

Bipartisanship in the U.S. Congress: The Water for the World Act of 2014 Teaching Plan

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Synopsis

In 2013, Representative Earl Blumenauer (D-Oregon) set out to pass the Water for the World Act, a bill aimed at streamlining water and sanitation aid to developing countries and making it more effective. Because Democrats were in the minority in the House and an informal rule required that they get the support of a majority of Republicans, Blumenauer and his staff had to engage in extensive bipartisan negotiations, finding the right ally across the aisle, and carefully framing the issue so as to avoid language or amendments that may have been considered toxic by one or the other side. After barely surviving an eleventh-hour attempt to kill the bill in the Senate, Congress passed the Water for the World Act in December of 2014.

This multimedia case is designed to support discussion of what makes bipartisan negotiation more (and less) likely to work. It is especially designed for executive education sessions or legislative trainings and requires no preparation before class, but it does require 90 to 100 minutes of class time. The

This teaching plan was written in collaboration with Kessely Hong, Lecturer in Public Policy and Faculty Chair of MPA Programs, at the John F. Kennedy School of Government, Harvard University (HKS). HKS cases are developed solely as the basis for class discussion. Cases are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

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instructor will need to structure the discussion around the topics covered in the seven videos, framing the questions differently depending on whether the students have legislative experience or not, etc.

Learning Objective

This case supports discussion of the challenges of bipartisan negotiation in a highly polarized legislative environment, and of strategies to increase the chance for success when the only way to pass legislation is through bipartisanship.

Some of the key aspects that may be explored through this case are: understanding two-level negotiations, developing strategies to choose coalition partners and build coalitions, the importance of framing the issue in a way that avoids potentially toxic amendments, the value of gaining bipartisan input to create a better and more durable bill, and the need to proactively identify spoilers and develop strategies to deal with them. The case is designed both for traditional classroom teaching and executive education, and for students with and without experience in legislative negotiation.

The instructor may want to vary the teaching plan below, depending on the available class time and how much legislative experience the students/participants have.

Recommended Reading

It will be helpful for the instructor to introduce or review Robert Putnam's concept of two-level negotiation, in which legislators need to negotiate both with members of the other party (Level I) as well as within their own side (Level II) with fellow party members, constituents, and lobbyists. The instructor may want to use Slide 1 for this purpose. See R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization*, MIT Press, summer 1988, pp. 427-460. This case presents an interesting scenario, with legislators and staffers reaching out to Level II constituents of the opposing party to create pressure on the legislators representing those constituents to engage in the negotiations.

Further, it can be useful to remind students that each side's Level II can represent a wide spectrum of interests and is not always monolithic (see T. Colosi, "Negotiation in the Private and Public Sectors: A Core Model," *American Behavioral Scientist*, November 1983, pp. 229-253).

Another relevant concept is the role of the "spoilers". There are different kinds of spoilers, and different strategies that can be used to deal with them. The benefits and risks of each of those strategies need to be considered. See S. Stedman, "Spoiler Problems in Peace Processes," *International Security*, 1 October 1997, Vol. 22(2), pp. 5-53.

Case Materials & Links

The instructor will need the following link to access the videos to play in class: <https://www.hksslate.info/wp/bipartisanship/>. In addition, the instructor will need a handout with the photos and names of the key players (see Exhibit 1).

If the instructor is interested in assigning students Video 1 (7:30 min.) to view ahead of time, he or she can share this link with them: <https://www.hksslate.info/wp/bipartisanship-students/> The students will need to use the following username and password:

Username: bipartisanship_student

Password: bipartisanship_video_1

Road Map

Assumes a 90-100-minute class and no pre-class preparation by students.

90-min. roadmap (expand length of sections if teaching a longer class).

Introduction, 5 min.

The Water for the World Act in the House, 28 min.

- *Video 1: Introduction*, 7:36 min.
- Discussion, 5 min.
- *Video 2: The Challenges in the House*, 6:00 min.
- Discussion, 10 min.

The House Negotiations, 28 min.

- *Video 3: A Republican Ally*, 5:50 min.
- Video 3 Discussion, 8 min.
- *Video 4: The House Negotiations*, 7:26 min.
- Video 4 Discussion, 8 min.

