The Electoral Roots of Legislative Obstruction:
Evidence from the Nineteenth-Century House of Representatives

William T. Egar∗
University of Wisconsin-Madison

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**Abstract:** Although notably absent for much of the postwar era, intense two-party competition for majority status is a reality in modern congressional elections. However, little is known about the side-effects of this kind of competition, particularly on minority party behavior. I argue that intense competition for majority status gives minority party members both a policy and electoral incentive to engage in legislative obstruction, and test this argument using data from the nineteenth-century House of Representatives. Results suggest that both anticipated as well as realized electoral gains by the minority party provide an incentive for members to engage in obstructive tactics.
Introduction

By most indicators, levels of conflict within Congress have risen in recent decades. Since the 1970s, the number of party votes and rates of partisan voting have steadily increased (e.g., Fiorina 2002). Filibustering in the “60-vote Senate” (Sinclair 2002) has risen during the same time (Binder and Smith 1997; Koger 2010), as has the use of “parliamentary guerrilla warfare tactics” in the House (Oleszek 2007, p. 186). Signs seem to point to a more aggressive minority party, one more willing to exploit its procedural advantages than minorities during most of the 20th century, when Minority Leaders often adopted a more collegial, “constructive” approach to legislating (Jones 1970). Most would likely attribute the rise in conflict to the increasing ideological distance between the Democratic and Republican parties in Congress (e.g., McCarty, Poole, and Rosenthal 2006). Along similar lines, ideology-based explanations have been offered for the increased strength of congressional parties in recent years. Conditional party government theory holds that party leaders are delegated additional authority by the membership when the congressiona parties are ideologically homogeneous and polarized (e.g., Aldrich and Rohde 2000; Aldrich, Berger, and Rohde 2002; Rohde 1991). The enhanced ability of party leaders to twist arms and structure floor proceedings further exacerbates the levels and appearance of conflict in Congress (Theriault 2008). When it comes to the rise of filibustering, explanations based on the Senate’s rising workload and increased time pressures (Koger 2010), heightened partisanship (Binder, Lawrence, and Smith 2002), and a procedural ”arms race” between the parties (Smith 2014) have been offered.

As congressional conflict has increased in recent decades, so has electoral volatility at the national level. Majority control of Congress, once solidly in the hands of the Democratic Party, is today hotly contested. House Republicans remained more or less a “permanent minority” (Mann 1988) for much of the twentieth century, as Democrats held an uninterrupted majority between the 1954 and 1992 elections. Senate Republicans, though more frequently competitive for control than their House counterparts, remained in a similar situation as Democrats held a Senate majority between 1954 and 1978. Since then, majority control of the Senate has flipped five times: the elections of 1980, 1986, 1994, 2006, and 2014 each brought a new party to power in the chamber.1 Since 1992, the House majority party has shifted following the 1994, 2006, and 2010 elections.

There is good reason to believe that the trends identified above — heightened partisanship, conflict, and obstruction in Congress, as well as increased competition for majority control — are tied together. Expectations about future elections by the congressional majority and minority parties are likely to have a significant impact on legislative behavior and party strategy. Stated simply, a minority party expecting to make electoral gains should have an incentive to increase levels of conflict and obstruction in Congress, while a minority party expecting electoral

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1This is excluding changes resulting from the 107th Congress (2001-2003), when party control switched mid-session from the Republican to the Democratic Party due to Jim Jeffords’ (R/I - VT) decision to stop caucusing with the Republicans.
stalemate (or worse) should have an incentive to seek compromise.

The Minority Party in Congress

The role played by political parties in Congress has been the subject of extensive examination by scholars. Once thought of as “a mere label for like-minded members” (Mayhew 1974) with minimal influence over their members’ decisions (Cooper and Brady 1981; Kingdon 1989), the congressional parties are commonly understood as integral to the modern legislative process, particularly in the House of Representatives. Granted procedural powers by the membership, party leaders are expected to carry out the wishes of their members — keeping items off the agenda opposed by most members, and pursuing legislation to help burnish the party’s brand (Cox and McCubbins 1993, 2005). Scholarship has examined the conditions that allow for strong legislative parties (e.g., Rohde 1991; Aldrich and Rohde 2000), investigated the ability of the parties to exert “direct influence,” or to affect their members’ voting decisions (Snyder and Groseclose 2000; Ansolabehere, Snyder, and Stewart 2001; Cox and Poole 2002; Burden and Frisby 2004; Jenkins, Crespin, and Carson 2005; but see Krehbiel, e.g. 1999), and documented the majority’s ability to exert forms of “indirect influence” by setting the legislative agenda in the House (Cox and McCubbins 2002, 2005; but see Schickler and Pearson 2009) as well as the Senate (Gailmard and Jenkins 2007; Den Hartog and Monroe 2008, 2011; but see Smith, Ostrander, and Pope 2013). Other research documents majority party advantages in such areas as winning on final passage votes (Lawrence, Maltzman, and Smith 2006), preventing the successful use of legislative procedures such as the discharge petition and motion to recommit in the House (Binder, Lawrence, and Maltzman 1999; Patty 2007; Miller and Overby 2010; Roberts 2005), and even outside the legislature in areas such as campaign fundraising (Cox and Magar 1999; Engstrom and Ewell 2010).

Yet for all the attention dedicated to the role of the congressional parties, existing scholarship has little to say about the role of the minority party. By and large, the above-listed sources dedicate their efforts to uncovering the various sources of majority-party advantage. This asymmetric focus is more understandable (albeit regrettable) in the case of the House minority party, as the House majority’s firm control of the chamber rarely offers many opportunities for minority input. Ostensibly granted ways of circumventing majority control through procedures such as the discharge petition (Krehbiel 1995) and the motion to recommit (Krehbiel and Meiorowitz 2002), neither procedure appears to consistently offer the minority power any real advantage over the majority, at least on policy outcomes (Patty 2007, Roberts 2005). Senate minority parties, on the other hand, can be quite influential. Filibusters and filibuster threats have become so commonplace in the contemporary Senate that scholars (e.g., Krehbiel 1998) treat the filibuster as central to the lawmaking process, and the “filibuster pivot” as a central actor whose support must be gained prior to passing any legislation. The Senate minority party has become better-understood through studies of the filibuster, even though these are not studies
of the minority party per se, but rather its main procedural weapon. Although recent studies (Bell 2011; Binder and Smith 1997; Binder, et al. 2002; Koger 2010; Smith 2014; Wawro 2005; Wawro and Schickler 2006) have increased our understanding of filibustering in both the historic and contemporary Congress, existing literature on legislative obstruction remains relatively thin considering the level of popular and scholarly interest in the topic (Koger 2010, p. 6-7).

