

MEMBERS AND LEADERS IN SENATE OBSTRUCTION

Nicholas O. Howard

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Approved by:

Jason M. Roberts

Georg Vanberg

Sarah A. Treul

David W. Rohde

Frank R. Baumgartner

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ABSTRACT

NICHOLAS O. HOWARD: Members and Leaders in Senate Obstruction.
(Under the direction of Jason M. Roberts)

Obstruction defines the U.S. Senate for both casual observers and scholars alike, with filibusters among the most well known parliamentary tactics in the world. This emphasis on public filibusters masks how obstruction shapes legislation, however. Filibusters are the end of a long process of obstruction and management rather than a stand-alone tactic by senators. While scholars have passingly mentioned off-floor tactics, the connections between these procedural tools for obstruction by senators and management by leaders has yet to be explored. This dissertation provides the first analysis of bill-level obstruction throughout the U.S. Senate, using both on- and off-floor procedural tools. I focus on how holds, Unanimous Consent Agreements, and filibusters are used, when these tactics can be expected, and how they affect passage. I also ask how these tools are connected, seeking to understand how the private actions by members and leaders shape obstruction the public sees. I find clear patterns for when these tactics are used, that holds and Unanimous Consent Agreements clearly relate to passage, and holds are powerful predictors of filibusters. This dissertation explores the broader system of obstruction in the U.S. Senate, shedding light on how obstruction actually works.

For Molly, Mom, Dad, Jason, and Michael, all of whom made this possible.

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1 OBSTRUCTION IN THE U.S. SENATE

The Senate is one of the most unusual legislative bodies in the world. Often called the “world’s greatest deliberative body,” the chamber can produce both monumental legislation and crippling delay. The capacity for great debate and crippling delay stem from the Senate rules governing debate (Shepsle and Weingast 1981). These rules advantage individual senators, often at the expense of the entire chamber’s ability to govern. This individualism, and how it affects legislative consideration, defines the Senate.

The most well known instance of this Senate individualism is the filibuster. Filibusters are purposefully dilatory speeches given by senators on the floor, often undertaken to delay or kill legislation. The ability for these speeches stems from the lack of a previous question motion, making it difficult to stop debate (Wawro and Schickler 2006; Binder and Smith 1997; Koger 2010). This stands in contrast to the modern House of Representatives, where the majority party controls debate through special rules and agenda control (Rohde 1991; Aldrich and Rohde 2000; Coker and Crain 1994; Cox and McCubbins 2005, 2007). Examples of famous – or occasionally infamous – filibusters abound in popular depictions of the Senate. Huey Long’s 1935 filibuster of the National Recovery Act extension, actions against the 1890 Lodge Bill or Force Act and Rand Paul’s 2013 opposition to John Brennans nomination are among numerous instances of the filibuster.

No example of obstruction is more famous than Strom Thurmond’s record breaking filibuster. Thurmond rose at 8:54pm on August 28th, 1957 to speak against the 1957 Civil Rights Act, a speech which would become among the most famous parliamentary debate moments in American history. This record setting talk-a-thon involved Thurmond reading the voting laws of each of the then 48 states, the U.S. criminal code, and previous Supreme

Court decisions, among many other time-killing methods. Although Thurmond ultimately lost the final passage vote, his filibuster remains among the more famous instances of obstruction in American history.

The filibuster's place in public perception extends beyond these examples into how the public sees the Senate. To most of the American public, the filibuster is the Senate in practice. Americans routinely identify the filibuster as an important feature of Congress, both for general practice and specific policy. Approximately 1/3 of respondents report they pay attention to debates over changes to filibuster rules in repeated polls over the last decade.¹ This importance given to the filibuster is equally true for the news media supplying information to voters. Almost 50% of news stories covering the debate over the Affordable Care Act referenced the filibuster in some fashion (Smith and Park 2013). While the public may value majority rule or minority rights differently depending on their personal political opinions, the filibuster is routinely identified as an important part of American government.

This importance given to the filibuster extends to academic studies of the American political system. Scholars routinely place the filibuster at the center of explanations for the political system. Gridlock, punctuations in policy processes, and moderations in policy are routinely explained through the filibuster (Krehbiel 1998; Binder 2003; Jones and Baumgartner 2005). The filibuster is also at the center of Senate scholarship. Students of Congress have explored the usage of filibusters across time, which individuals are likely to filibuster, and changes in how individuals use the filibuster across both their individual careers and American history (Koger 2010; Bell 2011; Overby and Bell 2004). These studies have concerned themselves with explaining what the public sees as the most important and defining feature of the Senate.

¹These poll results are before Democrats implemented in the "nuclear option" in the 113th Congress. Interest and knowledge increase around the November 2013 rule change for non-Supreme Court executive nominees.

While the filibuster is undoubtedly important, its perceived role does not take into account that the Senate primarily does not function through cloture and floor fights. Much of the time the Senate functions through Unanimous Consent Agreements (UCAs). UCAs are agreements negotiated between party leaders and approved by all 100 senators. These agreements can set time limits for debate, control which amendments are considered in order, ban procedural motions, and provide for specific passage procedures. UCAs represent the Senate choosing to limit itself through actions taken by the entire chamber. Many bills have UCAs, and UCAs controlling specific aspects of debate are not uncommon (Smith 2014). Indeed, UCAs controlling debate are far more common than filibusters and may be as common as cloture petitions (Bell 2011).

The Senate's reliance on UCAs to conduct its business emphasizes the importance of non-public action in the Senate. UCAs are negotiated off-floor, often before debate ever begins. Leaders seek these agreements to manage debate and effectively limit the possibility for dilatory actions. Members agreeing to UCAs which limit amendments remove their ability to offer obstructive amendments. Additionally, leaders can know and address possible obstruction before it ever occurs on the floor through holds. Holds are letters by a senator, or groups of senators, to her party leader stating their intent to object to legislation should it come up for debate. These holds often provide a reason that a senator is objecting to the legislation, allowing leaders to work with members in order to prevent on floor obstruction from occurring. Leaders can also pull bills from the floor if they are obstructed through holds, effectively killing the bill without a filibuster ever observed.

Focusing on the filibuster largely ignores the importance these off-floor obstruction and management efforts have on legislative outcomes. Senators objecting privately to leaders through holds provides leaders with information about debate problems without having to consume floor time. Leaders attempting to manage obstruction through UCAs may circumvent filibusters through guaranteeing members the ability to speak and present their

amendments. Holds, UCAs, and filibusters may be connected activities rather than stand-alone tactics. The usage of one may change the probability of another occurring, with holds likely to shape both UCAs and filibusters. More fundamentally, an exclusive focus on the filibuster explains little about how obstruction shapes the path legislation takes through the chamber. Incorporating more of the tools available to members and leaders provides a more thorough understanding of legislation and obstruction.

The three chapters in this dissertation all focus on how obstruction alters the path of legislation through the Senate. I specifically focus on the effect of obstruction and management efforts at different stages in Senate bill consideration. The ability for senators to register objection before debate occurs has large effects on the filibuster. Bills objected to at earlier stages are much more likely to receive objection at later stages. Leaders know this, and work to manage the floor through UCAs. The limited attention given to these pre-floor proceedings has hidden how obstruction actually works and what the entire process of obstruction means for legislation. This dissertation contributes to an understanding of how the effects of obstruction work at each stage in bill consideration by combining new data on pre-floor bargaining with existing data and approaches for floor debate and member preferences.

1.1 Forms of Obstruction

Scholars have long sought to understand filibusters and how chamber rules affect obstruction (Burdette 1940). Members have distinct preferences, and will act to protect and advance them (Krehbiel 1991, 1993). While joining a party does give senators some tools with which to pursue these interests, Senate rules severely hamper their ability to act through institutionalized gatekeeping roles (Dion 1997; Jones and Baumgartner 2005). They cannot use committees to thoroughly vet legislation while counting on party control of the floor to block alternative proposals. Moreover, members cannot be guaranteed that their proposal will be given consideration, as any member who gains the floor can make a proposal

(Binder, Madonna and Smith 2007). While party leaders gained the right of first recognition in the 20th century, this does not guarantee that an opposed senator will not occupy the floor in an effort to force changes to the bill or kill it outright (Campbell, Cox and McCubbins 2002; Tiefer 1989). Finally, parties are relatively weak due to both these rules and the leadership of the chamber set by the Constitution. The President of the Senate is the Vice-President, who can be a member of the opposition party. Any changes to chamber organization must account for this fact, leading parties to focus on what little they can directly control while allowing members to independently use the floor (Gold 2013; Smith 2007; Carson, Madonna and Lynch 2011). While senators do behave as members of party teams and supply the majority party with some advantages on the floor, Senate parties suffer at the hands of individualistic rules (Lee and Oppenheimer 1999; Den Hartog and Monroe 2011).

These individualistic rules and weak parties have led to a focus on the floor as a way to observe obstruction and lawmaking in the Senate. The implementation of cloture through Rule XXII in 1917 provides a natural means through which to test the effects of rule changes on obstruction (Wawro and Schickler 2004, 2006; Koger 2006). The changing rules lead to wider voting margins and changing procedural votes, with 2/3 cloture votes forcing accommodation on legislation that majority outcomes do not. Scholars have also emphasized the changes in filibusters and management efforts as a result of these rule changes (Koger 2010; Binder and Smith 1997). As the margin necessary to shut down filibusters decreases, the costs of engaging in filibusters also decreases. This causes scholars to frequently observe that the number of filibusters and subsequent management efforts increase through much of the late 19th and 20th centuries. The senators engaging in filibusters has also been a focus of much scholarship. Students of the Senate have found that ideological extremists and minority party members are more likely to filibuster (Bell 2011), retiring senators behave differently than all other senators (Overby and Bell 2004),

and senators have various goals when engaging in filibusters (Binder 1997).

Another on-floor tactic frequently discussed are amendments and their management by the chamber. Amendments have received attention from scholars looking for obstructive tactics, particularly those exploring killer amendments (Jenkins and Munger 2003; Poole and Rosenthal 2007). Controlling amendments through procedural motions to table and filling the amendment tree, and the advantages these tactics supply to the majority party, have come under increasing focus (Den Hartog and Monroe 2011; Smith 2014; King, Orlando and Rohde 2012). These non-filibuster tactics allow leaders to control senators' amending ability while giving advantages to members of the majority party. Amendments on the floor have the ability to undermine legislation, but leadership has tools to control their effects during consideration.

Alternative means of obstruction and management are largely underappreciated among students of the Senate. The Senate rarely presents single members pressing their interests through public debate, but rather usually has bills dying before ever being considered on the floor. Indeed, popular descriptions often note that bills and nominees die in the chamber without ever receiving floor attention. Descriptions of recent "do-nothing Congresses" often revolve around this narrative, but largely credit it to the filibuster. Far more often leaders could not gain an agreement to manage the chamber, effectively killing the bill prior to public consideration (Smith 1989; Roberts and Smith 2007; Smith 2014). The bill dies without public objection ever registered, but this does not mean that targeted obstruction does not exist. Leaders may be unable to garner consent to proceed due to off-floor obstruction in the individualistic Senate, and choose not to proceed to consider the bill (Smith and Flathman 1989; Ainsworth and Flathman 1995).

Two studies, Evans and Lipinski (2005) and Howard and Roberts (2015), point to holds as a means through which individual senators can obstruct individual bills before filibusters are ever necessary. With off-floor obstruction possible on individual bills, members do not

need to publicly object, but rather register their objections and follow through on them if pushed to do so. Thus, what makes filibusters powerful in the eyes of the public may not be that they are effective or represent members standing up for their beliefs, but rather that they represent members acting on previously registered objection.

What this discussion makes clear is that obstruction is not simply a public process played out on the Senate floor. Rather, the Senate presents numerous opportunities for senators to obstruct and leaders to manage consideration. This dissertation asks how the process of legislative consideration works with obstruction and management possible at multiple stages. Specifically, what bills are obstructed in the Senate and how connected are different types of obstruction? Previous scholars have acknowledged the presence of multiple forms of obstruction, but often focus on larger patterns of usage or generalized expectations rather than asking how obstruction works through multiple stages. This dissertation incorporates these multiple methods of obstruction and management, working toward establishing a bill-level picture for how obstruction functions throughout Senate proceedings.

1.2 Outline of the Dissertation

The dissertation proceeds in three chapters, each outlining a specific part of Senate bill consideration. Chapter 2 considers obstruction on legislation prior to floor consideration. Senators use holds – described in more detail in chapter 2 – to register objection with party leaders prior to floor consideration. While the origin of these holds has been “lost in the mists of history,” and had no recognition in rules or statutes until 2007, their usage by senators is undisputed (Oleszek 2013). These holds are commonly used to inform leaders of intention to object if the Senate moves to proceed with consideration on a bill. They serve as a threat to legislation which members can use in an effort to either force changes to legislation or undermine passage entirely. Senators can provide different messages to leaders through holds. These messages can range from a desire to stop consideration entirely to

modifying the legislation, and even include simply notifying the member before moving to consider (Howard and Roberts 2015; Evans and Lipinski 2005).

The analysis presented in Chapter 2 focuses on which bills are likely to be obstructed in this pre-floor environment. Limiting the analysis to only Senate bills reported from committee, the analysis demonstrates that senators act in predictable, self-interested fashions when using holds. First, senators are aware of the probable content of legislation. A bill sponsor's ideology affects the probability that a bill is targeted by holds, and bills reported from high profile policy committees are also more likely to receive holds. Second, I demonstrate that bills more widely supported within the chamber are much more likely to be targeted by holds. Higher numbers of cosponsors for a bill lead to a greater probability for holds, with holds seen across the range of cosponsors. Finally, I demonstrate that holds have powerful effects on passage. Held bills are much less likely to pass the chamber, even controlling for bill and chamber specific details.

Chapter 3 focuses on pre-floor attempts to manage the chamber by leaders. The modern Senate has become a chamber overwhelmed with proposals and increasingly discontented members. Pre-floor management through Unanimous Consent Agreements (UCAs) has become one of the most important tools for chamber leaders in their efforts to control a potentially unruly floor (Smith 2014). UCAs are agreements negotiated between leaders and agreed to by all 100 senators which set rules for the consideration of specific bills. This chapter focuses more specifically on complex UCAs, those which set specific provisions for consideration rather than setting aside a minor rule. Complex UCAs control which amendments are allowed on the floor, speaking allotments for members, when votes will occur, and can waive specific provisions for consideration. These complex UCAs are the closest tools Senate leaders have to special rules in the House, and can be used to shape public consideration before it occurs.

My goal in Chapter 3 is to present an explanation for why certain bills receive complex

UCAs while others do not. Rather than focusing on the general patterns across time for how leaders use these controlling agreements, I focus on which bills are given these agreements. I expected that the holds on a bill would lead to complex UCAs in order to manage this potential obstruction, but did not find a relationship. Rather, complex UCAs are generally used on bills which have a much broader base of support within the chamber. Bills with more cosponsors are more likely to receive complex UCAs, as are bills sponsored by members of the majority party. The second portion of this chapter turns to understanding how these agreements affect passage. Complex UCAs do lead to passage, but not for all Senate bills referred from committee. These controlling agreements do positively predict passage on legislation not indefinitely postponed by the Senate. These agreements appear to serve as a means for leaders to control the Senate floor in order to push legislation toward passage.

In Chapter 4 I move to the floor, analyzing the occurrence of filibusters and their connection to other obstructive tactics. As noted above, most work on the filibuster expects that these tactics are relatively unconnected. Filibusters are generally viewed as a standalone tactic, with other tactics dealt with by leaders' pre-floor management. As Chapter 3 details, leadership management efforts do not appear to respond to holds. This leads to questions about how members use holds and filibusters, and if these tactics may be connected. Senators threatening obstruction prior to floor consideration through holds may see their hold not honored by leaders and respond through on-floor filibusters in protection of their interests. Further, senators find value in consistently presenting objection to leaders. This protects their future interests through establishing a reputation for objection if threatened, putting leaders on notice that they will occupy the floor if ignored off of it.

The analyses in Chapter 4 find that holds are directly related to the incidence of filibusters, and that bills objectionable at earlier stages are far more likely to be found objectionable even after potential leadership actions. I find a consistent, powerful relationship

between holds and filibusters. Additionally, the presence of holds threatening to kill legislation on a bill make filibusters more likely than any other type of hold. Thus members seem to be protecting their interests and reputations through consistent obstruction on legislation. However, I find that filibusters do not affect passage. Rather, holds explain bill passage to a significant degree even accounting for filibusters. The second portion of the analysis in this chapter seeks to explain why holds do not lead to complex UCAs and filibusters may not affect passage. I attempt to match member requests with observed behavior to address this explanation. Using data on holds requesting the ability to offer amendments on the floor, and matching these requests with amendments actually presented on the floor, I find that senators are routinely denied the ability to present their desired amendments on the floor. This does not lead to punishment for leaders, as the ability for senators to offer their requested amendments on the floor does not lead them to vote differently on final passage.

My goal in writing this dissertation is not to provide a comprehensive, exhaustive account for how members and leaders interact on individual bills. Such an account is virtually impossible given the multiple tools available to both members and leaders to shape consideration and passage of legislation. Rather, I hope to provide a systematic and persuasive account of how obstructive member actions on legislation fits together along with why leaders react the way they do to these threats.

2 OBSERVING OBSTRUCTION: HOLDS IN THE SENATE

A fundamental question in democratic representation is what becomes law. The ability to turn citizen demands into laws centers around questions of legislative rules and legislator interests. Elected officials have an interest in constructing institutions and passing laws to further both individual power and reelection goals. That is, officials desire to deliver action on constituent requests. One of the problems with this process is that individual elected officials need not, and often do not, agree on what should be done. This potential for disagreement is greater when these officials have the capacity to insist on consideration for their preferred policies over others. Legislation can stall if elected officials cannot agree to pass legislation, and this becomes more likely with individualistic legislative rules.

The tension between individual elected officials' preferences and legislative efficiency appears most clearly in Senate procedure. Classic depictions of Senate obstruction give individuals great abilities to kill legislation through filibusters, but leaders can overcome this through achieving supermajority cloture or exempting a bill from supermajoritarian rules. This traditional thinking on obstruction prioritizes visible obstruction and leaders managing coalitions set against these actions. This classic depiction misses many of Senate obstruction's forms, however. The following example illustrates why depicting obstruction as public filibusters does not explain much of obstruction's effects on bills in the chamber.

The Hatch Act Reform Amendments of 1988, H.R. 3400 in the 100th Congress, sought to allow civil servants to interact with campaigns for elected office.¹ After House passage

¹The Hatch Act Reform Amendments was introduced by William Clay (D-MO) on November 1, 1987, and passed in a 305-112 vote on November 17, 1987. For further detail, see Pianin, Eric and Judith Havemann. "Bill to Ease Hatch Act Advances." *Washington Post*. October 7, 1987; Havemann, Judith. "Administration Assails Bill To Ease Hatch Act Restrictions." *Washington Post*. June 4, 1987; and Causey, Mike.

and Senate introduction, the bill remained in the Committee on Governmental Affairs until being reported from committee and placed on the calendar on July 7, 1988.² Committee deliberations were contentious, but party-line divisions within committee were absent, indicating that conflicts could be resolved and the bill cleared committee.³ However, the bill remained on the calendar without ever reaching the floor or being subject to a motion to proceed.⁴ Thus, the Hatch Act Reform Amendments of 1988 died a quiet death with no visible explanation.

