

## Considering the budget resolution in the Senate: Challenges and consequences of reform

Molly E. Reynolds

### INTRODUCTION



**Molly E. Reynolds** is a fellow in Governance Studies at Brookings. She studies Congress, with an emphasis on how congressional rules and procedure affect domestic policy outcomes.

In recent years, Congress has found it increasingly difficult to complete the first step of the congressional budget process: adopting a budget resolution. Since the creation of the modern budget process in 1974, Congress has failed to adopt a broad blueprint for revenue and spending in the form of a budget resolution ten times. All but one these failures has occurred since the start of the George W. Bush administration in 2001, and Congress went five consecutive years without finishing a budget resolution between 2010 and 2014.<sup>1</sup> When Congress does adopt a budget resolution, moreover, it is now a largely partisan affair. No member of the minority party has voted for a budget resolution offered by the majority party since 2008, and 1997 was the last time a budget resolution received more than a small handful of minority party votes in either chamber.

Because votes on the budget resolution are highly partisan, Congress has had particular difficulty completing action on the measure when its two chambers are controlled by different parties. Between 1982 and 2016, when the same party held a majority in both houses, Congress completed action on the budget resolution 80 percent of the time, versus only 60 percent of the time under divided control. When Congress was able to complete action on a budget resolution under divided control, moreover, it took longer to do so.<sup>2</sup> Compromise across parties on this task is clearly difficult. Delay in adoption and inaction on the budget resolution, while not fatal to the process, can prevent legislators from moving on to the appropriations process on schedule, giving it less time to complete separate spending bills before the start of the new fiscal year.

While basic partisan dynamics have certainly contributed to Congress's difficulties with *adopting* a budget resolution, there are also challenges that make *working on* a budget resolution difficult, especially in the Senate. The procedures under which the measure is considered on the Senate floor, as well as broader changes in the Senate's legislative process, have made deliberating over the budget resolution a task about which senators complain heartily. At the same time, however, they rely on the budget resolution as a vehicle for achieving various personal and partisan political goals. Accounting for this tension is key in proposing reforms to the procedures for floor consideration

that, while not panacea for all that ails the budget process in the contemporary Congress, do have the potential to improve over the status quo.

## WHY DOESN'T THE SENATE WANT TO DELIBERATE OVER THE BUDGET RESOLUTION?

There are several reasons why the Senate may wish to avoid deliberating over the budget resolution in the contemporary Congress. First, as outlined above, the measure has become a partisan exercise, with only members of the majority party in each chamber expected to vote for the legislation. Importantly, the procedures under which the resolution is considered mean that one usual impediment—the need to overcome the threat of a filibuster in the Senate—is not present. Overall debate on the resolution, which sets aggregate levels of spending and revenue for

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each fiscal year, is capped at 50 hours, preventing a filibuster of the measure.<sup>3</sup> The ability to adopt a budget resolution with only majority party votes in the Senate, however, means that if the Senate and House are controlled by different parties—as they were, for example, between 2011 and 2015—it is difficult for the two chambers to come to an agreement on a consensus product. Importantly, when the two houses fail to settle on common text, both have alternate methods for stipulating the topline budget numbers otherwise contained in the budget resolution that provide the basis for the annual discretionary appropriations process.<sup>4</sup> As a result, if Senate party leaders know that they are unlikely to be able to work with the House on a final product, they have less of an incentive to devote time to their own version.

Even if the same party has a majority in both houses, moreover, if differences exist *within* that coalition, adoption may be challenging since the majority is unable to turn to members of the minority party to deliver the necessary votes. This dynamic was on display prominently in 2016, when members of the House Freedom Caucus objected to the budget resolution drafted by the House Budget Committee on the grounds that it allocated the higher level of spending agreed to in an October 2015 budget deal rather than the lower amount specified by the 2011 Budget Control Act.<sup>5</sup> Ultimately, the House failed to consider a budget resolution on the floor, and the Senate, seeing the intra-party challenges in the House, followed suit.

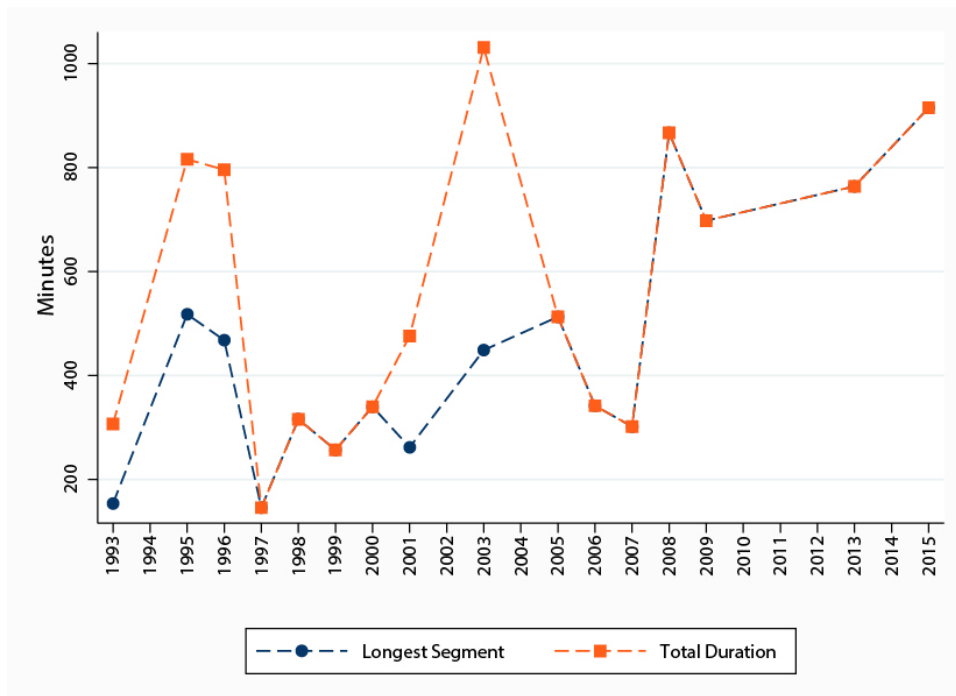
Another challenge in considering the budget resolution involves the consequences for the amendment process of the 50-hour statutory limit on debate on the measure in the Senate. Because “debate” is not equivalent to “consideration,” however, senators may continue offering amendments once the 50 hours have expired. By convention, these subsequent amendments are considered with 30 seconds of debate from each side, followed by a ten-minute vote.<sup>6</sup> This practice of calling up amendments and dispensing of them back-to-back, one after another, is colloquially known as the “vote-a-rama.”<sup>7</sup> Senators dislike this exercise, and have complained about it for more than two decades. In 1996, for example, Senator Frank Murkowski (R-Alaska) accused the Senate of using amendments to the measure “to engage in strategies of gamesmanship which deceive the American people about our legislative business.”<sup>8</sup> More recently, Senator Susan Collins (R-ME) argued in 2015 that the purpose of the vote-a-rama is “to simply make the other side cast uncomfortable votes.” “It’s hard,” Collins elaborated, “to say it’s a dignified process worthy of the

