

# Veto Rhetoric and Legislative Riders

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**Abstract:** *Riders to appropriations bills have long been a favorite congressional instrument for forcing presidents to accept unwanted policies. To resist unwanted riders, presidents have increasingly resorted to veto threats. Are such threats credible, and do they influence legislation? To answer these questions, we analyze the legislative histories of hundreds of threatened and unthreatened riders from 1985 through 2008. We find that threats are effective in bringing the final legislation closer to the president's preferences. Threats achieve their success, in large part, by interrupting the textbook legislative process in the Senate—spawning filibusters, prompting leaders to punt bills to conference, and encouraging the use of other “unorthodox” procedures. Unlike conventional models that regard veto threats as minimally effective, the findings presented here depict veto rhetoric as integral to identifying critical riders separating the legislative parties that must be resolved in order to avoid gridlock and pass annual appropriations legislation.*

**Replication Materials:** The data, code, and any additional materials required to replicate all analyses in this article are available on the *American Journal of Political Science* Dataverse within the Harvard Dataverse Network, at: <http://dx.doi.org/10.7910/DVN/SPXP04>.

The president “acts not as the executive but as the third branch of the legislature.” —(Wilson 1885, 52)

The Framers devised the president's veto to check legislative excesses. Although its deterrent effect was first broached in Publius's (in this instance, Hamilton's) assertion that even the prospect of vetoes would temper imprudent legislation, only with the regular occurrence of divided government have veto threats become standard practice. Until recent years, the record of threats was sparse and largely anecdotal and, consequently, attracted little scholarly attention. Spitzer's (1988) inventory of veto threats in the *New York Times* identified fewer than 100 references for the quarter century ending in 1986. More recently, Cameron (2000)

found that 14% of a sample of 443 major bills enacted from 1945 through 1992 attracted a veto threat. During years of divided government, this figure increased to nearly a third. Another census of veto threats from 1969 through 1998, an era dominated by divided government, found presidents threatening nearly half of major *enrolled* bills (Sinclair 2000). These are impressive numbers, especially considering that these studies excluded threatened legislation that died in Congress.

The documented growth of veto threats tells us only that modern presidents have increasingly enlisted them. The real question is, do they influence legislation? Evidence that threats matter remains sparse and inconclusive.<sup>1</sup> In the most thorough analysis of the impact of veto threats to date, Cameron (2000) and his colleagues (Cameron, Lapinski, and Riemann 2000) coded

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<sup>1</sup>One recent review noted the “paucity of research analyzing the impact of . . . veto threat behavior on legislative outcomes” (Marshall 2012, 199–200).

<sup>2</sup>Again, these data do not include threatened bills that died in Congress. To identify veto threats, Cameron and his colleagues drew on references in *CQ Almanac*.

presidents' assessments of final legislation in their veto and signing statements.<sup>2</sup> According to these statements, Congress made "some concessions" on two-thirds of the threatened bills and capitulated on another quarter. Yet, since presidents are politicians, one may suspect them of trying to burnish, or salvage, their reputations as they sign legislation they had earlier opposed.

Conley (2003) and Jarvis (2010) rely on more objective criteria in testing the effectiveness of the veto threats of George H. W. Bush and Dwight D. Eisenhower, respectively. Both report that threatened bills tended to converge toward the president's position. Yet inferring influence still remains slippery. Legislation changes as different sets of legislators take turns reshaping it. Objectionable provisions sometimes drop out of bills irrespective of the White House's veto rhetoric. And again, presidents are politicians who might find merit in threatening provisions that appear destined to fail in order to burnish their reputation.

So, the elusive question remains, do veto threats help presidents derail objectionable legislation? Presidents, contemplating such threats, would find prevailing political science theory discouraging. It holds that threats are noncredible and thereby can only minimally influence legislators or, alternatively, that they are highly credible, allowing legislators to pinpoint the president's minimally acceptable policy. Either way, veto threats offer presidents little prospect of achieving positive policy gains.

In the next section, we argue that both arguments rest on overly restrictive assumptions about how these institutional actors transact business with one another. As such, they understate the potential influence of veto threats on legislation. We develop an alternative model that reframes the context of veto threats politics from that of separation-of-powers to one of party competition. In this context, veto rhetoric helps define the policy stances of both members of the president's party and opponents in Congress, as they engage each other and the White House throughout the legislative process. In the third section, we introduce riders to annual appropriations as a class of legislation particularly well suited for testing the effectiveness of veto threats. Subsequently, we test our argument on a sample of 989 threatened and nonthreatened riders to annual appropriations bills from 1985 through 2008. Overall, the presence of a veto threat more than halves a rider's chance of surviving the legislative gauntlet. Moreover, as predicted by the model, the attrition of threatened riders tracks the influence of the president's legislative partisans at the different junctures of the legislative process.

## A Setting for Effective Veto Threats

Political science theory has identified two distinct hurdles presidents' veto threats must clear if they are to prove effective instruments in Congress. The first, and more familiar problem in the literature, concerns their weak credibility. The second arises at the other end of the credibility continuum, where threats are fully credible and provide Congress with complete information about the president's policy preferences. This allows Congress to pass the bill it most prefers and the president will not veto. Both "games" severely limit the influence of veto rhetoric, but both do so, we argue, by making unrealistic assumptions about how the president and Congress engage each other. Relaxing these assumptions opens avenues for effective veto threats. Although these alterations weaken the deductive, analytic rationale of current theory, they do not reduce the exercise to barefaced empiricism. Indeed, the revised model incorporates systematic information about Congress as a bicameral institution and legislators as members of party teams to predict not only that veto threats matter, but also how and where in Congress they will have their greatest influence.

### Veto Threats, Cheap Talk, and "Take It or Leave It"

Consider first the claim that veto threats belong to a family of costless communication known as "cheap talk" (Cameron 2000; Cameron and McCarty 2004; Matthews 1989). Unlike actual vetoes or executive orders, threats are not self-effectuating. Presidents can threaten to veto a bill one day and sign it the next day. Because threats do not foreclose subsequent actions, they are costless—at least with respect to presidents' discretionary authority. Consequently, legislators heavily discount presidents' veto rhetoric. Cheap talk limits, but does not wholly negate, the value of veto threats as a negotiating instrument. Even in conveying no more than that they "might veto" a bill, presidents still inform Congress that they probably prefer a policy that is significantly closer to the status quo than Congress's current proposal. So, even a cheap talk threat informs Congress that there is positive probability of a veto. Hence, Congress may well respond to a "might veto" signal by passing a bill closer to the status quo.