The Hatch Act Reform Amendments of 1988's failure was not due to filibusters or poison pill amendments. This is apparent from the bill's lack of floor consideration. Rather, it is due to the lack of floor *exposure* for the bill. Majority leader George Mitchell (D-ME) and minority leader Robert Dole (R-KS) could not procure a Unanimous Consent Agreement (UCA) which would have governed floor procedure and therefore elected to not proceed on the floor. To negotiate a UCA guiding debate, Mitchell and Dole required the consent of all 100 senators, and such consent was not attainable for this bill. Senators Jesse Helms (R-NC) and Bill Roth (R-DE) sent Republican leader Dole hold letters stating their intent to object to the bill should a motion to proceed come to the floor. Thus, these holds undermined unanimous consent, and the leaders decided that the possibility of passing the bill with this objection was not worth the cost of extra time on the floor should Helms and Roth actually follow through with their threats to filibuster. These holds removed the possibility of a UCA, and ultimately undermined any efforts to move the legislation forward.

This example makes apparent a hidden truth in traditional depictions of Senate proceedings, which tend to focus on the filibuster as the tool of choice for obstruction-minded

"Hatch Act Hearings." *Washington Post*. May 14, 1987.

²This reporting came after committee substitute amendments and an order to report issued by the full chamber.

³Phillips, Don. "Senate Panel Approves Mild Hatch Act Revision." *Washington Post*. May 20, 1988.

⁴Causey, Mike. "The Hatch Act Hangs On." *Washington Post*. September 28, 1988.

senators. In order to understand why some bills become laws while others do not, examining the entire process of obstruction – and not just the filibuster – is essential. While the presence or absence of filibusters provides great insight into how changes within institutions and incentives shape behavior and outcomes, characterizing filibusters as deciding the fate of legislation is incomplete. Fully understanding what bills become law requires understanding member actions at earlier stages of bill consideration. Using new data I collected on holds during the period of Republican leaders Howard Baker (TN) and Robert Dole (KS), I address these earlier stages in the obstructive process. This project, like those focusing on the filibuster, takes seriously that members have both an incentive to pass legislation and insist on their preferred policy being considered. With both of these premises in mind, I pursue two goals: (1) develop and test theoretical expectations for what bills are likely to be targeted by holds and (2) explore if these holds actually affect bill passage.

2.1 Obstructing Bills

Stating that obstruction is the defining feature of the U.S. Senate provokes relatively few arguments, and Senate rules show the truth of this statement. Individual senators have great power, both in the form of unlimited debate and weak centralized leaders (Smith 2014; Lynch and Madonna N.d.; Koger 2006; Sinclair 1989; Gamm and Smith 2002; Binder and Smith 1997; Binder 1997). Both popular and scholarly attention to obstruction, particularly in the case of the Senate, has produced great insight on public displays of dilatory intent – filibusters in the congressional world (Binder, Lawrence and Smith 2002; Binder 2003; Krehbiel 1998; Koger 2010; Smith 2014; Jenkins and Munger 2003; Lee 2009). Unlimited debate and dilatory amendments can be overcome through supermajority cloture votes on the floor, but is often easier to manage through pre-floor UCAs (Wawro and Schickler 2006; Oppenheimer 1985; Sinclair 2002; Smith 1989; Smith and Flathman 1989).⁵ UCAs require truly *unanimous* consent, and one member obstructing can undermine debate. Thus,

⁵Recent changes in non-Supreme Court nominations lowered the cloture threshold for these items to a majority vote, but nominations fall outside the purview of this paper (Oleszek 2013).

understanding what bills are targeted by obstruction requires developing an understanding of not only what bills are likely to have publicly observable obstruction but what bills are likely to have any type of obstruction observable to party leaders.

The most prevalent mechanism for obstruction is through holds. As seen in the Hatch Act Reform Amendments example, holds threaten on-floor objection, undermine potential UCAs, and stop legislation before bills ever reach the floor. Figure 2.1 presents an example of a hold from Jesse Helms (R-NC) in the 104th Congress. As can be seen here, the hold is a statement that a senator will obstruct proceedings in some fashion if the Senate chooses to proceed to consideration of the bill. What is obvious here is that while filibusters provide valuable insight into dilatory behavior, the broader context is fundamental to understanding when obstruction can be expected.

Filibusters, while widely discussed and publicly known, are the end point of the obstruction process. Multiple other actors make decisions before a filibuster is observed, and I look at the earlier decision of when holds are used to test potential effects of obstruction. To illustrate this difference in approach and focus, Figure 2.2 lays out the obstructive process. I also make two assumptions about the process' early stages. First, senators desire to have policy made at their ideal point and will introduce legislation which accomplishes this goal. Second, committees carefully vet all legislation within their defined jurisdiction. Thus, bills that reach the floor are roughly representative of their sponsor and have a chance of passing the Senate.

Figure 2.2 shows that after being received by party leaders from committees and placed on the calendar, senators choose whether to or not to place a hold on the specific piece of legislation at this point.⁶ While different types of holds are undoubtedly important, and I return to this distinction later in this chapter and dissertation, I choose not to focus on it at

⁶This operates on a bill-by-bill basis, with a senator targeting an individual bill. Hold letters, such as in Figure 2.1, need not target only one bill. However, senators wishing to target multiple bills within a single letter declare objection to each bill separately. Thus this process' integrity is preserved even though senators can direct holds to multiple bills simultaneously.

Figure 2.1: Example Hold

JESSE HELMS
NORTH CAROLINA

United States Senate
WASHINGTON, DC 20510-3301

December 18, 1995

The Honorable Bob Dole
Majority Leader
United States Senate
S-230 The Capitol
Washington, D.C. 20510

Dear Bob:

I will object to any time agreement, unanimous consent request with respect to consideration of S. 426, a bill to authorize the establishment of a memorial to Martin Luther King Jr., in the District of Columbia.

I request that I be given as much notice as possible of any attempt to bring this matter up for consideration by the Senate.

Sincerely,

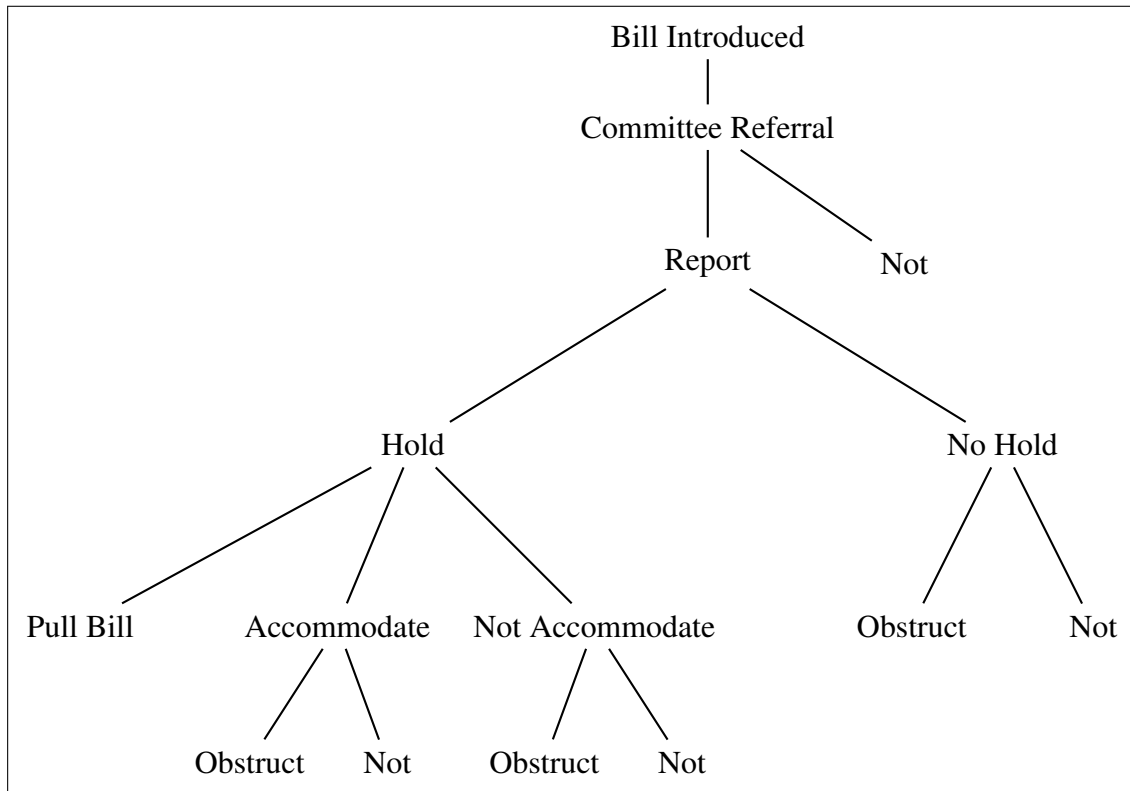


JESSE HELMS:ga

cc: Elizabeth B. Greene

Dole-1

Figure 2.2: Process of Obstruction



this point for purposes of clarity while returning to it in later sections.⁷ Leaders then choose a strategy with which to respond to senators' holding behavior. If a hold is not observed, the bill is introduced on the floor.⁸ When senators place holds on a bill, the choice leaders face becomes more complex. Leaders can either choose to pull a bill targeted by a hold from the calendar, move forward with the bill after offering some accommodation to holding senators, or proceed with the bill in its current form by ignoring the hold.⁹ This choice

⁷Howard and Roberts (2015) provide extensive treatment of this data and how hold types are distributed across Congresses.

⁸While undoubtedly an oversimplification, its purpose is twofold. First, filibuster discussions primarily center upon this path, often implicitly assuming holds kill bills. Second, while interest groups, caucuses, and time pressures may push items off the agenda, the focus here is on the connection between senator behavior and leader response.

⁹This may be due to both the nature of the bill, as some bills such as budgets are must-pass, and the nature of the holder, as holders with extreme ideologies are less likely to be successful in stopping passage (Howard and Roberts 2015; Krehbiel 1998).

primarily depends on the action desired, the availability of time, and importance of the legislation. After either of the last two strategies, the bill is placed on the floor and senators choose whether or not to obstruct on the floor.¹⁰ Finally, the bill passes or not given the results of the previous stage and its level of support.

Obstructionist research primarily focuses on the No Hold-Obstruct path, as it is assumed that this is the path through which observable filibusters occur. Apparent in Figure 2.2 is that this stage, as well as all others, exists as part of a larger process of consideration. That is, while filibusters are valuable means through which senators can register observable objection and are important in their own right, the presence of a filibuster is tied to the presence of a hold. Thus, to understand how floor obstruction occurs we must first understand what is likely to be obstructed before a bill ever reaches the floor.

Unlike much previous research, the question here is not “who places hold letters?” but rather “*what* is held and why?” A senator prefers to have policy made at her ideal point, regardless of institutional rules or passage procedures. The difficulty in this is that each senator insisting on her ideal point creates unstable political environments (Gilligan and Krehbiel 1987; Krehbiel 1991). More ideologically extreme members hold more often, but this tells us little about what is targeted by holds (Howard and Roberts 2015; Evans and Lipinski 2005). Additionally, while rules changes alter the utility of public filibusters, this tells us little about what is likely to be targeted (Wawro and Schickler 2006, 2004; Koger 2010; Binder and Smith 1997). What I undertake here is to look at how obstruction is utilized on a bill-by-bill basis. Thus, the central question of this chapter is what aspects of a piece of legislation make it more and less likely that it is targeted for obstruction?

¹⁰This can include simply expanding the number and duration of speeches and introducing a greater number of amendments. In short, obstructionist activity is primarily considered a pure delay tactic, but it need not be only this.

2.1.1 Bills Targeted by Holds

The process outlined in Figure 2.2 provides several avenues for legislative consideration and objection. Not every bill that comes up for consideration on the floor will be targeted by objection through holds. Senators must perceive a benefit to placing holds in some situations rather than others – implying that the action has consequences and costs – and leaders cannot successfully construct compromise bills to prevent holds. Holds are indeed observed on legislation, but only on approximately 15% of Senate originated bills reported from committee. Thus, holds occur on a regular basis, but are not utilized as a blanket strategy by members.¹¹ Understanding what drives this variation in hold usage provides a key insight into how senators view bills.

The rationale for senators obstructing individual legislation lies in senators knowing their own interests. While party affiliation may guide many procedural actions on the floor, a senator's personal policy interests extend beyond simply supporting the party. A senator has legislation she prefers to be made into law, and will take actions to see this happen. Additionally, she has a general worldview that dictates the bills supported and opposed. A senator prefers legislation similar to her own interests and will oppose legislation she dislikes.

I assume a senator desires to have policy made at her ideal point, and is more likely to favor a bill as its content approaches this ideal point.¹² Thus, a senator will be more likely to obstruct a given piece of legislation as the ideal point of the policy moves further away from the senator's ideal point. If, as in the discussion above, we assume that the sponsor introduces policy which maximizes personal policy benefits, then the distinction is between the ideal point of sponsor and the ideal point of the possibly obstructing senator. As the distance between the sponsor's ideal point and obstructing senator's ideal point decreases,

¹¹In what follows I build on – but differ in focus from – Krehbiel (1985), which focuses on why an individual member holds a given bill due to logrolling across bills.

¹²Both linear loss functions $(-|x_i - x_p|)$ and quadratic loss function $-(x_i - x_p)^2$, where x_i is the policy ideal point of the senator and x_p is the point of the policy are functional forms.

a bill should be less likely to be held.

Hypothesis 1: As a bill sponsor's ideology becomes further from a senator's, holds will be more likely.

More widely supported bills should be more likely to pass the chamber, with greater support on both procedural motions and final passage votes. Bills following the process shown in Figure 2.2 with a percentage of senators potentially greater than a majority in favor of this bill makes the bill likely to be approved by the chamber median and the supermajority pivot (Krehbiel 1998). This legislation should also be more likely to be the target of holds, however. Opposing senators know that if the bill comes to the floor they will have to obstruct through actions such as filibusters in order to prevent passage – and may lose even with a filibuster. Opposing senators thus engage in pre-floor obstruction on more widely supported Senate bills to prevent them from reaching the floor at all. Leaders, seeing a hold, may decide the bill is not worth managing potential floor objection, even if this objection is likely to be overcome. Thus, while more popular legislation should be more likely to be put on the floor, it is also more likely to be targeted by holds.

Hypothesis 2: As visible support for a bill increases, holds will be more likely.

Filibusters and holds become more powerful as time remaining in the legislative session decreases (Wawro and Schickler 2006; Howard and Roberts 2015). Legislation obstructed later in a session is less likely to pass the chamber. While this implies that obstruction is a powerful force near the end of a session, it does not take into account the cost of engaging in this obstruction. Engaging in obstruction has a cost directly related to time and pending legislation. A senator has policies she would like to see made into law. Early in a Congress, placing a hold does not radically diminish the probability her policy goals are made into law as time remains plentiful. Obstructing any individual bill does not take away a large percentage of the time remaining to consider other legislation. As Congress moves toward the end of its term this lack of consequence for obstruction is less true.

Time becomes more scarce, and any individual action consumes a larger percentage of remaining time. Any action a senator takes will have a greater effect on the probability a bill she prefers will be considered. Obstruction compounds this time scarcity, with time-killer objection consuming increasingly scarce time that could be used to consider their own legislation. Thus the chance of considering a bill depends more heavily on the senator's own obstructionist actions. The senator engaging in obstructionist activity has a higher probability of her preferred legislation becoming part of the obstructed backlog due to her own actions. Without changing any of the direct costs of obstruction, such as public visibility and leader recalcitrance, the costs of engaging in obstruction increase as time decreases.

Hypothesis 3: Holds will be more likely on bills introduced early in a Congress.

Finally, bill content presents useful information to senators beyond sponsor details. Separate classes of legislation exist simultaneously in Congress. The most obvious example is ceremonial legislation, such as post office renamings, versus non-ceremonial legislation, such as the Affordable Care Act.¹³ Legislation that deals with more issues is more likely to be held, as there are more areas on which senators can alter and object. More senators have interests represented in these bills, and thus the probability that one chooses to place a hold increases. Bills with broader implications are more likely to be considered in a few specified and higher profile committees, such as the Government Affairs and Judiciary Committees.¹⁴

Hypothesis 4: Bills referred to higher profile committees will be more likely to be targeted by holds.

In short, senators are perceived to be knowledgeable about both their interests and how exercising their procedural prerogatives alters these interests. What drives their obstructive

¹³Holds on reported ceremonial bills are rare, with only one in the 95th (1977-1978) and 97th (1981-1982) Congresses combined.

¹⁴These may also be likely to be must-pass bills, implying that the process of referral location and related hold behavior should appear the same.

behavior is a combination of bill-specific parameters and institutional circumstance. The specifics of the sponsor, a bill's popularity, consideration time remaining, and the general bill content pushes members to perceive bills differently. They know that placing a hold causes leaders to react certain ways depending upon these things as well, and adjust their strategy accordingly (Ainsworth and Flathman 1995). With this theoretical basis in place, I now move to translating this theory into observable metrics.

2.2 Research Design

To test the theory outlined above I utilize a dataset of holds I gathered from the Robert J. Dole Archive and a set of holds gathered by Evans and Lipinski (2005) from the Howard Baker Archive to explore this process. This dataset provides a record of holds placed by Republicans in the 95th, 97th, and 99th-104th Congresses. These data provide a summary of the target of the hold, the day the hold was placed, and the general type of hold, providing for a general test of hold dynamics.¹⁵

This available holds data relates only to Republican holds. This implies that *Sponsor Ideology* measured through first dimension DW-NOMINATE should be negatively related to hold placement. Thus, as *Sponsor Ideology* increases – becomes more conservative – the probability of a hold on a bill should decrease. Treating sponsors as important actors in bill content and viability requires several controls for sponsors, including *Sponsor Seniority* and *Sponsor Committee Leader* status. Translating visible support is far more direct, as the number of *Cosponsors* provides a close corollary to if a bill is likely to pass (Krehbiel 1998). I also consider time as a steadily decreasing function, with *Months Remaining* serving as this proxy.¹⁶

¹⁵For the 97th and 99th-104th Congresses I have additional information based on the letters. Much of this detail is presented in Howard and Roberts (2015), and some of this will be utilized later in this paper. I utilize the 95th Congress, but acknowledge the lack of letters shown in Figure 2.1.

¹⁶Models estimated with a separate control for introduction in the last two months of a Congress, to account for filibuster findings in Wawro and Schickler (2004), do not demonstrate different results.

Choosing how to treat bill content through committee referral proves far less clear. Several options for this exist, but I begin with the committee classification system provided by Deering and Smith (1997).¹⁷ This approach utilizes both the observed behavior of senators through their requests to serve on specific committees and the types of policies committees produce in order to generate categories of committees.¹⁸ A *Policy Committee* is the highest profile type of committee in which a bill can be considered, thus I utilize a dummy variable for all bills considered in this type of committee.