United States Senate, which is supposed to be the world’s most deliberative body”.<sup>9</sup> Indeed, the 57 amendments voted on during consideration of the budget resolution in 2015 (both before and during the vote-a-rama) included proposals involving hot-button issues such as gay marriage,<sup>10</sup> climate change,<sup>11</sup> and the Affordable Care Act.<sup>12</sup> A number of media reports on the decision by Senate Budget Committee Chair Mike Enzi (R-Wyo.) to forgo a budget resolution in 2016, moreover, cited senators’ desire to avoid casting difficult votes during the measure’s consideration;<sup>13</sup> coverage of reluctance in other recent years also contained similar arguments.<sup>14</sup>

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While it can be difficult to define exactly what constitutes the vote-a-rama and to determine how long it lasts, two attempts to do so, both displayed in Figure 1, indicate that the exercise can be demanding on senators’ time. Along the x-axis are the calendar years since the first vote-a-rama (in 1993), and along the y-axis are the approximate number of minutes consumed by the exercise. The orange squares represent an estimate of the total time elapsed considering the budget resolution after the statutory time allowed for debate expired or was yielded back.<sup>15</sup> Prior to the mid-2000s, Senate leaders would sometimes negotiate agreements to allow the post-limit consideration to occur over multiple days. As a result, rather than being one very long exercise, the vote-a-rama occurred in several shorter (though still multi-hour) segments. For these years, the blue circle indicates the longest single portion. We see that, while there were earlier years (1995, 1996, and 2003) where the total amount of post-debate time rivaled the length of the contemporary vote-a-rama, the use of a single, sustained period to hold repeated amendment votes has become a feature of consideration of the budget resolution since 2008.

**Figure 1: Estimated length of vote-a-rama, 1993-2015**



Putting aside senators' complaints about being asked to take repeated, tough votes—something many citizens would consider a basic responsibility of their job—there are other features of the contemporary vote-a-rama that make it a suboptimal environment for legislating. As we see in Table 1, in half of the years featuring a vote-a-rama, the last vote in the long vote series has occurred after 10 p.m., with 2013 setting the record, at 4:38 a.m.

**Table 1: Time of last vote in vote-a-rama vote series, 1993-2015**

Year	Latest vote in series
1993	11:59 PM
1995	6:52 PM
1996	5:59 PM
1997	8:37 PM
1998	10:13 PM
1999	10:00 PM
2000	2:55 PM
2001	10:15 PM
2003	5:52 PM
2005	9:51 PM
2006	7:18 PM
2007	2:52 PM
2008	1:40 AM
2009	11:29 PM
2013	4:38 AM
2015	3:19 AM

Certainly, Senate leaders could attempt to schedule consideration in such a way that would reduce the chances it stretches into the middle of the night, but they may believe that the late hour will serve as a disincentive for some rank-and-file members to continue to offer amendments. The data in Table 1, however, suggest that individual senators have not always responded to that possible inducement. In addition, even if we believe that senators should not shy from going on the record about controversial questions, having them do so after only one minute of debate in the middle of the night is not a recipe for quality deliberation. In 2015, for example, in the late stages of consideration of the resolution, several senators “accidentally vot[ed] the wrong way and need[ed] to make changes,” perhaps in part due to the late hour.<sup>16</sup>

## **BALANCING COMPETING TENSIONS IN THE CONSIDERATION OF THE BUDGET RESOLUTION**

While procedural changes may help senators overcome some of these incentives to avoid deliberating over the budget resolution, more than forty years of experience with the process reveals a series of tensions that any reforms must confront. When the congressional budget process was created in 1974, the central goal of the congressional budget resolution was to serve as a “coordinating device...[that] covers all federal spending, regardless of committee jurisdiction, and requires Congress to make explicit decisions on total revenue and spending, budget priorities, and the deficit.”<sup>17</sup> The fact that subsequent action by the appropriations, authorizing, and revenue committees is required to implement this overall framework has affected the resolution’s ability to serve as a truly comprehensive blueprint.<sup>18</sup>

To the extent that it can play a key role in articulating Congress's choices about how to allocate federal resources across a wide set of competing priorities, however, the procedures under which it is considered should encourage that kind of debate. The inclusion of a germaneness requirement in the Congressional Budget Act (CBA), moreover, also suggests that the process's architects intended to keep deliberation focused on the underlying goal at hand.

While the germaneness requirement—and, indeed, the overall limitation on debate—were designed to restrict deliberation in some ways, other core principles of the original CBA would suggest a relatively open amending process. As Allen Schick explains in his analysis of the process's early years, it was intended to be neutral on its face, with the potential to be “deployed in favor of higher or lower spending, bigger or smaller deficits.”<sup>19</sup> The process was also meant to be neutral with respect to the “the issues and alternatives considered in the course of developing the legislation,”<sup>20</sup> with a broad set of legislative interests given “access and voice.”<sup>21</sup> This neutrality—in terms of both inputs and outputs—suggests that the act's drafters meant for the process to be deliberative.