The congressional minority party, its goals, and its avenues for pursuing such goals, are topics worth addressing. If the primary function of the congressional majority leadership is to burnish the party’s brand by establishing a positive legislative record (Cox and McCubbins 1993, 2005), does the same apply to the minority party? If so, how can the minority party attempt to accomplish this goal, particularly if agenda control remains in the hands of the majority? Research has documented that minority-party House members increasingly forced the majority party to take divisive and embarrassing votes on amendments following the adoption of electronic voting in the 1970s (Roberts and Smith 2003). But few other studies dedicate attention to chamber minorities’ efforts to politically harm the majority party. If a party’s legislative record can have an impact on its electoral fate (Lebo, et al, 2007), then in addition to improving its own record, tarnishing the record of the opposing party should be a goal of equal importance, and this is an area where the minority party may be expected to have some impact, especially if equipped with obstructive procedural tools.

I argue that a strategy of obstructionism will be more frequently pursued by the minority party when it expects to recapture majority status in the next election. As a result of refusing to compromise or work with the majority party, minority obstructionism might come at the cost of forsaking policy gain in the short term, but it can potentially serve a multitude of purposes: the pursuit of long-term policy gain if the minority party expects to have a stronger hand after the next election; stalling majority-sponsored initiatives to tarnish the majority-party brand and deny opposing partisans opportunities for credit claiming; putting the minority party on the record in the most credible position possible when opposing the majority in the next election; and exacerbating voters’ dislike of Congress by making features of the legislative process — such as conflict, bargaining, and extreme partisanship that many voters find distasteful (Hibbing and Theiss-Morse 1995, 2002; Ramirez 2009) — more salient.

Electoral Expectations and Party Strategy

A strategy of avoiding compromise and stalling legislation through obstructive tactics makes sense for a congressional minority that expects a seat gains in the next election. Expecting a larger contingent of co-partisans to join them in the next Congress, members of the minority party should more frequently engage in “strategic disagreement” (Gilmour 1995), delaying policy
in one period to gain more favorable outcomes in the next. By contrast, a minority party expecting to lose seats in the election faces the strong possibility that putting off policy until the next Congress will at best prolong the inevitable, or at worst, produce an even less-favorable outcome in the next Congress than could have been achieved in the current period. By refusing to compromise, the non-competitive minority would lose whatever policy concessions they might have gained by working with the majority party to craft policy.

In addition to the pure policy reasons outlined above, there is reason to believe that obstructionism can be a valuable electoral strategy for the minority party. As Jones (1970) puts it, the minority faces a tradeoff between policy influence (“responsibility,” in his terms) and the pursuit of majority status:

“To satisfy the first demand [majority status], party leaders may seek glamorous issue stands or headline-grabbing victories on policy . . . This activity is very likely to work to the detriment of meeting the second expectation [responsibility] . . . The high probability is that the spectacular victory for the minority party will be an essentially destructive victory, i.e., a defeat for the majority party, notably for the president. . . the minority party may be creative and responsible and not only remain the minority party, but even ensure the continued success of the majority party” (p.23-24, italics in original).

By this argument, accepting compromise and having input on policy while in the minority might further the party’s policy goals short term, while at the same time it may contribute to public satisfaction with the majority party and harm the minority’s electoral chances. On the other hand, refusal to compromise and attempting to obstruct rather than influence the majority’s initiatives might further the minority party’s electoral goals while coming at the cost of policy influence in the short term. The first half of this argument is supported by Ripley’s (1967), whose study of House party leadership suggested that minority-party Republicans’ constructive approach to working with majority Democrats was detrimental to their electoral success:

“The success of this experiment with collegial leadership in the minority has been quite limited. The Republicans have had a major impact on some important programs, but the majority party possesses the power to deny most of the credit due them. Success at the polls, the ultimate aim of the leaders, has not been forthcoming” (p. 109-110).

Denying legislative success to the majority party can be politically consequential. Some evidence suggests that legislative successes are tied to positive electoral outcomes by congressional majorities (Lebo, et al. 2007), and satisfaction with Congress typically works to the benefit of majority-party members (Jones 2010; Jones and McDermott 2004, 2010). Preventing the majority party from accomplishing its goals might further the perception that the party “in control” is incapable of effectively governing. The notion that obstruction can affect the perception of a party’s basic competence is a concern voiced by politicians and scholars both. Senator John Kerry (D-MA) said as much during floor debate in October 1994, claiming that the filibusters undertaken by minority-party Republicans constituted an attempt to make the Democratic
majority appear incompetent in advance of the elections:

“I have said it before and I say it again: There is a scorched Earth policy underway to try to prevent anything from happening in Congress so that the Congress will look bad so that, hopefully, the Republicans will be the beneficiaries, because they can go out to the country and they can say: You see, those Democrats are in the majority and they cannot run the show. Frankly, Republicans get away with this strategy because America does not understand that you have seven different cloture opportunities just to get one piece of legislation through here. And America does not understand that it takes 60 votes in order to break the logjam every time—not just a majority, which the Democrats have; not just 51, which the Democrats have—America just doesn’t understand that a very few people can kill any bill in the Chamber. And Republicans can make people look silly and foul the whole process up and go out and claim victory.” (Congressional Record. 103rd Cong., 2nd sess., p. S14627)

This idea is also consistent with Lee’s (2013) discussion of the political incentives to obstruct presidential initiatives:

“A president’s difficulty is not merely that his party opposition will typically have policy-based objections to his agenda. The simple fact that a president publicly advocates a policy has political consequences. When presidents champion policy initiatives, they set a benchmark for evaluating the success or failure of their presidencies. When Congress fails to pass legislation sought by the president, the president looks weak and ineffectual — a political benefit to the opposition party in a two-party system.” (p. 776).

The implication is that the political consequences of obstructing the president’s agenda might fall on the president, rather than those responsible for blocking the president’s initiatives. Though not strictly a discussion of the congressional parties, it is not a stretch to believe that the logic outlined above can work in a similar fashion when it comes to the relationship between the majority and the minority party. Unhappiness with a lack of legislative productivity appears to harm the perception of members of the majority party without affecting the reputation of the minority (Jones 2014).

Not only do minority party incentives provide an expectation that electoral competition should breed obstruction; majority party incentives do much the same. A majority party facing electoral losses has an incentive to accomplish as much as possible before leaving office (the “strategic disagreement” argument in reverse), further incentivizing obstruction by the minority (but soon-to-be-majority) party. A concern for its reputation — a concern that should be greatest during highly-competitive periods when majority status is most threatened — could lead the majority to push for more items that help the party’s image among the public, something that naturally should prompt additional opposition from the minority party.

The implications of helping or harming a party’s legislative record and its appearance of competence among the public are most consequential when majority status is at stake. This also is consistent with Lee (2013, p. 777): “Under conditions where control of Congress or
the presidency seemingly hangs in the balance, members have reason to weigh more heavily
the partisan political consequences of their decisions... members would likely pay a lot more
attention to protecting their parties’ political interests during a time when control of national
institutions is seemingly up for grabs.” Thus, the ultimate expectation gleaned from this
discussion is that, for both policy and electoral reasons, we should expect to see more obstruction
attempts by the minority party when competition for majority control between the parties is
fiercest, and the stakes are highest; we should observe fewer obstruction attempts by the minority
party when levels of competition at the national level are lower.

