Inherently Unequal
The Effects of Equal Representation on Senate Policy Outcomes
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Senior Honors Thesis
Presented to the Department of Political Science
Weinberg College of Arts and Sciences
Northwestern University

In Partial Fulfillment
Of the Requirements for the Degree
Honors in Political Science
April 25, 2015
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Acknowledgements

      I would like to extend my deepest thanks to my advisor, Professor Laurel Harbridge, for her year-long guidance and unending assistance with the paper. Her feedback on my drafts, invaluable ideas and input, and help writing code made this project possible – I am forever grateful for her support! I am also indebted to Professor Thomas Ogorzalek for his help in finding sources, working through difficulties identifying variables, and providing comments on my writing. To Richard Shafranek I owe thanks for his sparking the idea of running a computer simulation to populate the counterfactual Senate. Lastly, I am incredibly thankful for my family's ceaseless support, advice, and interest throughout this entire process!

Abstract

Article I, Section 3 of the Constitution says that "The Senate of the United States shall be composed of two Senators from each State," regardless of population. The apportionment scheme, entirely undemocratic due to dramatic disparities in state populations (both today and at the time of the nation's founding), cannot be changed: Article 5 holds that "no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." Despite their infinite and timeless wisdom, the Founding Fathers established a legislative chamber that strays far from representational equality and the "one person, one vote" theory that serves as a basic democratic tenet and to which all other legislative districts in the country are held. This paper examines how the Senate's decidedly undemocratic method of apportionment affects public policy outcomes, both in terms of Senate vote totals and bill content. To do so, I created a counterfactual Senate whose seats – still 100 in total – are distributed based on population, not equality between the several states. From there, I simulated elections using this counterfactual apportionment scheme and, with the newly populated hypothetical chambers, analyzed the differences between senatorial outcomes in the real 111th-114th Senates (the Senates during President Barack Obama's two terms in office) and their counterfactual companions. I find that the counterfactual chamber, which increases the number of large, urban state Senate seats, benefits the Democratic Party, resulting in it holding large supermajorities in six of the seven years studied. With those supermajorities, the Democratic Party would have had the ability to pass legislation the real Senates voted down and make other bills the real Senates passed more liberal. Those results allow me to conclude that the undemocratic method of representation in the American republic's upper legislative chamber significantly skews policy outcomes in a conservative direction, precluding a liberal agenda from making its way out of the Senate.

Introduction

In Newtown, Connecticut, the fourteenth day of December, 2012 dawned like any other: frigid winter air latent with holiday spirit greeted those who awoke with the sun. Students throughout the town prepared for school, willing the day's passage so the weekend could be just a step away. Around seven hundred young learners buttoned their coats, zipped up their boots, and donned their hats, ready for another day at Sandy Hook Elementary School.

The peaceful Thursday morning in the picturesque New England town did not last long. Shortly after 9:30 am, when the doors to Sandy Hook Elementary locked, Adam Lanza used an assault rifle to shoot his way into the school. Gunfire echoed through the hallways; teachers ushered students into bathrooms and closets. Lanza focused his ire on two classrooms – one contained kindergartners and the other, first-graders. He shot without discrimination and without regard to the sanctity of life. Twenty students, aged 6 and 7, and six adults died in the massacre, which quickly become one of the bloodiest mass shootings in American history. In a matter of minutes, a specter had been cast over the peaceful town, one that left deep scars whose pain – though numbed – lasts time indefinite.

Unsurprisingly, the tragedy had a deep impact on the American public. A Quinnipiac University poll taken a month after the shooting found that 92 percent of Americans supported universal background checks for firearm purchases. Ninety-one percent of gun owners also favored that policy (Quinnipiac University 2013). Political scientists often contend that there is no such thing as "public opinion" because viewpoints are fractured or incomplete (owing to weak ideological preferences or a lack of information; Converse 1964). A 92 percent majority, though, represents a strong public will. Lawmakers responsive to the wants the national public ought to have passed legislation expanding the gun background check system.

That opportunity arose with the Manchin-Toomey amendment,[1] bipartisan legislation aimed at closing background check loopholes. With Joe Biden presiding over the Senate and a survivor of the Tucson mass shooting (which killed six, including a federal district court judge, and nearly took the life of Congresswoman Gabrielle Giffords) watching from the gallery, the Senate failed to invoke cloture. The amendment failed, 54-46, despite having overwhelming public support. In the wake of the second largest mass shooting in American history, the United States Senate acted contrary to the will of the public and opted to make no legislative fixes designed to prevent future calamities.

Of the senators who opposed the Manchin-Toomey amendment, seven represented the five least-populous states (Wyoming, Vermont, Alaska, and the Dakotas).[2] On the other hand, six of ten senators who represented the most populous states (California, Texas, Florida, New York, and Illinois) supported the Manchin-Toomey amendment. The five least populous states are home to just over 1 percent of the total American population; the five most populous states comprise 37 percent of all Americans. This stark difference in support – a 30-point swing (from 70 to 40 percent opposed to the amendment) – between Senators of the least and most populous states prompts a question central to our understanding of American democracy: how might legislative outcomes change if the Senate were apportioned by population instead of equality?

Relative representation in the Senate remains grossly unequal between the several states. Come Election Day, a resident of Round Hill, Nevada effectively has 17 times more Senate votes than does a citizen living just down Lake Tahoe Boulevard in California (Dahl 2002). The wants

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[1] An amendment to the "Safe Communities, Safe Schools Act of 2013."

[2] In Wyoming, 55 percent supported expanding background checks (Brown 2013); 84 percent did so in Vermont (Castleton University 2013) and another 60 percent in Alaska (Public Policy Polling 2013). I could not find credible polling on the subject in North and South Dakota. These numbers are all below the national support found by Quinnipiac University, showing a poignant difference in opinion between small, rural states and the nation at large.

of 38 million Californians are weighed equally to those of 550,000 Wyomingites, meaning ten percent of the nation has no stronger say in Senate affairs than does 0.1 percent of the country. This effect is likely accentuated by the political leanings of the states. Of the five least populous states, four voted for a Republican in the last two presidential elections; by comparison, four of the five most populous states voted for a Democrat in those same elections. Eight of the ten mentioned states have single-party Senate delegations. I argue that the unequal dispersion of political affiliation and its magnification in the equally represented chamber affects the vote outcomes and the ideological composition of Senate legislation.

My paper takes the following path: first I explain the historical background for Senate apportionment, after which I parse the existing literature to examine the "one person, one vote" theory in law and to see what other researchers have found regarding Senate apportionment. A full enunciation of my research method then follows and finally I analyze how, exactly, a differently apportioned Senate would have voted and written bills[3] from the 111th-114th Congresses. My bill analysis shows that a differently apportioned Senate – one whose seats and power follow the people, not the state borders – would have resulted in the chamber drafting and passing more liberal bills than those which made their way through the actual Senates. In the end, however, changes in Senate bills would only have affected final legislative outcomes in the 111th Congress. Thereafter, the Republicans controlled the House of Representatives and surely would have voted down the legislation passed by the 112th-114th counterfactual Senates.

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[3] Using DW-NOMINATE cut-points (explained below) and minimal winning coalitions, I will determine whether a counterfactual Senate would be able to pass a bill more liberal or conservative than its actual counterpart.

Background

The issue of Senate representation has its foundation in legal history. During the constitutional convention, James Madison proposed Senate apportionment based on population rather than equality between the states. Alexander Hamilton joined Madison in calling for proportional representation, claiming that equal representation despite population inequality "shocks too much the ideas of justice and every human feeling" (The Avalon Project 2008). This issue incited the most debate during the convention and threatened the creation of the Constitution. Delegates were deeply divided on the subject and many small states threatened to leave the convention should Madison's plan be adopted. That said, Madison and Hamilton had early success – state delegations originally voted 6-5[4] to implement proportional representation for the Senate. However, small states later reopened the issue and, with the votes of a few medium and large states, successfully adopted equal Senate representation. In return, the House of Representatives would be apportioned based on population. This, along with other concessions between the two sides, resulted in the Great Compromise that held together the convention.

Yet even after the Great Compromise's adoption, the notion that political power arose from and thus should remain with the people continued to permeate constitutional thought. Chief Justice John Marshall, whose interpretation of the Constitution underlies today's judicial system, stated in *McCulloch v. Maryland* that "the government of the Union…is, emphatically, and truly, a government of the people. In form and in substance it emanates from them" (*McCulloch v. Maryland*, 17 U.S. 316, 4 Wheat. 316, 4 L. Ed. 579 (1819)). A century and a half later, in *Reynolds v. Sims*, Chief Justice Earl Warren echoed those sentiments and held that all legislative

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[4] Surely aided by Rhode Island's abstention from the convention and New Hampshire's late arrival (it missed the both votes on Senate apportionment).

districts (except the Senate) must be apportioned by population.[5] While *McCulloch* did not

pertain to Senate apportionment, it did put forth the argument that the people – not the states –

entered into the Constitution. As such, the document is a compact between individuals, not a

contract binding together independent states – their assent, Marshall argued, "is implied in

calling a [constitutional] Convention, and thus submitting that instrument to the people." States

became subservient to the people as the people alone "were at perfect liberty to accept or reject"

the Constitution, and their "act was final." It takes little extension of this logic, which holds that

ultimate liberty and power (sovereignty) rests with the people, to use Marshall's words as an

argument for Senate power to move with the individuals whose consent formed the governing

body. Political power, then, should go to the absolute sovereigns – the people.

It is unlikely that the Founding Fathers and Chief Justice Marshall anticipated the

population disparity we see today. After the convention, the smallest state, Delaware, had a little

more than 8 percent of the largest state's population; today, the smallest state, Wyoming, has just

1.5 percent of California's population. Figure 1's gray line plots the smallest state's percentage

of the largest state's population from each census, beginning in 1790 and ending with the 2014

population estimates (percentages are marked on the right-hand axis).[6] Blue bars denote the

largest state's population and the barely discernable orange bars show the population of the

smallest state (population tallies are noted on the left-hand axis).

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[5] "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests" (Reynolds v. Sims, 377 U.S. 533 (1964)).
[6] This number is attained by simply dividing the smallest state's population by that of the largest.
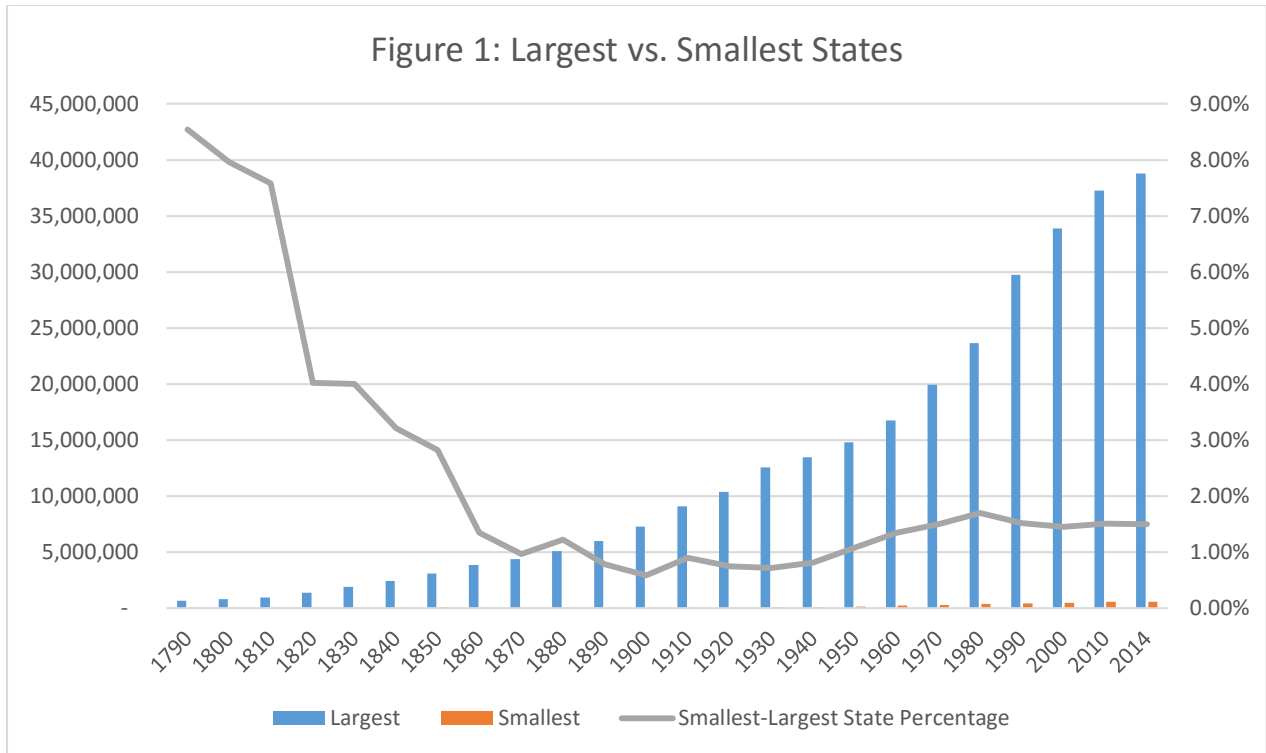
Figure 1: The blue bars denote the largest state's population (left-hand axis) and the orange bars – barely noticeable – show the population of the smallest state. The grey line depicts the smallest-largest state ratio. Numbers derived from the U.S. Census and InfoPlease.com.

Relative Senate representation is inversely related to state population. As the smallest-largest population percentage decreases, representational inequality increases. Over time, small states gained power over their larger counterparts as they maintained an equal voice in the Senate even as their percent of the largest state population and total population shrank. This can be seen by examining whether a state population's percentage equates to its share of Senate seats – perfect subscription to the one person, one vote principle would mean that a state's share of legislative seats equals its share of the population. Clearly, based on figure 2, the Senate fails to meet such standards.
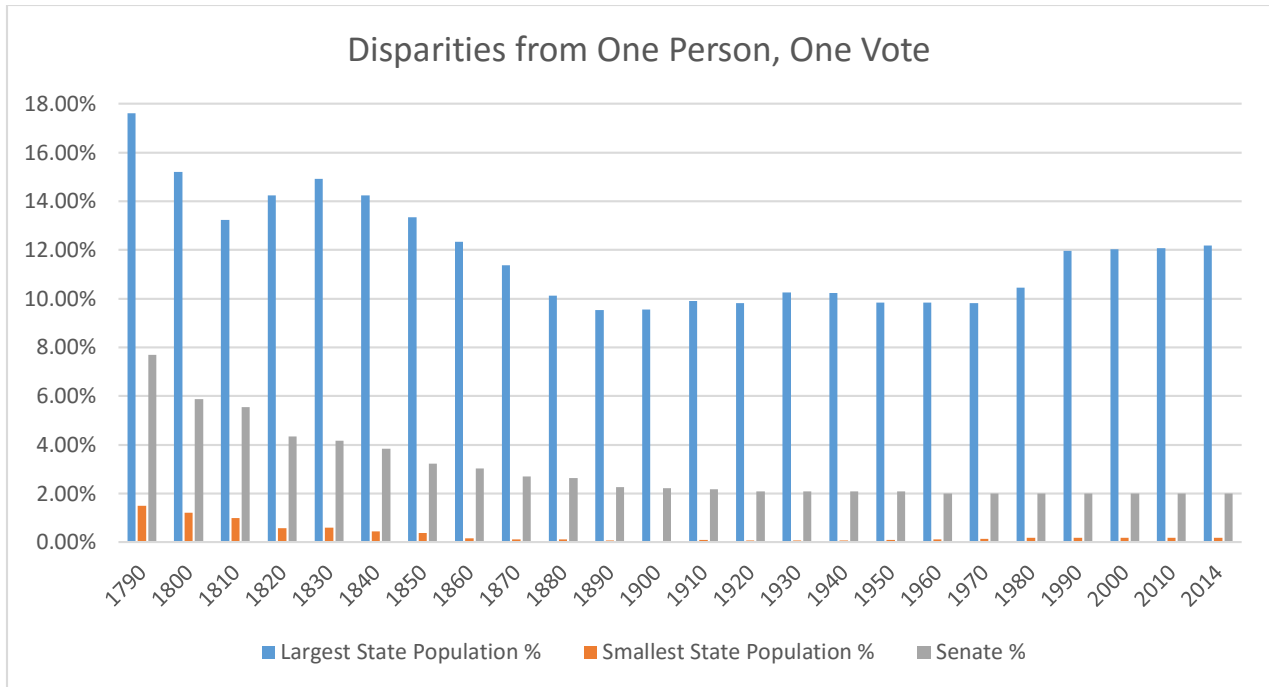
Figure 2: Blue and orange bars show the largest and smallest states' share, respectively, of the total population. The grey bars picture each state's Senate seat share (because of equal representation, each state, regardless of population, has the same share of Senate seats. In a one person, one vote regime, the blue and orange lines – total population percentage – would denote the largest and smallest states' Senate seat share). Numbers again derived from Census data.

      The blue lines denote the population percentage of the largest state, the orange line the population percentage of the smallest state, and the grey line shows each state's share of Senate seats. Under perfect one person, one vote representation, the blue and orange lines would also denote the largest and smallest states' Senate seat share.

      Population inequality isn't limited to the two extreme states – the unequal distribution of people across the country results in numerous low population states capable of coalescing to control the Senate. The smallest possible coalition that could sit 51[7] Senators consists of 26 states[8] and 55 million people,[9] or about 17 percent of the total population. By comparison,

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[7] Well, 52 given that each state elects two Senators.
[8] Obviously.
[9] And even fewer voters.

California and Texas – the two most populous states – have 64 million people but only four Senators. A 60 seat supermajority can be attained through senators representing just 72 million people, or 22 percent of the population.[10] While such coalitions are currently improbable – the likelihood that liberal Vermont elects senators from the same party (and with the same ideology) as deep-red Wyoming in the current political environment approaches zero – this example demonstrates the extent to which the American Senate can be subjected to minority rule. Considering the collapse of the two major parties onto the left-right, liberal-conservative economic spectrum (McCarty, Poole, and Rosenthal 2006; Noel 2013), a small percentage of the population can impose their ideological tendencies onto the majority of Americans, either by electing a majority of senators or enough to sustain procedural roadblocks (i.e., a filibuster). Though political scientists have studied the impact of institutional design on the distribution of federal funds and the representation of parties, they have not fully delved into how the Senate's apportionment scheme affects party numbers, the ideological composition of the chamber, and its influence on policy outcomes writ large.

Literature

In *Reynolds v. Sims*, Chief Justice Earl Warren found that the principle of one person, one vote serves as a basic democratic tenet. It implies the inherent equality of all voices in a polity – regardless of class, gender, race, creed, religion, or geographic location, everyone has one equally weighted vote used as the ultimate show of support for a candidate or idea. Warren described the Court's foray into the "political thicket," from which it emerged with jurisdiction over redistricting cases despite their political nature (*Baker v. Carr* 1964)*,* paving the way for the formal enunciation of the one person, one vote doctrine (*Reynolds v. Sims* 1964), as his tenure's

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[10] Which, dependent upon turnout, translates to far fewer than 72 million votes.

most influential decision (Ansolabehere and Snyder 2008).[11] Despite the theoretic and legal

justifications for one person, one vote, the American Senate does not – and cannot, per Article V

of the Constitution – subscribe to the standard. Given the vast state population disparities, there

is sizable representational (and thus electoral) inequality in the Senate (Lee and Oppenheimer

1999; Griffin 2006). On a one person, one vote basis, the Senate is the most malapportioned

legislative chamber in the world (Lijphart 1984).

This representational inequality has the potential to generate undemocratic policy results.

Overrepresentation of the least-populous states skews distributive outcomes by ensuring that

small states receive larger amounts of federal dollars per capita than do large states (Lee 1999,

2000). Senate apportionment also effects coalition building. Those seeking to form a minimal

winning coalition will try to "buy" small state support rather than large state support because it is

cheaper to earn small state backing. For instance, a senator attempting to pass a transportation

appropriation bill will likely turn to small state senators for support, wooing them with promises

of money that, given the state's small size, amount to little of the bill's proposed budget. Large

states, having more roads than small states, would require a larger appropriation share, lowering

the amount the sponsor could bring to his or her home state, thus making large state senators

unattractive coalition partners (Lee 1999, 2000). Coalition strategies owing to Senate

apportionment benefit small states and hurt large states (Lee 2000).

