

Partisan Support for Chairs' Rulings in the House and Senate

Chris Den Hartog
Department of Political Science
California Polytechnic State University
San Luis Obispo, CA 93407
cdenhart@calpoly.edu

and

Nathan W. Monroe
School of Social Science, Humanities, and Arts
University of California, Merced
Merced, CA 95211
nmonroe2@ucmerced.edu

Abstract

Chairs' rulings in the House and Senate—and whether they are upheld by the chamber—play a significant part in each chambers' legislative process, and often have major impacts on legislative outcomes. Such decisions, however, are virtually unstudied. In part this seems to follow from traditional characterizations that House rulings and votes are driven by partisanship, while Senate rulings are little or nothing more than legalistic, deterministic interpretations of chamber rules and precedents. But, given that the presiding officer in each chamber is a member of the majority party, there is reason to suspect that partisanship influences chairs' rulings—and votes on appeals of those rulings—to an extent unrecognized in the literature. We explore the extent to which roll call patterns on appeals of presiding officers' rulings support this conjecture in each chamber. House data suggest strong majority party influence over rulings and appeals votes; Senate data are less clear, but also suggest substantial majority party influence over chairs' rulings.

Paper prepared for presentation at the Bicameralism Conference, Vanderbilt University, October 23-24, 2009. We thank Andrea Campbell, Mike Crespin, Tony Madonna, Keith Poole and Dave Rohde for sharing data and other helpful materials. We also thank Mike Crespin for helpful advice.

Presiding Officers' rulings in the House and Senate—and whether they are upheld by the chamber—can play an important role in both chambers' legislative processes, sometimes having major impacts on legislative outcomes. When points of order are raised during floor consideration of a measure, the chair's ruling—and a possible vote to sustain or overturn that ruling—can fundamentally affect the prospects of motions, amendments, and bills. Also, they can establish precedents that govern consideration of future legislation. Given these implications, stakes are high for senators and House members, and especially for parties attempting to advance policies by influencing their chamber's agenda (Rohde 1991, Cox and McCubbins 2005).

With few exceptions, however, chairs' rulings and related roll call votes are unstudied. Moreover, the only systematic studies of these phenomena focus solely on the Senate (Bach 1989, 1991, Madonna 2009). The lack of interest in House rulings might reflect the belief that there is little ambiguity in House floor proceedings and, perhaps more importantly, that challenges of chairs' rulings are seen as serious tests of the Speaker's power and are typically decided on party line votes (Schneider 2005).

The lack of attention in the Senate, on the other hand, seems to stem from almost the exact opposite belief. Senate chairs' rulings are often portrayed as little or nothing more than legalistic, deterministic interpretations of chamber rules and precedents (Preston 2005, Heitshusen 2006, Gold 2008). This characterization often follows from the view that chairs' rulings are simply based on interpretations of Senate rules and precedents by a non-partisan, unbiased parliamentarian (Schneider 2005, Gold 2008). This non-partisan view fits with the dominant conventional view of the Senate, which

suggests that the Senate's procedures frustrate and undermine majority party attempts to control the legislative agenda (Smith 2007)

In this paper, we reconsider these polar opposite views of chairs' rulings, and their accompanying votes, across chambers. In the modern House and Senate, the Presiding Officer is always a member of the majority party,¹ and in both chambers, chairs' rulings have important implications for parties' agendas. While it is true that the Senate majority party does not have as strong a hold on the chamber's agenda overall, this may serve to underscore the need for partisan cohesion on chairs' rulings; indeed, chairs' rulings may be one place where Senate party leaders can "make up ground" in influencing the legislative agenda. We thus offer the conjecture that partisanship influences presiding officers' rulings more in the Senate than is acknowledged in the literature, and that such influence is more consistent between the House and Senate than is believed to be the case.

We examine partisanship on appeals of chairs' rulings votes in each chamber and investigate the extent to which roll call patterns support these conjectures. Our data support the view of House rulings as partisan affairs. And, though they are less striking, the data suggest substantial partisanship is also at play in Senate chair's rulings. The next section reviews extant literature about presiding officers' roles and decisions; the section after discusses the import of these decisions; and the third section features data bearing on our conjectures.

¹ Prior to 1977, the Presiding Officer in the Senate was sometimes a minority party member (Madonna 2009).

