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Lee, Jongkon

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Bureaucracy in a Network and Congressional Delegation

By

Jongkon Lee

A dissertation submitted in partial satisfaction of the requirements for the degree of Doctor of Philosophy in Political Science in the Graduate Division of the University of California, Berkeley

Committee in charge:

Professor Sean Gailmard, Co-Chair
Professor Christopher Ansell, Co-Chair
Professor Robert Van Houweling
Professor Sarah Anzia

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Abstract

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by

Jongkon Lee

Doctor of Philosophy in Political Science

University of California, Berkeley

Professor Sean Gailmard, Co-Chair

Professor Christopher Ansell, Co-Chair

If there is no expert but bureaucracy in a policy area, expertise may be sufficient for an agency to acquire its discretion. However, it is hard for an agency as an expert to have monopolistic status in any policy area, due to the growth of interest groups. Delegation in recent decades depends not only on its expertise, but also on the other bureaucratic capability to affect the behaviors of the outside experts. Even the most expert agencies cannot maintain their discretionary authorities without sufficient political capacities to affect the behaviors of interest groups. In particular, “brokerage capacity” that allows agencies to link interest groups and to resolve their interest conflicts, has become important in bureaucratic discretion. By mediating conflicts of interest and minimizing unnecessary contingencies, agencies are able to reduce interest groups’ incentives to provide information to the legislature, thereby indirectly affecting legislators’ decisions on delegation and oversight.
# Table of Contents

1. Introduction ........................................ 1

2. The Administrative Broker: Formal Model ........ 15


4. The Environmental Protection Agency and Hazardous Waste Problems: Case Study (1) 49

5. The Federal Communications Commission and Broadcast Regulation: Case Study (2) 68

6. Congressional Response to Administrative Brokerage 93

7. Conclusion ........................................ 100

References ........................................... 101
Chapter 1.
Introduction

1.1. The Puzzle: Delegation to Bureaucratic Agencies

Many bureaucratic politics studies have argued that legislators have delegated significant discretion to agencies because of the informational benefits derived from agency expertise (Scher 1963; Huntington 1965; Rourke 1984; Eisner and Meier 1990; Bawn 1995; Kerwin and Furlong 1963; Huntington 1965; Rourke 1984; Eisner and Meier 1990; Bawn 1995; Kerwin and Furlong 2011). Since agencies with high expertise are able to fully understand policy environments and realize intended policy outcomes, legislators can acquire more policy benefits by delegating to agencies relative to their own policymaking (Epstein and O’Halloran 1994; Gailmard 2002, 2009). However, delegation to agencies has caused accountability problems; information asymmetry derived from agency expertise has caused serious agency drift and subsequent distributive losses. Because only a few congressional members had professional knowledge about bureaucratic operations, legislators were unable to control agency drift appropriately (Ogul 1976; Bawn 1995; Bertelli 2012).

However, substantial development of interest groups has brought about significant changes in agency controls. As Tables 1-1 and 1-2 indicate, the number of interest groups and their monetary resources have significantly increased in almost all policy areas (King 1990; Salisbury 1990; Petracca 1992; Berry and Wilcox 2007; Skinner 2007; Baumgartner et al. 2009). To illustrate, about 14,500 organizations were listed in the Washington Representatives in 1991, nearly four times as many as were listed in 1977 (Petracca 1992). The number of organizations increased to approximately 20,000 in 2009 (Holyoke 2011). Similarly, the Encyclopedia of Associations listed more than 22,000 groups in 2005, while only less than 10,000 groups were listed in 1970. In addition, their political spending to intervene in policymaking processes has also significantly increased. To illustrate, according to the database of Center for Responsive Politics, the total lobbying spending in 1998 was only about 1.44 billion dollars, and the number was doubled to more than 3 billion dollars in the late 2000s. As a result, new interests have been articulated, not only in existing policy domains, but also in entirely new policy areas (Holyoke 2011). Not only quantitatively, but also qualitatively, interest groups have become more professionalized (Hula 1999; Bosso and Collins 2002; Berry and Wilcox 2007; Skinner 2007; Baumgartner et al. 2009). Interest groups have exerted efforts to take part in policy deliberations as well as to gather and analyze policy-relevant information (Berry and Wilcox 2007). In addition, they not only perform their own research, but also recruit think tanks or experts who can validate their research results and bolster specific views (Andres 2009).

