

**Open Rules in a Closed House:
Agenda Control in House Appropriations from 1995 - 2012**

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May 22, 2015

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Paper prepared for delivery at the Congress and History Conference, Vanderbilt University, May 22-23.

Introduction

Each year, the House and Senate must adopt legislation to fund all discretionary spending by the federal government – the third of the budget providing for spending on everything from defense to student loans. The process begins with the consideration of a dozen annual appropriations bills in the House followed by their consideration in the Senate. Both chambers must act in order to pass appropriations bills, but the majority party in each chamber brings sharply different tools and resources to this shared task. The standing rules of the House allow a reasonably unified majority party to manage the House floor and pass legislation efficiently. By contrast, the standing rules of the Senate generally require the majority party to accommodate the minority and individual members for the chamber to function. Analyzing how the majority party in each chamber manages its half of the shared task of funding the government is a powerful way to understand how the standing rules of the House and Senate shape legislative outcomes.

The Senate's management of appropriations bills has been the subject of recent study (Hanson 2014), but less attention has been given to the House. In this paper, I present descriptive data from a new project on the management of appropriations bills in the House of Representatives with an emphasis on two particular issues. First, to what extent has the House departed from the textbook path of following regular order to adopt spending bills? Second, to what extent do House members exert strong control over the agenda when they manage spending bills? This paper describes the findings of two waves of interview data with current and former congressional staff members familiar with the appropriations process; quantitative data on the type of rules adopted for

appropriations bills; roll call voting data; and, evidence from a case study of the 111th Congress and its unusual adoption of structured rules.

The data reveal a number of interesting findings. First, the bipartisanship described by Richard Fenno in appropriations has endured far longer than previous scholars have found. Interviews with key House staff members in 2005 and 2012 describe a norm of bipartisanship in House appropriations that is contested but endures. The House routinely adopts open rules to debate spending bills while adopting closed rules for most other kinds of legislation. House members also routinely debate and vote on individual spending bills in regular order. Until recent years, they also gave them bipartisan support. These bipartisan features of appropriations are increasingly contested by the chamber's polarized membership. Interview subjects report significant tensions with leadership and a challenging floor environment. The number of amendment-related votes on appropriations bills has increased each year, and in response the majority party has experimented with adopting structured rules for debate on spending bills. Some evidence suggests that the House may be following the Senate's lead and abandoning the regular order in appropriations as an informal way to control the agenda. The advantage of this practice is that it may allow the majority party to impose an effective closed rule on debate without sparking a time-consuming minority party backlash.

This paper is a descriptive survey of House appropriations aimed at laying the groundwork for future research, and keeping with that objective, it raises some provocative questions the way in which House members manage spending bills. First, why do House members adopt open rules for spending bills but closed rules in other legislative domains despite evidence of the problems they cause the majority party?

Second, do House members abandon regular order on appropriations in order to influence legislative outcomes as occurs in the Senate? If so, what accounts for the relatively recent adoption of this practice in the House compared to the Senate? Third, what accounts for the timing in the collapse of bipartisan support for spending bills? Previous research dates the rise of a more partisan appropriations process to the 1995 Republican revolution, but bipartisan support for appropriations bills endures well beyond that point. Future research should explore these questions.

The Evolving Appropriations Process

There is a rich scholarly tradition of studying the annual appropriations process in order to gain insight into larger questions about Congress. Richard Fenno's famous study of appropriations in the mid-20th century found that it was orderly, bipartisan and effective at limiting spending (Fenno 1966). Fenno observed that Congress followed a carefully structured sequence to adopt spending legislation commonly referred to as the "regular order." Under regular order, the House of Representatives acted first. Each subcommittee of the House Appropriations Committee wrote a bill covering programs within a set jurisdiction. 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 after the House and worked off the House versions of the bills. The Senate subcommittees amended the work of the House, and the 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 recent years, but it is still regarded by members as the preferred way to do business (Schick 2007, Hanson 2014).

Fenno described the appropriations process at the height of the textbook Congress of the mid-20th century during a time of strong committees, weak parties and substantial ideological overlap between Democrats and Republicans. Congress changed rapidly in the wake of his study. The House reform movement dethroned powerful committee chairs and set into motion a chain of events that led to the recentralization of power in leadership (Rohde 1991, Polsby 2004). Senators became more active and entrepreneurial as old norms of deference and specialization broke down (Matthews 1959, Sinclair 1986, Fenno 1989). Congress adopted the Congressional Budget and Impoundment Control Act of 1974, superimposing a new budgetary process over the preexisting appropriations process (Wildavsky and Caiden 2004). New sunshine laws increased transparency in Congress and brought member decisions into sharper public relief (Rieselbach 1986, Wolfensberger 2000). Rising partisan polarization escalated conflict between the two parties (McCarty, et al. 2006). The net effect of these changes transformed the environment in which members considered spending bills and appears to have made the floors of the House and Senate more contentious arenas than Fenno described.

(Insert Figure 1 About Here)

One major change in appropriations in the wake of these developments has been the increasing abandonment of the regular order and a corresponding turn toward unorthodox methods of legislating (Sinclair 2012, Hanson 2014, Smith 2014). Starting in the late 1970s, Congress began to fail to pass individual spending bills. In response, it adapted continuing resolutions (temporary funding measures usually adopted when Congress was late passing a spending bill) into yearlong measures covering more than one bill. The practice of passing some or all appropriations bills as a package soon

became routine. Between 1975 and 2012, the House of Representatives failed to call a vote on 12 percent of bills in regular order, and the Senate failed to call a vote on 26 percent. A total of 39 percent of bills were adopted as part of an omnibus appropriations bill or were covered by a yearlong continuing resolution (Hanson 2014). Figure 1 above illustrates the proportion of the regular appropriations bills each year receiving a vote in the House and Senate, and included in (or otherwise covered by) an omnibus package or yearlong continuing resolution.

A second major change is the subject of debate: the extent to which the appropriations process has departed from the bipartisan norms described by Fenno. Many scholars have observed an increase in the partisanship of the House Appropriations Committee and the subsequent debate over spending bills (Aldrich and Rohde 2000, Gordon 2001, Polsby 2004, Schickler and Pearson 2005). Most accounts mark the Republican takeover over the House in 1995 as a key moment in the transformation of the committee. Republicans weakened the independence of committees by empowering the Speaker and placing term limits on committee chairs. Speaker Newt Gingrich further injected partisanship into appropriations by directing an effort to cut spending and implement conservative policy ideas via the appropriations bills, resulting in a disastrous government shutdown that damaged the party reputation of Republicans and breathed political life back into Bill Clinton's presidency. Aldrich, Perry and Rohde go as far as to label the period since 1995 as encompassing "The Decline and Fall of Bipartisanship" on the House Appropriations Committee (Aldrich, et al. 2013). These findings are consistent with partisan theories of Congress, such as Conditional Party Government, in which the majority party would be expected to use its control over the agenda in an effort

advance its electoral and policy interests when it is unified and ideologically distant from the minority.

The observed partisan turn of the House Appropriations Committee noted by these scholars contrasts with the findings of research rooted in classic distributive theories of Congress. This approach is premised on the idea that members' interest in winning re-election leads them to seek particularized benefits for their districts (Mayhew 1974). Members claim credit for delivering these benefits and boost their chance to win re-election. There is a substantial body of scholarship that builds on this foundation to examine legislative bargaining using formal models. One body of work finds that distributive benefits will be allocated to the minimum number of members necessary to secure passage of the legislation (Baron and Ferejohn 1989). A second finds that members' uncertainty about whether they will be in the minimum winning coalitions leads them to support distributing benefits universally to all members, and that winning coalitions for distributive legislation will consist of a supermajority of members (Shepsle and Weingast 1981). Empirical studies of distributive benefits in Congress, including some published well after the 1995 Republican Revolution, offer evidence of universalism in practice and suggest that leaders distribute benefits widely to build large, bipartisan coalitions to secure the passage of legislation (Groseclose and Snyder 1996, Evans 2004, Shepsle, et al. 2009). Studies of the membership of the House Appropriations Committee find that members "gain assignments to panels of specific interest to their constituencies," consistent with distributive models of Congress (Adler 2000). No recent study has systematically examined whether partisan or distributive approaches better describe the modern appropriations process.