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Despite this embrace of neutrality and openness to a range of perspective, in the early years of the budget process's life, senators expressed skepticism about subjecting the budget to a free-wheeling amendment process. Early on, the first chairman and ranking member of the Senate Budget Committee, Ed Muskie (D-Me.) and Henry Bellmon (R-Okla.), respectively, worked to defeat floor amendments in order to preserve the careful deals that had been struck in committee, believing “the budget process to be incapable of surviving the rough and tumble of floor action.”<sup>22</sup> In the first five years of the modern congressional budget process (1975-1979), a total of 65 amendments were offered during consideration of the first, second, and third resolutions on the floor, with only 14 being adopted.<sup>23</sup>

As the number of amendments to the budget resolution began to increase in the early 1980s,<sup>24</sup> senators expressed concern about the scope of the questions they were being asked to consider. An early Sense of the Senate amendment offered by Senator Daniel Patrick Moynihan (D-N.Y.) in 1981 was criticized by Senator Slade Gorton (R-Wash.) on the grounds that “to the extent that it is only hortatory, [it] is meaningless [and] to the extent that it has any meaning it is totally contrary to the entire purposes of the Budget Act.”<sup>25</sup> Two years later, Senator John Stennis (D-Miss.) argued against a Sense of the Senate amendment from Senator Bill Bradley (D-N.J.) because “if we use [the budget resolution] as a vehicle for all kinds of resolves and so forth, we are firming the criticism that is made... that we are snuffing the life out of regular committees in the Senate.”<sup>26</sup>

This tension between keeping the budget process narrow in scope on one hand and allowing open deliberation on the other escalated further in the early 1990s with the first vote-a-rama on the budget resolution in the Senate in 1993.<sup>27</sup> Senators immediately recognized the potential shortcomings of using the method to dispose of amendments. As Senate Majority Leader George Mitchell (D-Me.) explained as debate time was about to expire, “we are now at a point in these proceedings that is without recent precedent...amendments can now be offered in which no one knows what is in them, no one knows if they are germane, no one knows if they have anything to do with the resolution.”<sup>28</sup> Mitchell's proposal for dealing with this situation was to table every remaining amendment that was

called up for consideration because “I cannot say to you, I cannot represent to you, that an amendment is without merit if I have not seen the amendment.”<sup>29</sup> (Mitchell’s approach was followed for all but one of the amendments considered during the vote-a-rama.)

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When the Senate next held a vote-a-rama, in 1995, senators realized that while addressing this lack of information was a worthy goal, it would have consequences for how long they would have to spend on the exercise. As Senator Tom Daschle (D-S.D.) pushed for “just a short description of what the amendment is prior to the time we are called upon to vote,”<sup>30</sup> Senate Majority Leader Bob Dole (R-Kans.) countered that “we have had 50 hours. I do not think we need another 50.”<sup>31</sup> A tension between information and speed, then, had emerged on top of the existing friction between openness to perspective and maintaining a narrow focus on the budgetary matters.

By the mid-2000s, meanwhile, the vote-a-rama had become a regular feature of Senate deliberation on the budget resolution and another important tension had emerged. Across the legislative process, the share of amendments drafted by senators actually brought up for debate on the Senate floor began to decline in the mid-1990s thanks in part to a tactic known as “filling the amendment tree.”<sup>32</sup> Senate precedents grant the majority leader a right of priority recognition on the Senate floor, and Senate rules and precedents specify the number and type of amendments permissible on a particular pending legislative question. If the majority leader wishes to prevent his rank-and-file colleagues from offering amendments, then, he or she can seek and obtain recognition and then offer the maximum number of amendments permitted on a particular measure.<sup>33</sup> At that point, “the amendment process is, in effect, frozen—no additional floor amendments may be offered to the measure until action is taken to dispose of one or more of the amendments that are already pending.”<sup>34</sup> Recent work on the Senate has highlighted the use of this prerogative by the majority leader as a tool to influence the legislative process in his party’s favor<sup>35</sup> and documents how, after being used for the first time in the 102<sup>nd</sup> Congress (1991-1992), this practice has become more frequent.<sup>36</sup>

What do these changes in the broader legislative process mean for consideration of the budget resolution specifically? Political science research suggests that, generally, senators may have a range of broader goals that they are trying to achieve when they offer amendments. First, a senator may disagree with one or more provisions of the bill on policy grounds and offer one or more amendments in order to change its content. Second, a legislator may be trying to engage in position-taking,<sup>37</sup> sending signals about his stances to multiple audiences, including constituents and interest group allies. Third, in pursuit of collective electoral advantage, a member may wish to build up the reputation of his own party, or harm the brand of his partisan opponents, by creating a record of their positions.<sup>38</sup>

Importantly, as senators’ ability to offer amendments on other bills becomes more limited, we should expect them to respond by offering more amendments in the rare chances they are given to do so—like the budget resolution. The logic here is one of simple supply and demand: senators demand opportunities to offer amendments that advance their aims, and if the majority leader has reduced the overall supply of amendment opportunities, senators will seek them out where they come. Put differently by former Senate Parliamentarian Bob Dove in 2009:



It is like a steam kettle. You fire it up, and it is going to come out someplace. If Senators can freely offer amendments on other measures, they may not be as interested in offering amendments on the budget resolution. But as long as the budget resolution stands almost alone as a way for minority members to get votes on things that they are very interested in getting votes on, you will be a target.<sup>39</sup>

In sum, then, consideration of the budget resolution in the Senate is confronted with three principal tensions. First, it needs to honor the commitment to a neutral budget process that features a range of input without letting matters only tangentially related to the budget overshadow actual deliberation over competing federal priorities. Second, it needs to balance senators' desires to both know what they are voting on and to move through the process expeditiously. Finally, while the budget resolution cannot be walled off from the rest of the legislative process, it also may not be able to bear the burden of functioning as the Senate floor's only steam valve.

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## TRENDS IN FLOOR CONSIDERATION OF THE SENATE BUDGET RESOLUTION

To understand how these tensions have played out in the Senate's recent experience with the budget resolution, it is helpful to examine several pieces of data. We saw above that senators' laments about the length and hour of floor consideration are not unfounded—though they are also not confined only to very recent years. To assess senators' claims that they are made to cast tough votes on largely meaningless questions, we can examine the prevalence of amendments to the budget resolution that we would consider “symbolic.” Generally, these symbolic amendments fall into two categories: those stating the “sense of the Senate” (SoS) on a particular matter or those establishing a “deficit neutral reserve fund” (DNRF).<sup>40</sup>

Sense of the Senate amendments allow senators to express, formally, their opinions about various issues.<sup>41</sup> They arose as a way for senators to champion particular causes—whether they be, in the words of a bulletin from the Senate Budget Committee's Republican staff in 2003, “motherhood, apple pie, or fill in your favorite thing”<sup>42</sup>—without proposing specific cuts elsewhere in the resolution. While, as discussed below, senators have been discouraged from offering these kinds of amendments to the budget resolution since 2000,<sup>43</sup> they continue to do so. During consideration of the fiscal year 2014 budget resolution, for example, Senator Marco Rubio (R-FL) offered an amendment (adopted by unanimous consent) expressing the “sense of the Senate on underutilized facilities of the National Aeronautics and Space Administration and their potential use.”<sup>44</sup>

Deficit neutral reserve funds, meanwhile, first emerged as part of the budget process during the consideration of the fiscal year 1984 budget resolution, with the first amendment to create one offered in 1989.<sup>45</sup> A reserve fund provides for flexibility in the budget process by allowing for future adjustments to the overall budgetary aggregates set forth by the budget resolution. These changes are permitted, however, if and only if some other specified action is taken.

