Members are likely to filibuster legislation as the level of disagreement between the two parties rises and passage of legislation becomes more difficult (Brady and Volden 2006, Barber and McCarty 2013). Members may also filibuster legislation in order to protect their right to offer amendments (Koger 2010). Consistent with these expectations, considerable research has shown that the use of the filibuster has increased as partisan polarization has grown in the Senate (Koger 2013).
Figure 3 illustrates how the widening gulf between the parties has made reaching accommodation more difficult. Each dot represents a Democratic or Republican senator placed on his or her estimated position on the DW-Nominate scale. In this example, a Democratic majority must secure 60 votes to end a filibuster by building a coalition from the left to the right. In the 95th Congress (1977-78), there was substantial overlap between the parties and the majority had to only bridge a small ideological distance to move from 51 votes (solid gray line) to 60 (dotted gray line). By the 112th Congress (2011-12), the distance between the 51st voter and the 60th had widened substantially. In the modern Congress, legislation preferred by a simple majority of senators may be unacceptable to the 60th voter needed to end debate. Alternatively, winning 60 votes may require substantial policy concessions to the minority that the majority is unwilling to make.

**The Result: Gridlock and Lost Opportunities for Scrutiny**

The net effect of these changes has been to create a more contentious, partisan atmosphere that has often paralyzed the Senate. The House failed to give an individual vote to only 12 percent of appropriations bills between 1975 and 2012, while the Senate failed to vote on 26 percent. The consequences of its failure ripple through the political system by necessitating the need for alternative steps to pass a budget. The Senate’s inability to pass spending bills makes omnibus packages larger and more likely than they would be otherwise. In the words of Senate scholar Steve Smith, “The Senate bears a disproportionate responsibility for the breakdown of the appropriations process” (2014, 233).

The Senate starts its appropriations season at a disadvantage because the House acts first on spending bills. If the House fails to vote on a bill, the Senate generally does not debate it. The Senate is further disadvantaged by the fact that its rules allow debate to quickly become unmanageable. The majority party may face filibusters it cannot overcome or waves of amendments that may politically embarrass its members. Weak majority parties are likely to conclude they cannot bring debate to a close at a cost they are willing to accept. Their strategy is to pull problematic bills from the floor or not call them up at all if they anticipate trouble. As one staff member explained: “There’s a much easier way to do this – we just
won’t take things to the Senate floor” (as quoted in Hanson 2014a, 30). Instead, they bundle bills together and bring the whole package to the floor (Hanson 2014a).

In more abstract terms, the Senate experiences a “collective action” failure when it considers spending legislation. Collective action failures occur in theory when the pursuit of individual interest by each member of a group leads to an outcome that is collectively worse for all members. In this case, debate in the Senate is akin to the well-known example of the “Tragedy of the Commons” in which a common resource that is open to all is destroyed by overuse. Research shows that all members have an electoral interest in debating each bill in regular order because it gives them the opportunity to offer amendments, take positions and claim credit for accomplishments (Mann and Ornstein 2006, Hanson 2014a). Adopting bills in regular order “for the most part, is still everyone’s preference” because it gives them the greatest opportunity to shape legislation, according to former Senate Majority Leader Tom Daschle (as quoted in Hanson 2014a, 29). The problem is that the majority party lacks the ability to manage debate, and each member’s unbridled pursuit of his or her interest creates the risk of gridlock and electoral damage for the majority. The temptation to abuse open debate is particularly strong for members of the minority party during times of high polarization.

The classic solution to the Tragedy of the Commons is to impose rules to regulate the use of the common resource. The parallel solution in the Senate would be to adopt rules to manage debate so that it does not spin out of control, but no such solution has been adopted to date. Instead, the majority limits debate by abandoning regular order — a blunt approach that sharply limits amending opportunities for all members. As one senior congressional staff member explained: “there are seventy senators who are basically disenfranchised” when appropriations bills are not brought to the floor individually (quoted in Hanson 2014a). The first reason debate declines is that members cannot debate a bill that is not brought to the floor. The second is that omnibus appropriations bills and yearlong CRs are forms of “unorthodox lawmaking” that generally limit the ability of members to participate in the legislative process (Krutz 2001, Sinclair 2012). Omnibus bills are often brought to the House floor under a closed rule that prohibits amendments. Debate may be limited in the Senate by a variety of means (Hanson 2014a). Senators may still filibuster packages in an effort to protect their right to debate and amend bills, but this strategy is risky because the cost of being perceived as delaying the budget is high.