One way to evaluate the current character of the House appropriations is by talking to those who work in it every day. Key congressional staff members describe appropriations in ways that suggest it is in flux rather than cleanly fitting with the expectations of partisan or distributive theories of Congress. I conducted two waves of interviews in 2005 and 2012 with current and former congressional staff members knowledgeable about appropriations.¹ Three interviews with senior staff members familiar with the House of Representatives are particularly revealing. In each case, they describe the Appropriations Committee as having a deeply rooted bipartisan character that is under siege – but has not been replaced – by heightened partisanship in the House.²

In 2005, a senior Republican staff member who had recently retired after a decade of working with the House Appropriations Committee in the wake of the Republican Revolution discussed the tensions between appropriators and House leadership in some detail. The staff member explained that it was necessary for appropriators to shed their ideology to pass spending bills, and this approach made the staff member a lightning rod with Republican leadership. For example, the committee routinely allocated earmarks to vulnerable members in each party, and divided money on one bill (Labor-HHS) 60-40 between the majority and minority. The leadership would have preferred to give all money to Republicans.³ The leadership also resented that the Appropriations Committee

¹ The 2005 wave of interviews was conducted with colleagues and some of the findings are reported in earlier work. See Shepsle, et al. 2009.

² In both waves, the staff members generally requested confidentiality as a condition for conducting the interview. The comments reported here are summaries from notes taken during the interviews. Quotations are verbatim quotes written down during the interview session.

³ I was particularly interested in this description in the wake of my own experience working in the House in the summer of 2004 for the most junior member of the House minority, Rep. Stephanie Herseth-Sandlin (SD-AL). In that case, the majority and

was a separate power center in the chamber. Six-year term limits for committee chairs were a great source of frustration for the staff member, who recalled getting angry when he read a news story quoting a “30 year old puke” in leadership saying that members would “wash [Majority Leader Tom] DeLay’s car” to get a coveted committee position.

In 2012, separate interviews with a senior Democrat and senior Republican staff member familiar with House Appropriations sounded similar themes. “There are a lot of tensions between the leadership and the Appropriations Committee” stemming from the power and independence of the committee, the Republican staff member noted. “There are Republicans, there are Democrats, and there are appropriators.” The Democratic staff member noted that there is always a battle for power between leadership and the committee, and the only way the committee can maintain power is through bipartisanship. The staff member went on to explain that keeping the appropriations process open (such as by adopting open rules) sent a message to all members that their ideas would be heard no matter what side of the aisle they were on. This, in turn, helped to generate bipartisan support for appropriations bills. It also preserved the committee’s power by allowing it to pass bills without the help of leadership.

Both staff members noted a second way the committee’s bipartisan traditions are under siege in the modern House: members are increasingly likely to flood appropriations bills with large numbers of amendments during the floor consideration of bills. The Republican staff member noted that bills now attract 200 amendments, mostly

minority staff of the House Appropriations Committee conspired together to provide an earmark for Herseth-Sandlin in defiance of a request from House leadership to deny her funds. When I asked a Democratic staff member about this incident in an interview in 2005, the staff member simply noted that majority and minority appropriators recognized they needed to help each other to get their work done.

from Republicans seeking to issue a press release. Debate over appropriations bills is more time consuming than in the past, and this makes it harder for the majority party to debate and adopt all 12 bills individually. The staff member further noted that open rules are particularly challenging in the wake of the moratorium on earmarks. Rep. John Murtha used to tell members that if they offered an amendment, they would lose their earmarks. That leverage is now gone. The Democratic staff member observed that open rules expose the majority party to difficult votes. But, the staff member also noted that leaders had a clear choice in how to manage the bills: clamp down on the process and spark a revolt by the minority, or bring the bills to the floor under an open rule and face the votes. The staff member noted the presence of former Marines on the staff of the Appropriations Committee, and said they brought the Marine Corps' attitude with them to the Hill: we're going to take that bill, so come at us with what you've got.

In summary, the findings from interviews offer evidence that the Appropriations Committee has hewed more closely to classic distributive accounts of Congress than many scholars have found. Ten years after the Republican Revolution, majority members of the committee were still adhering to universalistic practices in the distribution of earmark funds. As recently as 2012, appropriators justified adopting open rules for appropriations bills as a way to win bipartisan support and to allow the committee to retain power independent of House leadership. These bipartisan features of the process appear to be under siege, but have not disappeared. According to these accounts, the appropriations process should properly be described as one of "contested bipartisanship" rather than fully embedded in the broader partisan politics of the House.

Special Rules and Amending Practices in the House

I turn first to an assessment of the adoption of special rules to assess whether the label of “contested bipartisanship” fits descriptive data from the House appropriations process. The adoption of special rules is a critical way in which members manage debate on the House floor, and the type of special rule adopted is an indication of the degree to which the appropriations process is open to influence from all members (Davidson, et al. 2012). Appropriations bills are privileged under the standing rules of the House, and receive priority consideration for the House floor even without a special rule.

Appropriations bills may be debated without a special rule for this reason, in which case they are open to germane amendments. Appropriations bills are generally brought to the floor under open rules when rules are adopted (Schick 2007). The interview evidence presented above indicates that open rules are rooted in the committee’s bipartisan traditions, but also create challenges for the majority party by exposing it to amendments. Here, I examine the extent to which the House practice of adopting open rules remains intact, evidence about amending activity on appropriations bills, and review the results of a case study from the 111th Congress on an unusual example of the majority adopting structured rules.

The House Rules Committee is responsible for assigning a special rule structuring debate for most bills that are brought to the House floor. Rules may be open, closed, or modified and must be approved by a majority vote of the House. An open rule allows any member to offer a germane amendment. A closed rule prohibits amendments. Modified rules place some limits on amending. A modified open rule requires amendments to be preprinted in the *Congressional Record* prior to debate. A modified

closed rule (structured) requires amendments to be pre-approved by the Rules Committee and listed in its report. I gathered data on all House special rules using the annual reports of the House Rules Committee for each Congress from 1995 – 2012. These reports provide a breakdown of the total number of each type of rule (open, closed, modified) issued during a Congress, and the specific rule adopted for every bill debate on the floor of the House during a Congress. I coded rules as “open” if the committee listed them as “open” or “modified open” and closed if they were listed as “closed,” “modified closed,” or “structured” by the committee. Appropriations bills brought to the floor without a special rule are coded as “open.”

(Insert Figure 2 About Here)

Figure 2 compares the proportion of appropriations bills debated under an open rule or with no rule (dotted lines) with the proportion of open rules on all legislation (gray bars). As has widely been reported, the average number of open rules issued by the House Rules Committee has generally declined over time. A total of 57 percent of rules were open in the 104th Congress. That percentage declined to just 5 percent in the 111th Congress before rebounding to 17 percent in the 112th Congress. By contrast, 80 to 90 percent of appropriations bills that are debated are brought to the floor under an open rule or without a rule during a given year. The major exception to this trend is the Legislative Branch appropriations bill, which is often debated under a structured rule to prevent amendments on congressional salaries. In addition, the Democratic majority in the 111th Congress adopted a structured rule for debate on all but one appropriations bill. Republicans returned to the use of open rules when they took control of the House in the 112th Congress.

The data reveal a handful of instances in which more than one rule was adopted in regard to the same appropriations bill. Interview subjects note that open rules expose the majority party to dilatory tactics by the minority. In some cases, the majority responds with a second rule limiting debate. For example, the House adopted an open rule and then a structured rule to debate the fiscal year 2008 Agriculture appropriations bill. According to the *CQ Almanac*, the structured rule was a response to strong minority opposition to the bill: “Republicans stalled progress on the measure under an open rule earlier in the week...thwarting debate with a barrage of motions to adjourn and similar tactics. Finally, the House voted late in the afternoon to adopt a rule limiting amendments, a rarity for an appropriations bill, but Democrats said it was necessary to get work done.”⁴ The vast majority of bills in the dataset were considered only under a single rule.

