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Compliance with the Regular Order in the U.S. Senate

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An abstract of a thesis submitted to the Faculty of Emory College of Arts and Sciences of Emory University in partial fulfillment of the requirements of the degree of Bachelor of Arts with Honors

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## Abstract

### Compliance with the Regular Order in the U.S. Senate by Joshua C. Moscow

The rules and precedents of the U.S. House of Representatives and the Senate establish a “regular order” in the legislative process, but many have noted a trend in which deviation from the regular order is becoming more common and a bill’s path through Congress can be chaotic and unpredictable. This phenomenon is evident in the Senate, where a traditional emphasis on deliberation and minority rights has been threatened by many unorthodox procedures. This trend raises two questions: Why should the Senate follow the regular order? And why does the Senate follow or not follow the regular order in the legislative process?

Using an original measure that tracks the occurrence of several types of such unorthodox procedures, this study uses quantitative evidence to confirm that violations of the regular order are increasing. From 2008 to 2010, violations occurred with greater frequency than at any point in the previous 29 years. Increases in centralization in particular as well as the length of the Senate’s legislative sessions provide the greatest leverage in explaining the upward trend in violations. Contrary to expectations, increased partisan polarization and the presence of electoral cycle years have no direct effect on increased violations. Moreover, while partisan polarization is highly correlated with centralization, systematic multivariate analysis clearly demonstrates that centralization explains most of the variance in violations. These findings motivate future inquiries that explore the roles of centralization and time in the regular order and legislative decision-making.

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Table of Contents

I.	Introduction.....	1
II.	What is the Regular Order?.....	7
III.	Hypotheses.....	21
IV.	Research Design.....	24
V.	Results.....	28
VI.	Conclusions.....	35
VII.	Tables.....	41
	1. Bill Coding Sample.....	41
	2. Average Individual and Total Violations per Bill per Year, 1979-2010.....	41
	3. Active Days per Legislative Session, 1979-2010.....	42
	4. Percentage of Party Line Roll Call Votes, 1979-2010.....	43
	5. Appropriations to Party Leadership Offices, 1979-2010.....	44
	6. Bivariate Regression Coefficients.....	45
	7. Ordinal-Level Independent Variable Correlation Coefficients.....	45
	8. Partisan Polarization Multivariate Regression Coefficients.....	45
	9. Centralization Multivariate Regression Coefficients.....	45
	10. Partisan Polarization Regression Coefficients for Individual Violations.....	46
	11. Centralization Regression Coefficients for Individual Violations.....	46
	12. Partisan Polarization Multivariate Regression Coefficients by Electoral Years.....	46
	13. Centralization Multivariate Regression Coefficients by Electoral Years.....	47
VIII.	Figures.....	48
	1. Average Total Violations per Bill per Year, 1979-2010.....	48
	2. Average Committee Bypasses per Bill per Year, 1979-2010.....	48
	3. Average Multiple Committee Referral per Bill per Year, 1979-2010.....	49
	4. Average No Committee Hearing per Bill per Year, 1979-2010.....	49
	5. Average No Committee Markup per Bill per Year, 1979-2010.....	50
	6. Average No Committee Report per Bill per Year, 1979-2010.....	50
	7. Average Amendment Tree Fills per Bill per Year, 1979-2010.....	51
	8. Average Omnibus Measures per Bill per Year, 1979-2010.....	51
	9. Average Filibuster per Bill per Year, 1979-2010.....	52
	10. The Effect of Centralization on Violations per Bill.....	52
	11. The Effect of Session Length on Violations per Bill.....	53
	12. The Effect of Partisan Polarization on Violations per Bill.....	53
	13. Average Violations per Bill by Election Year.....	54
	14. The Effect of Session Length on Average Roll Call Votes per Day.....	54
	15. Average Roll Call Votes per Day by Election Years.....	55
IX.	Works Cited.....	56
X.	Appendix: Codebook.....	60

## I. Introduction

In the United States Congress, the House of Representatives and the Senate are governed by complex rules that dictate the steps a bill must take to becoming a law. Generally speaking, House and Senate procedures mirror each other: a bill is introduced by any given member; it is referred to a committee that examines, refines, and recommends it for floor consideration; it is debated and amended in the chamber; and it is voted on for passage by the entire body. If differences exist between two versions of the same bill passed by both houses, a conference between House members and senators is held to reconcile the differences and forge a compromise bill, which is then sent back to the chambers for an up or down vote. If passed by both the House and the Senate, the bill is sent to the White House and the president either signs it into law or vetoes it. However, such an explanation of the legislative process in Washington is now more than ever deceptively simplistic.

The House and the Senate vary greatly in their procedures. The differences between the organization and rules of the two chambers reflect the different roles that they were designed to play in enacting the nation's laws. The House, intended to reinforce popular sovereignty with proportional state representation, direct elections, and short terms of office, is bigger and was expected to be more volatile than the Senate. The Senate was designed to ensure equal representation of states and to act as a stabilizing check against the fluctuation of the House with long terms and elections originally via state legislatures. In this way, the large size of the House has traditionally encouraged quick and responsive legislative action, whereas the smaller size of the Senate has encouraged inclusive and extensive deliberation. As George Washington once said to



Thomas Jefferson, and what is now an oft-quoted phrase on Capitol Hill, “we pour [hot] legislation into the senatorial saucer to cool it” (Byrd 2006, S3408).

The procedures governing Congress have changed over time, more in the House than in the Senate, partially in response to the growth of demands that have been placed on the two chambers. The U.S. is much larger and more complex than it was when the Constitution was instituted and the scope of the federal government has grown correspondingly. Indeed, perhaps this consideration was the reason why the framers gave the House and the Senate the power to determine their own procedures. With the countless obligations that the parties and individual officials must meet on a daily basis, and scarce resources, legislative efficiency is an ongoing problem. As a result, both chambers now have procedures that allow the suspension of otherwise cumbersome rules to expedite the passage of non-controversial measures in order to conserve time and energy (Oleszek 2011, 14).

The House and the Senate also differ in how they distribute legislative power. The House is often described by the degree to which it is centralized or decentralized. When it is centralized, the majority leadership uses its procedural advantages to control the chamber’s agenda, influence voting, and influence outcomes. When it is decentralized, the majority leadership defers legislative power to committee chairs and performs formal duties of scheduling legislation for floor action. Rather than being centralized or decentralized in same manner as the House, the Senate is characterized by a distribution of power in which power resides neither in party leadership nor committees but in all senators. This is due to three reasons. First, the Senate’s small size enables it to give the minority and individual members opportunities to participate in the legislative process

without sacrificing order and efficiency. Second, because the Senate's presiding officer is the vice president, the Senate has chosen not to combine his powers with majority leader's as the two may not always be members of the same party. And third, the ability of minorities and individual members to obstruct or delay legislative action limits the ability of the majority leadership to control the agenda and dictate outcomes.

Despite the differences in how the House and Senate distribute power, neither of the chambers have been consistently centralized or decentralized over time. Between 1890 and 1910, the House was characterized by great centralization and strong party leadership. This was reflected particularly in the "czar" speakerships of Thomas Reed and Joseph Cannon. During this period of time, a group of similarly powerful Senate leaders in Nelson Aldrich and William Allison were seen to have exercised great power, despite having to do so jointly with committee chairs and not having the kinds of procedural tools accorded to their House counterparts. Between 1994 and 2008, Speaker Newt Gingrich oversaw centralization reflective of the Reed-Cannon era only to be followed Speaker Dennis Hastert's allowance of somewhat greater committee independence. But once Republicans gained control of the White House and Congress after the 2000 elections, Hastert reverted back to centralized decision making. Speaker Nancy Pelosi's speakership was characterized by assertive leadership but greater dependence on committees than Hastert's. In the Senate, George Mitchell's reinvigoration the parties' policy committees starting in 1989 engaged leadership in policy making to a level previously unattained. While Senate leaders still do not have the procedural prerogatives that House leaders enjoy, they now practice inventive tactics to advance or obstruct floor action or exclude the opposition from the decision making

process. The result of this is escalating procedural conflict between the parties, often at the expense of the Senate's legislative efficiency. (Smith and Gamm 2009)

What, then, explains the ebb and flow of centralization in Congress? Cooper and Brady (1981, 424; Brady et al. 1989, 206-207; Brady and Epstein 1997, 27-28) argue that partisan polarization is the key determinant of how centralized power is in party leadership. According to their theory, leaders can only be assertive if their party is cohesive and ideologically unified; if it is divided then members will not grant their leadership the power to act on their behalf. Thus the more polarized the parties are, the more centralized they are. Aldrich and Rohde (2000) use the term "conditional party government" to express the relationship between partisan polarization and centralization, but expand the Cooper and Brady theory to highlight the effect of centralization on legislative outcomes. Aldrich and Rohde argue that the combined effect of partisan polarization and centralization not only empower leaders to serve as instruments for party members, but also give leaders influence over policy outcomes and their subordinates' behavior. Both of these theories have been extended to the House as well as the Senate.

Given how Congress has changed over time, there is disagreement over whether or not the rules of the House and the Senate, taken together with various precedents and folkways that have evolved as the rules have changed, create a "regular order" in the legislative process. Some believe that the modern legislative process is so irregular that a regular order cannot be defined or construed as a realistic description of how Congress makes laws. Others believe that certain traditions and practices have persisted despite the changes in Congress and that a regular order does in fact guide the legislative process. While the regular order can govern smaller aspects of the legislative process such as the

House's requirement that congressmen speak from their party's designated desk and the Senate's tradition that forbids senators from referring to each other by name during debate, it also governs much larger facets such as the principle of unanimous consent in the Senate and the predominance of the Rules Committee in the House. The informal nature of the regular order makes it difficult to define precisely, but there is evidence to support the existence of generally recognized parliamentary principles that are acknowledged by legislators to ensure consistency, fairness, and a general order in the legislative process.

Scholars and legislative officials have noted a trend in which deviation from a regular order is becoming more frequent and a bill's path through Congress can be chaotic and unpredictable. This trend is a result of the use of many new procedures and devices that undermine some of Congress's general legislative principles, such as the Senate's emphasis on deliberation (Sinclair 2012, 86; Mann and Ornstein 2006, 7). From its introduction to final passage, a bill frequently incurs procedural irregularities that contradict these principles. This trend is evident in both chambers, and while much can be said of each that lends itself to questions to which sufficient attention has not been paid, I limit the scope of this study to examining deviation from the regular order in the Senate.

In her book *Unorthodox Lawmaking* (2012), Congressional scholar Barbara Sinclair counted procedures in violation of the regular order employed on 525 major legislative measures during their movement through Congress from the late 1980s through 2010. The irregular parliamentary procedures enumerated in her analysis of Senate actions were multiple committee referral, committee bypass, post-committee

adjustments, omnibus legislation, and legislation resulting from a legislative-executive branch summit. Of the major Senate bills, 54 percent were subject to one procedure and fourteen percent were subject to two or more. Additionally, Sinclair measures whether bills experienced filibuster trouble or an amending marathon involving ten or more roll calls. With these procedures included in the analysis, 74 percent of the bills were subject to at least one irregular procedure and 43 percent were subject to two or more (Sinclair 2012, 131-133). Sinclair also finds that the greater use of most of these special procedures is associated with legislative success. Furthermore, bills that are subject to amending marathons have a greater likelihood of passage and bills that are subject to a filibuster problem are less likely to pass (Sinclair 2012, 261-265).

Sinclair's study is instructive in several ways. First, it demonstrates the viability of treating bills as units of analysis and that their legislative histories provide evidence of the use of these special procedures. However, Sinclair does not describe precisely how she defines certain procedures, such as omnibus legislation and filibuster, both of which can be defined in a variety of ways. Sinclair also does not describe her criteria for determining what constitutes major legislation. Nevertheless, the results of Sinclair's analysis do suggest that there is enough variation in whether or not the bills were subject to special procedures to merit additional research surrounding the causes that make bills more or less likely to incur procedural irregularities. While Sinclair does explore these causes qualitatively, as have other scholars, she limits her quantitative study of special procedures to descriptive analyses that do not establish causal relationships. The objective of this study is to fill this gap and test a causal theory of deviation from the regular order in the Senate.

