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978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations
in the U.S. Senate

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Too Weak to Govern

Too Weak to Govern investigates the power of the majority party in the U.S. Senate through a study of the appropriations process over a period of nearly four decades. It uses quantitative analysis, case studies, and interviews with policy makers to show that the majority party is more likely to abandon routine procedures for passing spending bills in favor of creating massive “omnibus” spending bills when it is small, divided, and ideologically distant from the minority. This book demonstrates that the majority party’s ability to influence legislative outcomes is greater than previously understood but that it operates under important constraints. The majority party’s actions protect the party’s reputation by helping it pass a budget and by protecting it from politically damaging votes on amendments. However, the majority generally cannot use its power to push its preferred policies through to approval. Overall, the weakness of the Senate majority party is a major reason for the breakdown of the congressional appropriations process over the past forty years.

Peter Hanson is an assistant professor of political science at the University of Denver and a former staff member in the office of Senator Tom Daschle (D-SD). He has been interviewed by national and international media organizations, including the BBC, Agence France-Presse, the *New York Times*’ *FiveThirtyEight* blog, *USA Today*, Minnesota Public Radio, Colorado Public Radio, Rocky Mountain PBS, and the *Denver Post*. He co-led the University of Denver’s “Colorado Voter Poll” in 2012.

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Frontmatter

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Peter Hanson

Frontmatter

[More information](#)

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Peter Hanson

Frontmatter

[More information](#)

Contents

<i>List of Figures</i>	<i>page viii</i>
<i>List of Tables</i>	x
<i>Preface</i>	xiii
<i>Acknowledgments</i>	xxiii
1. The Limited Influence Theory of the Senate	i
2. Testing Expectations	38
3. The First Wave (1979–1987)	70
4. Back to the Regular Order	99
5. The Second Wave (1995–2012)	131
6. Conclusion	160
<i>Works Cited</i>	167
<i>Index</i>	171

Figures

2.1.	Abandoning the regular order by bill. U.S. Senate, Core 13 bills	<i>page</i> 41
2.2.	Consideration of annual appropriations bills. U.S. Congress, 1975–2012	42
2.3.	Democratic, Republican, and majority DW-NOMINATE standard deviation. U.S. Senate, 1975–2012	43
2.4.	Majority party margin of control. U.S. Senate, 1975–2012	44
2.5.	Distance between Senate Democrats and Republicans. First dimension DW-NOMINATE scores	45
2.6.	Party characteristics and failing to call votes. U.S. Senate, 1975–2012	47
2.7.	Party characteristic coefficients and confidence intervals. U.S. Senate, 2006–2012	51
2.8.	Marginal effects of change in party power variables. Defense and Labor–Health and Human Services bills	52
2.9.	Party characteristics and failing to call votes. U.S. House of Representatives, 1975–2012	53
2.10.	Abandoning the regular order and voting on amendments. U.S. Senate, 1981–2012	62
2.11.	Frequently amended bills and abandoning the regular order. U.S. Senate, 1981–2012	64
3.1.	Transition to Republican control of Senate. 96th and 97th Congresses, 1978–1982	72
3.2.	Two-dimensional voting in the Senate. Economic and social issues	73
3.3.	Party characteristics and abandoning the regular order. U.S. Senate, 1975–1990	74

Cambridge University Press
978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations
in the U.S. Senate
Peter Hanson
Frontmatter
[More information](#)

<i>Figures</i>	ix
4.1. Ideological distribution of majority and minority. U.S. Senate, 1985–1996	102
4.2. Party characteristics and abandoning the regular order. U.S. Senate, 1986–1996	103
4.3. Ideological distribution of Democrats and Republicans. Helms Amendment on National Endowment of the Arts	107
5.1. Party characteristics and abandoning the regular order. U.S. Senate, 1994–2012	132
5.2. Ideological distribution of Democrats and Republicans. U.S. Senate, 97th and 108th Congresses	133
5.3. A Democratic roll: Overturning limits on overtime wages. Roll Call 334, U.S. Senate, 2003	134