Characterizations of Parliamentarians and Chairs' Rulings

The notion that chairs' rulings are non-partisan, unbiased, and legalistic—either in the Senate or the House—is born out of a common view that these rulings are driven by the advice of objective parliamentarians. Gold (2008: 11), for example, describes the Senate parliamentarian as “an essential resource on questions of Senate procedure [who] can be relied on for confidential and unbiased advice.” Similarly, even in the modern context of the House, Schneider (2005: 7) notes “a non-partisan Parliamentarian, an officer of the House, is always present to advise the presiding officer on rulings and precedents.”

Based strictly on these views, one would assume that chairs in *both chambers* simply follow the legalistic interpretations of rules and precedent offered by the parliamentarian. Gold (2008: 11) says as much about the Senate, observing,

It is often misstated that the parliamentarian makes rulings. The presiding officer rules after having received the parliamentarian's counsel. Although the presiding officer has the power to ignore the parliamentarian's advice and simply rule on his own, it would be extraordinary for him to do so.

From this perspective, chairs' rulings are motivated by a desire to consistently and accurately govern Senate proceedings based on established rules and precedents. Accordingly, votes to overturn the ruling of the chair are rare, and motivated by a desire to set new precedent. As Heitshusen (2006: 3) puts it, “although it is not unusual for Senators to appeal the rulings of the chair, the Senate only rarely overturns the rulings of its presiding officer. To routinely do so would undermine the continuity of Senate rules and the consistency of rule interpretation essential to legislative work.”

In the modern House, however, the non-partisan view of the parliamentarian and legalistic view of chairs' rulings seem at odds with the typical characterizations of highly partisan procedural votes in that chamber. Bach (1998: 1) explains this apparent paradox:

In the House of Representatives, appeals from rulings of the chair are quite infrequent for at least two reasons. First, as noted above, the Speaker's rulings are based on the parliamentarian's advice which, in turn, is based on prior rulings on similar questions. In most instances, therefore, the correctness of rulings is not in doubt. Second, the overwhelming majority of the members of the majority party can be expected to support a ruling made by that party's elected leader or another Member whom he has designated to preside. For these reasons among others, there has not been a successful appeal on the House floor in more than half a century. In turn, this fact probably makes Members reluctant to appeal rulings except in extraordinary circumstances.

In other words, House chairs' rulings are rarely appealed and virtually always upheld; rulings are highly partisan in the rare event that they are put to a vote, but legalistic, mundane, and unchallenged the vast majority of the time.

More surprising, however, is that recent Senate history casts the parliamentarian's role, as it relates to chairs' rulings, in an increasingly partisan light. Smith, Roberts, and Vander Wielen's (2006: 17) account of the Senate parliamentarians' woes during the early part of this decade, for example, reveals rising partisan pressure to interpret rules and precedents in a manner favorable to majority party goals:

In 2001, the Senate Parliamentarian Bob Dove was fired. Technically, the parliamentarian is hired by the Secretary of the Senate, who is elected by the

Senate, but is always the handpicked choice of the majority leader. The precipitating cause of the firing was a procedural ruling by Dove that seemed reasonable, but disadvantaged the Republicans on an important budget matter. An earlier decision by Dove that rankled some Republicans was still fresh in the mind of many...Dove's successor, Alan Frumin, found himself on the hotseat in 2003, when the majority party Republicans sought to enact several reconciliation bills, each of which would be protected from a filibuster, and to avoid objections to features of a House-Senate compromise that appeared to violate restrictions on the content of budget measures.

Indeed, taking a longer view of Senate history, the relationship between the parliamentarian and the two parties seems even tenser than the parallel relationship in the House, a puzzle presented and addressed by Evans (1999: 616).

The role of the Senate parliamentarian has developed differently than that of the House parliamentarian. Since 1981, the Senate parliamentarian has been replaced with each transition to a new majority party. In contrast, House parliamentarians have not been replaced with changing party control. Why would the relatively bipartisan Senate have a parliamentarian less buffered from partisan politics than is the case with the more partisan, majority-rule driven House? Very little research has been done about the development of the parliamentarian's role in each chamber, particularly the Senate. But, one possible explanation is that the Senate's rules and precedents are much "thinner" than are the House's, and that there is more discretion in making parliamentary

rulings on the Senate side of the Capitol. As a result, Senate majority parties have greater need for their own parliamentarian.