The "veto threats as cheap talk" argument rests on assumptions that conform to the requirements of the generic cheap talk model in economics (Crawford and Sobel 1982). These assumptions do not, however, match

well critical features of politics in Washington that we argue render presidents' veto rhetoric much more prescriptive and effective than cheap talk allows. For one, cheap talk requires a nonrepeated game, rendering irrelevant any information learned from the trial about the president's reputation. For another, cheap talk is played privately, meaning it is costless with respect to any audience (e.g., voters) that could discipline presidents who fail to send credible messages.

In applying cheap talk to presidents' veto threats, Matthews (1989) acknowledges that the model may unrealistically ignore reputational and audience costs—both long regarded as essential ingredients in presidential leadership (Neustadt 1960). Indeed, as the inventories of veto threats reviewed above show, these signals occur frequently, particularly during divided government, and are publicly observable.<sup>3</sup> With toothless threats, presidents risk squandering both their reputation and public approval. Informed that George W. Bush had threatened to veto a seaports bill, fellow-Republican Senator Chuck Grassley responded that the president “had probably issued 100 veto threats. When you don't follow up on any of them, no one takes you seriously” (Nather 2006, 891).<sup>4</sup>

Now consider the other extreme, the problematic efficacy of fully informative veto threats. Such threats allow Congress to identify not just presidents' preferred policy but also those policies they minimally prefer to the status quo (Kiewiet and McCubbins 1991). This information allows Congress to present presidents with a “take it or leave it” choice and capture virtually all of any policy surplus. Although these fully informative veto threats may help presidents ward off undesirable legislation, prevailing theory offers presidents little prospect of enlisting threats to achieve positive policy gains.

Both cheap talk and the ultimatum game portray veto threats as bids in a separation-of-powers negotiation between two unitary actors over the placement of legislation across a single-dimensioned policy space. Although this simplified setting may be all that is required for representing the game-like qualities of presidential-congressional relations, it ignores several familiar features of these actors' real-world relations that set the stage for credible veto threats *actually* helping presidents achieve their policy goals. First, rather than a unitary actor, Congress is bicameral, with each chamber enjoying coequal authority. Second, legislation is typically—and often necessarily—a bundle of discrete provisions residing on different policy

dimensions. Third, presidents and legislators are members of competing party teams.

Although these additional features would greatly encumber efforts to formulate equilibrium properties of veto threat bargaining, they do introduce important, systematic information about the legislative process. The choices of now-partisan “teams”—that is, partisan representatives, senators, and presidents working together to influence legislation according to their office—remain strategic, institutionally structured, and, hence, reasonably stylized. These actors still look down the decision tree, albeit one with more nodes and branches. And they still calculate choices over alternative legislative bundles to identify those offering the best chances of achieving their policy goals in light of the probable subsequent actions of other legislators and the president.

### A Bicameral Congress with Competing Party Teams

Most successful legislation follows a predictable sequence where one chamber passes a bill and the second then considers it and passes it or some amended version. When the chambers' bills differ, they enter a reconciliation process, such as conference committee deliberations, to produce an enrolled bill that the president signs or vetoes. This sequence provides members in each chamber and its subdivisions occasion to insert their preferences and to negotiate a mutually acceptable bill. As different sets of legislators take turns in shaping legislation, some provisions are removed, others modified, and still others added. Presidents observe these actions and at propitious moments may seek to alter legislators' decisions by issuing veto threats.

Credible veto threats may affect legislation in a couple of ways. First, they may directly alter legislators' ranking of particular bundles of provisions. Is provision Y in bill {X,Y} worth defending if the president is more likely to veto it than the alternative {X,~Y}? Enthusiastic supporters of Y should remain steadfast, but those less ardent—particularly advocates of X—may decide that retaining provision Y overly jeopardizes X. If so, they may defect to another coalition that supports X but opposes Y. Timely, credible threats allow presidents to implant such calculations into legislators' choices over alternative legislative bundles.

Moreover, legislators are members of party teams whose brand reputations contribute to their success in the next election (Brady and Volden 1998; Cox and McCubbins 1993; Rohde 1991; Woon and Pope 2008). The president's successes and failures frequently become those of his partisan colleagues in Congress (Jacobson 2015).

<sup>3</sup>Ingberman and Yao (1991) relax Matthews's model, allowing presidents to issue (very) costly, and hence credible, public threats.

<sup>4</sup>Of course, not all veto threats occur publicly or even in earshot of the press and other politicians. We confine our investigation to those that do.

Opposition congresses subscribe to this tenet when they pass popular bills in order to provoke unpopular vetoes (Groseclose and McCarty 2001) and in other ways deal with presidents with an eye toward shifting “partisan electoral tides” (Cox and McCubbins 1993, 122). Presidents can exploit this setting by enlisting veto rhetoric to line up fellow partisans in Congress against objectionable provisions in pending legislation. “Regardless of their [legislators’] views on the policy merits of a presidential initiative,” concludes Lee (2008, 914), “how they handle a president’s priorities will affect his party’s collective reputation. Presidential successes create credit-claiming opportunities for the president’s party.” When presidents stake out clear positions, party preferences in Congress tend to separate and harden (Fett 1992, 1994; Lee 2008).<sup>5</sup>

A veto threat may set into motion a bargaining game between partisan teams. Beyond negotiating policy differences, each side will try to exploit, or even seek to change, legislative rules and procedures to improve chances for success. The success of the president’s partisans when they are in the minority may vary according to their share of the membership and by chamber. With the House of Representatives organized to secure the majority party caucus’s preferences (Cox and McCubbins 1993; Rohde 1991) and block minority party initiatives (Cox and McCubbins 2005), the president’s copartisans have scant opportunity to remove threatened provisions.<sup>6</sup> The Senate’s rules, by contrast, cede important prerogatives to the minority party. Unanimous consent required for numerous deliberative procedures and easily invoked filibusters vastly strengthen the influence of minority party senators over legislation compared to their counterparts in the House.

When the House of Representatives sends over a threatened appropriation, Senate leaders may confront a thorny problem—namely, a bill on which the other two veto actors have taken opposing positions. Depending on leaders’ assessment of these views, as well as the preferences of its pivotal members, Senate leaders may pursue a number of strategies. They may follow the textbook appropriations process—the hallmark of an earlier, less partisan era—that has the Senate Appropriations Committee (SAC) review and amend the House bill and send

it to the floor. Or the SAC may report its own bill. At times, floor leaders may even forgo committee deliberations and rework controversial House bills directly on the floor. (We find instances of all three sequences among our legislative histories.)