These ideas are also elaborated by Smith (2014) in his recent discussion of the rise in Senate
filibustering:

“Missing from previous studies is an account of the effect of electoral competition on
senatorial behavior. While we have plenty of evidence that individual legislators adjust
their behavior to their electoral circumstances, we usually ignore how congressional parties
and their leaders adjust their agenda and procedural strategies to the next election. . . From
the point of view of accomplishing policy objectives, the prospect of a change in party
control encourages the minority to withhold support for legislation in the hope of having
a stronger hand after the next election. It may also encourage the majority to push a
larger agenda for fear of losing seats in the next election. Either way, obstructionism is
encouraged... the minority recognizes that it may not be held accountable for outcomes in
a Senate “controlled” by the other party and can hope that frustration with Washington
will cost electoral support for majority party Senators.” (Smith 2014, p. 43-44).

Although Smith suggests using electoral competition to explain the contemporary Senate, to test
these arguments I instead turn to another chamber and time period that witnessed variation in
both obstructionism and electoral volatility: the nineteenth-century House of Representatives.

The House in the Nineteenth Century

A few factors combine to make the House of Representatives in the nineteenth century an
attractive venue to study the use of obstructive tactics. First, the century witnessed considerable
variation in how competitive the major parties were for control of the House. Between the late
1820s and 1838, Pro-Jacksons/Democrats dominated; from 1840 until the Civil War, Whigs
(subsequently replaced by the “Opposition” Party, then Republican Party)\(^4\) and Democrats
competed fairly consistently for the House, as control\(^5\) changed hands seven times between 1840
and 1858; Republicans held an uninterrupted majority between 1860 and 1872 before finally
losing it to the Democrats in 1874; the fiercely-competitive period between 1874 and 1894

\(^4\)Congressional parties first developed around Pro- and Anti-Jacksonian factions; the former adopted the label
Democrat, and the latter eventually coalesced around the Whig label (Aldrich 1995; Silbey 1991). Most accounts
treat the Opposition (then later, Republican) Party as the successor to the Whigs, which I do here.

\(^5\)Of course, “control” is used here simply to denote which party had more members in the chamber; the
majority party did not acquire the same degree of control over House proceedings (the ability to end dilatory
efforts, to set the agenda, etc.) until decades later (e.g., Cox and McCubbins 2005, ch. 4).
witnessed a total of six changes in party control.

[Figure 1 about here]

Chamber Rules and Obstruction

Contrasts are often drawn between the contemporary House and Senate, noting that the House is more structured, hierarchical, and rules-based, while the Senate is more informal and individualistic. The House’s rules empower chamber leaders, placing strict limits on amendments and debate, thereby facilitating quick action when a majority wants it. The Senate, by contrast, is characterized by the power of individual senators, an open amending process, few rules, and lengthy debate. As a consequence, it is today the chamber known for obstruction. Increased filibustering and use of cloture motions has led some to label the chamber the “60-Vote Senate” (e.g., Sinclair 2002). Unless operating with the unanimous consent of all Senators, nearly any measure is subject to unlimited debate; exploitation of this prerogative has led more and more often to the use of cloture motions by majority leaders, along with other restrictive procedural moves, resulting in an acrimonious, bitter, and unproductive atmosphere (Smith 2014). The House’s strict rules stand in stark contrast, making successful obstruction by a minority of members practically impossible.

However, this has not always been the case. During the nineteenth century, the House was characterized by obstruction and inactivity. Although the procedural tactics used to block legislation were different, historical accounts paint a picture of the House in the 1880s as a chamber quite similar to the modern Senate. According to Galloway and Wise (1976),

“the House of Representatives had been reduced to a condition of legislative impotence by abuses of its then existing rules of procedure. Not only was its legislative output small and insignificant, but the use of dilatory motions combined with the disappearing quorum and a series of filibusters to make the House an object of public ridicule and condemnation…the Washington Post, in an editorial captioned ‘Slowly Doing Nothing,’ observed that the House had passed only four bills, none of them important, in more than six weeks, and explained that ‘the system of rules is the prime cause of the wonderful inertia of this unwieldy and self-shackled body…In stalling legislation and keeping everybody else from doing anything a few members are all powerful, but when it comes to passing laws little can be done except by what is practically unanimous consent’ ” (p.164).

Similarly, Alexander (1916) comments on the unproductive state of affairs in the House during the 50th Congress (1887-1889): “By the time [John G.] Carlisle reached his third term as Speaker it became so easy to muster a sufficient number of disgruntled members to delay or prevent legislation that the House, in the Fiftieth Congress, although in continuous session longer than any of its predecessors, passed only one measure except such as received unanimous consent.” (p. 62). Multiple measures of dilatory efforts appear to confirm that the House witnessed more
obstruction attempts than the Senate during this period, despite the contemporary reputation of the latter as the more obstruction-ridden chamber (Koger 2010).\footnote{These measurement schemes do not attempt to count instances of delay by extended debate; given that delay by extended debate (the “classic filibuster”) has historically been the Senate’s most well-known obstructive tactic, this omission may cast some doubt on the idea that the House was the most obstruction-ridden chamber in the nineteenth century (see Beth 2012). On the difficulty of adequately measuring talking filibusters, see, for example, Burdette (1940) and Beth (1995).}

As mentioned above, the tactics used to delay or block legislation in the historic House were different than those used today. The primary obstructive tool of the modern Senate — extended speaking, or the mere threat of extended speech — has not always been available in the House, as House rules (unlike the Senate) provide for a previous question motion, or a motion to close debate and bring a matter to a vote by the chamber.\footnote{Of course, the previous question motion was not always interpreted this way. A motion to move the previous question originally was meant to put off unpleasant or awkward discussions, and even after it was re-interpreted to mean closure of debate in 1811, it was still occasionally an unwieldy tool; see Binder (1997).} Nonetheless, House members had a number of other procedural weapons at their disposal.

Two of the most frequently-used delaying tactics were dilatory motions and disappearing quorums. Dilatory motions, typically motions to adjourn, to recess, or to fix the day to which the House would adjourn, are procedural motions made by members for the purpose of consuming time. These often took precedence over other matters (Hinds 1907, V 5301) and thus members had many opportunities to offer them. Moreover, since a recorded vote (itself a time-consuming process, particularly before the introduction of electronic voting in the 1970s) could be requested by a mere one-fifth of the chamber, even small House minorities could waste hours of the chamber’s time by repeatedly offering parliamentary motions and demanding recorded votes. The thirty-third House (1853-1855), for instance, witnessed over eighty failed votes on a bill to organize the Kansas and Nebraska territories, most of which were motions to adjourn, to fix the day to which the House would adjourn, or to excuse members from voting, an event that Jenkins and Stewart (2013, p. 39) refer to as the “apotheosis of delay.” Every effort to measure obstruction in the historic House (Binder 1997; Dion 1997; Koger 2010) includes some measurement of procedural motions intended for delay.