Usually, this required action is some piece of deficit-neutral legislation, as we can see in the following reserve fund language taken from the fiscal year 2016 budget resolution:

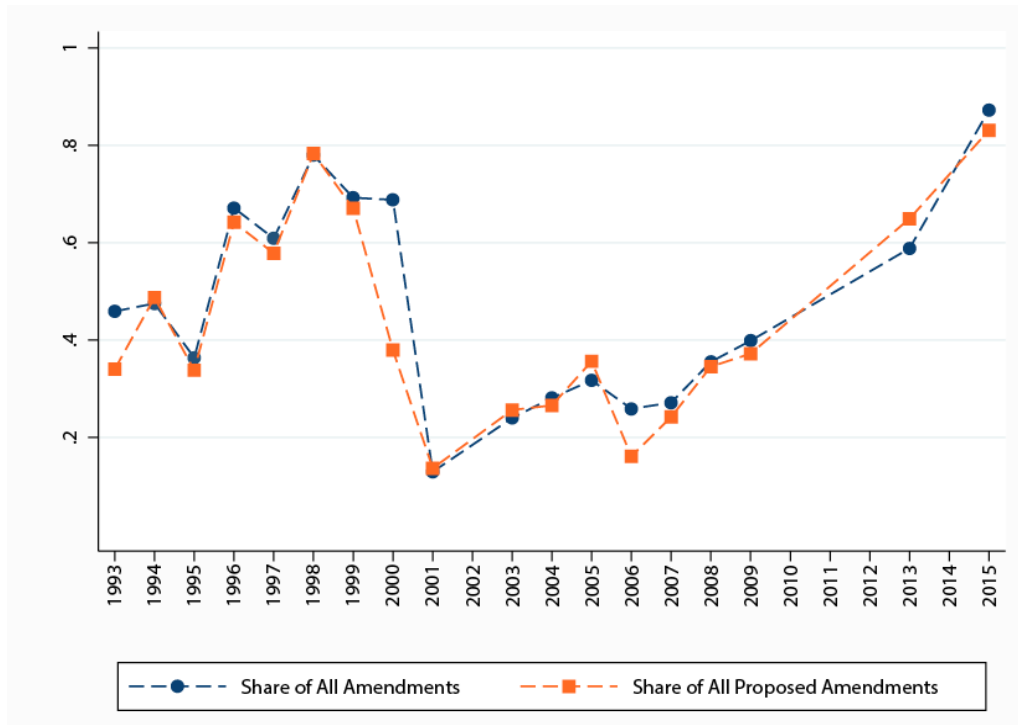
**DEFICIT-NEUTRAL RESERVE FUND FOR IMPROVING ACCESS TO THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM.**

The Chairman of the Committee on the Budget of the Senate may revise the allocations of a committee or committees, aggregates, and other appropriate levels in this resolution for one or more bills, joint resolutions, amendments, amendments between the Houses, motions, or conference reports relating to improving access to affordable health care for low-income children, including the State Children's Health Insurance Program, by the amounts provided in such legislation for that purpose, provided that such legislation would not increase the deficit over either the period of the total of fiscal years 2016 through 2020 or the period of the total of fiscal years 2016 through 2025.<sup>46</sup>

While reserve funds have a technical purpose,<sup>47</sup> they have largely come to be seen as symbolic measures, providing opportunities for senators to signal that action in a particular policy area is important to them and allowing "members of Congress to be for a politically popular program or activity without addressing how to fund the activity".<sup>48</sup>

As we see in Figure 2, since 1993, between roughly 20 and 80 percent of the amendments both filed and proposed (i.e., called up on the floor) on the budget resolution have been symbolic. Like the length of the vote-a-rama, the share of overall amending activity devoted to symbolic amendments has varied over time. The decline after the year 2000 corresponds to the procedural change aimed at limiting Sense of the Senate amendments, but senators found ways—largely through offering DNRF amendments instead—to accomplish the same ends they were seeking in years prior.