Tables

1.1.	Legislative History of Fiscal Year 1997 Appropriations Bills	<i>page 22</i>
1.2.	The Fate of the Annual Appropriations Bills, 1975–2012	24
2.1.	Party Characteristics and Failing to Call a Vote in the U.S. Senate, Logit Analysis, 1975–2012, Fixed Effects by Bill and Standard Errors Clustered by Year	49
2.2.	Party Characteristics and Failing to Call a Vote in the U.S. Senate, Logit Analysis, Year Ending in 2006, 2008, 2010, and 2012, Fixed Effects by Bill and Standard Errors Clustered by Year	50
2.3.	Party Characteristics and Failing to Call a Vote in the House of Representatives, Logit Analysis, 1975–2012, Standard Errors Clustered by Year	54
2.4.	House and Senate Party Characteristics Correlation Matrix	57
2.5.	Party Characteristics and Inclusion of Bill in Omnibus Package, U.S. House and Senate, Logit Analysis, 1975–2012, Fixed Effects by Bill and Standard Errors Clustered by Year	58
2.6.	Abandoning the Regular Order and Amending in the Appropriations Process, 1981–2012, Negative Binomial Regression Analysis	63
2.7.	Opposition Levels to Omnibus Spending Bills, 1979–2012	66
2.8.	Model Expectations and Results	68
3.1.	Legislative History of Appropriations Bills, 1981, First Session, 97th Congress	76

<i>Tables</i>	xi
3.2. Legislative History of Appropriations Bills, 1982, Second Session, 97th Congress	83
3.3. Legislative History of Appropriations Bills, 1983, First Session, 98th Congress	89
3.4. Legislative History of Appropriations Bills, 1984, Second Session, 98th Congress	92
4.1. Majority Size and Homogeneity, U.S. Senate, 1985–1996	102
4.2. Legislative History of Appropriations Bills, 1995, First Session, 104th Congress	112
4.3. Legislative History of Appropriations Bills, 1996, Second Session, 104th Congress	115
4.4. Inclusion of Bill in Omnibus Package After Veto, Logit Analysis, Fixed Effects by Bill Category and Standard Errors Clustered by Year	124
4.5. Frequency of SAPs, 1985–2004	126
4.6. SAPs and the Failure to Call a Vote in the House and Senate, 1985–2004, Logit Analysis, Standard Errors Clustered by Year	127
5.1. Evolution of Appropriations Subcommittee Structure, 107th–110th Congresses	135
5.2. Legislative History of Appropriations Bills, 2002, Second Session, 107th Congress	140
5.3. Legislative History of Appropriations Bills, 2003, First Session, 108th Congress	146
5.4. Legislative History of Appropriations Bills, 2004, Second Session, 108th Congress	154
5.5. Votes on Amendments in House and Senate, 108th Congress, 2003–2004	156

Cambridge University Press

978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations
in the U.S. Senate

Peter Hanson

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations
in the U.S. Senate

Peter Hanson

Frontmatter

[More information](#)

Preface

This is a book about party power in the Senate. How much power does the majority party in the Senate have to shape legislative outcomes to its liking? What are the sources of its power, and when is the majority likely to use it? How effectively can the majority party manage a chamber that is notoriously individualistic and so subject to delays and filibusters that the actual passage of legislation appears at times to be miraculous?

These are important questions. At stake is not just whether the Senate majority party can push its own legislative program to passage but whether it can pass any legislative program at all in today's highly polarized environment. Dismal evaluations of the Senate abound. "Sit and watch us for seven days – just watch the floor," Senator Michael Bennet (D-CO) lamented. "You know what you'll see happening? Nothing."¹ The power granted by Senate rules to individual senators appears to have paralyzed the chamber rather than allow for the serious debate intended by the framers of the Constitution.