## II. What is the Regular Order?

In this section I will review treatment in the existing literature of what is meant by the regular order and its consequences for the legislative process in the Senate. By tracing the regular path of a bill, I hope to outline the regular order paying particular attention to how certain procedures support or undermine the Senate's traditional emphasis on deliberation and minority rights, the positive and negative effects of these procedures on the Senate's legislative capacity, and the political and strategic implications of these procedures for the majority and minority party caucuses. Deviation from the regular order can be conceptualized as the procedures that contradict the Senate's traditional principles. Hypotheses about why the Senate deviates from the regular order can be developed building on studies that propose causes for use of some of these individual procedures.

After a bill is introduced Senate precedent holds that it is referred to one committee, which examines and refines the legislation and recommends it for floor consideration. The parliamentarian makes the assignment upon reviewing the bill's content, often with members seeking a political opportunity for a particular committee weighing in. However, some bills require multiple areas of specialization and the Senate allows bills to be referred to multiple committees under these circumstances, either jointly or sequentially. Unlike the House, the Senate makes infrequent use of multiple referrals (Oleszek 2011, 103-104).

Some bills considered by the Senate bypass committee altogether. Rule XIV permits a bill to bypass committee if any senator objects on the floor to its committee referral (Tiefer 1989, 594) or when the bill under consideration is a companion of House legislation. Studies indicate that bypassing committee has increased. Committees were

bypassed in the Senate on seven percent of major legislation between the 1960s and 1980s compared to the 45 percent bypass rate of the Senate in the 111<sup>th</sup> Congress (2009-2010) (Sinclair 2012, 54). There are practical reasons why this rule is in place; the bill might be a time-sensitive response to an emergency or the leadership might believe that changes to the bill can be implemented more efficiently by other means than submitting the bill to a committee where a time-consuming markup process could unnecessarily delay the bill's movement. There are also political reasons why members seek to circumvent committees; the majority leadership might wish to exercise greater control over the direction of a bill's drafting and the policies that it contains and prevent the minority from using committee debate to obstruct the majority's agenda (Oleszek 2011, 127-128).

Whether bypassing committee is done out of a practical or political consideration, its effect on the legislative process is the same. Bypassing committee eliminates the specialist role played by committees. Because senators are relatively few in number but handle a diverse agenda, they have to be policy generalists to a greater degree than members of the House. Therefore committees are important because they promote a division of labor that allows focused and intensive deliberation, and they provide a smaller arena wherein bipartisan compromise is more feasible. Bypassing committee also decreases transparency in the Senate's legislative process. Committees and the reports they produce inform not only other senators about the content of the legislation they consider, but also provide the public and interest groups with the ability to see how committees have shaped legislation relevant to their concerns. Bypassing committees inhibits such transparency.

When involved in the legislative process, committees frame the debate that bills receive from the full Senate. While bills may change dramatically when they are amended on the floor, committees are often able to solve substantive policy issues and foster bipartisan compromise. Most of this happens as a result of hearings and markups during a committee's consideration of a bill. Hearings allow experts in relevant fields, usually from universities, interest groups, or executive agencies, to answer the committee's questions on aspects of legislation and offer their insights. During markup sessions, the committee reviews legislation line by line and each member can offer changes which the committee then votes on. Even if they are closed to the public, markups bolster inclusivity and transparency by enabling senators and staff members to offer ideas in an open forum and keep track of a bill's evolution. Hearings and markups thus provide a level of scrutiny in committees that reinforces the deliberative nature of the Senate, but committees do not always conduct them.

Committees are able to set the tone of the full chamber's consideration of legislation, but the assumption that a bill is brought from committee to the floor unchanged is a faulty one. Party leadership will frequently modify a bill after a committee reports it and before the floor takes it up (Sinclair 2012, 57). Such post-committee adjusting can be done either because the leadership believes that the committee failed to make certain modifications or additions the leadership views as necessary for the full chamber to pass the bill, or because the leadership believes the bill stands a better chance at passage if certain changes are made. Post-committee adjustments can therefore be made for practical or political reasons; an adjustment can be made to appease a senator's request when a bill requires that senator's vote in order to



pass, or an adjustment can be made to insert a politically one-sided policy that advances the majority's agenda that was not approved by committee. Irrespective of the leadership's motive, either out of a practical desire to accommodate senators or a political desire to subvert the opposition's policy goals, post-committee adjustments can defeat the purpose of committee review. Not only do these adjustments empower the leadership to frame debate but they also undermine the committee's specialist role in the legislative process if they substantially alter the substance of the bill.

The Senate has permissive amending procedures in comparison to the House. Unlike the restrictive rules of the House that require the germaneness of amendments and in some cases allow only amendments designated by the Rules Committee to be offered, the Senate usually has no germaneness requirement and every senator may offer as many amendments as he or she wishes. Germaneness is required only under the consideration of budget proposals, if the unanimous consent agreement governing the structure of a bill's debate forbids nongermane amendments, or after cloture has been invoked.

The Senate, however, does have a set of rules that regulate the numbers of certain types of amendments that can be pending at a given time (Palmer and Bach 2003, 9). For example, only one first degree amendment to insert additional text into a bill can be pending at any time. There are four charts, or trees, that depict these restrictions, each of which can be filled with amendments to the point where no others can be offered. Today, amendment trees in the Senate are deliberately filled by one party to prevent the other from offering its own amendments (Oleszek 2011, 264). In many of these cases the majority leader uses the long-standing privilege of first recognition in the Senate to offer amendments in all available slots before others can offer amendments. The strategy

behind filling the amendment tree is political. If the majority leader prevents the minority from offering its own amendments on the floor, perhaps after the bill under consideration bypassed committee or was subject to post-committee adjustments, then the minority cannot advance its policy interests in any significant way and may be forced to filibuster if it opposes the bill. If the majority successfully files cloture immediately after filling the amendment tree, then the minority may have no way to modify the bill or to prevent it from passing. No provision of Senate rules forbids this practice, but it violates the chamber's open and permissive amending tradition.

A related but somewhat distinctive legislative process exists for enacting annual appropriations laws. The House and Senate appropriations committees are responsible for working within the spending limits set by the annual budget resolutions enacted by Congress to allocate funding for all government operations. The appropriations committees divide this laborious responsibility between twelve subcommittees, each of which oversees funding to different executive agencies and other areas of government operation. The goal of the appropriations committees and their subcommittees is to produce twelve separate appropriations bills, one for each area of government operation, for full consideration and passage by Congress. The committee and subcommittee action on these bills follows the same process of other committees, with hearings, markup sessions, and written reports accompanying the measure approved by the full committee. Since each appropriations law controls spending for a given fiscal year, Congress must pass the laws before the beginning of each fiscal year, or October 1<sup>st</sup>. Congress has two options if it is unable to meet this deadline: it can either pass a continuing resolution that extends the funding set by the appropriations law for the previous fiscal year, or it can

bundle appropriations laws together into a single, omnibus package so that it does not have to go through often time-consuming process of moving each law through its respective appropriations subcommittee, the full committee, and then both chambers. (Streeter 2007, 2-6)

The theory behind omnibus legislating relates to two kinds of “institutional dynamics” (Krutz 2001, 32-37). First, there is a mutual interest between leaders and members to fold bills together into omnibus measures. This is because leaders, with their scheduling prerogatives ultimately control what is and is not included in an omnibus bill, acquire greater control over what legislation is enacted and greater ability to place their party’s agenda policies into omnibus bills. Members benefit from omnibus legislation because it allows them more easily to incorporate pork barrel projects that help members’ reelection chances. Because omnibus bills encompass many different areas of policy that cater to the interests of many members, the packages present a way for members to enact pork projects that otherwise may be opposed if considered sequentially. Members also benefit from omnibus legislation in that the majority leadership can give preference to majority members’ most valued policies. This not only helps leaders maintain their standing within the caucus but it also helps majority members win reelection, which in turn helps the party maintain its majority status. Second, Congress and the president also both enjoy mutual benefits from omnibus legislation. Just as members benefit by incorporating measures that might be rejected sequentially, Congress incorporates measures that the president might veto sequentially and the president gets the chance to incorporate measures of his own in return for his approval of the entire package. Despite the mutual benefits that officials may enjoy from omnibus legislation, Congress is wary

of overusing omnibus measures. Because these packages are bargained for and approved by the leadership, they often exclude individual members from meaningful participation in the legislative process. Leaders risk losing their positions if disaffected members feel as though they have been overly neglected in the process, and also risk legislative failure if the president exercises the veto. Thus omnibus legislation is a fragile tool that requires balance and discretion.

Folding different appropriations bills together into a single omnibus package has both procedural advantages and disadvantages. On the one hand, Congress can expedite the movement of appropriations bills unlikely to warrant opposition by grouping them together and passing them as a single measure. Facing authorization and appropriation deadlines that it is often unable to meet, budget measures may be grouped together into a single omnibus package when constraints on time and resources prevent the consideration of each individual measure (Sinclair 2012, 112-113). On the other hand, grouping bills together undermines the committee system and generally reduces the amount of time and resources that the Senate can give to each measure. While omnibus legislation is used to keep the government and its programs operating and funded before they expire or budgetary deadlines pass, the persistent use of omnibus legislation circumvents the appropriations committee and inhibits its ability to devote ample deliberation to spending decisions, one of Congress's most important functions.

Despite its pros and cons the use of omnibus legislation has increased significantly over time (Tollestrup 2010, 2), a pattern for which there are several competing explanations. First, many argue that rising budget deficits are a central cause of the turn toward omnibus legislation (Davidson and Oleszek 1998, 184-185; Sinclair

2012, 156; Smith 1989, 123-125). When lawmakers are faced with tight budgets and pressured to find spending cuts to pay for new expenditures, an omnibus bill presents an easier way for them to incorporate their initiatives in the bill because of the decreased scrutiny that individual measures receive “as policy makers focus on the core issue of the entire package” (Krutz 2001, 39). Second, the political dynamics of divided government are conducive to omnibus legislation (Sinclair 2012, 156). In situations of divided government, the president is likely to veto initiatives presented to him by the opposition party in control of Congress and the opposition party is likely to defeat the initiatives spearheaded by the president. Both sides’ constant risk of legislative defeat increases the likelihood that they will negotiate deals via omnibus legislation. Third, similarly, omnibus bills present a way for the House and Senate to negotiate bargains if gridlock prevents the chambers from reconciling policy differences (Krutz 2001, 39-40). Fourth, omnibus legislation may also help polarized parties reach agreements according to the same logic. Fifth, increases in issue complexity and committee fragmentation may explain the increase in omnibus legislation (Baumgartner et al. 1997; 1998). As policy issues have become more complex, bills may not fit perfectly within one committee’s jurisdiction and require the attention of other committees. While coordination becomes a challenge when issues are fragmented among different committees (King 1997, 138-139), omnibus legislation provides a way to centralize power and streamline decision making to party leaders (Krutz 2001, 42). And sixth, the growth of Congress’s workload necessitates the development of procedures that maximize legislative efficiency (Cooper 1977; Cooper and Young 1989, 73-76). As indicated above, omnibus bills may be

constructed when limited time and a full calendar prevent sequential consideration of measures.

The Senate's uniquely thin rules of operation give individual members considerable parliamentary rights and place few limits on the exercise of those rights. These rules, three of them in particular, support the Senate's traditional emphasis on extensive and inclusive deliberation, but they also enable members to obstruct or filibuster legislative action with relative ease. First, the Senate's right of recognition rule gives every member the right to be recognized by the presiding officer when he or she seeks the floor and prohibits other senators from interrupting without his or her consent. Thus the speaking member can hold the floor for as long as he or she wishes or is physically capable, and the Senate cannot vote on legislation so long as a member seeks recognition to debate it. Indeed, some of the Senate's most memorable moments were of senators captivating the chamber with their oratorical prowess. The right of recognition also applies to making motions on the floor, meaning that the presiding officer must permit senators to offer amendments and file other parliamentary motions.

Second, the Senate lacks a germaneness rule that requires members speaking to address only topics pertinent to the measure under consideration. The right of recognition coupled with the lack of a germaneness requirement provides the grounds for most obstructionist tactics. There are thus many ways in which Senators can filibuster legislative action. While a filibuster is traditionally known as a senator's attempt to speak on the floor for as long as possible in an attempt to stall the Senate's proceedings, a senator can filibuster by exploiting the Senate's permissive amending rules either to offer so many amendments that the time-consuming process of voting on them stalls a bill's

movement or offer controversial amendments that demand politically risky votes members may not be not willing to take. These kinds of amendments and other dilatory motions, such as motions to recess, adjourn, vote, or points of order are done simply as time-consuming methods of obstruction.