1 There are two distinct ways in which spending bills are packaged together when the regular order is abandoned: yearlong CRs and omnibus appropriations bills. CRs in theory are simple extensions of the previous year’s bills, but in practice routinely contain new legislation. Omnibus appropriations bills do not extend the previous year’s bills and only contain new legislation. I treat both types of package as functionally equivalent and refer to them with the generic term “omnibus.” Both are multidimensional packages that combine different categories of the budget into a single, massive bill.

2 The classic example is of a pasture in which all farmers can graze cattle. Every farmer has an incentive to use the free pasture as much as possible, and the end result is that it is overgrazed and destroyed.

3 Senators appear to be more willing to filibuster individual appropriations bills earlier in the session, when there is less risk of being blamed for a government shutdown.
Consistent with this description, data on amending show that deliberation in the Senate has declined sharply as the regular order has collapsed. Figure 4 illustrates the number of votes on amendments to appropriations bills in the House and Senate each year, divided by the total number of members in each chamber. Voting on amendments has declined in the Senate even as it has increased in the House, where individual bills are routinely debated. Non-controversial voice votes in the Senate have been particularly hard hit – a real loss since amendments approved by voice vote are often technical corrections supported by both parties.

One cost of the decline in debating appropriations bills is that it denies members the opportunity to catch and correct mistakes and oversights in legislation. Abandoning the regular order “risks enacting substandard legislation” (Green and Burns 2010) because members cannot challenge problematic provisions. Second, members lose the opportunity to amend provisions that are out of step with opinion in the chamber. A likely outcome of open debate in regular order is that bills will be moderated to satisfy “pivotal” members of the floor whose votes are needed to win passage for legislation (Krehbiel 1998). For example, the $1 trillion 2015 appropriations ‘Cromnibus’ adopted in December 2014 contained a provision weakening campaign finance laws among other objectionable matters, and members had no opportunity to amend this legislation (Prolop 2014). It is likely that these provisions would have been challenged with amendments and modified or struck from the bill under the regular order.

There are other costs to the collapse of regular order as well. The inability of the Senate to process appropriations bills raises the likelihood that affected agencies will be funded through a temporary CR. The Government Accounting Office reports that temporary CRs lead to wasteful spending and inhibit the ability to federal agencies to carry out their appointed tasks (2013). It also increases the risk of a government shutdown and the serious disruptions to the lives of the American people that it entails. One study estimated the cost to the economy of the 2013 shutdown at $24 billion (CNN Money, 2013).

What does the collapse of regular order look like in practice? The events leading up to the passage of the $1 trillion FY 2015 ‘Cromnibus’ offer a useful illustration. The House of Representatives acted first on the 2015 spending bills, and succeeded in passing seven of them in regular order. In the Senate, the regular
order broke down. Majority Leader Harry Reid was unable to reach an agreement with Republicans on amendments to the bills, and ultimately failed to bring any of the dozen annual spending bills to the floor on an individual basis. The collapse of the regular appropriations process led both chambers to package all discretionary spending for the federal government (other than that for the Department of Homeland Security, which was held back for separate consideration later) into a single package that was considered in a rush at the end of the session.4

The collapse of the regular order had serious consequences. It prevented most rank-and-file senators from debating appropriations. House members debated the seven spending bills considered in the House vigorously. Democrats and Republicans offered amendments, and some minority amendments were adopted. Overall, members cast 121 votes on amendments during their debate on the bills. Senators had no opportunity to amend either the regular appropriations bills or the omnibus. This prevented them from challenging controversial provisions or even from making non-controversial corrections through amendments adopted by voice votes. Instead, senators adopted a $1 trillion budget that was written behind closed doors with no opportunity to make changes to it.

The inability of the Senate to act on legislation in the regular order effectively guaranteed that spending bills would be passed late, that a temporary continuing resolution would have to be adopted, and that a package of bills would be necessary. The ‘Cromnibus’ in December 2014 could have covered just the bills the House failed to pass instead of 11 of 12 if the Senate had taken action on the bills available to it. Instead, the Senate squandered its opportunity to build on the work of the House.

**Restoring the Regular Order**

Returning to the regular order will not be easy. The bookshelves of Washington, D.C., are filled with grand proposals for reform that gather dust and are never enacted. The first challenge is that many of the changes to the legislative environment described above are baked into the congressional cake for the time being. It is simply not likely that any set of reforms can reduce individual activism in the Senate or the degree of partisan polarization between the parties. These changes have complicated the passage of budget bills by weakening deference to the Appropriations Committees, placing budget choices in sharp, public relief, giving members less room in which to negotiate, and by making filibusters more likely. Successful reforms will have to live within the constraints imposed by these conditions or find ways to mitigate their effects.