Keeping the Bill Clean, 10 min.

- *Video 5: The Issue of Riders*, 2:36 min.
- Video 5 Discussion, 8 min.

A Spoiler in the Senate, 14 min.

- *Video 6: A Spoiler in the Senate*, 2:10 min.
- Video 6 Discussion, 9 min.
- *Video 7: Race to the Finish*, 3:25 min.

Wrap up, 5 min.

Discussion Plan

Introduction

At the beginning of the class, the instructor may want to distribute a handout with the names and photos of the key players interviewed for students to use as reference (See Exhibit 1). The instructor may want to orient students to the purpose of the class, and remind them that the strategies employed

in bipartisan negotiation—for example, identifying an ally in the opposing party, understanding the Level II dynamics at play for legislators in the other party, and gaining bipartisan input to create a better and more durable bill —can be applied to non-partisan conflicts, such as union/management negotiations.

The Water for the World Act in the House

- **Play Video 1: Introduction**
- **Discussion Video 1**

In a 100-min. class, the instructor may want to engage in a very short discussion about the inability of the Democratic Party to get the bill passed when they were in the majority in both the House and the Senate. The instructor may want to ask students, *Have you experienced that kind of lack of alignment in your own party? If so, what were the key factors at play?* Students may mention issues like over-confidence or not paying enough attention to the priorities of other party members.

If time is a constraint, the instructor may want to play videos 1 and 2 back to back.

Another option is for the instructor to assign Video 1 for students to view in preparation for the class (see link on page 2).

- **Play Video 2: The Challenges in the House**
- **Discussion Video 2**

After playing video 2, the instructor may want to briefly summarize the challenges Rep. Blumenauer faces as he tries to find a Republican champion for his bill. It may be helpful for the instructor to use Slides 2 and 3, depicting the differences between a simple majority and the Hastert Rule, to emphasize the magnitude of the outreach effort Rep. Blumenauer and his team would need to make.

The instructor may then use Slide 4 to ask students, *If you were Rep. Blumenauer and you needed “a majority of the majority” (i.e., of the Republican House members) to get your bill passed, who would you choose from the three members profiled in video 2 as potential Republican allies? The more moderate Charlie Dent, a war hero like Adam Kinzinger, or the very conservative Ted Poe? What kinds of factors would you be weighing?* Students can then discuss the merits of each candidate, pointing out their pros and cons and the criteria that should be more relevant at this juncture.

Another possibility, if time allows, is to ask students to “pair and share” for 5 min., working in groups of two to discuss who they would pick among the three Congressmen, and why. The instructor may want to ask, *If you were looking for someone to partner with you and serve as your co-sponsor, what kinds of qualities would you be looking for, and what would be the pros and cons of these three candidates?*

After the “pair and share”, the instructor may want to ask the students to share their decision with the class and explain the key reasons for that choice and their key concerns, using Slide 5 to record the students’ answers (see Slide 5a for potential answers). It may also be interesting to ask if any students changed their mind during the “pair and share”, and why.

As a follow-up, the instructor may want to dig deeper and ask students what Level II considerations came into play: *Did you consider how the internal allies of each candidate might react to the content of the bill and whether or not those Level II actors would need to be neutralized?*

Another way to bring students into the conversation may be to ask them if they've ever been in a similar situation where they represented the minority, and explore the strategies they used then. *When you're in a minority, how do you get the other party to work with you? What are strategies to lead change in an issue that's important to you when you need bipartisanship to move forward?*

The House Negotiations

- **Play Video 3: A Republican Ally**
- **Discussion for Video 3**

After students find out who Rep. Blumenauer ultimately chose, the instructor may want to emphasize the importance of always keeping in mind that the other side is not monolithic, as illustrated by Rep. Poe's affinity for an issue like victims' rights, traditionally associated with the Democratic Party (see Thomas Colosi's article, referenced on page 2).

The instructor may then discuss with students which aspects of Rep. Ted Poe's personality and beliefs might be more useful in terms of bringing other Republicans on board, and which strategies should be deployed now that the bill has a Republican champion.