Third, early in the Senate's history a rule existed that enabled it to move from a question under debate to another question by majority vote. While this previous question rule was eventually interpreted as a means for limiting or ending debate on a question (Luce 1922, 270-73), originally the rule was viewed as a way to obstruct legislation because it allowed consideration of legislation to be postponed, perhaps indefinitely (Binder 1997, 33, 38-39; Cooper 1962). But because the previous question was used infrequently and other means to delay legislative action existed, the Senate got rid of the previous question rule in 1806. Instead, the Senate relied on informal constraints of "dignity and courtesy" to prevent abuses of limitless debate (Luce 1922, 289). But these informal constraints proved to be ineffective as increasing instances of obstruction and filibustering led to the implementation of the 1917 cloture rule, which required the submission of a cloture petition signed by sixteen senators and a subsequent two-thirds majority vote, or usually 65 senators, to end debate on any Senate measure and bring it to a final vote of passage. Since the cloture threshold set by 1917 rule was so high, the Senate invoked cloture only five times over the following 46 years. As a result, in 1975, the Senate passed a rule reducing the cloture threshold to a three-fifths majority, or 60 senators.

Unanimous consent agreements and cloture also alter the rules that enable filibustering and obstruction. Similar to a special rule in the House, a unanimous consent

agreement (UCA) is a motion that sets the terms for the debate and amending process of a given bill being considered by the Senate and must be agreed to by all senators in order to take effect. UCAs govern aspects of floor procedures such as how much time will be allotted for debate, the division of that time between the parties, and the type of amendments permitted to be offered. Because achieving unanimity on issues such as these inevitably requires senators to compromise, UCAs arguably place weak restrictions on debate and amending procedures (Smith 1989, 119). Of course, the major drawback of UCAs is that it only takes one senator's objection to prevent legislation from being brought to the floor. Many unanimous consent agreements are organized via the cloakroom hotlines where senators (anonymously or openly) can place holds on part or all of an agreement, threatening to object to it if the agreement is brought to the floor, and the agreement is changed in attempt to accommodate their concerns (Sinclair 2012, 60-61; Oleszek 2011, 231-232). Because the Senate operates almost entirely under unanimous consent, at any given time all it takes is one senator to place a hold or object to a UCA in order to halt the legislative process. Nevertheless, the increased use of UCAs to govern the structure of a bill's debate has mitigated the traditional filibuster in which a senator stalls action with prolonged speech (Wawro and Schickler 2006, 15-16).

The 1917 cloture rule placed restrictions on debate and amending after cloture is invoked. Following the invocation of cloture, each senator cannot exceed one hour of debate and can only offer amendments germane to the bill under consideration. While cloture does allow a sufficiently large coalition to overcome the obstructionist efforts of a small minority or even a single senator, the 60-vote threshold is rarely easy to meet. Cloture not only can remedy obstruction but it also provides the Senate with a way to



expedite the movement of a bill if there is consensus on its outcome. But like some other procedures described above, cloture may be abused in ways that undermine the Senate's deliberative tradition. It is not uncommon for senators to file cloture on a bill, or on the motion to proceed to a bill, before any debate occurs either as a dilatory tactic in order to obstruct action on the measure or, conversely, in order to circumvent a filibuster and force a final vote of passage (Beth and Heitshusen 2011, 11). This kind of premature cloture motion can even be filed and invoked on bills that bypass committee or on bills directly after the amendment tree is filled (Sinclair 2012, 83; Beth et al. 2009, 11). In both cases, bills can be brought to a final vote without meaningful consideration from committee or the Senate as a whole.

Filibustering in the Senate has generally increased since 1901, with some year-to-year fluctuations, despite the cloture rule changes in 1917 and 1975. What, then, accounts for the growth of obstruction? The scholarship on filibustering indicates that legislative workload, time, cloture reforms, and partisan polarization are the key factors involved in whether or not senators engage in obstruction. Bruce Oppenheimer (1985, 407-412) posits the roles of time and workload as a cause of filibustering. During the twentieth century the Senate's workload increased, as measured by the length of legislative sessions, number of floor votes, pages in the *Congressional Record*, and bills considered. The growing workload pressured senators to churn out legislation constantly to keep up with growing demands of their constituents and the government, and as a result, senators started to use cloture votes to avoid obstruction and expedite the legislative process. However, the advent of cloture invited more filibustering because it lowered the cost of obstruction to senators in that obstructionist efforts only had to be aimed at defeating

cloture motions rather than relying on more time-consuming methods of filibustering such as occupying the floor indefinitely. Conversely, Wawro and Schickler (2006, 218-219) argue that cloture reform should have reduced obstruction because it gives senators anticipating a filibuster on a given measure the ability to defeat it and discourage obstructionists from engaging in a filibuster battle that they are likely to lose. Partisan polarization and party unity also play a role in the increase in filibustering. The logic here is that cohesive minority parties are better able and more likely to organize obstructionist efforts that forestall majority action and cloture motions. While Binder and Smith (1997, 15-17) suggest that increased partisan polarization is a direct cause of increased filibustering, Koger (2010, 143-146) presents evidence that the session length and the scarcity of time, not partisan polarization, is the more significant predictor of obstruction.

In summary, the Senate may engage in a number of procedures that deviate from the regular order of legislating. By bypassing committee, using multiple referrals, not holding hearings and open markup sessions, and delivering bills to the floor without a written committee report, the Senate effectively eliminates the committee apparatus from the legislative process. By enabling the majority leader to use his right of first recognition to fill the amendment tree, the Senate prevents other members from proposing their own amendments and making significant contributions to the floor consideration of bills. By failing to enact regular appropriations laws on time and resorting to omnibus measures to keep the government operating, the Senate is not able to give ample attention to what the government is funding and make meaningful efforts to balance the budget and cut the national deficit. By giving individual members the procedural prerogatives to filibuster

legislative action supported by a majority of senators, the Senate's activity can be halted and forces it to seek cloture on motions before they receive ample floor debate.

### III. Hypotheses

These irregular procedures, their effects on the Senate's legislative capacity, and their political and strategic implications as described above suggest several hypotheses as to why the Senate is likely to violate the regular order. First, violations should increase as the number of days in the legislative schedule per congressional session decreases. As the workload of the Senate increases, as a practical matter it must use procedures that expedite the legislative process in order to meet the growing demands of the public, interest groups, and the White House. Expediting the process out of this practical consideration is likely to entail procedures that violate the Senate's regular order. For example, a piece of major legislation may bypass committee because it is time sensitive but doing so would undermine the value the Senate places on the specialized deliberation of the committee system.

Second, violations of the regular order should increase as the partisan polarization of the Democratic and Republican caucuses increases. This hypothesis is based on a political consideration that as the parties are more divided and competitive, their caucuses are more likely to resort to tactics aimed at defeating the legislative initiatives of the opposition. Indeed, many of the procedures described above are conducted either to advance one party's agenda at the expense of the other or to obstruct these actions, and the regular order can be violated when one party uses parliamentary tactics for partisan objectives. For instance, when the majority leader uses the right of recognition to fill the amendment tree, he or she prevents the opposition from offering its own amendments, which runs contrary to the Senate's tradition of minority rights.

If the preceding hypothesis is supported by the data, violations of the regular order should also increase as party centralization increases. According to the current congressional scholarship, a natural effect of increasing partisan polarization is a corresponding increase in the centralization of the parties' organization and resources. The parties unify around opposing ideological principles as they move further away from each other and require strong leadership to promote party cohesion. As a result, centralization intensifies partisan competition by unifying the parties against each other. Thus if partisan polarization is linked to greater deviation from the regular order, a similar relationship may be observed between violations and centralization. Centralization also empowers leaders, politically and procedurally, with the capacity to assume greater control over their parties' agendas and work outside of the committee system.

Third, violations of the regular order should be more frequent in congressional sessions that take place during election years and more so in sessions that take place during a presidential election. This hypothesis is a hybrid of the first two, as it combines the practical considerations involved expediting the legislative process under time constraints and the political considerations involved with intensified partisan polarization and partisan competition. With six-year terms and three equally divided electoral classes of senators, elections take place every other congressional session and these sessions are shorter than non-electoral sessions in order to give senators ample time to campaign in their home states. Electoral sessions are also characterized by intense partisan polarization and competition and the parties adopt national campaign strategies that often highlight their opposing ideologies. The Senate is an important arena of electoral

competition that accentuates partisan polarization, in addition to the individual states hosting elections. It gives incumbent senators a national microphone to share their ideas, fight the opposition, and respond to constituent interests with legislative action. Thus if deviation from the regular order is positively correlated with shorter legislative congressional sessions and greater partisan polarization, then the data may show even greater deviation during election seasons. Because presidential elections further accentuate party competition, the data may display more violations during these cycles.

#### IV. Research Design

Deviation from the regular order is measured by the number of violations occurring on major legislation per congress and year, from the 96<sup>th</sup> Congress to the 111<sup>th</sup> Congress, or 1979 to 2010. Only major legislation, because it represents the most consequential pieces of legislation that occupy most of the Senate's time and resources, is included in the analysis. The sample of major legislation comes from a combination of David Mayhew's list of major enactments (Mayhew 1991, 52-73; 2008), *Congressional Quarterly's* annual lists of key Senate votes, and a list of annual regular appropriations laws found on the Senate's website. In order to ensure the procedural similarity of each bill in the analysis, CQ's list of key votes was limited to bills that reached a vote on final passage. Judicial nominations, international trade agreements, and simple and concurrent resolutions also are not included in the analysis for similar reasons. The Mayhew, CQ, and appropriations lists with these exceptions yielded 535 bills over a 32-year period.

Bills were coded individually based on the number of violations of the regular order that each incurred. Based on the literature, the procedures that will be coded as violations of the regular order include: committee bypass, multiple committee referral, absence of committee hearing, absence of committee markup session, filling the amendment tree, omnibus appropriations legislation, and filibuster.<sup>1</sup> The Library of Congress's THOMAS database was used to collect legislative history data on committee bypasses, multiple committee referrals, committee hearings, and committee markup sessions. Congressional Research Service (CRS) reports on filling the amendment tree and omnibus appropriations laws were used to identify instances of these procedures.

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<sup>1</sup> Due to inconsistency involved in identifying post-committee adjustments using THOMAS and the Congressional Record, this procedure was omitted from the analysis.

Finally, Gregory Koger's comprehensive list of filibustered bills was used to identify the bills in the sample that were filibustered (Koger 2010, 99-100). A CRS report on filling the amendment tree and the Koger list, however, did not include data for all of the 96<sup>th</sup> to 111<sup>th</sup> Congresses and these missing data were compiled using the methodology of the original source.

Committee bypasses, multiple committee referrals, absences of committee hearing, absences of committee markup session, and filibusters were each coded as one violation of the regular order. Filling the amendment tree was coded by counting one violation of the regular order for each time the amendment tree was filled on a given bill. Omnibus appropriations legislation was coded by counting one violation of the regular order for each of the thirteen appropriations categories that were included in an omnibus measure. For bills that passed the Senate in lieu of an original measure, the original bill was included in the analysis until the point at which it was replaced by a substitute measure. If a bill was discharged from a committee, then any violations of the regular order that could have occurred while the committee was considering the bill were not counted. This is due to the understanding that when the Senate discharges a bill from committee, it does so because it agrees that committee is not able to carry out its obligations in a proper or timely manner. Discharging differs from bypassing committee, in that a bypass signifies the Senate's unwillingness to let a bill be considered or amended by a committee whereas a discharge signifies the Senate's acknowledgement of committee input but also its need to move passable legislation to the floor if the committee is not completing its work. Once the data for each category of regular order violations were collected, the number of violations was totaled for each bill. Because



each year contained unequal numbers of major bills, the mean number of regular order violations per bill was calculated per year. This measure served as the dependent variable.