The second challenge, based on long-standing political science research on motivations of members of Congress, is that members will only support proposals that they view as being in their electoral interest. In Federalist 51, James Madison explains how the government of the U.S. protects liberty by harnessing human nature so that “ambition [is] made to counteract ambition.” In a similar spirit, budgetary reforms will have to harness the electoral interests of members to be successful. In the next section of this paper, I first review how political scientists approach the study of Congress and then assess whether a proposed set of reforms is likely to succeed.

**Conditions for Successful Reforms**

It is common for political scientists to take a “rational choice” approach to the study of Congress by treating the institution as a collection of individual members who act strategically to pursue their own interests. The starting point in this approach is for researchers to identify member interests and then to analyze how the pursuit of those interests can help to explain legislative decisions in Congress or the

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4 Republicans assumed control of the Senate in January of 2015 following the 2014 midterm elections. The new Republican majority reconsidered the FY2015 Homeland Security appropriations bill. It was debated in both the House and Senate and adopted on an individual basis in March of 2015, removing this bill from the ‘Cromnibus.’
existence of institutional features such as political parties and rules. In the words of Harvard political scientist Ken Shepsle, “Individuals have intentions and purpose and motives; collections of individuals do not” (1992, 254). Congress is a “They,” not an “It” (Shepsle 1992).

The goal most commonly ascribed to members of Congress is the desire to win re-election (Fenno 1973, Mayhew 1974). Members may have other interests, but the desire for re-election is preeminent because no other goal can be pursued unless members can win and hold office. Members take positions and cast votes strategically to maintain support among their constituents and win re-election. Research on the effect of member electoral interests on policy-making abounds. Alan Jacobs, for example, describes how electoral goals constrain the ability of members to develop policies that impose short-term costs to secure long-term investments (2011). Scott Adler and John Wilkinson present evidence that electoral incentives motivate members to solve problems that are the focus of public attention (Adler and Wilkinson 2012).

Similarly, members join political parties in order to help them meet their reelection goals (Aldrich 2011). A party affiliation helps candidates win by making it easy for likeminded voters to identify and vote for them. A party with a positive national reputation may give an added boost a candidate’s chances of winning on Election Day (Cox and McCubbins 2005). Parties offer organizational resources such as campaign staff and money that can help members win reelection (Jacobson 2009). Within Congress, parties provide an organizational framework that helps members set the legislative agenda and adopt legislation that will be popular in their home states and districts. Members may seek to advance their electoral interests by strengthening their party’s national reputation, or by investing more power in their leadership to pursue policy goals that are shared with other members.

The rules of the House and Senate are also shaped by the interests of members. Sarah Binder’s account of procedural change in Congress describes how members of the House adjust the rules of the chamber at the beginning of each session to grant or take power from the majority party depending on the balance of power between the two parties (1997). Changing the rules of the Senate requires a two-thirds supermajority, and as a result, minorities have often been able to frustrate rule changes in the chamber that would favor the majority (Binder and Smith 1997). But, formal changes to the rules are not always necessary to carry out reforms. A Democratic majority successfully eliminated the filibuster for some presidential nominations using a parliamentary maneuver known as the “nuclear option” in 2013 (Kane 2013). The lesson remains the same: members, acting through parties, shape the procedures used to consider legislation in both chambers to reflect their individual electoral interests.

Some have expressed an understandable skepticism, given their interpretation of member interests, as to whether reforms of any kind to the budget process will make any difference. Political scientist David Primo analyzed broad budget reforms efforts such as Gramm-Rudman-Hollings and concluded that they “lose some effectiveness because they are not designed by impartial arbiters seeking to maximize social welfare. Rather, they are designed by those with interests that may cause them to derail reform” (2007, 127). Members will continue to do what is in their own interest regardless of the process, or alter proposed reforms to suit them. Primo concludes that only systemic changes such as constitutional reform are likely to change the budget process.

Two important lessons can be drawn from the findings of political science research about the prospects for successful budget reform. First, members of Congress act to advance their electoral interests as they understand them, rather than as reformers might wish. Second, the result of members of Congress pursuing their individual interests may be good for members individually but bad for the country as a whole. The classic example of this problem is deficit spending. It may be good public policy to bring the budget into balance, but it is good politics for members to vote for high spending and low taxes. Successful reforms must build on member interests while still channeling them toward a policy goal that is good for the nation. As I explain below, restoring the regular order is both compatible with member interests and likely to lead to policy outcomes that reflect the preference of the median senator.