Following the *Baker v. Carr* and *Reynolds v. Sims* Supreme Court decisions

(369 U.S. 186 (1962) and 377 U.S. 533 (1964), respectively), state legislatures adopted

apportionment based on population, generating a natural case study to assess whether equal

geographic representation noticeably and significantly affects public policy. Prior to the

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[11] To put this in perspective: Chief Justice Warren wrote the majority opinion in *Brown v. Board of Education*, which found school segregation to be unconstitutional

Supreme Court's decisions, most state legislatures were grossly malapportioned – through deliberate efforts to thwart redistricting, rural counties often held disproportionate seat shares and therefore had undue power and influence on state fund transfers. Many rural counties received more state funds per person than did urban counties. When state legislatures moved to representation by population after *Reynolds*, counties began receiving funds proportionate to their state population share (Ansolabehere and Snyder 2008). Urban counties did not dominate the state purse, a fear many state legislators expressed during a House committee hearing regarding a constitutional amendment to allow states to choose how to apportion legislative chambers (Apportionment of State Legislatures: Hearing before the Committee on the Judiciary 1964). While this does not speak directly to the Senate or Senate vote outcomes, it demonstrates that changing the apportionment scheme has substantial effects on public policy that would likely be borne out in the Senate.

Existing literature pens a persuasive analysis of the normative importance of one person, one vote and the disproportionate distributional results of the Senate's failure to adhere to the principle. However, there has yet to be an extensive study into how Senate apportionment impacts Senate vote outcomes and legislation ideology (i.e., content). Existing research suggests that Senate apportionment does tend to overrepresent minority parties (Lee and Oppenheimer 1999, Griffin 2006), but may not have an effect on ideological representation (Griffin 2006). The latter point likely needs to be revisited: since Griffin's study the South and the Northeast have increasingly moved to single-party dominance.[12] Furthermore, the continued collapse of party lines onto left-right ideology[13] (McCarty, Poole, and Rosenthal 2006; Noel 2013) increases

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[12] In the 107th Senate, the last included in Griffin's analysis, there were nine southern Democrats and six New England Republicans. Today, those numbers are one and two, respectively.
[13] Across many political areas, including economics, race, and culture.

the likelihood that the over or underrepresentation of a party corresponds to the over/underrepresentation of an ideology. Should states overrepresented in the Senate trend Republican and those underrepresented trend Democrat, then reapportioning the chamber would decrease the number of Republicans and increase the number of Democrats in the Senate. That, in turn, would naturally lead to different bill outcomes than those which actually happened (and in doing so would likely advance liberal policy goals).

Analyzing actual senatorial outcomes and comparing them to a Senate apportioned based on population allows us to see the impact of rural overrepresentation in votes and legislation ideology. Recognizing the impact of equal representation in the upper chamber of Congress is crucial in assessing whether the Founding Fathers, in their strides to bolster equality in preference, perversely created a system in which the residents of the least-populous states can exert undue influence on national affairs. After all, can America truly be considered democratic republic if the will of the many is subverted by that of the (very) few?[14]

Research Method

To assess the impact of apportionment on Senate policy outcomes, I will construct a counterfactual Senate based on proportional representation and use this chamber to see (1) whether certain bills presented in the 111th-114th Senates would pass under a different representational regime and (2) if and how bills could be altered in a liberal or conservative direction while still maintaining the supermajority support needed to overcome procedural

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[14] The extent to which the Senate is malapportioned precludes defense on the merit of "minority rights." Minority rights does not mean a chamber potentially dominated by a slim portion of the country (as pointed out above).

hurdles. Leveraging the NOMINATE[15] score cut-points (the estimated first dimension[16] score that separates those voting "yea" from those voting "nay")[17] of existing bills to estimate which senators in the counterfactual simulation would support the bill, I will compare bill outcomes from the actual Senate to its counterfactual, attributing the difference in vote tally to apportionment.

First, of course, I must create the counterfactual Senate. Doing so requires two steps: 1) redistributing Senate seats to reflect population and 2) simulating and predicting the parties and ideologies (NOMINATE scores) of these counterfactual senators. I use the House of Representatives' redistribution formula to allocate Senate seats.[18] Each state, regardless of size, will receive one senator and the remaining 50 seats will then be distributed based on state priority numbers.[19] Senate apportionment post-2010 census is shown in figure 3 (prior to this census, Texas and New York had six senators, Colorado one, and Ohio four. The post 2010 seat map takes effect in the 2012 election).

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[15] NOMINATE is an algorithm developed by Keith Poole and Howard Rosenthal that approximates legislator ideology by observing voting patterns across a Congress. Lawmakers that often vote together tend to have similar NOMINATE scores. It operates on a -1 to 1, liberal to conservative scale (the lower the NOMINATE score, the more liberal the legislator; the higher the value, the more conservative. Moderate and centrist lawmakers have NOMINATE scores close to zero). Scores are comparable across time and different Congresses. A handy overview can be found in Everson, Wiseman, and Valelly (included in the works cited).

[16] The first dimension covers the left-right/liberal-conservative spectrum on economic issues. The second dimensions pertains to issues salient during certain time periods (eg, civil rights in the 1960s).

[17] In other words, the NOMINATE cut point is the ideological point that separates the support and opposition coalitions. For instance, a bill introduced by Senate Democrats might have a NOMINATE cut point of 0.243 – that means all senators with scores lower than 0.243 would be expected to vote in favor of the bill and those with NOMINATE values higher than 0.243 would be expected to vote against the bill.

[18] And, like the House, the counterfactual Senate will be reapportioned every ten years following the census.

[19] The formula entails "priority numbers" for each additional seat a state may gain. Basically, it amounts to state population multiplied by $1/\sqrt{n(n-1)}$ where n is a state's marginal seat number. All products are put in a row and then ranked from high to low; in this case, the top 50 priority numbers are awarded a Senate seat.
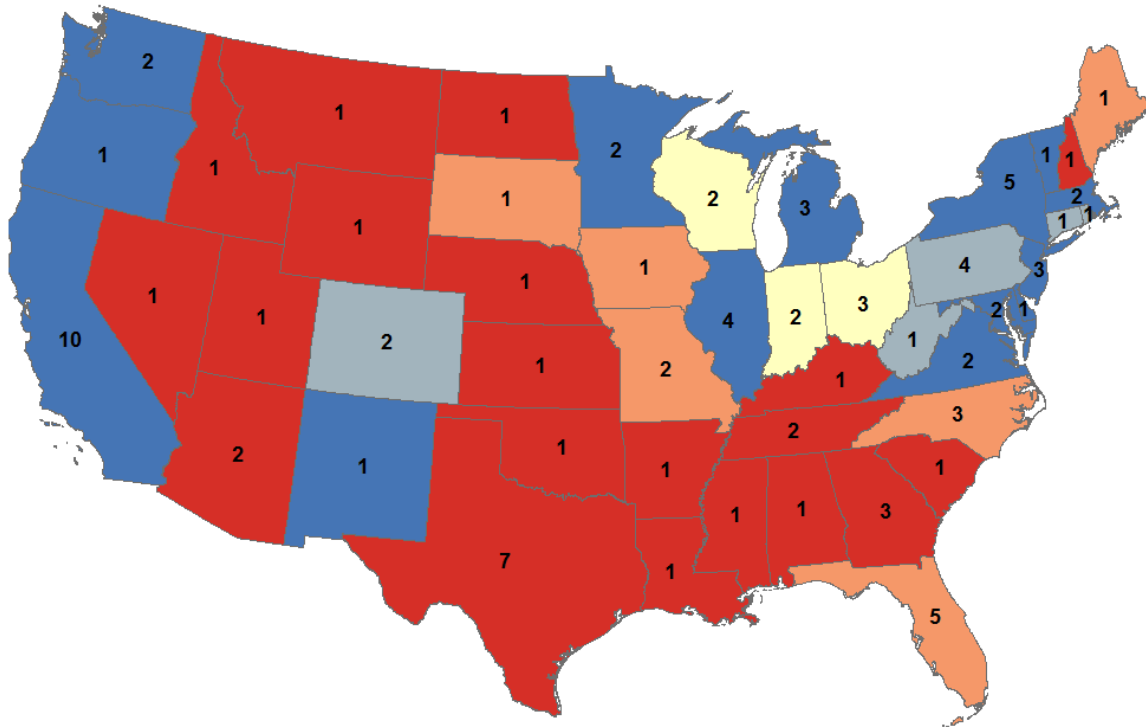
Figure 3: The number in the state indicates how many seats it would have if the Senate were allocated in part by population. The color of the states indicates the predicted partisan-ideological character of the state's delegation (mean DW-NOMINATE score), with red being conservative/Republican and blue indicating liberal/Democrat.

As evidenced by figure 3, apportionment looks dramatically different than that with which we are familiar. A few large states benefit at the expense of a majority: 28 states lose a Senate seat whereas only 11 gain seat. To the victors go magnanimous spoils – California's number of seats rises 500%; it controls one-tenth of the counterfactual chamber. With that tenth could go leadership positions, committee chairmanships, and interest domination (e.g., the California delegation could dominate the Environment and Public Works committee, or another that greatly impacts Californian interests). Regionally, the Great Plains, the Deep South, and New England all suffer. The Rust Belt manages to cling to power, though between the two

censuses its Senate share fell, but no other region becomes empowered. Instead, a handful of states suddenly become dominant players.

This apportionment mechanism nearly creates a truly proportional chamber that ascribes to the basic democratic principle of "one person, one vote." No longer are rotten borough states receiving disproportionate power in the Senate. Representation and its rewards closely follow the people, the ultimate bearers of governing power and consent. Figure 4 shows each state's population share as well as its seat share of the counterfactual Senate.
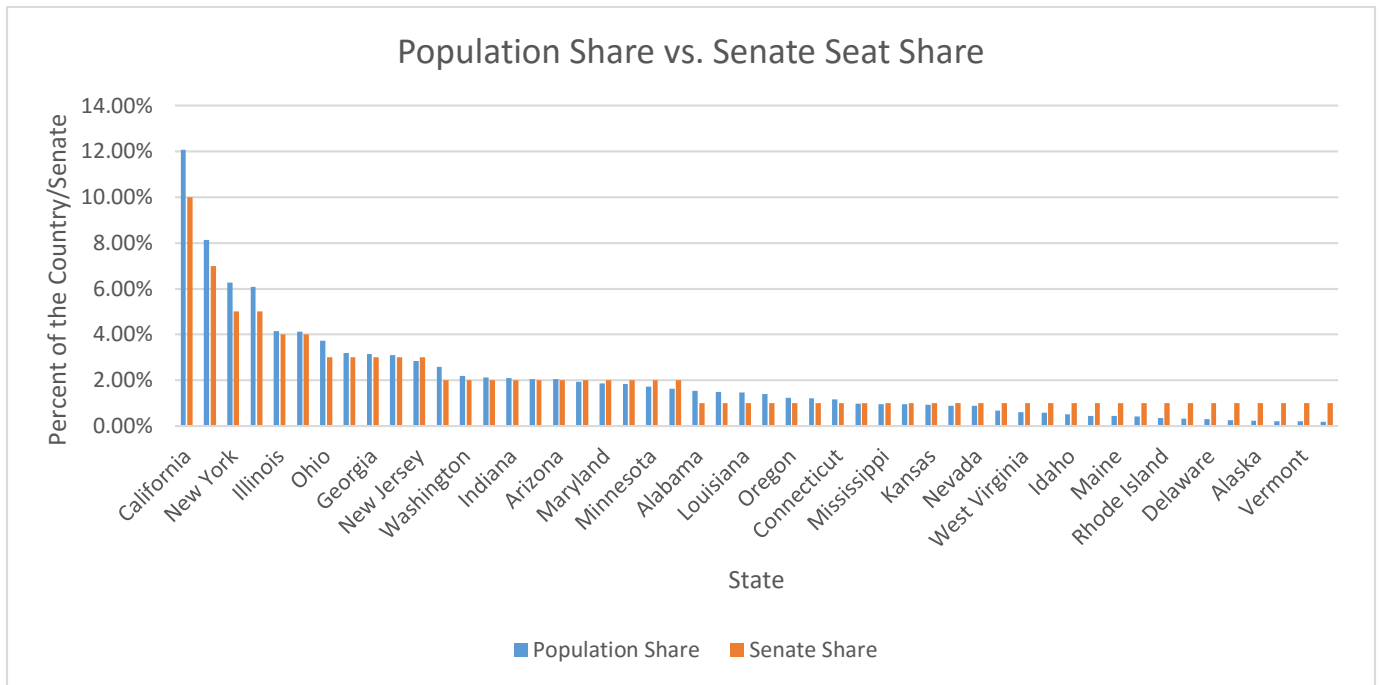
Figure 4: Senate share versus one person, one vote. Full subscription to the latter would result in blue and orange bars being equal.

Though strides have been made, the counterfactual Senate I have created is not a truly proportionate. Very small states like Maine, Delaware, and Vermont each receive a senator despite their population not qualifying them for any (in a 100 person chamber). As such, they remain overrepresented in the Senate, depriving California, Texas, Florida, and New York of true proportionality. Two other proposals are possible: the counterfactual Senate could expand

in size until all states naturally qualify for a senator, or the rules can be altered to eliminate the mandate that each state receive at least one senator. The first proposal is unfeasible as it would swell the Senate to a level that entirely contradicts its original and constitutional purpose (a more exclusive chamber that leverages its small size to deliberate on bills and check the majoritarian temptations and legislation flowing from the House of Representatives). To the second idea, while creating a counterfactual in which states could have zero senators would ensure the chamber truly reflects population masses, it would also turn "one person, one vote" into "half a million people, no vote." Some states would have a 1:1 population to seat share ratio, but Wyoming would have a 563,000:0 ratio, breaking both mathematics and democracy while rendering me a modern-day King George III.[20]

With the seats redistributed, I now turn to assigning counterfactual senator ideology. To estimate each senator's DW-NOMINATE score (i.e., ideology), I first examined the relationship between election-specific variables and NOMINATE scores for the true Senate. The goal was to find a model that closely predicted the ideology and partisan balance of real senators while producing party polarization[21] similar to that observed in the last several years. Achieving those goals would ensure the model's accuracy – in other words, being able to correctly predict the parties and ideologies of the real Senate likely means that the parties and ideologies found for the counterfactual Senate are reasonable and expected (i.e., if the state held a real election for the hypothetical seat, its result – both in terms of party and NOMINATE score – would be similar to

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[20] I have no interest in my counterfactual creations rebelling against me and waging war against my spreadsheets and code. However, it is worth noting that Vermont's junior senator, Bernie Sanders (I), in his quest for the presidency, continuously uses "one person, one vote" to rail against the campaign finance system. Well, as irony would have it, the counterfactual Senate I have created – which approaches "one person, one vote" – eliminates Vermont's second (his) Senate seat. A true "one person, one vote" chamber, unless expanded, would give Vermont all of…zero Senate seats. The violation of Sanders' beloved principle has made his Senate career and presidential candidacy possible.

[21] Which I calculate by finding the difference between the mean NOMINATE scores of the two parties.

the one I simulated). Variables used could not be specific to individual Senate elections (as that would lead to missing data when predicting election outcomes with no real counterpart). Other state-level election indicators (such as votes for the presidential or gubernatorial candidate) could be used as that same election would be held regardless of how many or how few senators a state had up election any a given year.

These restrictions led to one notable problem: without including senatorial party,[22] ideology became difficult to predict with confidence and accuracy. Regardless of which state and national level variables are included in the model, party is an important predictor of senators' NOMINATE scores. Moreover, there is evidence that much of the polarization in Congress reflects differences in how a Democrat versus a Republican would represent the same state or district (McCarty, Poole, and Rosenthal 2009). As a result, including a measure of party is critical. However, since party is unknown for the counterfactual Senate, I must first simulate counterfactual parties and then predict NOMINATE scores using party, state, and national variables.

After distributing counterfactual seats, I simulated each election from 2002 to 2014, inclusive, to predict parties for the counterfactual senators. I compiled a database for each real election in those years, including the winner's NOMINATE score and a variety of indicators used to predict party. I then used a logistic model to regress party outcomes on the independent variables.[23] Table 1 shows the relationship between the variables. The model gave me the odds

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[22] Which cannot be included because for states with more than two senators, there is no real counterpart to those counterfactual senators. While that might not make a big difference in some states (in California, for instance, it could be reasonably assumed that the victors of any addition Senate elections would be Democrats), for swing states like Florida, no assumptions about senatorial party can be made. Therefore, the party of all counterfactual senators must be simulated.

[23] The independent variables are: State partisan voter index (from the Cook Political Report), Democratic vote share from the each state's House of Representatives election, a dummy variable for midterm (1 for midterm, 0 for

that each election would result in a Democratic victor. I then used these probabilities to assign

partisanship – probabilities of 0.50 and above went Democrat and the rest, Republican. To verify

the model's accuracy, I simulated the actual Senate elections from 2002 through 2014 to see

whether it could reliably predict counterfactual parties.

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a presidential year), top-of-the-ticket party (1 for Democratic), top-of-ticket Democratic vote share, general election voting age population turnout, state percent minority, state GDP per capita, policy mood from [SOURCE] (a 0-100 scale with higher values associated with general proclivity to liberal policies), Democratic party net favorability, Republican party net favorability, each state's Democratic Senate delegation at the time of the election, dummy variables for regions

Table 1: Logistic Regression to Determine Party (standard error in parentheses)

Variable:	Party (1 = Democrat)
Democratic President (1 = Yes)	0.68
	(-1.57)
Midterm Election	0.13
	(-1.83)
Democratic Congressional Vote Share	-4.87
	(-3.58)
Top-of-the-Ticket Party (1 = Democrat)	-0.68
	(-0.84)
Turnout	1.22
	(-6.6)
State Percent Minority	-3.7
	(-4.06)
State GDP	0
	0
Policy Mood	0.22
	(-0.32)
Net Democratic Favorability	0.06
	(-0.07)
Net Republican Favorability	-0.08*
	(-0.05)
Democratic Senate Delegation	1.94***
	(-0.55)
State Partisan Voter Index	-0.26***
	(-0.09)
Midwest	-3.74***
	(-1.86)
Northeast	-4.15***
	(-2.06)
Pacific	-0.76
	(-2.29)
Great Plains	-1.93
	(-2.04)
Rockies	-1.46
	(-1.89)
South	-3.31*
	(-1.87)
Southwest	-2.37
	(-2.56)
Democratic President*Midterm	-2.22
	(-2.17)
Constant	-17.3
	(-21.26)
Observations	240
Log Likelihood	-52.72
Akaike Inf. Crit.	149.45
Note:	*p<0.1; **p<0.05; ***p<0.01

Before assessing the counterfactual Senate, it is important to note how well this approach works to uncover the true partisanship of the Senate. Though fairly accurate, the model did not predict every election correctly. It tended to miss one to five races in each cycle. These races often involved a "transitioning" state; that is, a state becoming increasingly Republican (as with some marginal Southern states – Arkansas, Missouri, and West Virginia, for instance) or Democratic (like Colorado and Minnesota). Other incorrect predictions stemmed from state characteristics that decidedly point to one party, though a senator of the opposite party emerged victorious. This, in some cases, might be candidate-specific. A long-standing incumbent may be from the "incorrect" party but could still win through incumbency advantage and home-styling (Fenno 1978). Other candidates may have made faux pas on the campaign trail[24] or simply not have connected with the voters. These latter traits are very difficult to quantify and include in predictions. Incumbency could be controlled, but cannot be applied to counterfactual predictions because there is no real data from which to determine who is an incumbent versus challenger, which counterfactual senators run for reelection, etc. Some errors will therefore always remain. Happily, the errors made tended to balance out. The model incorrectly predicted roughly the same number of Democrats as it did Republicans so that taking into account all 230+ races, the model biased Democrats by a net of one seat. In other words, the model is, at the aggregate, quite accurate.