(Insert Table 1 About Here)

An expectation of partisan theories of Congress is that the proportion of closed rules limiting amendments during debate is likely to rise as the majority party becomes more unified and distant from the minority. By contrast, a visible relationship between these variables and closed rules would not be expected under distributive theories of Congress. I estimated the correlations among four variables: the proportion of closed rules for all legislation, the proportion of closed rules for appropriations bills, majority party homogeneity (operationalized as the DW-Nominate standard deviation of the majority party divided by the standard deviation of the chamber), and majority party

⁴ "Bush Prevails on Cuba, Drug Imports." In *CQ Almanac 2007*, 63rd ed., edited by Jan Austin, 2-7-2-9. Washington, DC: Congressional Quarterly, 2008.
<http://library.cqpress.com/cqalmanac/cqal07-1006-44911-2047838>.

distance from the minority (operationalized as the distance between the median DW-Nominate scores of the two parties). Table 1 presents the results. The correlation between closed rules on appropriations bill with the two partisan variables is much lower than for closed rules on all legislation. The proportion of appropriations bill with a closed rule each year is correlated with majority party homogeneity at 0.25 and with distance at 0.26. By comparison, the two variables are correlated with closed rules on all legislation at 0.93 and 0.89 respectively.

(Insert Figure 3 About Here)

Interview subjects observe that it is increasingly challenging to manage appropriations bills on the floor because of the large number of amendments that are proposed. Consistent with these statements, the data show a robust and increasing amount of amending activity by both parties on the House floor when appropriations bills are considered. I counted the number of roll call votes taking place on amendments to either individual appropriations bills or omnibus measures as a rough measure of the amount of legislative activity taking place during the annual appropriations process for the years 1981 - 2012. For comparison, I also conducted a similar count of votes on amendments from floor debate on appropriations bills in the Senate. Figure 3 presents the results. The number of roll call votes on amendments in the House of Representatives is increasing in absolute numbers over time, while the number in the Senate is declining. Interestingly, the average number of votes per member in the House is now higher than it is in the Senate (see Figure 4). A visual inspection of the legislative history of appropriations bills showed that the House debates amendments from both parties.

Case Study in Special Rules: 2009

What sort of challenges do large numbers of amendments create for the majority party and how does it respond? I examine this question with a case study from the 2009 appropriations season. It is notable because it is the one instance in which the majority party systematically adopted structured rules for debate on spending bills. Three major findings emerge from this case study. First, the majority party's adoption of structured rules appears to be a response to elevated levels of amending on appropriations bills and a perception by the Democratic majority that Republicans were offering amendments in order to delay the passage of the bills. Second, the Democratic majority's decision to adopt structured rules for debate on the appropriations bills generated a sharp reaction from the minority that complicated the passage of the bills. Third, the rules adopted for debate were not neutral. The rules permitted amendments from extreme sponsors on average in both parties to move forward for debate.

The transition from Republican to Democratic control of the House in 2007 was accompanied by a significant increase in amending activity on appropriations bills. The number of roll call votes related to amendments to appropriations bills more than doubled from 108 to 233 from 2006 to 2007. Most appropriations bills did not reach the floor in 2008, but Democrats began the consideration of appropriations bills in 2009 wary they would face a "filibuster by amendment" from the Republican side. The first bill to reach the floor was H.R. 2847, the Commerce-Justice-Science Appropriations bill. Two rules were adopted for debate on the bill. The first, H. Res. 544, required amendments to be preprinted in the *Congressional Record* prior to the beginning of debate. An excellent unpublished case study of the bill's consideration by Anthony Madonna demonstrates

that the preprinting requirement sparked an angry reaction from Republicans who viewed it as a restriction on their ability to offer amendments. A total of 127 amendments were filed in the *Record*. Democrats protested that debating all of the filed amendments would make timely consideration of all the appropriations bills impossible, and responded by adopting a second rule (H. Res. 552) selecting a subset of the filed amendments to be in order for debate.⁵ Republicans protested the restriction and employed delaying tactics in protest. Madonna reports that the minority tactics added four hours to the debate on the bill and led to a record 53 votes being cast during one day.

(Insert Table 2 About Here)

Each of the 11 remaining appropriations bills was debated under a structured rule in the wake of the cantankerous debate on the Commerce-Justice-Science bill. In each case, the Rules Committee required members to file amendments with the committee prior to debate on the bill, and the committee selected which amendments out of those filed would be in order during debate.⁶ One effect of the rules was to reduce sharply the number of amendments in order for debate (Table 2). Democrats filed a total of 209 amendments, of which the Rules Committee allowed 13 percent to proceed. Republicans filed 1267 amendments (including 605 on the Defense bill), of which 54 percent were

⁵ Rules Committee Chair Louise Slaughter noted at the time: “There was not a single amendment to this bill in fiscal year 2003, but this year we had 127 amendments filed on the bill as of the Tuesday deadline. That suggested to us we were in for what potentially could have been a repetitive chain of deleterious and ill-considered amendments, none of which would have allowed us to get any closer to our goal of getting these bills completed and signed into law by the President. When it became clear this week that the minority was not ready to agree to a clear and firm schedule for finishing the work on appropriations bills, we decided that we had no alternative but to go ahead with a clear and concise plan” (*Congressional Record*, June 17, 2009, H6910).

⁶ I am grateful to Anthony Madonna for sharing data on structured rules for analysis in this paper.

allowed. Those statistics are somewhat misleading given the large number of amendments proposed and allowed by the Rules Committee to the Defense bill. Setting aside Defense, Republicans filed 680 amendments and 20 percent were accepted for debate.

(Insert Figure 5 About Here)

A second effect of the structured rules was to disproportionately select amendments for debate from more ideologically extreme sponsors on both sides of the aisle (Figure 5). Across all bills except Defense⁷, the average DW-Nominate score for Democratic sponsors was -0.35 for amendments that were not allowed compared to -0.38 for those that were. The movement was more significant on the Republican side, where the average DW-Nominate of sponsors was 0.77 for amendments that were not allowed and 0.85 for amendments that were allowed. Similar movements are visible to varying degrees on the individual bills. These findings are noteworthy because they are consistent with previous studies of structured rules which find that they enhance partisan divisions by selecting amendments that are more likely to provoke partisan divisions to move forward for debate (Lynch, et al. 2012). They may also have increased the likelihood that minority party amendments would be defeated.

The majority's tactics stirred a hornet's nest of opposition from the minority. Reports on the debate on appropriations bills from the *CQ Almanac* from 2009 repeatedly mention Republican protests to the use of structured rules. These criticisms were echoed in the minority views of the annual Rules Committee: "Open rules for appropriations bills have always been considered sacrosanct by Democratic and Republican majorities

⁷ I do not include Defense in the average because of the unusually large number of amendments introduced by Rep. Jeff Flake.

alike. As long as an amendment was germane, it could always be offered on the floor of the House during debate.”⁸ Minority resistance to the majority’s legislative practices can be significant enough to force it to change tactics (Green 2015), and in this case, there is some evidence that it led the majority to avoid bringing all but two individual appropriations bills to the floor in 2010. Two senior staff members familiar with appropriations observed in separate interviews in 2012 that House Appropriations Chair David Obey wanted to avoid minority dilatory tactics and chose not to bring individual spending bills to the floor in 2010 for that reason (Staff Interviews A and E 2012). Democrats lost control of the majority in the midterm elections that year. When Republicans assumed control of the chamber in 2011, they returned to the use of open rules on appropriations bills. They continue with that practice today.

Discussion

The findings of this section are consistent with the descriptions of interview subjects of “contested bipartisanship” in House appropriations. Open rules are routinely adopted for spending bills even as closed rules are common in other legislative domains. The adoption of open rules is described by both parties as a deeply rooted tradition, and there appears to be a cost both to adhering to this tradition and to abandoning it. Open rules expose the majority party to increasing numbers of amendments and to minority dilatory tactics. The problems caused by these tactics are disruptive enough to the majority’s ability to adopt appropriations bills in a timely fashion that Democrats adopted structured rules in 2009 in an effort to better control debate. The adoption of structured rules sparked a strong minority reaction that may have led the Democratic majority to

⁸ Summary of Activities of the House Committee on Rules, 111th Congress, January 3, 2011, page 96.

avoid regular debate on most appropriations bills in 2010. It is notable that the norm of open rules is strong enough that the new Republican majority in 2011 returned to the use of open rules when it assumed control of the chamber. Open rules remain the norm today.

Abandoning Regular Order in the House

Next, I evaluate patterns in abandoning the regular order in the House. Previous work (Hanson 2014) shows that the Senate majority party's decision not to call a vote on an individual appropriations bill and instead to bring it to the floor only as part of an omnibus package is a form of majority party influence. It limits the total amount of amending in the appropriations process and eases the formation of building a coalition to pass the budget. In the Senate, it is associated with parties that are weak because they are divided, distant from the minority or have a small margin of control.