The disappearing quorum constituted a form of obstruction by mere inaction. The Constitution stipulates that “a majority of the House shall constitute a quorum to do business.”\footnote{Art. I, sec. 5.} This in itself did not pose a problem; however, the presence or absence of a quorum was determined by a recorded vote rather than a count of members physically present in the chamber. Thus, if fewer than half of the House’s elected membership recorded a vote, another member could make a point of “no quorum,” after which no business could be transacted until a quorum was established. To overcome the lack of a quorum, the House’s rules permitted the sergeant-at-arms to send for and arrest unexcused absent members (Alexander 1917, p. 155-160).

By rule, all House members present in the chamber were required to vote unless excused. The lack of a quorum did not become problematic until the House in 1832 refused to punish John
Quincy Adams (Anti-Mason-Massachusetts) for his refusal to vote when his name was called, thereby establishing the precedent that members were able to abstain from voting without fear of reproach (Alexander 1916, p. 158; Hinds 1907, V 5943). Following this period, House minorities would frequently abstain from voting (while remaining physically present in the chamber) in order to prevent establishment of a quorum and consequently block legislation. When the majority party was either small, incohesive, or its members’ attendance was imperfect, the disappearing quorum could be an extremely effective tool of minority party obstruction since all it required was to sit silently. As Alexander (1916) describes, “Under the practice of the House the absence of a quorum frequently occurred with two thirds of the members present. The absurdity of such a condition appealed to everybody, for why order the arrest of absentees, if, after their return, their silence destroyed their presence?” (p. 159). Acting as minority leader early in the 53rd Congress, Thomas Reed (R-Maine) noted the absence of a number of majority party members, and held up the House for weeks by instructing the members of his own party to abstain from voting on approval of the House Journal (Luce 1922, p. 43).

Koger (2010) presents the most comprehensive effort at identifying disappearing quorums (both successful and unsuccessful attempts to deny a quorum). Based on his measurement, the use of the disappearing quorum tactic rose dramatically toward the end of the nineteenth century.

The obstructionism of the late 1800s eventually became so severe that when combined with the ambitions of Republican majorities in the 51st Congress (1889-1891), it ultimately was deemed intolerable. The dramatic passage of “Reed’s Rules” curtailed minority obstruction in the House by making the Speaker the judge of whether motions were dilatory (and thus out of order), and empowered the Speaker to count members physically present in the House chamber toward a quorum. Although the Democrats repealed many of these new rules after they regained majority control in the 52nd (1891-1893) Congress, Reed’s relentless obstruction as minority leader in the 53rd (described above) ultimately forced the Democrats to relent and re-establish most of the restrictive rules that Reed originally put in place (Binder 1997; Dion 1997; Valelly 2008).

As part of the regular order of business, the previous day’s Journal had to be approved before other business was conducted (Hinds 1907, IV 3056). Obstructing approval of the Journal prevented the House from moving on to its substantive work. Even when moving beyond the Journal to other matters, Reed and minority Republicans kept up their obstructive attack. With his party abstaining from voting on a measure allowing the Committee on Ways and Means to continue its work after the impending end of the first session, Reed began taunting the majority-party Democrats over their inability to end the Republican filibuster.

“The SPEAKER. The question is on agreeing to the report of the Committee on Rules. The question was taken; and on a division, demanded by Mr. Reed, there were — ayes 130, noes 1 [not voting 195]. Mr. REED. There is a quorum present, Mr. Speaker, but it seems not to be voting.” (Cong. Rec., 53rd, 1st Sess., p. 3107).
Historical Example: Policy Motive for Obstruction in Lame-Duck Session of the 43rd Congress, December 1874 - March 1875

Looking back through Congressional history, we can find some evidence of the electoral motivations driving members to engage in obstructionist tactics. The 43rd Congress (1873-1875) provides a useful example of elections combining with minority- and majority-party incentives to create a situation ripe for obstruction. By the 1870s, the Democratic Party was on the path to dominance in the Southern states, having “redeemed” most state governments of the old Confederacy, and used tactics in those states (both legal and extralegal) to repress the predominantly Republican black vote. Combined with the public’s increased distaste for the policies of reconstruction, this helped to foreclose any chance that the Republican Party would have in keeping control of a significant share of Southern congressional seats and produced a Democratic Party that was increasingly competitive at the national level (Foner 1988). Due in part to scandal, suppression of the Southern black vote, an economic downturn in 1873, and the Republican Party’s association with a set of unpopular legislation, the congressional elections of 1874 resulted in a landslide, bringing the Democrats a total of 176 seats (out of 292) and their first majority in the House of Representatives in nearly twenty years (Dubin 1998; Foner 1988; Remini 2006; Valelly 2004).

Returning to Washington in December for the lame-duck second session of the 43rd Congress, the outgoing radical Republicans led by former Union General Benjamin F. Butler (R-Massachusetts) intended to lead a push for a set of legislation that would secure the gains of reconstruction, including a Civil Rights bill, an Enforcement Act to help mitigate Southern violence and intimidation at the polls, and an army appropriations bill, among others (Foner 1988; Binder 1997). For their part, the Democrats appeared to have no intention of allowing these bills to pass. The dynamics of the electoral results and the lame-duck session raised the stakes for both sides. The Republican majority, just routed in the midterms, saw the lame-duck session as the last chance to act on Civil Rights and other partisan priorities.10 The reinvigorated Democratic minority returned to Washington determined to stop any action on the Republican policy program, particularly with regard to the Civil Rights bill, likely with the understanding that if they could find a way defeat the bill during the current Congress, their sheer numbers in the next Congress could ensure the bill’s lasting defeat.

The result of the lame-duck session was a spectacular display of obstructionism, led by Samuel Randall (D-Pennsylvania). Randall and his allies in the minority party, to prevent consideration of Butler’s civil rights bill, kept the House in session for approximately forty-eight straight hours11 by alternating motions to adjourn and to fix the day to which the House

10 Indeed, Republicans would not have majority control of the House for another six years; unified control of Congress and the Presidency would elude the party for another 14 years.

11 The commencement of dilatory motions by the Democrats on the legislative day of Wednesday, January 27 meant that the legislative day actually extended over multiple calendar days, leading to considerable confusion among members. Members repeatedly brought up and discussed, for instance, what motion for “adjournment until next Friday” or some other proposed variant referred to in this context if the legislative day remained Wednesday.
would adjourn, and requesting recorded votes. House rules permitted the alternation of such privileged motions *ad infinitum*, or at the very least as long as the obstructionists were willing to physically remain in the chamber and second the request for roll-call votes. The minority Democrats’ intention to obstruct any action on civil rights prompted a push by Butler and other Republicans for a complete restriction on the right to offer dilatory motions for the remainder of the congressional session (Wyatt-Brown 1965; Binder 1997). Although the House initially rejected Butler’s revision to the rules, it ultimately agreed to a less-dramatic rules revision proposed by James Garfield (R-Ohio) that allowed for but placed some limitations on the number of dilatory motions that members could make.