Former leaders of the chamber agree that there are few tools available to force action in the chamber. "When I was whip back in 2007 and McConnell was leader, we were trying to move the ethics in lobbying reform bill to conference," former Senate majority leader Trent Lott recalled. "Jim DeMint objected and Senator McConnell said, 'Hey, whip, go over there and see if you can get him to relent.' I tried. I tried. I got my chief deputy whip to go talk to him. I got his buddies to talk to him.

¹ Packer, George, "The Empty Chamber: Just How Broken Is the Senate?" *New Yorker*, August 9, 2010.

Cambridge University Press

978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations
in the U.S. Senate

Peter Hanson

Frontmatter

[More information](#)

He wouldn't relent. The result was, we didn't get to go to conference" (interview with author, March 7, 2012).

Lott's tale of obstruction and gridlock is a common one. It is also alarming given the variety of serious policy challenges facing the United States. If the deck is stacked against the ability of senators to make hard choices, then there is little hope that they can put the nation's fiscal house in order or address threats such as global warming. Concerns like these have sparked an important debate within the Senate about modifying the filibuster. The Senate took a first step toward reform when Democrats abolished the ability of senators to filibuster presidential nominations in November 2013, but senators can still demand a supermajority vote before legislation can be adopted. Absent further change to the Senate's rules, what can reasonably be expected of the Senate majority party?

In this book, I explore the nature of party power in the Senate by investigating how the majority party manages the annual passage of the appropriations bills that fund the government. One of the most important changes in the appropriations process since the 1960s is the crumbling of the "regular order" – a time-tested system of passing a dozen or so appropriations bills covering separate jurisdictions by bringing each bill to the floor for individual debate, amendment, and a vote. The regular order has been replaced by an ad hoc practice of packaging appropriations bills together into massive omnibus spending bills worth hundreds of billions of dollars. Omnibus packages may allocate up to one-third of the federal budget in a single bill and establish policies that affect millions of Americans.

The magnitude of this change is substantial and sometimes unappreciated. While omnibus spending bills are widely disparaged, there is little recognition among scholars that they have displaced something valuable in the regular order. In a *Washington Post* editorial, political scientist Jonathan Bernstein (writing about a process related to appropriations – passing a budget resolution) observed, "There's nothing sacred about the 'regular order' – the real question is whether [members of Congress are] getting their important business done, not what procedures they follow."² I think this view is mistaken. Rules and procedures are ways of allocating power and making decisions about policy in every legislative body. The "regular order" in appropriations is a permissive set of procedures that allows any member of the majority or minority to participate

² Bernstein, Jonathan, "Useful Reminder: They Don't Believe What They're Saying," *Washington Post*, July 1, 2013.

Cambridge University Press

978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations in the U.S. Senate

Peter Hanson

Frontmatter

[More information](#)*Preface*

xv

in lawmaking by offering amendments or making motions. Congress abandons this open environment and centralizes power in the hands of a few key players when it creates omnibus spending bills. As Senator Susan Collins (R-ME) explains,

[The regular order] means we would bring up each of the individual bills, they would be open to full and fair debate, they would be amended, they would be voted on, and we would avoid having some colossal bill at the end of the year that combines all the appropriations bills. Those bills are often thousands of pages in length. A lot of times some of the provisions have not had the opportunity to be thoroughly vetted. They really are not very transparent. They contribute to the public's concern about the way we do business here in Washington.... The best way for us to achieve these goals is for each and every one of the appropriations bills to come before the full Senate and for us to work our will on those bills. That is the way the Senate should operate. It is the way we must operate in order to restore the faith of the American people in this institution.³