The instructor may want to point out the importance of framing the issue in ways that steer clear of issues that often elicit a strong reaction from conservative Republicans (like foreign spending), and ask students, *How would you do that with a bill like this one? What aspects of the bill do you think would be helpful to emphasize in order to safely attract co-sponsors of the bill? What concerns could you anticipate and how could you go about mitigating them?*

- **Play Video 4: The House Negotiations**
- **Discussion for Video 4**

After showing this video, the instructor may want to ask students to summarize the strategies that were used in the House negotiations. Additional questions might be: *How would you go about understanding what motivates legislators in the opposing party and finding ways to anticipate what might trigger a negative reaction to your bill? Once you have identified those issues, what are strategies to address those concerns?* Students might mention the importance of personal relations, both at the members' and at the staff level, the ability to predict some of the thorniest issues (tax dollars being used abroad, etc.) and to prepare arguments to assuage them, or the need to target the message very specifically to something legislators in the opposing party will care about.

Also important is the need to keep the numerical balance between Democrats and Republicans, so that having too much support on one side doesn't raise suspicions on the other.

Particularly interesting in this negotiation was the role of faith-based organizations. The instructor may want to ask if any students have experienced situations where NGOs or interest groups not typically

associated with their side of the aisle have helped to bridge the divide between the two parties.

Another potential topic for discussion might be the critical role staffers play in bipartisan negotiations, both by forging strong relationships with their counterparts across the aisle and by carrying out the lengthy and labor-intensive process required in an ambitious negotiation like the one described in this case.

Keeping the Bill Clean

- **Play Video 5a: The Issue of Riders**
- **Discussion for Video 5a**

The instructor has a choice of playing Video 5a and 5b separately or as a whole (“Video 5”)

A common approach to negotiations is to expand the scope of issues to be negotiated in order to make the “pie” of potential value larger; this allows negotiators to engage in tradeoffs across issues based on priorities, and can be a way to induce compromise in one area by providing a “win” in another area. However, legislative negotiations are unique both in the number of levels involved (not only in terms of legislators, but also in terms of each party’s various constituents), as well as in the polarity of feelings about certain issues. Although many different actors are likely to want to bring their own agendas to the table, the introduction of highly polarizing issues can be toxic to the bill; in those cases, limiting the scope of negotiation may be preferable.

The instructor may want to ask students which of those two strategies they have observed or pursued. Below are some possible prompts:

- *Have you seen examples of both approaches (expanding the pie and narrowing down the topic being negotiated)? If so, what made each approach preferable at the time?*
- *How can a legislator go about determining whether expanding the scope of a bill is good because it will draw more support among some members’ constituents or bad because it may include “poison pills” that will alienate others?*
- *What strategies have you seen used to try to keep control over the content of a bill so that it wouldn’t include issues that might be considered toxic to one side or the other?*
- *Have you ever had fellow legislators try to insert their pet issue into your bill, and what strategies did you use to get around that and still keep their support?*

In discussing these issues, the instructor may want to emphasize the importance of defining the scope of the bill early on, fending off potentially controversial language, and finding other ways to deal with the concern of the member or members who are pushing for those “riders”.

In past discussions, experienced students have also mentioned the idea of requiring that amendments be co-sponsored by the two parties as a way to avoid including “riders” that might derail the legislation.

- **Play Video 5b: The Issue of Riders (Reveal)**

In this video, both staffers are on the same page about fending off problematic “riders”. But that isn’t always the case. The instructor may use this moment to ask students if they’ve ever been in a situation where they wanted to pursue a “cleaner” bill but their counterpart in the negotiations was pushing in the other direction.

A Spoiler in the Senate

- **Play Video 6: A Spoiler in the Senate**
- **Discussion for Video 6**

To frame this discussion block, the instructor may want to use Slide 6 to introduce the three types of spoilers, according to Stephen John Stedman, and summarize their differences: total spoilers refuse to compromise, “[pursuing] total power... and [holding] immutable preferences... [They] see the world in all-or-nothing terms”; limited spoilers have narrower goals “(recognition of a grievance, a share of power)”; and greedy spoilers fall somewhere in between, “expand[ing] or contract[ing] [their goals] based on calculations of cost and risk”.¹ The instructor may want to ask students, *How would you characterize Senator Coburn?*

Before soliciting input from students, the instructor may also want to remind them that, by the time Sen. Coburn announced his hold on the Water for the World bill, the end of the legislative session was just days away, which meant that amending or renegotiating the bill so as to include the Senator’s concerns were no longer options.