Evans's speculation about the relative importance of the parliamentarian in the two chambers goes to the heart of our speculation about partisan support for chairs' rulings. As we discuss in the next section, though we suspect partisan dynamics play a role in voting on appeals of chairs' rulings in both chambers, the strategy and motivations that drive those dynamics likely vary across chambers.

Beyond anecdotal evidence and procedural realities, however, there has been no systematic empirical investigation of partisanship on votes regarding chairs' rulings. Bach (1991) looks at the outcomes of votes on chairs' rulings in the Senate, but his focus is on the frequency of such votes, and on whether the chamber typically upheld or overturned the ruling of the chair (he finds that the votes are relatively infrequent, but that they usually result in the chamber sustaining the chair's ruling). Madonna (2009) also focuses solely on the Senate, but does look for effects of partisanship on chairs' rulings. The dependant variable in his analysis is the chair's decision itself, rather than the appeal vote; he finds that prior to the emergence of the Senate parliamentarian in 1925, rulings were influenced by partisan factors. However, as the chair began relying on the advice of the parliamentarian, these partisan factors no long significantly influenced chairs' rulings.

A trend toward more non-partisan chairs' rulings, however, does not imply that partisan influence is removed from Senate decisions about whether to sustain the points of order that trigger these rulings. If majority party senators exhibited strong cohesion in sustaining chairs' rulings, then non-partisan rulings would sometimes lead to majority defeats. If, on the other hand, the chair ruled in a non-partisan fashion, and the chamber

tended to sustain these rulings when they were favorable to the majority party, but overturn them when they were unfavorable, then the outcome of most appeals votes would be to the majority's liking. Indeed, Madonna (2009) points out that there are instances of chairs' rulings *being voted against by the chair who made the ruling*, which is consistent with such a scenario.

Partisan Implications of Appeals Votes on Chairs' Rulings

In both the House and Senate, votes on appeals of chairs' rulings occur after a member of the chamber raises a point of order regarding a floor motion, some other floor action, or an amendment that is alleged to violate the chamber's rules or precedents. Especially in the House, the chair often rules on the point of order, no appeal is submitted, and the question is decided without a vote (Schneider 2005). However, in some cases, a senator or House member appeals the ruling of the chair, triggering a vote by the entire chamber to either sustain or overturn the decision.²

In the House, the majority party's hold over the chamber agenda is regularized through tight control of committees – especially the Rules Committee – and through the floor scheduling powers of the Speaker (Cox and McCubbins 1993, 2005). Often, points of order are waived by adoption of a special rule (Oleszek 2007), and floor proceedings are carefully choreographed in advance and controlled by the majority leadership. Still, on occasion, points of order are raised that have serious policy implications – determining, for example, whether a particular amendment is in order – and the ruling of the chair in these instances is crucial to the majority party's agenda influence. In such

² In the Senate, some points of order are automatically referred to the chamber for a vote, without the chair making a ruling. Questions of constitutionality and the germaneness of amendments to appropriations bills are almost always handled this way (Schneider 2005), though technically the presiding officer can choose to submit any point of order directly to the full Senate (Gold 2008).

cases, if the ruling is appealed, a member of the majority party will typically make a motion to table the appeal, and the vote will occur on the motion to table (Bach 1998).³

Beyond the specific policy implications, however, we also might expect to see intensely partisan voting patterns on appeals votes in the House because of the broader implications of those decisions. In the House, the presiding officer is the Speaker or the Speaker's designee. Thus, votes on chairs' rulings not only have specific implications for the success of the policy proposal under consideration, but also implicitly offer a test of the Speaker's control of the chamber. Overturning the chairs' ruling would be seen as undermining the majority party's agenda power more generally, and thus the parties might view these votes as loyalty tests for rank-and-file members.