I ran 1000 simulations for each counterfactual race to determine the senators' parties. For each simulation, I drew a sample of data from the full dataset of true senators (with replacement), regressed the sample data, and then set the values of each variable in the

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[24] Such as Todd Akin and his "legitimate rape" comment. A variable for gaffes could have been included but would entail too much work to study each election in search of verbal faux pas that changed the race's trajectory.

regression to those of a particular state and year to predict the likelihood of a Democratic victor. The mean predicted probability of the senator being a Democrat across the 1000 simulations was then used to assign partisanship. All the variables in the initial model came from real data (i.e., the true Senate). As mentioned above, a mean probability greater than or equal to 0.50 resulted in a Democratic victory and any probability lower led to a Republican seat. Attaining counterfactual parties greatly facilitated the process of predicting counterfactual NOMINATE scores.

With the parties determined, I used a second, linear model to predict NOMINATE scores. Here, too, I regressed real NOMINATE values with real election indicators, using those relationships to predict counterfactual ideologies.[25] Again, I bootstrapped 1000 simulations of the model and based my analysis on the mean prediction for each Senate seat. The regression output is shown in table 2. All counterfactual independent variables used real data (i.e., real top-of-the-ticket Democratic vote share, turnout, etc.); the only data without a real counterpart is that which I'm predicting – counterfactual ideology. As party is the strongest predictor of ideology, using the logistic model to first find each counterfactual senator's party made the ideological results accurate. I back tested the linear model on real Senate NOMINATE scores and the results, again, found my model to be true: party polarization stood roughly equal between the real Senate and my predicted NOMINATE values for it. This lends further confidence to my model and hints that its counterfactual ideologies are reasonable and accurate.
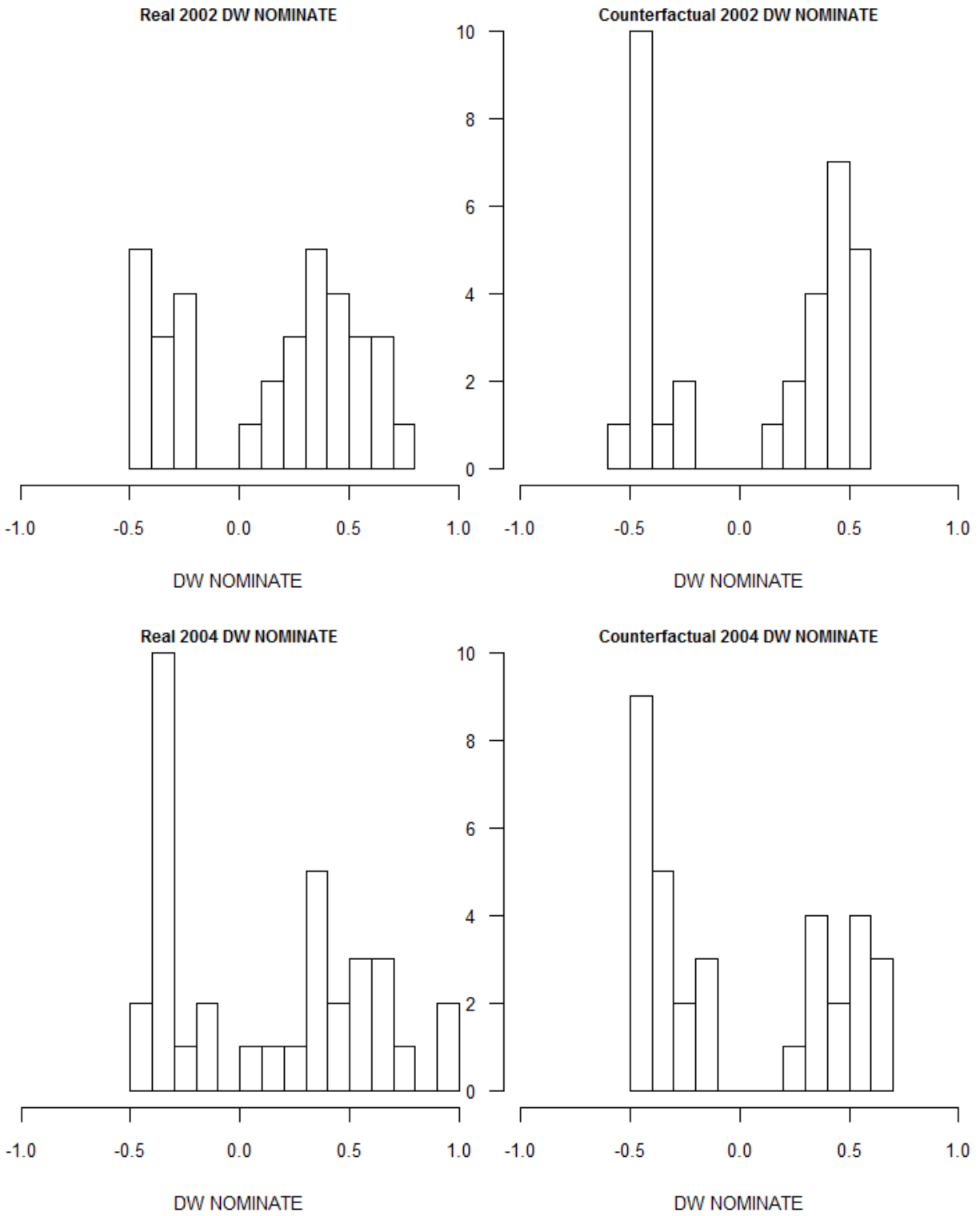
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[25] I used the same dependent variables as when predicting party, excepting Democratic Senate delegation and net Republican favorability (as doing so yielded more accurate results than when the two were included in the model).
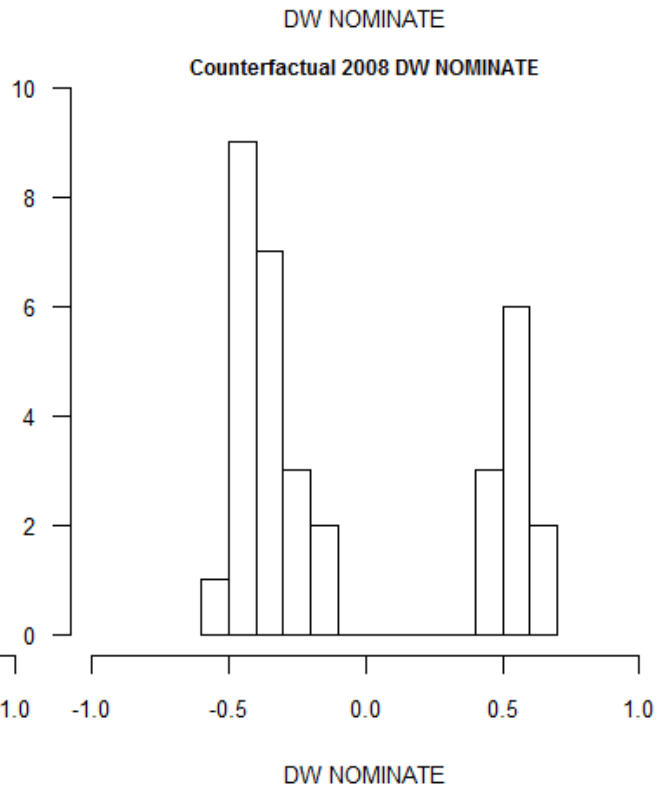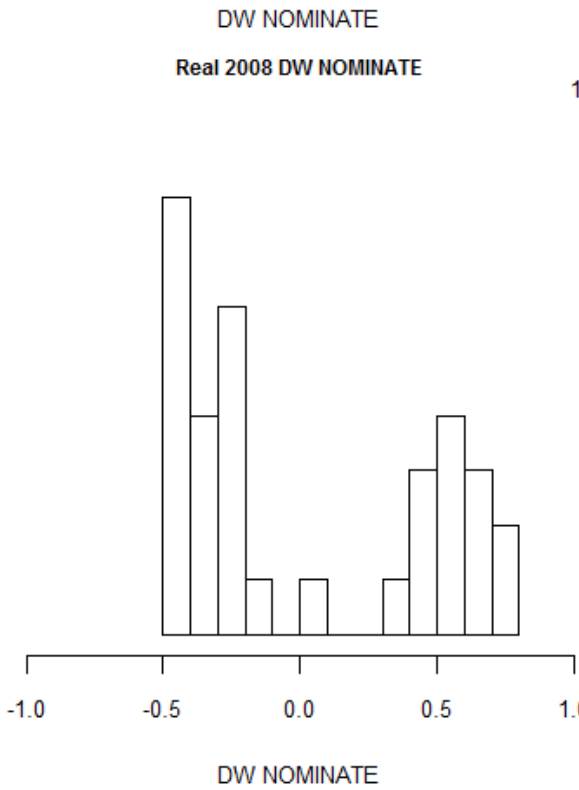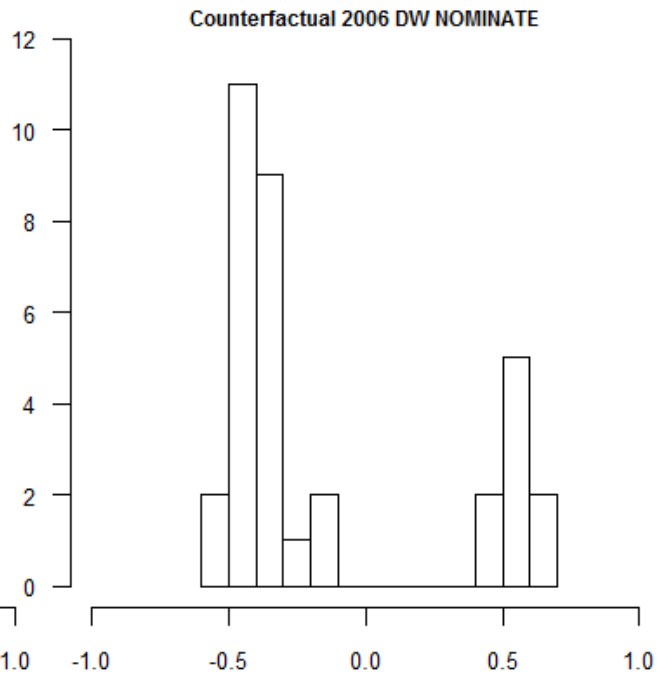
Table 2: Predicting Ideology (standard errors in parentheses)

Variable:	NOMINATE Score
Democratic President	0.04
	(-0.06)
Midterm	0.02
	(-0.05)
Party	-0.73***
	(-0.02)
Democratic Congressional Vote Share	-0.2
	(-0.12)
Top-of-the-Ticket Party (1 = Democrat)	-0.03
	(-0.03)
Top-of-the-Ticket Democratic Vote Share	0.04
	(-0.16)
Turnout	0.09
	(-0.18)
State Percent Minority	-0.09
	(-0.11)
State GDP Per Capita	0
	0
Policy Mood	0.02**
	(-0.01)
Net Democratic Favorability	-0.003
	(-0.002)
State Partisan Voter Index	0.01**
	(-0.002)
Midwest	-0.06
	(-0.04)
Northeast	-0.09**
	(-0.04)
Pacific	-0.08*
	(-0.04)
Great Plains	-0.002
	(-0.05)
Rockies	0.07
	(-0.04)
South	0.07
	(-0.04)
Southwest	0.07
	(-0.06)
Democratic President*Midterm	0.03
	(-0.06)
Constant	-0.75
	(-0.55)

Observations	240
R2	0.94
Adjusted R2	0.93
Residual Std. Error	0.12 (df = 219)
F Statistic	158.14*** (df = 20; 219)
Note:	*p<0.1; **p<0.05; ***p<0.01

To divvy up three classes of counterfactual senators, I largely followed the current class system. All one senator states hold counterfactual elections on years when the state held a real election. States with more than three senators have at least one election per year but not more than one-third plus one of their total seats. Decennial reapportionment takes place after the 2010 election and first effects the 2012 election. At that point, Texas and Colorado gain seats while Ohio and New York each lose one – each seat is phased in/out during the 2012 election so no terms are truncated. Each year's real election and corresponding counterfactual simulation is shown in figure 5. Senate totals are shown in figure 6. Full results from each counterfactual election can be found in the appendix.

Figure 5: The following graphs show histograms of real and counterfactual senator ideologies. Bars with a DW-NOMINATE score below zero show Democrats and those with DW-NOMINATE values above zero show Republicans. Note that for each year, the counterfactual Senate fails to simulate moderate senators – it tends, by and large, to inflate the number of senators at the ideological poles.

Real 2006 DW NOMINATE

Counterfactual 2006 DW NOMINATE

Real 2008 DW NOMINATE

Counterfactual 2008 DW NOMINATE

Real 2014 DW NOMINATE   **Counterfactual 2014 DW NOMINATE**

DW NOMINATE   DW NOMINATE
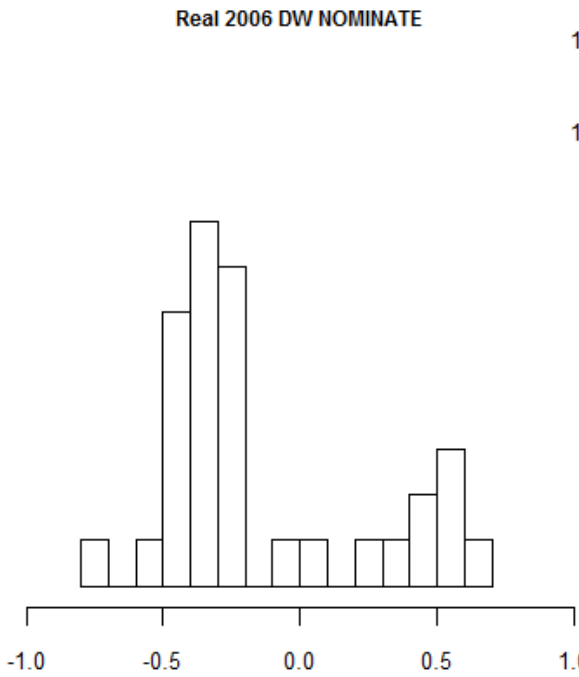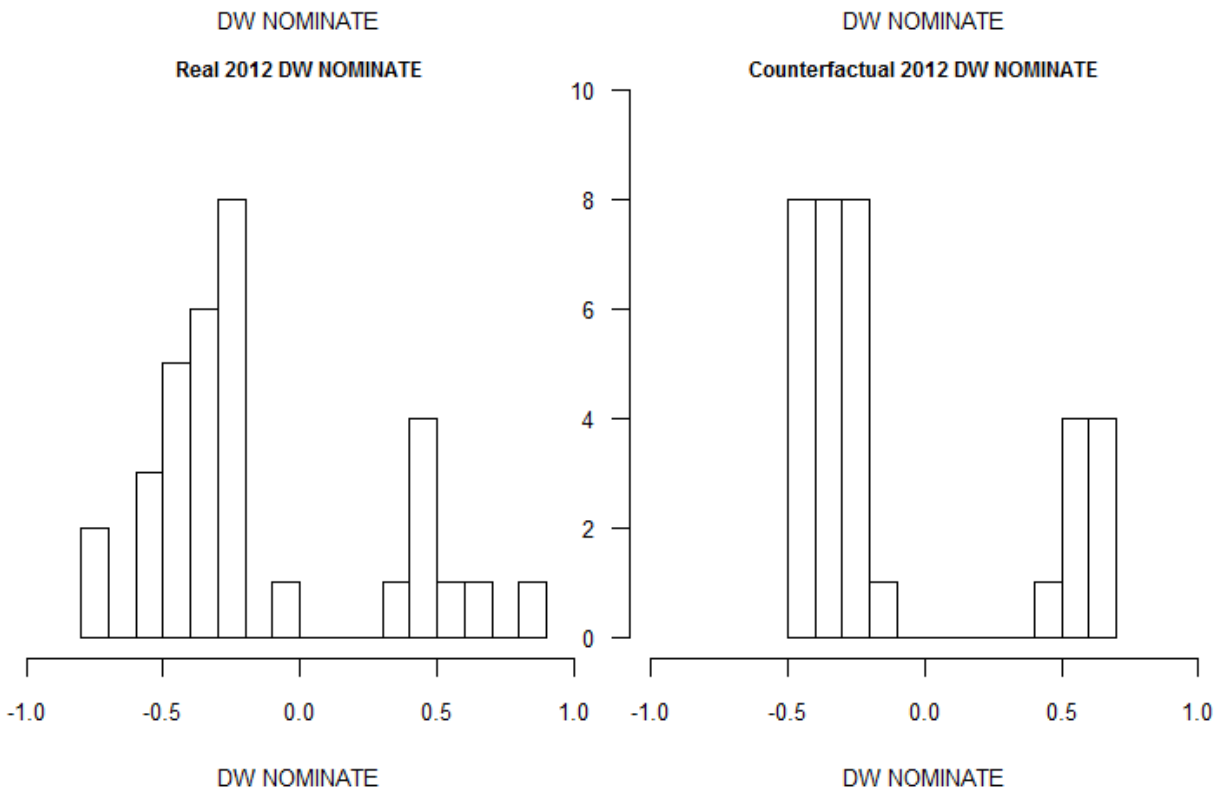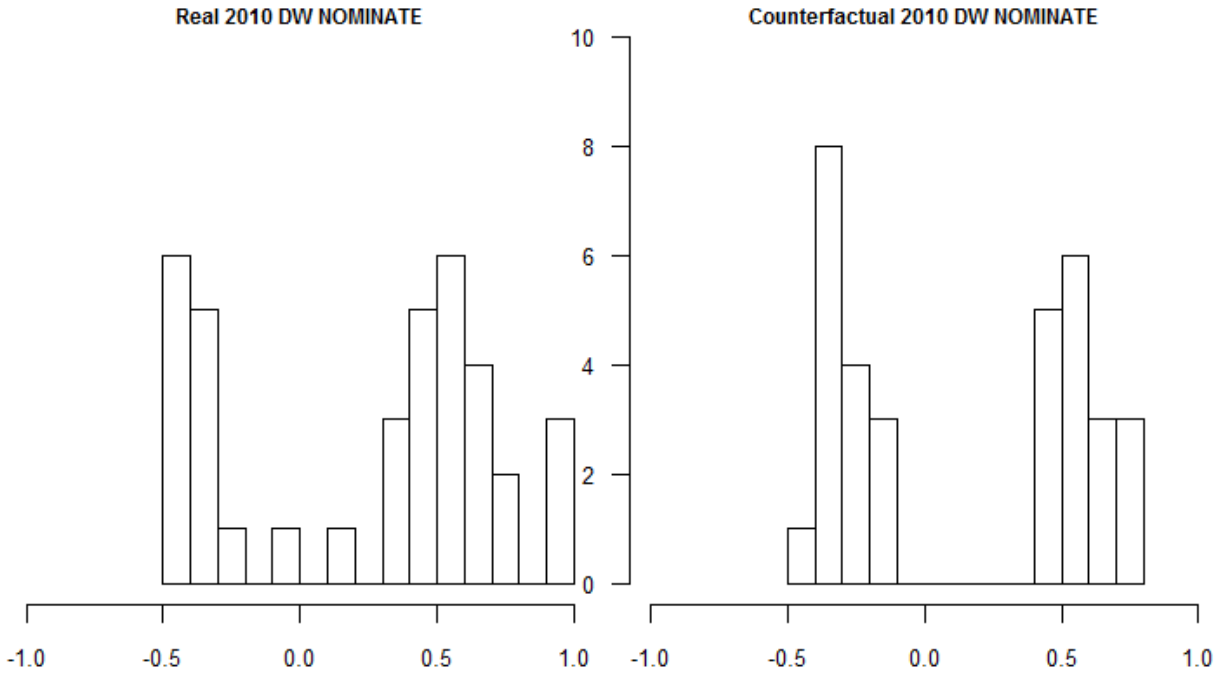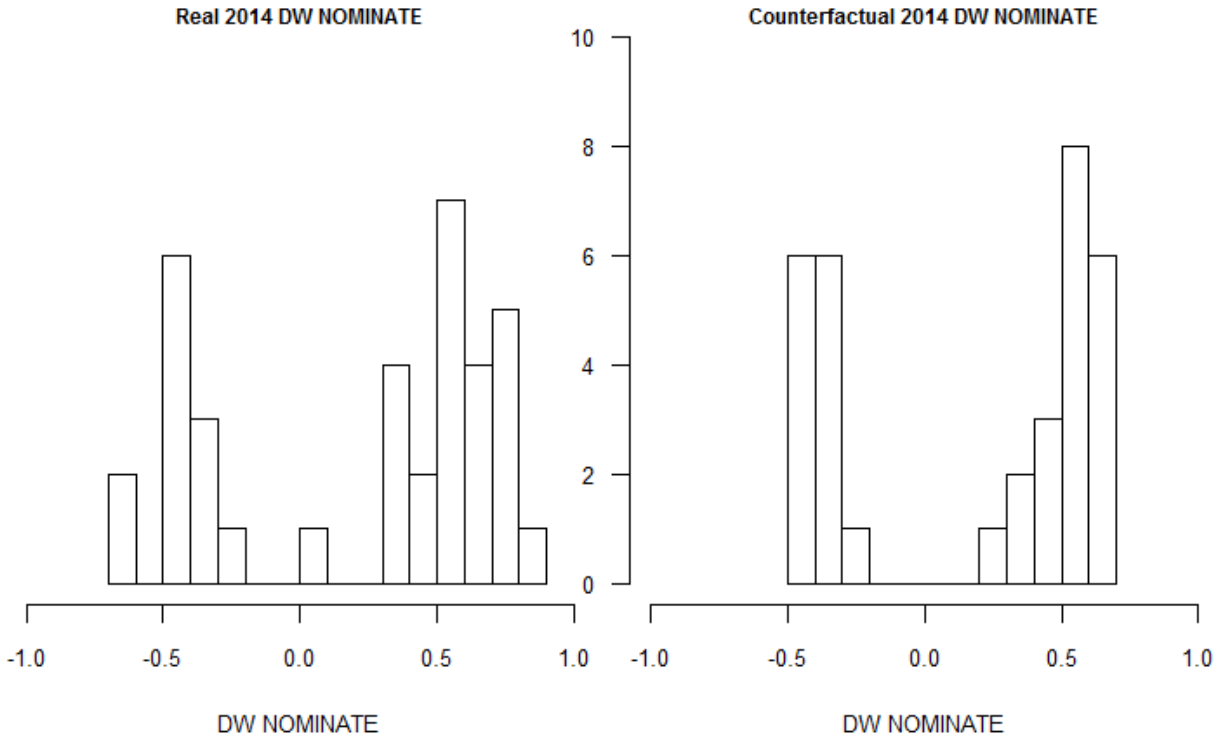
Notably, whereas the real Senate contains some moderates (fewer every election), the counterfactual does not contain any. These simulated senators are pushed away from the ideological center and towards fairly liberal/conservative territory. The model also fails to predict the far-left and far-right senators – there are no simulated counterparts to Elizabeth Warren and Ted Cruz. Polarization between the real and counterfactual Senates, therefore, remains the same: since I measure party polarization as the difference between the mean ideologies of the two parties, the real Senate's moderates and extremes average out to party means to those of the counterfactual chamber. Failing to account for the centrists does have ramifications for my analysis (which I explain in depth later). A lack of moderate senators results in few counterfactual bipartisan coalitions – most NOMINATE cut points I examine are close to, but not exactly, 0.000.[26] While this likely understates the bipartisanship of the