To test the first hypothesis on the length of legislative sessions, I totaled the number of days that the Senate convened per session, each of which corresponds with a given year. For example, the first session of the 101<sup>st</sup> Congress took place during 1989 and the second session took place during 1990. Days in which the Senate is technically in session but does not convene, such as weekends and federal holidays, were not included. To test the second hypothesis on partisan polarization, I compiled the annual percentage of party unity roll call votes in the Senate, wherein a majority of Democrats aligns against a majority of Republicans, as identified by CQ's vote studies (Zeller 2011). To test the third hypothesis on centralization, I used Frances Lee's calculations of the total annual congressional appropriations to party leadership offices (Lee 2009, 15). This measure consists of the total amount of money appropriated to Senate leadership, whip, and policy committee offices, adjusted for inflation. These calculations are optimal for measuring centralization because they encompass the three major hubs of congressional leadership activity rather than only the leaders' offices, and by using appropriation levels they account for a wider range of leadership activity outside of compensating staff members. To test the third hypothesis on elections, I created dummy variables to represent years in which each no elections, senatorial elections, and presidential elections took place.

The hypotheses were tested with bivariate regression analyses of the mean number regular order violations per year/Congress against each of the independent variables as operationalized above. If the data support the first hypothesis on length of

legislative sessions, the regression was expected to show an inverse relationship between violations and session length. If the data support the second hypotheses on partisan polarization, the regressions were expected to show positive relationships between violations and both measures of partisan polarization. If the data support the hypothesis regarding centralization, the regression was expected to show a positive relationship between violations and centralization. If the data support the hypothesis regarding elections, violations will increase across nonelection years, senatorial election years, and presidential election years. Should the bivariate hypotheses outlined above be supported by the data, a multivariate analysis would be needed to test the relative influence of each independent variable on deviation from the regular order.

## V. Results

Violations of the regular order gradually increased from 1979 to 2010, as illustrated in Figure 1. From 1979 to 1988, the average number of violations per bill was 2.8 and from 2001 to 2010, the average rose to about 4. The upward trend, however, fluctuates. From 1989 to 2000 violations were relatively static, averaging 2.6 violations per bill. Upon closer examination, the overall increasing trend is marked by two distinct periods of growth in violations per bill, 1979 to 1987 and 2005 to 2007. From 1979 to 1987, average violations doubled from 2.1 to 4.2. From 2005 to 2007, average violations more than doubled from 2.5 to 5.75. The overall trend is also marked by two distinct periods of decline in violations per bill, 1987 to 1988 and 2003 to 2005. From 1987 to 1988, violations decreased from 4.2 to 2.1. From 2003 to 2005, violations decreased by half from 4.5 to 2.5. The year 2007 experienced the greatest number of average violations per bill at 5.75, and the year 1990 experienced the fewest number of violations at 2.01.

Breaking down the average number of total violations per bill into the individual violations that comprise the total reveals the specific procedures that drove the overall trend upward. Figures 2-9 display the changes in average individual violations per bill over time, and Table 2 lists the numbers that comprise these trends. Of the eight violations used to calculate the total, only committee bypass, no committee report, and filling the amendment tree showed the most significant increases over the entire 32-year period. Instances of committee bypass fluctuate around 0.2 per bill from 1979 to 1992 but gradually increase from 0.04 in 1994 to 0.66 in 2010. No committee report violations experienced a similar pattern of increase. Filling the amendment tree rarely occurred

between 1979 and 2005 but increased significantly from 2006 to 2010. Amendment trees were filled an average 0.5 times per bill in 2007, 0.7 in 2008, and most at 1.6 in 2010.

Of the 535 bills included in the analysis, only six incurred a multiple committee referral. No committee hearings were a consistently common violation throughout the 32-year period, occurring on 70 to 90 percent of all bills. No bill received a hearing in 1980 and 2008, and only 46 percent did not in 1998. Absence of committee markup sessions was also a consistently common violation. During 16 of 32 years markups did not occur on any bills. No markups were conducted between 68 and 95 percent of the time during the remaining years. From 1979 to 1994, the only two years that experienced omnibus violations were 1986 and 1987. While these violations occurred more frequently during the latter third of the time period, the increase of these violations was inconsistent and marked by years in which no omnibus violations occurred. Filibustering experienced a net increase, but it also fluctuated greatly over the 32-year period. From 1979 to 1985, the average filibuster per bill increased from 0.1 to 0.5. It decreased to 0.04 in 1990, increased again to 0.4 in 1995, decreased to zero in 1998, then gradually increased to its highest level at 0.63 in 2010.

Next, I conduct bivariate regressions to test the independent effect of each variable on average total violations of the regular order per bill. Table 6 lists the coefficients for these regressions. First, I tested the effect of session length on violations. This regression yields a statistically significant coefficient but in the opposite direction than expected; for every one day added in session length the average number of violations by 0.02 (a coefficient of 0.02). Taken alone, session length explains roughly 20 percent of the overall variance in violations. Second, I tested the effect of partisan

polarization on violations. This regression also yields a statistically significant coefficient and in the expected direction. For every 1 percent increase in the number of party line votes in, the average number of violations increased by 0.04. Taken alone, partisan polarization explains about 10 percent of the overall variance in violations. Third, I tested the effect of centralization on violations. This regression coefficient is statistically significant and in the expected direction. For every one million-dollar increase in the appropriations to party leadership offices, average violations increased by 0.40. Taken alone, centralization explains nearly 44 percent of the overall variance in violations. Fourth, I tested the effects of senatorial and presidential elections on violations. The regressions indicated coefficients in the opposite direction than expected, the average number of violations decrease during senate elections and though less so, during presidential elections. However, neither coefficient is a statistically significant. Looking at all of the bivariate regressions, centralization appears to be the strongest predictor of violations of the regular order, followed by session length and then partisan polarization.

Before conducting a multivariate regression analysis, I ran a correlation matrix of the independent variables. Table 7 lists the correlation coefficients of partisan polarization, centralization, and session length. Session length is positively correlated with partisan polarization at about 39 percent and centralization at 28 percent. The strongest positive correlation exists between centralization and partisan polarization, at about 64 percent. The strong correlation between centralization and partisan polarization confirms previous studies' findings that link the two phenomena, but it presents a challenge to including both variables in a single multivariate regression analysis to explore their independent effects on violations of the regular order. A correlation this

strong would introduce collinearity into the multivariate analysis and could skew the results of the model, particularly if the independent effects of each variable on violations are sought.

In order to avoid the issue of collinearity, I conducted two separate multivariate regressions with partisan polarization and centralization. While this limits the ability of the model to discern the combined effect of partisan polarization and centralization on violations of the regular order, the coefficients of each regression can be compared to see how the effects of partisan polarization and centralization hold up when session length and electoral years are introduced in the model.

There are two important findings in the multivariate regression with partisan polarization, which is displayed in Table 8. First, the size of the partisan polarization coefficient decreases when session length and electoral cycle variables are included in the model. More importantly, the coefficient is no longer statistically significant and therefore does not contribute to explaining the overall variance in the average number of violations per year. The bivariate regression coefficient decreases from 0.04 to 0.02 and loses its statistical significance, in contrast the significant positive effect of session length on average number of violations grows as partisan polarization and election years are introduced in the model. When electoral cycles are included in the model, session length remains 0.02 and maintains its significance in senate election years and increases to 0.03 in presidential election years. However, like partisan polarization, election year coefficients are statistically insignificant and therefore do not explain the variance in average violations in this model. Therefore session length alone explains 23 percent of the overall variance in violations.

There are two important findings in the multivariate regression using the centralization variable, which is displayed in Table 9. First, centralization maintains a statistically significant positive effect on violations even as all other variables are included in the model. Moreover, the size of the centralization regression coefficient remains fairly consistent at 0.35 when session length is included, 0.35 when session length and senate elections are included, and a 0.34 when presidential election years are included. Second, session length also maintains a statistically significant positive effect with all other variables incorporated in the regression model. Session length coefficient remains statistically significant and ranges from 0.15 when centralization is included, a 0.14 when both centralization and senate elections are included and a 0.19 when presidential election years are included. Together, centralization and session length explain roughly half of the variance in violations at each stage of the regression. As in the multivariate model with partisan polarization, election years did not yield statistically significant results.

Next, to identify more closely how the variables affect the number of regular order violations, I conducted multivariate regressions on the individual types of violations that comprise the total. As with the regressions described above, I ran two sets of regressions, one with partisan polarization and the other with centralization, in order to avoid collinearity. Tables 10 and 11 display the results for these two regressions. Only two coefficients in the regression with partisan polarization were statistically significant. First, session length had a marginal 0.006 positive effect on the number of no committee report violations, which explained about 10 percent of the variance in these types of violations. And second, in senate election years, the average number of filling the

amendment tree violations increased by 0.29, and explains about 24 percent of the overall variance. Six coefficients in the regression with centralization are statistically significant. Centralization coefficient ranges from an increase of 0.09 in the average number of committee bypass violations and explains nearly half of the variance, 0.08 increase in average number no committee report violations and explains 44 percent of the variance, and a 0.10 increase in average number of filling the amendment tree violations and explains 38 percent of the overall variance. The centralization coefficient is negative - 0.001 and denotes a decrease in average number of multiple referral violations, while the coefficient for presidential election years is 0.03, denoting an increase in the average number of multiple referral violations. Centralization and presidential elections taken together explained 34 percent of the variance in multiple referrals though centralization is in the opposite direction. However, because they occurred only seven times in the 535-bill sample, there is weak evidence to suggest that this relationship is driving the overall increase in violations.<sup>2</sup>

I then conducted another set of multivariate regressions for total violations, this time controlling for election years. I also separated these regressions by partisan polarization and centralization in order to avoid collinearity. The election-sorted regression with partisan polarization yielded no statistically significant coefficients. This is likely due to the reduced number of observations that results from dividing the entire

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<sup>2</sup> I also conducted a multivariate regression including an interaction term consisting of the partisan polarization and centralization variables as another alternative to avoiding collinearity issues. This regression, however, yielded statistically insignificant coefficients for all variables, including the interaction term. This insignificance is likely attributable to the smallness of the model's sample size (n=32), as interaction terms require larger samples that can still provide enough variance to yield significant results even when multiple variables are interacted.



32-year sample into non-election years, senatorial election years, and presidential election years. The election-sorted regression with centralization yields one statistically significant result: a roughly 0.4 increase in the average number of violations in Senate election years, which explains some 88 percent of the violations in those years. See Tables 12 and 13 for the multivariate regressions sorted by election year with partisan polarization and centralization, and Figure 13 for a breakdown of the average violations per bill per election year.

Overall, centralization and session length seem to be the most consistent explanations of the increase in violations of the regular order. Both variables yield significant and positive effects in bivariate regressions and withstood the introduction of other variables in the multivariate regressions. Centralization and session length also yielded significant and positive effects on several individual violations, as did Senate and presidential election years. Perhaps the most telling findings are the combined effects of centralization and session length that explain nearly half of the variance in all violations, and the 0.4 increase in the average number of violations on all violations in Senate elections that explains 88 percent of the variance.

## VI. Conclusions

These results contain three important findings on the legislative process in the Senate. First, violations of the regular order on major legislation are increasing. From 2008 to 2010, violations occurred with greater frequency than at any point in the previous 29 years. Most of the individual violations driving this overall upward trend were related to committee functions. All of the committee-related violations, with the exception of multiple referrals, either increased significantly over the 32-year period or remained consistently high. Committee bypasses and no committee reports increased significantly, while no less than 46 percent of major bills received hearings and no less than 68 percent lacked markup sessions during any given year. The only non-committee related violation that increased significantly was filling the amendment tree. The other non-committee related violations, omnibus legislation and filibustering, fluctuated too greatly to have had a significant impact on the overall increase.

Second, centralization and session length appear to be the two most significant explanations of the increase in violations of the regular order. These results are surprising for three reasons. One, the relationship between session length and violations was in the opposite direction from that expected, despite previous studies suggesting that scarcity of time increases the likelihood that the Senate will use procedures that violate the regular order. Two, partisan polarization had no effect once other variables are introduced, while centralization, a closely related phenomena, appears to be the most significant explanation of violations over the 32-year period. And three, centralization provides the most significant explanation of violations in senatorial election years, despite having no effect in non-election and presidential election years.