Their choice of the textbook procedure or an alternative will rest on local circumstances such as party control of the chambers, the specific provisions in dispute, the urgency of passing the next year’s appropriations, and other considerations. Although dissection of the strategic rationale for each alternative path would take us beyond the scope of our model’s predictions (and available data), we can expect that given the Senate minority’s prerogatives, veto threats will tend to deflect Senate deliberations from the incremental, textbook process.

The overarching consideration that prompts Senate leaders to adopt unorthodox deliberations is the filibuster. In raising the threshold for passing threatened bills from 51% of those voting to 60% of the membership, the filibuster gives the minority greater leverage to insert itself into the policy debate and to have greater influence on policy outcomes. Frequently, the intent of those who opt to filibuster is to force the majority party to accommodate the president’s objections. Senate leaders confront this challenge without firm control over the chamber’s deliberations.

Once the House bill or a SAC substitute arrives on the floor, Senate leaders increasingly resort to “unorthodox lawmaking” (Sinclair 2011) to move stalled, “must-have” appropriations through the chamber. Frequently, when the Senate majority cannot abide the concessions required to pass the bill, leaders will opt to package the stalled bill with other appropriations into an omnibus package and “punt” threatened riders to conference (Hanson 2014; Krutz 2001). As desperate as punting may appear, it offers leaders a way to avoid immediate gridlock and shifts intractable legislation to an arena where representatives of both chambers and the White House can negotiate a final bill (Longley and Oleszek 1988, 143–47). It may, in fact, “offer the only hope of agreement between the president and Congress” (Sinclair 2011, 105).

The institutional differences in the House and Senate offer clues about the subsequent fate of threatened provisions in conference (or by other reconciliation mechanisms). With actual and threatened filibusters commonplace during divided government—also a time of frequent veto threats—Senate negotiators are more constrained in the packages they can take back to their chamber than are their House counterparts. This provides one commonly offered reason to explain why the Senate prevails in conference on about two-thirds of appropriations provisions on which the chambers differ (Fenno 1966; Ferejohn 1975; Kanter 1972; Ortega and McQuillan

<sup>5</sup>Similarly, fellow partisans in Congress who voted for a bill are significantly more likely to switch their vote to sustain their president’s veto than are the bill’s initial supporters from the other party (Krehbiel 1998).

<sup>6</sup>Epstein and O’Halloran (1999, 171) even find that the number of committees on which the voting record of the majority party’s median member is an outlier increases with divided government. Outliers’ preferences systematically “tend to move counter to those of the President.”

1996).<sup>7</sup> If this rationale holds for riders, conference should both preserve the elimination of the riders the Senate removed and find additional threatened riders to strike in the punted bills that had stymied Senate action.

This leaves unaccounted for conference action on one last set of threatened riders—those which both the House and Senate endorse. Here, our model of party competition in the bicameral setting is uninformative. In fact, on those threatened riders on which the House and Senate agree, the strategic situation reverts to an ultimatum-like calculation. What, if any, *additional* changes will members of the presidential party team require in order to forgo a filibuster and sign the bill? These peak-level negotiations include the president's representatives as ever-attentive participants, even inside the conference room, reminding legislators of the president's unrequited threats (Longley and Oleszek 1988). If Sinclair's conclusion (2011, 107) is correct that "under divided control presidents often wield their greatest power over legislation at the post-passage stage," conferees should also be more inclined to remove threatened (than unthreatened) riders on which their chambers agree.

This argument yields the following testable predictions for the effects of credible veto threats on both the substance and procedures at each stage of legislative deliberations.

*Prediction 1:* The House of Representatives resists veto threats.

*Prediction 2:* The Senate responds to veto threats.

- 2A: Bills containing veto-threatened riders are more likely to attract filibusters than nonthreatened bills.
- 2B: The Senate is more likely to abandon textbook deliberations of veto-threatened House bills.
- 2C: Senate leaders are more likely to create omnibus packages and punt threatened bills to conference.
- 2D: For bills decided on the floor, the Senate is more likely to remove threatened than nonthreatened riders.

*Prediction 3:* Conference responds to veto threats.

- 3A: Conference is more likely to reinstate nonthreatened than threatened riders removed by the Senate.
- 3B: Conference is more likely to remove threatened than nonthreatened riders from House bills the Senate punted.

<sup>7</sup>Another possible rationale suggests Senate success on riders rests with the sequence of deliberations (Kanter 1972; see also Rogers 1998). The House defines the core of legislation and the Senate modifies provisions to make the legislation politically more palatable.

- 3C: Conference is more likely to remove threatened than nonthreatened riders that survived Senate action.

Cumulatively, Congress should be more likely to remove threatened than nonthreatened riders. After testing each prediction at its relevant stage of the legislative process, we sum up their effects to answer the broader question motivating this inquiry: Do threats matter?

## Threats Directed at Riders

Riders are peculiarly well suited for testing veto rhetoric's influence on legislation. In many instances, their purpose is to limit administrative discretion or to alter policies in ways the administration opposes. They are inserted into these "must-have" bills because they could not get past the president's veto pen as stand-alone authorization bills. In recent years, the House Appropriations Committee (HAC) has hitched several hundred "limitation" riders per session to annual appropriations legislation. Given their purpose, it is not surprising to find their numbers swelling by two-thirds during periods of divided government (MacDonald 2010).<sup>8</sup> In the aftermath of the Republican takeover of the House of Representatives in 1994, Speaker Newt Gingrich questioned the commitment of some Republican committee chairs to the Contract for America and enlisted the HAC to implement the new majority's programmatic cuts (Aldrich and Rohde 2000). Subsequent research (Aldrich, Perry, and Rohde 2012; Gordon 2005) confirmed that 15 years later—even during the Democratic-controlled 110th Congress—the HAC continued to act as an agent of the House majority in attempting to rein in an opposition-controlled administration.<sup>9</sup> Yet presidents have accepted the challenge and routinely threaten to veto "must-have" appropriation bills if they contain objectionable riders. In fact, some threats of appropriations bills refer exclusively to riders.

Riders also offer methodological advantages over other forms of legislation. Testing the above predictions involves tracking legislative provisions as they wend their way—sometimes jumping from one bill to another—through committees and chambers. Unlike authorization bills, which can originate in either chamber and

<sup>8</sup>Policy riders are another class of riders designed to change policy; unlike limitation riders, they do not expire at the end of the fiscal year (MacDonald 2005). Finding no significant differences in the statistical relationships in a preliminary analysis, we ignore this distinction.