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1 According to Bawn (1995, 65), legislators “will delegate when the gains from agency expertise outweigh losses from potential agency drift.”

2 Agency drift (or bureaucratic drift) can be defined as “the degree to which the agency pursues goals that diverge from those of the principal” (Stephenson 2007, 271).

3 From this perspective, traditional legislative-bureaucratic politics studies in the 1960s and 1970s claimed that legislators had “abdicated” policymaking authorities to agencies due to their professional expertise (Scher 1963; Huntington 1965; Ogul 1976; Lowi 1979).

4 The URL of the database is http://www.opensecrets.org/lobby/index.php.
The development of interest groups has become highly threatening to agencies; the knowledge and expertise of these interest groups makes it difficult for agencies to maintain their monopolistic status over expertise (Kaufman 1981; Kearney and Sinha 1988; Rourke 1992; Gormley and Balla 2004); interest groups have provided policy-related information to legislators and have decreased congressional monitoring costs on agency policymaking behaviors (McCubbins and Schwartz 1984; McCubbins et al. 1987, 1989; Wright 1996; Hall and Miler 2008). Moreover, interest groups have informed legislators of agency drift through adverse reactions to agency decisions. For example, judicial challenges against agency actions are important triggers for congressional intervention in agency decisions. According to Asimow (1994, 133), “Prompt and intense judicial review might facilitate oversight by drawing congressional attention to possible departures by the agency from the original coalitional deal.” Because interest groups’ negative responses to agency actions generally imply some problem with agency policy from the groups’ point of view, interest groups can alert legislators of agency misbehaviors via a variety of methods such as lawsuits and public opinion campaigns (Asimow 1994; Epstein and O’Halloran 1995). In sum, the proliferation of interest groups since the 1970s

5 Hall and Miler (2008, 991) noted that interest groups “provide issue-specific expertise and assistance to resource-constrained overseers, thereby lowering the costs of intervening in agency policymaking.” Likewise, Wright (1996, 75) said, “Interest groups achieve influence in the legislative process by strategically providing information to change or reinforce legislators’ beliefs about legislative outcomes.”

6 If legislators believe that bureaucratic misbehaviors may be perfectly corrected in courts, legislators may have little incentive to collect information in order to control agencies (Shepsle and Bonchek 1997; Bertelli and Feldmann 2007), regardless of the agency misbehavior signals from judicial challenges. However, ideological stances of courts and legislators are not the same (Segal 1997; Bailey 2007). As a result, court decisions cannot always meet the legislative purposes of current Congress. Thus, if legislators observe that an agency is frequently challenged by stakeholders in courts, they have significant incentive to enhance their oversight on the agency.
has significantly increased their capacity to pull “fire alarms.”\textsuperscript{7} Though the term “fire alarm” has been frequently defined as direct information provision from interest groups to legislators, “fire alarm” in this dissertation encompasses any adverse interest group reaction to agency activity, in any political venue that might in principle be observable to Congress, because diverse adverse reactions of interest groups can alert legislators of administrative malfeasance.\textsuperscript{8} Thanks to fire alarms sounded by interest groups, legislators have become able to decipher policy environments and develop policy alternatives by themselves (Lupia and McCubbins 1994; Epstein and O’Halloran 1995).

Despite the remarkable growth of interest groups in diverse policy areas, however, empirical studies have suggested that agencies continue to exploit information asymmetries and to enjoy significant discretion (Rourke 1984; Peters 1995; Huber and Shipan 2002; Workman et al. 2009). Though several studies have indicated that average bureaucratic discretion slightly decreased in the 1990s (e.g., Epstein and O’Halloran 1999b; Bertelli 2012), the decrease rate has been relatively small, compared with the explosive growth of outside professionals. In reality, a number of individual agencies such as the Environmental Protection Agency (EPA) have enjoyed broad discretion for decades (Mansfield 2001; Buente et al. 2010). If so, why the political principals cannot fill up the informational gap and constrain agencies, in spite of the numerous professional informants? In other words, what is the “missing link” between the two arguments of bureaucratic politics literatures: information asymmetry and interest group growth? Given the political situations that political uncertainty (i.e., uncertainty over whether current legislative allies will have political power in the future) has highly increased since (at least) the 1980s and that legislators have high incentive to restrict agency discretion to specific behaviors meeting their preferences (Moe 1989; Horn 1995), it is a puzzle that legislators provide broad discretion to agencies in spite of the huge development of interest groups that can provide administrative information to legislators.\textsuperscript{9}