The effect produced by session length in the opposite direction than expected has interesting implications for previous studies on the effect of time and workload on the legislative process. The trend observed in this study, that violations increase as legislative sessions grow in length, might be because longer sessions invite greater levels of legislative activity. With more time on their hands, senators may aim to maximize the amount of bills considered by the chamber. In order to do this, the Senate may use certain procedures that expedite the legislative process but violate the regular order in doing so. Even though this study controlled for legislative output by measuring the average number of regular order violations per bill per year, the observed increase in violations could reflect the desire of senators to do more with more time.<sup>3</sup> However, previous research suggests the opposite, with violations increasing as time becomes scarcer and workload increases. These differences may be reconciled by conducting the test with a more valid measure of workload. Session length describes time, but does not capture the concept of workload. Further refinement of this measure is needed before broader conclusions can be made about the relationship between time, workload, and violations of the regular order. Of course, there is also the possibility that this is a spurious relationship, despite the statistical significance of the regression coefficients. But a better measure of

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<sup>3</sup> Figure 14 displays a basic look into this theory by charting the effect of session length on the average number of roll call votes per day. I hypothesize that an increase in session length will be followed by an increase in the Senate's legislative activity (controlled for time), which I measured by the average number of Senate roll call votes per day (Ornstein et al. 2008, 125). However, the graph shows a very weak relationship, if any, between these variables. Figure 15 compares the average number of votes per day in non-election years to election years. While sessions in non-election years are on average about 23 days longer than sessions in election years, the number of votes per day in election years is only marginally larger than in non-election years. While these figures do not provide any evidence to support my hypothesis, a more robust measure of workload needs to be developed and tested before issuing a broader conclusion about the effect of session length on legislative activity and violations of the regular order.

workload needs to be developed and tested before broader determinations can be made about this relationship.

The effect of centralization, and not partisan polarization, on violations is important for a number of reasons. First, it establishes a link between the size of the party leadership offices and procedures that not only violate the regular order but also do so in ways that exclude other offices, namely committees. Leadership offices can now afford to hire staff members to work on specific policy issues usually reserved for committees. Thus the leadership not only can manage the organization of the caucus and its general policy agenda, but it can also extend its influence into the more minute aspects of legislating. Simply put, the larger the party leadership offices are, the more resources they have to play larger roles in the policy making process.

Second, this research shows that although partisan polarization and centralization are linked, the two phenomena do not necessarily affect the legislative process in the same way. Studies that explore the effect of partisan polarization on the legislative process should also explore the effect of centralization. Going forward partisan polarization and centralization should be treated as two distinct phenomena, each with different effects on the legislative process, in order better to determine how each fits into theoretical models of legislating. Third, this finding suggests that while partisan polarization provides the motivation for parties to obstruct the opposition or otherwise exclude them from the legislative process often in ways that violate the regular order, partisan polarization alone appears to be a necessary but insufficient condition for increased violations. Instead, centralization appears to be both a necessary and sufficient condition, for it gives parties the capacity to violate the regular order. As indicated above,

surpluses in staff resources give leadership offices the manpower to produce and spearhead their own initiatives without risking the demise of their legislation in committee. Thus in a model of the legislative process, the relationship between partisan polarization and centralization can be better understood as a relationship between motivation and capacity.

Considering the high levels at which violations such as committee bypasses, no hearings, no markups, and no reports happen, it is difficult to discern who in fact is legislating in the Senate. The committee system exists not only a way for lawmakers to divide the hefty labors of developing national policies on increasingly complex issues, but it also exists as a mechanism of transparency and accountability. Moving bills through committee makes it easier for members and staff officials, as well as the public, to track the evolution of initiatives. When a bill with no committee history is introduced and considered on the Senate floor, there is no formal way of telling who is actually responsible for its contents. This uncertainty leaves open the possibility that actors outside of the legislative branch, such as special interest groups, play a direct role in crafting national legislation. Research studying the origins and evolution of bills considered by the Senate without prior committee history is needed to determine exactly which actors are involved in the policy making process, when they are involved and not, and how these actors interact to create legislation when the regular order is not followed.

In addition, more needs to be done to study the individual types of violations of the regular order and why they are committed. These studies need to discern where individual violations originate, i.e. whether they are more likely to be committed by members of the majority or minority parties. They also need to explore how individual

violations interact; in other words, whether or not certain violations are committed directly in response to others. Such studies will shed more light on the political dynamics behind the legislative process as well as explain the consequences certain procedures can have on the regular order as a whole.

Given the frequent irregularities of Senate procedure, no measure of the regular order can be 100 percent valid. But the measure used in this study can be improved in several ways to create a more accurate representation of the regular order and capture more of its nuances. Of the eight individual violations that comprised the total violation variable, five were related to the committee system. While it is difficult to understate the role of committees in the legislative process, the measure should be expanded to include more aspects of floor procedure, such as the use of cloture. In addition, practices that do not necessarily fit within either the committee or floor realms of procedure should also be included in a measure of the regular order. The most relevant example of such procedures is a post-committee adjustment, but the fact that this practice takes place neither in committee nor on the floor makes it difficult to identify on a consistent basis. Identifying post-committee adjustments consistently might be done by examining the *Congressional Record* to see if senators acknowledge the implementation of an adjustment on a bill when it is brought to the floor, or by comparing the content of a bill reported from committee to the version brought to the floor. This study could also be improved by expanding the sample of major legislation and testing for causal effects over a longer period of time.

Most importantly, studies exploring the role of centralization in legislative decision-making are needed to better flesh out the reasons why Senate violates the

regular order. These studies should focus on the leadership and how it makes decisions in terms when it chooses to use procedures that violate the regular order and when it chooses to not to. These studies should involve asking leadership officials about the variables that factor into issues such as when to assume a bigger role in drafting a given legislative initiate and when to defer to committees. They should also use more robust, quantitative measures to develop a more precise theory of how party leadership overcomes these issues.

## VII. Tables

Table 1: Bill Coding Sample

Year	Congress	Bill	Bypass	Multiple referral	No hearing	No markup	No report	Tree fill	Omnibus	Filibuster	Total
2004	108	S1637	0	0	1	1	0	2	0	1	5
2004	108	S1805	1	0	1	1	1	0	0	1	5
2004	108	S1072	0	0	0	1	0	0	0	0	1
2004	108	HR4818	0	0	0	1	0	0	9	0	10

Table 2: Average Individual and Total Violations per Bill per Year, 1979-2010

Year	Bypass	Mult. Referral	No Hearing	No Markup	No Report	Tree Fill	Omnibus	Filibuster	Total
1979	0.056	0	0.947	0.947	0.053	0	0	0.105	2.11
1980	0.143	0.143	1	1	0.286	0	0	0.357	2.93
1981	0.416	0	0.833	0.917	0.5	0	0	0.25	2.92
1982	0.067	0	0.733	0.733	0.333	0	0	0.533	2.4
1983	0.294	0	0.882	0.941	0.353	0	0	0.412	2.88
1984	0.545	0	0.727	0.909	0.545	0	0	0.364	3.1
1985	0.333	0	0.833	1	0.667	0.167	0	0.5	3.5
1986	0.071	0	0.733	0.8	0.267	0.067	0.867	0.2	3
1987	0.3	0.1	0.8	1	0.4	0	1.3	0.3	4.2
1988	0.125	0	0.833	0.917	0.167	0	0	0.083	2.13
1989	0.28	0	0.92	1	0.44	0	0	0.08	2.72
1990	0.12	0	0.72	1	0.2	0	0	0.04	2.08
1991	0.348	0	0.913	1	0.348	0	0	0.087	2.7
1992	0.083	0	0.75	0.958	0.125	0	0	0.208	2.13
1993	0.05	0	0.9	1	0.15	0.05	0	0.3	2.45
1994	0.045	0	0.818	1	0.136	0	0	0.273	2.27
1995	0.238	0.091	0.727	0.909	0.318	0	0.227	0.409	2.91
1996	0.263	0.05	0.85	0.95	0.35	0	0.3	0.25	3
1997	0.238	0	0.524	1	0.333	0	0	0.143	2.24
1998	0.308	0	0.462	1	0.385	0	0.538	0	2.69
1999	0.357	0.059	0.471	0.941	0.412	0.176	0.294	0.235	2.94
2000	0.545	0	0.833	0.916	0.5	0.083	0.417	0.083	3.33
2001	0.647	0	0.64	0.68	0.52	0	0	0.2	2.48
2002	0.222	0	0.889	1	0.556	0.111	0	0.333	3.11
2003	0.667	0	0.842	0.947	0.789	0	0.947	0.316	4.47
2004	0.417	0	0.5	1	0.417	0.167	0.75	0.333	3.58
2005	0.167	0	0.889	1	0.389	0	0	0.111	2.56
2006	0.692	0	0.846	1	0.769	0.231	0	0.385	3.9
2007	0.727	0	0.917	0.917	0.917	0.5	1.75	0.25	5.75
2008	1	0	1	1	1	0.7	0	0.3	5
2009	0.737	0	0.947	1	0.789	0.105	0.789	0.211	4.58
2010	0.625	0	0.727	0.727	0.636	1.636	0	0.636	4.82



Table 3: Active Days per Legislative Session, 1979-2010

Year	Days
1979	166
1980	166
1981	164
1982	147
1983	149
1984	131
1985	170
1986	144
1987	174
1988	137
1989	136
1990	138
1991	157
1992	129
1993	153
1994	138
1995	211
1996	132
1997	153
1998	143
1999	162
2000	141
2001	173
2002	149
2003	167
2004	133
2005	159
2006	138
2007	189
2008	184
2009	191
2010	158

Table 4: Percentage of Party Line Roll Call Votes, 1979-2010

Year	Percentage
1979	46.7
1980	45.8
1981	47.8
1982	43.4
1983	43.7
1984	40
1985	49.6
1986	52.3
1987	40.7
1988	42.5
1989	35.3
1990	54.3
1991	49.3
1992	53
1993	67.1
1994	51.7
1995	68.8
1996	62.4
1997	50.3
1998	55.7
1999	62.8
2000	48.7
2001	55.3
2002	45.5
2003	66.7
2004	52.3
2005	62.6
2006	57.3
2007	60.2
2008	51.6
2009	72
2010	78.6

Table 5: Appropriations to Party Leadership Offices, 1979-2010

Year	Dollars (millions)
1979	5.3
1980	4.7
1981	5.4
1982	5.1
1983	5
1984	5.5
1985	5.9
1986	6
1987	5.7
1988	6.4
1989	6.2
1990	6
1991	6.4
1992	6.8
1993	6.7
1994	6.5
1995	6.7
1996	5.8
1997	6.2
1998	6.7
1999	6.9
2000	7.2
2001	7.3
2002	7.7
2003	8.1
2004	8.4
2005	9
2006	9.5
2007	9.3
2008	9.7
2009	10.2
2010	10.5

Table 6: Bivariate Regression Coefficients

	Coefficient	Constant	Adj. R <sup>2</sup>
Session Length	0.023*	-0.361	0.2017
Partisan polarization	0.035*	1.301	0.1082
Centralization	0.4*	0.369	0.438
Senate Election	-0.154	3.191	-0.028
Presidential Election	-0.006	3.154	-0.0333

\*p ≤ 0.05

N=32

Table 7: Independent Variable Correlation Coefficients

	Session Length	Partisan polarization	Centralization
Session Length	1	-	-
Partisan polarization	0.388	1	-
Centralization	0.2802	0.6365	1

Table 8: Partisan Polarization Multivariate Regression Coefficients

	Partisan polarization	Session Length	Senate Election	Presidential Election	Constant	Adj. R <sup>2</sup>
All Violations	0.035*	-	-	-	1.301	0.1082
“	0.02	0.019*	-	-	-0.828	0.2173
“	0.019	0.02*	0.109	-	-0.954	0.1917
“	0.019	0.027*	0.441	0.661	-2.357	0.2339

\*p ≤ 0.05

N=32

Table 9: Centralization Multivariate Regression Coefficients

	Centralization	Session Length	Senate Election	Presidential Election	Constant	Adj. R <sup>2</sup>
All Violations	0.4*	-	-	-	0.369	0.438
“	0.348*	0.015*	-	-	-1.57	0.5146
“	0.352*	0.014*	-0.076	-	-1.48	0.4985
“	0.335*	0.019*	0.141	0.404	-2.296	0.5059

\*p ≤ 0.05

N=32

Table 10: Partisan Polarization Regression Coefficients for Individual Violations