The instructor may then want to ask students, *What strategies would you use to move past a spoiler like Sen. Coburn who has the unilateral power to block your legislation?*, recording their answers on the template in Slide 7. Sample answers to this question are found in Slide 7 Sample Answers.

Below are other prompts that might generate interesting discussion:

- *When you’ve had to deal with a very strong spoiler or opposing force, what have you seen work?*
- *What kinds of information would you want to find out about the spoiler, and how would you go about doing that?*
- *How would you identify actors who can advocate for your bill in a way that might make the difference?*
- **Play Video 7: Race to the Finish**
- **Discussion for Video 7**

In this last discussion block, the instructor may want to debrief about the range of strategies used to deal with Sen. Coburn’s hold, including “naming and shaming”, reaching out to the President of the University of Alabama, etc. The instructor may want to ask, *What was effective about these strategies, and what was risky? When is “naming and shaming” worth the damage to that relationship, and the possibility that the spoiler will retaliate the next time? Should that approach also be used with other kinds of spoilers? And what other paths could have been pursued in a similar situation, keeping in mind*

¹ S. Stedman, “Spoiler Problems in Peace Processes,” *International Security*, October 1, 1997, Vol. 22(2), pp. 10-11.

the importance of making sure that the spoiler doesn't lose face with his constituents?

Wrap-Up

The instructor may want to wrap up the class discussion by reviewing some of the key points in the case:

- This case is an invitation to think about strategies and ideas that might be helpful if students ever find themselves in a situation where they need bipartisan support.
- When looking for potential allies, make sure you identify people who can carry the other side, but are reasonable to work with and have deep institutional relationships.
- In bipartisan legislative negotiations, perception is key: it's important for a bill to appear balanced between the two parties and avoid being seen as co-opted by one party; otherwise, legislators from the other party may not feel safe supporting the bill.
- Be careful to stay away from issues that might be poisonous to either side.
- It's important to always keep in mind not only one's own Level II, but also the other side's Level II. If you are able to engage with Level II lobbyists and constituents, they might play a helpful role in the negotiation and lend the legislation more credibility.
- Always think proactively about ways to engage potential spoilers (or neutralize them, if need be).