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Potential Reforms

Finally, I evaluate a variety of proposed reforms to restore the regular order. The good news is that research shows members broadly consider the regular order to be in their electoral interest because of the credit claiming and position-taking opportunities associated with debating the bills. Members turn to omnibus bills only when the costs of unmanaged debate in regular order rise beyond what they are willing to accept, not because they prefer passing an omnibus (Hanson 2014a). They are likely to be receptive to efforts to restore regular order. As longtime Senate Appropriations chair Robert C. Byrd (D-WV) said: “That is the way to protect Congress’s power of the purse. That is the way to protect the American people. That is the way to respect Members’ rights to debate important legislation.” (Congressional Record, 2004). Next, a set of potential reforms to assess whether they are consistent with the re-election interests of Congress and likely to be successful is analyzed.

1. Reform the Filibuster

The most effective way to restore the regular order in the Senate would be to give the majority party the ability to manage debate by reforming the filibuster or by statutorily requiring a majority vote for appropriations bills in a manner similar to budget reconciliation bills. Many senators are likely to view filibuster reform as being in their interest. Senators voted to limit the filibuster’s use to block judicial nominations as recently as November of 2013.

There are two reasons why eliminating the filibuster would aid a return to the regular order. First, members use the filibuster to block the consideration of legislation or to seek accommodations when they have policy disagreements with a bill. Such disagreements are now quite likely due to the large ideological distance between the two parties. Second, members filibuster legislation to protect their right to offer amendments if the majority is seeking to end debate on a bill or taking other steps that might restrict amendments. Allowing a simple majority of senators to close debate on a bill would kill both birds with one stone by simultaneously giving the majority party the ability to limit debate and amendments. It would smooth the path through the Senate and allow the majority party to follow its preferred course of the regular order, just as the removal of supermajority requirements for nominations in 2013 cleared the path for the Senate to confirm judges (Kamen and Kane 2014).

One objection to such reform is likely to come from those who believe that the filibuster preserves a Senate tradition of open debate, but this argument stems from a misunderstanding of the history of the Senate. Sarah Binder and Steve Smith effectively debunk the notion that the filibuster was designed or has survived in order to protect open debate in the Senate (1997). It was never intended by the Framers, was created inadvertently when the Senate’s previous question motion was eliminated, and has persisted due to the ability of Senate minorities to block reform of the Senate’s rules.

A second objection is that reforming the filibuster would transform the Senate into a more majoritarian institution and reduce the ability of a Senate minority to have its point of view incorporated into legislation. While the Senate has a long tradition of seeking to accommodate its members, there is no constitutional basis for the idea that approving a law should require supermajority support. A variant of this argument is that the filibuster prevents a misguided majority from adopting a policy that is out-of-step with public opinion. This argument is puzzling in several respects. First, the Framers’ system for slowing the pace of change and forging consensus was to divide power between the branches of government and require them to reach agreement before a new law could be passed. The argument that new laws also should require the agreement of a supermajority of senators is a modern innovation. Second, democracies have a long-standing practice to ensure elected officials are held accountable for unpopular decisions: elections. Voters can directly decide whether they disapprove of a policy and vote against their senator if they wish. There is no need to rely on the Senate minority to play this role. Third, a majority of senators is more likely to reflect average opinion than the 60th senator whose demands must be met to end a filibuster. The most famous filibuster in Senate history was aimed at upholding the views of an extreme

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5 See chapter 1 of the book for an extended discussion of the costs and benefits of regular order from the perspective of members.
minority and blocking desegregation legislation. The real danger is that filibusters will be used to defend extreme points of view rather than mainstream opinion.

The key question is how the Senate can create a better system to manage debate on appropriations bills. Currently, 60 senators must vote for cloture to end debate in the Senate according to Rule 22 of the Standing Rules of the Senate. There are several potential ways to adjust this requirement. One approach would be for two-thirds of senators to agree to reduce the requirement for cloture on appropriations bills to a simple majority, while providing guaranteed time for debate and amendment. Binder and Smith suggest establishing a succession of cloture votes over which the number required from cloture drops from 60 to a simple majority (1997). In either case, adopting a formal change to the Senate’s rules would be the best way to secure a change with broad support in both parties. The cloture requirement could also be changed by a majority of senators exercising the “nuclear option” as Democrats did in 2013, although such a step would likely generate substantial minority opposition. Finally, senators could amend the Budget and Impoundment Control Act to give appropriations bills the same procedural protections as budget reconciliation bills, which only require a simple majority to be adopted.