The most potent criticism of omnibus bills captured by Senator Collins is that they are undemocratic because their creation and passage are marked by a lack of broad participation, transparency, and accountability. The packages are often written behind closed doors by a few key members of Congress. Rank-and-file members of Congress may have little opportunity to read, debate, or amend omnibus bills before voting on them. "No member knew, or could have known, all that was in those huge stacks of paper before voting on them," the *New York Times* fumed after Congress approved a 2,000-page, \$600 billion omnibus in 1987.⁴ Omnibus packages may also contain spending or policies buried in their pages that would not pass on their own. An eleven-bill package in 2003 eased logging restrictions on Alaska national forests at the behest of Appropriations Chairman Ted Stevens (R-AK). Adding the forestry provision and other riders to the package was "irresponsible and anti-democratic" the *Washington Post* charged. "What is 'omnibus appropriations legislation,' after all, except a bundle of 11 complex bills, debated and discussed in a few days and finalized in secret?"⁵

Criticism of omnibus bills comes from presidents and members of Congress, Democrats and Republicans, and the minority and majority alike. President Reagan called for an end to omnibus bills from his lectern in his 1988 State of the Union address. Former Senate majority leader

³ *Congressional Record*, February 27, 2012, S1041.

⁴ "New Session, Old Odor," *New York Times*, January 26, 1988.

⁵ Applebaum, Anne, "No Bottom to This Barrel," *Washington Post*, February 12, 2003.

Cambridge University Press

978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations in the U.S. Senate

Peter Hanson

Frontmatter

[More information](#)

Tom Daschle called the practice “a symptom of the dysfunctionality of Congress these days” (interview with author, February 15, 2012). In 2009, members of the Republican minority in the Senate signed a letter to Majority Leader Harry Reid (D-NV) observing that “omnibus bills have not allowed for adequate public review [of appropriations bills] and have clouded what should otherwise be a transparent process.”⁶ Two years later, their call to return to the regular order was echoed by Senate Appropriations Committee chair Daniel Inouye (D-HI) as he expressed his own frustration about omnibus packages.⁷

These criticisms point to the fact that the majority’s decision to create an omnibus bill is not one of legislative style over substance. It is a decision to replace one system of passing legislation with another. More fundamentally, it is an exercise of power. Running twelve bills through the regular order or packaging them together into an omnibus bill is a choice between an open and permissive system for considering legislation versus one that is centralized and restrictive. Rank-and-file members recognize that creating an omnibus means fewer opportunities for them to participate in lawmaking, claim credit for accomplishments, and take positions important to their constituents than they would likely receive in the regular order.

Given the homage so many members pay to the regular order, what accounts for the frequency with which it is abandoned? Congress has created omnibus bills in twenty-four of the last thirty-eight years. As of this writing, it has packaged every appropriations bill into an omnibus package since 2010. In some recent years, the powerful subcommittees of the Appropriations Committee in the House and Senate have not even approved the individual spending bills assigned to them – a fact that would have astounded observers just ten years ago. Congress now lurches from budget crisis to budget crisis, and its orderly system for adopting appropriations bills is broken.

I show that Senate majority parties that have a narrow margin of control, are ideologically divided, or are especially ideologically distant from the minority are likely to conclude that the regular order is harming the party and to abandon it in favor of creating an omnibus package. Abandoning the regular order limits amending in the Senate and helps ensure the passage of the budget, protecting the reputation of the

⁶ Letter to Senate Majority Leader Harry Reid, March 24, 2009. http://www.src.senate.gov/files/03-24-09_Letter_to_Reid.pdf. Accessed July 2, 2013.

⁷ *Congressional Record*, March 10, 2011, S1541.

Cambridge University Press

978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations
in the U.S. Senate

Peter Hanson

Frontmatter

[More information](#)*Preface*

xvii

majority party. Interestingly, the Senate abandons the regular order more frequently than the House does and at times forces the creation of omnibus bills through its failure to deal with bills individually. The greater likelihood that the Senate majority party will abandon the regular order is a reflection of the Senate's individualistic rules and the difficulty of managing the Senate floor. It is likely that we would see fewer and smaller omnibus bills if the United States had two legislative branches like the House of Representatives.