Slide 1. Two-Level Games

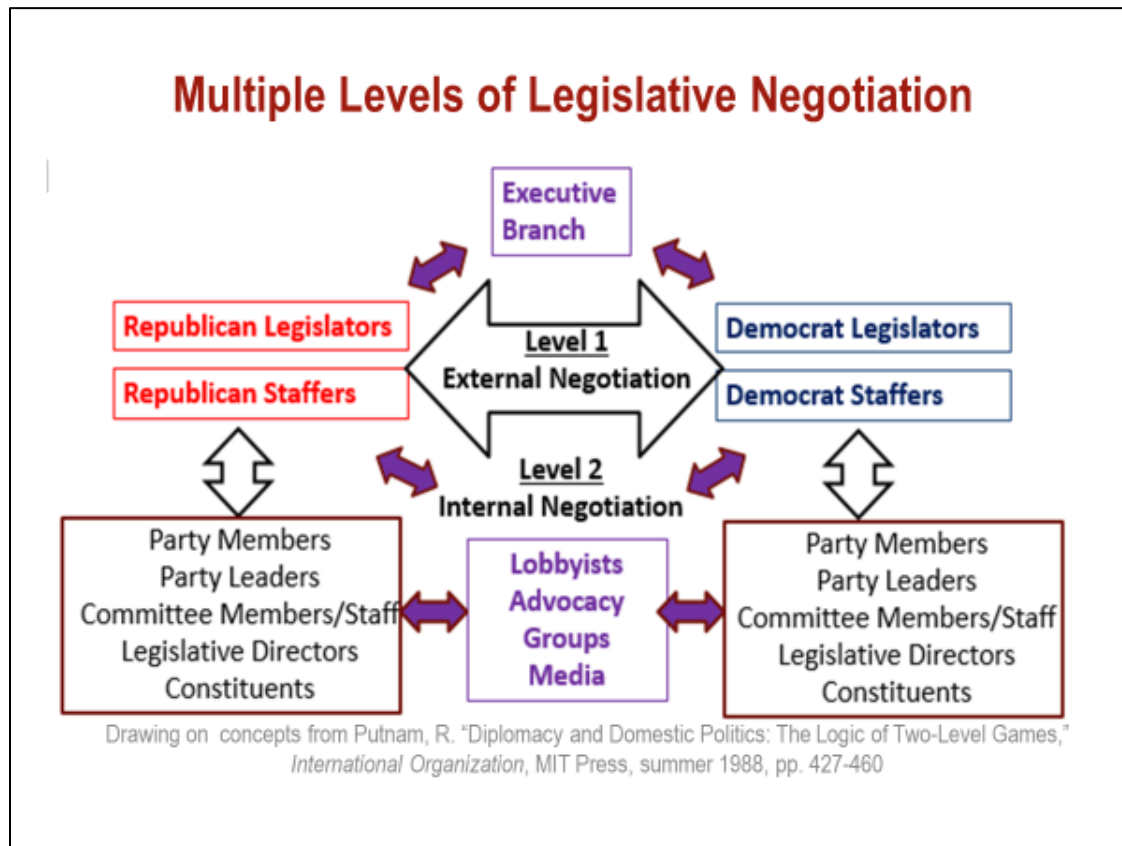
“Two-level games”

(Putnam, R. “Diplomacy and Domestic Politics: The Logic of Two-Level Games,”
International Organization, MIT Press, summer 1988, pp. 427-460.)

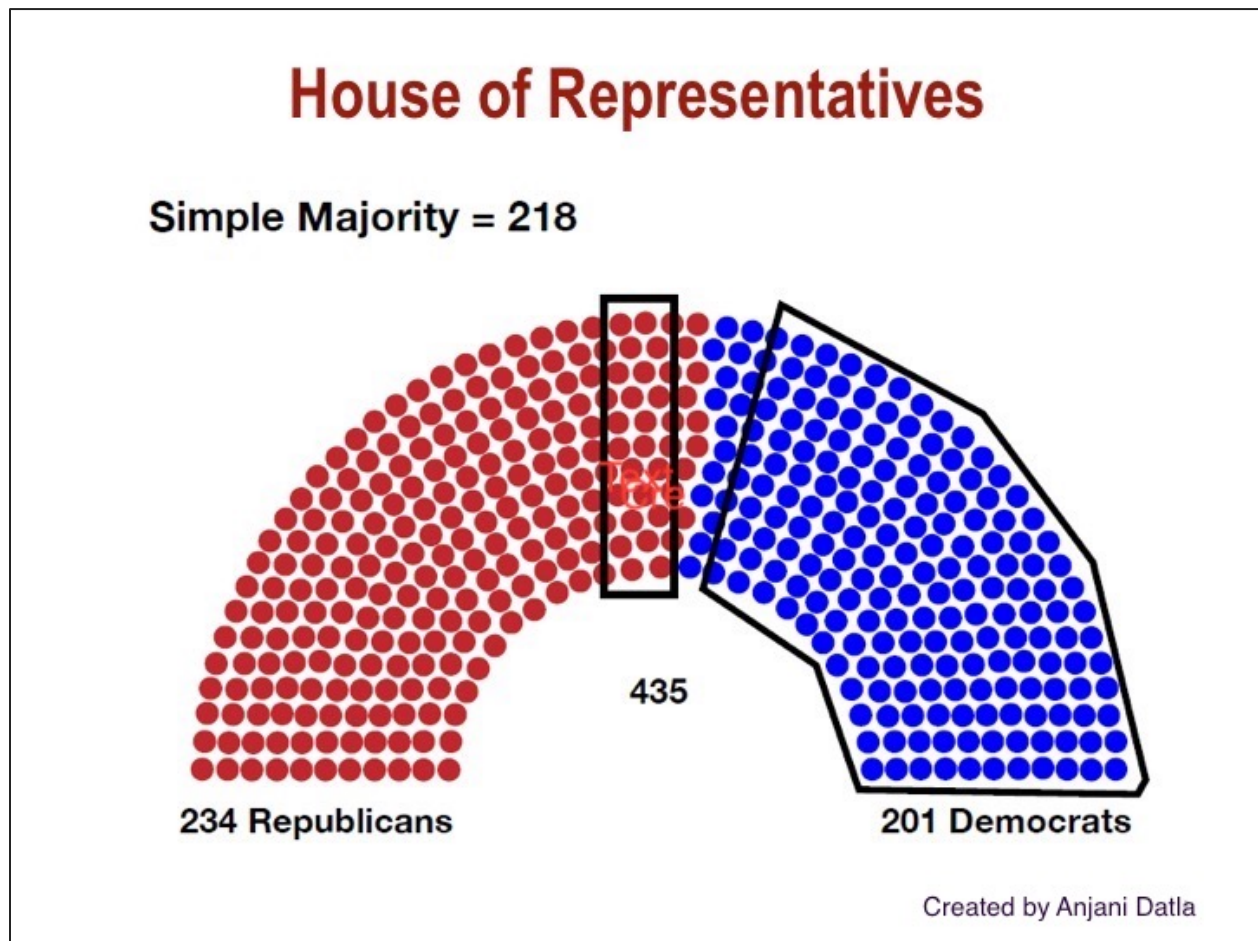
- **Level I**: “bargaining between the negotiators, leading to a tentative agreement” (**external negotiations**)
- **Level II**: “separate discussions within each group of constituents about whether to ratify the agreement” (**internal negotiations**)