Ultimately the rules change helped pave the way for the passage of the civil rights bill, along with a host of other Republican policy priorities (Foner 1988, Binder 1997), but not before a rancorous, often nasty debate occurred over the civil rights question. Butler began the lame-duck session in an ostensibly conciliatory manner, suggesting to the minority that all members would have full opportunity for debate and amendment, a suggestion that was rejected outright with threats of filibustering.

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the 27th while the calendar day was Friday the 29th. The following is an excerpt from one of these discussions, occurring after the passage of at least one (calendar) day:

“Mr. ELDREDGE: Then it would seem that to-day is yesterday and tomorrow too…
Mr. McKEE: If there should be no adjournment of the House now, will the Speaker, at twelve oclock, take the chair, and rule that a new day has begun?
The SPEAKER: We are now, according to usage, in the legislative day of Wednesday, January 27. The Chair knows and recognizes the fact that that involves some contradictions and apparent difficulties. At the same time it is the usage long continued and, so far as the Chair knows, unvaried.
Mr. McKEE: Then may this day last a week.
The SPEAKER: That is for the House to determine.
Mr. McKEE: I am glad to know that this is yesterday.” (Congressional Record, 52nd Cong., 2nd sess., pg. 806)

12Butler and other Republicans frequently asked for teller votes on whether or not to hold a roll-call vote on the Democrats’ dilatory motions. Though this is at first puzzling — why would the proponents of a measure add further delay to the process by requesting additional votes? — this appears to have been an attempt to increase the physical cost entailed by the obstructionists. To outlast the filibusterers and keep the House in session, Republicans had to supply enough members to maintain a quorum, meaning their members needed to remain present in the chamber around the clock, answering when their names were called on roll-call votes. Demanding that the minority supply enough votes to second the request for a roll call helped ensure that a substantial number of Democrats had to remain in the chamber for the dreary business of dilatory motions as well. This process led to one Democrat asking for travel reimbursement due to the frequency of the teller votes:

“Mr. BUTLER, of Massachusetts. And I demand the tellers on ordering the yeas and nays.
Mr. ROBBINS [D-North Carolina]. I rise to a question of order. I desire to know whether we are allowed mileage for this travel in passing between the tellers?
Mr. BUTLER, of Massachusetts. Only actual expenses.
Mr. WILSON [R-Iowa]. You have been on a fool’s errand all night, and you don’t get anything for that.” (Cong. Rec., 52nd, 2nd sess., p. 802).

13It is worth noting that Butler’s proposal did have majority support in the House, but because the change needed to be introduced via a motion to suspend the rules, a two-thirds majority was required. Although the Republican party did control two-thirds of the chamber, Butler was unable to obtain the complete backing of his party due to some members’ fear of “so sweeping a rules change,” and the fear that Butler would use the new rules as an opportunity to push for even more radical legislation (Wyatt-Brown 1965).

14The term “filibuster” has not always referred exclusively to delay by extended speech, but rather to the use of obstructive tactics to delay or defeat legislation more generally, including the use of dilatory motions (see Koger 2010). Members of the 43rd Congress frequently used the term to describe the Democrats’ response to Butler’s Civil Rights bill, including the Democrats themselves.
“Mr. GARFIELD [R-Ohio]. The purpose is to open [the Civil Rights bill] up for discussion — for full consideration.

Mr. BUTLER [R-Massachusetts]. And amendment. . .

Mr. ELDREDGE [D-Wisconsin]. What I endeavored to say was that this side of the House, as I understand their views, are opposed to the civil-rights bill and feel it to be their duty to defeat its passage by all the means within their power. . .

Mr. BUTLER of Massachusetts. I ask my friends on the other side — and I want it distinctly understood — if they agree to have the bill set down for consideration with the understanding, which shall be carried out so far as I have charge of it, that it shall be fully debated, that every proposition shall be fully debated, and that every amendment shall be voted upon that any man will say is offered in good faith, so that everybody shall have the right to put his views not only before the country in the shape of a speech, but to try and put before the House such views to incorporate in legislation as the House will adopt. . .

Mr. BECK [D-Kentucky]. . . . We have thrown no obstacle in the way of your finance bill or the other regular business. We will endeavor to aid you faithfully in passing all necessary legislation; but I will say further that whatever means I have of defeating the civil-rights bill I shall endeavor to use to defeat that bill; and I do not intend to consent to go to the Speaker’s table to give it any advantage if I know how to prevent it. I think I have a right to do that. It is leaving all the legitimate business of the session — the finance, the appropriations bills, and all private claims — to throw in a firebrand here, and we are going to resist it if we can.” (Cong. Rec., 52nd, 2nd sess., p. 259).

In the lame-duck session of the 43rd Congress, Democrats made over 90 failed procedural motions. In the course of this debate, members made clear that the recent election results were not far from their minds. Democrats in particular made frequent reference to the 1874 landslide, often taunting the majority party by reminding them of the election results, or using the results as justification for their ongoing filibuster. During the debate over Garfield’s proposal to limit dilatory motions, Samuel Cox (D-New York) accused the Republicans, who were “just dropping and dropping into a little minority in the next Congress” (Cong. Rec., 52nd, 2nd sess, p. 897) of acting on short-term partisan passions that they would come to regret when the new rule would be used against them in the following Congress. Democrats made frequent mention of the election results to claim that their filibustering was a representation of the public will, and any serious, lasting changes implemented by a defeated Congress constituted illegitimate action. At one point, Randall proposed moving past Civil Rights legislation and considering annual appropriations bills instead, during which the following exchanged occurred:

“Mr. RANDALL. . . . I make this proposition for myself: that we lay this question aside, take up and pass finally the appropriations bills necessary to carry on the Government from the 1st of July, 1875, to the 30th of June, 1876, and we struggle — for after all it is a question of physical endurance — after we have accomplished all the legislation necessary to carry on the Government for the next fiscal year, we shall struggle together as to this bill.

Mr. BUTLER, of Massachusetts. My answer to that proposition is, first, that the gentleman from Pennsylvania is not upon the Committee on Appropriations which has control of the appropriation bills; secondly, that the majority of this House, being responsible for the legislation of the country, cannot permit the minority to dictate what legislation
we shall present for consideration to the House and country.
Mr. BUCKNER [D-Missouri]. It is a defeated majority.” (Cong. Rec., 52nd, 2nd, p. 790).

Randall, for his part, insisted on the passage of appropriations bills (legislation temporary in nature), while Aylett Buckner made the minority-party perspective clear: any lasting actions taken by a lame-duck majority were considered illegitimate. Randall’s insistence on moving onto appropriations bills — what he and others often called the “legitimate business” of the lame-duck Congress (p. 900) — was seconded by other members of his party (p. 806). John Storm (D-Pennsylvania) made a similar argument in a speech lambasting the Republican majority, asserting that the primary purpose of the Civil Rights bill was simply to antagonize the South, and that “[by] resisting all means by which the bill could be reached, we were representing not a minority, but a majority of the people of the country... we had supposed [the civil rights question] was settled by the recent elections...” (p. 950-951). Randall echoed Storm’s sentiments, suggesting that the Republicans’ civil rights bill was intended “to put the iron heel of your expiring power upon the head and body of [the South]” (p. 899).