The House majority party could adopt this practice to achieve similar goals, but no study has investigated whether it does so. The House majority party has access to tools to control debate that do not exist in the Senate, such as special rules, and so it may have little need to use the Senate's heavy-handed tactics. Nonetheless, there may be an incentive for the House majority party to seek informal means of controlling the legislative agenda other than imposing special rules. The case study above demonstrates that imposing a structured rule on debate can spark dilatory tactics in response from the minority. Bypassing the regular order could be appealing to the House majority party for that reason.

It has been historically rare for the House to abandon regular order on appropriations bills. The House debated and gave an initial vote to all but 12 percent of

appropriations bills between 1975 and 2012. Nonetheless, it has become more common since 1995 for the House to abandon the regular order in appropriations. The House failed to give an individual vote to 20 percent of regular appropriations bills between 1995 and 2012 and 39 percent of bills between 2006 and 2012. The more frequent abandonment of the regular order in the House is a shift in the behavior of the majority party that could represent an increase in its usage of an informal means of controlling the agenda.

(Insert Table 3 About Here)

Abandoning regular order has the practical effect of limiting amending for the simple reason that members cannot amend a bill that is not brought to the floor. The majority party still must pass some form of legislation, such as an omnibus appropriations bill or yearlong continuing resolution, in order to fund the government. Unless that legislation offers the same practical opportunity to amend as occurs in regular order, the total amount of amending activity will decline. In the House, it has been common in recent years for omnibus bills and yearlong continuing resolutions to come to the floor under a closed rule that prohibits amending. Table 4 illustrates how abandoning regular order limits amending using the legislative history of the appropriations bills in 2012 as an example. In this case, members of the House voted on seven bills in regular order and on a yearlong continuing resolution covering the remaining bills. House members cast a total of 153 roll call votes on amendments in relation to the seven bills they debated on the floor. They cast no votes on the CR because it was brought to the floor under a

closed rule. In effect, this meant that money for the agencies funded by the five bills that were covered by the CR was debated under a closed rule that blocked amending.⁹

(Insert Figure 6 About Here)

To examine whether abandoning the regular order is associated with a decline in amending in the House, I estimated the correlation between the proportion of bills not receiving a vote in the House during a year and three other variables: the total number of roll call votes on amendments in the House during an appropriations season; the total number of voice votes; and, the total number of all votes. Vote counts include votes cast related to amendments on regular appropriations bills, omnibus appropriations bills, or yearlong CRs. I estimated the correlations for the years 1995 – 2012. The proportion of bills without a vote was negatively correlated with the number of roll call votes at -0.43, voice votes at -0.44 and all votes at -0.45. Figure 6 illustrates this pattern using the number of roll call votes cast related to amendments. The decline in amending associated with abandoning the regular order can be significant. For example, the number of amendment-related votes declined from 233 in 2007 when all bills were debated in regular order to 4 in 2008 when the House failed to debate or vote on 11 bills in regular order. These findings are not dispositive, and cannot address the ultimate reasons why the House abandons the regular order. The failure of the House majority party to debate a bill in regular order might occur because the majority party believes it lacks the votes to adopt a bill, for example. But, they do demonstrate that abandoning the regular order has

⁹ It is noteworthy that the adoption of a closed rule on an omnibus package or yearlong CR does not appear to provoke the same minority party backlash as it does on regular appropriations bills. A staff member from the House Rules Committee I interviewed in 2015 explained that omnibus bills and yearlong CRs are the product of bicameral negotiations and members generally understand that opening the bill to amendments would risk breaking the negotiated deal.

the same effect on amending activity in the House as it does in the Senate, and the same potential to be used as an informal instrument of agenda control in the House.

(Insert Figure 7 About Here)

Interviews and the case study from 2009 offer some evidence that abandoning regular order was used as a form of agenda control by the House majority. If that is the case, then the House majority party has been more aggressive in its effort to control the legislative agenda in appropriations than its use of special rules would indicate. Figure 8 illustrates the legislative history of appropriations bills from 1995 to 2014 showing what proportion of bills were debated under an open rule, structured rule, or not debated at all. The use of structured rules remains rare, but it has become more common since 2008 to fail to debate individual appropriations bills in regular order and to fund the agencies they cover through an omnibus or yearlong CR brought to the floor under a closed rule instead. If abandoning the regular order and structured rules are two ways of achieving a similar end – limiting the opportunity for debate – then the appropriations process appears to be much more closed in recent years than in the past.

Voting Patterns on Appropriations Bills

A final perspective on the House appropriations process can be gained by analyzing voting patterns on appropriations bills. Advocates of some distributive theories of Congress predict that voting coalitions on appropriations bills will be larger than the minimum number of members needed to adopt a bill. By contrast, winning coalitions under partisan theories of Congress are more likely to be narrow, partisan majorities. I gathered data on the initial votes for passage in the House of Representatives for four appropriations bills for every year from 1979 to 2012. The bills are Agriculture, Defense,

Energy and Water, and Labor-Health and Human Services. I selected these bills because their jurisdictions have remained constant for over three decades. Various reorganizations of the jurisdiction of Appropriations subcommittee have changed the groups of agencies covered by other bills. The four bills selected also represent a wide range of policy types, including social welfare programs (Labor-HHS) and classic distributive spending (Energy and Water).

(Insert Table 4 About Here)

Table 4 reports the average winning coalition for each of the four bills between 1979 and 2012 if they received a vote. Of those bills that do receive a vote, most receive the support of a supermajority of members. A simple majority in the House of Representatives requires 218 votes. On average, the Agriculture bill received 333 votes (standard deviation 55), Defense received 348 (standard deviation 40), Energy and Water received 352 (standard deviation 59), and Labor-Health and Human Services received 312 (standard deviation 53). Figure 8 illustrates the average level of support for each bill and its distribution using box plots. The average winning coalition across all four bills was 341 votes in favor. These coalitions drew substantial support from the minority party in the House. On average, the Agriculture bill attracted 114 votes from the minority party, the Defense bill 141 votes, the Energy and Water bill 134 votes, and the Labor-HHS bill 87 votes. The minority party contributed 123 votes to the passage of the four bills on average.

(Insert Figure 8 About Here)

Majority party support for appropriations bills is close to unanimous on average, at 89 percent and higher for the four bills. The percentage of the minority party

supporting the Energy and Water and Defense bills averages at 74 and 78 percent respectively. The average minority party support for the Agriculture and Labor-HHS bills is lower, at 64 percent and 50 percent respectively. Interestingly, minority party support for the four appropriations bills shows an overall decline since 1979 and a sharp decline in the 2000s. A closer inspection of the votes behind these trend lines reveals both that support for the bills is highly variable in the minority party, but dropping on average (Figure 9). 2007 appears to be a pivotal year in which minority support begins to drop sharply.

(Insert Figure 9 About Here)

Discussion

Appropriations bills have historically been described as receiving bipartisan support, and the evidence presented here shows that this has remained the case until recent years. Four key appropriations bills covering a range of policy areas generally received bipartisan support until around 2007, at which point minority support for spending bills eroded sharply. The number of bills not brought to a vote in regular order also increases in this time period, suggesting that the appropriations process overall became more contested at this point.

Discussion and Future Research

This paper presents a variety of types of descriptive data aimed at understanding the way in which House members manage the annual appropriations process. The yearly effort to fund the federal government is important because the affected programs reach into the lives of all Americans and because it holds broader lessons that can help researchers understand how Congress has evolved in recent decades. The data presented

here indicate that the modern appropriations process can be characterized as one of “contested bipartisanship.” Staff members close to the process defend it as bipartisan and openly discuss tensions with party leadership. The practice of adopting open rules has proven to be surprisingly robust, and clearly departs from the majority’s practice of adopting closed rules on other types of bills. House members have demonstrated remarkable success adopting appropriations bills in regular order with bipartisan support until recent years. Within that context, signs of trouble abound. Bipartisan support for appropriations bills has dropped sharply since 2007. Members now offer waves of amendments that slow down the consideration of spending bills and may give the majority party an incentive to turn to unorthodox methods of legislating.