**Figure 2: Share of amendments to the budget resolution that are symbolic, 1993-2015**



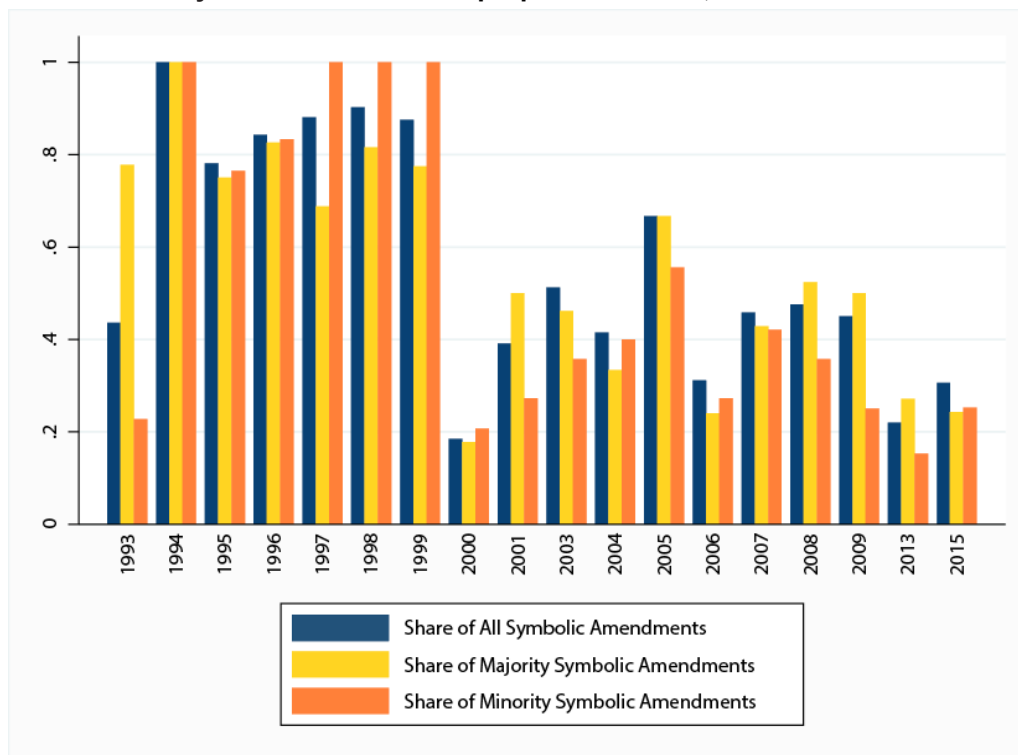


To understand what goals senators might be pursuing through the amendment process on the budget resolution are, a closer look at these symbolic amendments is useful. One possibility is that the minority party is using the amendment process on the budget resolution more aggressively than the majority party. Political science research suggests that minority party members offer more amendments, in part because the majority party is better at working together to prevent amendments from members with extreme preferences.<sup>49</sup> Since the 1980s, minority party members' amendments have been adopted less frequently (even controlling for ideology), suggesting that party members may be using the amendment process to engage in partisan messaging rather than simply seeking policy change.<sup>50</sup> Given that symbolic amendments are explicitly designed to send messages about members' positions, we might expect to see this same trend on the budget resolution.

Figure 3 displays the share of all filed symbolic amendments actually proposed on the floor during consideration of the budget resolution; the blue bars indicate the share of all symbolic amendments, while the yellow and orange bars display the share of symbolic amendments offered by the majority and minority parties, respectively. Not all proposed amendments eventually receive a recorded vote, but formally offering an amendment is an important first step down that path toward generating a demonstrable record to which senators can point.

The share of filed symbolic amendments that are actually proposed on the floor is generally lower in recent years than it was in the early years of the vote-a-rama's existence. This is unsurprising, given that the overall number of amendments filed has also increased in recent years. What is more notable is the lack of a consistent pattern in the difference between the majority and minority party figures.<sup>51</sup> There are some years, especially in the late 1990s, where the share of filed minority-sponsored symbolic amendments actually offered exceeded the same quantity for the majority party. In recent years, on the other hand, the share of filed majority-sponsored symbolic amendments sometimes, but not always, surpassed the minority share.

**Figure 3: Share of all filed symbolic amendments proposed on floor, 1993-2015**



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Within this universe of proposed amendments, one group is particularly important: those on which recorded votes are taken.<sup>52</sup> The existence of a recorded vote provides tangible evidence on which sponsors can rely when they seek to claim credit for their action in the future, as well as a clear record of members' positions. This can be both positive, for members who wish to use votes as evidence of certain stances, and negative, for senators who are trying to force their peers to go on record with potentially unpopular policy positions. Roll call votes can and do become fodder for future campaigns; a vote to

an amendment on the fiscal year 2016 budget resolution regarding Pell Grants, for example, was at the center of a testy exchange in a recent debate between Senator Kelly Ayotte (R-NH) and her Democratic opponent, Governor Maggie Hassan.<sup>53</sup> Hassan accused Ayotte of having voted to cut the program, to which Ayotte replied "Let me be clear. Read the resolution...the governor has not read it...you can read it yourself. This is a false attack. I want voters to read the bill."<sup>54</sup>

**Figure 4: Share of all proposed symbolic amendments receiving roll call votes, 1993-2015**

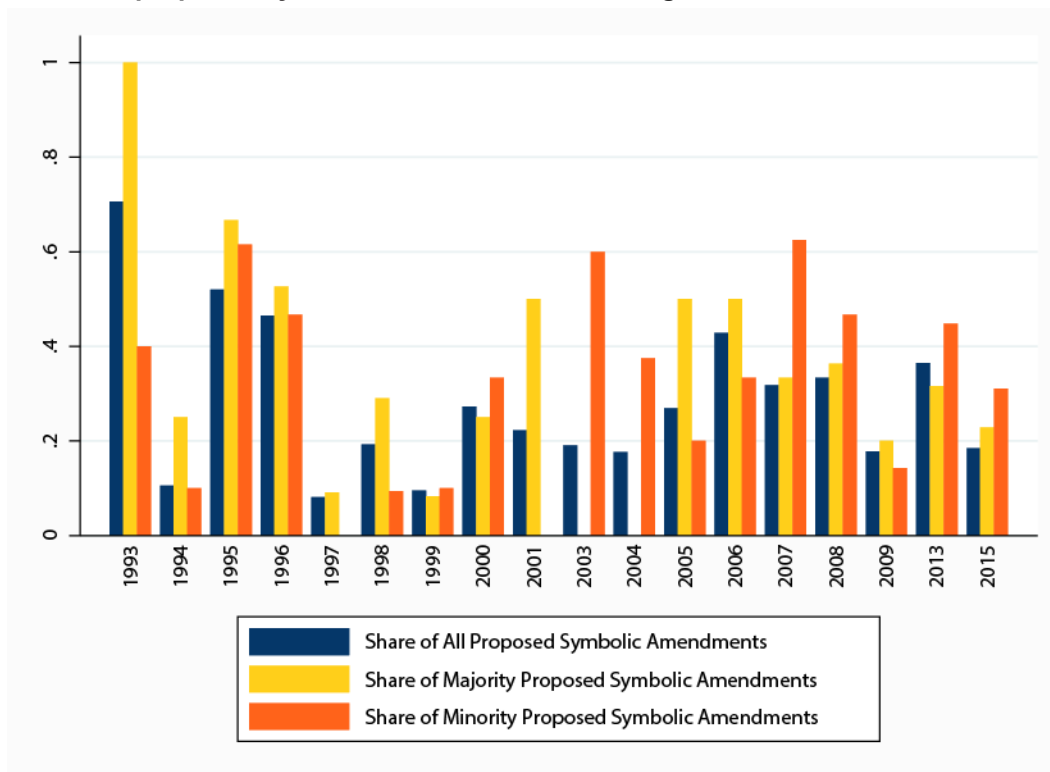


Figure 4 displays the share of all proposed symbolic amendments, as well as majority- and minority-party proposed symbolic amendments, that received roll call votes on the floor of the Senate.<sup>55</sup> We again see variation over time, though unlike the proposal trend in Figure 3, it is not a consistent decline. In the earlier part of the period, the share of majority-proposed

symbolic amendments receiving recorded votes often exceeded the share of minority-proposed symbolic amendments obtaining them. In recent years, however, that pattern has often been reversed.

This aggregate over-time data paints an incomplete picture, especially if we believe senators' claims that each party is using the process to make their partisan opponents cast difficult votes. In addition, given that the limitations on amendment opportunities in the rest of the legislative process may affect majority and minority party members differently, different factors may be associated with the amendments that the two sides contribute to the budget resolution.