Violation	Partisan polarization	Session Length	Senate Election	Presidential Election	Constant	Adj. R <sup>2</sup>
Bypass	0.005	0.005	0.023	0.172	-0.788	0.1319
Mult. Referral	-0.0004	0.0009	0.006	0.028	-0.119	0.1163
No Hearing	-0.003	0.002	-0.011	0.043	0.549	-0.0016
No Markup	-0.0006	-0.0007	-0.059	-0.014	1.106	-0.0542
No Report	0.002	0.006*	0.086	0.113	-0.668	0.1056
Tree Fill	0.012	0.004	0.294*	0.225	-1.357	0.2334
Omnibus	0.004	0.006	-0.009	0.022	-0.971	-0.0230
Filibuster	0.001	0.002	0.117	0.072	-0.279	0.0121

\*p ≤ 0.05

N=32

Table 11: Centralization Regression Coefficients for Individual Violations

Violation	Centralization	Session Length	Senate Election	Presidential Election	Constant	Adj. R <sup>2</sup>
Bypass	0.099*	0.002	-0.071	0.095	-0.783	0.493
Mult. Referral	-0.011*	0.001*	0.017	0.037*	-0.119	0.3471
No Hearing	0.001	0.002	-0.03	0.042	0.499	-0.0461
No Markup	0.005	-0.001	-0.068	-0.017	1.092	-0.0527
No Report	0.088*	0.003	-0.007	0.046	-0.694	0.4413
Tree Fill	0.109*	0.003	0.229	0.141	-1.241	0.3842
Omnibus	0.057	0.005	-0.056	-0.022	-0.947	0.0095
Filibuster	-0.001	0.003	0.125	0.073	-0.257	0.0041

\*p ≤ 0.05

N=32

Table 12: Partisan Polarization Multivariate Regression Coefficients by Electoral Years

	Non-Election	Senate Election	Presidential Election
Partisan polarization	-0.0004	0.052	0.029
Session Length	0.028	0.045	0.032
Constant	-1.432	-6.35	-2.95
Adj. R <sup>2</sup>	0.1305	0.5613	0.3481
N	16	8	8

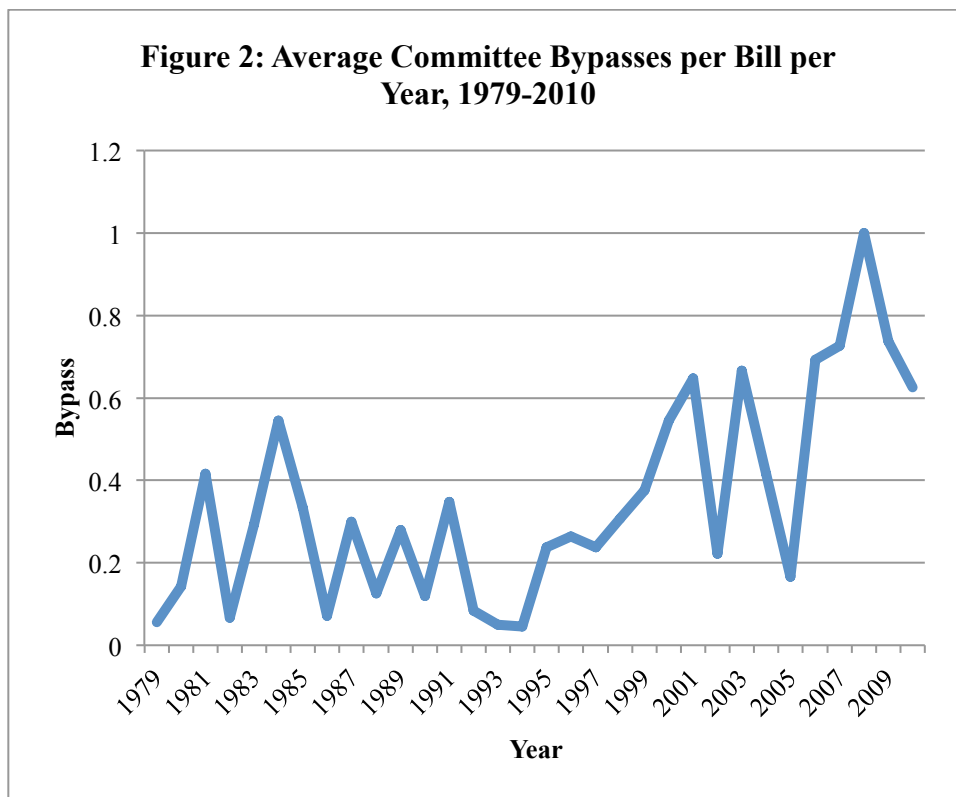
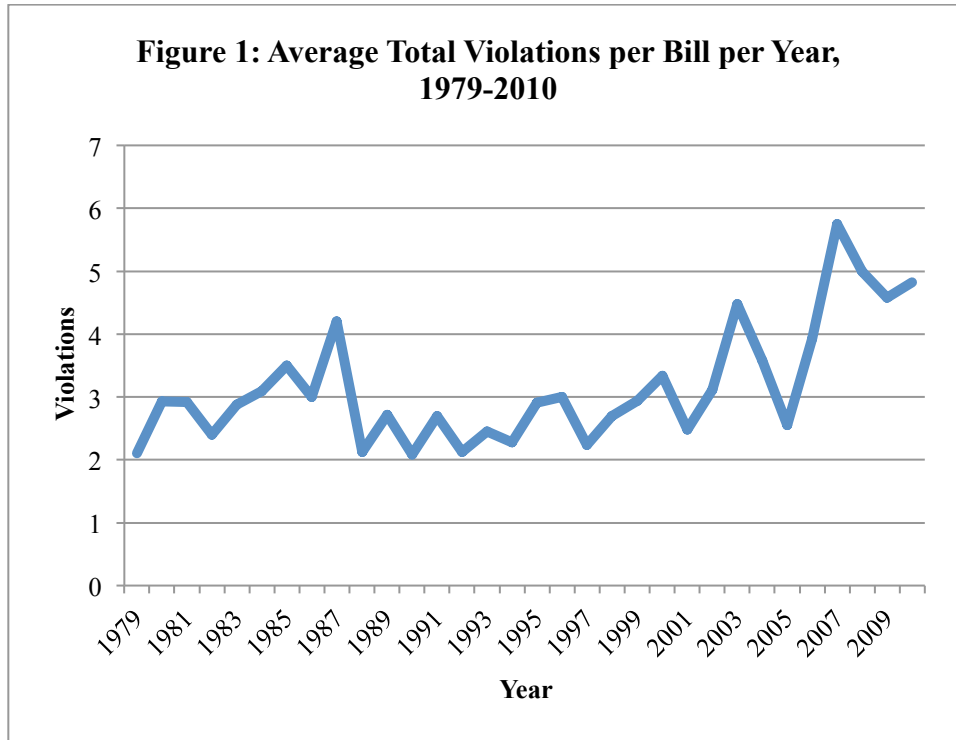
\*p ≤ 0.05

Table 13: Centralization Multivariate Regression Coefficients by Electoral Years

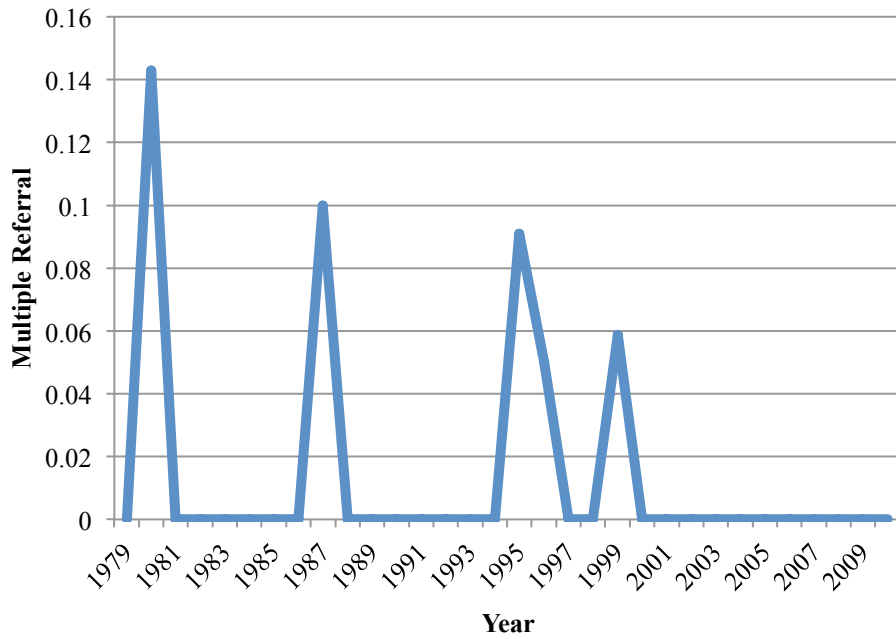
	Non-Election	Senate Election	Presidential Election
Centralization	0.294	0.395*	0.289
Session Length	0.017	0.038	0.023
Constant	-1.706	-5.298	-2.167
Adj. R <sup>2</sup>	0.3137	0.8888	0.5995
N	16	8	8