These patterns are surprising because the House of Representatives has most clearly embodied the turn toward polarized politics in the modern political system, and it is the chamber in which many scholars would expect to observe the majority party wielding strong control over the agenda. For that reason, it is important that future research address the causal reasons for the patterns described here. Scholars should seek to better understand why open rules remain in the norm in appropriations but the exception for other types of legislation. Is this an unusual example of path dependence and the continuation of old norms of behavior even after the reasons for those norms have disappeared? Or, are open rules the result of a set of member calculations unique to appropriations? Staff members insist that some degree of bipartisanship is necessary in order to ensure that appropriations bills are adopted and the government is funded each year. Authorization bills can fail, and members can try again the following year. But, some form of legislation must be passed each year to provide funding for the government

or federal offices will shut down and members of Congress will stand at risk of receiving the blame. The fact that spending bills are “must pass” bills may give the majority party a strong incentive to keep the process open in an effort to win bipartisan support and ensure the passage of legislation.

Second, how does the majority party employ the variety of different tools at its disposal to control debate short of adopting a closed rule? There are several interesting areas for fruitful exploration here. First, many of the rules adopted for debate are “modified open” rules that require amendments to be preprinted in the *Record* prior to debate. Members of the minority criticize this tactic because it prevents them from proposing amendments on the fly during debate, but the consequences of this tactic for debate on spending bills are poorly understood. Second, the majority party retains (and occasionally exercises) the option of adopting a second, closed rule for debate if it believes the minority party is abusing open debate. Does the existence of this option constrain the behavior of minority members and deter them from engaging in dilatory tactics lest they provoke a closed rule? Third, does the House majority party abandon regular order in an effort to influence legislative outcomes in the same manner as the Senate majority party? Little is known about this practice in the House because it has occurred so infrequently until recent years.

Third, what accounts for the timing in the collapse of minority party support for appropriations bills? Previous accounts point toward the politicization of appropriations under Speaker Gingrich, but the timing better aligns with the Democratic takeover of Congress in 2007. Researchers should explore how unified Democratic government under President Obama shaped Republican opposition to appropriations bills, and how

the election of a sharply conservative Republican majority in 2010 changed the dynamics of the appropriations process.

Fourth, did the earmarking moratorium adopted in 2011 (not explored in this paper) affect the formation of bipartisan coalitions to adopt spending bills? Previous scholars have found that earmarks help the majority party to assemble broad coalitions of support for general legislation (Evans 2004). Interview subjects also report that earmarking is a useful way to build support for appropriations bills and to deter members from engaging in floor tactics that bill managers viewed as unhelpful.¹⁰ Little recent work has been done to evaluate the extent to which earmarks may have helped to create support for appropriations bills in recent years.

Conclusion

This paper presents descriptive data on the House appropriations process from 1975 – 2012. The data indicate that the House appropriations process can best be described as one of “contested bipartisanship.” Old distributive patterns in appropriations such as the formation of large, bipartisan coalitions of support and open rules, have remained long after some scholars declared that appropriations had become deeply embedded in the modern partisan politics of the House. Future research should seek to understand the causal reasons for the endurance of these patterns.

¹⁰ Former Senate Majority Leader Tom Daschle offered this opinion on the loss of earmarks during an interview with me in 2012: “I can't prove this, but I would say: 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, and I think that's a very big part of it. So I think as well-intended as this whole earmark ban has been, it's contributed, in my view significantly, to the lack of comity, to the lack of commitment to this legislative process.”