<sup>9</sup>This was not always the case. Not long ago, the HAC was renowned for its bipartisanship (Fenno 1966).

may bounce back and forth across chambers and sessions, annual appropriations bills—and most riders—originate within the HAC. This and the yearly fiscal deadline create a fairly linear legislative sequence, simplifying (relatively) the exercise of tracking riders on their way to the president's desk.<sup>10</sup> The necessity and urgency of appropriations may also make riders more vulnerable to veto threats than are comparable provisions of authorization legislation. We return to this issue in the conclusion.

### Statements of Administration Policy

Previously, a major roadblock to research on veto threats was the absence of a systematic record. They are, after all, not official actions but political statements. Threats can occur anywhere, anytime, and take a variety of forms, from declarations in the State of the Union address to comments to congressional leaders in private conversations. The dearth of exhaustive data changed for at least one important class of veto threats—Statements of Administration Policy (SAPs)—with the publication of an exhaustive compilation of these presidential memoranda sent to congressional floor leaders from the Office of Management and Budget (OMB) (Kernell 2005).<sup>11</sup> SAPs specify objections to pending legislation and prescribe changes to make it more acceptable. As such, they create a public record of presidential commitment for which dissembling rhetoric and renegeing could tax the president's reputation and prestige. From 1985 through 2008, presidents issued SAPs raising veto threats against 261 riders to annual appropriations; all but 37 originated within the HAC.

Threat language can range from hinting at a veto (e.g., “the Administration strongly objects to such limitations” and “the President's senior advisors [would] recommend that he veto the bill”) to an explicit and binding commitment (e.g., “[the President] will veto this bill in its current form”).<sup>12</sup> Although White House staff vets and even

<sup>10</sup>Moreover, inserted among appropriations items, they are self-contained and relatively easy to track across legislative iterations.

<sup>11</sup>The origin of SAPs as a distinct class of presidential messages remains somewhat unclear, although we know that they began late in Ronald Reagan's first term. Threatening SAPs for the years 1985–1996 were unearthed from the files of OMB staff. Beginning in 1996, every White House has posted the administration's SAPs on [whitehouse.gov](http://whitehouse.gov). Although until recently SAPs have been unfamiliar to students of the presidency, they were distributed to members of Congress, the press, and, importantly for political science research, to Congressional Quarterly (CQ), where they served as the primary source for qualifying roll calls for CQ's “presidential support score” (interviews with CQ staff, 2006, 2010).

<sup>12</sup>Few of those threats classified here failed to associate a veto with the provision, but following the advice of a senior OMB official, we scored a threat when the memorandum contained a veto reference in nearby text. Examples of threats and their provisions are available in the supporting information.

rewrites SAPs, the OMB's professional role in compiling views from the departments and drafting these statements has led to a codification of the threat language that spans administrations. This helps legislators distinguish those “deal-breaking” threats that offer the president little “wiggle room” (Schelling 1980) from threats that would only more weakly weigh against the president's signature. Of the 261 threats directed at riders, 127 took this more personal, emphatic form. To test whether Congress heeds “will veto” threats more than others, we distinguish these two types of veto threats throughout the analysis.<sup>13</sup>

In order to test the treatment effect of veto threats on riders originating in the HAC, we require information about comparable nonthreatened riders. All HAC riders sent to the House floor that received coverage in *CQ Weekly* during these years (N = 435) compose our control group.<sup>14</sup> Weighting the 224 threatened HAC riders according to their share of the larger population of all newsworthy riders and combining them with the full population of nonthreatened riders generates a weighted, choice-based sample of 572 observations.<sup>15</sup>

Tracking changes in riders across several thousand iterations of appropriations legislation was laborious but relatively straightforward.<sup>16</sup> Coding judgments came into play only on those infrequent occasions when legislators rewrote the riders. Only 23 threatened riders (18 originating in HAC) and 17 nonthreatened riders (10 originating in the HAC) were revised; each significantly curtailed the intent of the rider or otherwise brought it closer to

<sup>13</sup>The “will veto” classification includes “would veto” and “would have to veto.” President Reagan frequently substituted the verb “disapprove” for “veto.” A third category of disfavor has the president “oppose” a provision in the SAP while favoring the bill. We have excluded these from our analysis.

<sup>14</sup>These riders exhibit similar patterns to MacDonald's (2010) inventory of all HAC limitation riders between 1993 and 2002. He reports a decline in limitation riders during the 105th Congress (1997–98); our series displays a similar dip followed by resurgence during the 106th and 107th congresses. For estimating Models 1 and 3 of Table 2, the sample includes all riders introduced at any juncture of deliberations (N = 826 from *CQ Weekly*).

<sup>15</sup>We follow a choice-based sampling procedure (Cameron 2000; Cameron and Trivedi 2005; Manski and Lerman 1977). With threatened riders composing 26% in the CQ sample and overrepresented at 39% of the combined House Appropriations sample, we corrected for oversampling by assigning probability weights of .65 and 1.22 for threatened and nonthreatened riders, respectively. Where appropriate, we adjust these weights to reflect decisions that apply to a subset of cases.

<sup>16</sup>The descriptions in the SAPs or in CQ's coverage provided sufficient information to identify the text of the rider in the bill. Our primary source for the 101st–110th congresses is [thomas.gov](http://thomas.gov). For the 99th and 100th congresses, we rely on the U.S. Government Printing Office's *Cumulative Finding Aid, House and Senate Bills*. Legislative updates from *CQ Weekly* also proved useful for tracking down information on Senate and conference actions.

**TABLE 1 The Distribution of SAP-Threatened Riders across Congresses**

Congress	Party Control of			Number of Threatened Riders	Threatened Riders' Origin			
	Presidency	House (Seat %)	Senate (Seat %)		HAC	HF	SAC	SF
99th (1985–86)	Republican	Democrat (58.2%)	Republican (56%)	1	0	0	1	0
100th (1987–88)	Republican	Democrat (59.3%)	Democrat (55%)	12	6	3	1	2
101st (1989–90)	Republican	Democrat (59.8%)	Democrat (55%)	8	7	0	1	0
102nd (1991–92)	Republican	Democrat (61.6%)	Democrat (56%)	16	12	0	2	2
103rd (1993–94)	Democrat	Democrat (61.4%)	Democrat (57%)	0	0	0	0	0
104th (1995–96)	Democrat	Republican (53.1%)	Republican (52%)	37	28	2	7	0
105th (1997–98)	Democrat	Republican (52.4%)	Republican (55%)	30	27	1	2	0
106th (1999–2000)	Democrat	Republican (51.5%)	Republican (55%)	34	34	0	0	0
107th (2001–02)	Republican	Republican (50.8%)	Democrat (50%)	3	3	0	0	0
108th (2003–04)	Republican	Republican (52.6%)	Republican (51%)	40	30	0	0	10
109th (2005–06)	Republican	Republican (53.3%)	Republican (55%)	26	26	0	0	0
110th (2007–08)	Republican	Democrat (53.6%)	Democrat (50.5%)	54	51	0	0	3

the president's position. After a preliminary analysis of the statistical relationships found them to be indistinguishable from removed riders, we recoded them as removed.