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[26] So any senator crossing party lines would need to have a NOMINATE score close to 0.000 (ie, a bill with a NOMINATE cut point of 0.089 would attract Republican senators with NOMINATE scores under that; those senators do not exist in the counterfactual. As such, a bill could have a NOMINATE cut point in the conservative

counterfactual Senate, it does not change results. For six years, the Democratic majority required no crossover votes to override a filibuster; in the last Senate (the 114th), the majority stood small enough that it would require more than just centrist Republicans to invoke cloture (with a 54 seat majority, it would require six crossover votes – even in the real Senate, there are not six centrist Republicans). Furthermore, as the number of moderate senators on both sides of the aisle declines, their exclusion from the counterfactual ever more closely mirrors reality. Not simulating the extreme senators does not affect the study as the only bills with cut points close to -1 or 1 are those already attaining 80+ votes (and so an additional vote is meaningless to the overall tally and characterization of the bill as "bipartisan").[27]

Figure 6: Real versus counterfactual Senate party composition.

	111th	112th	113th	114th
Democrats	60	53	55	46
Republicans	40	47	45	54

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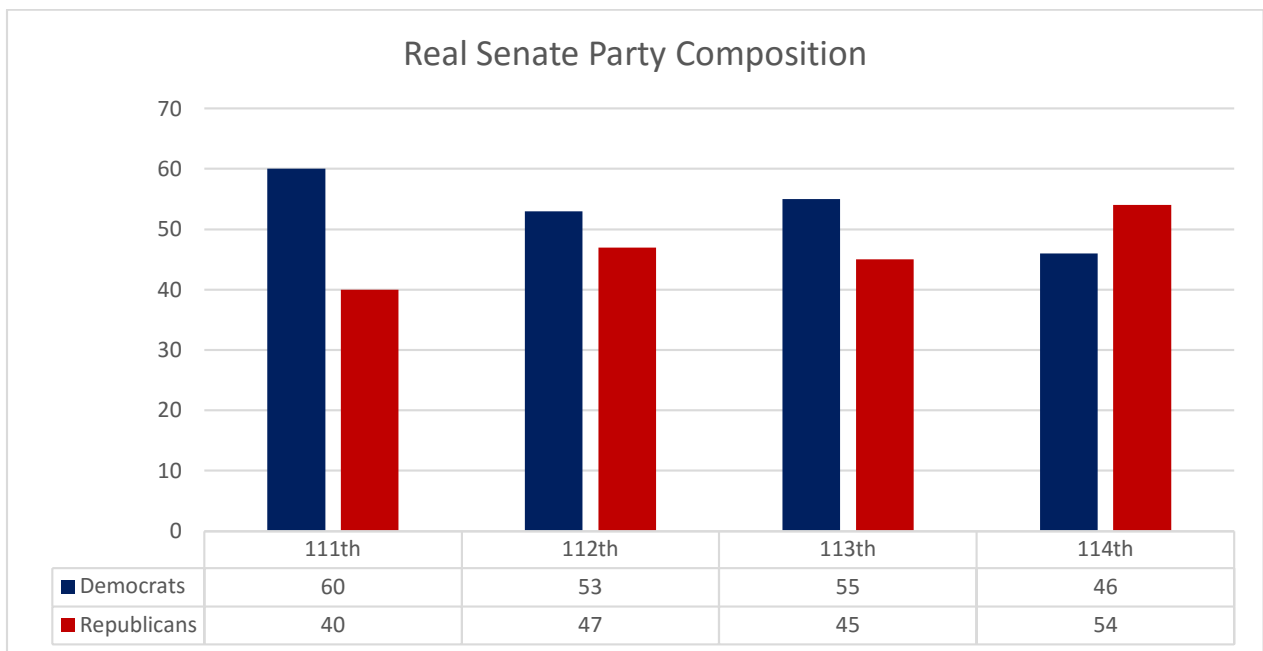
end of the spectrum but attract no counterfactual Republican senators though it would have attracted some in the real Senate).

[27] When assessing bills in the counterfactual Senate, I assume that no member would vote against a bill in protest of it not going far enough to address a perceived problem.

Counterfactual Senate Party Composition

	111th	112th	113th	114th
Democrats	66	63	63	54
Republicans	34	37	37	46
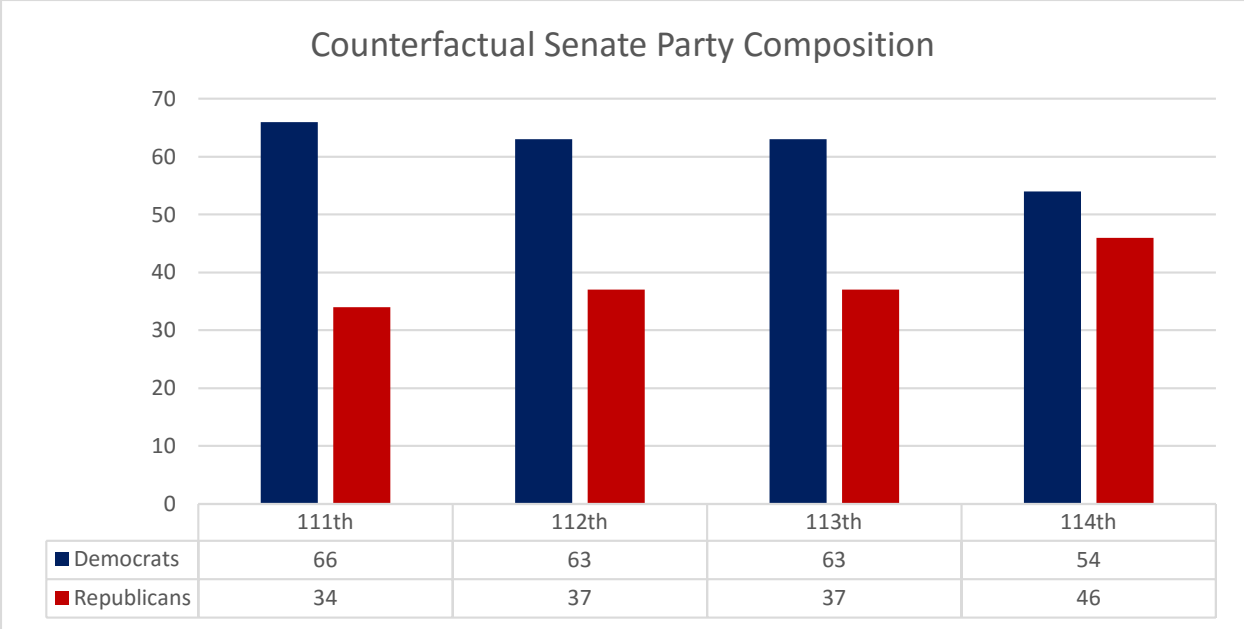
As hypothesized, the counterfactual Senate, which grants urban, populous states additional seats in the Senate at the expense of small, rural states, benefits Democrats. In 2002, the Democrats won 14 seats to 19 for the Republicans; in 2004, Democrats took 19 and Republicans, 14. Two years later, counterfactual Democrats won 25 of 34 seats. The 2008 election saw another 22 Senate seats go blue. In 2010, 2012, and 2014, Democrats won 16 (of 33), 25 (of 34), and 13 (of 33), respectively. Unsurprisingly, these trends generally follow those of the real Senate elections. As a result, the Democratic Party wields strong supermajorities that could withstand Republican filibusters in six of the eight years studied, ensuring that Senate Democrats would have ample opportunity to pursue their agenda. With ideologies assigned, I identified a number of bills from the 111th through the 114th Senates to analyze with the counterfactual Senate.

Bills picked represent major pieces of legislation or components of the majority party's agenda – they signify importance endeavors undertaken by Senate Democrats, and, in the 114th

Senate, the Republican majority. These bills often received ample media attention and attracted the public's interest, no easy feat for the legislative process. The significance of these bills result in rich legislative histories which I will parse. Moreover, the bills had clear partisan and ideological divisions that shaped voting outcomes. As such, divergent results – both vote and content wise – between the real and counterfactual chambers can be directly attributed to Senate apportionment and its ability to change the party and ideological composition of the body.
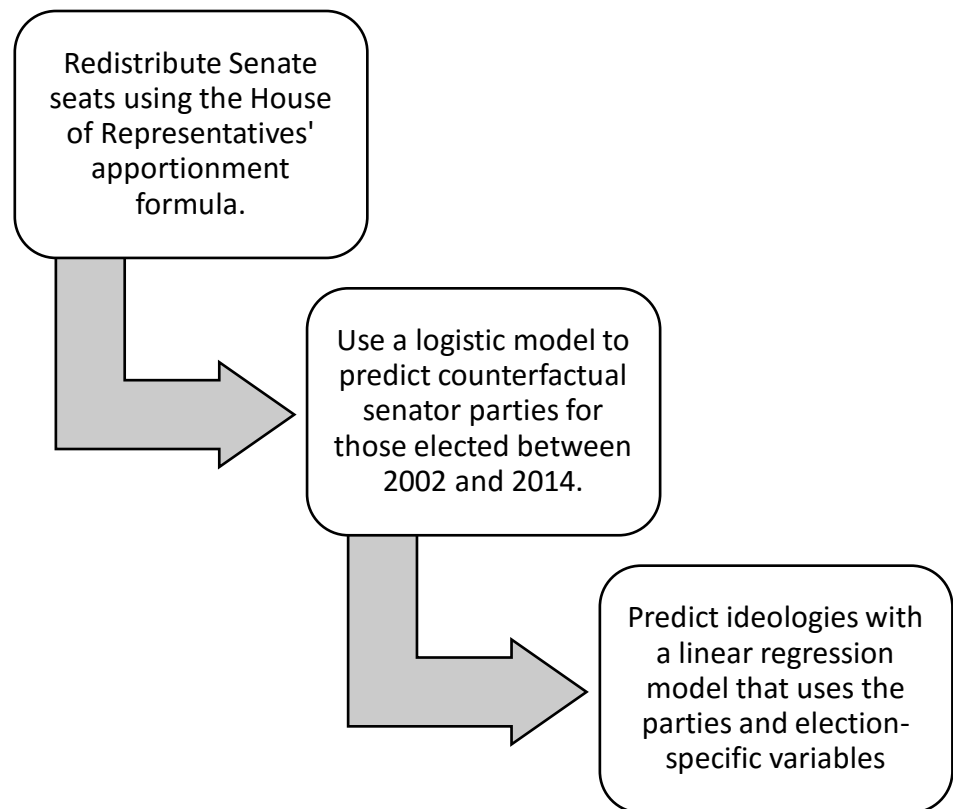
Each Senate roll call vote, from the very first Congress through the first term of the 114th, has a NOMINATE cut point that approximates the ideological location that separates "yea" from "nay" votes (Carroll, Lewis, Lo, McCarty, Poole, and Rosenthal 2016). Though highly accurate, the measure is not perfect. Its first dimension cut points analyze the votes from an economic perspective. With the collapse of the two parties onto the left-right economic spectrum, the first dimension cut point has become increasingly accurate and, in general, correctly predicts more than 90 percent of senator votes. The most notable instances in which the cut point might fail to predict votes are cases where vulnerable senators abandon their party and thus vote in a manner more reflective of their upcoming electorate[28] or on bills that go beyond simple economic coalitions.[29] That said, the cut point values have incredible explanative power and aptly capture the ideological split between votes on certain bills. I will apply the NOMINATE cut points from a small sample of key roll call votes from the 111th through 114th actual Senates to those

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[28] For instance, Senator Mark Kirk (R-IL) has increasingly voted with the Democratic Party on major issues, like defunding Planned Parenthood and repealing the Affordable Care Act, likely because he faces a tough 2016 reelection in a blue state during a presidential cycle.

[29] This might entail cases of the second dimensions, including issues such as race and gay rights (like non-employment discrimination or discrimination in public services). For the latter, these issues largely involve coalitions defined by party, but, increasingly, Republicans have been swayed toward the traditionally "liberal" position, resulting in coalitions that could not predicted solely on NOMINATE's first dimension. Other instances might include energy bills that benefit a particular region – such as the Keystone XL pipeline – that naturally incentivize Democratic senators to break ranks and vote in a manner not predicted by their first-dimension NOMINATE score.

counterfactual Senates to see if and how majority coalitions would have changed. From there,

using Riker's theory of minimal winning coalitions (1962), I will determine whether bills could

have moved in a more liberal direction and, if so, extrapolate the implications for public policy.

Figure 7 briefly summarizes the research method and the next sections delve into the extent to

which the counterfactual Senate changes policy outcomes from the 111th through the 114th

Senates.

Figure 7: An overview of the research method

Redistribute Senate
seats using the House
of Representatives'
apportionment
formula.

Use a logistic model to
predict counterfactual
senator parties for
those elected between
2002 and 2014.

Predict ideologies with
a linear regression
model that uses the
parties and election-
specific variables

111th Senate

The 111th Senate took its seat following the 2008 election. As the country plunged into recession, plagued by rising unemployment and lost income, voters opted for the Democratic Party. Barack Obama swept to the highest office with 365 electoral votes and a 7.2 point popular vote victory. He won traditionally red states[30] like Indiana, Virginia, and North Carolina and flipped swing states Nevada, Colorado, Florida, Ohio, and New Hampshire. In ascending to the presidency, Obama carried with him a legion of new Democratic senators and the audacious hope of a resurgent liberal movement. And with 60 Democratic senators[31] and 256 House members, the dreams of Democratic forefathers suddenly seemed within reach.

Obama and fellow Democrats arguably pursued the most ambitious domestic policy agenda since Lyndon B. Johnson's Great Society program. They sought a healthcare overhaul, a large stimulus package to pull the country from the recession's dredges, and Wall Street reform. An apparent mandate[32] and filibuster proof majority seemed to make these goals possible, though tensions within the Democratic caucus provided challenges for party leadership. Regardless, up through the Massachusetts special election to fill Senator Ted Kennedy's seat after his passing (which Senator Scott Brown, a Republican, won), the Democrats had the votes to enact legislation notwithstanding Republican filibusters and attempted obstruction. The remainder of this section, as well as its successors, track the path key pieces of legislation took as they navigated committees, appealed to marginal Democrats or other pivotal senators, and

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[30] As well as the all-important Nebraskan second congressional district and its one electoral vote (Nebraska and Maine allocate electoral votes based on district winner and statewide vote victor).

[31] Well, 58, but the two independents (Senators Bernie Sanders (I-VT) and Joe Lieberman (I-CT)) caucused with the Democrats.

[32] At least a proclaimed mandate.

ultimately arrived on the Senate floor for a vote. I will then use the aforementioned cut point method to examine the bills and their counterfactual history.

Patient Protection and Affordable Care Act

The cornerstone of Obama's first term agenda and his presidential legacy, the Patient Protection and Affordable Care Act (ACA) entailed months of debate, policy posturing, bill editing, and rhetorical mudslinging before the House and Senate finally managed, through parliamentary tactics, to send the bill's final version[33] to the White House. Divisions within the Democratic caucus ensured that the bill would see no smooth sailing but instead would necessitate the steady-handed guidance of then-Majority Leader Harry Reid (D-NV) and then-Speaker of the House Nancy Pelosi (D-CA) to navigate the stormy legislative waters. Senatorial mutiny spawned by the raging tempest claimed many casualties. Most notably, the public option – the bill's most precious, liberal cargo[34] – saw itself tossed overboard to the waiting sharks in an effort to keep the wounded bill afloat.

Democrats in the Senate Finance Committee rang the public option's first death knell.[35] Though they had a 13-10 committee majority, the Rockefeller amendment – which would have attached a public option to the committee's healthcare bill – failed 8 to 15 with five Democrats joining the ten opposing Republicans (Young 2009). Never one for defeat and always the adroit, tactical politician, Reid, in October of 2009, announced a plan to include the public option (with an opt-out provision) in the ACA. The provision would have allowed states to choose whether to offer the public option and, politically, sought to attract conservative Democrats Blanche Lincoln

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[33] Clunky, poorly written, and in dire need of editing final version that encouraged lawsuits, notably one (*King v. Burwell*) whose entire grounds rested on the sloppy word choice of sleep-deprived congressional aides

[34] Which would designed a government healthcare plan to directly compete with private offerings

[35] And therefore never send to know for whom the bell tolls, it tolls for the public option.

(D-AR), Mary Landrieu (D-LA), and Ben Nelson (D-NE) (Bash 2009). Reid needed complete Democratic unity to thwart a Republican filibuster – all 60 Democrats would have to vote to invoke cloture – as attempts to appeal to moderate Republicans like Olympia Snowe (R-ME), who voted to send the ACA out of committee, ultimately came up short due to partisan pressures and dislike for the public option, even in opt-out form. Nelson and Landrieu, leveraging their pivotal positions, sought "pork" from Reid, ultimately resulting in the "Cornhusker Kickback" and "Louisiana Purchase" which directed federal funds to their home states (Frates 2009).