Figure 1

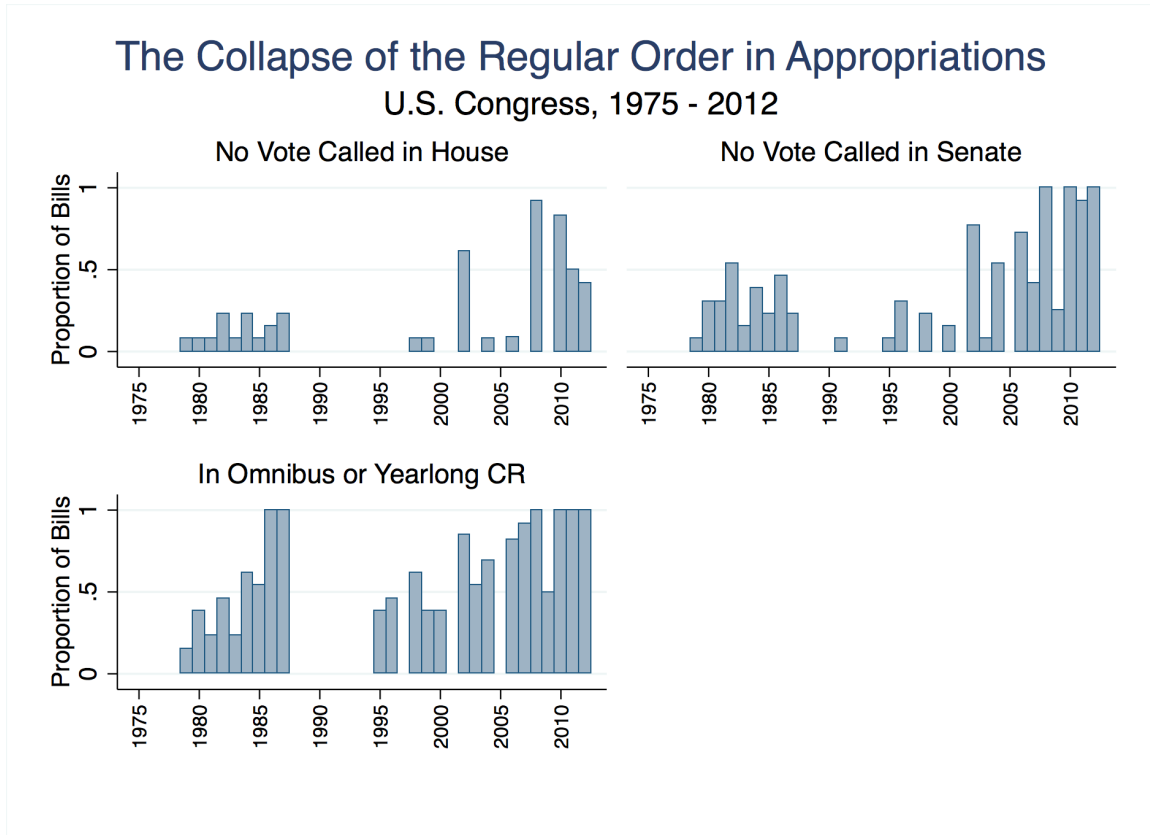


Figure 2

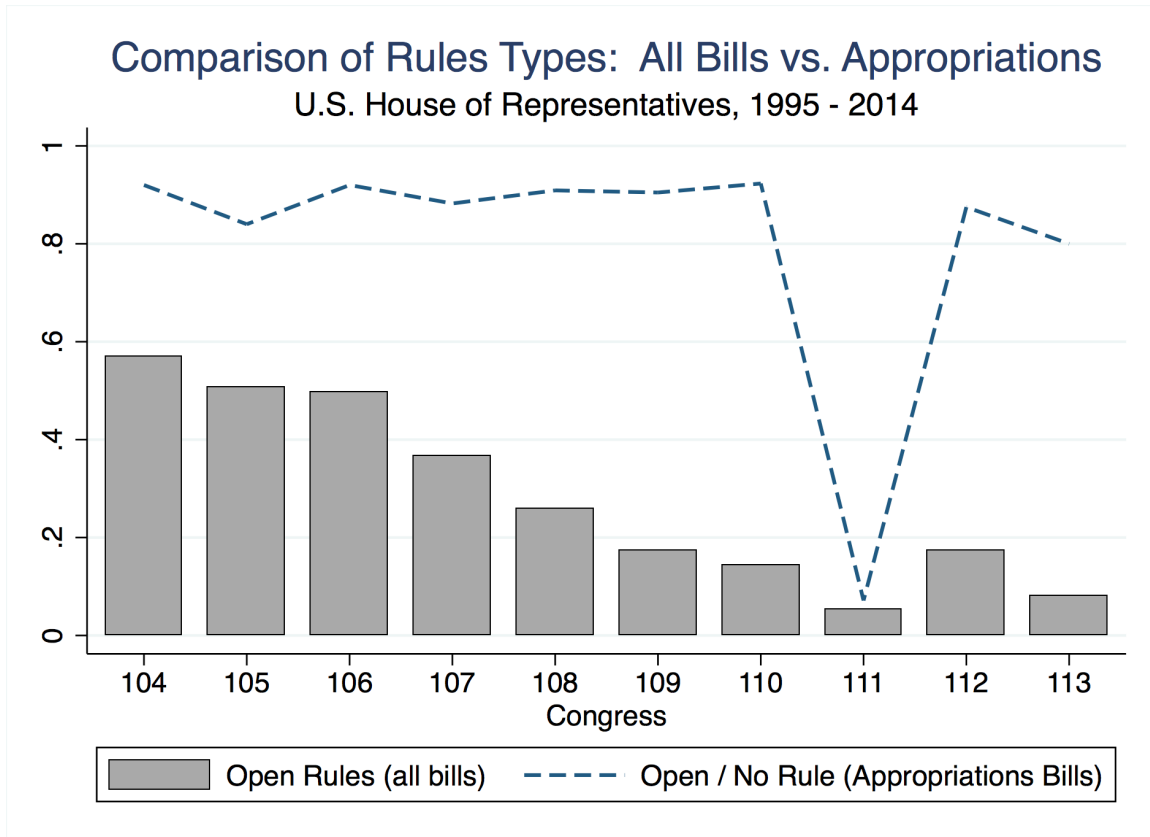


Figure 3

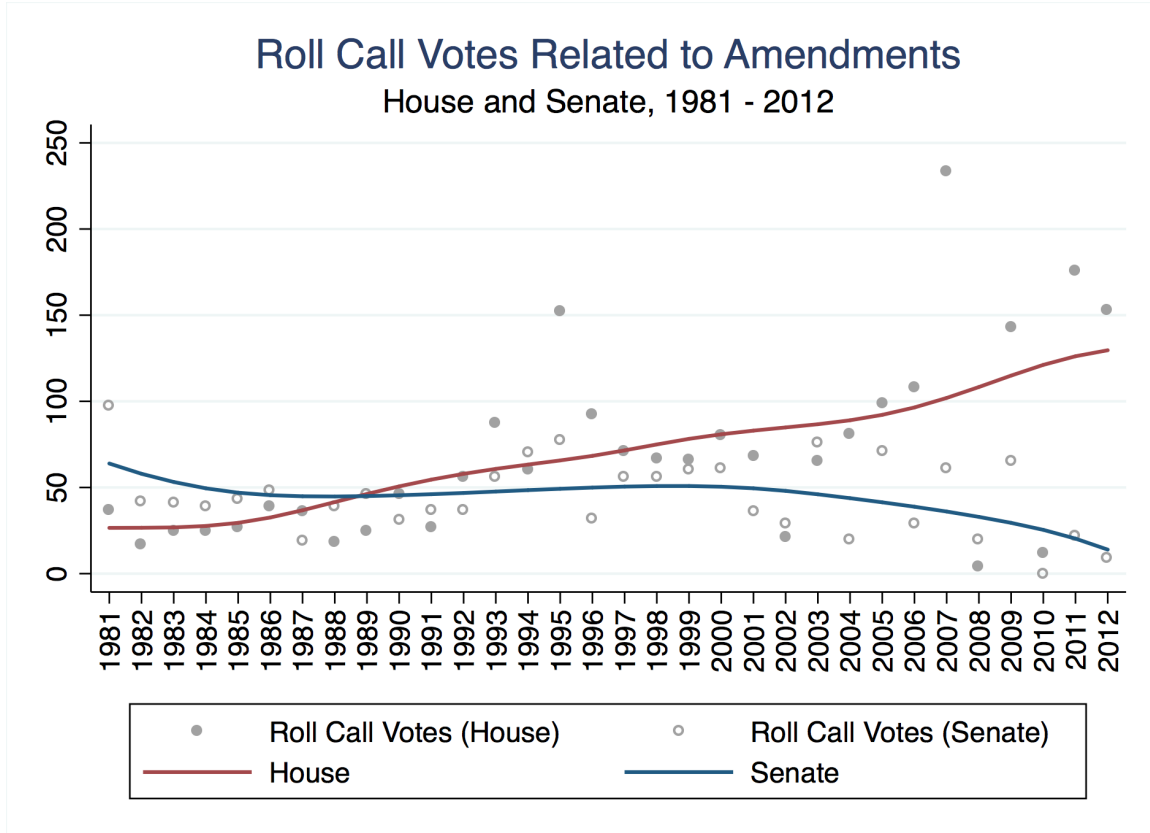


Figure 4

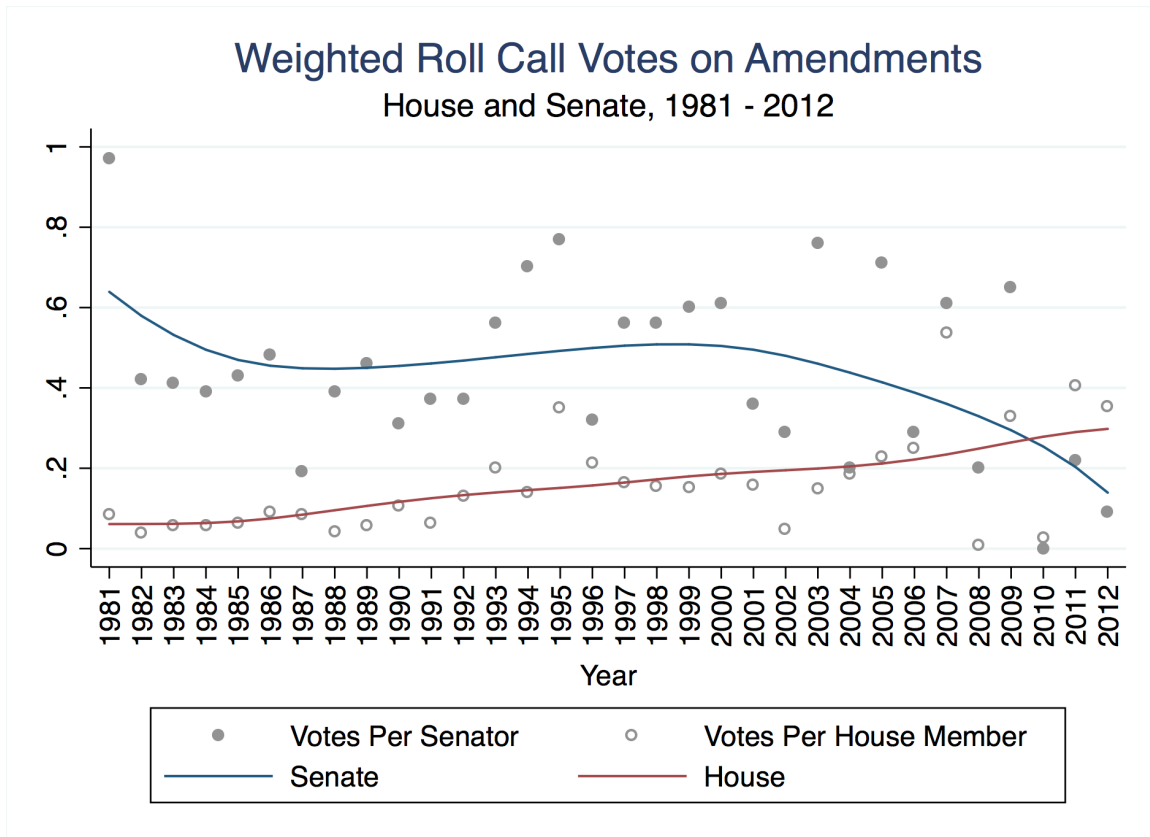


Figure 5

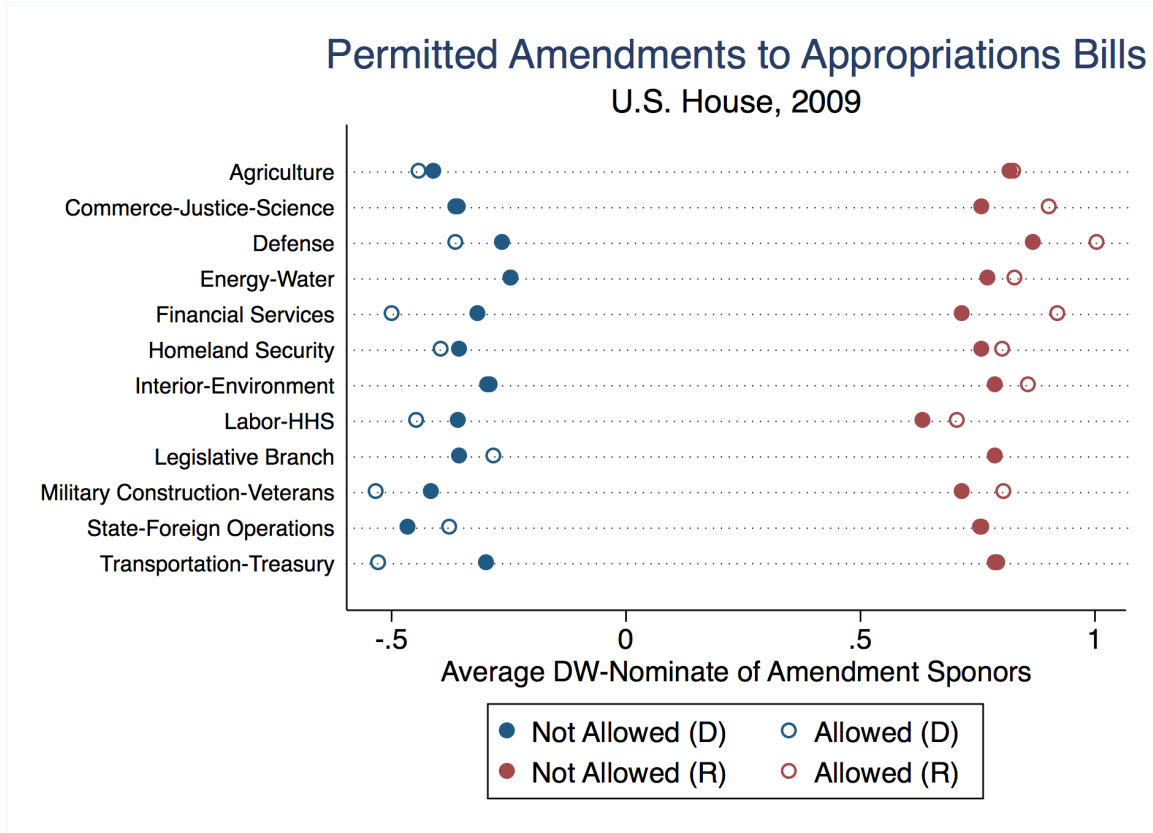


Figure 6

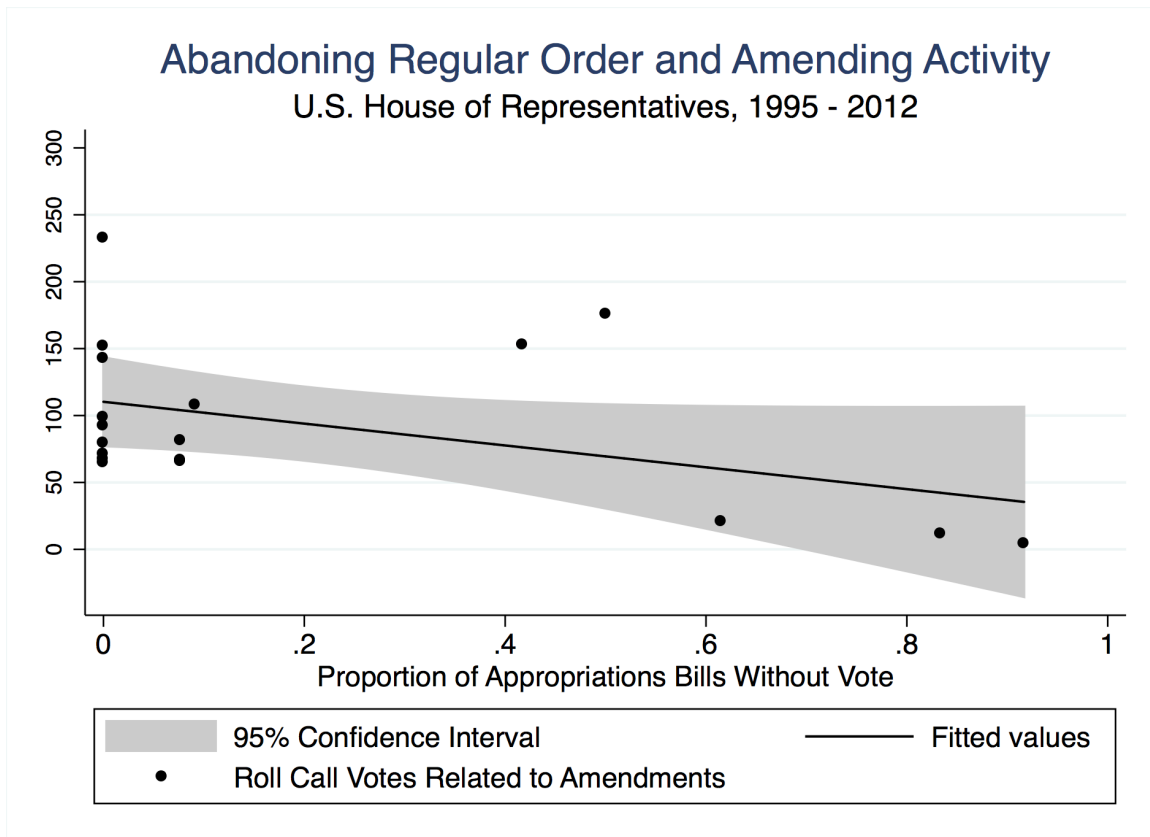


Figure 7

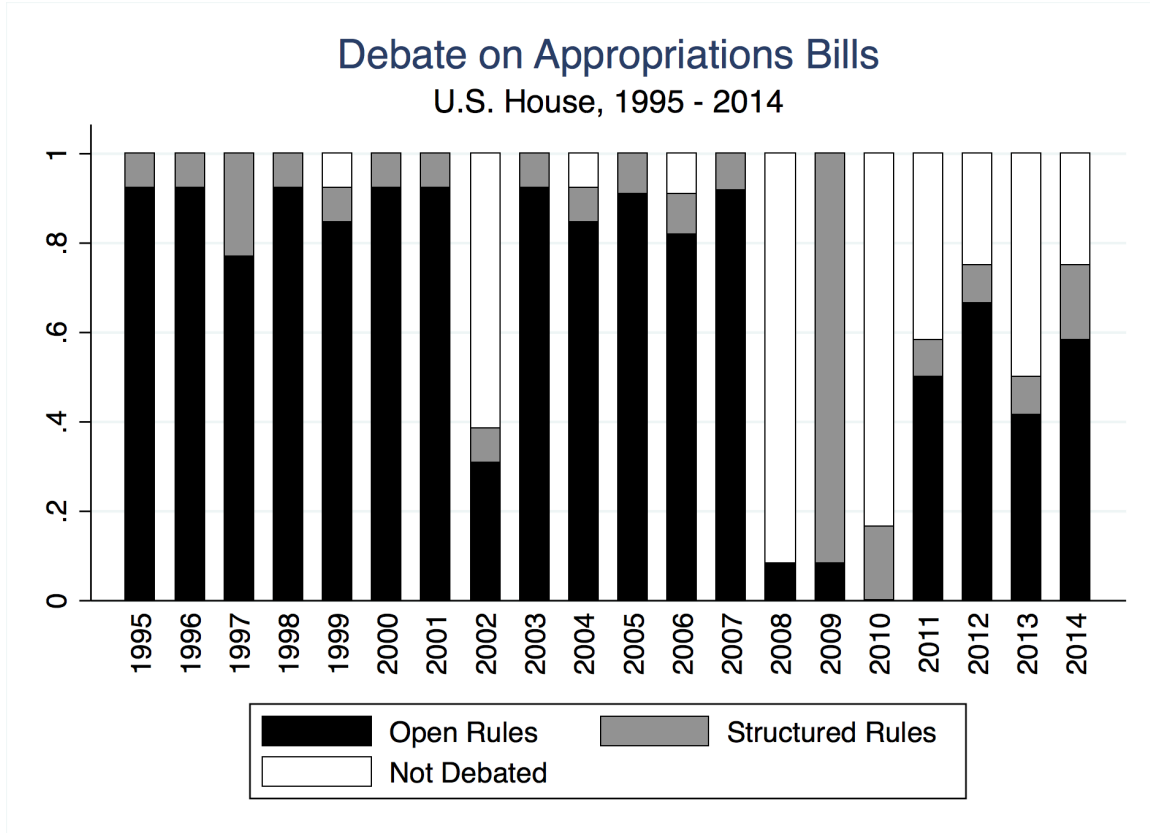


Figure 8

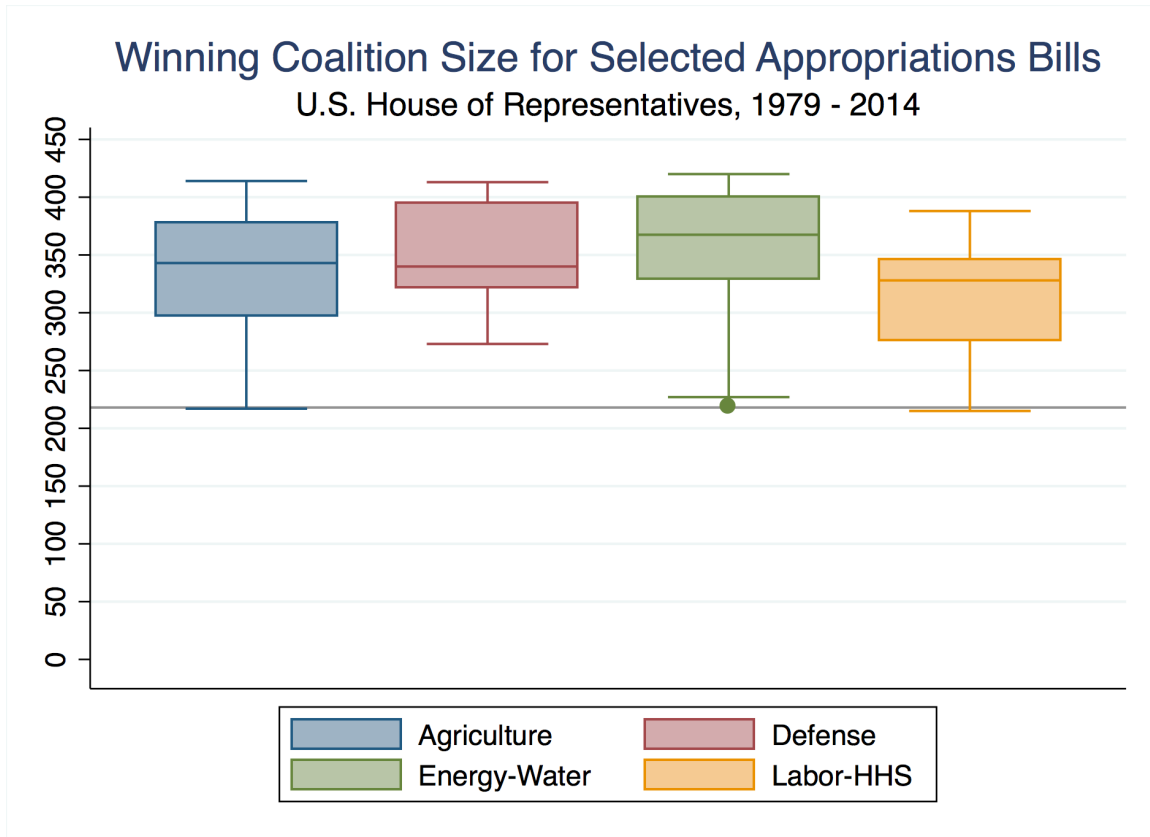


Figure 9

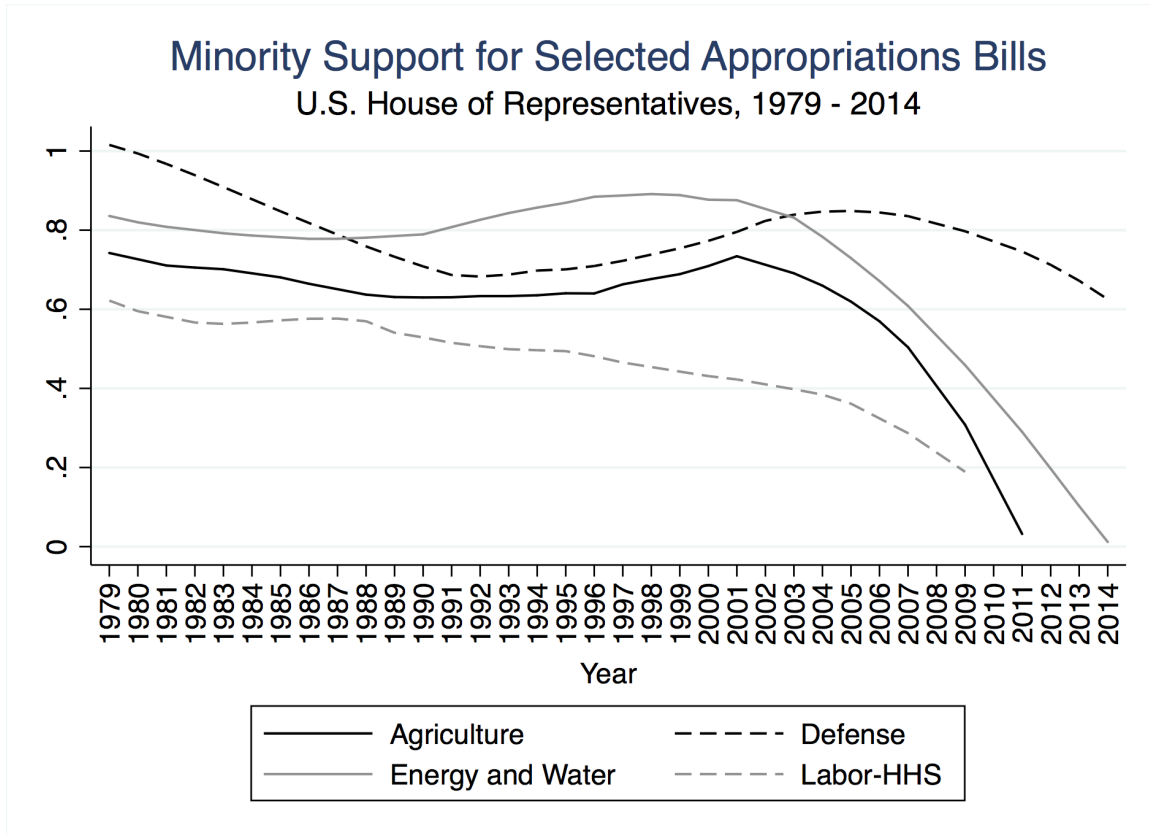


Table 1. Closed Rules and Party Polarization Variables Correlation Matrix

	Appropriations	All Bills	Majority Homogeneity	Distance
Appropriations	1			
All Bills	0.43	1		
Majority Homogeneity	0.25	0.93	1	
Distance	0.26	0.89	0.78	1

N=14

Table 2. Amendments Filed and Allowed to FY2010 Appropriations Bills