These findings offer important lessons for two ongoing debates about party power in Congress. One debate is over the extent of the Senate majority party's ability to influence legislative outcomes in its favor. For example, can the majority party win a vote by pressuring a wavering senator to support the party or block the minority from offering a policy that might win majority support? Traditionalists such as Barbara Sinclair and Steven Smith maintain that the Senate's rules prevent the majority party from exercising substantial influence in this fashion. Recent studies by political scientists such as Chris Den Hartog and Nate Monroe challenge this view with findings that the Senate majority party can often meet its policy goals in the chamber. I chart a middle course between these two positions. I show that the majority party's influence is generally insufficient to meet policy goals but that its manipulation of the appropriations process helps it to meet electoral goals by protecting its party reputation. The Senate majority party has a limited, but important, ability to influence legislative outcomes.

The second debate is about the conditions under which majority party influence is likely to be used. My findings challenge well-known partisan theories of Congress such as Conditional Party Government (CPG). CPG was developed by John Aldrich and David Rohde to describe the House of Representatives, but it is sometimes assumed to describe the far different dynamics of the Senate as well. Aldrich and Rohde maintain that the majority party's ability and incentive to influence legislative outcomes are conditioned on the unity of its members and their overall ideological distance from the minority. When these conditions are met, members of the majority have a strong sense of common purpose. They delegate power to their leaders to influence the legislative process and enact their preferred policies. An observation of the majority party influencing the legislative process is a sign of a strong, unified party exercising powers that have been delegated to it by its members.

These expectations do not match the reality of the Senate. The majority party in the Senate is more likely to abandon the regular order and create

Cambridge University Press

978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations
in the U.S. Senate

Peter Hanson

Frontmatter

[More information](#)

xviii

Preface

omnibus bills when it has characteristics that make its job managing the floor more difficult – in short, when it is weak. Omnibus bills are more likely when the majority is small and divided because that is when it has trouble summoning the votes it needs to overcome opposition, deal with troublesome amendments, and pass individual spending bills. The packages are also more likely when large ideological gulfs between the parties generate more intense minority opposition and raise the risk of gridlock, making the passage of spending bills in the regular order more difficult. Omnibus bills help the majority overcome gridlock and pass a budget. Their creation is the sign of a weak Senate majority party struggling to avoid harm rather than a vigorous majority dominating the floor. As the title of this book suggests, they emerge when the majority party is too weak to govern using its traditional procedures.

One objective of this book is to provide clarity about what it means for a majority party to be “strong” or “weak” in the Senate. Political scientists commonly use the term “strong” to identify parties with the ability to influence legislative outcomes and “weak” to identify those that cannot. This shorthand unhelpfully muddles the debate over the kinds of party characteristics and circumstances that are associated with majority party influence. Properly speaking, a strong majority party is one that can meet its legislative goals regardless of whether it has to manipulate the legislative process to do so. The strongest Senate majority party is one that can win votes outright because it has a large margin of control and is ideologically unified. Weak majority parties are those with small margins of control or ideological divisions or that are facing vigorous minority delaying tactics. Parties in these situations can influence legislative outcomes to meet a limited set of goals, but they achieve less overall than what they could gain with more (or more unified) members. True majority party strength in the Senate is found in numbers and ideological unity, not the limited means by which parties can manipulate legislative outcomes.

This book utilizes a mixed methodological approach to make its case, including interviews with policy makers, quantitative analysis, and case studies. I take this approach because it is the best way to support an argument that depends on understanding the flow of business on the Senate floor. I take some pride in the fact that it demonstrates the value of books and qualitative analysis in a field that is increasingly dominated by short articles presenting quantitative findings. I am a proponent of the research method known as the “soak and poke” – hanging around Congress to see matters and develop questions firsthand. I had

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978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations
in the U.S. Senate