How important is it for specific procedural protections to be carved out for the minority? This question is best answered through negotiations between members themselves, but the example of the House of Representatives suggests that fears about cloture will simply shut down debate if given the chance are overblown. The House has far more majoritarian rules than the Senate, and it has preserved open debate on appropriations bills even amidst blistering partisanship (Hanson 2015). In fact, the data presented earlier in the paper show that House members have a better opportunity to amend spending bills than do senators. The reason appears to be that the House majority party has the ability to manage debate if it gets out of hand. For example, the House majority responded to dilatory action by the minority in the 2009 by adopting structured rules that allowed both minority and majority amendments. It controlled the debate without eliminating it. One takeaway point is that the majority party has an incentive rooted in its desire to assemble a winning coalition and a sense of fair play to allow amendments by both sides to appropriations bills. Given the Senate’s small membership and relative collegiality compared to the House, it is likely that the Senate majority party would be equally if not more amenable to open debate on appropriations bills if it had the security of knowing it could manage the debate if necessary.

One danger of singling out appropriations bills for reform is that it would create a strong incentive for senators to use appropriations bills to carry controversial legislation that would be filibustered if it stood on its own. For example, portions of the Affordable Care Act were adopted through the Budget Act’s reconciliation process because its procedures avoid a Senate filibuster. Senators could avoid such problems by strengthening existing germaneness requirements on appropriations bills, such as by allowing the chair, subject to guidance from the parliamentarian, to rule on a germaneness point of order without requiring a vote of the Senate.

The major consequence of filibuster reform would be to strengthen the capacity of the Senate to act by empowering a simple majority of senators to pass legislation. In a reformed Senate, the majority party would be better able to pass spending bills on an individual basis prior to the beginning of the fiscal year. This would not guarantee that Congress would pass all bills in regular order, but it increase the likelihood that bills would be passed on time. Fewer continuing resolutions would be needed and omnibus bills would be fewer in number and/or combine a smaller number of separate appropriations bills.

Reforming the filibuster would also have policy consequences. Assuming that the Senate could strike an effective balance between permitting open, but managed, debate, in the manner of the House, the likely outcome would be that policy would reflect the preference of Senate’s median voter. It is a standard expectation of research on Congress that open debate will lead to bills being amended until they satisfy the preference of the member whose support is needed to win passage. Particularly egregious provisions would be challenged and modified under open debate. Senators would also have the opportunity to engage in the routine kind of legislative tinkering that normally occurs through amendments adopted by voice vote or unanimous consent. This kind of deliberation will allow members to better oversee federal agencies and make decisions about federal priorities.
2. Concurrent Consideration of Appropriations Bills

By custom, the House acts first on spending bills. The Senate could reform its practices so that it considers appropriations bills concurrently with the House. This reform is clearly in the interests of senators because the failure of the House to act denies them the opportunity to debate bills that could otherwise be considered in the Senate.

The Origination Clause of the U.S. Constitution requires that “All Bills for raising revenue shall originate in the House of Representatives.” This provision has its roots in a British tradition that all money bills, including bills on both taxes and spending, had to originate in the House of Commons. In the American case, the Framers restricted the clause to bills for “raising revenue” rather than generally applying it to money bills. This fact has led to a debate between the House and Senate on the question of whether appropriations bills, which do not raise revenue, must originate in the House. The Senate typically has deferred to the House position that appropriations bills must originate in the House of Representatives, but this practice is a custom rather than a settled constitutional requirement (Saturmo 2011).

This practice reduces overall scrutiny of the budget. While the House typically passes spending bills in the regular order, it failed to do so 12 percent of the time between 1975 and 2012. The Senate could have debated these bills, but often did not out of deference to the House. A simple reform would be for the Senate to develop and debate its bills concurrently with the House, and to pass them regardless of whether the House has acted. The Senate took a step in this direction in the 1990s when it began to report its own bills without waiting for the House. In 1998, it defied the tradition altogether and passed seven bills before the House. But, in recent years, both chambers have reverted to tradition (Schick 2007, 232).

The capacity of the Senate Appropriations Committee would have to be strengthened in order for the Senate to act more independently in appropriations. Fenno’s account makes clear that the Senate has historically been a junior partner to the House of Representatives in the development of appropriations bills. The House took the lead in writing the bills, and the Senate modified this work. Other scholars have observed that senators are spread more thinly than House members in their committee assignments, and do not have the same time available or level of specialized policy expertise as their House counterparts (Schick 2007, 232). Senators would have to expand the staff resources available to the Appropriations Committee in order to improve its capacity to develop legislation in a manner similar to the House. Senators would also have to consider modifying to Rule 16 of the Senate, which protects appropriations bills against many non-germane amendments if the bills originate in the House.