Though the Democratic filibuster of the Civil Rights Act was ultimately unsuccessful, the lame-duck session of the 43rd Congress is nonetheless illustrative of the policy rationale outlined earlier, where incentives of the outgoing majority party and resurgent minority party combine to encourage a strategy of obstructionism. An outgoing majority party pressed an ambitious agenda, seeking policy gains it could achieve in the short time remaining, including civil rights legislation that the minority party found most odious (and would have serious partisan electoral consequences for the South by helping to enfranchise predominantly-Republican Southern blacks). A newly-competitive minority party, recapturing majority control of the House for the first time in years, engaged in a program of relentless obstruction against the outgoing majority party, the elections still fresh in their minds. When not offering dilatory motions, members like Samuel Randall instead pushed the majority to focus its efforts on inherently temporary legislation, like appropriations bills. The majority, intent on passing its policy program before retreating into minority status, was forced to take steps to change the rules and limit obstruction by the minority in order to achieve that goal, but not before the minority declared its intent to block not just the civil rights bill currently under consideration, but any civil rights bill whatsoever.

15Writing in his journal, Garfield indicated that he suspected the Democrats were attempting to run out the clock completely, even on appropriations bills, which if not passed in the lame-duck session, would instead be passed in an early special session of the next Congress — when the Democrats would hold a majority (Garfield 1973, p. 13).

16This story is also consistent with Jenkins and Nokken (2010), who find that party leaders pursued more ideologically-extreme agendas in lame-duck sessions.

17This is a story consistent with Binder’s (1997, 1998) account of short-term partisan policy interests combining with the effect of inherited rules combining to produce institutional changes in Congress (after all, the suspension procedure prevented passage of Butler’s proposal, a more radical shift in the rules regarding dilatory motions, one which would have passed under pure majority rule). What might be missing from Binder’s account is that expected changes in majority control, rather than decreasing the likelihood of restrictive rules changes as she posits they should (if the majority fears such restrictions will be used against them in the future), changes should instead be expected to increase the likelihood – an outgoing majority party should have the greatest incentive to push to get what policies it can before leaving office, making the need for restrictive rules higher than it would be otherwise, particularly if the minority (but soon-to-be-majority party) is intent on obstructing until the end
Seat Change and Obstruction Attempts, 1827-1901

Turning from an historical example to more systematic evidence, I rely on Koger’s approach to measuring obstructive tactics in the early House. To identify dilatory motions made between the 20th and 56th Congresses (1827-1901), I identified all motions to adjourn, to recess, to set a time to reconvene after adjourning, and to set a time to reconvene after recessing\(^{18}\), along with the sponsor of each motion. When measuring obstruction, scholars often rely only on motions that failed as an attempt to narrow the search to motions that are dilatory in nature (Binder and Smith 1997; Koger 2010; Wawro and Schickler 2004, 2006), which I do here. For disappearing quorums, I rely on Koger’s list of minority-party DQs.\(^{19}\) The combination of these two (total dilatory motions plus total disappearing quorums) will constitute my dependent variable.\(^{20}\) Figure 2 plots the number of minority dilatory motions and disappearing quorum attempts from the 20th through 56th Congresses.

The key independent variable of interest in this study is the minority party’s expectations regarding upcoming elections. This poses a significant measurement challenge, because there is no direct or readily-available measure of what members anticipate election results will be. But the historical House provides some unique opportunities in this regard. Following Binder, et al. (2002) and Koger (2010), my analysis proceeds with the congressional session as the unit of analysis. With the exception of early or special sessions that were called as the congressional workload demanded, the congressional calendar in the nineteenth century typically consisted of an early (or “long”) first session, beginning in December of the Congress’s opening year until the summer or fall of the following even-numbered year, and a lame-duck (or “short”) second session, lasting from the December of even-numbered years until Congress’s fixed adjournment date at the beginning of March. The unique schedule, which persisted until the passage of the 20th amendment in 1933, meant that every Congress would have a lame-duck session that met after elections to the next Congress were already held (Beth and Sachs 2006). Historic lame-duck sessions provide a useful testing-ground for the “strategic disagreement” rationale for minority obstruction; members of the minority party would return for the second session knowing whether their party had gained or lost seats (as they did in the example of the 43rd Congress), obviating the need to estimate or guess their chances at recapturing a majority in

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\(^{18}\) This was accomplished by searching for the keywords “adjourn” and “recess” using Poole and Rosenthal’s Voteview for Windows.

\(^{19}\) See Koger (2010, p.45-50) for additional detail on his measurement scheme.

\(^{20}\) This is similar to Koger’s “obstruction score” for each session, which combines all dilatory motions, all disappearing quorums, with an additional “point” for each successful DQ. Unlike Koger (2010) however, this count is limited to only minority-party dilatory motions and DQs, and does not add an additional point for successful DQs.
the next Congress.\textsuperscript{21} We should therefore expect more minority-party obstruction in lame-duck sessions where the minority gained seats, and fewer obstruction attempts if the minority lost seats.

The dependent variable I use is the total number of obstruction attempts in a congressional session (dilatory motions plus disappearing quorums, minority party only).\textsuperscript{22} To begin, I control for factors known or believed to influence the frequency of legislative obstruction. First, I account for the level of ideological disagreement between the parties by taking the absolute value of the difference between DW-NOMINATE scores of the median majority and minority party members in the chamber; the greater the difference between the parties, the more obstruction we should observe.\textsuperscript{23} Next, I control for workload; the higher the congressional workload, the more precious is the chamber’s time, making threats of obstruction more serious and potentially more successful (Oppenheimer 1985; Koger 2010). Unfortunately, an exogenous and session-specific measure of workload is extremely difficult to come by. I instead use a Congress-level measure of workload developed by Binder (1997), who uses a principal components analysis to identify a common “workload” factor from a number of variables from each Congress: the number of days spent in session, total number of members serving, and the number of public laws enacted. In addition, I include variables that account for changes in the rules.

Following Koger (2010), I include a dummy variable (\textit{House Reform Era}) that accounts for the period of fighting over the implementation and repeal of Reed’s Rules (51st Congress through first session of the 53rd Congress), as well as a variable for the second session of the 53rd Congress through the end of the 56th (\textit{Post-Reform Era}) to account for the re-imposition of Reed’s rules. Lastly, I account for partisanship in several ways. There is no apparent agreement in existing literature regarding how partisanship influences the decision to obstruct. Dion (1997) argues that obstruction should increase when the majority party is smaller; Binder, et al. (2002) focus on how party strength (an interaction between party size and unity) influences obstruction; Koger (2010) finds partisan variables to have relatively little influence on obstruction; Wawro (2005) finds that the greater the minority disadvantage in size and unity, the more likely their members to resort to obstructive tactics. I include variables capturing the majority party’s share of the chamber, minority cohesion, as well as \textit{Majority Advantage} used by Binder (1997) and Koger (2010), which is measured by taking:

\[
(Majority\ Party\ Seat\ Share) \times (Majority\ Party\ Unity) - (Minority\ Party\ Seat\ Share) \times (Minority\ Party\ Unity)
\]

\textsuperscript{21}Until the latter decades of the nineteenth century, not all states held their elections on the same day. A few states would hold elections on odd-numbered years prior to the beginning of the long session in December, a practice that did not end until 1880s. Nonetheless, the bulk of the election results would be known to members by the beginning of the lame-duck session.