\textsuperscript{7} The “fire alarm” oversight implies passive and reactive oversight responding to the complaints from outside agents. Congress establishes rules and procedures that enable interest groups to examine administrative behaviors, and to charge agencies with violating congressional goals in courts or Congress itself. As a result, Congress can control agencies without bearing significant oversight costs. For a detailed discussion, see McCubbins and Schwartz (1984) and Ogul and Rockman (1990).

\textsuperscript{8} Many bureaucratic politics studies have assumed that fire alarms include not only direct information provision, but also diverse interest groups’ behaviors opposing to agency decisions. For example, Epstein and O’Halloran (1995, 229) said, “Examples of fire alarms include gay-rights groups’ protesting the military’s exclusion of homosexuals from the armed forces, environmentalists challenging the Bush administration’s definition of wetlands, and scores of angry parents demanding that Congress force the Federal Communications Commission to regulate the violence shown on television.”

\textsuperscript{9} An alternative view to agency discretion is legislators’ “blame-shifting” behaviors (Fiorina 1982; Arnold 1990). The view says that legislators would be reluctant to restrict agency discretion, because they want to shift blame from unpopular policies or to avoid political heat in regulation policies—even when they have sufficient administrative information. However, it is hard to assume that blame-shifting is the main key to the puzzle of delegation. In recent decades, US political parties have been ideologically polarized (Stonecash 2006; Theriault 2006). Moreover, majority parties in Congress and presidential parties have easily changed. Given this political uncertainty, winning party members have significant incentive to restrict agency discretion to limit their opponents’ influence over agency behaviors (Moe 1989, 1990). Therefore, if legislators have sufficient expertise, they may have significant incentive to limit agency discretion to limit political uncertainty, though they can avoid some blames through delegation. Moreover, blame-shifting runs counter to traditional congressional behaviors such as pork
The answer to the puzzle seems to lie in bureaucratic politics in policy networks. Aberbach et al. (1981) have asserted that the roles of bureaucracy have been changed from Facts (and Administration) to Equilibrium. This argument implies that agencies not only provide skillful solutions for specific problems, but also politically broker conflicting interest groups in policy networks. In other words, an agency may be as a political entity, rather than as a neutral technician. However, traditional bureaucratic politics literature has primarily focused on bureaucratic expertise as a source of bureaucratic discretion; the bureaucratic capability to broker conflicting interests has not yet been fully examined. From this viewpoint, it is necessary to analyze the “brokerage” role of bureaucracy as a missing link, in order to understand bureaucratic politics and to solve the puzzle. Therefore, this dissertation will analyze the relations between bureaucratic politics of brokerage in policy networks—which affects the information flow from the external experts to political principals—and agency discretion.

1.2. Literature Review: Bureaucratic Dominance and Congressional Dominance Studies

Huber and Shipan (2002, 17) point out that “political leaders in all forms of government must delegate policymaking authority to bureaucrats.” Though this proposition is seemingly simple and clear, a plethora of studies have discussed this issue from a variety of perspectives. In particular, bureaucratic power to maintain broad discretionary authority and congressional efforts to overcome information asymmetry have been emphasized by diverse literatures that focus on bureaucratic politics, congressional oversight, and interest group. However, there are some biases in these literatures. Though they have highlighted the importance of bureaucratic expertise, they have generally neglected their political power of administrative brokerage. This subchapter briefly summarizes the history of congressional delegation literatures and describes the limits of these studies.