Peter Hanson

Frontmatter

[More information](#)*Preface*

xix

an unparalleled opportunity to observe the daily chess match for control over the Senate floor in my twenties as a legislative assistant to Senate Democratic Leader Tom Daschle. Complaints about the efforts of the Republican majority to stifle debate and block amendments were commonplace at weekly Democratic strategy sessions held in the Lyndon Baines Johnson Room. Leadership aides would urge staff members representing each senator to uphold filibusters designed to prevent the majority from cutting off debate and, with it, the right to amend a bill. “They’re trying to turn this place into the House of Representatives!” was the rallying cry. The notion of being under the majority’s thumb like members of the House was alarming to those accustomed to the Senate’s individualistic traditions. In the colorful words of one Senate staff member, the majoritarian House was no better than the “Gulag” – the old Stalinist system of prison camps in the Soviet Union. The fierce procedural battles I observed left me deeply curious about the nature of majority party power in the Senate and the ways in which it could be exercised.

Later, in graduate school at Berkeley, I came to admire books by scholars such as Richard Fenno, Nelson Polsby, and Richard Hall, whose “hanging around” in Congress led to remarkable works of scholarship. This book follows their lead by incorporating interviews with former Senate majority leaders Tom Daschle and Trent Lott, as well as senior staff members, with decades of experience working with appropriations. The insights of policy makers offer critical guidance in the interpretation of data and help connect the dots in the sprawling annual debates over spending bills. It is my hope that more researchers will utilize interviews as part of their research to add depth to their work. Staff members who have served for years on Capitol Hill understand legislative procedures, care deeply about Congress as an institution, and are eager to talk about their observations. I am grateful to all of the individuals who spoke with me as part of this project.

The quantitative evidence presented in the book comes from an analysis of a unique data set of the legislative history of the appropriations process. Most studies of the Congress rely on the record of roll call votes to analyze decisions made on the floor. By definition, such studies cannot measure with any certainty why some bills receive a vote and others do not. My approach builds on the routine nature of the appropriations process and the norm of following the regular order. It is widely understood that Congress writes twelve (formerly thirteen) appropriations bills each year and generally seeks to pass them on an individual basis. I mark

Cambridge University Press

978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations
in the U.S. Senate

Peter Hanson

Frontmatter

[More information](#)

xx

Preface

a failure to vote on one of these bills as a moment in which Congress departs from the regular order in favor of an alternate path. I analyze the majority's decision not to call a vote to understand how, when, and why the majority party controls the legislative agenda and what it accomplishes by doing so. I build on these statistical findings with detailed case studies to demonstrate how the patterns visible in the quantitative data manifest on the floor of the Senate. Where possible, I draw directly from debates in the *Congressional Record* and transcripts of press conferences with Senate leaders to make my points using the words of members themselves.

The lessons about the strength of the Senate majority party offered in this book give reason for both skepticism and hope about the ability of senators to navigate the rules of the institution to make tough decisions about policy. The good news is that the majority party largely has been able to fulfill its basic duty of funding the government even in the most challenging circumstances. The bad news is that it has done so with legislative tactics that have sacrificed transparency, accountability, and participation in the legislative process by most members. The appropriations process is now badly broken, and there appears to be little immediate hope that it will return to health. Absent further changes to the Senate's rules, the Senate majority party will continue to muddle its way through and meet its basic responsibilities. The question is whether the world's greatest deliberative body can do better than muddle along. Senators must find a way to govern again by providing opportunities for members to perform basic legislative functions such as evaluating legislation, weighing alternatives and making improvements to bills without the process breaking down. Senate leaders must create an enduring new balance between protecting the Senate's tradition of individualism and ensuring that important decisions can be made in a timely manner.