Though Reid appeared to successfully batten down Nelson and Landrieu's support, a new problem soon arose: Joe Lieberman (I-CT). Lieberman threatened to abandon the Democratic caucus and join the Republican filibuster. A Democrat turned Independent who campaigned for and flirted with becoming the running mate of John McCain in 2008 despite being Al Gore's 2000 vice-presidential selection and whom allegedly begrudged Democrats for their challenging him in his 2006 Senate reelection bid (Kurtz 2012), Lieberman had supported healthcare reform in the past, but now stood firmly in opposition. Even assuming the support of moderate Democrats – none of whom specifically endorsed the public option – with Lieberman bound to support a Republican filibuster, Reid stood at least one vote shy of the 60 needed to invoke cloture. In effect, Lieberman's opposition ensured the public option's ultimate death (Klein 2009). Reid, much to his and Democrat leadership's chagrin, dropped the public option. Legislatives proceedings then took haste. On December 24, the Senate passed the ACA by a 60-39 vote along party lines. The House, at this time the more liberal of the two chambers, passed a different bill – one which included the public option – meaning that the ACA's saga would continue as the two chambers met in reconciliation.

Unfortunately for the Democrats, they lost their 60 vote majority in January with Republican Scott Brown's Massachusetts special election victory.[36] Reconciliation had given hope to the renewal of the public option, its dream once again brought back from the dead. After all, the House passed the provision and President Obama vocally supported the plan. Losing Kennedy's seat meant that Democrats were at least a vote short of overcoming a Republican filibuster even if they were able to enforce caucus unity. With the Senate still in need of passing the reconciled version of the ACA, losing Kennedy's seat and the filibuster pivot threatened the future of the bill (san public option).

Reid opted to use parliamentary procedures to pass the reconciled healthcare bill by attaching it to a budget bill. Though some senators, including Bernie Sanders (I-VT), claimed to have the 50 votes needed to pass the public option through the same parliamentary tactic – only 50 votes were needed as Vice President Joe Biden would be the tie-breaking 51st – there was no evidence to support such claims (Fabian 2010). Such parliamentary gimmicks can be politically toxic if framed as a party thwarting the will of the (super) majority[37] and evading opposition. Some moderate Democrats may not have been willing to support the contentious public option in a roundabout manner, therein handing Republican challengers powerful television ads to run come reelection. Amending the ACA to include the public option was not possible because the addendum would not have been germane to the budget bill (necessary when using such

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[36] Losing the iconic liberal Senator's seat took many by surprise. Massachusetts, after all, stood as a deep-blue state. Blame for the loss laid manifold. In the book "Confidence Men," Ron Suskind slammed Obama for not actively campaigning in Massachusetts to ensure Democrats kept a 60 seat majority. It seems likely that both Obama and the Democratic Party underestimated the liberal backlash quickly sweeping throughout the country. The election can be seen as a precursor to the Republican resurgence that November.
[37] Ironic because the parliamentary procedure still necessitates a bill receive a majority of the chamber to pass (50 or 51 votes versus 60 to override a filibuster) and so does not entirely "thwart the will of the majority."

parliamentary procedures). And so the ACA finally passed Congress and was signed into law

without the public option, which was retired, once and for, all to the legislative graveyard.

Through the counterfactual Senate, though, the Affordable Care Act and public option

take a different legislative course. The March 25 ACA reconciliation vote, in which 56

Democrats voted in favor of the ACA, sending it to the president,[38] had a NOMINATE cut point

of -0.145.[39] In other words, senators whose NOMINATE scores stood more negative than -

0.145 voted for the bill and those with NOMINATE scores greater than -0.145 voted against the

bill. In the counterfactual Senate, applying the same cut point would result in a 66-34 vote in

favor of the ACA. All counterfactual Democrats would vote in favor of the healthcare overhaul

(and all Republicans against). With six votes to spare, no rogue senator could hijack policy

proceedings or kill certain elements of the legislation. Leadership likely would not need to buy

votes because multiple could be lost without derailing the legislation (and that's just to overcome

a filibuster – for the reconciliation backstop, leadership would have had even more wiggle

room).

The counterfactual Senate would likely allow leadership to push a more liberal ACA bill

through the Senate than the one ultimately enacted. Using Riker's theory of minimal winning

coalitions (1962) – the idea that legislative drivers will seek the smallest coalition necessary to

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[38] The final vote was 56-43 with three Democrats voting with the Republican caucus in opposition. Since Reid usually parliamentary procedures to tack the ACA to the budget, the bill could not be filibustered and 56 "yea" votes could pass the act.

[39] The Obamacare reconciliation vote had a different NOMINATE cut point than did the original December 24th ACA vote (whose tally stood at 60-39). Since the first vote involved a Republican filibuster, the Democrats needed 60 votes to advance the legislation. As such, Reid and other Democratic leaders spent political capital whipping votes, demonstrated by the aforementioned "Cornhusker Kickback" and "Louisiana Purchase," to win marginal senators. The reconciliation vote did not need unity in the Democratic caucus and thus required less whipping – the "Cornhusker Kickback" and "Louisiana Purchase" were both dropped from the bill. I will use the reconciliation cut point because it seems more indicative of actual ideal points and ideological coalitions than the first ACA vote because, in the final vote, marginal Democrats faced less party pressure to vote with the caucus (ie, they could vote in line with their ideal point rather than that of the party).

guarantee success in order to maintain the ideological purity of a bill – the ACA could move to the left while still retaining supermajority support. That would likely mean the addition of the public option. As mentioned before, the Senate Finance Committee voted against the Rockefeller Amendment that would have added the public option to the ACA. That same day, the Committee voted against an amendment by Senator Charles Schumer (D-NY) that would have achieved the same. The latter vote count was 10-13 with three Democrats – Senators Max Baucus (D-MT, the committee's chairman), Kent Conrad (D-ND), and Blanche Lincoln (D-AK) – voting against the provision. Baucus claimed his vote stemmed from a belief that the public option would not attain 60 votes on the Senate's floor. Only Conrad and Lincoln, then, voted against the public option on ideological grounds.

Conrad's NOMINATE score stood at -0.301 and Lincoln's at -0.162; Senators Tom Carper (D-DE) and Bill Nelson (D-FL), who voted against the Rockefeller public option amendment[40] but for Schumer's, had NOMINATE scores of -0.244 and -0.264, respectively. Moreover, after the votes, Carper told the Huffington Post that he was "almost agnostic on the public option" and sought to increase competition (Grim 2009). It can be deduced, then, that the cut point for the public option stood between -0.244 (Carper's ideology, a rough indifference point) and -0.162 (Lincoln's ideology and the most conservative Democrat voting against the public option; this leaves Conrad's vote as either an outlier or a decision made for other reasons, perhaps electoral considering Conrad hailed from a deep-red state). Assuming a -0.244 cut point, 56 counterfactual senators would vote in favor of the public option. A cut point of -0.203 (the average of Lincoln and Carper's ideology) would lead us to predict 60 counterfactual senators voting for the bill. Both cut points would allow the public option to leave committee

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[40] Whose provisions were more liberal than those of the Schumer amendment, so less support was expected.

attached to the ACA. If the public option had a -0.203 cut point, it would have survived a filibuster. If -0.244, counterfactual Democratic leadership could have used the same parliamentary tactic as the real Senate to pass the public option. Regardless of path, both cut points leave the public option not only viable, but a likely – even probable – legislative inclusion. Moreover, with between 56 and 60 percent of the chamber voting in favor of the public option, the Senate would have matched public thinking: in June of 2009, most polls found support for the public option standing above 60 percent (Silver 2009). Its addition would have furthered the Democrat's liberal agenda and would have mirrored public thinking (Silver 2009).

American Recovery and Reinvestment Act of 2009 (the Stimulus)

With the country riddled in recession and unemployment quickly rising, President-elect Obama broke his staid silence on domestic and foreign issues to lay out his stimulus plan. His campaign promise – a different type of politics – led him to outline policies favorable to both Democrats and Republicans. Obama originally sought a $775 billion stimulus package that included $300 billion in tax cuts (Murray and Kane 2009), an idea designed to appeal to Republicans who believed that tax cuts, rather than government spending, best stimulated economic growth without inflating the federal deficit. However, Obama's dedication to bipartisan overtures did not last long: as soon as the House and Senate began working on their versions of the stimulus, the ratio of direct spending to tax cuts rose and Republicans responded with outrage and opposition.

In the middle of January, 2009 – before Obama took the oath of office – the House of Representatives passed H.R. 1, their version of the stimulus bill. The House's bill allocated some $550 billion to build new schools and to improve other infrastructure, such as highways and energy projects. Other parts of the $550 billion would go toward unemployment insurance

and healthcare benefits for those out of work (Murray and Kane 2009). An additional $275 billion would be applied to tax relief for businesses and individuals, giving workers an extra $500 in their paychecks (Murray and Kane 2009). The bill's swollen price tag, a result of the worsening economic crisis, as well as an emphasis on spending rather than tax cuts led to Republican disappointment and unified disapproval (Murray and Kane 2009). Republican House opposition did not bode well for the Senate's ability to attract bipartisan support, especially given the likelihood that the stimulus package would continue to bloat.

The Senate endorsed an $838 billion stimulus bill in early February, voting 61-36 in favor. At one point, that bill reached a startling total of over $930 billion – far in excess of Obama's original proposal and much greater than the House bill's total – but the administration and Senate leaders trimmed $100 billion to ensure its passage.[41] Three Republicans, Olympia Snowe (R-ME), Susan Collins (R-ME), and Arlen Specter (R-PA),[42] voted in favor of the bill, and Ted Kennedy, battling a brain tumor, returned to Capitol Hill to cast his vote (Espo 2009). The Senate bill differed from the House bill by around $30 billion and the composition of the stimulus – the Senate included more tax breaks than did the House (but fared only marginally better[43] in attracting Republicans). In conference, the stimulus package shrank to $787 billion, disappointing liberals in both chambers and leading some private economists to predict continued economic malaise (Murray and Kane 2009b). The final package passed the House 246-183 and the Senate, 60-38[44] with a 0.116 NOMINATE cut point. Despite attracting minimal

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[41] More of a political decision than an economic one as a number of prominent economists believed that a trillion dollar plus bill would be needed to combat the recession.

[42] Who later switched parties and became a Democrat. Though all other Republicans voted against the measure, the Chamber of Commerce, a prominent Republican special interest group, supported its passage (Espo 2009).

[43] Technically, infinitely better (3 versus 0).

[44] Again with Snowe, Collins, and Specter voting with the Democrats (far from the large bipartisan coalition Obama hoped to attract (Murray and Kane 2009b).

Republican support, the ability to pass such a large stimulus measure in but a month warranted celebration and catalyzed the influx of federal dollars into the wanting economy.

Once more, if the counterfactual Senate voted on the same bill as the real Senate, it would have supported the bill by a 66-34 margin. Though the NOMINATE cut point is positive and the real bill attracted Republican support, the counterfactual Senate would see a straight party-line vote. This is because the counterfactual does not have many centrist Republicans; while there are moderates, their ideologies do not hover around zero as did Snowe's and as does Collins's. Perhaps the counterfactual's clustering around party medians – therein depriving the ideological center and ideological extremes – represents a design flaw. That said, there are very few (and increasingly fewer) real senators with ideologies around zero on the NOMINATE scale,[45] and as the counterfactual does not take into account effects of incumbency or years serving any part of a state's electorate, its failure to include centrist senators seems representative of new electoral realities. Some states who elect these centrists – namely Maine – also lost a Senate seat, naturally decreasing the number of centrist senators sitting in the counterfactual. Regardless, the lack of centrist politicians does not impact ultimate bill passage (just the coalitions). In the counterfactual, the stimulus would have flown through the Senate.

Wielding a large majority, the Senate would likely have increased the size and scope of the stimulus, losing a few votes but still retaining the 60 needed to overcome a filibuster and ensure passage of, perhaps, a trillion dollar bill. As soon as Obama rolled out his stimulus plan, some economists warned that it would not be enough to help the economy regain footing

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[45] Moreover, those centrist senators all tend to have been in the chamber for a number of years, meaning that their continued reelection could be caused by incumbency advantage more so than matching ideologies with their electorates. Newly elected senators tend, in general, to hover either around party means or towards the extreme ends of the spectrum. Senator Specter is one of these centrists senators, but his party switch pushed him to the moderate wing of the Democratic Party with a NOMINATE value similar to ones held by counterfactual Democrats.

(Krugman 2009). Tax breaks, a large component of the Obama stimulus plan, generally produce less than $1 of economic growth for every dollar of cuts (Andrews and Herszenhorn 2009) – Democrats likely included them to appeal to their blue dog counterparts or to earn the support of centrist Republicans. A large majority in the counterfactual would preclude Democratic reliance on Republican support to pass bills.[46] Therefore, the Democrats could have enlarged the overall bill while increasing the ratio of direct spending to tax cuts. Post-mortem analysis contends that, because of Republicans, the enacted stimulus was too small to resuscitate the economy (Horsey 2014); worries about the bill's size were not limited to 20/20 hindsight (see Krugman above). Without having to appeal to Republicans, Democrats could have inflated the bill without fretting about its passage. A larger, differently allocated stimulus package would likely have emerged from the counterfactual. Would this altered apportionment scheme have shortened the recession and hastened a return to natural unemployment? If so, constitutional Senate apportionment has effects far greater than normative theories of representation: the chamber might stand as a body incapable of alleviating economic catastrophes that cost millions of jobs and threaten national livelihood.

Dodd-Frank Wall Street Reform and Consumer Protection Act

The Great Recession and financial crisis incited populist anger against Wall Street for its perceived excesses and role in contributing to the greatest economic calamity since the Great Depression some 70 years prior. Democrats and their liberal backers seized this nationwide mood and utilized their large legislative majorities to push Wall Street reform, seeking to reign in the big banks and prohibit the behavior that contributed to the crash. Grand goals and lofty

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[46] That is, Democrats would not need Republicans to pass the ACA. They might still seek GOP support for sake of bipartisanship.

rhetoric[47] ultimately led to the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereafter Dodd-Frank). In the sweet middle ground of angering conservatives for being "socialist" and upsetting liberals for not going far enough to regulate Wall Street, Dodd-Frank broke the decades long trend of financial deregulation and imposed some stringent rules on the big banks.

Democratic leadership pursued a dual approach to passing Wall Street reform. The House and the Senate would concurrently draft, push, and pass their own bills, later to be reconciled. Representative Barney Frank (D-MA) headed the House's drive. Frank's bill passed the House on December 11, 2009 by a 223-202 vote with all Republicans (along with 30 or so Democrats) opposing the legislation. The bill imposed oversight and mandated capital cushions for the largest banks and Wall Street firms, including an emergency fund into which large banks would pay and would be tapped in the case of institutional failure (Liberto 2009). Conservative Democrats disliked many of the provisions, but those on the left – the Congressional Black Caucus in particular – worried the bill did not go far enough to address systematic worries or to help minority communities (Liberto 2009). Despite opposition, it passed with healthy margins thanks to the Democrat's large House majority. Other provisions in the bill included allowing the Government Accountability Office to audit the Fed, regulating (to an extent) derivatives, giving regulators the power to break up big banks if they threatened to destabilize the financial sector, a new Consumer Financial Protection Bureau, and giving shareholders the ability to influence executive compensation (Liberto 2009).

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[47] The Obama administration laid out "A New Foundation: Rebuilding Financial Supervision and Regulation," a broad presidential memo, to disseminate its goals (Obama also gave a major speech on financial reform). He hoped to: consolidate regulatory agencies, bring derivatives onto exchanges to increase their transparency, create a new consumer protection bureau, establish a type of living will to help the government unwind banks in the case of imminent collapse, and tighten regulation of credit rating agencies (WSJ 2009).

On the Senate side, Chris Dodd (D-CT) and Richard Shelby (R-AL) worked together on the bill, ultimately creating a package that included provisions more liberal than the House's bill (causing Shelby to withdraw his support). Dodd's bill would have significantly altered the regulatory balance of power, taking from the Federal Reserve many of its supervisory powers and giving them to newly created agencies (CBSNews 2009). Banking regulation would be consolidated under a single agency, therein eliminating the Office of the Comptroller and the Office of Thrift Supervisions and stripping the Federal Deposit Insurance Corporation and the Federal Reserve of bank supervisorial roles (CBSNews 2009). A new "Agency for Financial Stability" would enforce rules and be charged with breaking up destabilizing institutions; derivatives would be regulated and the Fed would be curtailed in its ability to provide emergency loans to healthy institutions (CBSNews 2009). The bill draft, which did not attract Republican support (and even risked alienating moderate Democrats), clearly went much further than Frank's bills, especially with regards to the extent to which the Fed would retain its regulatory role instead of surrendering it to newly created agencies.

Dodd's far-left proposal did not last long – in the months after he introduced the bill, Obama, financial lobbyists, and other lawmakers worked with Dodd to hone his draft into a more moderate package that better aligned with the administration's goals. His final bill emerged from the Senate Banking Committee on a party-line vote (ranking Republican Shelby, who worked with Dodd on the bill, did not support the final draft). On the floor, many senators added amendments that strengthened financial regulation. Senator Lincoln, a moderate Democrat, proposed restrictions on derivative trading that withstood attacks from the administration, Dodd, and lobbyists (Dennis 2010). Senators Carl Levin (D-MI) and Jeff Merkley (D-OR) proposed the Volcker Rule – named after the former chairman of the Fed, it now (for the most part)

prevents Wall Street firms from engaging in proprietary trading and stands as a cornerstone of the Act, even though it was not originally sought by the administration – as an amendment to an amendment by Senator Sam Brownback (R-KS). He withdrew his proposal and left the Volcker Rule in legislative limbo, its final inclusion to be determined at conference. Dodd's bill finally passed in May 2010 by a 59-39 vote that cut across party lines. Senators Olympia Snowe (R-ME), Susan Collins (R-ME), Chuck Grassley (R-IA), and Scott Brown (R-MA) all joined Democrats in support of the Act. Democrats Maria Cantwell (WA) and Russ Feingold (WI) voted against the bill as they believed it did not include tough enough regulations on Wall Street (Dennis 2010). The bill served as the textual basis for reconciliation.

In conference, negotiators included some provisions from the House bill, such as protections for racial minorities, mortgage underwriting, and oversight of savings and loans (NYT 2010; other provisions can be found in Jackson 2010), but the Senate bill dominated the committee. On July 15, the Senate approved the conference bill (Dodd-Frank) by a 60-39 vote with Snowe and Collins siding with the Democrats and Feingold voting with the Republicans in opposition. Notably, though Grassley and Brown voted for the original Senate bill, they did not join the majority coalition on the conference vote. Feingold likely opposed the bill out of ideological conviction, believing it did not go far enough to reign in alleged Wall Street excesses. The conference bill vote had a NOMINATE cut point of 0.244.[48]

As with the ACA, in the counterfactual Senate, the Dodd-Frank Act would have taken a different legislative route. The NOMINATE cut point of 0.244 would result in a 66-34 counterfactual Senate vote,[49] enough to easily overcome a filibuster with the ability to move the

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[48] A positive number because of the two Republicans supporting Dodd-Frank.
[49] Though if Feingold's opposition to Dodd-Frank represents a second cut point where extremely liberal senators do not support the bill, the counterfactual vote tally might have fewer "yeas."

bill in a more liberal direction without sacrificing a supermajority coalition. On a complex issue like Wall Street reform, it is difficult to pinpoint exactly how the Dodd-Frank bill could have become more liberal. Dodd's original bill had many liberal tenets not included in the adapted conference text and it seems likely that a more Democratic chamber would attempt to include those provisions in a Wall Street reform bill. Moderate Democrat Mark Warner supported the original Dodd bill – his NOMINATE score was -0.250. Assuming, for sake of argument, that Warner stood as the most conservative Democrat supporting the bill, the cut point for the original Dodd bill would be around -0.25. A 56-34 vote in favor of the bill would ensue.[50] This would not be enough to overcome a filibuster, but there is reason to think that the cut point above might be too low: conservative Democrats like Blanche Lincoln (with a -0.162 NOMINATE score) proposed very liberal amendments[51] regarding financial regulation. If Lincoln had supported the original Dodd bill, pushing its NOMINATE cut point below -0.162, 65 counterfactual senators would have supported the very liberal financial reform legislation.