Also important to consider for both content effects and possible popularity measures is the presence of *Multiple Referral* for bills. These bills should be more likely to receive holds, as they have been considered by a wider range of senators before reporting to party leaders, and therefore opposing senators may believe these bills are more likely to pass. Additionally, this helps control for consideration in non-high profile committees. Finally, I employ controls for institutional circumstances for both the chamber, *Republican Majority* and whether a bill has a *Majority Sponsor*.

2.3 Results

As this study concerns itself with what is held and what affects this behavior the unit of observation will be the individual bill rather than the individual senator. Furthermore, I restrict my analysis to only Senate originated bills which have been reported from committee, as discussed above with Figure 2.2.¹⁹ These are the bills most likely to pass as they have been carefully vetted and approved by committees.²⁰ Holds speak to a senator's perception

¹⁷Two alternatives, controlling for referral to a specific committee through a series of dummy variables and controlling for referral to any category of committee provided by Deering and Smith, exist. Each approach has appeal, but my approach provides a more specific test of the theoretical mechanism with only marginal loss in specific information.

¹⁸Policy committees in Deering and Smith (1997) are: Budget, Foreign Relations, Governmental Affairs, Judiciary, and Labor. Several studies have utilized a similar approach to generating categories of committees, including Fenno (1973).

¹⁹I focus on "S type" Senate bills which must be passed by both the Senate and House and signed by the president to become laws in the following analysis.

²⁰I acknowledge that senators can, and do, place holds on bills before reaching the floor, but given the rarity of this I choose to focus on Senate obstruction's broader framework.

of a bill relative to her own priorities and perceptions, and focusing on bills more likely to pass the chamber accounts for this logic. Table 2.1 provides results for models related to what bills are held. The outcomes variable is Table 2.1 is if a bill received a hold or not, and each bill is a separate observation. Thus, each coefficient in Table 2.1 provides the relationship between the associated covariate and the presence – or absence – of a hold.

Table 2.1: Senate Bills Subject to a Hold

Variable	All Bills	Majority Sponsor	Minority Sponsor
Cosponsors	0.025* (0.003)	0.027* (0.004)	0.013 (0.008)
Sponsor Ideology	-0.744* (0.200)	-0.915* (0.320)	-1.331 (0.776)
Months Remaining	0.006 (0.008)	0.006 (0.009)	0.004 (0.024)
Policy Committee	0.258* (0.104)	0.176 (0.113)	0.663* (0.305)
Multiple Referral	0.466* (0.188)	0.379 (0.204)	0.948 (0.498)
Sponsor Seniority	0.045* (0.014)	0.060* (0.016)	-0.024 (0.042)
Committee Leader Sponsor	-0.198 (0.132)	-0.324* (0.143)	0.454 (0.361)
Republican Majority	-0.892* (0.148)	-0.729* (0.237)	-1.399* (0.566)
Majority Sponsor	0.570* (0.159)	- -	- -
Dole as Leader	-0.198 (0.119)	-0.282* (0.127)	0.380 (0.378)
Intercept	-2.391* (0.238)	-1.848* (0.225)	-2.534* (0.624)
N	3096	2513	583
Log-likelihood	-1316.792	-1133.138	-176.106

Note: Estimates are from an logistic regression model. The outcome variable is coded 1 if the bill was targeted by a hold 0 if it was not. Standard errors in parentheses. * = $p \leq 0.05$.

Column 1 in Table 2.1 presents the model for all Senate bills. Holding all over variables in the model constant, the addition of one more *Cosponsor* for a bill increases the

probability that a bill is targeted by a hold, on average. This can be seen graphically in Figure 2.3. Moving from one standard deviation below the mean number of cosponsors to one standard deviation above the mean number of cosponsors makes holds 8% more likely. In short, when a greater number of senators approve of a bill, and the bill is perhaps more likely to pass, holds are more likely to be observed on that bill.

The effects of *Sponsor Ideology*, measured through DW-NOMINATE, also follows the above theory. Table 2.1 demonstrates that as a sponsor's ideology increases, or becomes more conservative, Republicans are less likely to place a hold on this bill. Figure 2.4 demonstrates that as bill sponsors become more conservative, and therefore more like a randomly selected Republican on average, they are less likely to have holds target their bills. Senators are less likely to hold bills whose sponsors are more like themselves, as these bills are more preferred.

The effect of committee type for all Senate bills reported from committee provides clear results, as the effect for *Policy Committee* is positive and statistically significant. Thus, bills referred to these higher profile committees are more likely to be targeted by holds on average. Senators are more likely to use holds on bills considered in these committees, implying a difference in how obstruction is used across different levels of salience. Bills considered in policy committees are 3.4% more likely to be held than bills considered in other committees. While this result cannot speak to differences across individual bills, the relationship between committee consideration and obstruction usage speaks to how senators perceive obstruction as tool to shape consideration.²¹

Having more *Months Remaining* between a bill's introduction and the end of a Congress has no statistically significant effect on the probability of a hold on the bill. This non-significant result is not due to the difference between the sessions, as inserting a dummy

²¹It is possible that senators may place holds on these bills in order to further their own interests and force a log roll among other senators (Arnold 1990; Krehbiel 1985), but I am focused on the occurrence of holds here.

Figure 2.3: Effect of Cosponsors on Probability A Bill is Held

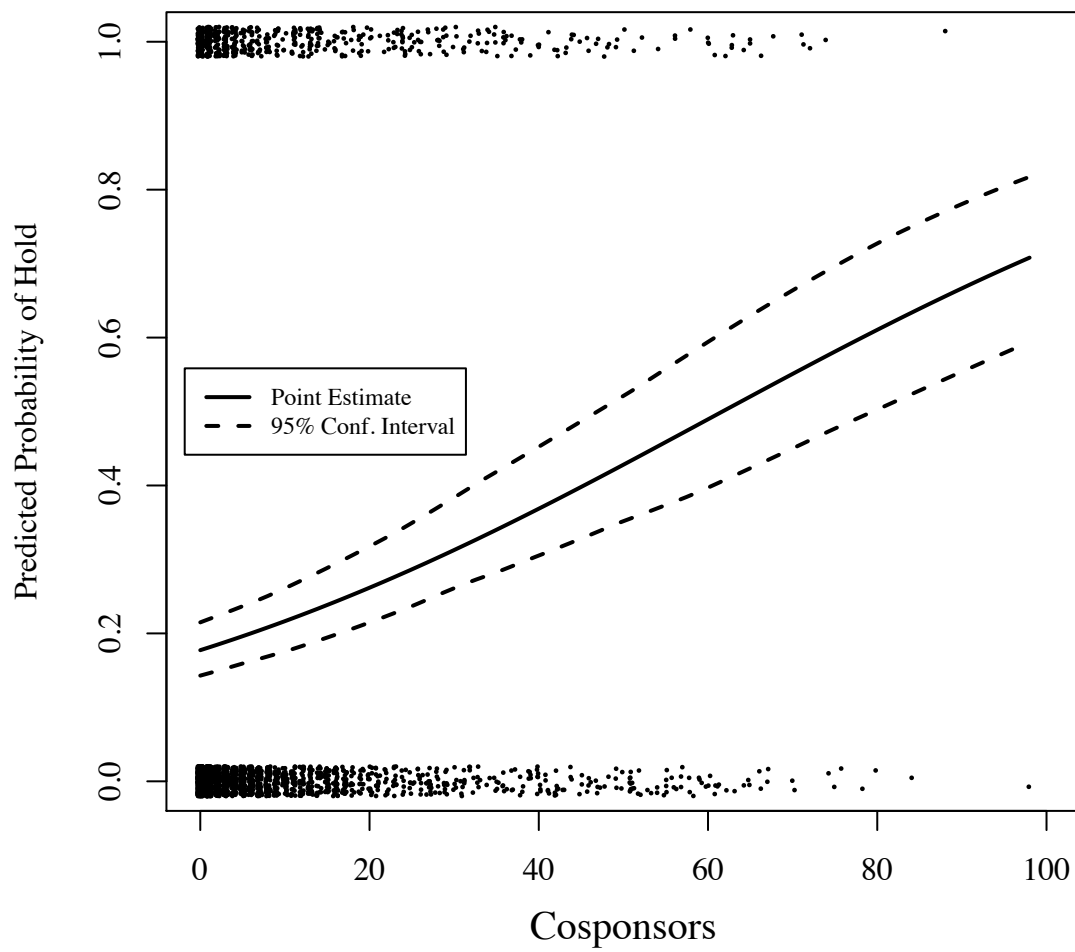
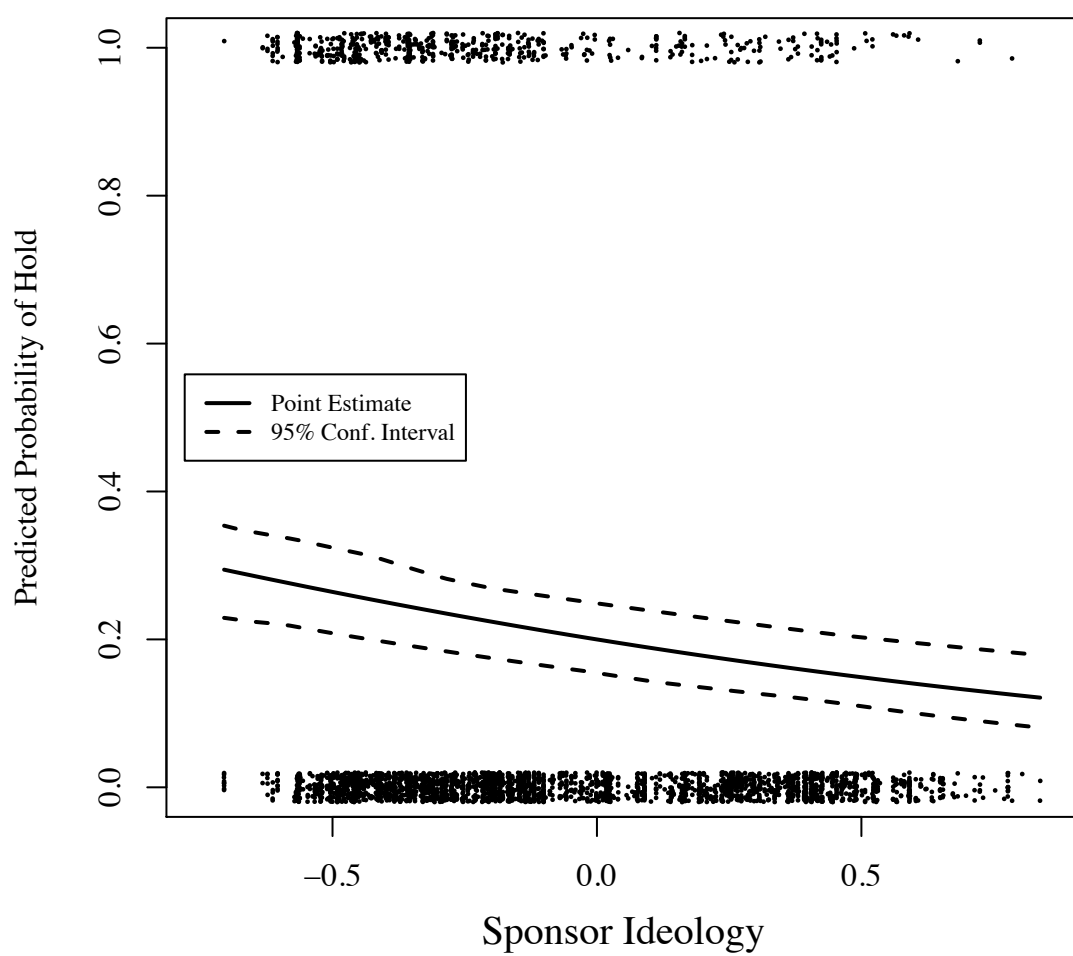


Figure 2.4: Effect of Sponsor Ideology on Probability A Bill is Held



variable for each session does not affect this result.²² A likely explanation for this non-statistically significant effect is that senators face cross-pressures when considering time. A senator knows that any bill she obstructs is less likely to pass the chamber, but will also lower the time remaining to consider her own legislation. These cross-pressures likely lead to inconsistent behavior across legislation, providing this non-statistically significant result.

Multiple Referred bills are more likely to be targeted by holds than bills considered in a single committee, all else constant. That is, even controlling for policy committee consideration and level of public support, bills considered within more than one committee are more likely to be obstructed by Republicans. These bills have been approved by a greater number of senators, as they have been considered by multiple committees. Consideration in multiple committees increases the probability of a hold on the bill by 7%. A senator opposing this legislation understands that this bill is more likely to pass the chamber due to increased support from institutional gatekeepers. This senator will act to prevent consideration and stop passage, as increased vetting and approval may lead to increased support in a floor vote.²³ This result is again indicative that senators act to protect their interests and object to bills they oppose which are more likely to pass.

The controls also present interesting results. Bills with an institutionally powerful *Committee Leader Sponsor* pushing for passage are no more likely to be obstructed than bills with non-committee leader sponsors. While increased consideration from multiple committees considering legislation makes holds more likely, the committee position for sponsors has no statistically significant effect. However, greater *Sponsor Seniority* for bills does make them more likely to be targeted by holds, on average. Thus the potential power for a sponsor does have some effect, but may lie more in the sponsor's perceived place within

²²Senators may perceive late holds as less effective, but Howard and Roberts (2015) demonstrate that outright stoppage holds placed toward the end of a congress are actually *more* effective on average, however.

²³It is probable that either the greater winnowing effect from multiple committees or the increased popularity from more members approving the bill causes this effect to appear. The difficulty of discriminating between these explanations is that I do not know what multiply referred bills would be like without being considered in more than one committee.

the Senate than her institutional power.

Bills are less likely to held by Republicans when there is a *Republican Majority* than with a Republican minority. A senator is more likely to agree with legislation introduced by members of her own party. A higher percentage of bills will be both sponsored by members of her party and reported from committee when in the majority. As a senator will act less against legislation they support, holds should be less frequent on bills introduced when Republicans are in the majority. Thus this finding fits with expectations about preferences and parties.

Additionally, bills with a *Majority Sponsor* are more likely to be the target of a hold, on average. This is most likely due to one of two processes. First, majority party bills are likely to be more numerous as there are more members, but this is unlikely to explain this finding. The alternate possibility is that, as Den Hartog and Monroe (2011) find, majority parties and majority party members have a fundamental advantage in Senate legislative consideration. Bill opponents know that majority sponsored legislation is more likely to pass the chamber due to this advantage, and will be more likely to place a hold on this bill.

This corroboration of previous findings related to majority party advantage led to a splitting of the data between majority party sponsored and minority party sponsored legislation.²⁴ These results are presented in Columns 2 and 3 of Table 2.1. The primary interest here are similarities – and differences – between Republican senators targeting legislation across majority and minority sponsorship.

The effects of public support for a bill are consistent across both majority and minority sponsored legislation, and corresponds with the finding for all bills. Adding one additional *Cosponsor* to a bill increases the probability that said bill is targeted by a hold, on average, for both majority and minority sponsored legislation. This effect only reaches statistical significance for majority sponsored legislation, however. More popular legislation is more

²⁴This procedure is functionally equivalent to interacting *Majority Sponsor* with all other variables in the model.

likely to be targeted for obstructionist activity.

Similar to the results for all bills, *Sponsor Ideology* is negative for both majority and minority sponsored legislation. Again, this effect does not reach statistical significance for minority sponsored legislation. As the sponsor becomes more conservative Republicans are less likely to hold the bill. *Months Remaining* is also similar to the result for all bills, with the effects for majority and minority sponsored legislation in the predicted direction but not reaching statistical significance for either set of bills.

The effect of legislative content, as measured by the type of committee in which a bill is considered, on hold usage varies across sponsor majority status. Majority sponsored legislation considered in a *Policy Committee* is more likely to be the target of holds, but does not reach statistical significance. The effect for minority sponsored legislation is positive and statistically significant. Thus, bills considered within high profile *Policy Committees* are more likely to be the target of holds, on average.

Multiple Referral for legislation is positive for both types of legislation, but does not reach statistical significance for either majority or minority sponsored bills. Interestingly, *Sponsor Seniority* is positive and statistically significant for majority sponsored legislation, but negative and not statistically significant for minority sponsored bills. While having a *Committee Leader Sponsor* was not statistically significant and negative for all bills, it is statistically significant and negative for majority sponsored bills but not for minority bills. Finally, a control for the different periods indicates that majority sponsored legislation was less likely to be held under Dole, on average, but no such effect appears for minority sponsored legislation.

These results provide explanations consistent with the hypotheses presented above. Legislation with more *Cosponsors* is more likely to be targeted by Republican holds. Bills with more ideologically conservative sponsors are less likely to be held, regardless of sponsor majority status. On average, bills referred to *Policy Committees* are more likely to be

held. While I do not find that more *Months Remaining* for bill consideration affects the probability a bill is targeted by a hold, my findings are consistent with my expectations. Senators opposed to legislation are knowledgeable of their own interests, and are equally aware of when legislation which goes against these interests is likely to pass. These situations where senators oppose a bill likely to pass is where holds are more likely to be observed. Given this understanding of what bills are targeted, I move on to if senators receive any benefits from holding bills.

2.4 The Effects of Holds on Bills

With these consistent results I turn to the effect of holds. The process in Figure 2.2 of senators holding, leaders responding, and senators obstructing assumes that holds shape leader strategy and the probability that a bill passes the Senate. That is, if a hold is not observed I presume that leaders will not pull a bill from the calendar, whereas held bills can be pulled from the calendar or defeated on the floor. This implies that bills on which holds are observed should pass the Senate at lower rates than non-held bills, as they signal to leaders a need to potentially change strategies.

This type of response is not guaranteed, as leaders can choose to honor a hold or not. While the holds by Roth and Helms discussed above were successful in stopping the Hatch Act Reform Amendments of 1988, pulling the bill or altering its content is a choice by leaders. Contrary to this, The Neighborhood Schools Improvement Act, introduced on January 14, 1991, was held by Jesse Helms but considered and eventually passed on the floor.²⁵ Thus, the possibility exists that the example of the Hatch Act Reform Amendments of 1998 is an exception to the general process.

To test if holds affect passage of Senate bills, Table 2.2 presents logistic regression models for Senate passage of Senate bills. The dependent variable in these models is the passage of a bill in the Senate, and the coefficients represent the relationship between an

²⁵This bill sought to expand resource provisions for achieving the National Education Goals.

increase in an independent variable and the probability of a bill passing the Senate. The theory presented above assumes that a senator acts to protect their own interest, and engaging in obstruction through holds makes bills she opposes less likely to pass the chamber. This means that the primary covariate of interest in Table 2.2, *Held Bill*, will be negatively related to bill passage.

Column 1 in Table 2.2 provides a test of the relationship between holds and passage for all Senate bills referred from committee. Strikingly apparent in this model is the relationship between the presence of a hold on a bill and its probability of passage. Controlling for traditional passage effects, including cosponsors, time remaining at introduction, and chamber configuration, the presence of a hold dramatically lowers the probability that a bill passes the Senate. On average, the presence of a hold on a bill lowers the probability of the bill passing the Senate by 21% with a maximum effect of 26%. This indicates that holds on bills do affect bill passage. Their use significantly lowers the probability that bills become laws, both statistically and substantively.