### Presidents Select Riders to Threaten

Congress's increasing reliance on riders to achieve its policy goals is countered by opposition presidents' increasing willingness to threaten them. In Table 1, we find presidents threatening riders in SAPs addressing 88 different annual appropriations bills. Of the objectionable riders, 86% originated in the HAC, the vast majority after Republicans took control in the 104th Congress. Even during years of opposition control, the Senate has not produced significant numbers of objectionable riders. This includes the 107th Congress, when the Democratic Senate resisted (by other means) President Bush's and House Republicans' efforts to cut social welfare spending.<sup>17</sup> A second clear pattern in Table 1 is presidents' increasing use of veto threats, again beginning in the 104th Congress. President Bill Clinton issued more threats than his predecessors by a wide margin. President George W. Bush then eclipsed Clinton's record. Only the 107th Congress, most of which occurred in the wake of 9/11, stands apart. In the 108th and 109th congresses, with Republicans controlling both chambers, Bush even threatened more HAC riders than Reagan had issued against opposition congresses.

Since presidents' use of SAP-based threats has never been systematically examined in the literature, we begin

by modeling the likelihood of a rider being threatened as a function of party control of Congress and the presidency and the individual presidents' propensities during the period under study. Since we will also test for a stronger impact of explicit, "will veto" rhetoric, we have estimated the same model for both the inclusive and explicit threat variables. The main finding in Table 2 is that presidents are roughly eight times more likely (from 2% to 16%) to threaten a rider that arises when the opposition party controls the House of Representatives.<sup>18</sup> Moreover, riders originating in the HAC, which as noted above has increasingly served as a leadership instrument, are almost six times more likely to attract threats (increasing from 3% to 17%) than riders arising elsewhere in Congress. Consistent with the House's dominant position in appropriations, party control of the Senate is unrelated to the occurrence of threats. Below we find that this pattern of chamber party control reverses in explaining the influence of veto threats in removing riders from legislation.<sup>19</sup>

Among the variety of situational variables that regularly appear in the literature as covariates of presidents' legislative success, only two proved significant:

<sup>18</sup>As noted elsewhere, riders are a favorite device of opposition congressional majorities' attempts to rein in the administration (MacDonald 2010). Also, the likelihood of an explicit veto threat increases sixteen times, from under 0.5% to roughly 8%. The margins are even larger if we examine HAC riders (Model 2).

<sup>19</sup>This and more explicit statistical tests for endogeneity reassure us that threats are not the products of anticipated congressional action. We tested for the presence of an endogenous regressor in the subsequent models of Senate action using an instrumental variable probit that instrumented threat using predictors of threats from Table 2 not associated with Senate outcomes (Newey 1987). A Wald test of exogeneity does not reject the null hypothesis that threat selection is exogenous.

<sup>17</sup>We classify the 107th Congress as Democratic because Senator Jim Jeffords switched parties and flipped party control before passage of any of the appropriations bills in our sample.

TABLE 2 Likelihood of Veto Threat

	All Veto Threats		Explicit Veto Threats	
	(1) All Riders	(2) HAC Riders	(3) All Riders	(4) HAC Riders
HAC Origin	1.925** (0.299)		2.266** (0.678)	
Opposition House	2.093** (0.566)	3.003** (0.767)	3.464** (0.677)	4.289** (0.849)
Opposition Senate	0.356 (0.475)	0.252 (0.485)	-0.228 (0.584)	-0.394 (0.615)
Presidential Honeymoon	-3.066** (0.878)	-2.737** (0.908)	-1.626 (0.975)	-1.359 (1.006)
Time Left in Fiscal Year	-0.005* (0.002)	-0.003* (0.001)	-0.007** (0.002)	-0.007** (0.002)
Clinton	0.624 (0.368)	0.902* (0.373)	0.876 (0.753)	0.917 (0.757)
G. W. Bush	2.953** (0.446)	4.052** (0.685)	4.835** (0.714)	5.781** (0.867)
Constant	-5.450** (0.695)	-4.710** (0.750)	-8.205** (1.105)	-6.811** (0.920)
Observations	988	572	989	572
Pseudo R-squared	0.247	0.210	0.366	0.370
Log-likelihood	-325.2	-255.9	-170.1	-138.0

Note: Logit estimates with corrected standard errors are clustered by bill in parentheses. Choice-based sample weights adjusted according to sample.

\*\*p < .01, \*p < .05.

*Presidential Honeymoon*, representing the first year of the president's first term, and the *Time Left in Fiscal Year* after the bill was reported by the HAC.<sup>20</sup> A new president's first session is generally less contentious, even during divided government, possibly reflecting opposition leaders' fear of standing in the way of a recently elected president's real or imagined mandate (Cox and McCubbins 2005; Kernell 2006; Krehbiel 2001).<sup>21</sup> We also find that Presidents Clinton and George W. Bush enlisted veto threats much more frequently than did their predecessors Presidents Reagan and George H. W. Bush. This pattern tracks the growing partisan polarization of Congress, but it may also reflect presidents' individual styles.<sup>22</sup> Finally, we suspect that the

reduced likelihood of veto threats for legislation passed earlier in the fiscal year indicates the absence of partisan disagreement.<sup>23</sup>

In Figure 1, we plot the actual rates of veto threats against the model's estimates in Table 1 (Model 2). The actual occurrence of threats falls within the 95% confidence intervals of their estimates during 15 of the 24 congressional sessions. The marked reduction in partisanship within Congress following the terrorist attacks of 9/11 in 2001 (Jacobson 2003) probably accounts for the paucity of threatened riders in the second session of the 107th Congress, the biggest outlier from the predicted veto rates.

## Findings

We argue that veto threats influence legislation both directly through legislators' calculations of likely outcomes and indirectly by mobilizing the support of presidents'

<sup>20</sup>In estimating models of Senate action (Table 3), we use the date the Senate received the bill.