Bill	Total Filed	Filed (D)	Allowed (D)	% (D)	Filed (R)	Allowed (R)	% (R)
Agriculture	90	17	1	0.06	73	12	0.16
Commerce- Justice-Science	124	23	7	0.30	101	35	0.35
Defense	605	19	2	0.11	587	548	0.93
Energy-Water	103	24	6	0.25	79	14	0.18
Financial Services	97	8	1	0.13	89	16	0.18
Homeland Security	90	27	1	0.04	64	13	0.20
Interior- Environment	105	12	1	0.08	93	12	0.13
Labor-HHS	35	21	1	0.05	14	4	0.29
Legislative Branch	20	4	1	0.25	16	0	0.00
Military Construction- Veterans	32	9	3	0.33	23	5	0.22
State-Foreign Operations	88	26	2	0.08	62	6	0.10
Transportation- Treasury	85	19	2	0.11	66	21	0.32

Table 3. Legislative History of FY2013 Appropriations Bills

Bill	House Votes	Senate Votes
Agriculture	Not debated	Not debated
Commerce-Justice-Science	40	Not debated
Defense	26	Not debated
Energy-Water	35	Not debated
Financial Services	Not debated	Not debated
Homeland Security	20	Not debated
Interior-Environment	Not debated	Not debated
Labor-Health and Human Services	Not debated	Not debated
Legislative Branch	5	Not debated
Military Construction-Veterans Admin.	2	Not debated
State-Foreign Operations	Not debated	Not debated
Transportation-HUD	25	Not debated
H.R. 933 (Yearlong CR)	0	9
Total	153	9

Table 4. Winning Coalitions, Majority and Minority Support for Appropriations Bills, 1979 – 2012.

Bill	N	Average Winning Coalition	Average Majority Votes	Average Minority Votes
Agriculture	27	333	218	114
Defense	31	348	207	141
Energy and Water	30	352	219	134
Labor-HHS	25	312	225	87

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