\textsuperscript{22}I include only the typical “long” and “short” congressional sessions here, excluding special sessions.

\textsuperscript{23}I include distance on both the first- and second-dimension scores as the second dimension becomes important in predicting roll-call behavior during the antebellum period (Poole and Rosenthal 1997).
To test the expectation that electoral gains by the minority party increase obstruction attempts in historic lame-duck sessions, I separately include variables measuring how many seats the minority party gained, an indicator for whether majority control of the House changes in the next Congress, and a variable that subtracts the minority’s net seat change from how many seats they are from attaining a chamber majority. Values of zero or above indicate instances where the minority did win back a majority; below zero, the minority remained the minority party. Measures of seat gain or loss are interacted with an indicator variable for lame-duck sessions; if knowledge of seat gains or changes in majority status serve to increase obstruction in the lame-duck session, then the coefficient on the interaction term should be positive. Because the dependent variable is a count of obstruction attempts per session, I estimate a series of negative binomial regression models, with standard errors clustered on Congress.

Results

[Table 1 about here]

For the most part, the control variables work as anticipated; coefficients on workload are positive (though not statistically significant); coefficients on first-dimension ideological difference are positive and significant; consistent with Binder, et al. (2002) and Wawro (2005), the Majority Advantage coefficient is positive, although it does not reach statistical significance. The set of restrictive rules changes re-adopted during the 53rd Congress’s second session (Post-Reform Era), unsurprisingly, decreases the number of obstruction attempts. Interestingly, the coefficients on partisan ideological differences on NOMINATE’s second dimension are negative and significant. In part, variables capturing seat gain or changes in majority control work as expected. Whether measured as seat gain, seats gained minus seats needed for a majority, or simply as a change in control, minority party electoral success appears to increase the number of obstruction attempts made in the nineteenth-century House. Contrary to initial expectations, however, this does not appear to operate only in lame-duck sessions. This not necessarily inconsistent with the initial argument; for policy and electoral reasons, both anticipated as well as realized seat gain by the minority party are expected to increase minority obstruction efforts. If the minority can reasonably anticipate its electoral future — an assumption made in previous works on the historic Congress (Binder 1996, 1997) — then these models indicate that the mere expectation of seat gain, not seat gain alone, encourages additional obstructionism by the minority party.

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24 Party margins during the session are found at http://history.house.gov/Institution/Party-Divisions/Party-Divisions/ . Data on seats won in general elections comes from Dubin (1998).

25 A likelihood ratio test indicates that the overdispersion parameter is significantly different from zero and that the choice of poisson regression would be inappropriate. I estimated models with different combinations of partisan variables, including majority size, majority advantage, minority and majority cohesion. Results are robust to different specifications, but only models with Majority Advantage are displayed.

26 It is worth noting that the only other multivariate analysis of House obstruction during this timeframe omits second-dimension ideological difference (Koger 2010), so this is neither consistent nor inconsistent with earlier work.

27 Likelihood ratio tests confirm that in none of the models does inclusion of the interaction term significantly improve the overall model fit.
Electoral Expectations and Obstruction by Individual Members, 1871-1895

So far, aggregate-level evidence suggests that congressional minority parties that soon gain seats or gain a majority engage in more obstructionism than those that do not. To address this question more explicitly — how expectations about electoral prospects influence obstruction — I next estimate individual-level models of House dilatory efforts, similar to Wawro’s (2005) work on obstruction in the antebellum Senate. In the next section, an individual House member within a congressional session constitutes the unit of analysis, and the number of dilatory motions made by the member in a given session is the dependent variable.

Minority party electoral expectations, while impossible to discern perfectly, can be measured indirectly in multiple ways. First, for each Congress I include the measure of the swing ratio from Brady and Groman (1991), which is the expected percentage point increase in a party’s seat share resulting from a one-percentage point increase in that party’s total vote share. Periods with a high swing ratio mean that small changes in vote share can produce large changes in chamber seat share; these should be relatively unstable periods where majorities are “less robust” (Dion 1997) and the minority party can expect that majority status is more likely to change.

Additionally, the literature on congressional elections offers guidance on measuring partisan electoral expectations. House elections, both in the nineteenth century (Carson and Roberts 2005) and in the modern period (Jacobson 1989, Jacobson and Kernell 1983) are shaped by strategic decisions of candidates. Candidate quality 28 is a significant predictor of vote share in congressional elections; very few House incumbents are ousted by inexperienced challengers (Jacobson 1989; Carson and Roberts 2005). More importantly, the strategic decisions of these candidates — which districts to contest, which year to run, etc. — are shaped by national conditions and electoral expectations. When candidates perceive that national political conditions favor the one party over the other, the advantaged party has an easier time recruiting experienced candidates; the opposite holds true for the disadvantaged party, which struggles to convince high-quality candidates to run in an unfriendly environment where they are more likely to lose (Jacobson and Kernell 1983). Accordingly, aggregate patterns in partisan candidate emergence can provide a useful indicator of electoral expectations — a higher-quality set of minority-party challengers should indicate years when the minority expects its chances of electoral gain are high. Based on candidate quality data from Carson and Roberts (2013) spanning elections between 1872 and 1894, I measure minority party electoral expectations by calculating the percentage of majority-party incumbents facing a high-quality minority challenger, as well as the difference in the majority- and minority-party percentage of incumbents facing quality challengers.

As a third measure of electoral expectations, I compute the difference in the average percentage gained by majority- and minority-party candidates in the most recent election. 29

28 “High-quality” candidates are defined as candidates with previous experience in elected office.
A smaller value should indicate Congresses where the minority lost elections fairly narrowly, while a larger value should indicate periods of strong majority electoral dominance.

In addition to the above-listed electoral variables, I control for each member’s ideological distance from the chamber median using DW-NOMINATE scores (both dimensions). I again control for workload using Binder’s (1997) workload score. As in the session-level models, I include a measure of Majority Advantage, interacted with party. Consistent with Wawro (2005), we should expect that the need for the minority to engage in obstructive tactics increases with the size and unity of the majority party, while it should decrease with the size and unity of the minority party; minority party members should obstruct more the greater the degree of the majority’s advantage. Lastly, I include an indicator for the 51st Congress, which operated for part of the session under Reed’s Rules.