1.2.1. Bureaucratic Dominance Studies

In particular prior to the 1980s when interest group society was not fully developed, bureaucratic dominance studies have been prevalent; they have argued that agencies have maintained significant discretionary authorities because of their professional expertise (Rourke 1984; Meier 1987; Eisner and Meier 1990; Aghion and Tirole 1997; Worsham et al. 1997; Gailmard and Patty 2007). Bureaucratic agencies as permanent institutions have many human and monetary resources to collect administrative information and hire experienced workers. In contrast, legislators frequently fail to fully understand policy environments and appropriate policy methods (Crewdson 2002; Meier and O’Toole 2006). Thus, many studies have claimed that broad delegation has been inevitable, because professional agencies can yield best policy outcomes by minimizing possible administrative errors (Kaufman 1956; Mashaw 1985, 1997).

barreling (Epstein and O’Halloran 1999b).

Aberbach et al. (1981) have suggested four different images of bureaucracy in terms of the interaction between political officeholders and civil servants: Administration (Image I), Facts (i.e., Neutral Expertise) (Image II), Equilibrium (Image III), and Hybrid (Image IV). After Aberbach et al. (1981), Aberbach and Rockman modified their ideas and argued that the bureaucratic image of Hybrid has diminished. However, they have asserted that the bureaucratic image of equilibrium as broker had been enhanced (1997, 337) and is still dominant (2006, 985).

Aberbach et al. (1981, 13) said, agencies “engage in anticipatory conflict management, seeking consensus among the relevant participants before a proposal is actually put forward.”
The benefit of delegation has grown as the complexity of society has increased (King 1975; Huber and Shipan 2002). As a result, legislators have delegated significant policymaking authorities to bureaucratic agencies. However, agencies are policy-motivated strategic actors (Hammond and Thomas 1989); they have frequently made biased decisions which do not meet the preferences of principals (Dodd and Schott 1979; Balla 1998; Epstein and O’Halloran 1999b; Spence 1999; Bertelli and Feldmann 2006; Gailmard and Patty 2012). Because agencies do not share the same preferences with legislators, broad delegation implies not only informational gains, but also significant distributive loss for legislators (Bawn 1995; Epstein and O’Halloran 1999a). As Brehm and Gates (1997, 196) write, “The overwhelming evidence … indicates that bureaucrats’ own preferences have the greatest effect on performance.” To limit the negative consequences from broad delegation, legislators have made significant efforts to monitor agency behaviors (Aberbach 1990). Nevertheless, many bureaucratic dominance studies have asserted that agencies are “impenetrable mazes” for inexpert legislators in many policy areas (Scher 1963, 532) and that legislators had inevitably provided agencies with significant discretionary status (Scher 1963; Huntington 1965; Ogul 1976; Huber and Shipan 2002). As a result, legislators have been likely to provide broad discretion to those agencies whose policy preferences are far from their own to acquire informational benefits (Bendor and Meirowitz 2004). In summary of bureaucratic dominance studies, the common assumption of this tradition was that bureaucratic power and discretion are derived from professional expertise, whether the significant discretion was the outcome from rational delegation or helpless abdication. As a result, bureaucrats dominated policymaking processes based on their informational superiority for decades (Niskanen 1971, 1975; Miller and Moe 1983; Bendor et al. 1985, 1987; Banks and Weingast 1992).

1.2.2. Congressional Dominance Studies
Congressional dominance studies that emerged in the early 1980s have asserted that legislators can control agency behaviors relying on the information provision from interest groups (McCubbins and Schwartz 1984; Banks and Weingast 1992; Lupia and McCubbins 1994; Epstein and O’Halloran 1995) and their own oversight methods (Aberbach 1990). The main weakness of bureaucratic dominance studies is that they assume that the relationship between legislators and bureaucrats is bilateral. It is not doubtful that many legislators themselves are not experts in specific policy areas relative to bureaucrats and, as a result, they inevitably delegate broad discretionary authorities to agencies in a dyadic relation. However, in multilateral relationships, they can overcome information asymmetry problem with the help of interest groups. Congressional dominance theorists have argued that principals can overcome

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12 Admittedly, congressional monitoring has contributed to reducing the deception of agencies (e.g., Bendor et al. 1985, 1987), despite its imperfectness. However, legislators could have not fully overcome the information asymmetry by their own efforts.