2

Slide 2. Multiple Levels of Legislative Negotiation



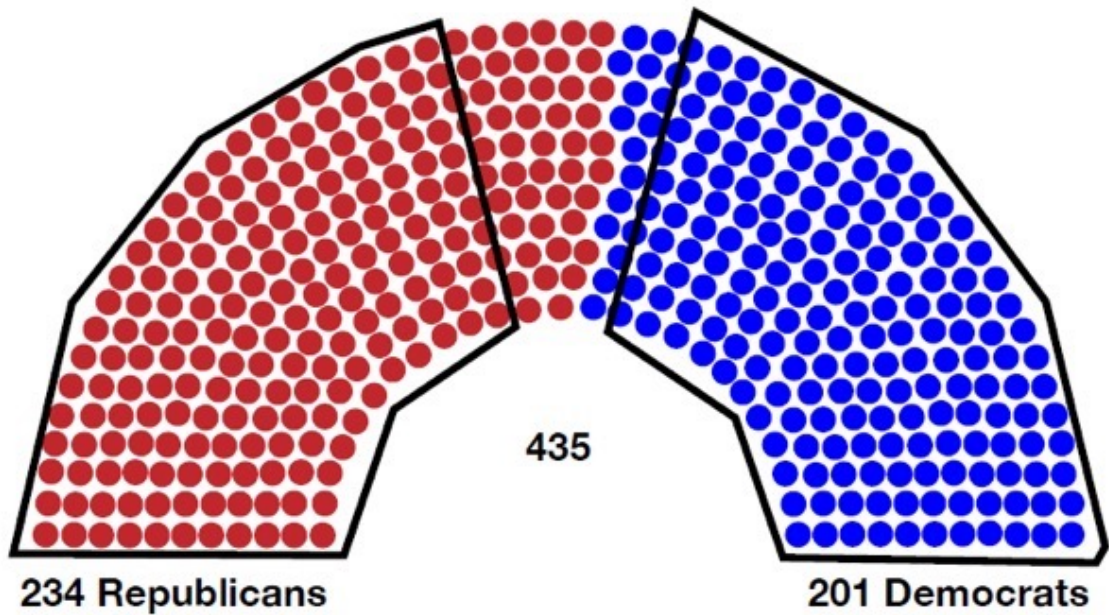
Slide 3. The Numbers: Simple Majority



Slide 4. The Numbers: The Hastert Rule

House of Representatives

Hastert Rule = Majority of the Majority



Created by Anjani Datla

Slide 5. Choosing a Republican Ally

If you were Rep. Earl Blumenauer, whom would you choose as your Republican co-sponsor?