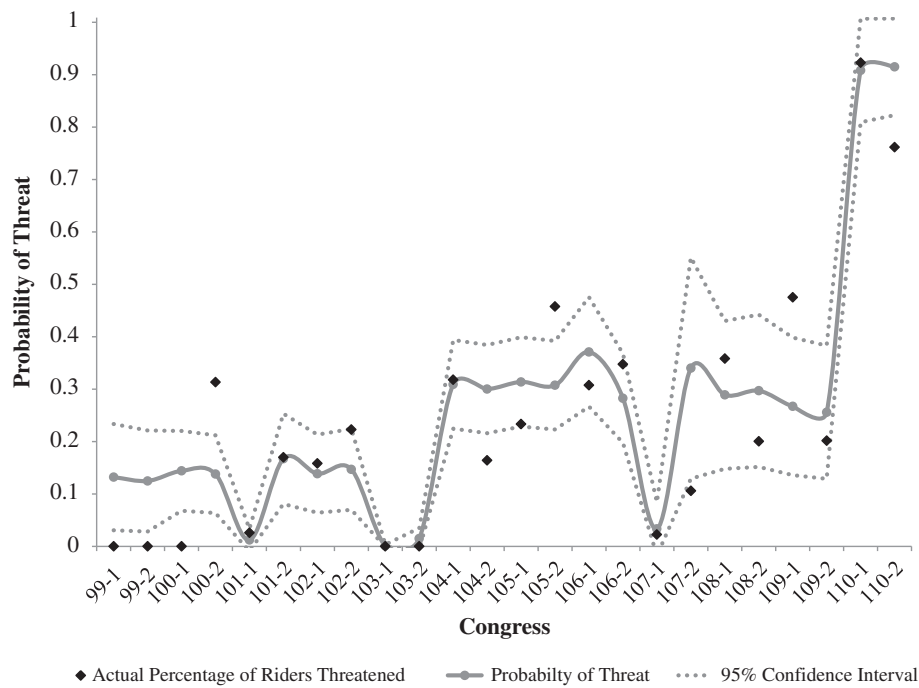
<sup>21</sup>We also tested the president's job approval rating, presidential support score, and the congressional and presidential election calendars. Only the last approached statistical significance, but only in the first of the four models in Table 2.

<sup>22</sup>Sinclair (2011, 108) also notes that George W. Bush threatened some provisions when his party controlled the House "to give Republican leadership ammunition against majority-supported provisions."

<sup>23</sup>As should be expected, appropriation bills during times of divided government are more likely to be reported by the HAC closer to the fiscal deadline.



**FIGURE 1 Likelihood of Veto Threat of HAC Riders**



Note: Probabilities are estimates from Model 2 in Table 2 using the weighted sample. Actual percentage of riders threatened is also calculated from the weighted sample.

copartisans in Congress. Members of the president’s party, having a stake in his success, shift legislation toward the president’s preferences as their numbers and institutional rules permit. The Senate confers on the president’s copartisans greater opportunity to influence legislation, rendering the Senate more responsive to veto threats. This is the chief prediction of our model, one we confirm both in the substance of legislation and the procedures the Senate employs in legislating threatened bills.

*Prediction 1: The House of Representatives Resists Veto Threats*

Given the House’s heavy reliance on committees, the chamber’s prerogative to initiate appropriations ensures that the HAC introduces the largest share of the riders that arise during legislative deliberations (MacDonald 2010). The relationships in Table 2 show the HAC to be the principal source of riders that attract the animus of presidents. Yet the House floor retains 95% of threatened HAC riders.<sup>24</sup>

<sup>24</sup>The House appears slightly more responsive to veto threats when the president’s party holds the majority. It removes 9.1% of threatened riders compared to only 4.6% ( $p < .2$ , one-tailed test) when the opposition controls the chamber. Of note in this calculation, there were 152 riders threatened at the House stage (some were threatened when the bill reached the Senate); only 22 of those threats occurred when the president’s party controlled the House.

Why, one might ask, does the House fail to respond to presidents’ threats by removing more objectionable riders and improving the prospect that they will accept the final bill? One possibility, of course, is the null hypothesis that these messages amount to little more than cheap talk and are, consequently, uninformative. Another answer is that House leaders anticipate extensive accommodation by the Senate. Retaining threatened riders provides them with bargaining assets in subsequent negotiations with the Senate and the administration. The evidence offered below attests to the wisdom of this strategy.

*Prediction 2: The Senate Responds to Veto Threats*

- 2A: Bills containing veto threatened riders are more likely to attract filibusters than non-threatened bills.
- 2B: The Senate is more likely to abandon textbook deliberations of veto threatened House bills.
- 2C: Senate leaders are more likely to create omnibus packages and punt threatened bills to conference.
- 2D: For bills decided on the floor, the Senate is more likely to remove threatened than non-threatened riders.

The arrival of House bills, draped in veto threats, poses a challenge to Senate leaders to fashion even

simple majorities, much less the supermajorities increasingly required to pass controversial legislation. Moreover, being second to take up appropriations—occasionally with fiscal deadlines looming—Senate leaders may struggle to refashion legislation that can pass the chamber while bridging differences between the president and the House. Compounding their difficulties, partisan senators often reinforce their president's veto threat with a threat of their own, the filibuster.

For eight of the twelve congresses covered by our analysis, the opposition party controlled the Senate. In each of these eight congresses, however, the president's party held at least 44% of the seats—safely above the 40 votes necessary to sustain a filibuster. Party competition should motivate the president's partisans to tender filibuster threats when necessary to reinforce their president's veto threat.<sup>25</sup> To test this prediction (2A), we coded all references in *CQ Weekly* to potential and actual filibusters directed at appropriations bills in our sample.<sup>26</sup> By this measure, almost a quarter of appropriations bills containing threatened riders also elicited an actual or threatened filibuster; this compares to 13% of nonthreatened bills. For more precise measurement of this relationship, Models (1) and (2) in Table 3 estimate the likelihood of a filibuster as a function of a veto threat and party control of the chambers. Threats increase the likelihood of filibusters by 14 percentage points, from 8% to 22% (Model 1). When the threat is explicit ("will veto"), this probability increases by 35 percentage points, with nearly half of explicitly threatened provisions in filibustered bills. Weak threats, by comparison, elicit only a 2% increase (Model 2). Clearly, the president's partisans key on the strength of his signal in deciding whether to escalate their opposition through filibustering.

Whatever benefit credible veto threats confer to the president and Congress in discovering mutually acceptable policy, they certainly appear to pose headaches for Senate leaders. As veto threats separate and harden partisan positions, they make filibusters more likely and compromises more difficult. The Senate may find that it must deliberate the bill in some nontextbook fashion (Prediction 2B)—having the SAC take up consideration and even

report the bill before the House completes its action or even by skipping committee consideration and bringing House bills directly to the floor—and subsequently, by wrapping threat-laden bills into omnibus packages and punting them to conference (Prediction 2C).