13 Though many bureaucratic dominance studies have assumed bilateral relationships between legislators and agencies, they are never dyadic (Moe 1987; Waterman and Meier 1998). According to Meier and O’Toole (2006, 34), “Public programs in the United States are increasingly implemented in complex networks composed of government agencies at multiple levels as well as private and nonprofit organizations.” Rather, many political entities outside government can affect the information asymmetry between legislators and agencies. In other words, the informational gap could be reducible by the help from outside experts.
information asymmetry thanks to the advice of the outside experts (McCubbins and Schwartz 1984; Banks and Weingast 1992; Lupia and McCubbins 1994; Epstein and O’Halloran 1995) and, as a result that bureaucrats are responsive to congressional preferences (Ferejohn and Shipton 1989; Wood and Waterman 1991; Olson 1995). Moreover, as fire alarms from interest groups delay administrative implementation, legislators have sufficient time to understand and control agency behaviors (McCubbins et al. 1989). Owing to the growth of private groups in terms of both number and knowledge (Berry and Wilcox 2007; Skinner 2007; Baumgartner et al. 2009), it has become difficult for agencies to maintain monopolistic status for expertise (Kaufman 1981; Kearney and Sinha 1988; Rourke 1992). According to Matthew McCubbins,

“the problem is not that legislators lack information, or that bureaucrats monopolize information. Legislators have access to numerous sources of information and expertise on technical subjects from sources outside of the bureaucracy, such as legislative staff, interest groups, and private citizens” (1999, 33).  

In sum, congressional dominance theorists have argued that legislators could have provided only limited discretion to agencies, rather than abdicating their policymaking responsibilities, as interest groups have developed and their fire alarms have become more available. However, fire alarms are not always available; interest groups have to spend significant monetary and human resources to sound fire alarms. Moreover, administrative inefficiencies caused by fire alarms are costly for interest groups. Thus, political manipulation to affect the cost of fire alarms is highly important regarding agency discretion. In this respect, many studies have analyzed legislators’ efforts to increase the incentive of fire alarms by reducing the cost of fire alarms: They have argued that legislators have enacted procedural statutes that allow interest groups to sound fire alarms conveniently (McCubbins and Schwartz 1984; McCubbins et al. 1987, 1989; Epstein and O’Halloran 1994; Lupia and McCubbins 1994; Bawn 1995; Lupia and McCubbins 1998; Potoski and Woods 2001). However, these issues have rarely been discussed in terms of agencies, though bureaucrats tend to have significant political powers to affect their policy stakeholders’ behaviors (Carpenter 2001b; Moe 2006). According to Aberbach et al. (1981, 93), agencies “continuously interact with organized interest groups and mediate among established interests.” In other words, agencies are among the most important policy brokers to adjust interest conflicts in their policy communities (Kingdon 1984; Sabatier and Jenkins-Smith 1993). This political capacity of agencies as policy brokers is highly meaningful regarding fire alarms and discretionary authorities, because fire alarms (through protests, litigation, and lobbying) are likely to derive from interest conflicts. If agencies properly mediate among interest groups and resolve interest conflicts, the agencies might be able to reduce the incentive for

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14 Some congressional dominance studies have argued that legislators have extensive power over agencies such as agency appropriations and confirmation of appointees and can control agency drift even without “fire alarms” from interest groups (Weingast and Moran 1983; Aberbach 1990).  
15 From this viewpoint, several studies have argued that legislators failed to control bureaucratic policymaking tightly because of the ineffectiveness of procedural requirements (Hamilton and Schroeder 1994; Balla 1998).  
16 Sabatier and Jenkins-Smith (1993) and Kingdon (1984) clearly argued that not only government agencies, but also diverse political actors can be policy brokers or policy entrepreneurs. However, in real administration, agencies have frequently played the role of brokers because it is hard for ideologically biased political actors to mediate interests appropriately.
interest groups to set off fire alarms. In the next section, administrative brokerage in policy networks and brokerage capacity will be explained with regard to fire alarms.