But what about other, more liberal provisions, such as breaking up the big banks? While considering the Dodd Senate bill, Senators Sherrod Brown (D-OH) and Ted Kaufman (D-DE) proposed an amendment to break up some of the biggest banks, including Citigroup and Goldman Sachs, whose size could create systemic risk (Herszenhorn 2010). The amendment failed 61-33 with 27 Democrats, 33 Republicans, and 1 independent voting "nay" and a NOMINATE cut point of -0.391. It would fare only marginally better in the counterfactual: 33 senators – all Democrats – would vote "yea." While the chamber has more Democrats than does

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[50] And since the bill would have moved in a liberal direction, it seems safe to assume that no liberal senators would break Democratic ranks.

[51] Note: the authors believed in the amendments and hoped to seem them passed into law. These were not poison amendments designed to tank the bill.

the real Senate, the Democrats are not necessarily more liberal; therefore, on far left proposals, a different apportionment scheme might not have a dramatic impact on public policy. On close party line votes, though, inflating the number of Democrats in the chamber shifts policy in a more liberal direction and ensures bill passage. For Wall Street reform, the counterfactual Senate would likely have passed the original Dodd bill's proposals but would not have gone so far as to break up the big banks or pass a modern-day Glass-Steagall Act.

Overall, the counterfactual apportionment scheme would add around six Democratic votes to the 111th Senate. With those votes would come the promise of more liberal legislation – bills such as the Affordable Care Act, the stimulus package, and the Dodd-Frank Financial Reform Act could have all have moved left while still retaining the supermajority support needed to end a filibuster. A strongly Democratic counterfactual Senate coupled with a large House majority would likely have resulted in the enactment of laws more liberal than those signed by President Obama during the 111th Congress. Legislation, both in the Senate and in the House, would have moved further to the left under the counterfactual apportionment scheme.

112th Senate

Time magazine's May 18, 2009 cover infamously proclaimed the Republican Party an "endangered species." Luckily for the GOP, though, the Democrats stress environmental protections and legislative guards for rare animals. Democratic efforts to defend threatened species worked: in 2010, the Republican Party, riding high on the Tea Party wave, roared back to prominence, seizing 63 House seats (and the chamber's majority), netting a six seat Senate gain (out of 37 Senate races),[52] and winning 680 state legislative seats. The president's party

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[52] Giving the Republicans a 242-193 House majority and the Democrats a 53-47 majority (including the two independents).

generally fares poorly in midterm elections, but the Democrats suffered electoral annihilation of historic proportions. They lost their large House majority and saw their strong Senate advantage crumble. A new wave of obstruction and impasse soon riddled the nation's capital. The Republican controlled House, with a number of far right legislators, refused to work with President Obama and the Democrats. In the Senate, all Democratic sponsored legislation faced an inevitable filibuster – without 60 senators (or close to it), the Democrats simply could not invoke cloture. Gone was the Democrats' ambitious policy agenda; gone were the days of government functioning. The 112th Congress saw unprecedented legislative brinkmanship that threatened to shut down the U.S. government and which almost crippled the country's economic vitality. Luckily, 11th hour negotiations staved off the government's closing and raised the debt ceiling, avoiding calamity.[53] These measures passed with broad bipartisan support and will not be analyzed below; instead, I turn to Obama's proposed domestic agenda, which faced a different fate than in the 111th Congress.

American Jobs Act

The slow recovery from the financial crisis, coupled with worrisome economic indicators in the summer of 2011, increased fears about a double-dip recession. August proved a tumultuous month as Congress nearly defaulted on its outstanding debt, which many economists feared would have triggered a global financial panic. Gridlock and obstruction – namely, the Tea Party's refusal to work across the aisle even when Republican leadership sought to make deals with Obama – nearly stalled the economy's weak, puttering engine; as a result, Standard & Poor's, the rating agency, downgraded America's credit rating from a perfect AAA to AA+.

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[53] In a 74-26 vote that would have been 97-3 in the counterfactual Senate.

Stock markets across the world tumbled, economic confidence shaken. Shortly after Labor Day, Obama delivered a major speech before a joint session of Congress in which he detailed a major new jobs package that he repeatedly urged Congress to pass "right away." They didn't.

Obama's speech outlined his $447 billion jobs bill, which included $245 billion in payroll tax cuts for employees and employers, expanded unemployment benefits, tax credits for the long-term unemployed, an additional $50 billion for infrastructure projects (and an extra $10 billion to capitalize a national infrastructure bank), and $50+ billion to be spent on public schools, teachers, and law enforcement (White House 2011). Republicans responded "lukewarmly"[54] to the address with Speaker John Boehner (R-OH) saying that the president's plan "merited consideration" (Mascaro 2011). Despite the President urging that the bill be passed with all due haste, Majority Leader Harry Reid (D-NV) initially punted on the bill, opting instead to focus on punishing China for currency manipulation (a bill likely to attract bipartisan support). Reid's hesitancy to fast-track the jobs bill perhaps indicated opposition within the Democratic caucus and sparked rumors that he would employ a piecemeal approach to passing the bill's provisions, pushing those which he believed would garner supermajority support (Helderman 2011). Not long thereafter, Reid tacked onto the bill a 5 percent surtax on those earning more than $1 million a year (a measure that he claimed would pay for the package). This proposal struck a populist tone that drew sharp contrasts between Democrats and Republicans and also appealed to populist overtures ringing through the country (both on the left and right), though its inclusion threatened to alienate most – if not all – Republicans (Pear 2011).

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[54] Which, in a sign of the political times, the Los Angeles Times proclaimed as a positive start.

Reid ended up bringing the full bill to a vote in early October; it failed 50-49[55] despite

Obama's countrywide barnstorming meant to rally popular – and, through the public, legislative

– support for the bill. The failed cloture vote had a NOMINATE cut point of -0.011. No

Republicans joined the Democrats and two Democrats (plus Reid) – Ben Nelson (D-NE) and Jon

Tester (D-MT) – with tough upcoming reelections voted against ending debate (Helderman and

Nakamura 2011).[56] After the vote, Reid and Obama announced plans to break the bill into

smaller portions they would then try to sell to the Senate and House. Most of these smaller bills

also failed, though some provisions that rolled back regulations successfully (and unsurprisingly)

waltzed through Congress without Republican obstruction. For counterfactual consideration, I

will ignore these small bills and instead focus on the vote for the entire package as it obviously

contained the fragmented legislation.

The 112th counterfactual Senate would have had 63 Democrats and 37 Republicans, a

three-seat net counterfactual loss for the Democrats (half the loss of the Democrats in the real

Senate). Indeed, in the 2010 counterfactual elections, Democrats fared rather well, essentially

splitting the Senate seats because the counterfactual apportionment scheme had many seats up

for grabs in states that leaned blue, even in Republican swing years. A 63 seat majority again

promised that the counterfactual Senate Democrats could enact their policy agenda because they

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[55] Important to note: for this, as well as other bills that failed to invoke cloture when brought to a vote by the majority party, the Majority Leader often votes in opposition not out of ideological conviction, but for procedural reasons (doing so allows him to bring the bill up for a vote again in the future). Here, for instance, the true ideology-based vote would have been 51-48.

[56] That the two Democrats would cite reelection considerations as their reason for opposing the measure implied that Obama's direct appeal to the people ginned up no (or negligible) support. Otherwise, Nelson (who ultimately forewent his reelection bid) and Tester would have been able to champion voting for the bill during their upcoming campaigns and some vulnerable Republicans would have felt pressure to break party ranks. Furthermore, that no Republicans joined the Democrats meant that the cloture vote would not be close, likely meaning Reid gave his caucus some degrees of freedom to vote their conscious or electorate rather than the party mantle.

could, with unity, overcome a Republican filibuster.[57] The Senate would likely pass bills close to Obama or leadership's goals that would then serve as the basis for negotiations with House Republican leadership. Of course, with Republicans unable to prevent legislation from passing the Senate, House Republicans might, in this counterfactual world, have doubled down on their efforts to obstruct the liberal agenda. Impasse might not be lessened, but simply relegated in its entirety to a single chamber. Would Republicans try to compromise or use their House majority to pass their agenda, only to see it die in the Senate? Would they take that failed agenda and present it to the American people as an alternate viewpoint in hopes of eroding the Democrats' Senate majority? The scope of this study is small; what if the counterfactual Senate's apportionment scheme led a resilient Democratic Senate majority – would that change Republican calculus? These questions are, by their hypothetical nature, impossible to answer, but it is clear that a different Senate apportionment method would greatly alter the political landscape and discourse.

In the 112th counterfactual Senate, the American Jobs Act would have passed 63-37 with all Democrats voting in favor and all Republicans opposed. President Obama's main third year proposal would have seen the Senate's stamp of approval only to then be struck down by the House (which never approved the American Jobs Act). Passing with three senators to spare would mean that Reid could have made the bill more liberal. A more liberal bill might have included increased stimulus funds or have altered the balance between infrastructure spending and tax credits (as with the American Recovery and Reinvestment Act discussed in the previous

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[57] However, the House of Representatives would not have changed hands in the counterfactual, so any bills passed in the counterfactual Senate almost certainly would have died in the House. House districts benefit Republicans for any number of reasons: natural geographic sorting that cluster Democrats in urban areas, all of its seats are up for election every two years (so in years like 2010, Republicans have a strong potential to swing many House seats – more than in the Senate), etc.

section); regardless of textual change, though, the ultimate outcome would have remained the same: failure in the Republican controlled House. This example, as well as others from the 112th Senate, show that the ideological dichotomy between the two chambers – caused largely by remarkable differences in district size and geographic sorting among the electorate (Bishop and Cushing 2008) – would not be solved by the counterfactual apportionment scheme. In fact, political gridlock and institutional polarization would be heightened as the Senate would pass liberal bills supported by a supermajority and by the President, but these same proposals would be rejected by the House.

Repeal Big Oil Tax Subsidies[58]

Though not a major element of Obama's legislative agenda, he still pushed the Senate to "strip the oil and gas industry of billions in tax incentives" (Dwyer 2012). The bill failed to invoke cloture 51-47 with some moderate Democrats (typically hailing from oil-rich states) – Mark Begich (D-AK), Mary Landrieu (D-LA), Ben Nelson (D-NE), and Jim Webb (D-VA) – voting against ending debate. Republican Olympia Snowe broke ranks and voted to invoke cloture. Obama argued that the tax incentives served as proof that the economy favored corporations over people; Republicans, on the other hand, believed repealing the tax incentives would increase gas prices, already above $4 per gallon (Dwyer 2012).[59] The bill had a NOMINATE cut point of 0.1,[60] though that perhaps understates the pressure on moderate Democrats to split from the party because of oil interests in their states.

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[58] This bill did not receive lots of media attention, nor did it dominate legislative discourse for months. However, the counterfactual Senate's vote on the bill speaks volumes about how the chamber would approach issues favored by liberals.

[59] Speaker Boehner's office released a Congressional Research Service report that posited altering the tax code might increase consumer prices.

[60] The second dimension might be important here as this first-dimension cut point fails to explain all Democratic votes..

A NOMINATE cut point of 0.1 implies that in the counterfactual, the tax repeal bill would have passed 63-37 along party lines. However, given that in the real Senate oil-state Democrats voted against the bill, Democrats from those same states would likely vote against it in the counterfactual. Alaska's counterfactual senator – a Democrat – would be expected to vote against the bill. Other high-oil states (California, Oklahoma, North Dakota, and Texas) either have Republican counterfactual senators or Democrats disinclined to vote against the bill (due to liberal ideologies and environmental concerns). Therefore, I would expect the counterfactual vote to actually be 62-38, a negligible difference from the above tally. This bill, too, would have died in the House. Though the counterfactual Senate's attempts to repeal the tax subsidies may ultimately be futile, it shows that the counterfactual chamber would embrace some of the ideology and rhetoric endorsed by the progressives, namely Senators Elizabeth Warren (D-MA) and Bernie Sanders (I-VT). Taking on big special interests would be a boon to the progressive movement and legitimize calls that now ripple through the Democratic Party to act "tough" against perceived "greed" and "corporate welfare." It represents the chamber moving to the left in terms of policy enactment and ambition. These votes would not be symbolic exercises meant to bolster liberal credentials;[61] they would be serious attempts at passing very liberal bills in hopes of curtailing the "excesses" of the private sector.

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[61] Arguably the case in the 112th Senate because the Democrats could not override a Republican filibuster and thus any legislative attempt that ran contrary to Republican wishes would almost certainly be dead on arrival. The vote stood to differentiate the two parties and create election issues. In this specific instance, the vote also fell into the narrative the Democrats tried to produce for the 2012 election – that of the Democrats fighting for the working and middle classes whereas the Republicans cared solely about big business (a narrative chosen in part, perhaps, because of Mitt Romney's, the presumed Republican nominee, upper-class, financial background).

Paying a Fair Share Act (Buffett Rule)

Seeking to repeal tax subsidies for oil corporations signified a bourgeoning theme within the Democratic Party, one it sought to drive home during the upcoming election: economic fairness. In early 2012, Obama took that theme a step further by introducing the Paying a Fair Share Act, or Buffett Rule, which hoped to impose a 30 percent tax floor on individuals earning at least $1 million a year. The bill, supported by billionaire Warren Buffett (who abhorred the low taxation rate of high-income individuals), also took direct aim at the presumed Republican presidential frontrunner, Mitt Romney, who amassed his wealth through private equity. Though the bill had little chance of being enacted into law – a fact readily admitted by Democrats – it sharpened the divide between the two parties' messages and showed that the Democrats would use their agenda setting powers to pursue progressive politics. That goal is furthered in the counterfactual Senate.

As expected, the Buffett Rule ultimately failed in the Senate 51-45 with Collins crossing over to vote with Democrats and Mark Pryor (D-AK) voting with Republicans (in what was otherwise a party-line vote). The legislation continued a war of words in which Democrats laid siege to "trickle-down economics" and Republicans launched vicious attacks deriding the Democrats for pitting poor against rich (engaging in class warfare) for electoral purposes (that is, winning middle class votes in November). It would have done little to reduce the deficit, but, according to the White House, would have "set a principle for broader tax reform" (Nakamura 2012).   The vote had a NOMINATE cut point of 0.013.

In the counterfactual, the Buffett Rule would have (again) passed 63-37 on party lines. Once more, the bill would not have passed the Republican controlled House and, once more, public policy would not be affected. Political discourse, though, could have changed in many of

the aforementioned ways. Economic coalitions might have deepened[62] and new distinctions

drawn for the upcoming election (it is very easy to imagine campaign ads featuring the Buffett

Act from both parties). The Democrats actually passing the bill likely would have contented the

liberal base[63] and also demonstrated that the party embraced and meaningfully acted on

progressive principles. That said, the Buffett Rule represented mainstream liberal thought, not a

far-left proposal. As will be seen below (and as evidenced by the counterfactual's inability to

break up big banks), adding Democrats does not necessarily mean moving legislation in a

dramatically liberal fashion. It is even possible that today's growing cleavage between

progressives and moderates may have been hastened as progressives felt disillusioned by the

continued failure to enact far-left legislation even with a large Democratic majority in the

counterfactual Senate.

The real 112th Congress saw very little legislation enacted; instead, it witnessed

brinkmanship, numerous attempts to repeal President Obama's signature healthcare law, and a

majority party in the Senate unable to pursue its agenda. In the counterfactual, the last instance

would have been allayed: with a strong supermajority, Senate Democrats would have passed

their economic policies, including repealing tax incentives for big oil companies and

implementing a 30 percent minimum tax rate for the highest income earners. But in a bicameral

system, a large majority in one chamber does not guarantee that a bill would be signed into law.

The counterfactual Senate would likely only heighten tensions between the two chambers and

the two parties – House Republican effectively vetoing Senate bills would likely deepen rifts

between Democrats and Republicans. Democrats, controlling the Senate and Presidency, would

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[62] Either with the poor supporting the Democrats in greater numbers or the rich continuing to significantly back (in terms of votes and donations) the Republican Party.
[63] Though furthered their anger against the Republicans (who would have killed the bill).

likely accuse Republicans of blatant partisan gridlock. Republicans would likely turn to their

overwhelming victory in 2010 midterms and argue that they, not the Democrats, reflected the

public's want. Each argument would have elements of truth[64] and each would likely exasperate

the polarization and inaction that resulted in the real 112th Congress have a lowly 11 percent

approval rating (Newport 2011).

113th Senate

The 2012 elections dawned with a vulnerable incumbent president and a party still

shocked by the 2010 midterm results. A contentious Republican primary ended with the

expected conclusion – a Mitt Romney candidacy. Perhaps most notable in 2012 were the

campaign season's gaffes. From "legitimate rape" to "you didn't build that" and, of course, the

infamous "47 percent" remark, candidate faux pas raced through Twitter[65] and Facebook and

assuredly cost votes and seats.[66] All races in the cycle spent about $7 billion (Parti 2013) to

influence results (with varying levels of success). No election had seen more candidate and

independent speech. And when voters finally had the opportunity the share their voices, the

results favored Democrats: President Obama won a resounding reelection victory, the Democrats

gained a couple seats in the Senate (giving them 55 total, including two independents), and

picked up eight seats in the House (which still left them in the minority).

Obama's second term agenda had few sweeping propositions and none of his first term's

ambition and grandiosity. It stood largely as a watered down, tame follow up to the goals that

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[64] And elements of political science fiction.

[65] Making its presidential campaign debut.

[66] Todd Akin, who made the "legitimate rape" comment, and Richard Mourdock, who defeated longtime Republican Richard Lugar but squandered the Senate seat when saying that even in the case of rape, "life is a gift from God," both lost very winnable elections in Missouri and Indiana. A fun aside: Akin's primary victory caused Claire McCaskill, the incumbent Missourian senator, to shotgun a beer for the first time.

flowed with Obama's – and Democrats' – 2008 sweep into office. Tragically, exigent

circumstances reshaped fifth year debates. The mass shootings in Aurora, Colorado in 2012's

summer and the indescribable events at Sandy Hook Elementary School in December brought

gun violence to the legislative forefront. Concurrently, Democrats also pursued unemployment

insurance and a bipartisan immigration bill. The second term saw other domestic policies

pursued, such as a minimum wage increase and a lame-duck debate over the Keystone XL

pipeline.

Assault Weapons Ban and *Manchin-Toomey Amendment*

A month after the Sandy Hook massacre, Senator Dianne Feinstein (D-CA), a longtime

gun control advocate, introduced an assault weapons ban similar to the one she passed in 1994.

The bill would have prohibited the sale of 157 military-style rifles and would have banned

magazines with a capacity greater than 10 rounds (Freedman 2013). Unlike her earlier bill,

Feinstein's efforts did not contain a sunset provision and would have barred from sale any

weapon with a detachable magazine or "a single military-style feature" (Freedman 2013). To

appeal to the pro-gun members in the Senate and public, over 2000 hunting and sporting rifles

would have been exempted from the regulations. The National Rifle Association (NRA),

unsurprisingly, opposed the bill.

The Manchin-Toomey amendment represented a bipartisan effort led by moderate

Democrat Joe Manchin (D-WV) and Tea Party Republican Pat Toomey (R-PA). It would have

mandated criminal background checks on all gun sales between private parties (including sales at

gun shows and over the internet), with some exemptions (Moorhead 2013). Standing law did not

require background checks on gun transfers between friends, family, and neighbors – it only

covered purchases from federally licensed gun dealers (Moorhead 2013). Manchin-Toomey also

would have outlawed an already outlawed gun registry, but it did include provisions allowing for the study of gun violence (Moorhead 2013).[67] The amendment's bipartisan support and push seemed to bode well for its ultimate passage – it at least had a better chance of passing the Senate than did Feinstein's assault weapons ban.

Just five months after the heartbreak at Sandy Hook – a period in which at least 3,900 individuals died at the hands of guns (Kirk and Kois 2013) – the Senate voted down both pieces of legislation. Reid initially dropped Feinstein's provisions from the gun control bill because he reasoned it could not attract enough senators to gain overcome a filibuster and might threaten the bill's legislative chances (Steinhauer 2013). Feinstein offered her legislation as an amendment to the bill. It failed, 40-60, with a -0.283 NOMINATE cut point. Republican Senator Mark Kirk joined many Democrats in supporting the measure, but a long list of Democrats voted with Republicans against the amendment.[68] The Manchin-Toomey amendment, despite bipartisan sponsors and large public support, also failed. Cloture could not be invoked. It fell 54-46 with a -0.022 NOMINATE cut. Republican Senators Collins, Kirk, McCain, and Toomey (obviously) voted with Democrats. Democratic Senators Baucus, Begich, Heitkamp, and Pryor voted in opposition with the rest of the Republican caucus.