At first glance, however, neither of these bases for partisanship on appeals votes is apparent in the Senate. That is, the Senate majority party does not dominate the legislative agenda the way they do in the House (i.e. through a strong rules committee and scheduling power of the presiding officer), nor is the role of majority leader fused with that of the presiding officer (Gamm and Smith 2000). But Senate co-partisans still share common interests with one another, giving them reasons to act cooperatively (or to create party structures to facilitate cooperation, even if less consistently than parties in the House). In other work (Den Hartog and Monroe 2008), we present evidence of this type of cooperative behavior among majority party senators; one can imagine this dynamic extending to votes on appeals of chairs' rulings. At their most routine, votes on appeals of chairs' rulings often decide whether an amendment will fail or continue on to final consideration, in much the same way as tabling motions. At the most consequential, a

³ The advantage of using a tabling motion is that it is not debatable, whereas the appeal motion is debatable. However, the tabling motion is only available in the House, not the Committee of the Whole (Bach 1998).

vote on a chair's ruling could potentially eliminate filibusters on some or all types of legislation. Indeed, this "nuclear option" has been the topic attention in recent years.

In short, insomuch as the majority party does try to influence the agenda in the Senate, they must rely even *more* heavily on floor procedural votes – such as those on appeals of chairs' rulings – to be successful, as compared to their counterparts in the House. Thus, in part, scholars may have overlooked the partisan influence that is common in both the House and Senate because the genesis of this partisanship, as it manifests itself on chairs' rulings votes, is somewhat different across chambers. We suspect that the majority party may win a disproportionate share of votes on appeals of the chair in *both* the House *and* the Senate. We investigate this possibility in the next section.

Data

We examine votes on chairs' rulings in the House and Senate from a variety of angles, using data from the 83rd through 108th Congresses. First, we ask how many such votes there were in each chamber in each Congress. Second, we examine how often chairs' decisions were sustained and rejected. Third, we look at the incidence of party unity votes, and the numbers of majority and minority party wins on such votes.

For each chamber, we first identified roll call votes on appeals of chairs' rulings, and motions to table appeals of chairs' rulings. For each case, we then coded whether the chamber sustained or rejected the ruling, each party's position on each vote, and whether the vote outcome matches the parties' positions on each vote. For the House, we

identified the relevant votes using Rohde's (2004) roll call data,⁴ supplemented with additional data provided by Mike Crespin. Rohde's data was also the source of our party voting data. For the Senate, we identified relevant votes using Andrea Campbell's roll call data through the 104th Congress, and vote information on the Senate website (www.senate.gov) for the 105th through 108th Congresses; we supplemented these sources with question of order data provided by Tony Madonna. Senate roll call voting data comes from Keith Poole and Howard Rosenthal's party split roll call voting data.⁵ We thank each of these authors for generously sharing their data.

How often do votes on appeals of chairs' rulings occur?

We begin by simply looking at the numbers of votes on chairs' rulings, shown in Figure 1. One of the first things to note is that there are relatively few; across the period we examine, there were just 74 House votes, and 166 Senate votes (per-Congress means of 2.85 and 6.15, respectively). The figure reveals an interesting pattern, however. In each chamber, there were few votes prior to the 1970's. This continues to be the case in the House across the 1970's and 1980's; in the Senate, however, the number skyrockets during this period. But in the highly partisan period since around 1990, the number of Senate votes has declined sharply, while the number of House votes has increased steadily.

Figure 1 here

⁴ Rohde, David W. Roll Call Voting Data for the United States House of Representatives, 1953-2004. Compiled by the Political Institutions and Public Choice Program, Michigan State University, East Lansing, MI, 2004.

⁵ The link to the dataset is "[Senates 35 - 110 Democrat and Republican Party Voting Splits \(Stata 8 File\)](#)," available at pooleandrosenthal.com.

How often are chairs' rulings sustained and rejected?

In each chamber, chairs' rulings are usually sustained. In fact, the chair was sustained on all 74 of the House appeals. In the Senate the pattern is not so extreme, but still leans heavily in the chair's favor: 125 of the 166 votes (75.3 percent) sustained the ruling.

Figure 2 shows the aggregate numbers of votes upholding and rejecting rulings for each Congress and chamber, and reveals interesting variation within the Senate that the overall numbers hide. Prior to the early 1970's, the number of rulings sustained and rejected is often similar, with more rulings rejected than sustained (though the number of votes is small in this period). From the early 1970' through the late 1980's, when the number of appeals votes increases sharply, the proportion of rulings sustained also increases markedly. Then, from the late 1980's forward, both the number of appeals and the proportion sustained drop once more.

Figure 2 here

The results for the House are consistent with the partisan picture painted by anecdotal evidence about chairs' rulings in that chamber: the chair never loses. The results for the Senate are less clear; not only does the chair's "success" vary over time, but it is also less clear what the data say about the extent to which chairs' decisions are made on legalistic versus partisan grounds.