Additionally, holds placed by different senators may have different purposes. A senator can state their desire to be notified of the consideration, change the content of the bill through amendments, or stop consideration and passage of the bill entirely. Howard and Roberts (2015) develop classifications of holds depending on a senator's expressed goal in their hold letter sent to the party leader.²⁶ Of particular interest here is if holds desiring to stop legislation have a larger effect on passage than all holds together. Thus I will use the presence of a killer hold to measure this. Killer holds are those holds which state a desire to stop consideration and passage of legislation without giving a possible method to overcome this objection. That is, they are stating that their goal is to kill the legislation rather than change it before consideration and passage. To test if killer holds lower the probability of

²⁶Howard and Roberts (2015) develop a six part coding system for Republican holds. The system is: 1) Outright Hold to kill legislation 2) Specific Amendment Request to put in bill 3) General Amendment Request to put unspecified amendment in bill 4) Specific Demands to remove part of bill 5) Requests for Notification before motion to proceed 6) Requests for Delay before bringing bill to floor.

Table 2.2: Bill Passage in the Senate

Variable	Model 1	Model 2
Held Bill	-0.961* (0.106)	- -
Killer Held Bill	- -	-0.962* (0.135)
Cosponsors	0.006* (0.003)	0.004 (0.003)
Sponsor Ideology	0.443* (0.130)	0.483* (0.129)
Months Remaining	0.025* (0.006)	0.023* (0.006)
Policy Committee	-0.110 (0.082)	-0.129 (0.081)
Multiple Referral	-1.047* (0.180)	-1.056* (0.179)
Sponsor Seniority	-0.013 (0.011)	-0.014 (0.011)
Committee Leader Sponsor	0.068 (0.098)	0.074 (0.097)
Republican Majority	-1.065* (0.097)	-1.056* (0.097)
Majority Sponsor	-0.035 (0.100)	-0.078 (0.099)
Dole as Leader	-0.578* (0.091)	-0.630* (0.092)
Intercept	0.847* (0.168)	0.896* (0.168)
N	3096	3096
Log-likelihood	-2005.515	-2022.123

Note: Estimates are from an logistic regression model. The outcome variable is coded 1 if the bill passed the Senate and 0 if it did not. Standard errors in parentheses. * = $p \leq 0.05$.

passage as a separate group, I estimate the logistic regression model presented in Column 2 of Table 2.2. The covariate of interest here is if a bill is the target of a killer hold, indicated through the dichotomous *Killer Held Bill*, rather than any hold.²⁷ These holds should lower the probability of passage, as this is the stated purpose of the hold.

Column 2 of Table 2.2 presents the results of this model. The effect for *Killer Held Bill* is negative and statistically significant, implying that bills targeted by these killer holds are much less likely to pass the Senate. A bill targeted by a killer hold is 22% less likely to pass the Senate than a bill not targeted by a killer hold. While this effect is dramatic, it is very similar to that for all held bills in Column 1 of Table 2.2. The results indicate that senators utilizing these holds do get what they want on average, but there is not a dramatic difference when senators engage in the most direct threat possible opposed to other types.

Holds do stop the passage of legislation, both for all holds taken together and killer holds separately. While holds may be a symbol for larger objection to the bill, the results show that this obstruction dramatically lowers the chances a bill is passed by the Senate. This stops any chance the bill has to become law, indicating that holds directly affect Congressional policymaking. The actions taken by individual senators shape the outcome of legislation in terms of passage. This provides consistent evidence that senators take action on bills assuming that these actions will shape outcomes.

2.5 Discussion

This chapter has concerned itself with the place of holds within the legislative process and how they are utilized. It provides an explanation of two fundamental processes in legislative deliberation. First, I have established a process through which both leaders and members knowingly allow obstruction on a bill-by-bill basis. Members are served well, as they can protect their interests, but leaders also gain by receiving information about potentially difficult legislation. Second, the theory and models above provide the

²⁷The covariate of interest in this model is thus a subset of the covariate of interest for the model in Column 1.

first explanation for both holds affecting bill passage and which bills we can expect to be subjected to holds.

From this discussion it is clear that holds do alter the probability that bills pass the Senate. This result is perhaps not surprising given what we expect from previous studies of the filibuster, but this is the first systematic demonstration that holds do lower the probability a bill is passed by the Senate. Furthermore, this result relates to only Senate bills reported by Senate committees, a tougher test for obstructionist activity than sampling from all possible legislation.

My findings also speak to the relationship between individual bills, institutional circumstances, and opposing senators. It is apparent in the models and discussions above that senators view bills differently when choosing to engage in obstruction through holds. The content of legislation appears to structure the decision to hold a bill, but the specifics of this circumstance may depend on the majority status of a bill sponsor. That support for a bill affects decisions to register a hold is not surprising, but important to remember when considering how cosponsorship affects bill passage rates. Additionally, senators seem to be attentive to the identity of a bill sponsor when utilizing holds. Bills in Republican majority Congresses are targeted less frequently by Republican senators, and the ideological conservatism of the sponsor affects hold usage. The effects of time were in the expected direction, but not statistically significant. Holds may be more effective as Congresses draw to an end, but slowing the entire agenda at a Congresses end does not drive hold usage. The process behind how support and time may interact, as well as how supporters and opponents utilize different types of obstruction together, are worthwhile areas for future research.

More visible forms of obstruction, such as filibusters and pushing for cloture votes, do receive a great deal of attention. This study makes the case that understanding holds provides valuable insight into the lawmaking process. Viewing filibusters as primary evidence

of obstruction is a potentially fruitful exercise, but our understanding could be greatly enhanced with careful analysis of off-floor obstruction. This project pursues the broad strokes of when obstruction is utilized, but does not deal in detail with how it is related to other processes and its micro-level effects. Further work is needed to understand when obstruction is actually successful in its goals and when leaders can safely choose to ignore a senator's registered objection. While focusing on the floor is valuable, pursuing how legislative bargaining works prior – and parallel – to this visible deliberation has the potential to greatly enhance what we know about the American political process.

3 MANAGING OBSTRUCTION: UNANIMOUS CONSENT AGREEMENTS

The path of H.R. 3103 through the 104th Congress presents an interesting case study on the effect of Senate procedure on legislative outcomes. Originally designed to limit exclusions based on preexisting conditions, the bill was the Republican counter to Clinton's pursuit of health care reform and shaped related rhetoric in the 1996 presidential campaign. Although the bill was relatively uncontroversial in the House, this changed in the Senate.¹ A bipartisan filibuster by Edward Kennedy (D-MA) and Nancy Kassebaum (R-KS) sought to either fundamentally change the bill's content or stop passage of the House's legislation.² Even with these filibusters, the bill passed the Senate on April 23, and was signed into law on August 21, 1996. This bill, more commonly known as the Health Insurance Portability and Accountability Act of 1996, or HIPAA, is one of the lasting centerpieces of President Clinton's legacy.

The bill passed over the public objection of Kennedy and Kassebaum in large part due to pre-floor negotiations by party leaders. Republican majority leader Robert Dole (KS) and Democratic minority leader George Mitchell (ME) were able to move HIPAA through the Senate with a Unanimous Consent Agreement (UCA), negotiated before floor debate began, which established the date of final passage.³ Due to the UCA, obstruction was ended

¹H.R. 3103 was introduced in the House on March 18, 1996, reported from Ways and Means on March 25, and passed on March 28. HIPAA was also referred to the House Commerce, Judiciary, and Economic and Education Committees. These committees were given additional time to consider the bill, but the final passage vote was held before the extended reporting deadline with no reports given. The bill passed on a recorded vote, with Republicans voting 299-1 in favor and Democrats 149-38 against.

²Note that this bill was the target of multiple procedural tabling and cloture motions. See Dewar, Helen. "Striving to Lead, Dole Stumbles Into a Week of Setbacks." Washington Post. April 21, 1995.

³As discussed in Chapter 2, a Unanimous Consent Agreement (UCA) is an agreement between party leaders, and agreed to by all 100 senators, which covers any or all of floor activity, passage procedure, amendment limitations, and setting the time of final consideration prior to floor consideration.

within the time limit, the Senate's more moderate language inserted into the bill, and final consideration was a relatively smooth process.⁴ What is apparent here is that the presence of public objection to legislation is not sufficient to explain HIPPA's ultimate fate. Pre-floor bargaining and controlling floor proceedings can be even more important to guiding consideration to a successful outcome.

While Chapter 2 considered what legislative details make bills more likely to receive holds, this ignores the next step highlighted in the HIPPA example. Members can, and as we have seen do, threaten to obstruct legislation, leaders can manage these threats and the legislation they target. Controlling floor proceedings through developing UCAs for specific bills circumvents the generally lacking floor rules, providing structure and deadlines for consideration. Fully understanding the process of obstruction and bill consideration thus requires developing an understanding of when controlling agreements occur, their effects, and why different patterns emerge. Controlling the floor may be critical to managing member needs and threats, and should shape passage in the chamber.

Despite the place of pre-floor bargaining in Senate procedure, as well as the acknowledged importance of this process by students of Congress, scholars have a limited systematic understanding of leadership control on legislative outcomes. This is due to both the secrecy of this bargaining and the difficulty in obtaining usable data on each part of this process. Existing empirical studies focus on only select bills within individual Congresses, with broader analyses only existing among game theoretic analyses (Smith 1989, 2005, 2014; Krehbiel 1985; Ainsworth and Flathman 1995). This chapter is an analysis of complex UCAs, which are those managing floor consideration of bills in terms of amendments, timing, and voting procedures, in an attempt to develop a more systematic understanding of how off-floor agreements are developed and shape outcomes. I utilize a newly gathered

⁴The bill was ultimately amended by substituting the language of S. 1028, the Health Insurance Portability and Accountability Act of 1995, after the enacting clause. H.R. 3103 passed through the Senate with no referral, but S. 1028 was referred to, and reported by, the Committee on Labor and Human Resources.

dataset of complex UCAs in the 99th Congress, along with data on Republican holds and Senate amendments in multiple Congresses in what follows.

These data provide a unique perspective on Senate procedural bargaining. The UCA data provide a window into how senators choose to govern themselves, how leaders are able to manage floor proceedings, and how often members agree to limit their own options. The comprehensive data allows exploration of the relationship between holds and UCAs, how UCAs actually affect the passage of legislation, and possibilities for why this relationship exists. This chapter pursues three goals: (1) understand the distribution of UCAs within a Congress, (2) provide a systematic analysis of the relationship between UCAs, holds, and the passage of legislation in the Senate, and (3) explore how leaders may view floor control in a more systematic fashion.

3.1 UCA History and Purpose

Unanimous Consent Agreements are among the most utilized leadership tool to manage the floor. Simply stated, UCAs are any agreement negotiated by leadership and approved by the membership which governs some aspect of floor procedure. While widely used, instances of unanimous consent are not identical to one another in both form and function. The most general, and common, form are simple unanimous consent requests. These appear as members requesting permission of the Senate to take an action, either for their individual needs or to move business through the Senate. Many motions to proceed to consider bills fit into this category, with chamber or bill leaders simply stating their intention to move to new legislation if no objection appears. Pending the lack of objection, the Senate moves to consider the new bill “by unanimous consent.” Second, simple unanimous consent agreements manage procedure for individual bills. These agreements are agreed to by leaders and membership, and written down to formalize the agreement, but cover uncontroversial consideration elements. These simple UCAs are often used to dispense with

the third reading of a bill, consider a group of unobjected bills en bloc, or add cosponsors to a bill during consideration and change votes after the outcome has been announced. Third, complex Unanimous Consent Agreements manage the content of deliberation over bills. These agreements, like simple UCAs, are formalized negotiations between leaders and agreed to by members recorded in the *Congressional Record* and *Senate Journal*. What distinguishes these two types of UCAs is that complex UCAs control not only general procedure but the details of how bills are debated and what is in order on the floor itself (Smith 2014).

These agreements have been used to structure floor proceedings since the mid-1800s (Roberts and Smith 2007). UCAs were seen as a means to circumvent attrition-based bargaining, wherein a senator or group of senators would hold the floor until winning or losing. Deliberation could be dealt with in off-floor negotiations, leaving time on the floor to move legislation through the chamber. The increasing size of both the Senate and government as a whole, along with rising individualism in the chamber, pushed leaders to begin routinely managing legislation through these bargained consent agreements rather than on-floor debate (Wawro and Schickler 2006). While the specific origins of these agreements are murky, most observers note increased usage of these agreements in the 20th century, particularly the 1960s and 1970s (Taylor 2012; Smith 2014).

With the increased usage of UCAs came a change in their role in the legislative process, particularly for complex UCAs (Oleszek 2013). Complex UCAs stand apart from basic consent requests or simple UCAs in that they seek to manage how bills are debated on the floor or what is allowed to be presented. Thus, while simple UCAs may cover such actions as reading a bill the third time or referring a bill to committee, complex UCAs dictate how much time is allotted for debate and what amendments are in order on the floor. Originally used as a means to gather consent for bills as a whole, these complex agreements have become a means through which leaders and members carve out individual components of

legislation. Smith (2014) shows that complex UCA usage in the early 20th century centered around setting general limits for amendments with minimal mention of individual amendments or motions, late 20th century complex UCAs have almost exclusively functioned as a means through which to manage individual parts of deliberation (62-63). Leaders desire to manage an increasingly disruptive and busy chamber, and governing consideration is a means to accomplish this task (Oppenheimer 1985).

Central to academic attention to these changing complex agreements has been the question of who benefits from their usage. While UCAs are negotiated by leaders and agreed to by members, they may have unequal benefits for members and leaders. Smith and Flathman (1989) make the case that the increasing specialization of complex UCAs benefits members, as they bargain with leaders over the content of these agreements due to their ability to object if not appeased. This allows members to carve out policy concessions through debate and amendments at the expense of leaders. Senators indicate a variety of incentives for placing holds when they communicate with leaders, including outright stoppage, amendment offerings, and notification (Howard and Roberts 2015; Evans and Lipinski 2005, N.d.). The specific desires members state in their threats to obstruct can force leaders to adapt policy consideration to account for potential on-floor obstruction and filibusters.

However, Ainsworth and Flathman (1995) demonstrate that these targeted complex UCAs may actually be a leadership tool. Leaders are better able to limit individual members' abilities to object through writing these specific complex UCAs, taking away individual senators' power granted through floor rules (Taylor 2012). These agreements lower members' ability to object, as upon agreeing to a UCA they are bound by its provisions. This lowers the perceived threat of obstruction through filibusters, with members bound to time agreements and amendment limits as in the example above (Koger 2010; Binder

and Smith 1997; Binder 1997). Additionally, the Senate majority party has a fundamental advantage in scheduling procedures, both for bills and amendments (Krehbiel 1993; Den Hartog and Monroe 2011). Senators may be members of procedural teams, but the advantages given to the majority party cannot be ignored (Lee 2009). The ability of party leaders to limit member obstruction, and the advantage of the majority party, may severely limit the ability of members to obstruct as individuals on the floor.

To unpack this puzzle, we should explore both the actions of individual members and instances of control by leaders. While previous work has demonstrated broad patterns for complex UCA usage, which I build on here, there has been little focus on the bill level. Patterns of usage and general statements about changes across time are valuable, but tell us remarkably little about how management efforts affect individual legislation. While Smith (2014) makes a convincing case for changing complex UCA features and Ainsworth and Flathman (1995) demonstrate the existence of equilibrium offerings by leaders, these studies tell us little about how these tools are used and what difference they make in outcomes.

If the ultimate goal for scholars researching the connection between Senate rules and the policy process is to understand how these rules and their usage affect the path of bills through the chamber, then the connection between rules, usage, and outcomes for individual bills is important. Exploring why individual bills have complex UCAs while others do not can tell us not only why leaders craft general types of agreements, but more importantly how leaders see the connection between individual bills and their available tools. Thus, to move beyond the general distribution of consent agreements and understand what complex UCAs imply for members, leaders, and legislation scholars should begin exploring the tools used on individual bills. Focusing on when complex UCAs are utilized on individual bills, and the effects these agreements have on outcomes, is necessary to fully realize what management efforts mean for the chamber.

3.2 UCAs in Senate Procedure

The discussion above makes clear that using UCAs requires negotiating between numerous actors within the Senate. Both party leaders must agree to the UCA, followed by all senators – including bill sponsors, opposition partisans, and other institutionally powerful individuals. Additionally, leaders will only utilize UCAs after bills have been reported from committee and placed on the calendar.⁵ Figure 3.1 reintroduces the process tree from Chapter 2, focusing on the decision leaders face when negotiating complex UCAs.

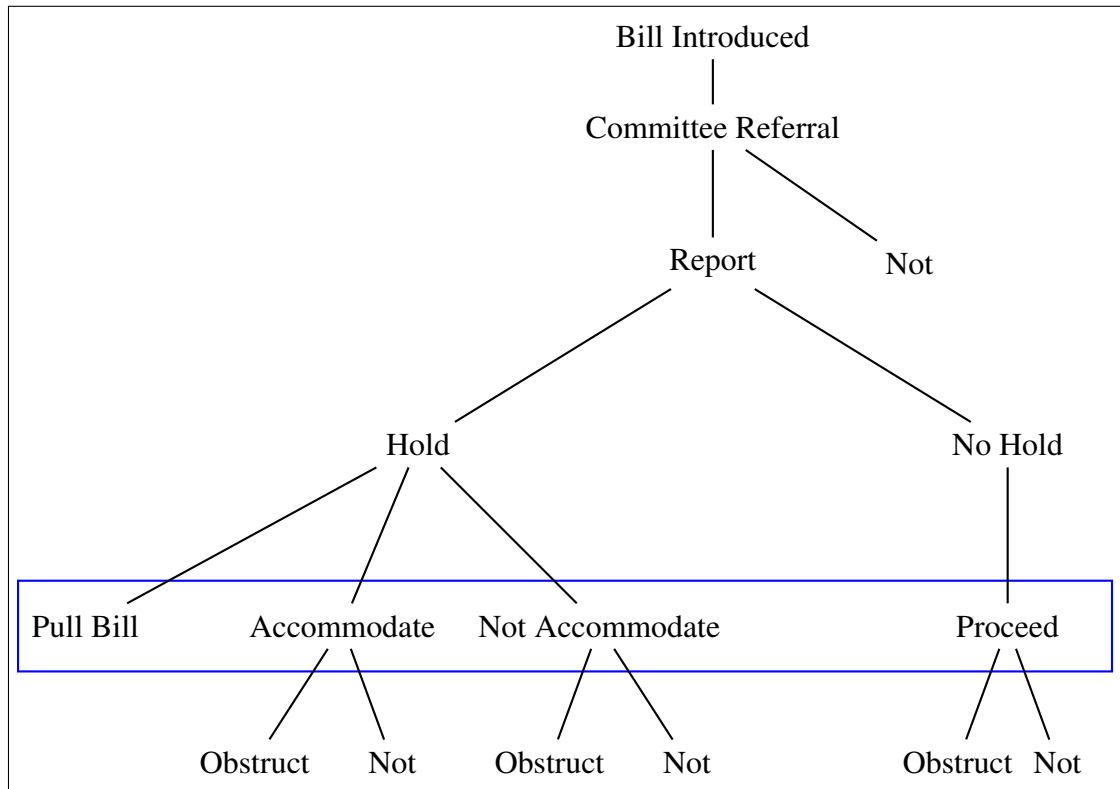
After bills are reported from committee and held – or not – leaders choose how to react to the actions of members and their specific threat.⁶ If members threaten a hold, leaders face three options. First, leaders can pull the bill from the calendar if they believe that the bill will fail or consume too much time, effectively guaranteeing no chance of passage. Second, leaders can attempt to work with members in order to manage consideration on the floor through guaranteeing the ability to present amendments on the floor or make procedural motions. Finally, leaders can choose to not accommodate members and either attempt to gain consent to proceed in spite of the objection or place the bill on the floor without unanimous consent. On bills with no observed holds, leaders should either negotiate a UCA or proceed to consider the bill on the floor without going through the process of gaining consent. The box in Figure 3.1 shows where in the process leaders offer complex UCAs. After leaders respond and bills are presented on the floor, members choose to object or not and the bill passes or not.