Again, the dependent variable is the total number of dilatory motions made by a member in each congressional session between the 41st and 53rd Congresses (1871-1895). However, most members made no dilatory motions at all during a given session. To account for the preponderance of zeroes I estimate a series of zero-inflated negative binomial regression models. Following previous studies of obstruction, (Koger 2010, Smith 2014, Wawro 2005), I include a time trend variable, used in this instance to predict zero-counts of dilatory motions made. I estimate models separately for long (pre-election) congressional sessions and lame-duck sessions; independent variables accounting for electoral expectations are included in the first set of models, while measures of seat gain and changes in party control are included in the second set.

The results in Table 2 are consistent with the idea that positive electoral expectations encourage additional use of obstructive procedural tactics by members of the minority party in pre-election sessions of Congress. In all four models, coefficients on interaction terms between party and electoral variables are statistically significant and in the expected direction. Long sessions during Congresses with a greater swing ratio, a higher percentage of majority incumbents facing strong minority challengers, larger gaps between the percentage of majority and minority incumbents facing strong challengers, and smaller gaps in vote share between the parties in the previous election all appear to witness more dilatory efforts by minority party members. Consistent with Wawro’s (2005) work on the antebellum Senate, the coefficient on the interaction between party and Majority Advantage is positive and significant across all four models. Results

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30 This is especially true when examining dilatory motions and not disappearing quorums; the latter were more often the tool of large and cohesive minority parties, and the tactics often were used as supplements rather than complements (Koger 2010).

31 Earlier Congresses are excluded due to lack of early data on candidate quality; Congresses after the re-imposition of Reed’s Rules (54th through 56th Congresses) are excluded for simplicity’s sake.

32 Control variables are suppressed for the sake of presentation. Variables measuring members’ first- and second-dimension ideological distance from the chamber median were negative but statistically insignificant in all four models; workload was positive and significant in all four.
from Table 3 confirm that minority party electoral success prior to the meeting of lame-duck sessions produced additional obstruction by minority party members.

**Discussion and Conclusions**

Positive electoral expectations, as well as realized electoral gains, appear to have an effect on whether or not members of the congressional minority party engage in obstructive procedural tactics. If accurate and generalizable, this finding might help explain patterns of obstructionism in the contemporary Senate; most filibuster lists (e.g., Beth 1994, Binder, et al. 2002, Koger 2010) show that the amount of filibuster activity increasing around the same time that two-party competition for majority control of the Senate became more intense.

The “strategic disagreement” idea of stalling policy action in one period and holding out hope for better policy in the next has been explored in the past (Gilmour 1995), albeit not through an analysis of legislative obstruction. What has received less attention is the extent to which obstruction furthers the electoral goals of chamber minorities, and the type of incentives that this provides to the minority party. Jones (2014) finds that a concern about a lack of legislative productivity harms individuals’ evaluations of the congressional majority party, but does not affect their perceptions of the minority party. The incentive for the minority party, then, should be to lower legislative productivity, knowing that the public’s resulting dissatisfaction will work to their benefit by harming the opposing party. Consistent with the evidence presented above, this incentive appears to be highest when majority control of the chamber is at stake.

Again, if the finding is accurate and generalizable, then this has a number of implications. Competitive elections are typically thought of as beneficial, keeping incumbents honest and responsive to voters. By contrast, competition for control of national institutions appears to create incentives for conflict, obstruction, and a lack of bipartisan compromise, the type of behavior that has led many to conclude that the modern Congress is dysfunctional (e.g., Mann and Ornstein 2012). Minority obstruction does not appear to be an electorally-costly strategy, one punished at the polls. By blaming the majority party for a lack of productivity, the public inadvertently rewards those who are at least partially responsible for legislative inaction. This does not appear to be a contemporary phenomenon, one lost on party leaders through history; not long before Democrats regained control of the House for the first time since the 1894 midterm elections, Democratic Minority Leader John Sharp Williams in 1908 announced an intention to “create a campaign issue...by maintaining an all-summer’s deadlock” in the House through the creative use of parliamentary procedure (Alexander 1917, p. 208-209); Williams appeared to assume that the public would blame the “do-nothing” Republican majority rather than the obstructionist minority that he led.

This work attempts to contribute to a growing literature that seeks to determine how much of contemporary conflict in Congress results from sincere ideological polarization versus partisan “team play” (Lee 2008, 2013; Theriault 2013). If it is true that electoral reasoning
will lead minority members away from compromise and toward conflict, then it is possible that the measured degree of ideological polarization in Congress will be inflated by the competitive context. Ideology scores such as DW-NOMINATE cannot reliably distinguish between ideologically motivated and partisan behavior. As Lee (2008) states in her discussion of ideology scores based on the roll-call record:

> “Any vote that tends to divide the two parties from one another, regardless of the reason, will be treated by such methodologies as measuring members’ ideology . . . Equating party votes with ideological votes is not warranted if . . . partisan conflict can have any other source besides members’ differing preferences on public policy.” (p. 52-53, italics in original).

If the parties find themselves more frequently divided for electoral reasons, then defining this additional division as an ideological difference is a mistake. Lee (unpublished) argues convincingly that the high levels of congressional polarization observed in the late 19th century resulted not from a great degree of policy differences between Democrats and Republicans, which many argue were small and unimportant during the time (e.g., Sundquist 1983), but rather from “zero-sum party conflict” over issues like the distribution of patronage, the results of contested elections, and other legislation that would impinge on the parties’ ability to compete for congressional majorities.

In studies of congressional parties, particularly in the House, the minority party is typically a mere afterthought — treated as “the crazy uncle of American politics, showing up at most major events, semiregularly causing a ruckus, yet steadfastly failing to command attention and reflection” (Krehbiel and Wiseman 2005). But to the extent that it can impact the majority through obstruction and conflict, and affect our vote-based measures of member ideology, the minority party is a topic worthy of further examination.
Figure 1: House Party Control and Margins, 20th through 56th Congresses. Blue represents years of Democratic majorities, red represents years of Whig/Opposition/Republican majorities.
Figure 2: Minority Party Obstruction Efforts in the House, 20th through 56th Congresses. Note: Solid line represents number of dilatory motions made; dashed line represents number of disappearing quorums.
Table 1: Negative Binomial Regression: Minority Party Dilatory Motions plus Disappearing Quorums by session, 20th through 56th Congresses

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* statistics in parentheses; standard errors clustered by Congress
* p < 0.05, ** p < 0.01, *** p < 0.001
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*p < 0.05, **p < 0.01, ***p < 0.001
Table 4: Zero-Inflated Negative Binomial Regression: House Members’ Use of Dilatory Motions in Lame-Duck Sessions, 42nd through 53rd Congresses (1871-1895)

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z statistics in parentheses; standard errors clustered by member.

* p < 0.05, ** p < 0.01, *** p < 0.001
References


- Bell, Lauren C. 2011. *Filibustering the U.S. Senate*. Amherst: Cambria Press.


Mann, Thomas E., and Norman J. Ornstein. 2012. It’s Even Worse Than it Looks: How the