What is the pattern of partisan wins on appeals votes?

We thus turn to party voting patterns in each chamber to try to gain insight on chairs' decisions. We code the position of each party on each vote, where the party position is either sustain or reject, and is measured as the option favored by a majority of the party's voting members. From this, we code each vote as falling into one of three

categories: majority win (the majority and minority positions differ, and the majority position prevails), minority win (the majority and minority positions differ, and the minority position prevails), or bipartisan (the parties have the same position, which prevails).

Figure 3 shows the number of appeal votes falling into each category. The pattern in the House is stark. There are zero minority wins, only two bipartisan votes, and 72 majority wins. Though we feel comfortable construing a majority or a minority win as a victory for that party, the bipartisan votes constitute a more ambiguous, and interesting, cases. One can imagine a number of quite different processes that could produce a bipartisan vote: at one extreme, it could simply reflect similar preferences among members of both parties; or, it could reflect majority weakness that forces the majority to push a compromise acceptable to both parties; or, at the other extreme, it could reflect the majority party controlling the process and doing what it wants, and the minority happening to share the majority's position. And, since only two of the 74 House cases fall into this category, understanding the implication of bipartisan votes does not seem critical in the House. It appears that, perhaps without exception, the chair rules in a way favored by the majority party, and the chamber upholds the chair's ruling.

Figure 3 here

In more than one way, however, the Senate data are less clear. Both bipartisan votes and minority wins are far more common than in the House. Across our time series, there are 73 bipartisan votes, 74 majority wins, and 19 minority wins. If we construe bipartisan votes as a sign of majority weakness, then the substantial number of bipartisan votes reflects a Senate majority that is much weaker than the House majority. On the

other hand, if we construe bipartisan votes as the majority getting what it wants, then the majority position prevails in 147 of the 166 appeals votes (as opposed to 92 of 166 for the minority party), which is a more impressive success rate. And if we merely disregard bipartisan votes and focus on party unity votes, the majority wins about 80 percent of the time.

Conclusion

Despite their potentially profound significance for legislative outcomes, congressional literature features little systematic evidence about such rulings. Especially given that such rulings appear to present opportunities for partisan influence, we think they warrant greater study. This paper is a small step in that direction, presenting descriptive statistics and charts meant to fill in some of the broad outlines of the use of chairs' rulings in each chamber.

We find that the vast majority of rulings are upheld—all of them in the House, and about 75 percent in the Senate—and that most votes on appeals of rulings produce the result favored by the majority party. Unsurprisingly, the House majority appears stronger than the Senate majority. But we add the caveat that these claims are speculative; we construe data presented here as suggestive, rather than as hypothesis tests.

Particularly given the exploratory nature of this paper, we can think of multiple directions in which this work could be extended. First, one could also include Senate votes on germaneness, which the chair often submits to the chamber for a decision, without first ruling on the matter. Our own initial examination of this data indicate that both the sustained/rejected and the majority/minority/bipartisan patterns on germaneness

votes are similar to those on appeals votes. Second, we can imagine a more detailed multivariate analysis accounting for factors such as the party of the MC who appeals the ruling, the party of the chair, majority size, and party heterogeneity. Another fruitful avenue would be to examine the consequences of votes on chairs' rulings. For instance, can we characterize whether they typically impose or remove hurdles faced by proposals? Do they tend to affect proposals from one party differently than proposals from the other party?

A direction we hope to explore is rulings on budget matters. Waiving the Congressional Budget Act in the Senate, and chairs' rulings on related points of order, requires a three-fifths majority for passage, which significantly changes the strategic environment. Thus, partisan success and cohesion on these votes may be different from other votes on chairs' rulings.