1.3. Administrative Brokerage and Agency Discretion

1.3.1. Venue Choice and Interest groups’ Incentive of Fire Alarms

Though legislators have much knowledge on policymaking and implementation compared with layman citizens, it is nearly impossible for a limited number of legislators to process complete information over all the policy areas. In other words, attention is a scarce resource and gathering information is costly for legislators in policymaking process (Jones and Baumgartner 2005; Baumgartner et al. 2009; Jones and Baumgartner 2012). Since there are “too many votes, too many issues, too many meetings, and many attention-demanding situations” (Hall 1996, 22), legislators have only limited time and human resources. Thus, legislators tend to focus only on salient issues that are closely linked to their electoral concerns (Hilgartner and Bosk 1988; Birkland 1997). Accordingly, significant conflict expansion that promotes issue salience is essential to move legislators (Schattschneider 1975; Gormley 1986; Browne 1995; Jones and Baumgartner 2005). Therefore, legislators will tend to invest more energy in collecting information about policy areas where complaints on agencies’ poor performances are prevalent. To put it another way, conflict expansion functions as a fire alarm for legislators in terms of the principal-agent relationship between legislators and bureaucrats.

From this perspective, congressional dominance theorists have argued that legislators can overcome their information shortage with the help of interest groups (McCubbins and Schwartz 1984; Banks and Weingast 1992). The adverse reaction of discontented groups to administrative performance is informative to political principals and helps them alleviate their information asymmetry. Their complaints (e.g., administrative litigation) signal little accountability of bureaucracy thereby increasing legislators’ incentives to collect more information through congressional hearings and the investigations of the Government Accountability Office (GAO; known as the General Accounting Office until 2004). For example, judicial challenges against agency decisions draws congressional attention to agency drift and promotes oversight on the challenged agencies (Asimow 1994). In short, information (or signals) provided by interest groups may affect the legislators’ incentive constraint of delegation (LIC, hereafter); the adverse reactions of interest groups enhance legislators’ incentive to limit agency discretion.

What has been ignored in this argument, however, is the interest groups’ incentive constraint to provide information (IIC, hereafter). That is to say, only the interactions between Congress and interest groups have been emphasized, and those between interest groups and agencies (or agencies’ capacities to affect interest groups’ behaviors) have been somewhat neglected in the literature. Though the legislature is a dominant policy venue for interest groups, bureaucracy may also represent a policy venue (Boehmke et al. 2005, forthcoming).18 Interest

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17 In the similar sense, conflict expansion of interest groups forces legislature to take attention as well as places their issues on the formal agenda (Cobb et al. 1976; Kollman 1998).

18 Though bureaucratic politics (and congressional dominance) literature has accentuated interest groups’ information provision in delegation problem, their behaviors have not been much analyzed in terms of venue choice. One exception is Boehmke et al. (2005). They argue that informative venue choice affects delegation decisions.
groups will tend to choose the policy venue that maximizes their benefits, rather than unconditionally providing information to Congress.\textsuperscript{19} If acceptable compromises among conflicting interests have already been made by agencies, it is unnecessary for interest groups to do costly lobbying for the legislature (Berry and Wilcox 2007). In other words, if agencies can resolve interest conflicts beforehand, interest groups may not have much incentive to provide information to the legislature even if there is bureaucratic drift.\textsuperscript{20} This venue choice argument implies that if agencies are capable of affecting bureaucratic drift by resolving interest conflicts, they can indirectly affect LIC. To put it another way, if agencies can resolve interest conflicts successfully in the bureaucratic venue, interest groups do not have much incentive to provide information to Congress. Consequently, the information asymmetry may persist and agencies can maintain their discretionary authorities. This two stage causal chain (conflict resolution by agencies $\rightarrow$ IIC $\rightarrow$ LIC) explains why agency capacity to resolve interest conflicts is important in determining agency discretionary authority.\textsuperscript{21}

However, it is not an easy job for agencies to resolve conflicts among diverse policy stakeholders; one group’s gains in policymaking and implementation are likely to bring about the counter-mobilization of opposition groups that would otherwise remain silent (Peltzman 1976; Huber 2007). In particular, in recent decades when diverse interest groups have proliferated and fragmented, it is not easy for agencies to avoid the complaints of all interest groups without significant political capacities to affect interest groups’ behaviors. According to Salisbury (1990, 213), “in a destabilized world of fragmented interests and multidimensional challenges from externality groups it becomes impossible for policy makers to identify which interests, if any, they can succumb to without grave political risk.” Therefore, it is necessary for agencies to have not only neutral capacity to choose efficient policy alternatives, but also political capacity to resolve interest conflicts to maintain broad discretion.