3. Ease Transparency Requirements

Political scientists have argued that reducing transparency in Congress could improve negotiating conditions and aid the passage of legislation. I am skeptical that members would view this step to be in their electoral interest, but it is possible that giving members a greater degree of insulation from the intense gaze of interest groups and the public would improve their ability to negotiate and pass spending legislation in regular order.

Effective negotiations require privacy that is hard to come by in the wake of the sunshine laws passed in the 1970s. Committee meetings are now routinely open to the public, and floor proceedings are broadcast on C-SPAN. Most controversial votes are recorded. Members who stray from the party line to work with the other side in this environment are immediately criticized. Arguably, one of the reasons Congress may have turned to the creation of omnibus bills is because they are informally negotiated behind closed doors. They may offer exactly the kind of flexibility and privacy members need to make compromises. It is possible that members could more easily reach agreement on bills in the regular order if there were more opportunities for private negotiation or fewer recorded votes. For example, each chamber could report vote tallies on appropriations bills rather than the votes of individual members. Members might be more likely to cast tough votes if their decisions were shielded from direct view.
The primary problem with this approach is that transparency is highly valued by numerous stakeholders who are likely to strongly oppose any effort to allow members to make decisions in secret. With a few notable exceptions such as the limits placed on disclosure requirements in campaign finance laws by the Supreme Court, the political system has moved toward greater rather than less transparency. Sites like Congress.gov make bills, reports and votes immediately accessible to the public. Members and party organizations use Twitter to blast out links to information and to take positions on a continuing basis. The lack of transparency in creating an omnibus bill is one of the key criticisms that members, journalists, interest groups and scholars have made of the process. Transparency is generally valued as a way to prevent corruption, while secrecy is equated with inappropriate influence and shady dealings. It is likely that members advocating fewer recorded votes or closing committee meetings would be subject to strong criticism, and for that reason would perceive it to be against their electoral interests.  

4. Reform the Budget Act

The Budget Act as a central part of the congressional landscape is unlikely to change. Nonetheless, it is worth evaluating whether amending the Act by abolishing the requirement to pass a budget resolution might make it easier for Congress to return to regular order. I conclude that such a step has potential, but largely unevaluated, merit and that most members would not view it as being in their interest.

Fisher advocates abolishing the requirement for Congress to adopt a budget resolution while keeping other useful institutional features created by the Act, such as the Congressional Budget Office. The logic of Fisher’s argument suggests the Appropriations Committee’s prestige and traditional role as guardian of the Treasury could be restored if the requirement for Congress to adopt a budget resolution were abolished. Members of Congress might then be more willing to defer to the committee’s decisions and adopt bills in the regular order. The problem with this approach is that all committees saw their authority diminished in the post-reform House by abolition of the seniority system in the House and by the rise of individual activism in the Senate. Eliminating the requirement to adopt a budget resolution may not be sufficient at this point to improve the committee’s stature or lead to appropriations bills being treated with greater deference on the floor.

Fisher also suggests that effective budgeting was undermined by requiring Congress to set an overall figure for discretionary spending. The merit of this argument is difficult to assess, as there is no systematic research examining whether the size of a 302(a) allocation affects the likelihood that spending bills will be passed in regular order. Nor does any research examine whether budget figures proposed by presidents are more likely to be realistic than those adopted by Congress. For example, President Bush proposed a ceiling for discretionary spending that was seen by many as too low to adequately fund appropriations bills in 2002. The House endorsed this limit in its budget resolution, and subsequently Speaker Hastert opted not to bring eight bills to the floor when it became apparent he could not pass them without making more funds available (Hanson 2014a, 139). This example suggests that there is some validity to the point that low discretionary spending ceilings can make it more difficult to pass spending bills, but it is not clear that either the president or Congress is more likely to propose “realistic” spending caps.

It seems unlikely that members of Congress would willingly give up their current right to debate overall spending levels. First, Fisher correctly notes that it is “difficult to defend fragmentation, splintering, and decentralization” against a unified budget process (1997, 208). Second, this step would leave the president with the sole responsibility for proposing an overall budget number. Members appear to value the ability to take positions on cutting or expanding different segments of the budget in the annual debate on the resolution, and would likely object to giving the president this role exclusively. Absent a sea change in the way members perceive their interests, it appears unlikely that a proposal to abolish the requirement to pass a budget resolution will be adopted by members in the near future.