References

- Bach, Stanley. 1989. "Points of Order and Appeals in the Senate." *CRS Report for Congress*, Order Code 89-69 RCO.
- Bach, Stanley. 1991. "The Senate's Compliance with its Legislative Rules: The Appeal of Order." *Congress and the Presidency* 18: 77-92.
- Bach, Stanley. 1998. "Points of Order, Rulings, and Appeals in the House of Representatives." *CRS Report for Congress*, Order Code 98-307.
- Cox, Gary W., and Mathew D. McCubbins. 1993. *Legislative Leviathan: Party Government in the House*. Berkeley, CA: University of California Press.
- Cox, Gary W., and Mathew D. McCubbins. 2005. *Setting the Agenda: Responsible Party Government in the U.S. House of Representatives*. New York: Cambridge University Press.
- Den Hartog, Chris, and Nathan W. Monroe. 2008. "Agenda Influence and Tabling Motions in the U.S. Senate." In *Why Not Parties? Party Effects in the United States Senate*, Nathan W. Monroe, Jason R. Roberts and David W. Rohde, eds. Chicago, IL: University of Chicago Press.
- Evans, C. Lawrence. 1999. "Legislative Structure: Rules, Precedents, and Jurisdictions." *Legislative Studies Quarterly* 24: 605-624.
- Gamm, Gerald, and Steven S. Smith. 2000. "Last Among Equals: The Presiding Officer of the Senate." In *Esteemed Colleagues: Civility and Deliberation in the United States Senate*, Burdett A. Loomis, ed. Washington, DC: Brookings Institution.
- Gold, Martin B. 2008. *Senate Procedure and Practice*, 2nd edition. Lanham, MD: Rowman & Littlefield.
- Heitshusen, Valerie. 2006. "Points of Order, Rulings, and Appeals in the Senate." *CRS Report for Congress*, Order Code 98-306 GOV.
- Madonna, Anthony. 2009. "The Presiding Officer and Parliamentarian: Moving Towards a Non-Partisan Interpretation of Rules and Precedent in the U.S. Senate." Unpublished Paper.
- Oleszek, Walter J. 2007. *Congressional Procedures and the Policy Process*, 7th Ed. Washington, DC: CQ Press.
- Oppenheimer, Bruce I. and Mark J. Hetherington. 2008. "Catch 22: Cloture, Energy

- Policy, and the Limits of Conditional Party Government.” In *Why Not Parties? Party Effects in the United States Senate*, Nathan Monroe, Jason Roberts and David Rohde eds. Chicago, IL.: University of Chicago Press.
- Preston, Mark. 2005. “Parliamentarian Takes Quiet Role in Senate Tiff.” *Roll Call*.
- Rohde, David W. 1991. *Parties and Leaders in the Postreform House*. Chicago and London: University of Chicago Press.
- Rohde, David W. 2004. Roll Call Voting Data for the United States House of Representatives, 1953-2004. Compiled by the Political Institutions and Public Choice Program, Michigan State University, East Lansing, MI.
- Schneider, Judy. 2005. “House and Senate Rules of Procedure: A Comparison.” *CRS Report for Congress*, Order Code RL 30945.
- Smith, Steven S. 1989. *Call to Order: Floor Politics in the House and Senate*. Washington, DC: Brookings.
- Smith, Steven S. 2007. *Party Influence in Congress*. Cambridge, MA: Cambridge University Press.

Figure 1. Number of chairs' ruling votes in House and Senate, 83rd through 108th Congresses