To examine this, let us consider two sets of regression results that examine whether three different member characteristics predict which filed symbolic amendments will be proposed and which proposed symbolic amendment receive a recorded vote. First, does seniority matter? Previous work finds that amendments offered by more senior members are more likely to succeed on the floor,<sup>56</sup> and we might expect similar effects for proposal behavior. Second, if an

amendment is proposed by a senator who serves on a committee that handles the issue with which the amendment deals, is it more likely to be proposed and/or receive a vote? Senators tend to be particularly active on issues handled by the committees on which they sit,<sup>57</sup> in part because they often secure membership on committees that deal with issues important to their constituents.<sup>58</sup> Third, does a senator's extremity within his or her party matter? Work on the House suggests that more moderate members of the majority party are granted more opportunities to offer amendments.<sup>59</sup> If a similar dynamic is at play in the Senate, then extreme members might be discouraged from offering amendments elsewhere in the legislative process and shift their activity to the budget resolution, where there are fewer limits on the behavior.<sup>60</sup>

Table 2 presents the results of a series of estimations for the effect of each of these factors on whether filed symbolic amendments are proposed (columns 1 and 3) and receive roll calls (columns 2 and 4) for the majority and minority parties. We see moderate members of the majority party have generally proposed more symbolic amendments,<sup>61</sup> but do not observe a statistically significant relationship between member extremity and whether proposed symbolic amendments receive roll call votes. For minority party members, however, the finding is the opposite. There is no statistically significant effect of extremity on proposal behavior, but more extreme members of the minority party are more likely to receive roll call votes on their proposed symbolic amendments. Since we expect that the majority party may try and stack the deck against the minority party elsewhere in the legislative process, this pattern may be the result of senators who are not be able to get votes on their preferred questions elsewhere in the legislative process turning to the less restrictive environment of the budget resolution to generate credit-claiming opportunities.

Roll call votes can and do become fodder for future campaigns; a vote to an amendment on the fiscal year 2016 budget resolution regarding Pell Grants, for example, was at the center of a testy exchange in a recent debate between Senator Kelly Ayotte (R-NH) and her Democratic opponent, Governor Maggie Hassan.

**Table 2: Predicting proposals and roll calls on symbolic amendments, 1993-2015**

	(1) Majority Proposals	(2) Majority Roll Calls	(3) Minority Proposals	(4) Minority Roll Calls
<b>Member extremity</b>	-0.613* (0.348)	0.918 (0.731)	-0.051 (0.830)	3.080*** (0.854)
<b>Committee membership</b>	-0.340 (0.284)	-0.123 (0.412)	-0.325** (0.156)	0.176 (0.270)
<b>Seniority</b>	-0.003 (0.008)	0.004 (0.013)	0.014 (0.018)	0.020 (0.014)
<b>Constant</b>	-0.344 (0.378)	-0.908*** (0.252)	-0.619* (0.334)	-1.397*** (0.275)
<b>Observations</b>	701	262	777	272

Standard errors clustered by year in parentheses.

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

For committee membership, the results also vary across majority status. Amendments filed by minority party members dealing with issues handled by the committees on which they serve were less likely than others to be formally proposed on the floor.<sup>62</sup> We do not observe a similar relationship for the likelihood of a roll call on minority-proposed symbolic amendments, nor for other either outcome for the majority party. If we think that members of committees

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The results in Table 2 are consistent with an account of symbolic amendments being used on the budget resolution as an outlet for senators who may not have access to other sources of legislative input. Has this behavior changed at all in recent years? More than half of the symbolic

amendments filed on the budget resolution occurred in the two most recent years that the Senate deliberated on one,<sup>63</sup> 2013 and 2015. The size of this increase suggests that senators may be responding to more incentives now than in the past.

**Table 3: Predicting proposals and roll calls on symbolic amendments, 2013 and 2015**

	(1) Majority Proposals	(2) Majority Roll Calls	(3) Minority Proposals	(4) Minority Roll Calls
<b>Member extremity</b>	-1.030 (0.629)	0.306 (1.343)	0.057 (0.641)	2.991** (1.271)
<b>Committee membership</b>	0.400* (0.230)	-0.221 (0.465)	-0.095 (0.243)	-0.058 (0.497)
<b>Seniority</b>	-0.013 (0.012)	0.009 (0.021)	-0.010 (0.018)	0.082** (0.038)
<b>Constant</b>	-1.188*** (0.190)	-1.088*** (0.365)	-1.216*** (0.222)	-1.453*** (0.443)
<b>Observations</b>	412	102	420	87

Standard errors in parentheses.

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

Table 3 replicates the analysis in Table 2, but just for 2013 and 2015. As in the full time series, extreme minority party members received more roll call votes on their proposed symbolic amendments in 2013 and 2015.<sup>64</sup> More interesting, however, are two findings that are different in the most recent period than in the overall analysis. For majority party senators, committee members are more likely to propose their filed symbolic amendments, while for minority party members, more senior senators receive more roll call votes on their proposed symbolic amendments. In both cases, we are seeing some senators who we would traditionally expect to have good access to other components of the legislative process instead turn to the low-hanging fruit of the budget resolution to achieve their goals.

Together, the results in Tables 2 and 3 are suggestive of an important pattern in the use of the amendment process on the budget resolution by senators in both the majority and minority parties: as a way to generate credit claiming opportunities that they may not be able to produce elsewhere. Certainly, these symbolic amendments can be highly partisan and force members of the other party to take tough votes. But, as the results from the most recent period show, those senators who are seeking the amendment opportunities the budget resolution provides may also be members who traditionally had better access elsewhere but who have seen those opportunities shrink as well.