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6 The campaign to block the Trans-Pacific Partnership Agreement (TPP) is a prime example. The treaty was negotiated in secret in order to give participating nations the freedom to make difficult decisions, but the secrecy generated substantial criticism from stakeholder groups. See Kaminski, Margot, “Don’t Keep the Trans-Pacific Partnership Talks Secret,” *New York Times*, April 14, 2015, available at http://www.nytimes.com/2015/04/14/opinion/dont-keep-trade-talks-secret.html.
5. Restore Controlled Earmarking

Some observers have argued that the moratorium on earmarking should be lifted because earmarks help congressional leaders form coalitions for passage of a budget. Earmarks have historically been regarded as in the interest of members, and they might entail a return to them in the future. I conclude that earmark reform may marginally aid a return to the regular order, but it is not likely to have much effect on its own.

Earmarks are direct grants for projects carved out of larger programs by members of Congress for their home states and districts. Members of Congress adopted a moratorium on earmarks in 2011 as the result of a backlash against the rising number of earmarks in appropriations bills, and due to concerns that projects funded through earmarks were likely to be wasteful or unnecessary. President Obama supported the moratorium by threatening to veto appropriations bills containing earmarks.

Research suggests that earmarks may play a vital role helping leaders in Congress to build a coalition of support for major pieces of legislation like appropriations bills. Political scientist Diana Evans presents evidence in her book *Greasing the Wheels* that pork barrel projects help leaders to “buy votes” in support of general interest legislation in Congress (2004). Former Senate Majority Leader Tom Daschle similarly observed:

>If you take away a member's earmark capacity, you take away a big motivation for him or her to want to finish that bill… I mean, [appropriations is] the one thing that used to be fairly bipartisan, and the reason it was bipartisan was because everybody felt invested. They had things in there for their states, and they didn’t want to jeopardize those things. We've removed all of that, and so now they don't feel any investment any longer (Interview with author, February 15, 2012).

These arguments suggest that abolishing earmarks had the unintended consequence of making it more difficult for leaders to build coalitions of support for spending bills.

Two major reasons are offered for lifting the moratorium on earmarking in appropriations bills. First, some members take the principled position that Congress has the right to exercise its power of the purse to direct where spending will take place. If Congress does not earmark the bills, they say, it effectively transfers the power to make those decisions to the executive branch. Second, and more relevant to the arguments here, earmarks could help leaders build coalitions of support for passing bills in the regular order, because members have long regarded such spending as being in their electoral interest (Mayhew 1974).

While research lends support to the idea that earmarks help leaders build a coalition of support for legislation, no one has directly analyzed whether earmarks help Congress to pass appropriations bills in the regular order versus in a package. There are reasons to be skeptical that lifting the moratorium would do so. Data from Citizens Against Government Waste show that the number of earmarks rose sharply after 1996 and continued to rise through 2005 during the heart of the second wave of omnibus legislating (2014). The data suggest that earmarks either had no practical effect on the likelihood of an omnibus, or that they only made a difference on the margins.

Restoring earmarking could also have some undesirable side effects. Some experienced observers of the appropriations process contend that the explosion of earmarking in the late 1990s and early 2000s contributed to a weakening of the Appropriations Committees. Scott Lilly, the former staff director of the House Appropriations Committee, said the task of evaluating thousands of earmark requests overwhelmed the relatively small staff of the committee (2012). The committee’s ability to evaluate budget requests from executive agencies withered as its resources instead became focused on awarding earmarks. “Congress had in effect traded control of 100% of the federal discretionary budget for the ability to earmark 2%” (Lilly 2012).
6. Limit the Use of Temporary Continuing Resolutions

A final option would force Congress to take action on spending bills in a timely manner by limiting the use of temporary continuing resolutions.

This proposal is primarily aimed at ensuring the timely passage of spending bills rather than helping Congress return to regular order. A temporary continuing resolution is a commonly used safety valve in Congress that provides a few weeks or months of funding for federal agencies if Congress fails to pass the regular appropriations bills. These measures are unpopular for several reasons. First, they create uncertainty for federal budget managers who must begin a new fiscal year without knowing their actual budget. Second, the measures may encourage delays in finalizing the budget by giving members an easy way to put more time on the clock for negotiations. For these reasons, some budget experts have proposed requiring a supermajority to pass a temporary CR or prohibiting them altogether by requiring that appropriations bills provide a full 12 months of funding (Meyers et al. 2013). Members of Congress respond to firm deadlines (Adler and Wilkerson 2012), and therefore may be more likely to pass appropriations bills in a more timely fashion if they believe a government shutdown, and resulting negative popular reaction, could result from failure to do so.