Clear in the depiction of obstruction in Figure 3.1 is that using complex UCAs has numerous strategic elements. Leaders must access both the initial presence of obstruction

⁵Bills can also be placed directly on the calendar. This happens rarely for Senate originated bills, but is more common for House legislation. In the discussion and analysis to follow I will focus on Senate originate bills considered in committees, but acknowledge the complications in the process.

⁶Important to note is that I assume here holds and the individual components of UCAs occur on a bill-by-bill basis. A UCA, like a hold letter, can relate to more than one piece of legislation, but I assume here that each component is separately negotiated. Thus, while I acknowledge that this process occurs simultaneously across bills, the integrity of the process is preserved when exploring on a bill-by-bill basis.

Figure 3.1: Process of Obstruction: UCAs



and the likelihood that a senator will follow through on her threat. They must also look at the probability that a bill will pass the floor, and if concessions to potentially obstructing senators will undermine the possibility of passage. Broad based support for legislation may also push leaders to schedule legislation, despite potential obstruction (Kessler and Krehbiel 1996; Krehbiel 1998). Similarly, leaders must look at both Congress' institutional and political circumstance to gauge if the potential for obstruction is worth risking potential delay.

Where I will focus in this chapter are the decision points outlined by the blue box in Figure 3.1. At this stage leaders can take three actions. They can either pull the bill from the floor, put the bill forward without a consent request, or work with members to develop a managing UCA. My interest lies in the decisions of the Senate to manage itself, and how

the actions of members shape the availability of leadership tools. Thus, the questions here are if holds affect efforts at gaining unanimous consent requests, and if gaining consent leads to higher passage probability for bills.

3.3 Leadership Cues and Complex UCAs

Senate floor debate is often an acrimonious and unwieldy process. Chamber rules provide relatively few restrictions for consideration, as bills can be debated endlessly by senators allowed to speak on any subject. Every senator, leaders and rank-and-file alike, know this possibility exists. While members may desire to either pass or kill legislation, a leader's goals are more complex. Leaders desire not only to pass favored legislation, but also control the floor generally and move legislation through the chamber by expediting consideration.

The ability for leadership to manage the chamber lies in the information available to leaders. Leaders do possess public information about the bill. This includes the content of the legislation, which committees considered the bill, how well-supported the bill is within the chamber, who sponsored the bill, among other features of both the bill and institution. This information cannot be ignored by leaders, as they may face pressure from both membership and the general public to bring certain bills to the floor. The bill content and which committee considers legislation may force leaders to take action on legislation. Institutionally powerful members can also pressure leaders to take action on legislation or face consequences.

The most important public information for the leadership's decision to work toward consideration for a bill is the potential level of support within the chamber. Bills which are well-supported with higher numbers of cosponsors may be pushed more heavily by the membership. Leaders, desiring to protect their fellow partisans, will push for consideration of these bills in order to protect their partisan interests electorally. Cosponsors are also important in that these bills will likely face less resistance for complex UCAs, incentivizing leaders to push these bills in an effort for the chamber to appear productive. While some

bills may be deemed more important or potentially impactful, legislative productivity has an electoral payoff as well.

Cosponsors are not the only signal of potential support within the chamber, however. Leaders are aware of the procedural advantages for the majority, and that majority members are better able to provide institutional benefits. While senators may often act as members of procedural teams, scheduling advantages for majority partisans abound. Majority legislation is more likely to be reported from committee, have amendments considered on the floor, and pass procedural votes. Leaders and other members are aware of these advantages, and while they may not favor the underlying legislation they will be more likely to proceed with the legislation.

Leaders are thus aware of this public information when bills are reported from committee, and view bills accordingly. Yet, leaders face a serious problem in managing the chamber even with this public information. While not every senator will object to a bill, and a senator will not object to every bill, on-floor obstruction can still disrupt deliberation. Furthermore, each member's potential objection to legislation is private information available only to that senator an overwhelming percentage of the time. Leaders are not aware of potential member objection when bills are reported from committee, as only public information is available to leaders when initially evaluating bills.

Chamber leaders desire this private information. Legislation can fail without it, as members obstruct floor proceedings in order to kill the legislation with no prior warning for leaders. Deciding which bills to put forward becomes a choice less fraught with potential failure if this information is available, as they can incorporate it and make better decisions. This need to gain access to private information and incorporate it into decision making pushes leaders to develop a means through which they can obtain it.

The Senate has developed holds, a means through which leaders can gain access to this

private information prior to floor consideration. Holds provide a means through which leaders can evaluate potential objection by specific, individual senators before debate ever occurs. Moreover, holds allow leaders access to often itemized demands by members before crafting UCAs. John Ashcroft (R-MO) provides an example when he informed Majority Leader Robert Dole (KS) that:

“As I wish to pursue my intention to offer Section 312 as an amendment to the bill [S. 1180] on the floor, I will object to any time agreement or unanimous consent request with respect to consideration of S. 1180, Calendar Order Number 292, an Act which amends title XIX of the Public Health Service Act to provide for health performance partnership, and for other purposes.”

While Ashcroft threatens to object to any unanimous consent request on this bill, he makes Dole aware of potential objection and obstruction. That is, Ashcroft provides Dole with private information about potential obstruction prior to floor debate. Importantly, Ashcroft also provides Dole a means through which he can be appeased. This information can be utilized by Dole when attempting to gain consent through working guaranteed consideration of the substitute amendment into a complex UCA.

Leaders value expedited legislative consideration, and will make widespread use of the information provided to them through holds. Working with member demands to craft complex UCA provisions guaranteeing floor time, the ability to offer an amendment, or blocking the ability of others to offer amendments becomes far easier with this new information. Additionally, gaining unanimous consent will be far easier with senators guaranteed consideration of their potential problems with legislation. The potential to be guaranteed the opportunity to offer their amendments, or speak about the bill under consideration, provides a strong incentive for members to agree to binding their ability to object on the floor. Chamber leaders know this, and will develop agreements governing the floor based on this private information now made available to them.

Beyond leadership incentives for inclusion of threats in UCAs, this provides incentives for members to register their objection with party leaders prior to floor consideration. Members gain a guaranteed opportunity to gain access to the floor rather than relying on the chaotic Senate recognition system. Senators will utilize this UCA system put in place by leaders to further their own interests, giving off-floor processes power over on-floor consideration. This means that complex UCAs should not only respond to public information, but should also respond to revealed private information made available through holds.

That UCAs provide advantages to both members and leaders has definitive connotations for passage. These agreements, written by leaders to expedite floor consideration by appeasing potential member objections, provide for bills to be considered on the floor. Given the Senate's agenda and the overwhelming crush of business, this eases one of the most difficult hurdles for passage. While a complex UCA should by no means guarantee Senate passage for a bill, floor consideration and control over debate makes passage much more likely. Using complex UCAs provides members advantages, but it greatly eases the ability of leaders to guide legislation through the chamber. This theory leads to three hypotheses about when bills should receive complex UCAs and how they effect passage.

Hypothesis 1: Bills with observed holds will be more likely to have complex UCAs utilized

Hypothesis 2: Bills with wider support, measured through more cosponsors and a majority party sponsor, will be more likely to have complex UCAs utilized.

Hypothesis 3: Bills with complex UCAs will be more likely to pass the chamber.

3.4 Data

The data presented here is based on complex UCAs listings in the Senate Journal for the 99th Congress.⁷ As discussed earlier, I define a complex UCA as any agreement among

⁷As discussed earlier, I have holds data for the 95th, 97th, and 99-104th Congresses, and amendment data for the 101st-104th Congresses (Howard and Roberts 2015; Evans and Lipinski 2005; Den Hartog and Monroe 2011). Thus future iterations will cover large portions of this time period. Due to constraints from coding resources and time I choose to focus on the 99th, in which Republicans give a broad spread of goals and motivations when placing holds with Majority Leader Dole.

all 100 senators which controls either general or specific elements of floor consideration. These agreements occur after committee consideration and before passage. What falls outside of complex UCAs are general consent requests and simple UCAs doing away with simple procedural hurdles. Thus, formal UCAs concerning referrals to committees and third readings of bills do not qualify as complex. Additionally, general orders for recognition do not apply to legislation and thus are not counted among these complex UCAs. These commonly occur near the end of a day's session, setting the time for routine business and who will be recognized to give remarks opening the next day.⁸

Table 3.1 provides an overview of complex UCA content in the 99th Congress. This table includes all complex UCAs in the 99th Congress on all bills. Thus, the percentages listed in column 2 of Table 3.1 are an overall picture of bargaining over legislative procedure in the Senate in 1985 and 1986. Apparent in this table is that many complex UCAs targeted specific amendments, with over 20% making allowances for amendment consideration in some form. 16.81% limit the time available for specific amendments, which involves providing time allotments for considering a certain amendment. This often appears as a given time limit with the available time controlled by certain senators. 6.06% of complex UCAs dictate that only the amendments outlined in the UCA will be in order on the floor, while 15.96% provide for consideration of amendments without banning others.

Second degree amendments and procedural motions were a consistent target in the 99th Congress. 6.38% of complex UCAs banned second degree amendments, while 5.43% removed the ability for the chamber to recommit the bill to committee. Banning amendments outright was rare in the 99th Congress, with only 1.7% of all complex UCAs banning amendments outright. This implies that these agreements were written with the purpose of appeasing members and easing consideration for Majority Leader Dole (R-KS) and Minority Leader Byrd (D-WV).

⁸Where these may be of interest is the question of setting a given day's agenda, but that falls outside the question presented in this dissertation.

Table 3.1: Specific Provisions Within Complex UCAs – 99th Congress

Provision	Percentage of UCAS
Specific Amendment Time Limits	16.81
Motion Time Limit	2.34
Measure Time Limit	8.09
Not Amendment Restrictive	15.96
Amendment Restrictive	6.06
No Second Degree	6.38
No Motion to Recommit	5.43
No Motion to Table	2.23
Bar All Amendments	1.7
Total UCAs	940

Table 3.1 outlines the distribution of complex UCAs on all legislation, but the primary interest in this study is on Senate originated legislation. Thus, the question remains for how these complex UCAs are used on individual legislation. Focusing on bills, Table 3.2 presents complex UCA usage in the 99th Congress on Senate originated, “S” type legislation. One startlingly clear conclusion from Table 3.2 is that complex UCAs are not uncommon, but are not used on all legislation. The first category in Table 3.2 includes any complex UCA, from control over amendments to setting the order in which amendments are considered and indefinite postponement of legislation. Of all Senate legislation reported from committee, 22.74% receive any type of complex UCA.

UCAs that explicitly control content and consideration – rows 2 and 3 in Table 3.2 – are used on approximately 1 in 8 Senate originated bills. These two categories are of primary interest, in that they represent leaders and membership working together to manage the content and deliberation of legislation. These categories do not include amendment ordering and indefinite postponement UCAs, but rather deal exclusively with what is allowed to be offered on the floor. The second category in Table 3.2 is any UCA – Non-Sequential Ordering – represents the percentage of bills on which complex UCAs that did not deal with the order on which amendments were considered or bills set aside were used. These are agreements such as the May 24, 1985 complex UCA for S. 1160 introduced by Dole.

This complex UCA detailed a set of amendments which would be the only amendments in order on the floor and placed limits on what second degree amendments would be in order to be offered.⁹

The third category for complex UCAs – Content Management Only – represents a subset of the Non-Sequential Ordering category. A possibility from Table 3.1 is that all of the complex UCAs relating to amendment management are utilized on only a select number of bills. What is clear is that the two categories are almost identical in usage. Content Managing UCAs are used on 12.66% of Senate legislation, almost perfectly matching the Non-Sequential Ordering usage. Complex UCAs which provide control for debate outside of setting the sequence for consideration of amendments and bills almost entirely deal with the managing the content of legislative debate. Given the theory above, these complex UCAs should be most directly linked to the prior hold behavior of members.

Senate bills considered under different types of complex UCAs may have different debate patterns and different outcome possibilities. These differences may shape both how complex UCAs are utilized and affect passage in the Senate. This distinction between the content of complex UCAs and how they affect consideration will be utilized in the analyses to follow below. Limiting the analysis by separating different ordering UCAs – those which provide for indefinite postponement for bills – will be informative for how UCAs manage the chamber.

Table 3.2: Complex UCAs on Senate Bills – 99th Congress

Complex UCA Type	Percentage of Bills
Any Complex UCA	22.74
Non-Sequential Ordering	12.92
Content Managing Only	12.66
Number of Bills	370

⁹Further complex UCAs on this bill also set time limits for debate and voting on each amendment at later dates.

Additionally, I utilize the dataset of holds featured in Chapter 2. These holds were gathered at the Robert J. Dole Institute of Politics in Lawrence, KS, and are from Republicans under the leadership of Robert Dole (R-KS) in his time as Senate party leader, which includes the 99th Congress. Thus the data relating to the presence or absence of holds relates only to Republicans. This may temper the interpretation of majority status, as I do not have bills on which there are both majority and minority holds to compare to single party holds. While I acknowledge this limitation, the data provide the only available window into procedural bargaining in the Senate.¹⁰

The unit of observation here is the bill, not the complex UCA itself. Thus, the statistical tests below are focused if complex UCAs are utilized on bills, rather than on the specific provisions of complex UCAs themselves.¹¹ I limit myself to Senate originated legislation, both due to the nature of the data available and that these bills are almost always considered in Senate committees. This allows me to follow the path presented in Figure 3.1, and only look at Senate originated legislation which has been reported out of committee. Thus, the observations in the analysis to follow have all followed the same path. This eases concerns about the different path House bills follow through the Senate, where the Senate has a far more varied treatment of legislation.

Leaders do not create and manage debate through complex UCAs in isolation, but rather must carefully bargain with members over the content of floor deliberation itself. Capturing this process requires accounting for numerous institutional and bill-specific variables, as these may have an effect on complex UCA usage and bill passage. I utilize a number of controls for bill sponsors, in an attempt to parse out the effects of who writes a bill on if holds effect complex UCA usage. *Sponsor Ideological Extremity* measures the ideological

¹⁰I have attempted to gather similar data from Democrats under the leadership of George Mitchell (ME) at his archive. This data was not present in his Senate papers, so no comparable data exists for Democrats at this time.

¹¹E. Scott Adler and John Wilkerson, Congressional Bills Project: 1985-1986, NSF 00880066 and 00880061

difference between a bill sponsor's DW-NOMINATE and a perfect median score of zero. Thus, this is simply a measure of a bill sponsor's ideological extremity, and helps to control for confounding effects in *Majority Sponsor*. *Sponsor Seniority* measures the number of Congresses in which a bill sponsor has served, and *Committee Leader Sponsor* refers to a bill sponsor's committee chair or ranking member status. I also utilize three bill specific variables, *Months Remaining*, *Policy Committee*, and *Multiple Referral*. *Months Remaining* is a count of months between bill introduction and the end of a Congress. *Policy Committee* indicates if a bill was considered in a high-profile, policy oriented committee, while *Multiple Referral* indicates whether a bill was considered in two or more committees rather than a single committee.¹²

3.5 Analysis

The discussion above provides several predictions for complex UCA usage on legislation, and Table 3.3 contains models for their usage. Table 3.3 presents two logistic regression models, each with a dependent variable of a non-sequential ordering complex UCAs on Senate legislation reported from committee.¹³ That is, the dependent variable is the presence or absence of a UCA falling into the second complex UCA type in Table 3.2. Apparent in Table 3.3 is the general lack of statistically significant effects in predicting the usage of complex UCAs on legislation. The presence of a hold on legislation does not predict the usage of UCAs in a statistically significant fashion. This goes against the expectation in Hypothesis 1, which is that a held bill should be more likely to have a complex UCA. The usage of a Republican hold on a bill in the 99th Congress does not appear to have any effect on the usage of complex UCAs on those bills.

Senators state differing intentions when placing holds, however. While the Ashcroft

¹²Policy committees in Deering and Smith (1997) are: Budget, Foreign Relations, Governmental Affairs, Judiciary, and Labor. Several studies have utilized a similar approach to generating categories of committees, including Fenno (1973).

¹³I do not consider in this paper multiple complex UCAs on the same bill, but rather focus on their use on legislation.

Table 3.3: Usage of Complex UCAs on Bills – 99th Congress

Variable	Model 1	Model 2
Held Bill	0.135 (0.379)	- -
Killer Held Only	- -	0.500 (0.716)
Cosponsors	0.067* (0.033)	0.067* (0.032)
Majority Sponsor	3.005* (1.275)	2.981* (1.266)
Cosponsors * Majority Spnsor	-0.062 (0.035)	-0.061 (0.035)
Sponsor Ideological Extremity	0.053 (0.907)	0.094 (0.912)
Months Remaining	0.015 (0.026)	0.014 (0.027)
Policy Committee	0.238 (0.323)	0.247 (0.322)
Multiple Referral	0.884 (0.570)	0.871 (0.569)
Sponsor Seniority	-0.019 (0.045)	-0.017 (0.046)
Committee Leader Sponsor	0.329 (0.380)	0.309 (0.382)
Intercept	-5.290* (1.390)	-5.261* (1.379)
N	370	370
Log-likelihood	-135.839	-135.673
$\chi^2_{(10)}$	17.65	17.98

Note: Estimates are from an logistic regression model. The dependent variable is coded 1 if the bill received a complex UCA and 0 if it did not. Standard errors in parentheses. * = $p \leq 0.05$.

example above provides specific information to leaders which can be used to appease the holding senator, other holds simply desire to kill the bill. Thus, these holds without bargaining information may be confounding the results in Model 1. Bills targeted by killer holds may be less likely to receive complex UCAs, as leaders have access to relatively little private information with which to appease members and only have access to the filibuster threat. This provides a potential contrary, consideration prevention oriented, mechanism for killer holds. If leaders value the content of private information to expedite consideration, killer holds should lead to a decreased likelihood for complex UCAs. This potential confounding mechanism is also not confirmed. That is, if complex UCAs were a strictly bargaining and expediting tool we would expect to see a statistically significant negative relationship between killer holds and complex UCAs in Table 3.3's Model 2. No statistically significant relationship exists, and the coefficient does not change for these holds.