The counterfactual Senate would also have voted down the assault weapons ban by a 44-56 vote, but it would have passed the Manchin-Toomey amendment 63-37. Because the counterfactual Senate, like its real counterpart, has many moderate Democratic senators – those with NOMINATE scores between 0 and -0.25 – the far-left assault rifles ban would not attract

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[67] Previous legislation barred the Center for Disease Control from studying gun violence.
[68] Max Baucus (MT), Mark Begich (AK), Michael Bennet (CO), Joe Donnelly (IN), Kay Hagan (NC), Martin Heinrich (NM), Heidi Heitkamp (ND), Tim Johnson (SD), Mary Landrieu (LA), Joe Manchin (WV), Mark Pryor (AR), Jon Tester (MT), Mark Udall (CO), Tom Udall (NM), and Mark Warner (VA).

enough support to pass.[69] A number of those counterfactual Democratic senators voting against

the ban hail from swing or transitioning states where senators might be "mispartied" – Florida,

Arkansas, Montana, and Alaska, to name a few. Similar to the real Senate, these Democrats vote

in moderate fashions and even increasing the overall number of Democrats does not change the

influence of moderates. Moreover, national indicators used to simulate the 2010 counterfactual

election all trended Republican; therefore, even Democratic senators hailing from deep blue

states (like California and New York) saw their ideologies moderated, adding to the number of

senators more conservative than the assault weapon ban threshold.[70] However, the Manchin-

Toomey amendment would have easily passed the counterfactual Senate (once more, a straight

party-line vote). Background checks would have taken a step toward universality and important

loopholes would have closed. Perhaps lives would have been saved, maybe massacres

prevented. At the very least, the public's will would have been followed.

Unemployment Insurance

2013's conclusion also saw the sun set on unemployment insurance for over a million

workers. As the recession worsened in 2009, Congress enacted an emergency unemployment

insurance program to provide 53 weeks of additional benefits (Vinik 2015). The program had

been extended multiple times to continue helping the long-term unemployed; the jobless

recovery left many out of the workforce and unable to find paid positions, necessitating extended

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[69] It would need more liberals in the chamber, not just more Democrats.

[70] In real Senate elections taking place during Republican swing years, is there reason to believe that deep-blue senators would be pulled to the ideological center? Hard to say: deep-blue seats might be unaffected by favorable Republican trends, especially if an incumbent is running (or, in the case of an open seat, a primary might keep the candidate to the left), but, based on ideal points, the victorious senator should moderate based on the electorate's will.

unemployment insurance to prevent millions from falling into abject poverty. The Senate moved to reinstate the program shortly after its expiration.

In early January, 2010, the Senate voted to extend unemployment benefits for three months, invoking cloture with a 60-37 vote that saw six Republicans vote with Democrats. However, that vote was not binding: for the program to be reestablished, it would have to again clear the 60 senator hurdle in the Senate and pass the House. It did not accomplish the former. A bill to expand unemployment insurance for 11 months failed 52-48 and a second, which would have expanded the program for three months, fell 55-45; the NOMINATE cut points were -0.245 and 0.06, respectively.

A few months later, the Senate moved to reinstate unemployment insurance with a bill that would also offer retroactive payments to the millions who lost benefits with the changing of the calendar (Lowery 2014). House Republicans refused to let that bill come to the floor. In June, some 6 months after benefits ended, the Senate passed another unemployment insurance bill (this time without retroactive payments), hoping to entice the House into acting (Sanchez 2014). The House never did and the long-term unemployed did not receive federal relief. Examining the plight of unemployment insurance in the counterfactual Senate will not show a different final bill outcome, but as above, it will offer an alternate Senate history with less obstruction and gridlock.[71]

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[71] A political optimist would note that if a bill easily passed the Senate, it might add pressure on the House to act and not contradict the other chamber (especially if the bill received large, bipartisan support in the Senate). Whether that phenomenon happens is outside the scope of this project.

The 11-month unemployment extensions would have earned the support of 50

counterfactual senators,[72] enough to pass a straight up-or-down Senate vote (assuming that Vice

President Joe Biden would cast his decisive vote in favor of the measure). No filibuster could be

survived, however, and thus no 11-month legislation sent to the House. On the other hand, the

three month extension would have garnered the support of 63 Democrats, easily escaping a

filibuster without any Republican support.[73] The extension would then have been sent to the

House for them to not act throughout the year. Media and public narrative largely would have

remained the same: Democrats voted[74] time and time again – with either marginal or no

Republican support – to give aide to millions impacted by the recession. It seems doubtful that

the Republicans would have felt extra pressure to act in this counterfactual; after all, the House

did not support many bipartisan bills sent to it by the Senate in the real 113th Congress. Senate

bill composition would have changed little – any difference between the real and the

counterfactual would have been a matter of extending the program for a couple of months.

Simply adding Democrats to one chamber does not necessary entail a far-left legislative

movement.[75]

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[72] It's worth noting that the Democrats opposed to this bill – moderate Democrats – largely hail from Florida, North Carolina, and Pennsylvania, swing states that send senators of each party. Therefore, it would be expected that both Republicans and Democrats coming from these states demonstrate moderate voting behaviors.

[73] The counterfactual Senate contains more moderate Democrats than it does moderate Republicans. There is evidence that real Republicans are moving further away from the ideological center than are Democrats, which might explain why the counterfactual fails to simulate moderate Republicans. Another reason the counterfactual does not induce bipartisan coalitions is because the moderate Republicans currently sitting in the real Senate – the likes of Collins, Kirke, and Ayotte – all have their seat either eliminated or simulated to be held by (moderate) Democrats.

[74] Other unemployment insurance extension packages also would have passed with supermajority support in the counterfactual.

[75] Obviously because the Republicans retain support of the other legislative body.

Minimum Wage Fairness Act

Raising the minimum wage represented the cornerstone of President Obama and the Democrats' second term domestic agenda. At the time (and today), the federal minimum wage stood at $7.25 per hour, which, due to inflation, meant that the floor wage had its lowest purchasing power in decades. The Minimum Wage Fairness Act, introduced by Tom Harkin (D-IA, who retired at the conclusion of the Congress), sought to raise the minimum wage to $10.10 per hour over the course of two years. Republicans staunchly opposed the effort, believing that minimum wage decisions should be made at the state level; Democrats disagreed over the size of the raise – some wanted a small raise and others wanted to bump it up to $12 or $15 an hour. Compromises within the caucus resulted in a $10.10 bill.

Harkin's bill, which played into the Democrats' 2014 electoral message of a fair economy, came to the floor in April of the election year and promptly failed its cloture vote, 54-42. Reid voted against the legislation for procedural reasons and Senator Bob Corker (R-TN), an unlikely ally, crossed over to vote with Democrats. Four senators missed the vote, which had a NOMINATE cut point of 0.079. Once more, the counterfactual Senate would have endorsed the bill with 63 "yea" votes. The debate over the bill would not have been one of attracting Republicans; rather, it would have revolved around the extent of the minimum wage raise. Might the Democrats have introduced a $12 an hour bill? A $15 bill? Moderate Mary Landrieu (D-LA) hesitantly supported the $10.10 bill and likely would not have voted for a $12 minimum wage and certainly not a $15 wage. Her NOMINATE score for the 113th Senate was -0.231.[76] Assuming that Landrieu's NOMINATE stood as the approximate cut point for a $12 minimum

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[76] Which seems like a fair estimate considering in the 114th Senate Senator Patty Murray (D-WA) introduced a $12 minimum wage bill with 33 cosponsors, the most conservative of whom, Bill Nelson (D-FL), had a NOMINATE score slightly more liberal than Landrieu's.

wage, there would be around 50 counterfactual senators supporting the bill. That would pass the

bill with Biden's support if it came to an up or down vote. But it could not survive a filibuster.

Nor could a $15 minimum wage be enacted. The minimum wage represents another instance in

which adding Democrats to the chamber does not move policy in a significantly liberal direction.

Yes, it would have allowed a $10.10 minimum wage to pass the chamber,[77] but not a wage

increase matching those supported by progressives.

Keystone XL Pipeline (Part 1)

After six years of controversy marked by environmentalist protests and Republican

attacks, the Keystone XL pipeline finally came up for a vote during the lame-duck session

between the 2014 election and the seating of the 114th Congress. The vote was of particular

importance to Senator Landrieu (D-LA), who faced a contentious runoff in January against

Representative Bill Cassidy (R-LA). Both advocated for the Keystone XL pipeline and wanted

to boast of its legislative success in time for the runoff. Unfortunately for Landrieu, the Senate,

with the staunch opposition from liberal Democrats and the President, did not pass the pipeline

bill; the House, on the other hand, voted to approve Keystone XL construction.[78]

The incredibly close Senate vote saw Keystone XL fail to invoke cloture 59-41. All 45

Republicans voted for the bill along with 14 Democrats (a number of whom represented states

that would have benefited from pipeline construction). Liberal, generally coastal Democrats

mustered just enough support to sustain the filibuster. This bipartisan coalition led to a

NOMINATE cut point of -0.2. Interestingly, Keystone (both here and in the 114th Senate,

discussed below), represents the only analyzed bill in which fewer counterfactual senators would

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[77] And just the chamber.
[78] Perhaps handing Bill Cassidy the runoff election win against Landrieu.

have voted "yea" than senators in the real chamber – only 43 counterfactual senators would have voted to construct Keystone XL, a significant decrease from the real Senate's tally.[79] Keystone XL represented a Republican legislative effort that managed to appeal to moderate Democrats. Since the counterfactual decreases the number of Republicans in the Senate, there were naturally fewer "yea" votes for Keystone XL. Fewer Democrats would have supported Keystone XL in the counterfactual – six as compared to 14 in the real Senate (though a number of counterfactual senators have ideologies very close to -0.2 and perhaps would have supported the bill since their votes would not have been decisive). This is both a matter of states whose Democratic senators supported Keystone XL either losing a Senate seat or having its party flipped (to Republican) in the counterfactual and a number of counterfactual Democrats hovering just above the given NOMINATE cut point. In fact, adding the counterfactual Pennsylvania and Missouri Democratic Senate delegations[80] brings the counterfactual Democratic support total to 10, close to the real vote and with differences explainable by lost and flipped simulated seats. However, even changing those votes from "nay" to "yea," it is apparent that the counterfactual chamber, with its increased number of Democrats, would not have passed the Keystone XL pipeline bill.

Miscellaneous

Other notable bills merit less attention because they passed the real Senate with large bipartisan majority coalitions. One such bill, the Gang of Eight comprehensive immigration reform, passed the Senate with 68 votes. In the counterfactual, that number would actually fall

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[79] This is because the status quo – an unbuilt Keystone XL pipeline – is more liberal than the policy alternative of allowing the pipeline's construction. Naturally, liberal senators would not want to see policy moved in a conservative direction.

[80] Both of whose real senators voted in favor of Keystone XL.

to 63 with a straight party line vote.[81] That seems rather counterintuitive, but could still have

had significant impacts on public policy. The bipartisan approach to the bill (four Democrats

and four Republicans sat on its drafting committee) watered down the path to citizenship and

ensured that liberal wants met a conservative counterpart, leading to centrist compromise. Being

able to pass the entire bill solely with party unity might have led to reform based on the liberal

immigration consensus (with no compromises attached or included). However, whatever the

Democratic body created and passed would have assuredly failed in the House, just like the Gang

of Eight bill.

Another notable bill, the Employment Non-Discrimination Act (ENDA), passed the

Senate 64-32 with some bipartisan support. The vote tally would have slipped to 63-37 in the

counterfactual Senate for reasons already enumerated. Little in that bill likely would have

changed even when not having to work across the aisle. These bills point out some of the

counterfactual chamber's weaknesses, both in its design and in its implementation. Its

construction might undercount moderate Republicans (though, as mentioned before, that could

be a result of those marginal Republican seats either being eliminated or flipping to Democratic

control). Secondly, the counterfactual chamber diminishes the need for bipartisanship (as

Democrats held large supermajorities in three of the four Senates analyzed), which could

theoretically heighten partisan rancor and animosity across the country, leading to bitter elections

and poisonous discourse worse than what we see today.[82]

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[81] One limitation of the counterfactual Senate is that it reduces the number of moderate Republicans, pushing all GOP senators above 0.4 on the NOMINATE scale.

[82] In the Senate, rhetorical and affective polarization would not change policy outcomes or create gridlock because of the strong Democratic majority. However, it would increase impasse between the Senate and the Republican-controlled House and perhaps lead to brinkmanship and high-profile confrontations between chamber leaders.

114th Senate[83]

The 2014 midterm election did not bode well for Democrats. President Obama had very low favorability ratings and Democrats faced an unfavorable Senate map – with many seats up for election and long-standing incumbents from red states retiring (like Jay Rockefeller and Max Baucus, WV and MT, respectively), the Democrats stood at risk of losing their majority. Vulnerable senators refused to campaign with Obama, thinking his presence would be toxic to their election chances. But even his absence could not save susceptible Democrats. In a highly nationalized election which Republicans used as a referendum against Obama (much like the 2012 presidential race, though this time with success), turnout fell to embarrassingly low levels and Democrats faced an electoral bloodbath.

Republicans walloped the Democrats, expanding their House seat total to 247 – their largest majority since before the Great Depression – and snatching the Senate majority with 54 seats. Nine Senate seats flipped hands, a number of which entailed Republicans winning seats in red states like Montana, South Dakota, Arkansas, and Louisiana. But their victory parade marched through swing states, too: Colorado, Iowa (which had an open seat election), and North Carolina all fell into Republican hands. The Democrats managed to retain Virginia, though only by a single percentage point. Only in New Hampshire did Democrats win a tossup seat as Jeanne

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[83] The NOMINATE values here are estimates of the first year of the 114th Congress (as this Congress is still in session). Senator NOMINATE scores might fluctuate throughout the remainder of the second term (especially as the 2016 elections draw nearer and vulnerable senators adjust their votes to better align with constituent interests). This could, in theory, mean that the numbers used in the model which populated the counterfactual chamber are off and thus the parties and/or ideologies of its members elected in 2014 are incorrect. However, it seems unlikely that NOMINATE scores would shift dramatically between the first and second terms of the Congress, and it seems even less likely that any changes in voting patterns and behavior would significantly skew the model's output.

Shaheen defeated Scott Brown.[84] Losing the Senate meant that the last two years of Obama's administration would likely be plagued by battles between the executive and legislative branches likely inhibiting major pieces of legislation from being enacted and perhaps thwarting Obama's attempts at solidifying his legacy.

Keystone XL Pipeline (Part 2)

Reintroduced in the 114th Senate, this time by Republican leadership, Keystone XL passed the chamber and the House, only to then be vetoed by Obama.[85] Nine Democrats joined the Republican caucus in supporting the bill, all of whom were moderates or represented energy-rich states, leaving the NOMINATE cut point at -0.251. Republicans eagerly brought the bill to the floor despite a veto threat as Keystone XL had been a major campaign issue, especially in the Midwest and the South, and posed the first instance of the Republican majority working to endorse economic and energy development.[86] It would test the resolve of President Obama – would he veto a bill with overwhelming legislative support, including a number of Democrats? – and would show that the Republican legislative majority could stand up to the executive branch. It set the tone for the remaining year and a half of the Congress.

As with the real Senate, counterfactual Democrats fared poorly in the 2014 election, whittling their majority down to 54 – the mirror image of the real 114th Senate. The counterfactual would not have sent the Keystone XL bill to the President's desk as only 56 senators would have voted to invoke cloture. Granted, that's still a majority of the chamber, but

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[84] The former senator from Massachusetts who moved to New Hampshire after losing his retention bid to Elizabeth Warren in 2012.

[85] The veto override attempt failed.

[86] Perhaps the first sign of the "majority working" slogan the National Republican Senatorial Committee has unveiled for the 2016 elections.

not enough to override a filibuster; however, it does represent a 13 vote swing from the 113th counterfactual Senate (even though Democrats only lost 9 counterfactual seats). Other Democrats elected to the 114th Senate had moderate ideologies because of the national swing towards the Republicans – many indicators used in the counterfactual's creation pointed to a strong Republican swing year which moderated a number of Democrats. That trend to moderation boosted the legislative chances for Keystone XL and also represented a Democratic caucus pulled to the center from its senatorial predecessors. While a more moderate Democratic majority would decrease the chances of enacting a liberal agenda – especially given that it could not overcome a filibuster – it would not necessarily mean a swing to Republican propositions.[87] The GOP, though, would gain significant power in the Senate as they could successfully obstruct any legislation brought forth by the Democratic majority.

Defunding Planned Parenthood and the ACA

In the summer of 2015, undercover videos surfaced purportedly showing doctors and administrators at Planned Parenthood selling aborted fetal parts for profit, illegal and arguably unethical behavior. Though the videos have since been debunked (and the filmers indicted by a grand jury), they renewed conservative calls to defund Planned Parenthood. Many presidential candidates seized the opportunity to attack abortion and Republican governors looked to take matters into their own hands, signing state bills to strip Planned Parenthood of any federal or state dollars. Majority Leader Mitch McConnell supported such endeavors and ultimately brought to the Senate floor a bill that stripped Planned Parenthood of its funding.

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[87] Though maybe a necessary swing to bipartisanship and the inclusion of some Republican ideas in bills requiring 60 votes to pass the Senate.

Another Republican sticking point – the Affordable Care Act – had survived more than 50 GOP attempts to repeal it and had skated through two Supreme Court decisions, the latter of which prompted Republican senators to actively explore a constitutional amendment to limit judicial tenure. Now with a clear congressional majority, Republicans saw their opportunity to advance a repeal attempt. Applying the same parliamentary method the Democrats used to originally pass the ACA – budget reconciliation – Republican leadership bundled Planned Parenthood defunding and the ACA repeal for a straight up-or-down vote. Nobody believed that Obama would sign the bill, but it would again show the Republican majority at work and bring Planned Parenthood funding and the ACA into the national spotlight.

Coupling Planned Parenthood defunding with the ACA repeal put vulnerable, moderate Republicans in a difficult situation: some, like Susan Collins (R-ME), who said that "by twinning [the ACA] with a defunding of Planned Parenthood, you divide the caucus and muddy the message" (Snell 2015), had reservations about the ACA but did not want to cripple Planned Parenthood. To water down the bill and create a package they could support, Senators Mark Kirk (R-IL), Lisa Murkowski (R-AK), and Collins sponsored an amendment to maintain Planned Parenthood funding (while still repealing the ACA). This amendment needed only a simple majority, but it failed 48-52 with Democrat Joe Manchin (D-WV) voting with Republicans, producing a NOMINATE cut point of 0.097. Therefore, defunding Planned Parenthood made it onto the final bill.

The final reconciliation bill passed 52-47 (with a cut point of 0.106) with Collins and Kirk voting against the bill, likely due to its provisions defunding Planned Parenthood (all other votes followed party lines). Obama, as expected, vetoed the measure, but its symbolism proved

a success.[88] Both votes would have failed in the counterfactual 54-46: Planned Parenthood

defunding would have been separate from the ACA repeal, which would not have made it to

Obama's desk. It is also possible, if not likely, that the vote would not have even come up for a

vote in the counterfactual.[89] Planned Parenthood and the ACA would not have been in any

danger of losing their funding, much to the chagrin of Republican lawmakers. Rhetoric on the

campaign trail likely would not have changed – the power of the undercover videos still would

have shaped discourse – but would not have gained senatorial legitimacy.[90] The final outcome

between the real and counterfactual would have been the same (the bill dying), but in the latter,

the bill would not have made its way out of Congress.[91]

Miscellaneous

Other notable bills from the 114th Senate would not have changed in the counterfactual,

though vote tallies would have been different. Early in the year, controversy erupted over

funding for the Department of Homeland Security (DHS). Republicans in both the House and

the Senate refused to fund the agency unless the appropriations denied money for Obama's

executive orders on immigration. A near shutdown delayed only by short-term funding bills led

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[88] Another symbolic gesture as the Republicans knew Obama would veto the bill and they had no hope of overriding the veto. However, the bill passed with majorities in each chamber of Congress, allowing Republicans to argue that Obama abused the office of the presidency by ignoring the will of the legislative branch. Moreover, Republican presidential candidates continued to push the issue and it received ample coverage in the first few Republican primary presidential debates (and thus has likely become ingrained in the minds of Republican voters and will almost surely be a cleavage issue during the general election campaign).