One risk of banning temporary CRs is that it might actually make omnibus bills more likely by increasing the pressure on members to pass a budget more quickly. Additionally, many temporary continuing resolutions are adopted with strong bipartisan support. Requiring a supermajority to adopt a temporary CRs might not constrain member actions for that reason. Finally, temporary CRs have been a feature of budget politics for decades, including during the years before the passage of the Budget Act. It is unlikely that members would find it in their interest to give up a tool that is so useful to them.

Is there an Advantage to Omnibus Bills?

This paper is premised on the idea that it would be beneficial for Congress to return to regular order. An alternative argument is that the omnibus process that has evolved may be preferable to the regular order.

By this argument, the key question is whether Congress can successfully pass a budget, not what procedures it uses to do so. The omnibus process may have evolved as it did precisely because it offers benefits that are can no longer be found in the regular order, such as the ability to negotiate privately and informally to reach compromises. Leaders may have a greater ability to adopt unpopular but necessary budget measures in a take-it-or-leave-it package like an omnibus. Controversial pieces of legislation that are attached to the bills are an unseemly but routine part of legislative sausage-making, and crucial for sealing difficult deals between members. Omnibus bills get things done and are about the only place where we still see compromise in Congress — a rare and precious feat in today's polarized Congress.

This view is mistaken. First, no research suggests that the policy that emerges from the omnibus process is “better” in a substantive sense than what emerges from regular order — only that it tends to be a bipartisan logroll that is likely to pass. Nor is there any systematic evidence that leaders use omnibus bills to make tough budget decisions, such as cutting spending. Omnibus bills are more likely, in fact, to be criticized for being bloated and wasteful. My research suggests that members grudgingly accept omnibus bills as a necessary evil to pass the budget. Omnibus bills as the “last resorts of a failed process” according to former Senate Majority Leader Trent Lott. They may not even be playing this role effectively any more. In recent years, Congress frequently has adopted continuing resolutions that merely extend the previous year’s funding levels and terms rather than pass newly crafted appropriations bills. It is possible that the tried and true practice of packaging bills together to create broad coalitions of support may no longer be sufficient to pass such legislation in today’s challenging legislative environment. Repairing the Senate would avoid the necessity of creating an
omnibus by allowing members to follow their preferred path of the regular order. In a reformed Senate, senators would debate bills, make difficult decisions and pass a budget without getting mired in gridlock.

Conclusion

This paper evaluates a set of reforms that might help Congress return to its traditional method of adopting a dozen annual appropriations bills in the regular order instead of in an end-of-session omnibus. Omnibus bills are roundly criticized because they are often adopted with little scrutiny by rank-and-file members and contain controversial provisions or wasteful spending. Restoring the regular order would improve scrutiny over the budget by allowing Congress to bring its full deliberative capacity to bear over the budget. It would help members achieve electoral benefits by giving them an opportunity to take positions, offer amendments, and claim credit for accomplishments. Eliminating the filibuster would increase the legislative capacity of the Senate and make it more likely that it could adopt spending bills individually and on time.

Returning to the regular order will not be easy. The legislative environment has changed considerably since the 1960s due to the congressional reform movement, the rise of the individualistic Senate, sunshine laws, passage of the Budget Act and the rise of partisan polarization. Successful reforms must operate within this new environment. As with any reforms, they must take into account the interests of members of Congress. Elected officials are strategic actors who are more likely take actions that are in their electoral interest rather than to pursue a more diffuse idea of the public good. Successful reforms must be compatible with, or ideally enhance, the re-election interests of members.

The analysis of this paper suggests that the likeliest path back to the regular order runs through the Senate. The House follows the regular order more often than the Senate, most likely because it has the tools to control debate when necessary. The Senate majority party lacks effective tools to control debate in the chamber and so it abandons the regular order to shield itself from difficult votes on amendments, avoid filibusters, and ease the passage of the budget by creating an omnibus package. A reform that would allow a simple majority of senators to close debate and vote on a bill, either by reforming the filibuster or through statutory means, would give the majority party the ability to manage debate and pass bills in regular order as most senators prefer. Senators would also benefit by writing and debating appropriations bills concurrently with the House rather than waiting for the House to act. Other reforms assessed here seem less likely to be effective. The Senate is the choke point in today’s legislative system. Clearing a path through the chamber would do much to allow Congress to return to more traditional means of passing budget legislation informed by full debate and greater transparency.

References


*Restoring the Regular Order in Congressional Appropriations*


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