Chapter 1 outlines the ongoing debate over the extent of majority power in the Senate and presents a theoretical framework for the majority's management of the appropriations process, drawing from interviews with senior policy makers and past scholarship. Omnibus packages have become an increasingly common way of passing appropriations bills in the last thirty-eight years, but there is little research into the reason for this change. Interviews with top policy makers, such as former Senate majority leaders Tom Daschle and Trent Lott, suggest that the bills arise when a weak majority party loses control of the Senate floor. Members weigh the opportunity to participate in lawmaking in the regular order

Cambridge University Press

978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations
in the U.S. Senate

Peter Hanson

Frontmatter

[More information](#)*Preface*

xxi

against the risks of troublesome amendments or that they may fail to pass a budget. Members of the majority party abandon the regular order and create an omnibus bill when they judge that the risk to their party reputation outweighs the benefits they receive from participating in the legislative process.

Chapter 2 presents quantitative data and analysis to test three major expectations of the theory. The results show that the Senate majority party is more likely to abandon the regular order and create an omnibus package when it is small, divided, and distant from the minority. Not calling a vote on individual spending bills and passing an omnibus bill instead also tends to reduce the opportunity of members to offer amendments. Finally, omnibus bills generally receive bipartisan support. Together, these findings show that creating omnibus bills is a strategy used by weak parties to pass the budget and protect their reputations.

Chapter 3 provides an account of key debates on appropriations bills in the 1980s to illustrate how and why Congress transitioned from passing spending bills individually to packaging them together as omnibus bills. In 1981, the Republican majority that assumed control of the Senate was hampered by a small margin of control and severe ideological divisions in its membership. Liberals such as Senator Lowell Weicker (R-CT) and conservatives such as Senator Jesse Helms (R-NC) faced off over abortion, school prayer, and desegregation on appropriations bills. These floor debates occurred in the context of difficult budget fights sparked by President Ronald Reagan's efforts to reduce federal spending. Internal Republican disputes prevented Majority Leader Howard Baker (R-TN) from passing individual spending bills at times and led him to add them to omnibus packages instead.

Chapter 4 investigates a crucial seven-year period from 1988 to 1994 in which Congress stopped creating omnibus bills and returned to passing appropriations bill in the regular order. This case study shows that the transition was sustained by the ability of a unified and powerful Democratic majority to resolve frequent disputes over social policy on spending bills without resorting to packaging the bills together. This period came to a sharp end in 1995 when Republicans resumed control of Congress. Congress resumed passing omnibus bills as appropriations bills became the focal point of budget disputes with the president and because the narrow Republican majority left the party vulnerable to Democratic obstructive tactics. This chapter also investigates the role of presidents in the creation of omnibus bills. Presidents can make the creation of omnibus bills more or less likely, but they have different judgments about the

Cambridge University Press

978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations
in the U.S. Senate

Peter Hanson

Frontmatter

[More information](#)

strategic value of bargaining with Congress over a single omnibus bill versus a dozen individual spending bills.

Chapter 5 analyzes the majority's management of the appropriations process in the early 2000s during the presidency of George W. Bush. During this era, a unified Republican majority was vulnerable to obstruction and being rolled by the minority on votes because of its narrow margin of control. It responded by creating omnibus spending bills that allowed it to avoid difficult votes and ensure passage of the budget. Influence from President Bush tilted the bills in a more conservative direction by overturning some of the policy decisions made on the Senate floor, but voting patterns show that the bills still received substantial bipartisan support.

Chapter 6 concludes by outlining the challenge facing congressional leaders today. The unorthodox strategy of creating omnibus bills is increasingly accepted as a standard way of doing business. Intense minority opposition has made it difficult for any majority to pass spending bills, and the budget process established in 1974 appears to be on the verge of collapse. As we enter into the fourth decade of the modern budget process, the future is deeply uncertain.

Cambridge University Press

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Peter Hanson

Frontmatter

[More information](#)

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xxiii

Cambridge University Press

978-1-107-06315-0 - Too Weak to Govern: Majority Party Power and Appropriations
in the U.S. Senate

Peter Hanson

Frontmatter

[More information](#)

xxiv

Acknowledgments

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in the U.S. Senate
Peter Hanson
Frontmatter
[More information](#)

Acknowledgments xxv

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