The relationships in Table 3 indicate that veto threats increase the likelihood that Senate leaders will exercise both options. A veto threat increases the likelihood of nontextbook consideration by 25 percentage points, from 19% to 44% (Model 3).<sup>27</sup> (Unlike filibusters, the different types of threat signals do not affect the legislative pathway differently.)<sup>28</sup> Threats also increase by 19% (from 12% to 31%) the probability that the Senate will punt the rider as part of the bill (Model 5). As with filibusters, explicit veto threats are more closely associated with these choices (Model 6).

Although punting is increasingly employed in the present-day polarized Congress, it is still an infrequent detour to the legislative process. Eighty percent of nonthreatened riders and 59% of threatened riders resided in bills that received full consideration on the Senate floor. Here too, threats influence Senate actions (Prediction 2D). The 59% of threatened riders removed exceeds the attrition rate of nonthreatened riders by 15 percentage points (Model 7). Taking the effects of punting and removal together, more than three-quarters of the HAC's threatened riders went to conference without Senate endorsement.

### *Prediction 3: Conference Responds to Veto Threats*

- 3A: Conference is more likely to reinstate nonthreatened than threatened riders removed by the Senate.
- 3B: Conference is more likely to remove threatened than non-threatened riders from House bills the Senate punted.

<sup>25</sup>And vice versa: One such instance occurred in 1999 when Clinton's policy advisor Bruce Reed (1999) wrote President Clinton that 31 senators had already signed a letter asking the president to threaten a bill if conferees agreed to allow federal aid for special education to be used to reduce class size.

<sup>26</sup>Following past practices (see Sinclair 2011, 80–81), virtually all references to a possible filibuster were defined as threatened, even euphemistic references in *CQ Weekly* that a bill *might* have an "extended debate problem." Even this inclusive definition probably understates the actual incidence of filibusters, many of which are threatened in private leadership negotiations.

<sup>27</sup>Nontextbook consideration is either the result of Senate leaders bringing the bill directly to the floor or having the SAC take up consideration of the bill before the House completes its process. Unable to clearly differentiate these alternative procedures using thomas.gov, we have combined them into a single variable indicating nontextbook consideration.

<sup>28</sup>When the same party controlled both chambers, the predominant setting from the 99th through 110th congresses, the Senate was unlikely to skip committee consideration of the House version of the bill. When the Senate was controlled by the president's party and the House of Representatives by the opposition, however, the Senate appears to have relied more heavily on its appropriations committee to restore and fully vet the president's requests. The opposite pattern arises when party control of the chambers was reversed in the 107th Congress, when the Senate alone was controlled by the opposition party. In the face of House and White House disagreement, the Senate majority is more likely to jettison the House bill to ensure its preferred outcome.

**TABLE 3 Likelihood of Senate Actions**

	(1) Bill Filibustered	(2) Bill Filibustered	(3) SAC Reports House Bill	(4) SAC Reports House Bill	(5) Senate Punts Bill	(6) Senate Punts Bill	(7) Senate Removes Rider	(8) Senate Removes Rider
Bill-Level Variables								
In Threatened Bill	1.169* (0.513)		-1.209** (0.433)		1.211* (0.521)			
In Bill with Standard Veto		0.156 (0.706)		-1.330** (0.488)		0.540 (0.591)		
In Bill with Explicit "Will Veto"		2.076** (0.603)		-1.005 (0.524)		2.043** (0.617)		
Rider-Level Variables								
Threatened Rider							0.621* (0.273)	0.557 (0.334)
Standard Veto Threat								0.714 (0.399)
Explicit "Will Veto" Threat								
Institutional-Level Variables								
Time Left in Fiscal Year	0.014 (0.012)	0.011 (0.012)	0.019** (0.007)	0.019** (0.007)	-0.003 (0.006)	-0.005 (0.006)	0.002 (0.004)	0.002 (0.003)
Opposition Party Controls House	0.900 (0.630)	0.723 (0.648)	3.426** (0.690)	3.402** (0.687)	-0.433 (0.727)	-0.665 (0.756)	0.677* (0.325)	0.682* (0.326)
Opposition Party Controls Senate	-0.407 (0.582)	-0.070 (0.617)	-3.400** (0.735)	-3.364** (0.736)	-0.380 (0.761)	-0.137 (0.784)	-0.170 (0.332)	-0.166 (0.332)
Constant	-3.685* (1.448)	-3.525* (1.388)	0.201 (0.624)	0.214 (0.631)	-1.296* (0.607)	-1.115 (0.596)	-0.755* (0.346)	-0.756* (0.346)
Observations	531	531	531	531	531	531	391	391
Pseudo R-squared	0.073	0.163	0.213	0.216	0.057	0.114	0.027	0.028
Log-likelihood	-229.8	-207.4	-271.9	-271.1	-271.1	-254.7	-262.6	-262.6

Note: Standard veto and explicit veto are unique categories; baseline comparison is no veto threat. Models 7 and 8 exclude riders on bills that the Senate punted. Logit estimates with corrected standard errors are clustered by bill in parentheses. Choice-based sample weights are adjusted according to the sample. \*\*p < .01, \*p < .05.

**TABLE 4 Likelihood of Conference Removing Rider**

	(1) Rider Absent from Enrolled Bill	(2) Rider Absent from Enrolled Bill
Threatened Rider	1.778** (0.278)	
Standard Veto Threat		1.969** (0.339)
Explicit “Will Veto” Threat		1.570** (0.311)
Senate Removes	1.475** (0.284)	1.478** (0.287)
Senate Punts	0.750* (0.362)	0.803* (0.356)
Opposition House	0.315 (0.418)	0.317 (0.416)
Opposition Senate	-1.243** (0.418)	-1.241** (0.416)
Constant	-1.593** (0.299)	-1.607** (0.299)
Observations	531	531
Pseudo R-squared	0.175	0.177
Log-likelihood	-268.6	-268.0

Note: Logit estimates with corrected standard errors are clustered by bill in parentheses. Choice-based sample weights are adjusted according to the sample. \*\*p < .01, \*p < .05.

3C: Conference is more likely to remove threatened than non-threatened riders that survived Senate action.