Increasing support within the chamber does make complex UCAs more likely on legislation, however. As the number of cosponsors on a bill increases, complex UCAs become more likely on that bill. Bills on which leaders see greater public support among senators are more likely to have UCAs. Additionally, bills sponsored by a member of the majority party are more likely to have complex UCAs. The interactive effect between these two variables does not have a statistically significant effect, but should be taken into consideration when drawing inferences for complex UCA usage. In short, greater potential underlying support for the legislation increases the likelihood that complex UCAs are utilized to control and limit debate. Leaders respond to publicly available information, and work to craft complex UCAs on these bills with a greater degree of public support. These results lend support to Hypothesis 2.

Interestingly, I find no other statistically significant effects on the usage of complex UCAs for either model in Table 3.3. The details of the bill sponsor do not have any effect,

nor does the time remaining upon bill introduction or where bills were considered in committee. While some of these effects are theoretically unexpected, this could be due to the sample occurring in only one Congress.

The details in Tables 3.1 and 3.2 present a possible explanation for these results, however. Table 3.2 demonstrates that there are several bills which receive scheduling complex UCAs, but no other complex UCA. Additionally, Table 3.1 demonstrates that complex UCAs can be targeted at certain elements of discussion and scheduling while leaving others untouched. One provision of complex UCAs not seen in Table 3.1 is that of indefinite postponement, whereby the Senate agrees to set aside a bill and not consider it further. These bills are not eligible to pass the Senate, and this ineligibility stems from a decision of the Senate as a whole.

Table 3.4 presents a model estimated excluding those bills which received indefinite postponement, without any other complex UCA, excluded from the data.¹⁴ These bills included in this model are those where complex UCAs are the most likely, given that they are not simply put aside through actions of the Senate. As in Table 3.3, no statistically significant relationship exists between *Hold* and the usage of complex UCAs in Table 3.4.¹⁵ Thus, I cannot find support for Hypothesis 1 with the data presented.

While leaders and the chamber do seem to react to public information, the creation of complex UCAs does not respond to private information made available to leaders in the 99th Congress. This finding most likely stems from two separate sources. First, the data available at this time is limited to only the 99th Congress. This Congress presents a majority Republican party with a Republican president, an institutional arrangement which may change how complex UCAs are used. Future versions of this chapter will include more Congresses in an effort to better assess these effects. Second, complex UCAs may

¹⁴I also estimated a model excluding all bills which received indefinite postponement UCAs. This model did not provide different inferences than the model shown, and thus is not presented.

¹⁵The model was also estimated using only killer holds and found similar results to that in Table 3.3. The model is not presented here for the purpose of space.

Table 3.4: Complex UCAs with Postponed Bills Excluded

Variable	Coefficient (Std. Err.)
Hold	-0.008 (0.387)
Cosponsors	0.065* (0.033)
Majority Sponsor	3.076* (1.279)
Cosponsors * Majority Sponsor	-0.059 (0.035)
Sponsor Ideological Extremity	0.245 (0.932)
Months Remaining	0.015 (0.027)
Policy Committee	0.245 (0.334)
Multiple Referral	1.087 (0.607)
Sponsor Seniority	-0.022 (0.047)
Committee Leader Sponsor	0.398 (0.390)
Intercept	-5.243* (1.410)
N	321
Log-likelihood	-127.861
$\chi^2_{(10)}$	18.59

Note: Estimates are from an logistic regression model. The dependent variable is coded 1 if the bill received a complex UCA and 0 if it did not. Standard errors in parentheses. * = $p \leq 0.05$.

respond to only holds by specific senators rather than general threats. Connecting holds and complex UCAs on a micro level may explain how leaders react to both threats from specific members and threats from any member. Chapter 4 will engage the connection between holds and observed floor amendments, but further work will be needed to analyze how leaders see threats by specific senators.

3.5.1 Complex UCAs and Bill Passage

I now move from a focus on factors associated with the usage of complex UCAs to focus on the relationship between complex UCAs and bill passage. The theory expects that complex UCAs should make passage more likely, as they ease time concerns for consideration and solve many potential on-floor problems before they consume floor time. I here utilize the same covariates as in the model in Table 3.3, but add the presence or absence of a complex UCA as a covariate.¹⁶ Table 3.5 presents logistic regressions with the passage of a bill through the Senate as the dependent variable, and these covariates as explanatory covariates.

Column 1 of Table 3.5 presents a model considering Complex UCAs as isolated tools, and fails to find a statistically significant relationship between their usage and bill passage. That is, controlling for institutional and bill-specific factors, the usage of complex UCAs does not appear to have an effect on bill passage in the Senate. To account for the fact that complex UCAs are part of a bargaining process with members, column 2 of Table 3.5 includes the presence of a hold on a bill. This model again finds no relationship between the usage of complex UCAs and bill passage in the Senate, but finds a clear negative relationship between holds and bill passage. That is, the presence of a hold on a bill in the 99th Congress statistically significantly lowers the probability of that bill passing the Senate, while the presence of a complex UCA has no statistically significant effect. This provides

¹⁶I do not use the interaction here, as the relationship between the two covariates is less clear. I also considered the number of complex UCAs used on a bill in this analysis. Changing the results in Table 3.5 to include this count variable rather than a binary indicator does not change the inferences reached.

no support for Hypothesis 3.

To attempt to unpack why I find no relationship between complex UCAs and bill passage, but a remarkably clear relationship between holds and bill passage, I return to the discussion of different complex UCA content and usage. As discussed above, the Senate can indefinitely postpone legislative consideration through complex UCA. These indefinite suspensions indicate management efforts, but ultimately stop any possibility for passage. The effect of UCAs indefinitely postponing consideration should be especially apparent for the question of passage. Indefinitely postponing legislation through UCA gives the legislation no chance to pass the chamber, whatever information exists and past action taken. Thus including these bills in models estimating bill passage may confound the effects management efforts have on legislation. Table 3.6 presents models estimated for sub-categories of all legislation, with the difference between the models being which indefinitely postponed bills are excluded from the full dataset. Models 1 and 2 use all Senate legislation which includes an indefinite suspension complex UCA but not a content management complex UCA. Thus on these bills, as in Table 3.4, the Senate has suspended consideration but not taken prior efforts to manage content. Models 3 and 4 exclude any bill which received an indefinite postponement complex UCA, regardless of other content management efforts on the legislation.

Models 1 and 2 in Table 3.6 utilize bills which did not exclusively feature an indefinite postponement UCA. This sub-sample includes the same observations as Table 3.4. This leaves some bills which were indefinitely postponed, but were the target of other complex UCAs. Similar to the results in Table 3.5, I find no statistically significant relationship between complex UCAs and passage in either column. Also similar to Model 2 in Table 3.5, I find a statistically significant negative relationship between the incidence of holds and passage.

The last two columns of Table 3.6 present a different story, however. These two columns

Table 3.5: Bill Passage in the Senate – 99th Congress

Variable	Model 1	Model 2
Complex UCA	0.404 (0.331)	0.472 (0.345)
Held Bill	– –	-1.374* (0.317)
Sponsor Ideological Extremity	-0.326 (0.620)	-0.355 (0.639)
Months Remaining	0.047* (0.018)	0.053* (0.019)
Policy Committee	-0.428 (0.227)	-0.340 (0.235)
Multiple Referral	-2.269* (0.651)	-2.095* (0.662)
Sponsor Seniority	0.009 (0.032)	0.004 (0.033)
Committee Leader Sponsor	-0.366 (0.260)	-0.240 (0.270)
Majority Sponsor	-0.689* (0.309)	-0.691* (0.321)
Cosponsors	0.004 (0.009)	0.011 (0.010)
Intercept	0.276 (0.467)	0.311 (0.479)
N	370	370
Log-likelihood	-238.783	-228.276
$\chi^2_{(9)}$	35.32	56.333

Note: Estimates are from an logistic regression model. The dependent variable is coded 1 if the bill passed the Senate and 0 if it did not. Standard errors in parentheses. * = $p \leq 0.05$.

Table 3.6: Bill Passage With Postponed Bills Excluded

Variable	Model 1	Model 2	Model 3	Model 4
Complex UCA	0.053 (0.339)	0.092 (0.358)	1.276* (0.493)	1.207* (0.505)
Hold	- -	-1.659* (0.333)	- -	-1.614* (0.348)
Cosponsors	0.024 (0.028)	0.033 (0.034)	0.019 (0.029)	0.029 (0.034)
Majority Sponsor	-0.505 (0.421)	-0.546 (0.450)	-0.511 (0.423)	-0.542 (0.449)
Cosponsors * Majority Sponsor	-0.022 (0.030)	-0.025 (0.035)	-0.017 (0.031)	-0.020 (0.036)
Sponsor Ideological Extremity	-0.278 (0.682)	-0.264 (0.716)	-0.178 (0.723)	-0.289 (0.755)
Months Remaining	0.052* (0.020)	0.062* (0.021)	0.053* (0.021)	0.064* (0.022)
Policy Committee	-0.487 (0.249)	-0.299 (0.264)	-0.398 (0.260)	-0.164 (0.276)
Multiple Referral	-2.454* (0.678)	-2.196* (0.693)	-2.269* (0.701)	-1.942* (0.736)
Sponsor Seniority	0.006 (0.678)	-0.002 (0.037)	0.007 (0.036)	-0.001 (0.038)
Committee Leader Sponsor	-0.466 (0.288)	-0.336 (0.303)	-0.449 (0.299)	-0.295 (0.314)
Intercept	0.485 (0.563)	0.544 (0.593)	0.388 (0.579)	0.412 (0.601)
N	321	321	304	304
Log-likelihood	-201.303	-199.930	-186.800	-175.090
$\chi^2_{(9)}$	36.62	39.36	35.91	59.33

Note: Estimates are from an logistic regression model. The dependent variable is coded 1 if the bill passed the Senate and 0 if it did not. Standard errors in parentheses. * = $p \leq 0.05$.

exclude any bill receiving an indefinite postponement UCA, regardless of other action on the bill. Thus, these are the bills with a chance to pass the Senate taking into account the actions of the united floor to stop passage. Model 3 in Table 3.6 demonstrates that for these bills complex UCAs do positively predict passage. Thus, for bills reported from committee which the Senate has not indefinitely set aside there is a positive and statistically significant relationship between their usage and bill passage. Column 4 includes the presence of holds into this model. When holds are included in this model's estimation, they retain the negative and statistically significant relationship with passage seen in all previous models in Tables 3.5 and 3.6. In spite of this negative relationship between private objection and passage, complex UCAs maintain their positive and statistically significant effect from Model 3. Thus for legislation not indefinitely postponed by collective chamber action, complex UCAs do relate to passage.

These results demonstrate that some relationship exists between complex UCAs and bill passage in the Senate. When exploring legislation introduced in the Senate, the usage of complex UCAs can affect passage through the chamber, but much of this effect depends upon the data considered. That the models for any expanded set of observations beyond those without indefinite suspension show no results weakens the support for Hypothesis 3, but the support remains. Complex UCAs do appear to in practice be some form of leadership tool to ease consideration and passage, even when including private information presented to leaders through holds in the model estimation.

3.6 Discussion

This chapter provides an initial exploration of complex Unanimous Consent Agreements and their effect on legislative outcomes. While the data has shortcomings due to the lack of multiple Congresses, it still provides among the first statistical treatment of these UCAs. My analysis reveals that the level of support within the chamber is tied to the usage of these agreements, both in terms of cosponsors for a bill and the majority status of the bill

sponsor. Public information about bill support leads to increased probability for UCA use. I fail to find a relationship between holds and complex UCAs, a surprising result given the expectation that leaders will use this private information to craft agreements designed to bill management on the floor. I do, however, hesitate to conclude that no relationship exists. The data does suggest that the relationship between these two procedural mechanisms may be weaker than my theory, and much of the existing literature, expects.

My findings also speak to the complicated relationship between complex UCAs and passage procedure. I fail to find any relationship between the usage of a complex UCA and a bill passing the Senate when exploring all Senate bills, even when holding constant the presence of privately related objection through holds on bills. However, when parsing bills eligible for passage by the end of their consideration I do find a strong positive relationship. Bills which have not been set aside by the Senate and are targeted by complex UCAs are more likely to pass the Senate than those which do not have complex UCAs. This provides some evidence that complex UCAs may be a leadership tool to ease consideration and eventual passage. While leaders may not respond to specific member threats through holds, negotiating complex UCAs controlling content does provide leaders with benefits for managing the chamber and eventual passage.

Even with the strongly positive relationship between complex UCAs and passage present in columns 3 and 4 of Table 3.6, the negative effect for holds from Chapter 2 survives. Thus, this chapter makes clear that the information and tools available to both members and leaders have power over outcomes and passage. While it appears that complex UCAs may provide leaders with advantages over members to some degree, this should not be taken as leaders rescinding member capacities to affect outcomes. Complex UCAs may simply be tool with which leaders can funnel member objections through widely supported legislation. Additionally, these agreements may only appear through some mechanism which does not appear in this chapter.

The lacking connection between information given to leaders about private objection and complex UCAs brings to the forefront questions of how leaders view threats to legislation. Chapter 2 demonstrates that holds are predictable and effect passage, but even with these potentially powerful effects leaders do not seem to respond to threats through management efforts. The question remaining in this dissertation is how member threats affect floor proceedings, and if leaders do not respond to member threats due to floor behavior. To attempt a resolution of this question, the next chapter turns to the connections between off- and on-floor objection, and how leaders may attempt to manage objection and deliberation in public.

4 LINKING PUBLIC AND PRIVATE OBSTRUCTION: FILIBUSTERS

Observers often depict the Senate floor as one lone senator railing against the force of a majority, willing her policy stances and individual preferences to be heard before succumbing to exhaustion and the limits of human endurance. Examples of these, including Strom Thurmond's filibuster of the 1957 Civil Rights bill, are among the most famous parliamentary debate moments in American history. Other times, filibusters can be a block of senators protecting their own interests by working together to hold the floor and stop passage of a bill. Indeed, senators are prone to seeing the filibuster in this fashion when it protects their own interests. Robert Byrd echoed this when stating that there can be a "casual, gentlemanly, good-guy filibuster. . . . Everybody goes home and gets a good night's sleep and everybody protects everybody else."¹ Scholars, while moderating these extraordinary cases, often depict the floor as requiring 60 votes to proceed on any bill (Krehbiel 1998). Portrayed in this case as a serious obstacle to general proceedings, this threshold causes proponents and leaders to modify legislation or face its defeat.

This chapter is an attempt to place the filibuster, and these characterizations of its usage and intent, into a broader context for members and leaders. While in some cases filibusters may be a senator surprising leaders by engaging in unlimited, no-holds-barred attempts to kill legislation, this chapter posits that filibusters and other on-floor tactics are far more often part of a larger obstructive strategy. Filibusters often appear to the public as senators willing their views to be heard, but I make the case that far more often these filibusters are the end of senators presenting objection to leaders throughout the process. Chapter 2

¹Quoted in Yang, John. "Fili-bluster; Has the Senate Marathon Seen Its Day?" *Washington Post*. January 16, 2005. B1.

demonstrated that senators place holds on a variety of legislation, and these holds should here be linked to incidences of filibusters. Leaders understand this possible objection exists, and may unequally target majority party legislation, but also realize the procedural hurdles bills considered on the floor have already overcome (Den Hartog and Monroe 2011). This chapter argues that understanding how members see filibusters and amendments within their procedural tool chest, and how these on-floor tactics are linked to off-floor actions, should inform how leaders react to proposals and threats.

The remainder of this chapter will focus on two elements. First, I explore why an individual bill may be threatened with a filibuster. I will focus on how this relates to the presence of previous threatened objection, and what this reveals about the nature of filibusters and obstruction more broadly. Second, I attempt to unpack why leaders react in the fashion they do to filibusters and threats. This chapter ties together the previous two chapters to establish a picture of why obstruction works as it does, both from members making threats and leaders reacting – or not – to those same revealed threats.

4.1 Origin and Use of the Modern Filibuster

In the procedural bargaining story that began this dissertation, I stated several assertions about members and leaders. First, members know their own interests and are aware of the circumstances under which a bill is considered. This means that members will actively work to protect their own interests, and this action will be most likely when their interests are directly threatened through legislation. Thus a cost of doing business in the Senate is understanding the varied interests of current senators and what they are likely to obstruct.

Critical to the import of this evaluation is that I am not looking directly at members choosing to obstruct and how much they obstruct. Rather, I am exploring how legislation moves through the Senate, along with where obstruction occurs and how this obstruction affects Senate consideration. Thus I do not focus on the specifics of which individuals may be more likely to utilize filibusters and amendments in this chapter (Bell 2011; Overby and

Bell 2004). Neither do I focus on senators' electoral situations and how this may alter their public actions (Patty N.d.). Rather, I am interested in the institutional setup under which bills are considered, where senators and bills fit within that setup, and how the existence of multiple obstruction stages frames where filibusters are utilized.

To develop a framework for why individual bills would be filibustered, and when we should expect to see this strategy utilized, beginning with the history of cloture is informative. Filibusters are not new to the Senate, existing since 1790 (Bell 2011). The possibility of endless Senate filibusters is generally credited to removing the rule for previous question motion from Senate procedure in 1806 (Binder and Smith 1997; Binder 1997).² Increasing usage of on-floor obstructive tactics led to the implementation of cloture through Rule XXII in 1917 (Burdette 1940; Wawro and Schickler 2004). Meant to bring an end to attrition filibusters and help ease an increasing Senate workload, Rule XXII allowed members to end debate through a 2/3 vote (Wawro and Schickler 2006). Majority members, both partisan and policy, favored this change to streamline Senate consideration (Koger 2006). Changing usage patterns and political circumstances cause the Senate to lower this threshold to a 3/5 of all members present and voting threshold in 1975 (Binder 1997, 1999). The traditional usage of the filibuster as a tool against a limited set of legislation changed during the intervening period, moving away from questions of civil rights to a broader spectrum of targeted issues (Binder, Lawrence and Smith 2002).

The modern period has seen several changes from the classic period. The usage of obstructive measures has continued to increase over the last 40 years (Schiller 2012). Senators obstruct a great deal of legislation, and deploy obstructive tactics frequently (Koger 2010; Howard and Roberts 2015). This increasing obstruction has forced the Senate to react, and often react preemptively. The number of cloture petitions have increased dramatically over

²This rule, which is used by the House to close debate on a bill, was not removed for the purpose of allowing endless debate. Removal was due rather to its lack of usage and duplication of alternate rules which the Senate believed were more straightforward. In fact, this new procedural landscape was not used until almost 1840 (Binder 1997).

the last thirty years (Bell 2011; Lee 2010). Cloture petitions have become increasingly divorced from observed obstruction, with leaders often filing these petitions simultaneously with the bill (Smith 2014). Leaders developed tactics to deal with obstruction through debate and amendments, including expanding their usage of procedural motions to block debate (Smith, Ostrander and Christopher 2013).