1.3.2. Administrative Brokerage and Bureaucratic Politics

1.3.2.1. Traditional Brokerage/Collaboration Studies

There has been significant development in administrative brokerage studies over the last three decades. Many studies have maintained that consensus-oriented policy making has emerged as a

\textsuperscript{19} According to Baumgartner and Jones (2009, 32), policy venues can be defined as “the institutional locations where authoritative decisions are made concerning a given issue.” Because policymaking authority is dispersed and not automatically assigned to particular venues in US politics and the variety of policy venues can enact contrasting public policies, interest groups are likely to seek out their most favorable venues (Pralle 2006b; Baumgartner and Jones 2009). Bureaucracy has been one of the most dominant venues in policymaking processes. For example, based on the survey performed by Kerwin (2003,181), more than 60% of interest groups have assumed that involvement of agency rulemaking is as important as or more important than lobbying legislature, grassroots work, political contributions, and litigation. Moreover, agencies have professional knowledge, standard operating procedures (SOPs), and significant implementation experience in managing policy problems.

\textsuperscript{20} In this respect, agencies has exerted efforts not only to avoid threatening fire alarms from interest groups (Johnston 2002; Prendergast 2003; Gordon and Hafer 2005), but also to shape specific political environments to minimize dangerous political oppositions (Huber 2007).

\textsuperscript{21} Though interest groups are assumed as “informants” for legislature in this study, it implies not only direct information provision, but also other diverse signaling about bureaucratic drift (e.g., litigations or just explicit complaints). The conflict resolution by agencies may reduce all the kinds of signaling—not limited to direct information provision.
response to the high cost of adversarial administration (Freeman 1997; Innes and Booher 1999; Wondolleck and Yaffee 2000; Singleton 2002; Kelly 2004; Gunningham 2009) and that sufficient dialogues beyond organizational boundaries are necessary for agencies to resolve possible conflicts thereby enhancing efficient administrative performance (Harter 1982; Haron 1995; Roberts 2002). They have generally argued that favorable relationships with policy stakeholders allow agencies to choose appropriate policy alternatives and implement in an efficient manner (e.g., Susskind and Cruikshank 1987; Chertow and Esty 1997; Weber 1997). For example, Innes et al. (1996) argued that a California’s collaborative water management program called CALFED effectively improved policy making gridlock and litigation. Likewise, Weber and Khademian (1997) showed that collaboration efforts contributed to preventing administrative interruption in reformulated gasoline regulation. Healey (1998) also argued that collaborative cultures among policy stakeholders are important for urban planning and improvements.

Though diverse studies have pointed out numerous factors to build consensus, they have generally agreed that sufficient communication and legitimate procedure are the main factors to draw administrative collaboration. 22 As remarked by Ansell and Gash (2008, 558), “communication is at the heart of collaboration.” By frequent communication, stakeholders can understand policy counterparts, enhance mutual trust, and decrease transaction costs to reach agreements (Lasker and Weiss 2003; Schneider et al. 2003; Plummer and Fitzgibbon 2004; Warner 2006). However, it is infrequent that conflicting stakeholders meet one another on their own initiatives (Wright 1996). In other words, even though interest groups that share similar policy preferences communicate voluntarily, they rarely interact with their opponent groups without legitimate procedure. Therefore, institutional mechanisms to ensure broad and open participation are important for building consensus in policymaking process (Andranovich 1995; Reilly 1998; Burger et al. 2001; Gunton and Day 2003; Lasker and Weiss 2003; Plummer and Fitzgibbon 2004). 23 From this perspective, several studies have maintained that institutional designs to connect policy stakeholders and build consensus are necessary to reach administrative agreements thereby improving policy outcomes removing administrative inefficiencies from interest conflicts (e.g., Healey 1996; Johnston et al. 2011).