\*p ≤ 0.05

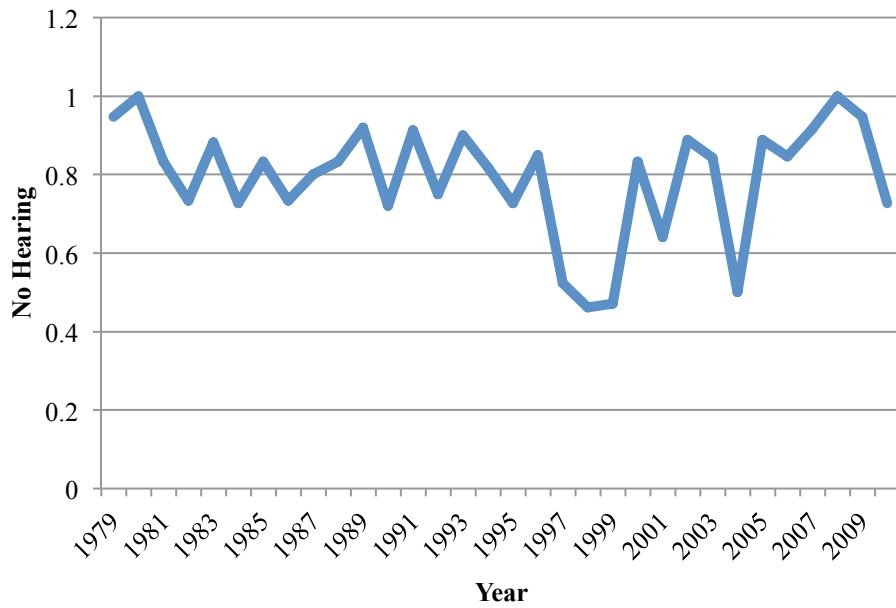
VII. Figures



**Figure 3: Average Multiple Committee Referral per Bill per Year, 1979-2010**

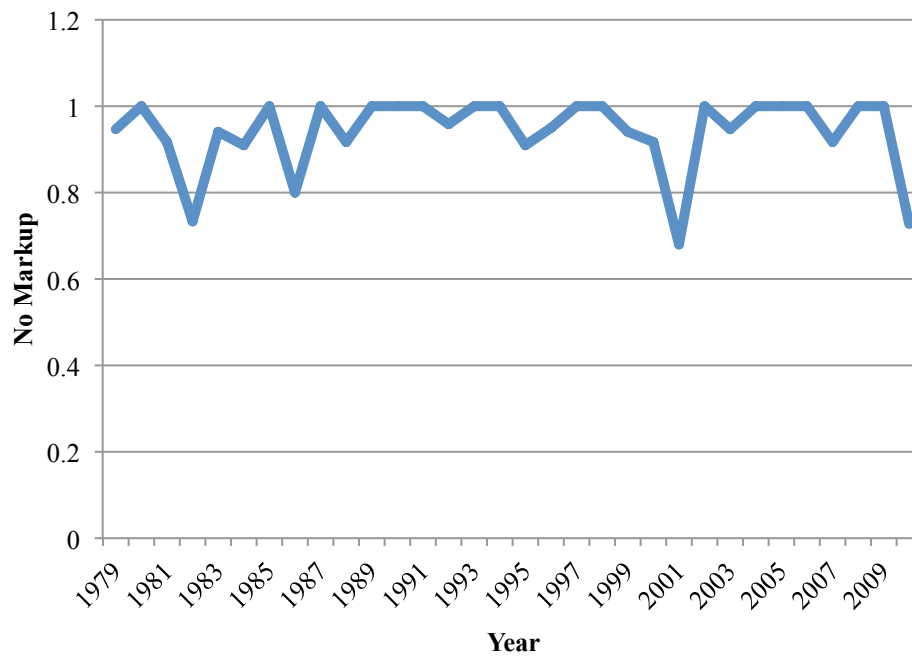


**Figure 4: Average No Committee Hearing per Bill per Year, 1979-2010**

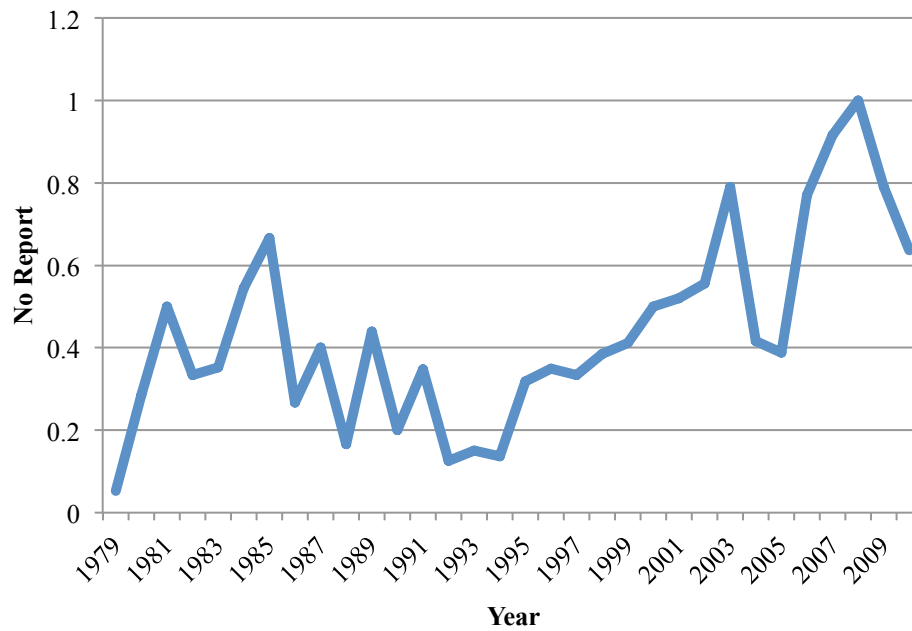




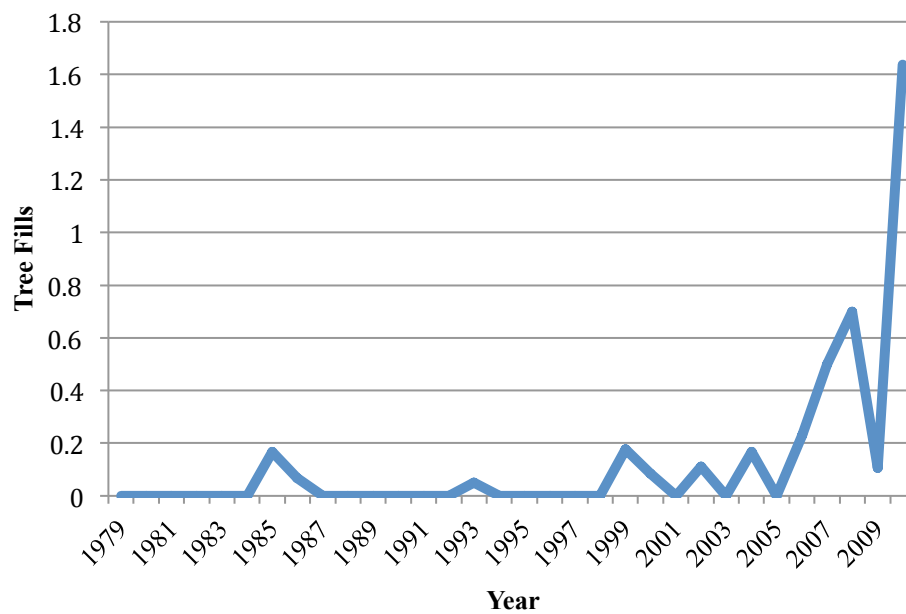
**Figure 5: Average No Committee Markup per Bill per Year, 1979-2010**



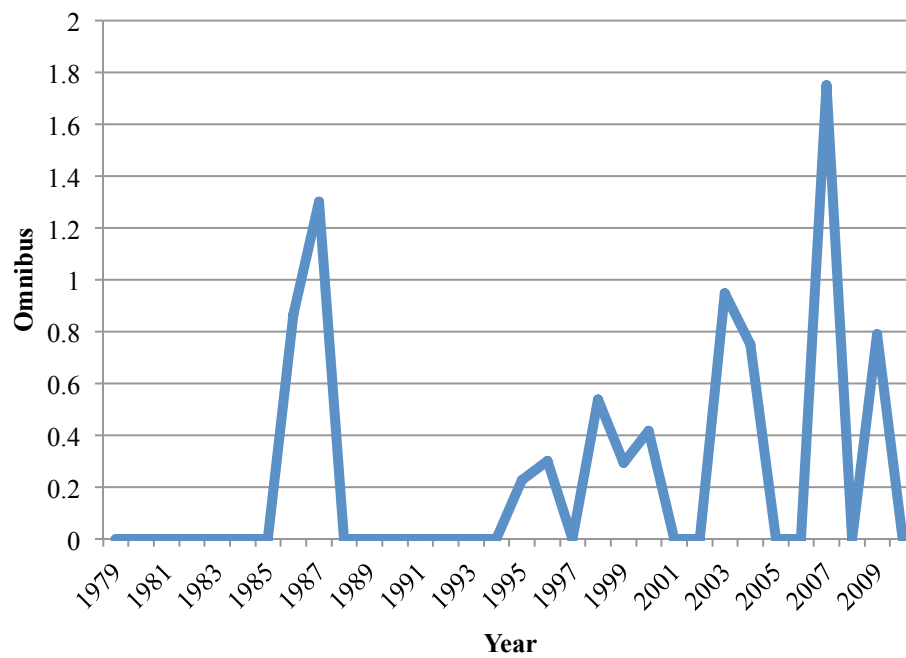
**Figure 6: Average No Committee Report per Bill per Year, 1979-2010**

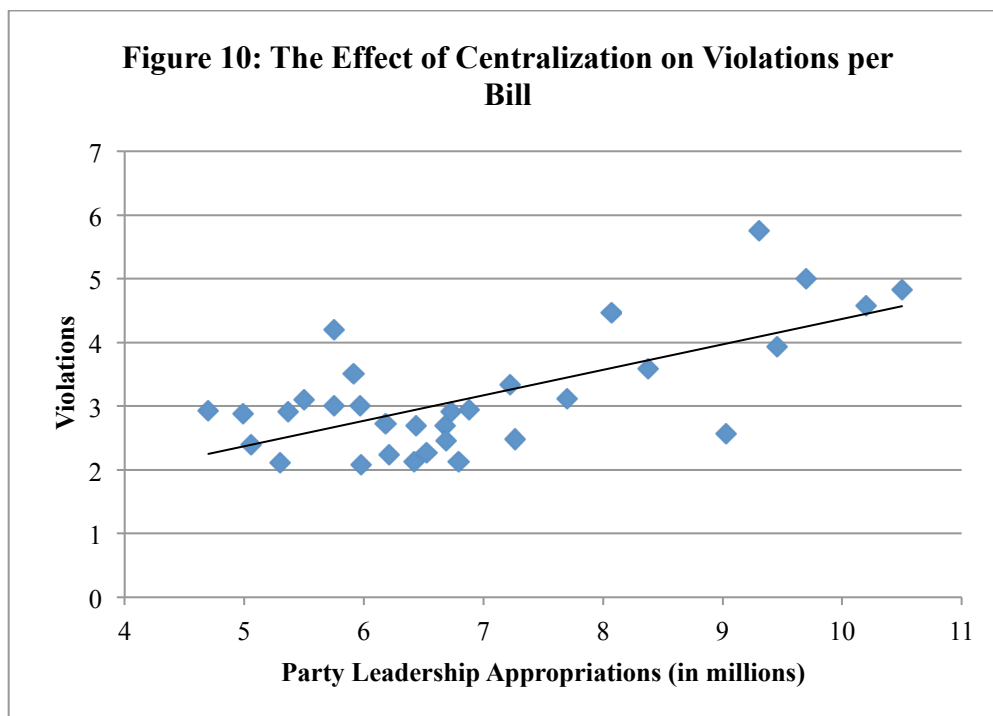
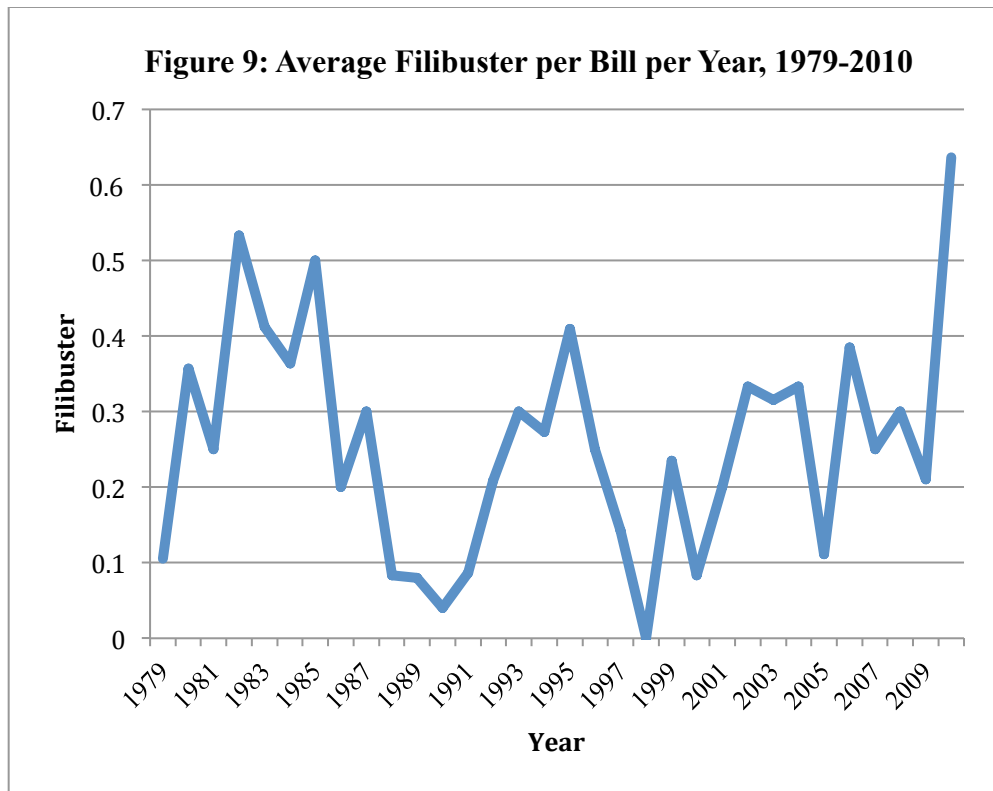