[89] With sure knowledge of failure, it is possible the amendments would not have seen vote action. On the other hand, even a failed vote produces symbolism (see the footnote above) that can divide senatorial candidates in swing states and, of course, be an issue in the presidential race. More importantly, the bill might not have even seen the counterfactual floor. Though Senate leaders do not have the agenda setting power of their House counterparts, they still have some control over which bills receive votes. The counterfactual Senate Majority Leader (a Democrat) may have sought to prevent such a vote in the first place.

[90] The entire bill still would have passed the Republican controlled House, though.

[91] Actions taken by the states surely would have remained the same in the counterfactual world – Republican governors and state legislatures would have attempted to disempower Planned Parenthood, just as is happening today.

to much excitement in the House and a split from the bipartisan immigration sentiments shared

after the Gang of Eight bill (perhaps the first instance of the Republican Party ignoring the 2012

election "autopsy" in which party elites noted that the GOP needed to reach out to Hispanic

communities to remain electorally viable in future presidential campaigns). The House

ultimately passed a "clean" DHS funding bill (one that did not strip funds from Obama's

executive orders) and the Senate approved it 68-31. Interestingly, in the counterfactual, which

has more conservative than moderate Republicans,[92] there would only have been 58 votes in

favor (which would not have imperiled the bill's passage because the real Senate voted 98-2 to

debate the clean bill – the counterfactual Senate would also have cleared the procedural hurdle).

The bill still would have passed and the DHS would have been funded.

In October, funding debates shifted focus to keeping the government open. Preventing a

government shutdown created such legislative strife that it cost Speaker Boehner his job, divided

the Republican majority, and empowered the deeply conservative House Freedom Caucus. The

deal ultimately struck increased spending by $80 billion over two years and raised the debt

ceiling. To pay for the spending increase, Congress agreed to lower Medicare payments to

doctors and tightened requirements for Social Security disability eligibility (Herszenhorn 2015).

When the budget bill came to a vote in the Senate, it passed 64-35. Under the counterfactual

apportionment scheme, the bill would have passed with 63 votes, more or less the same as the

real Senate. Provisions likely would not have changed nor would have the debate surrounding

the bill. The House would have remained the budget debate's headliner.

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[92] Because of the 2010 and 2014 indicators pointing to strong Republicans years, ideology gets pushed to the right, leaving many Republican senators with NOMINATE scores above 0.5.

Lastly, I turn to Obama's greatest foreign policy achievement while in office: the Iran

Nuclear Deal. Years of negotiation led to a summer of contention in which the Senate held

numerous packed hearings on the deal and Donald Trump and Ted Cruz (R-TX) held a joint rally

on the Capitol's lawn, attacking the nuclear deal and railing against Obama's foreign policy.

The Senate remained deeply divided over a bill that would disapprove the deal. Obama worked

to earn the support of some centrist Republicans; all balked. Some Democrats, like Chuck

Schumer (D-NY), quickly distanced themselves from the deal. The bill required 60 votes to

overcome a filibuster and 67 to override a sure presidential veto. Democrats feared that

Republicans could amass that amount (or 60, therein delegitimizing the deal). Hard lobbying by

the administration swayed enough undecided Democrats to sustain a filibuster of the disapproval

resolution by a 58-42 vote. Based on cut points, the counterfactual would have failed to invoke

cloture in a 46-54 vote,[93] not close to threatening the Iran deal. Again, the final outcome would

not change, but debate framing would – from a close vote to symbolically delegitimize the deal

to a largely party-line vote with little hope of impacting foreign policy.

Discussion and Conclusion

Undoubtedly, the Senate's constitutional apportionment scheme has affected public

policy. By systematically overrepresenting small, rural states which today trend Republican, the

Senate, in recent years, benefits the GOP at the expense of the Democratic Party. Altering

Senate apportionment so power follows the people rather than the states leads to a chamber that

subscribes to the normative "one person, one vote" principle that dictates apportionment for

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[93] This might understate the support for invoking cloture. Some traditionally liberal Democrats opposed the Iran
Deal either because of hawkish foreign policy beliefs or fears that the deal would endanger Israel (many of these
legislators also happened to be Jewish, adding another dimension to Iran Deal considerations). Furthermore, the
NOMINATE approach does not necessarily account for partisan pressure to vote a certain way (pressure which
could be strong on close votes).

every other legislative body in the country. Reapportioning seats to reflect population and running counterfactual election simulations significantly increases the number of Democrats in office and, as shown, can have a significant impact on public policy as mainstream liberal ideas could see the light of day without compromise and without threat of filibuster. Some bills, like the Affordable Care Act, would become more liberal in the counterfactual Senate than in the real Senate, but others, such as bills regarding the minimum wage, assault rifle bans, and Wall Street reform, would not change in content. Notably, increasing the number of Democrats does not mean that the chamber becomes significantly more liberal. The Democratic Party's shift to the left that has become apparent in the 2016 campaign cycle would not necessarily be realized in the counterfactual Senate; the progressive agenda would still not have had the votes needed to be enacted.

The simulated counterfactual Senate gave Democrats a filibuster-proof majority in three of the four Senates studied. While that supermajority would likely be used to pass the Democratic agenda – from minimum wage hikes to universal pre-school and so on – it would still run up against another institutional roadblock: the House of Representatives. In only one of the four Congresses analyzed did the Democrats control the House. The 111th Congress would have proved the only time in which the Democrats could unabashedly and uninhibitedly dictate the legislative agenda and fully implement their goals. In those two years, with the counterfactual Senate, public policy might have been significantly altered. The public option might have been included in the Affordable Care Act; the Dodd-Frank Wall Street reform bill might have been made more stringent, including a number of the liberal policies hoped for by its Senate architect (Chris Dodd of Connecticut) and other elements desired by the left; the stimulus package might have been larger which could have eased the Great Recession's pain. Clearly, in

times of undivided Democratic congressional control, the counterfactual's apportionment scheme would have had a meaningful impact on policy outcome.

However, in times of divided government control, as in the 112-114th Congresses, the strongly Democratic counterfactual Senate would be unable to influence policy outcomes. Sure, the body would have passed liberal bills and legislation for which the party craved – such as gun control reform, additional stimulus early in the recession, and a higher minimum wage – but the bills would have died in the Republican controlled House. As long at the Republicans could play successful defense in one chamber (as they would not have been able to mount a filibuster in all but the 114th Senate), Democrats would still see their agenda stymied. Increasing their number in one chamber would produce symbolic victories worth nothing more than a participation trophy. Interestingly, though, the Republican's House dominance has been a historical aberration. Up until Newt Gingrich's (R-GA) Contract with America, the Republican's 1994 congressional campaign cornerstone, the Democrats largely controlled the House – and by large margins. In fact, in the 50 years preceding the Contract with America, Republicans held a House majority for only four years. The Democrats had, for decades, a solid lock on one branch of government.

The four counterfactual Senates analyzed showed a strong and resilient Democratic majority, even in the 114th, two-thirds of whose members were elected in strong Republican years. If the simulated Senates' partisan composure and Democratic strength extends throughout the past half century, then, with a population-based Senate apportionment scheme, the party would have had strong congressional control throughout much of the post-war period. During times of Democratic presidential leadership, ambitious programs could have been implemented; in times of conservative executive control, Republican programs could have been significantly

moderated.[94] However, many confounding factors that could have divided the Democratic congressional caucus come to mind: the role of race, moderate Democrats in the South, and other coalition factors specific to certain types of bills. In other words, how might the salience of the second-dimension have thwarted Democratic programs even in times of large congressional majorities?

Just because the Democrats solidly held the counterfactual Senate during these eight years does not mean that, historically, they would maintain control of that chamber. Since President Lyndon Johnson signed the Civil Rights Act, the Democrats and Republicans have more or less switched regional dominance – the Democrats, once prominent in the South, began to compete and win in the North. In turn, the Republicans, at one point the party of the North, began to win with frequency and increasing ease in the South. Before this realignment, in a time when the Northeast held a greater share of the population than it does now (and thus would have had more counterfactual Senate seats than it does today), the counterfactual may very well have benefitted Republicans, perhaps by enough to flip the chamber's majority.[95] The patterns seen in this paper might not have held going back a few decades. A historical extension of this works needs to be conducted to understand how the counterfactual apportionment scheme would have changed public policy in the post-World War II period.

There might be downsides to the counterfactual apportionment. In six of the eight years, the Democrats had a filibuster-proof majority and thus would not have had to work with Republicans to pass legislation. It seems possible that refusing to work across the aisle would only heighten and increase tensions between the two parties, especially given that many

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[94] Perhaps very important during the neoliberal resurgence of Ronald Reagan's administration.
[95] Or, if not, would those Republicans be conservative enough to block liberal proposals or would their ideology be far enough left to aid Democrats in pursuing their agenda?

Democratic-sponsored pieces of legislation from the Senate would have died in the Republican House. In times of unilateral Democratic government control, a strong House and Senate majority might utterly preclude the Republicans from having a say in government. If they could not filibuster, they would have no check in the Senate. Without a majority in the House, Republicans would have no legislative input. That could perhaps increase discord between the parties and bolster affective polarization between Republicans and Democrats as Republicans could, theoretically, view Democrats as a tyrannical majority party.

The counterfactual Senate also has interesting ramifications for electoral strategy and the Electoral College. With Senate power concentrated in large states, both parties would have to campaign and compete in expensive media markets[96] to have a chance of winning the majority. Swing states like Florida, Ohio, Virginia, North Carolina, and Michigan would attract millions of dollars in party and outside money. Other states, like California, Texas, Illinois, and New York, might attract large sums of money every other election cycle (i.e., Republicans might compete in California, Illinois, and New York in midterm years whereas Democrats might target Texas in presidential years). The path to the majority would wind through those states meaning that parties would need to pay extravagant sums to play for the majority. Each of the states mentioned has more than two senators and thus on some years would have multiple Senate elections. As such, total money raised and spent would likely double – or even triple in states like California – as the number of candidates increases. For those concerned with perceived or

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[96] Large urban areas tend to have very pricey media markets; many campaigns rely on television ads to reach a large number of voters.

potential deleterious effects of money in politics, this apportionment scheme would only

exasperate the alleged problem.[97]

A reapportioned Senate would also alter the distribution of electoral votes. Continuing to

add the number of House and Senate seats to determine electoral college votes, California would

have 63 electoral votes (instead of 55); Texas, 43 (versus 38); and New York and Florida, 32

(rather than 29). Altogether, those states would account for 170 electoral votes – just 100 short

of a majority. Some of the most contentious swing states in recent years – New Hampshire,

Iowa, and Nevada – would all lose electoral votes and likely decline in significance. Ohio and

Florida would attract even more attention than they already draw (as would Pennsylvania,

Virginia, and North Carolina). In effect, the number of states in which presidential candidates

compete would fall. If the counterfactual Senate serves as any indicator, the new Electoral

College would benefit Democrats.[98] Reapportioning the Senate, then, benefits Democrats in two

governing institutions: the Senate and the Presidency. Only the House stands unaffected.

Overall, using the counterfactual Senate to analyze a snapshot of major legislation the

Senate considered during Obama's two terms in office paint a portrait of the Senate as a chamber

whose policy decisions are swayed and skewed by the systemic overrepresentation of small, rural

states and the corresponding underrepresentation of large, typically urban states. A Senate based

on population rather than equality between the several states increases the number of Democrats

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[97] Due to hard money contribution limits, the limited resources of the Democratic and Republican National Committees (as well as the corresponding senatorial campaign committees), and that same party candidates in certain states would be competing for donations (eg, two Republican candidates for two Senate seats in Illinois would be competing for the same scarce grassroot and donor class resources), meaning that outside spending groups – super PACs – would be necessary to pick up the slack. Regardless of whether super PACs actually lead to corruption or a democracy "subverted" by the wealthy, some individuals might believe so and could potentially lose faith in the government and democratic process.

[98] Under this "counterfactual Electoral College," President Obama would have won his reelection with 342 electoral votes, rather than 332. A reapportioned Senate would give the Democrats a 10 electoral vote bonus.

in office and betters the chances that a liberal agenda be enacted. Perhaps this would align

policy outcomes with public thought; perhaps it would have led the country down a much

different legislative path. Whatever the outcomes, one element remains clear: the Senate would

ascribe to the seemingly basic democratic principle that representation and political power

should follow the people; all people, regardless of residence, should have one equal vote.

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Appendix

The following charts show full results from each counterfactual election:

2002			2004		
Party	NOMINATE	State	Party	NOMINATE	State
Rep	0.387	AK	Rep	0.6	AZ1
Rep	0.489	AL	Dem	-0.434	CA4
Rep	0.429	AR	Dem	-0.435	CA5
Dem	-0.483	CA1	Dem	-0.435	CA6
Dem	-0.483	CA2	Rep	0.481	CO1
Dem	-0.481	CA3	Dem	-0.427	CT
Dem	-0.349	DE	Dem	-0.165	FL2
Dem	-0.221	FL1	Dem	-0.161	FL3
Rep	0.501	GA1	Rep	0.557	GA2
Rep	0.278	IA	Dem	-0.49	HI
Rep	0.521	ID	Dem	-0.391	IL3
Dem	-0.436	IL1	Rep	0.42	IN1
Dem	-0.437	IL2	Dem	-0.389	MD1
Rep	0.417	KS	Dem	-0.38	MI2
Rep	0.525	KY	Rep	0.361	MO2
Dem	-0.235	LA	Rep	0.544	NC2
Dem	-0.535	MA1	Dem	-0.215	ND
Rep	0.174	ME	Rep	0.292	NH
Dem	-0.427	MI1	Dem	-0.358	NJ2
Dem	-0.438	MN1	Dem	-0.18	NV
Rep	0.282	MO1	Dem	-0.474	NY3
Rep	0.479	MS	Dem	-0.474	NY4
Rep	0.469	MT	Rep	0.354	OH2
Rep	0.472	NC1	Rep	0.644	OK
Dem	-0.403	NJ1	Dem	-0.419	OR
Dem	-0.49	NY1	Rep	0.344	PA2
Dem	-0.488	NY2	Rep	0.341	PA3
Rep	0.324	OH1	Rep	0.561	SC
Rep	0.317	PA1	Dem	-0.232	SD
Rep	0.458	TN1	Rep	0.629	TX3
Rep	0.56	TX1	Rep	0.627	TX4
Rep	0.561	TX2	Dem	-0.42	WA1
Rep	0.367	VA1	Dem	-0.374	WI1
	D	14		D	19
	R	19		R	14

2006			2008		
Party	NOMINATE	State	Party	NOMINATE	State
Rep	0.541	AZ2	Dem	-0.29	AK
Dem	-0.439	CA10	Rep	0.548	AL
Dem	-0.439	CA7	Dem	-0.173	AR
Dem	-0.439	CA8	Dem	-0.473	CA1
Dem	-0.439	CA9	Dem	-0.472	CA2
Dem	-0.175	FL4	Dem	-0.475	CA3
Dem	-0.173	FL5	Dem	-0.35	DE
Rep	0.536	GA3	Dem	-0.223	FL1
Dem	-0.408	IL4	Rep	0.51	GA1
Dem	-0.28	IN2	Dem	-0.376	IA
Dem	-0.531	MA2	Rep	0.559	ID
Dem	-0.423	MD2	Dem	-0.44	IL1
Dem	-0.414	MI3	Dem	-0.441	IL2
Dem	-0.368	MN2	Rep	0.464	KS
Rep	0.507	NC3	Rep	0.557	KY
Rep	0.485	NE	Rep	0.532	LA
Dem	-0.369	NJ3	Dem	-0.52	MA1
Dem	-0.37	NM	Dem	-0.473	ME
Dem	-0.493	NY5	Dem	-0.418	MI1
Dem	-0.492	NY6	Dem	-0.401	MN1
Dem	-0.374	OH3	Dem	-0.347	MO1
Dem	-0.374	OH4	Rep	0.489	MS
Dem	-0.362	PA4	Dem	-0.169	MT
Dem	-0.533	RI	Rep	0.472	NC1
Rep	0.485	TN2	Dem	-0.376	NJ1
Rep	0.606	TX5	Dem	-0.495	NY1
Rep	0.604	TX6	Dem	-0.275	NY2
Rep	0.588	UT	Dem	-0.378	OH1
Dem	-0.313	VA2	Dem	-0.362	PA1
Dem	-0.452	VT	Rep	0.523	TN1
Dem	-0.437	WA2	Rep	0.605	TX1
Dem	-0.381	WI2	Rep	0.61	TX2
Dem	-0.317	WV	Dem	-0.338	VA1
Rep	0.556	WY			
	D	25		D	22
	R	9		R	11

2010			2012		
Party	NOMINATE	State	Party	NOMINATE	State
Rep	0.668	AZ1	Rep	0.576	AZ2
Dem	-0.38	CA4	Dem	-0.481	CA10
Dem	-0.379	CA5	Dem	-0.481	CA7
Dem	-0.381	CA6	Dem	-0.481	CA8
Dem	-0.165	CO1	Dem	-0.48	CA9
Dem	-0.13	CT	Dem	-0.27	CO2
Rep	0.595	FL2	Dem	-0.221	FL4
Rep	0.596	FL3	Dem	-0.224	FL5
Rep	0.626	GA2	Rep	0.519	GA3
Dem	-0.444	HI	Dem	-0.421	IL4
Dem	-0.318	IL3	Dem	-0.3	IN2
Rep	0.483	IN1	Dem	-0.28	MA2
Dem	-0.323	MD1	Dem	-0.433	MD2
Dem	-0.275	MI2	Dem	-0.414	MI3
Rep	0.431	MO2	Dem	-0.396	MN2
Rep	0.598	NC2	Dem	-0.182	NC3
Rep	0.565	ND	Rep	0.49	NE
Rep	0.584	NH	Dem	-0.376	NJ3
Dem	-0.226	NJ2	Dem	-0.385	NM
Rep	0.523	NV	Dem	-0.257	NY5
Dem	-0.373	NY3	Dem	-0.37	OH3
Dem	-0.155	NY4	Dem	-0.346	PA4
Rep	0.438	OH2	Dem	-0.269	RI
Rep	0.755	OK	Rep	0.577	TN2
Dem	-0.344	OR	Rep	0.612	TX5
Dem	-0.219	PA2	Rep	0.614	TX6
Dem	-0.22	PA3	Rep	0.619	TX7
Rep	0.622	SC	Rep	0.593	UT
Rep	0.465	SD	Dem	-0.345	VA2
Rep	0.716	TX3	Dem	-0.298	VT
Rep	0.722	TX4	Dem	-0.436	WA2
Dem	-0.345	WA1	Dem	-0.399	WI2
Rep	0.417	WI1	Dem	-0.227	WV
			Rep	0.634	WY
	D	16		D	25
	R	17		R	9

2014		
Party	NOMINATE	State
Rep	0.419	AK
Rep	0.621	AL
Rep	0.612	AR
Dem	-0.417	CA1
Dem	-0.418	CA2
Dem	-0.416	CA3
Dem	-0.348	DE
Rep	0.515	FL1
Rep	0.504	GA1
Rep	0.372	IA
Rep	0.607	ID
Dem	-0.376	IL1
Dem	-0.380	IL2
Rep	0.542	KS
Rep	0.612	KY
Rep	0.596	LA
Dem	-0.479	MA1
Rep	0.271	ME
Dem	-0.357	MI1
Dem	-0.352	MN1
Rep	0.427	MO1
Rep	0.550	MS
Rep	0.529	MT
Rep	0.527	NC1
Dem	-0.346	NJ1
Dem	-0.439	NY1
Dem	-0.437	NY2
Rep	0.398	OH1
Rep	0.400	PA1
Rep	0.600	TN1
Rep	0.637	TX1
Rep	0.638	TX2
Dem	-0.294	VA1
	D	13
	R	20