- **Charlie Dent** (co-sponsored earlier Water for the Poor Act, member of Foreign Operations Subcommittee)



- **Adam Kinzinger** (Tea Party, former fighter pilot in Iraq & Afghanistan)



- **Ted Poe** (former judge, tough on law enforcement, member of Foreign Affairs Committee)

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Slide 6. Pros and Cons of the Three Candidates

If you were Rep. Earl Blumenauer, whom would you choose as your Republican co-sponsor?

	Charlie Dent	Adam Kinzinger	Ted Poe
Pros			
Cons			

Slide 6a. Sample Answers

If you were Rep. Earl Blumenauer, whom would you choose as your Republican co-sponsor?

	Charlie Dent	Adam Kinzinger	Ted Poe
Pros	<ul style="list-style-type: none"> • Knowledgeable, experienced • He's in the Appropriations Committee • Easy for Democrats to work with 	<ul style="list-style-type: none"> • Could carry Tea Party • Military service / Foreign Affairs credentials • No established issue areas 	<ul style="list-style-type: none"> • Tough conservative • Long tenure / Connections • Focused on Foreign Affairs
Cons	<ul style="list-style-type: none"> • Too moderate for some Republicans (RINO, Republican in name only) • Can't carry Tea Party • Not on Foreign Affairs Committee 	<ul style="list-style-type: none"> • Freshman / Lacks institutional knowledge • Lacks relationships with other members • May alienate moderate Democrats 	<ul style="list-style-type: none"> • Eccentric, unpredictable • May want to change the bill

Slide 7. Different Types of Spoilers

Types of Spoilers

(Robert C. Bordone, "Dealing with a Spoiler? Negotiate Around the Problem,"
Negotiation 10(1), PON, Cambridge, MA, 2007, pp. 4-6.)

- **Total Spoilers**: "refuse to compromise"
- **Greedy Spoilers**: "alter their goals based on their calculations of risk and opportunity"
- **Limited Spoilers**: "hold out for narrow goals" and care about "a limited set of issues"

7

Slide 8. Template, Strategies for Trust-Building & “Sticking Points”

What strategies can be used to move past spoilers who threaten to block legislation?

Slide 8a. Sample Answers

What strategies can be used to move past spoilers who threaten to block legislation?