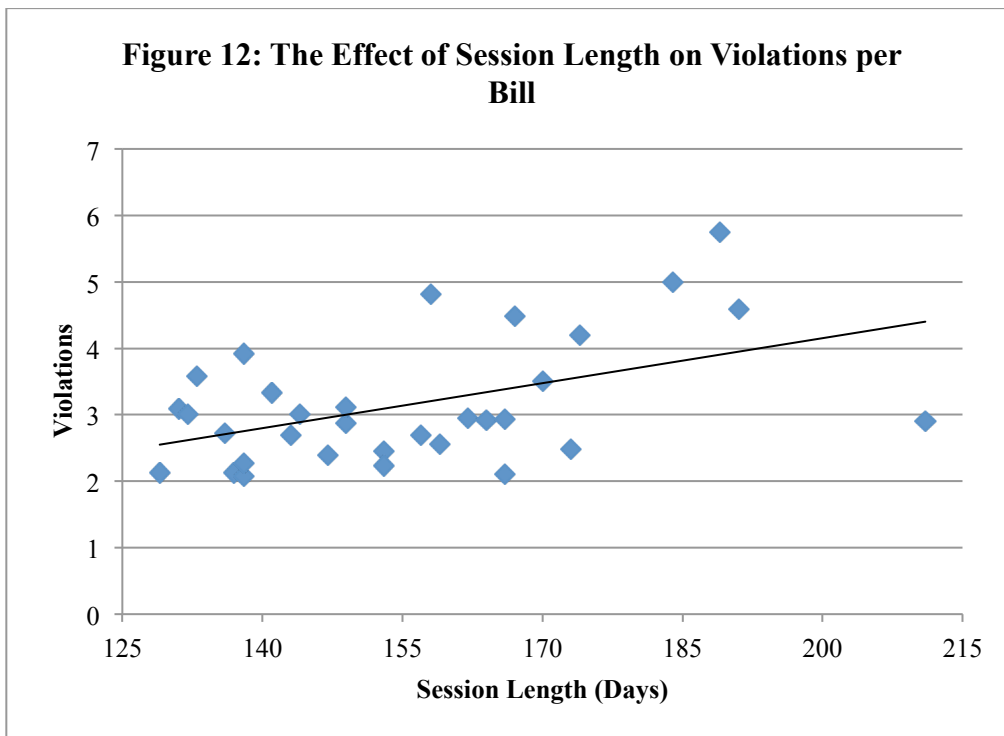
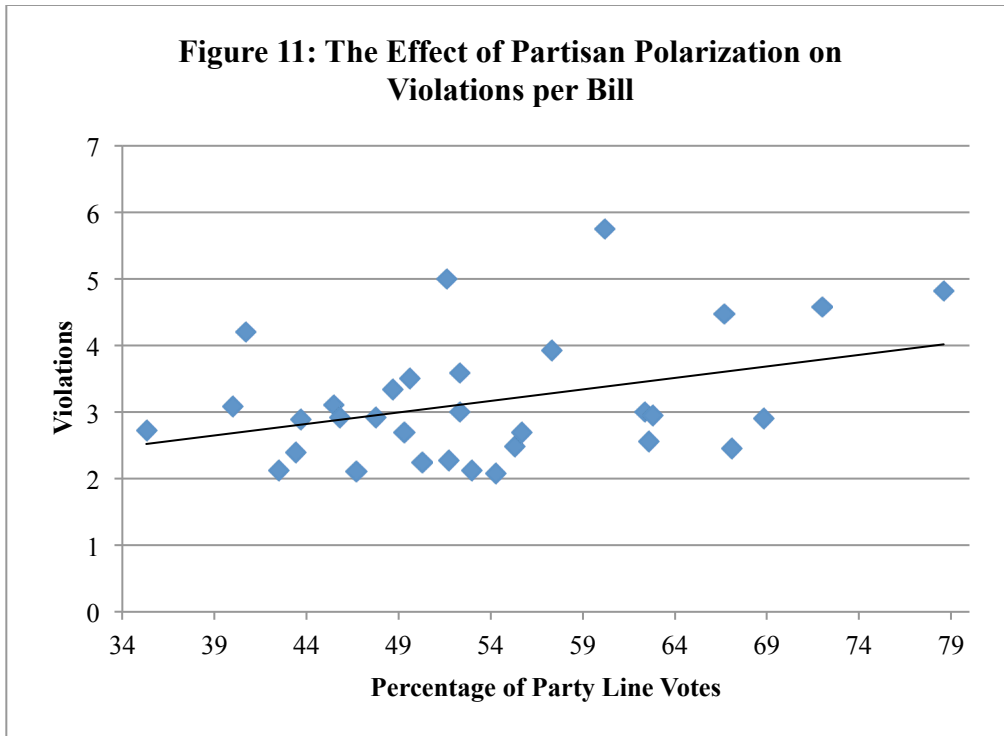
**Figure 7: Average Amendment Tree Fills per Bill per Year, 1979-2010**

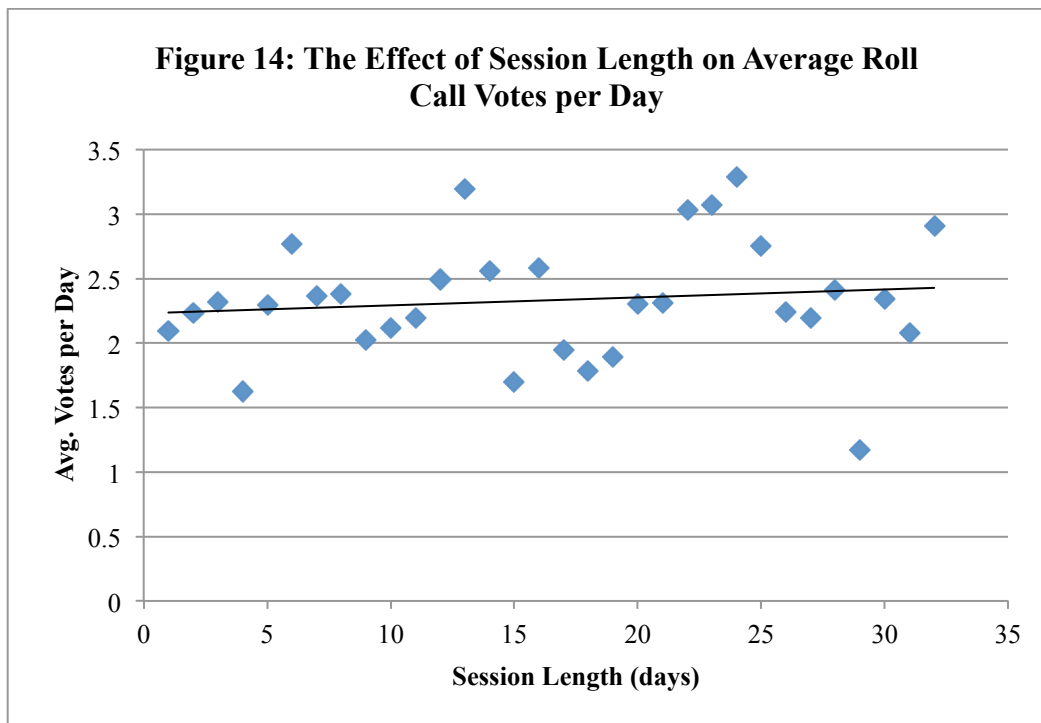
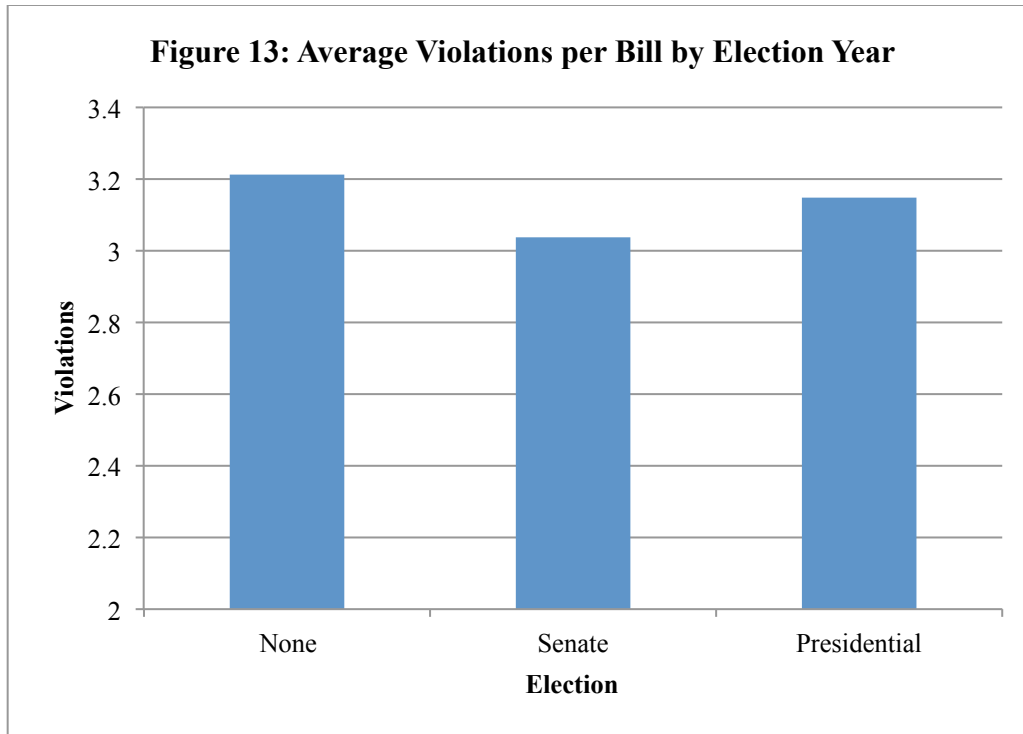


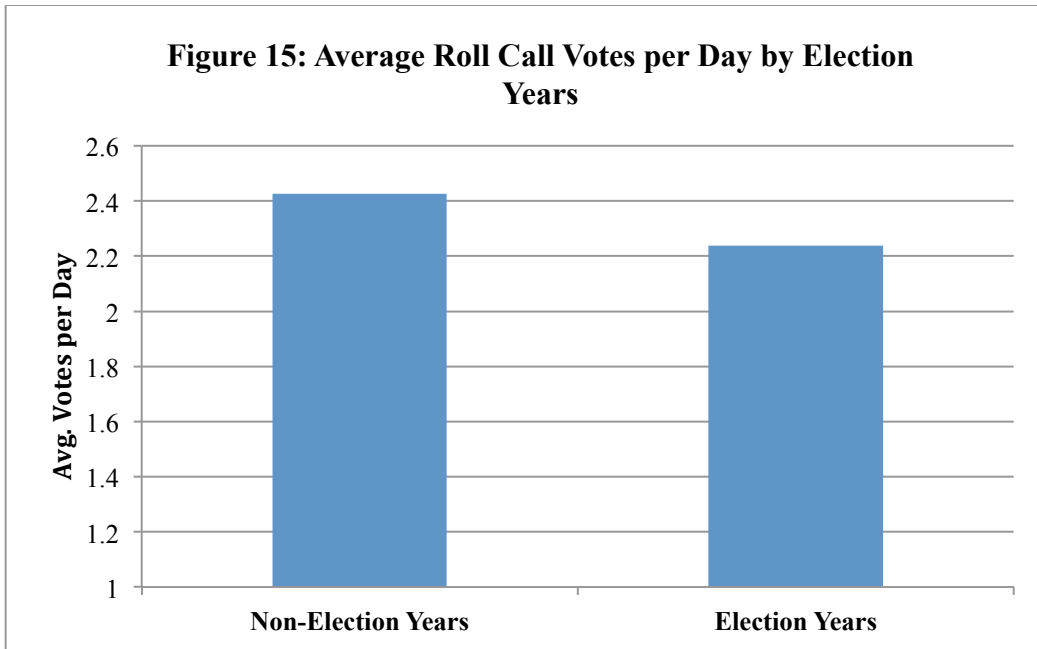
**Figure 8: Average Omnibus Measures per Bill per Year, 1979-2010**











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## X. Appendix: Codebook

year: any individual year from 1979 to 2010.

session: the number of each legislative session per Congress (ex. 101-2).

sessionlength: the number of days the Senate was active per legislative session.

polarizationpartyvotes: partisan polarization, measured by the percentage of roll call votes per year in which a majority of Democrats aligned against a majority of Republicans (as identified by Congressional Quarterly's annual reports).

centralization: dollars (in millions) appropriated to Senate leadership, whip, and policy committee offices per year (adjusted for inflation).

\_Ielection\_1: dummy variable representing years in which a class of senatorial elections occurs.

\_Ielection\_2: dummy variable representing years in which a presidential election occurs.

bypass: a bill is brought to the floor without being referred to committee.

multiref: a bill is referred to more than one committee

nohear: a bill did not receive a hearing in committee.

nomarkup: a bill did not receive a mark-up session in committee.

noreport: a bill was reported from committee without a written report.

treefill: the number of times the majority leader or his designee filled a bill's amendment tree (as identified by CRS reports).

omnibus: the number out of the thirteen regular appropriations categories legislated by an omnibus appropriations law (as identified by CRS reports).

filibust: a bill was filibustered during floor consideration (as identified by Koger).

VIOLATION: average number of total violations of the regular order per bill per year.