## REFORMS TO THE PROCEDURES FOR CONSIDERING OF THE SENATE BUDGET RESOLUTION

As we contemplate reforms to improve floor consideration of the budget resolution, it is useful to review how senators have responded to previous attempts to limit their ability to offer amendments on the measure. One prior effort occurred in the late 1990s, in conjunction with the first major increase in the share of symbolic amendments to the budget resolution (as documented in Figure 2). During consideration of the fiscal year 1999 budget resolution, Senators Don Nickles (R-Okla.) and Frank Murkowski (R-Alaska) offered an amendment prohibiting “precatory” (a legal term meaning “expressing a wish”) amendments to the budget resolution; the senators argued that debating these matters “wastes a lot of time...[and has] made the Senate look bad in the process.”<sup>65</sup> Senator Frank Lautenberg (D-N.J.), a member of the minority party, argued in response that “the budget resolution already places serious restrictions on minority participation. This is how we get there. When you are on this side next year, you will know

how it feels to be in the minority and you will have an opportunity to amend things that you don't see. I, frankly, don't see a lot of harm in it. It takes time, yes, but it gives a chance for an exchange of ideas that I think is important.”<sup>66</sup> The Nickles-Murkowski amendment was ultimately defeated,<sup>67</sup> but efforts to rein in symbolic amendments continued the following year when a provision declaring Sense of the Senate amendments non-germane (and thus out of order) was included in Budget Committee Chairman Pete Domenici's (R-N.M.) budget process reform legislation.<sup>68</sup> In 2000, proponents of streamlining consideration of the budget resolution were successful at including a similar provision in the fiscal year 2001 measure, adding a requirement explicitly designed to “place a 60-vote hurdle with respect to what is commonly referred to as ‘sense of the Senate’ amendments.”<sup>69</sup>

While Figure 2 demonstrates that the 2000 point of order was initially successful at reducing the attention devoted to symbolic amendments in the Senate, senators clearly responded by finding new vehicles for the same impulse. The Senate Budget Committee's Republican staff noted this adjustment as early as 2003, noting that “with the SoS outlet...limited, the dilemma returned: how to relieve the pressure that builds up in every budget resolution for showing gratuitous support for favored programs?”<sup>70</sup> One approach (not captured in the data in Figure 2 because it changes the functional totals) involved using reductions in a particular “catch all” component of the budget resolution to offset increases elsewhere.<sup>71</sup> By the mid-2000s, meanwhile, the instrument of choice had become the DNRF. As a 2009 Budget Committee Republican staff bulletin described them,

“DNRFs have become the latest incarnation of the Senate of the Senate (SoS) amendments – non-binding, throwaway hand-waiving provisions. SoS provisions used to be a favorite way for Senators to express a notion on the Senate floor that the numbers in a budget resolution “supported” some favorite policy, but the Chairman and ranking member of the Senate Budget Committee have collaborated to keep SoS provisions out of the budget resolution. DNRFs have come rushing in to replace the vacuum.”<sup>72</sup>

These prior efforts to limit symbolic amending activity on the Senate budget resolution provide an important lesson for future attempts: if senators have a goal they wish to pursue and the chamber's procedures are changed to limit their ability to do so in one way, they will simply find a different avenue to use. Attempting to eliminate avenues completely, then, is likely to be less successful than modifying them.

Any efforts to end the vote-a-rama entirely would almost certainly fall on deaf ears, in part, though not exclusively, because doing so would be seen as an attack on minority rights in the Senate, especially in the current environment. Other reform proposals floated previously, however, have the potential to strike the necessary balance. One such idea would be to establish a filing deadline for first and second degree amendments to prevent additional proposals from being filed after debate had expired.<sup>73</sup> This would potentially allow for more review of the amendments before they are considered on the floor, though if filing rates continue at their current high level, it is difficult to imagine mean-

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ingful review of hundreds of amendments. A second, related possibility would be to “require a brief layover period to review amendments.”<sup>74</sup> This change, too, could increase the level of information available to senators. As with the filing deadline, however, its efficacy could be limited if the number of filed amendments remains very high.<sup>75</sup>



Another proposal that could rein in current practice without simply pushing senators to seek some alternative avenue for the same behavior is to place a limit on the number of amendments permitted per senator.<sup>76</sup> If this restriction was imposed on the filing end, it would help address the drawbacks to the deadline and layover proposals described above, but even if it only applies to amendments formally offered on the floor, it would potentially reduce the number of items to be dealt with. In addition, limiting the number of amendments a senator could offer would provide a valuable, clear signal about exactly which issues are of greatest importance to members.

Reform proponents have also suggested either eliminating reserve funds entirely,<sup>77</sup> or restricting their content. A proposal introduced by Arlen Specter in the late 2000s, for example, would require that “provisions contained in a budget resolution, or amendments to that resolution, shall not include programmatic detail not within the jurisdiction of the Senate Committee on the Budget.”<sup>78</sup> While attractive in their directness, both have the potential to create the same situation as the attempt to eliminate Sense of the Senate amendments. They would likely reduce the number of symbolic amendments for a time, but only until senators found another creative avenue to exercise the same behavior.

The Senate Budget Committee has recently taken steps that may shed light on the prospects for middle-ground reforms that would balance the need to make the current process work better while still acknowledging that members of all stripes use the process to pursue personal and partisan goals. While most of the hand wringing about consideration of the budget resolution in the Senate has focused on floor debate, some of the same dynamics have played out during committee consideration. In 2015, for example, 33 of the 53 amendments considered by the committee during markup of the resolution were related to reserve funds.<sup>79</sup>

Another proposal that could rein in current practice without simply pushing senators to seek some alternative avenue for the same behavior is to place a limit on the number of amendments permitted per senator.

In April 2017, the Committee adopted unanimously a number of changes to its internal rules related to deliberation of the budget resolution. First, the Committee imposed deadlines for the release of both the text of the resolution itself and for amendments to be considered in committee with the goal of providing “senators with adequate time to read and understand the budget and amendments before they vote on them” and preventing “the ‘gotcha’ amendments that are meant to catch senators off guard.”<sup>80</sup> The Committee’s experience with these requirements—does the number of filed amendments decrease? Do senators use the available time to actually review the submitted materials?—may serve as a useful test of what similar restrictions would achieve if implemented for floor consideration. In addition, the Committee adopted a new rule making consideration of amendments that would “have no effect if adopted”<sup>81</sup> out of order. Much will depend on how the rule is implemented, but it, too, could provide a preview of what analogous efforts to limit symbolic amendments on the floor would mean. In particular, if senators respond by reducing the number of one type of amendment only to find a new, alternative way to accomplish the same goals, that would suggest—as previous experiences have—that eliminating one particular vehicle merely steers senators to a new one that achieves a similar end.

In the end, it may be difficult to dramatically improve deliberation on the budget resolution in the Senate without making other changes in the broader legislative process. Most significant would be a more-open amending process on other pieces of legislation in the Senate. Other scholars have highlighted the challenges of implementing such a change,<sup>82</sup> and recent experiences in the House with attempts to open the amending process after periods of heavy

restriction serve as an example of the difficulties in doing so.<sup>83</sup> In the absence of a marked increase in the supply of amendment opportunities available to senators, the budget resolution is likely to remain a significant outlet for their pent-up demand. At the same time, there are smaller changes that the Senate would be well-served to consider that have the potential to streamline the process without ignoring its importance to individual senators.