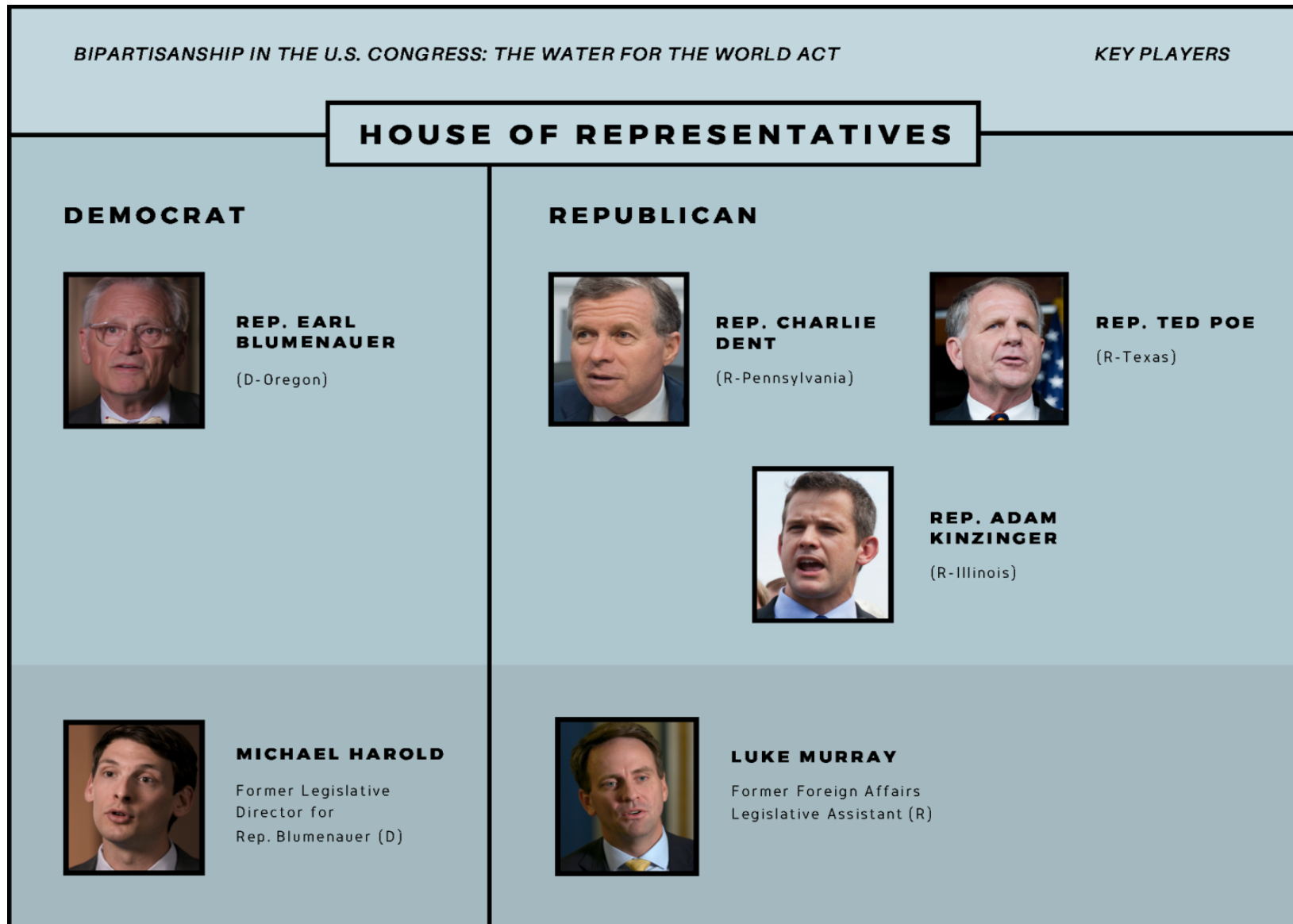
- Use member-to-member relationship to walk them through the bill and explain it further, answering any concerns they might have
- Try to find out what is the nature of their opposition (ego or substantive issue)
- Give them a forum to voice their concerns (maybe even allowing them to make their case on the floor of the House or Senate)
- Find out if the spoiler's Level II opposition is the reason he or she is blocking the bill and find ways to make it safe for them to support the bill
- Carrot: Get the leadership involved, ask them if they can exert influence
- Stick: Threaten to hold up their priorities (i.e., retaliate)

Slide 9. Lessons for leading change through Bipartisan Negotiation

Lessons for leading change through Bipartisan Negotiation

- Be careful not to assume the other side is “homogenous”
- Pay attention to the other side’s “Level II” (internal) negotiations—look for both challenges and opportunities
- Be open to unexpected allies
- Be careful not to ignore stakeholders, even if they initially seem less powerful
- Design a process to increase transparency, trust, perceptions of fairness, communication and respect
- Look for neutral framing
- Balance scope to avoid including “toxic” issues but include enough sources of value to bring others on board
- Try to anticipate potential spoilers and understand what motivates them
- Know “the rules of the game”
- Consider long-term relationships and reputation

Exhibit 1. Key Players Handout



SENATE

DEMOCRAT



CHRIS HOMAN

Foreign Policy Legislative
Aide to Sen. Dick Durbin
(D-Illinois)

REPUBLICAN



SEN. BOB CORKER

(R-Tennessee) At the time
(2013-2014), he was also
the ranking member of the
Senate Foreign Affairs
Committee

NGOs



LISA SCHECHTMAN

Former Senior Policy
Advisor, Water Aid (NGO)



LISA BOS

Director of Government
Relations, World Vision
(Faith-Based NGO)