The modern filibuster is, in short, a potentially valuable weapon for members in their pursuit of policy and political goals even though used infrequently. This said, it is not the only tool in a member's arsenal. Members often threaten but rarely engage in filibusters. Chapter 2 demonstrated widespread pre-floor hold threats, with more than 15% of bills targeted by holds, but as discussed later far fewer face on-floor filibusters. Neither are filibusters invulnerable to leader and chamber action. Leaders actively take steps to curtail this tactic through complex UCAs, as seen in Chapter 3, where 12% of Senate bills in the 99th Congress received content managing agreements. Changes to obstruction stretch beyond member usage and leader control, as filibusters also target a larger spectrum of the Senate's agenda than in the past (Binder and Smith 1997). No longer can filibusters be solved by rolling civil rights legislation into a package to make it more palatable. Leaders must be constantly aware of the possibility of obstruction.

4.1.1 Past Attention to the Filibuster

The filibuster often proves a difficult, but crucial, step to overcome in Congressional policy making. While the filibuster has changed over the past century, it remains of pivotal importance to theories of American politics. Several studies place the filibuster at the center of what it means to consider legislation in Congress. Krehbiel (1998) utilizes the filibuster pivot to create his gridlock zones, with legislation needing overcome a potential 60-vote cloture threshold before consideration should occur (Krehbiel 1993). Chiou and Rothenberg (2003) demonstrate that party strength alters the conclusions reached by Krehbiel, shaping the gridlock zones through both individual preference and party (Chiou and

Rothenberg 2006, 2009). The filibuster also harms general legislative productivity, with bill sponsors and supporters forced to circumvent possible obstruction at each stage (Jones and Baumgartner 2005). The need to constantly manage possible obstruction, both before and during public consideration, slows Congressional proceedings and exacerbates gridlock (Binder 1999; Volden and Wiseman 2014; Weingast and Marshall 1988; Shepsle and Weingast 1987, 1994; Cox and McCubbins 1994). Despite incentives to pass legislation for reelection, the power given to individual senators slows the legislative process.

Filibuster effects stretch beyond legislation. Nominations are directly affected by the presence of the filibuster, as only the Senate confirms nominees (Rohde and Shepsle 2007; Primo, Binder and Maltzman 2008). Presidents must adjust their strategies around senators and their preferences, while accounting for potential cloture fights (Johnson and Roberts 2004, 2005; Binder and Maltzman 2002, 2004, 2009). Additionally, the filibuster's existence may provide more power to institutionally pivotal members such as committee chairs (McCarty and Razaghian 1999). In short, the filibuster shapes all areas of Senate consideration.

Filibusters affect parties as well, with the majority party's ability to schedule and pass legislation diminished by the filibuster. The ability for any individual or small coalition to stop consideration undermines many potential majoritarian impulses in the chamber (Gailmard and Jenkins 2007; Den Hartog and Monroe 2008, 2011). This effect has potentially become more powerful with the modern filibuster, as parties have increasingly become polarized teams (Lee 2009; Poole and Rosenthal 2007; Binder and Smith 1997; Binder 2003). While members of the majority party can utilize the filibuster to further their own interests, obstruction and its effects overwhelmingly harm the majority party (Alter and McGranahan 2000; Bawn and Koger 2008; Smith 2007).

These effects on legislation, nominations, and organization depend upon senators using the filibuster, however. Discussed above is the increased filibuster usage and management

in the modern period (Beth 1995; Binder and Smith 1997; Binder 1999; Koger 2010; Sinclair 2001, 2002). Elected officials generally face a dilemma when engaging in obstruction. Producing legislation, which is undermined by the filibuster and obstruction, constitutes a legislative good (Mayhew 1974; Fenno 1978). This point especially holds in legislatures, where members repeatedly interact and develop reputations over time (Baron and Ferejohn 1989; Meyer 1980). While passing legislation proves valuable to legislators, preventing unfavored legislation from passing also provides benefits.

This discussion makes apparent that senators have many reasons to engage in obstruction. Binder and Smith (1997) discuss motivations for why senators choose to filibuster centered on policy and personal beliefs, but the reasons can go beyond these broad classifications. Bell (2011) finds that individual preference and partisan status greatly affects who chooses to engage in filibusters, with minority party members and ideological extremists much more likely to engage in public obstruction. The changing electoral environment, including the presence of quality challengers and the changing electoral environment, often pushes senators to obstruct as well (Fenno 1989; Binder 2011; Wallner 2013; Patty N.d.). Beyond these individual reasons, changes to Senate rules affect member motivations as well (Koger 2010; Binder 2003). Lowering the cloture threshold made debate limits easier to invoke, but also lowered the potential cost of obstructing as well. Similarly, centralizing agenda management provides for streamlined scheduling but may routinize obstruction (Evans and Lipinski 2005, N.d.; Howard and Roberts 2015).

While scholars have focused much attention on filibusters and obstruction, this description makes apparent an unanswered puzzle in Senate scholarship. Past studies of obstruction observed through the filibuster tell us much about effects on broad policymaking dynamics and how this tool has been used by individual senators. These studies tell us little about how the filibuster affects individual bills, where we should see it used, and how the filibuster fits within other obstructive strategies. That is, nearly all of the description above

focuses on the institution or individual senators rather than examining what filibusters and obstruction mean for individual bills. This chapter, continuing the focus of previous chapters, explores the determinants of which bills are filibustered and if filibusters affect Senate bill passage. Exploring individual bills will help our understanding of obstruction's usage and place, both for senators and legislation simultaneously.

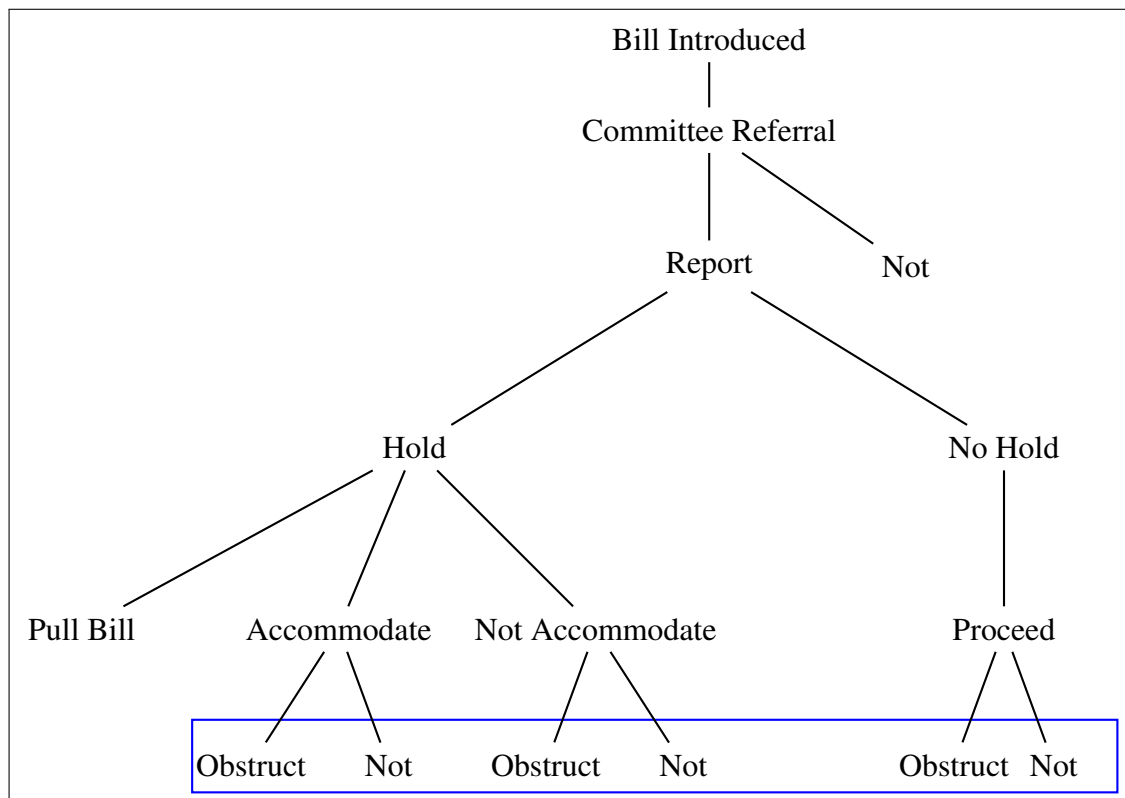
4.2 Why Filibuster Bills?

The filibuster remains the weapon with the most potential impact in a senator's arsenal, but leaders can – and often do – try to circumvent this strategy. What makes filibusters powerful, especially in the form of threats, is that any single senator has the potential to filibuster at any time. Figure 4.1, replicated from Chapters 2 and 3, highlights this chapter's focus on the last stage of obstruction, and makes apparent that senators again face a choice in their actions. While appearing as a separate choice in public, this choice is contingent upon past action of both members and leaders. Which bills leaders decide to put on the floor affects member's decisions to filibuster those bills.³ This said, senators do not utilize this tool in every situation where it may be effective. Neither do these senators utilize the filibuster on every bill they dislike. Rather, they selectively utilize this tool to advance their interests. This is clear when looking at the usage rates for filibusters. In the data utilized throughout this dissertation, all Senate bills reported from committee, about 2% of bills are targeted by filibusters (Bell 2011). This means that, while objection may exist in some form, for the other 98% of bills there is no filibuster observed. This chapter asks what the determinants are for which bills are targeted by filibusters, given that the potential exists for any bill.

Elected officials are the best informed actors in the political world. They have access

³Senators almost entirely target their filibusters and obstruction at bills currently on the floor. This is not to say that filibusters directed at legislation not reaching the floor is impossible. Senators can, and do, filibuster individual items with the intention of making a point about an unrelated or only tangentially related item. Rand Paul's recent filibuster of the Brennan nomination is a case in point, where his filibuster dealt primarily with the Obama administration's usage of drone strikes.

Figure 4.1: Process of Obstruction: Floor



to information not publicly available, and often work with private parties – interest groups, lobbyists, and NGOs – to craft their positions on bills and general policy areas. This is to say that senators are knowledgeable about their own interests. As for holds in chapter 2, senators have policies they favor. They will work to push bills aligning with these interests into law, and will act to protect the possibility that these bills pass the chamber. Senators prefer policy that favors their interests, and will act against policy that goes against these interests.

While this speaks to filibuster patterns among members, the rationale for actions on individual bills lies in the relationship between individual members and leaders. Previous actions by members provide signals to leaders – and in some ways may bind members to their action. This signal to leaders provides leaders with information concerning member

actions, and establishes how members are likely to behave in a situation. These signals are vitally important to both members and leaders in a legislature, where they will interact repeatedly in similar situations. These repeated interactions, and the information contained in these interactions, establish a member's reputation among leadership. Reputation can provide non-institutional enforcement of cooperation, enabling greater production of legislative goods. Members have an incentive to cooperate, for their reputations as effective lawmakers can be tied to how productive Congress appears to constituents.

Cooperation and productivity are not the only reputational incentives for elected officials, however. Senators may be interested in reelection, but legislators have many incentives for their actions – including reelection, policy, and power. Senators may object to legislation for reelection reasons, but these reasons center primarily around the goals of policy and power. While ideology and policy content matter for policy and power, the power of an individual legislator's reputation centers around expectations about their future actions. Reputation is more than policy consistency, and may be equally based around consistency of actions.

Senators who wish to be perceived as institutional moderates may project this image by taking certain actions to position themselves as such. On the other hand, members who wish to be perceived as recalcitrant, reluctant assenters may also project this image through the actions they take. Howard Metzenbaum (D-OH) embodied this image by stating that “I’ve made it clear I don’t intend to let these things go through [...] I’ve added three or four tax bills to my [obstructing] list because I don’t even know what they contain.”⁴ Thus, members may wish to be perceived as a certain type in order to position themselves for repeated bargaining and power within the institution, and will behave accordingly.

Obstruction is possible on any bill which reaches the floor, but members who privately object are providing information to leaders about their potential for future objection. While

⁴Quoted in Sinclair, Ward. “Metzenbaum Uses Hold to Choke Off Colleagues’ Pre-Election Largess.” *Washington Post*. October 1, 1982. A3

senators can object to any bill on the floor, their reputation may be more tied to legislation on which party leaders are aware of previous objection. Filibusters on bills are not isolated incidences. Figure 4.1 makes this apparent, with eventual floor action coming only after off-floor action and negotiation. Not only do leaders act before potential filibusters occur, but individual members act prior to filibusters as well.

This previous action, and leaders' knowledge of the action, makes elected officials more likely to obstruct. The signal provided through holds informs leaders of probable action, and enables leaders to make judgements based on observed actions. Leaders receive hold requests, accommodate members or not, and then members can choose to obstruct. Reputations are constructed in this process for members, as threatening legislation prior to floor consideration without obstructing this legislation when placed on the floor reveals information about the member. Leaders see this inaction and learn from the member's behavior. When members threaten further legislation, leaders will be less likely to appease members or pull bills from the floor, as little incentive exists without member action. Members know this and will act to protect their reputations and interests, both for the current bill and future bills. Thus filibustering decisions center not only on the policy, but also on protecting a member's future interests within the institution.

This is primarily true for threats to kill legislation. Whereas members requesting changes to legislation can be appeased through managing bill content, as with the Ashcroft example in Chapter 3, threats to kill legislation cannot. Members placing a killer hold are consciously sending a different message to leaders than those utilizing amendment or notification related holds. These senators are telling leaders that any attempt to bring the bill up for consideration will cause on-floor obstruction to occur, regardless of any attempt to appease them. This stands opposed to members sending other types of holds, where leaders can provide either notification of proceeding or policy-related payoffs to encourage members to not object to legislation. These threats in particular affect reputation, as members

are in many respects daring leaders to put the bill on the floor and endure floor fights. Failing to filibuster following these threats has the potential to directly undermine a member's reputational advantages from obstruction. Thus, I expect legislation on which a killer hold is placed to be more likely to receive a filibuster than not. Additionally, these bills should be more likely to be targeted by filibusters than bills receiving non-killer holds.

While I am not concerned with calculating individual senator reputations in this study, this has direct implications for what should be expected for bills. Holding senators are, in essence, notifying leaders that obstruction through filibusters will occur if they are not appeased prior to consideration. Members notifying leaders of this objection and not following through on their threats causes leaders to update their perception of members. These leaders will be less likely to accede to threats in the future, harming the senator's policy, institutional, and reputational power. This stands opposed to the situation in which members follow through with their threats, notifying leaders that future threats are likely to be treated similarly in the future. Thus, while members are able to filibuster legislation on which they do not place holds, I expect filibusters to fit within a senator's strategy set rather than being a completely separate tool.

Filibusters are used to advance member's interests, as well as fitting within their strategy sets. Elected officials will not only protect their reputations with filibusters, but will also use filibusters to benefit their policy interests. Filibusters and on-floor obstruction are more effective at the end of sessions, when members can run out the clock on a session to prevent passage. This effectiveness in killing legislation when utilized later in sessions and Congresses should not make filibuster occurrence more likely. Rather, on floor obstruction should be less likely as time becomes rarer. Senators are aware of not only their own interests – which bills they are likely to support and find objectionable – but also how their actions are likely to affect those interests. Members know they potentially harm their own interests when utilizing increasingly rare time, and will be less likely to use obstructive

measures when time decreases. Despite the lack of statistical significance for time in Chapter 2, I expect this effect to appear for filibusters. The usage of filibusters requires actually holding the floor and stopping consideration of all bills, rather than potentially affecting floor time. Holding the floor directly prevents consideration of legislation a senator favors, and senators desiring to pass bills will filibuster less on bills considered later in Congresses in order to consider alternate legislation.

Members only advance their interests and establish reputations on bills considered on the floor. As members have a vested interest in not only passing legislation but also sending signals to leaders about their preferences, they will object to legislation on the floor for this purpose. Scheduling and consideration advantages for majority parties in legislatures, including the Senate mean that majority sponsored legislation will be the target of this obstruction far more often than not. To establish their reputation, members will target this available legislation sponsored by members of the majority party even if members of that party themselves. While members of the majority party may be less likely to use this obstructive tool in order to advance their procedural, filibusters will be more likely to be directed against available majority legislation. This reputation and interest-based theory results in four hypotheses:

Hypothesis 1: Held bills will be more likely to be targeted by on-floor filibusters

Hypothesis 2: Bills with killer holds will be more likely to be targeted by on-floor filibusters than bills not targeted by killer holds, and will be more likely to be filibustered than bills with non-killer holds

Hypothesis 3: Filibusters will be more likely on bills introduced early in a Congress

Hypothesis 4: Filibusters will be more likely on bills sponsored by members of the majority party

4.3 Research Design

The two preceding chapters have concerned themselves primarily with either pre-floor or off-floor proceedings. Whether through private, confidential holds registered with party leaders, or those leaders negotiating complex Unanimous Consent Agreements between themselves and with membership, procedural tools shape outcomes. Of course, these tools matter little if they do not affect passage, which has been shown to be true for both tactics. The chapters leave an outstanding question, however. Do these tools affect what happens on the floor? That is, do private holds actually affect the incidence of public obstruction and attempts to manage obstruction? Throughout this dissertation I have assumed that this is true, and that leaders manage the floor attempting to control this time-eating tactic.

This chapter moves to observing member actions on the floor in an attempt to answer this question. I utilize Senate originated legislation reported from committee in the 1977-1996 period, the same data present in Chapter 2. This continuity allows me to follow the process in Figure 4.1, and include off-floor obstruction through holds into the usage of filibusters.⁵ Thus, for the first section of results below the dependent variable will be the presence or absence of a *Filibuster* while the second section will focus on bill passage.

What constitutes a filibuster is not without controversy. Burdette (1940) was doubtlessly correct when he stated that some filibusters will forever go unrecognized. Several scholars have attempted to compile lists of filibustered legislation and nominations, beginning in the modern period with Beth (1995). Binder (1999) attempted to expand this list, as have Koger (2010) and Bell (2011). I utilize Bell's list, provided in her book's appendix, over Koger's list for two reasons. First, while Koger's list is more expansive, much of the expansion is based on newspaper accounts of filibusters. Bell's list utilizes some of this information, but utilizes it to a lesser degree while relying more on the Congressional Record. Second,

⁵The data limitations in Chapter 3 prevent me from utilizing leader behavior through complex UCAs at this time. Future versions of this chapter will include the leader actions discussed in Chapter 3 in order to gain a better understanding of how leaders see threats and potential reputation.

Bell's list provides, where possible, the identities of the filibustering senators. I utilize this information below to test the implications of my first and second hypotheses, as the holds data available relate only to Republican actions.

The first and second hypotheses address the effect holds have on filibusters, and these are dichotomous measures of activity. *Hold* indicates the presence or absence of any type of hold, while *Killer Hold* is the presence of a killer hold on a bill and *Non-Killer Hold* shows the presence of a hold on a bill without being of the killer type. *Months* addresses the third hypothesis, and is a count of the number of months remaining upon bill introduction. *Majority Sponsor* is a dichotomous indication of the majority status of the bill sponsor, and relates to the fourth hypothesis.