## ENDNOTES

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11. See S. Amdt. 777, S. Con. Res. 11, 114<sup>th</sup> Congress.
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42. “Informed Budgeteer,” 108<sup>th</sup> Congress, 1<sup>st</sup> session, no. 8, 31 March 2003 <<https://www.budget.senate.gov/imo/media/doc/bb08-2003.pdf>>, p. 2.
43. The fiscal year 2001 budget resolution stipulated that amendments “containing precatory language,” including “sense of the Senate” provisions, would be considered non-germane and thus vulnerable to a point of order. While the enforceability of this definition is ambiguous (see Megan Suzanne Lynch, “Congressional Budget Resolutions: Consideration and Amending in the Senate,” *Congressional Research Service* 23 June 2009), senators have successfully challenged sense of the Senate amendments on grounds that they violate the germaneness requirement for amendments to the budget resolution. See, for example, 159 Congressional Record 43, 22 March 2013, p. S2281.
44. See S. Amdt. 623 to S. Con. Res 8, 113<sup>th</sup> Congress, 1<sup>st</sup> session.
45. For a thorough discussion of the early history of DNRFs, see “Informed Budgeteer: Are Reserve Funds Used as Intended? S. 1: A Case Study,” *Budget Bulletin*, Senate Budget Committee Republican Staff, 108<sup>th</sup> Congress, 1<sup>st</sup> Session, No. 14, 15 July 2003.

46. See §4304, S. Con. Res. 11, 114<sup>th</sup> Congress.
47. Section 302(f) of the Budget Act prevents the consideration of any legislation that would exceed either the aggregate spending levels or the specific limits on budget authority and outlays as set when the aggregate levels are allocated to committees. If the Senate wants to consider a bill that would violate this framework, senators have several options. First, the measure's proponents could just bring the measure to the floor, cross their fingers, and hope no senator raises a point of order. Second, the bill's supporters could build a 60-vote coalition to waive the point of order. Their third option—creating a reserve fund in the budget resolution—is attractive for its combination of certainty and flexibility.
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56. Lee 2016.



57. Wendy J. Schiller, *Partners and Rivals: Representation in U.S. Senate Delegations* (Princeton, NJ: Princeton University Press, 2000).
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60. For all member-level variables here, measurement is done using the primary sponsor of the amendment.
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62. There are a wide range of ways to map policy areas to committees. Here, I utilize Adler and Wilkerson's Congressional Bills Project, which codes each bill introduced in Congress by its policy content (according to the scheme developed by Baumgartner and Jones's Policy Agendas Project) and the committee to which it was referred. To determine if a committee handled bills in a particular topic area, I conducted a series of bivariate logistic regressions for each congress. On the left hand side was a dummy variable indicating whether a given bill was in a given topic area. On the right hand side was a dummy variable indicating whether a given bill was referred to a particular committee. If the relationship was positive and statistically significant at  $p=0.10$  for a congress, I considered that committee to handle that issue in that congress.
63. This does not include the budget resolution considered in January 2017 for the sole purpose of setting up reconciliation instructions for a possible repeal of portions of the Affordable Care Act.
64. The relationship between extremity and proposal behavior for majority party members, meanwhile, does not reach conventional levels of statistical significance here, though  $p=0.101$  suggests we might consider it substantively significant.
65. 144 Congressional Record 41, p. S3084, 2 April 1998.
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67. Vote #80, 108<sup>th</sup> Congress, 2<sup>nd</sup> session, 1998.
68. "Informed Budgeteer," 106<sup>th</sup> Congress, 1<sup>st</sup> session, no. 2, 25 January 1999 <<https://www.budget.senate.gov/imo/media/doc/BB3-1999.pdf>>.
69. "Conference Report to Accompany H. Con. Res. 290, Concurrent Resolution on the Budget for Fiscal Year 2001," House Report 106-577, 106<sup>th</sup> Congress, 2<sup>nd</sup> session, 12 April 2000, p. 74.
70. "Informed Budgeteer," 108<sup>th</sup> Congress, 1<sup>st</sup> session, no. 8, 31 March 2003 <<https://www.budget.senate.gov/imo/media/doc/bb08-2003.pdf>>, p. 2.

71. The “catch all” function is Function 920, or “Allowances,” which “does not include actual programs, but rather is...sometimes used to reflect proposals (but never historical data) that affect multiple budget functions, that cannot be easily distributed across functions, or that are not really proposals at all.” See “Informed Budgeteer,” 108<sup>th</sup> Congress, 1<sup>st</sup> session, no. 8, 31 March 2003 <<https://www.budget.senate.gov/imo/media/doc/bb08-2003.pdf>>, p. 2.
72. “Informed Budgeteer,” 111<sup>th</sup> Congress, 1<sup>st</sup> session, no. 2, 23 April 2009 <<https://www.budget.senate.gov/imo/media/doc/bb02-2009.pdf>>, p. 1.
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74. “Opening Statement of Senator Conrad,” p. 6.
75. These proposals have generally also contained a requirement that debate time only be yielded back by unanimous consent to prevent one side from yielding back time as a way to deprive the other side of opportunities to offer amendments.
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77. Rivlin and Domenici 2015
78. S. Res. 29, 111<sup>th</sup> Congress, 1<sup>st</sup> session.
79. “Committee Print to Accompany S. Con. Res. 11, Concurrent Resolution on the Budget FY 2016,” S. Prt. 114-14, U.S. Senate, Committee on the Budget, 114<sup>th</sup> Congress, 1<sup>st</sup> session, March 2015.
80. “Budget Committee Unanimously Approves Reforms to Broken Budget Process,” 6 April 2017 <[https://www.budget.senate.gov/chairman/newsroom/press/budget-committee-unanimously-approves\\_reforms-to-broken-budget-process](https://www.budget.senate.gov/chairman/newsroom/press/budget-committee-unanimously-approves_reforms-to-broken-budget-process)>.
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The Brookings Institution  
1775 Massachusetts Ave., NW  
Washington, DC 20036  
Tel: 202.797.6090  
Fax: 202.797.6144  
[brookings.edu/governance](http://brookings.edu/governance)

## EDITING

Liz Sablich

## PRODUCTION & LAYOUT

Cathy Howell

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