In fashioning a final bill, conferees must consider its history—specifically, differences in the House and Senate bills, the continued presence of threatened riders, the prospect that the conference report might be filibustered, and, ultimately, the likelihood of a veto. The relationships reported in Table 4 display conferees’ actions in light of this history.<sup>29</sup> Having been removed in the Senate or folded into an omnibus bill greatly reduces a threatened rider’s chances of making it through conference.<sup>30</sup> Converting these relationships into probabilities in Table 5, we find a 75% chance that the threatened riders removed on the Senate floor will not return to

<sup>29</sup>All of the conference reports for the bills in this analysis won the chambers’ endorsements and became the enrolled bill.

<sup>30</sup>The coefficient for veto threats remains essentially the same when interacted with Senate action (not shown). Whatever their treatment on the Senate floor, threatened provisions were twice as likely to be removed in conference.

**TABLE 5 Likelihood of Conference Excluding HAC Riders across Different Senate Actions and Veto-Threatened Status**

Likelihood of Rider Being Excluded from Conference Bill if . . .	Nonthreatened	Threatened
Senate Passes Rider	9.3%	39.6%
Senate Punts Rider	19.3%	60.6%
Senate Removes Rider	31.2%	74.5%
Overall Likelihood of Being Excluded from Conference Bill	17.6%	57.8%

Note: Probabilities are simulation estimates from Model 1 in Table 4. All differences are significant at the p < .05 level.

the final bill, compared to 31% for comparable unthreatened riders.

More surprising, the Senate majority’s strategy of punting to avoid concessions largely fails. Punted riders were only marginally less likely to be excluded from the enrolled bill than those the Senate had explicitly deleted—61% versus 75%. Punting, in itself, does not appear to pose a barrier for conference passage; the chance of punted nonthreatened riders being omitted from the enrolled bill was only 19%. Since threatened riders compose a larger share of all riders in punted bills—56% of riders in punted bills compared to 32% in bills acted upon—the positive coefficient for *Senate Punts* in Table 4 represents a major, indirect source of legislative accommodation of presidents’ objections. The difficulty veto threats pose for passage of punted legislation on the Senate floor that led them to be punted follows them into conference. These relationships confirm the assessment of Senator Robert Byrd (D-WV), long-standing chair of the SAC, that omnibus bills “bring the White House to the table and put them in charge” (Hanson 2014, 522).

Even after preserving the bulk of the Senate’s action (and inaction) in removing the veto-threatened HAC riders, the conference committee continued to whittle threatened riders from legislation. According to the derived estimates in Table 5, the chances of conference dropping threatened riders that both chambers had passed was 40%, compared to only 9% of nonthreatened provisions. Similarly, the mortality rate for threatened, punted riders was three times that of non-threatened riders: 61% and 19%, respectively. Comparable differences appear in the likelihood of restoring riders the Senate removed on the floor: 25% and 69%, respectively. Overall, the conference stage of deliberations increases the failure rate of threatened

riders by 40 percentage points over nonthreatened riders (see the last row of Table 5).

The event histories of threatened riders that survived the legislative gauntlet offer endgame evidence of both the wisdom of bundling riders into appropriations and the credibility of veto rhetoric. With an estimated 41% of threatened HAC riders reaching the enrolled stage and the president signing 88% into law, 36% of all threatened riders became law. Presumably, the president would have vetoed all of these provisions had they come to him singly as authorization bills. Yet if bundling helps Congress impose some policies on opposition-controlled administrations, veto threats help presidents fend off many others. Of the 88 annual appropriations bills that presidents had earlier threatened because of objectionable HAC riders, 37 were free of such riders when they arrived on their desk. In addition, threatened riders were roughly twice as likely as nonthreatened riders to reside in bills that the president vetoed (15% versus 8%).

## Conclusion and Discussion

When presidents participate early in legislative deliberations by threatening a veto, they enjoy a better prospect for success than if they had waited for their “take it or leave it” choice. Timely, credible veto threats prompt legislators to reassess which legislative bundles stand the best chance of achieving their policy goals. With veto threats, presidents send strong signals identifying for both the public and copartisans in Congress those policies on which the parties disagree.

In principle, the insertion of riders in “must-have” legislation poses a tough test for veto threats. Yet presidents achieving a nearly 60% success rate in removing objectionable riders—three times the rate of nonthreatened riders—bodes well for veto threats directed at other kinds of legislation. Line item appropriations in the same bills holding riders should be especially susceptible to veto threats. Indeed, haggling over spending cuts introduced by the HAC in its appropriations bills is a venerable annual rite (Fenno 1966; Wildavsky 1964).

Authorization legislation, however, differs in key respects that call into question the effectiveness of veto threats. One ingredient generally missing in authorization bills is a deadline. While the approaching October 1 fiscal year deadline presses both opposing parties to find a compromise, such exigent considerations are not normally present with authorization bills.<sup>31</sup> (Even after

a program’s authorization expires, continued appropriations can sustain it.) In many instances, passing and re-passing vetoed bills over sessions and even over congresses becomes more feasible. Indeed, Cameron (2000) has demonstrated that “sequential veto bargaining” occurs frequently, especially for major legislation during periods of divided government.

Appropriations and authorization legislation differ in another key respect—legislative sequence. With the House of Representatives taking the first turn at appropriations, opposition House majorities are well positioned to propose extreme measures that elicit information about the president’s preferences and set the stage for negotiations with the White House and the Senate. The House’s specialization and majoritarian rules give controlling opposition parties the wherewithal to establish a strong bargaining posture with the White House. The Senate, conversely, possesses neither of these qualities. This chamber’s composition and rules suit it better to act as the second mover (Rogers 1998), an arena that allows its veto players to search for mutually acceptable legislation. That the Senate sometimes fails and punts legislation to conference offers testimony to the challenge of coordinating policy in Washington’s present-day divided government. It is difficult to envision how veto threat bargaining would unfold were the legislative sequence reversed with the Senate moving first, leaving the House of Representatives responsible for brokering an enactable bill.

These novel questions about legislation arise only because veto rhetoric has been found here to be an effective instrument for presidents’ intervention in a class of legislation traditionally deemed untouchable. Unlike the results obtained from the ultimatum game and cheap talk models, credible veto threats give presidents reasonable chances for excising targeted deal-breaking provisions from legislation. At each step of legislation beyond the House floor, deliberations shed threatened riders at rates much higher than that with which they remove comparable nonthreatened riders. With veto threats chalking up such success, and with presidents increasingly enlisting them to counter objectionable legislation, veto threats appear to carve out a role for presidents that, in this era of divided government, gives fresh poignancy to Wilson’s (1885) distant characterization of the president as “the third branch of the legislature.”

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<sup>31</sup>Since Republicans’ failed showdown with President Clinton in 1995, opposition majorities in Congress have been loath to hold up appropriations and risk blame for shutting down the government.

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