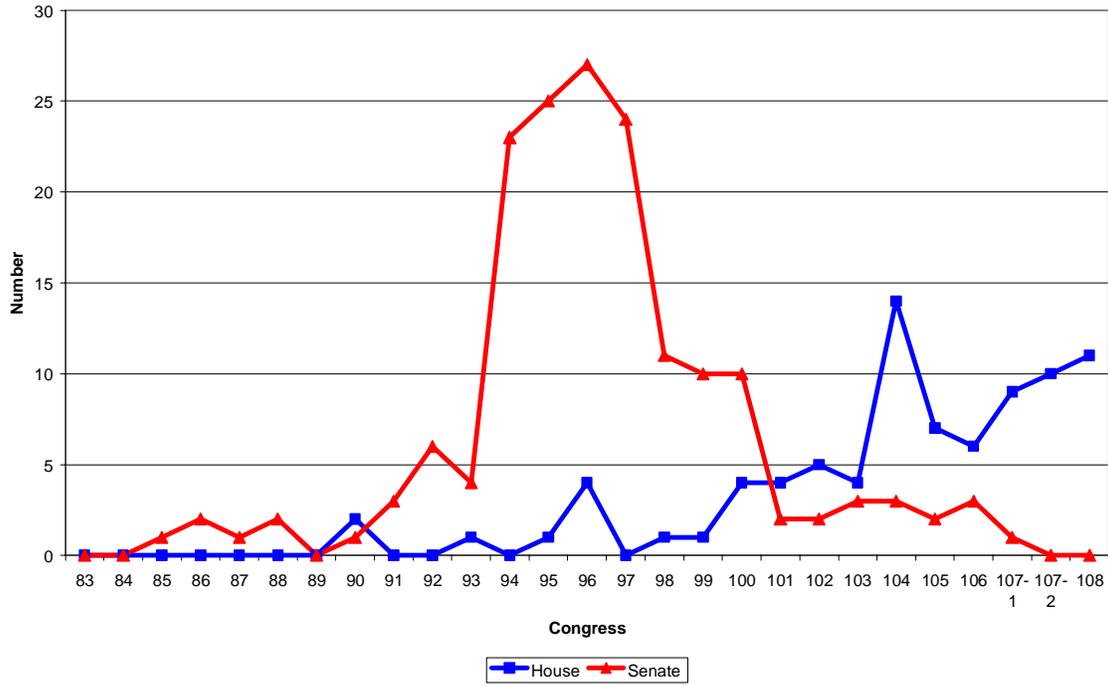


Figure 2a. Number of appeals of chairs' rulings sustained and rejected, 83rd through 108th Houses

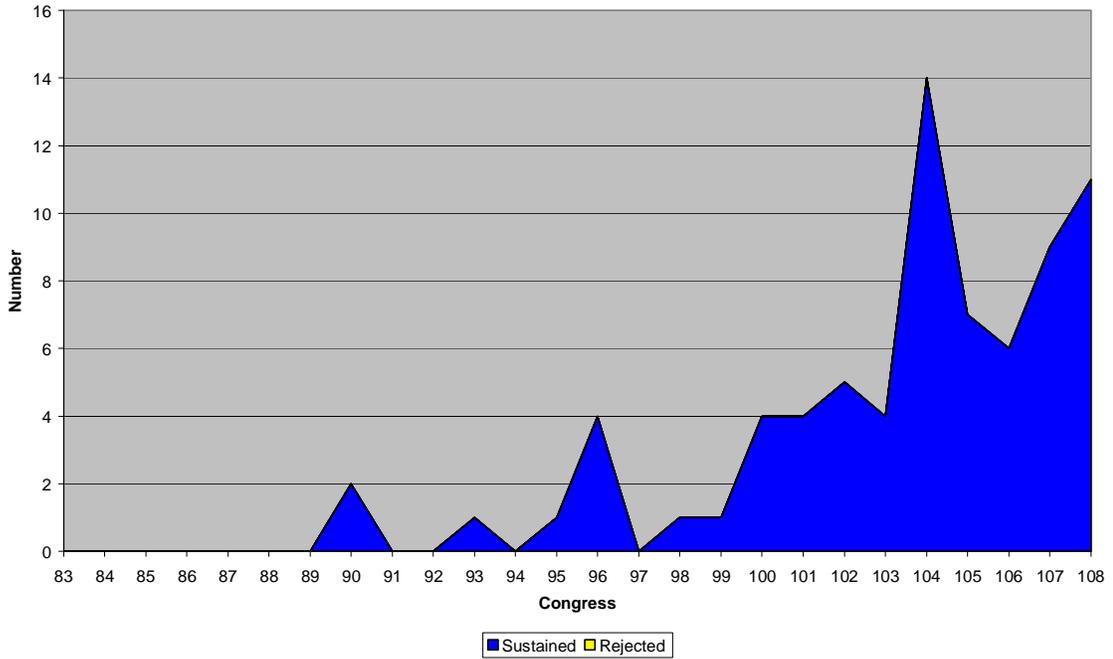


Figure 2b. Number of appeals of chairs' rulings sustained and rejected, 83rd through 108th Senates