As in previous chapters I control for a variety of bill-specific and institutional features. *Sponsor Ideology* measures the bill sponsor's ideology through first dimension DW-NOMINATE scores, and helps to control for confounding effects in *Majority Sponsor*. *Sponsor Seniority* measures the number of Congresses in which a bill sponsor has served, and *Committee Leader Sponsor* refers to a bill sponsor's committee chair or ranking member status. I also utilize two bill specific variables, *Policy Committee*, and *Multiple Referral*. *Policy Committee* indicates if a bill was considered in a high-profile, policy oriented committee, while *Multiple Referral* indicates whether a bill was considered in two or more committees rather than a single committee.⁶

4.4 Analysis

Table 4.1 presents the first models relating holds to filibusters. Both models in this table have the presence or absence of any filibuster as the dependent variable, and are logistic regression models. Each coefficient in this table represents the effect of a one unit increase in the covariate on the probability of a bill being targeted by a filibuster. Model 1 presents

⁶Policy committees in Deering and Smith (1997) are: Budget, Foreign Relations, Governmental Affairs, Judiciary, and Labor. Several studies have utilized a similar approach to generating categories of committees, including Fenno (1973).

the effect of any hold on the probability of a filibuster, while Model 2 separates holds into bills targeted by a *Killer Hold* and those targeted by only *Non-Killer Holds*.

Model 1 in Table 4.1 demonstrates clear support for my first hypothesis. The presence of a hold does predict filibusters in a positive and statistically significant manner.⁷ Indeed, holding all other variables at their relative means – medians for dichotomous variables – holds strongly predict filibusters. With a hold, the probability of a bill being filibustered is 3.33%. This stands opposed to the absence of a hold on a bill, where the probability of a filibuster is approximately 1/5 of when a hold is present, or 0.73%. In absolute terms this is a substantively small change, but it does explain a significant portion of the variance in what is targeted by filibusters. This provides strong support for the first hypothesis.

The effect of time on the probability a bill is targeted by a filibuster is also positive and statistically significant. A one unit increase in *Months* increases the probability a bill is targeted by a filibuster. A bill introduced with 16 months remaining in the Congress, the mean number of months remaining, has a 0.96% probability of being filibustered, while moving one standard deviation of 6 months toward the beginning of the session increases this probability to 1.43%. Additionally, majority sponsored legislation is far more likely to be targeted by filibusters. A majority sponsored bill has a 1.3% probability of being targeted by filibusters, whereas a minority sponsored bill has a 0.2% probability. While this decrease is not substantively equivalent to hold's effect, the decrease is on par with holds in magnitude. These results provide strong support for hypotheses 3 and 4.

Several of the control variables present interesting results as well. The effect of additional cosponsors for a bill is positive and statistically significantly related to the probability a bill is filibustered. This result is perhaps unsurprising given the similar result for the probability of holds in Chapter 2. Interestingly, no other bill-specific control variable reaches

⁷While the model does not include a control for a direct relation between the holder and the filibustering senator, these are almost always the same person. A filibustering senator may not be the only holder for a bill, but they are among the holding senators if there is more than one.

standard levels of statistical significance. Thus, the ideology of the bill sponsor, multiple referral, and consideration in a policy committee all have no discernible effect on the probability a bill is filibustered. The only sponsor specific control variable with a statistically significant relationship to the probability of a filibuster is if the bill sponsor is a committee leader. Bills sponsored by these committee leaders are significantly more likely to be targeted by filibusters. Additionally, bills introduced under Dole's leadership are more likely to be targeted by filibusters in a statistically significant manner.

These results provide strong support for three of the four hypotheses, but cannot speak to hypothesis 2. Model 2 in Table 4.1 evaluates the hypotheses that killer holds will both have a statistically significant effect on the probability of filibusters and that bills targeted by killer holds will have a higher probability of filibusters than bills targeted only by other types of holds. Model 2 presents clear support of the first portion of hypothesis 2, as the presence of a killer holds on a bill is positively and statistically significantly related to the probability of a filibuster. That is, compared to bills which are not targeted by killer holds there is a higher probability that the bill will be filibustered when targeted by a killer hold.

The evidence for the second portion of hypothesis 2, that bills targeted by killer holds will be more likely than those targeted only by non-killer holds, is more nuanced. The coefficient for *Killer Hold* is indeed larger than that of *Non-Killer Hold*, and the substantive effect of the two is different as well. Bills not targeted by a *Non-Killer Hold* are likely to be targeted by holds at 0.86%, whereas the presence of a non-killer hold increases this probability to 2.8%. The difference for the predicted probability of filibusters for bills with a *Killer Hold* are much greater however, with a filibuster probability of 0.79% on a bill without a killer hold and those with killer holds 4.98%. That is, the average effect for a *Non-killer Hold* is 2%, while the average effect of a *Killer Hold* is 4.2%. The difference in substantive effects provides evidence that there is a greater effect for killer holds than other types, and that bills targeted by killer holds are more likely to be filibustered as well.

Table 4.1: Bills Targeted by Filibusters in the Senate

Variable	Model 1	Model 2
Hold	1.539* (0.265)	— —
Killer Hold	— —	1.880* (0.312)
Non-Killer Hold	— —	1.202* (0.333)
Months	0.066* (0.024)	0.066* (0.024)
Majority Sponsor	1.844* (0.642)	1.884* (0.649)
Cosponsors	0.027* (0.007)	0.026* (0.007)
Sponsor Ideology	0.662 (0.591)	0.733 (0.597)
Polity Committee	0.276 (0.266)	0.272 (0.268)
Multiple Referral	0.268 (0.454)	0.290 (0.454)
Sponsor Seniority	0.018 (0.033)	0.017 (0.033)
Committee Leader Sponsor	0.898* (0.346)	0.869* (0.346)
Republican Majority	0.040 (0.447)	0.094 (0.452)
Dole as Leader	1.150* (0.440)	1.248* (0.443)
Intercept	-9.222* (0.911)	-9.345* (0.916)
N	3096	3096
Log-likelihood	-278.366	-276.513
$\chi^2_{(11)}$	127.19	130.90

Note: Estimates are from an logistic regression model. The dependent variable is coded 1 if the bill was filibustered and 0 if not. Standard errors in parentheses. * = $p \leq 0.05$.

Thus, I find strong support for killer holds leading to filibusters, and convincing evidence that killer holds are more likely to lead to filibusters than non-killer holds.

While the models in Table 4.1 present compelling evidence for the hypotheses detailed above, the data does not present the most direct test of the mechanism for interactions between members and leaders. Given that I have only hold data from Republicans, the question is if the results stand up when only looked at through filibusters in which Republicans were directly involved. That is, given that the question underlying the research design above is if members are more likely to filibuster bills on which they have given leaders prior notice. To most directly answer this question, Table 4.2 looks at only filibusters in which Republicans were directly involved, and not simply any filibuster which occurred on the floor.

The results presented in Table 4.2 provide similar inferences to all filibusters. The presence of a *Hold* placed by Republicans on a bill has a positive and statistically significant effect on the probability of a filibuster, making a filibuster approximately 1.5% more likely. *Killer Holds* remain positively and statistically significantly related to filibusters, as do *Non-Killer Holds*. While the substantive difference between the two is not as dramatic as for all filibusters, with *Non-Killer Holds* making filibusters 1.17% more likely and *Killer Holds* making filibusters 2.87% more likely. The difference between the two remains substantively important, confirming both hypotheses 2a and 2b. Bill introduced earlier in the session are more likely to receive Republican involved filibusters. Additionally, the majority status of the bill sponsor has a positive and statistically significant effect when looking at only Republican involved filibusters while controlling for Republican majorities.

Whether looking at all filibusters in Table 4.1 or Republican involved filibusters in Table 4.2, I find clear support for all my hypotheses. Holds are clearly related to filibusters, both for holds as a general category and each subcategory. Killer holds are more strongly related to filibusters than non-killer holds, although the difference is smaller for Republican

Table 4.2: Bills Targeted by Republican Filibusters

Variable	Model 1	Model 2
Hold	1.521* (0.327)	— —
Killer Hold	— —	1.863* (0.371)
Non-Killer Hold	— —	1.129* (0.417)
Months	0.072* (0.030)	0.073* (0.030)
Majority Sponsor	1.663* (0.764)	1.707* (0.770)
Cosponsors	0.030* (0.008)	0.029* (0.008)
Sponsor Ideology	-0.015 (0.720)	0.054 (0.727)
Policy Committee	0.420 (0.325)	0.415 (0.327)
Multiple Referral	-1.315 (1.025)	-1.288 (1.025)
Sponsor Seniority	-0.016 (0.043)	-0.017 (0.043)
Committee Leader Sponsor	0.958* (0.416)	0.921* (0.416)
Republican Majority	0.009 (0.540)	0.073 (0.545)
Dole as Leader	0.785 (0.493)	0.878 (0.495)
Intercept	-9.146* (1.076)	-9.269* (1.080)
N	3096	3096
Log-likelihood	-200.97	-199.409
$\chi^2_{(11,12)}$	93.312	96.434

Note: Estimates are from an logistic regression model. The dependent variable is coded 1 if the bill was filibustered by Republicans and 0 if not. Standard errors in parentheses. * = $p \leq 0.05$.

involved filibuster. Important to note is that the majority of these filibusters are those which the member placed a hold on the relevant bill, and many of these eventually filibustered bills received multiple holds. While not all holding senators are involved in filibusters, what is clear is that leaders often have prior notice of intent to object before filibusters occur. Additionally, bills introduced early in Congresses are more likely to receive filibusters, and majority sponsored legislation is much more likely to be targeted by filibusters.

Given these results supporting my hypotheses, I next move to evaluating the effect filibusters have on bill passage. Chapter 2 demonstrated that holds, both general and killer holds exclusively, have clear effects on bill passage. This chapter demonstrates that holds have clear linkages to filibusters, explaining much of the variance in filibuster occurrence. Thus, Table 4.3 presents three models with differing treatments of holds. Model 1 utilizes the separate categories for holds. In this model I find that each category of hold is related to bill passage, and that there is a slight, but not large, difference between the two hold categories. Importantly, I find no statistically significant relationship between Republican filibusters and bill passage.⁸

To more fully evaluate the effect filibusters have on bill passage, Model 2 in Table 4.3 condenses holds into a single category. As in Chapter 2, I find a statistically significant relationship between these holds and bill passage. Even after condensing holds into a single category I still do not find a relationship between Republican filibusters and passage, however. To test for any effect filibusters may have on passage, Model 3 removes holds from the estimation procedure entirely. This model still does not find a statistically significant relationship between filibusters and bill passage, however. This, combined with the comparative model fit statistics, demonstrates that holds should be included to explain bill passage and filibusters may not have an outside effect on floor consideration on a bill-specific level.

⁸This remains true for all models in Table 4.3 if the filibuster definition is changed to all filibusters.

Table 4.3: Bill Passage in the Senate

Variable	Model 1	Model 2	Model 3
Republican Filibuster	-0.057 (0.311)	-0.074 (0.310)	-0.390 (0.303)
Killer Hold	-1.064* (0.137)	— —	— —
Non-Kiiller Hold	-0.833* (0.145)	— —	— —
Hold	— —	-0.958* (0.106)	— —
Months Remaining	0.025* (0.006)	0.025* (0.006)	0.024* (0.006)
Majority Sponsor	-0.037 (0.100)	-0.034 (0.100)	-0.103 (0.099)
Cosponsors	0.006* (0.003)	0.006* (0.003)	0.002 (0.003)
Sponsor Ideology	0.444* (0.130)	0.443* (0.130)	0.528* (0.128)
Policy Committee	-0.111 (0.082)	-0.110 (0.082)	-0.137 (0.080)
Multiple Referral	-1.047* (0.180)	-1.049* (0.180)	-1.089* (0.178)
Sponsor Seniority	-0.012 (0.011)	-0.013 (0.011)	-0.019 (0.011)
Committee Leader Sponsor	0.066 (0.098)	0.068 (0.098)	0.103 (0.097)
Republican Majority	-1.076* (0.097)	-1.065* (0.097)	-0.938* (0.094)
Dole as Leader	-0.595* (0.092)	-0.577* (0.091)	-0.528* (0.090)
Intercept	0.866* (0.169)	0.844* (0.168)	0.743* (0.166)
N	3096	3096	3096
Log-likelihood	-2004.706	-2005.486	-2047.817
$\chi^2_{(13)}$	278.357	276.796	192.135

4.4.1 On-Floor Amendments

A second remaining question for floor consideration in the Senate is the effect of amendments. Chapter 3 demonstrated that there is not a clear relationship between holds and leadership management efforts. I expected, but did not find, that holds predict leadership behavior through complex UCAs. That this remains true no matter the limitations placed on the data leads to questions concerning how leaders see threats in their management efforts. Is there a floor-based reason why leaders do not capitulate to member demands and craft complex UCAs when members threaten proceedings?

I examine the connection between holds, amendments allowed on the floor, and final passage votes in the Senate. While I do not have a comprehensive list of amendments offered in the 99th Congress, which would allow for a direct comparison to the results in Chapter 3, I do have a comprehensive list for the 101st-104th Congresses. Pairing these presented amendments with holds that state their goal as changing the content of legislation in some fashion allows us to see member and leader interaction. Howard and Roberts (2015) demonstrate that, depending on the Congress, between 10% and 42% of holds actually seek to alter legislation through either adding amendments or removing parts of the bill. That is, these holds are not an inconsiderable amount of the data for any Congress and members routinely use holds to threaten the specific content of legislation.

Table 4.4 provides an exploration of if holds requesting the ability to alter bills are honored, utilizing data on every floor amendment presented in the 101st through 104th Congresses.⁹ The data utilized here are all holds regardless of bill type, and not simply Senate originated bills as discussed above. This table takes each hold stating either specific or general amendment requests, along with requests to remove parts of the bill, and asks if related amendments were presented on the floor. For example, Mitch McConnell (R-KY) sought to have his right to offer an amendment about regulating nonprofit organizations

⁹I thank Chris Den Hartog and Nate Monroe for making their amendments data available to me.

Table 4.4: Amendment Hold Demands Accommodated

Congress	Not Accommodated	Accommodated	Total
101	69 (72.63%)	26 (27.37%)	95
102	40 (78.43%)	11 (21.57%)	51
103	14 (70.0%)	6 (30.0%)	20
104	62 (73.81%)	22 (26.19%)	84
Total	185 (74.0%)	65 (26.0%)	250

Note: Cells are the number of amendments in a Congress by presented status. Row percentages in parentheses.

protected when The National and Community Service Act of 1990 was considered.¹⁰ McConnell submitted to Republican Leader Dole on February 20, 1990. The party leadership allowed McConnell to present his amendment to the Senate in deliberation over the bill after this hold was received. While the amendment ultimately failed through a motion to table, McConnell's hold was honored in that he was allowed to offer his amendment on the floor.

Two aspects of these data are immediately apparent from this table. First, far more requests are not honored than are honored. That is, a member requesting the ability to offer an amendment changing the bill was far less likely to be able to present this amendment on the floor. Second, the lack of floor amendments allowed for Republican holds in the 104th Congress – the only Republican majority in Table 4.4 – is striking. These procedural advantages do not appear to equate to Republicans allowing co-partisans to change bills, however. This suggests that amendment related holds were viewed as potentially valuable by individual senators, but majority status does not necessarily confer disproportionate

¹⁰This bill, which sought to streamline community service and volunteer programs and their regulation in the United States, was Introduced in the Senate on July 27, 1989 and reported from the Committee on Labor and Human Resources on October 27, 1989.

Table 4.5: Final Passage Votes by Amendment Allowed on the Floor

	Accommodated	Not Accommodated	Total
Yea Vote	21 (58.33%)	23 (60.53%)	44 (59.46%)
Nay Vote	15 (41.67%)	15 (39.47%)	30 (40.54%)
Total	38	36	74

Note: Cells are the number of final passage votes by presented status. Column percentages in parentheses.

advantage to individual senators. The allowed percentage for the 104th is almost exactly the average for this period, with 26.19% allowed. While these hold requests were regularly utilized by senators, with 250 in an eight year period, they are only successful 26% of the time.

Given that senators are often not allowed to offer their requests on the floor, the next question is if this alters votes on bills. Table 4.5 provides an overview of this question, taking all amendment related holds and asking if the senator requesting the hold voted for or against the bill on final passage.¹¹ The patterns in this table suggest that there is minimal difference in voting patterns on final passage for senators whose holds are honored versus those who are not. The observed pattern is the opposite of what would be expected, with 60.53% of senators whose holds are not honored voting yes, and 58.33% of senators whose holds are not honored voting yes. In short, it is not apparent from looking at final passage proceedings that leaders pay a heavy price for ignoring the wishes of individual senators.

4.5 Discussion

This chapter provides an initial exploration of filibusters and on-floor proceedings and both membership and leadership tools. My findings speak to the targeted nature of filibusters, as well as how filibusters themselves fit within the strategy set of individual senators. Senators perceive their own interests when choosing to obstruct legislation, not only in terms of bills

¹¹There were two votes in which a senator with an amendment request abstained from the final passage vote. These two observations are not used in this table.

they oppose but also the amount of legislation they support still at risk. Thus senators are more likely to obstruct legislation introduced earlier in the Congress than later. The results above also suggest that while Alter and McGranahan (2000) state that there are situations in which the filibuster can be a majority tool to be used against the minority, this is in general not the case. Majority sponsored legislation has a much higher probability of being targeted by filibusters as opposed to minority sponsored legislation, indicating that the filibuster is in general a tool used against the majority party. Importantly, this does not necessarily show that filibusters are a tool used by the minority against the majority. The dependent variable in Table 4.2 is only Republican involved filibusters, and the similar effect indicates that members target majority legislation – in many cases of their own party.

Also clear is that filibusters do not occur in isolation. These are, in general, not random occurrences where leaders have no prior information of potential objection. Filibusters are rather a step in the obstructionist process for members, and leaders are most likely aware of this progression. Holds are a powerful predictor for filibusters, both for all holds and each subcategory of intent. Leaders can also gain information from the type of hold sent to them by members, as bills on which killer holds have been placed are more likely to be filibustered on the floor than bills which receive other types of holds. What this indicates is that members most likely view obstruction as an entire tool chest of actions, and each action within their arsenal is connected to others. Leaders also most likely know this and react accordingly.

This connection between actions for members, and that leaders are likely aware of this connection, makes the results for the passage model intriguing. While held bills are more likely to result in filibusters, a consistent result from Chapters 2 and 3, filibusters have no discernible effect on passage. That is, a bill targeted by a filibuster is no less likely to pass the chamber than one not targeted. The connection between holds and filibusters makes this a potentially unusual result, given that holds have a powerful negative effect on bill

passage. What this says is that leaders know they are potentially unlikely to be negatively harmed by moving a popular or must-pass bill to the floor, so long as they can get passage support in the face of obstruction.

My findings also speak to the complicated relationship between leader management bill consideration. I fail to find any relationship between the usage of a complex UCA and holds in Chapter 3, and the results above indicate that leaders routinely ignore member requests to present amendments on the floor. Given the strongly negative relationship of holds and bill passage, one might assume that leaders would accommodate holds through complex UCAs and allow amendments on the floor. While I again hesitate to say that no relationship exists due to the data available in Chapter 3, a possible interpretation of the data is that leaders know there is both a high threshold for members to actually object on the floor and such objection is unlikely to affect passage. Further work is necessary on this project, both to expand the data available and parse the content of complex UCAs, but the results presented are promising for expanding our understanding of policymaking in the Senate.

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