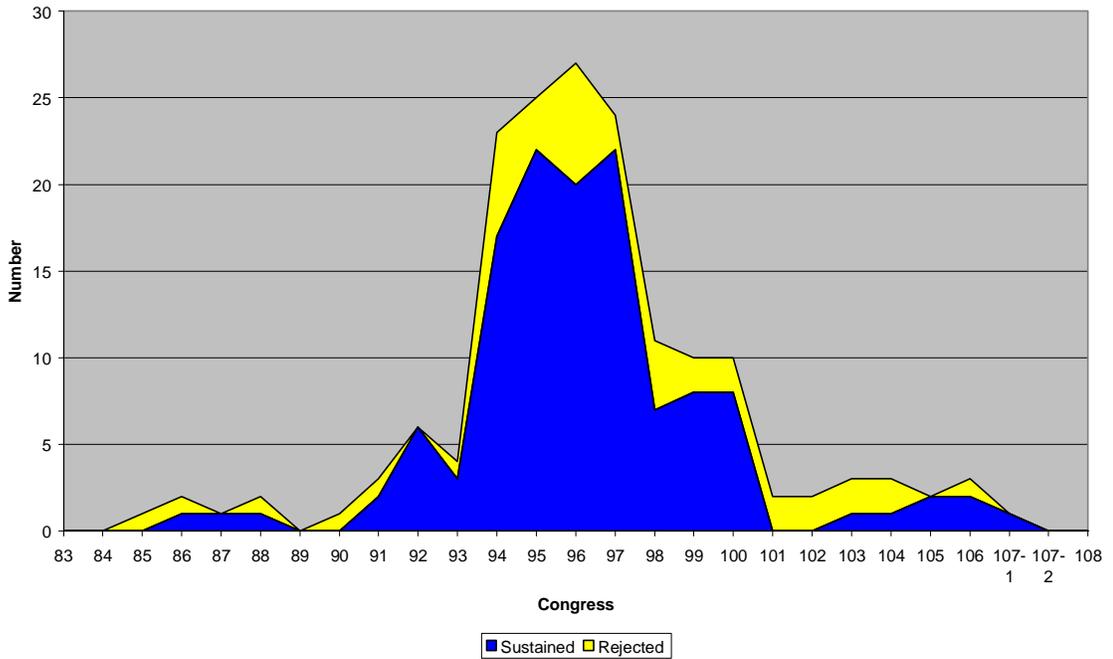


Figure 3a: Number of bipartisan votes, majority wins, and minority wins on appeals of Chairs' rulings, 83rd through 108th Houses

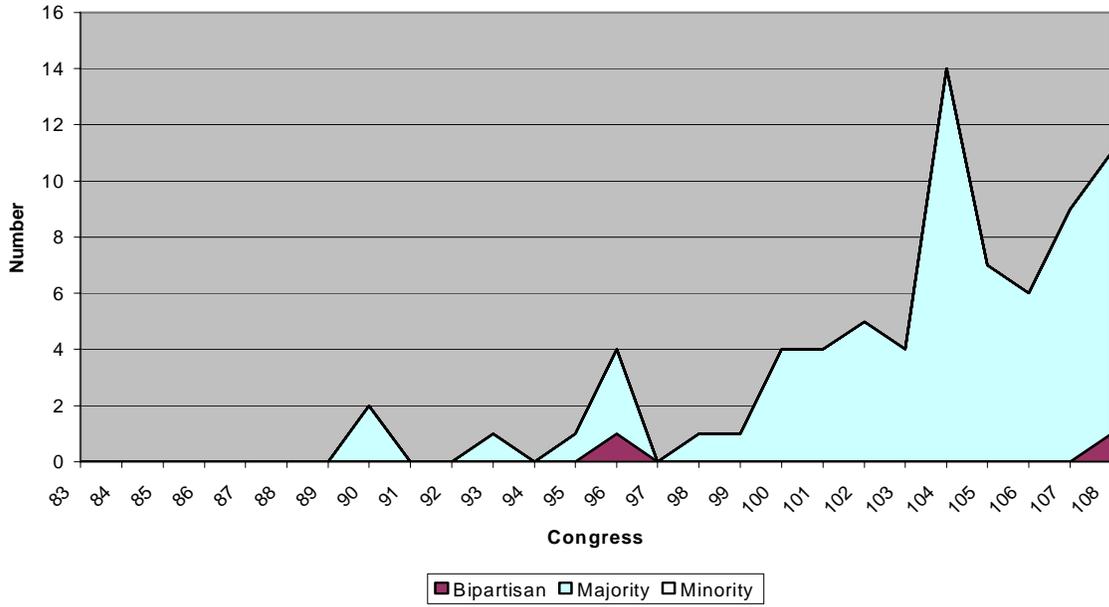


Figure 3b. Number of bipartisan votes, majority wins, and minority wins on appeals of chairs' rulings, 83rd through 108th Senates