1.3.2.2. Brokerage Capacity and Discretion
As administrative brokerage literature argued in the previous section, agencies should establish appropriate institutional mechanism to allow broad and open participation for successful conflict resolution. Based on the traditional literature about administrative brokerage, brokerage capacity in this dissertation is defined as “the capacity that agencies promote communications among diverse interest groups through appropriate rules and procedures.” 24 This definition is closely related with “network centrality,” defined as “a function of the centrality of those to whom one is

22 See Ansell and Gash (2008) for a collaborative governance literature overview.
23 In a similar vein, advocacy coalition framework (ACF) studies have argued that policy brokers to ensure stakeholder interactions help resolve interest conflicts and negotiate between coalitions (Sabatier 1988; Sabatier and Jenkins-Smith 1993).
24 This definition also reflects Marsden (1982, 202), who argued that brokerage can be understood as a process “by which intermediary actors facilitate transactions between other actors lacking access to or trust in one another.” Likewise, Carpenter (2004, 228) argued that the role of brokers is to increase interaction between network participants. The brokerage role of bureaucracy in communication networks have been partly approved by several studies (e.g., Laumann and Knoke 1987; Fernandez and Gould 1994).
connected through direct and indirect links” (Ibarra 1992, 432). If an actor positions in a central position, the actor is more likely to have communication channels with more network participants thereby brokering unconnected policy stakeholders.\(^{25}\) Many studies have studied brokerage related with network centrality. For example, Carpenter (2001a, 291) defined brokerage as organizational centrality combined with a relative monopoly on policy information. Likewise, Burt (2005) also argued that the network actor in central positions is important as a broker between unconnected participants. However, not only network centrality, but also the potency of the bond between members of a network (i.e., tie strength) significantly affects brokerage capacity.\(^{26}\) Many studies have emphasized that tie strength affects information flow and political supports in policy networks (Wellman and Wortley 1990; Putnam 2000; Provan and Milward 2001; Isett and Provan 2005; Lee and Kim 2011). In other words, even when an agency positions in a central position (with diverse links with policy stakeholders), successful brokerage might be unavailable unless policy stakeholders can communicate efficiently and make trustful relationship.

When agencies have sufficient network centrality and tie strength, they can effectively decrease transaction cost among policy stakeholders. Because broad and frequent contacts promote intergroup trust and reduce transaction costs in policy communities (Williamson 1981; Doney and Cannon 1997; Nicholson et al. 2001) and remove misunderstandings between unconnected groups (Burt 2004), when agencies arrange frequent contacts in central network positions, transaction costs among interest groups would decrease and interest groups can reach agreements more easily; numerous studies have argued that broad and frequent contacts reduce transaction costs among stakeholders thereby promoting robust consensus (Williams 1970; Cook 1984; Nelson 1989; Harrington and Miller 1992; Jackson 1993; Forbes 1997; Pettigrew 1998; Patchen 1999). However, low transaction cost derived from high network centrality and tie strength is not sufficient for successful administrative brokerage. According to the Coase theorem (see Coase 1960; Stigler 1966), efficient agreements are possible when transaction costs among stakeholders are low and property rights of the stakeholders are clearly defined. In this respect, the contacts should be arranged by appropriate rules and procedures in policymaking processes. Without rules and procedures, “unregulated discussion easily ends in unending dispute and even in violence” in policymaking processes (Majone 1989, 3), even under low transaction costs between interest groups. Because property rights of public goods and services are frequently unclear, it is nearly impossible to distribute policy benefits perfectly fairly. This distributive disappointment for some policy stakeholders can cause serious interest conflicts. In spite of some distributive dissatisfaction, however, if interest groups feel that their rights are legitimately reflected in policymaking processes, they may have less incentive to expand interest conflicts. In other words, interest conflicts from distributive disappointment can be mitigated by procedural justice (Brown et al. 2006) and the procedural justice derived from legal rules leads to shaping long-term agreements (Pruitt et al. 1993). In this respect, legal rules and procedures are necessary for successful conflict resolution (Thibaut and Walker 1975; Lind and Tyler 1988; Tyler and Blader 2000). From this perspective, if agencies can promote frequent contacts among diverse interest groups with appropriate rules and procedures, they could resolve interest conflicts more conveniently by limiting transaction costs and promoting procedural justice in administration.

\(^{25}\) See Freeman (1979) for an overview of centrality measures.

\(^{26}\) This definition of tie strength is based on Granovetter (1973).
Given this definition and explanation of brokerage capacity, in real administration, the main method to enhance the capacity may be formal meetings held by agencies. Frequent formal meetings make participants believe that the agency is responsive to public concerns (Halvorsen 2003) and legitimate agency decisions (Richardson et al. 1993). In particular, public meetings have been one of the most dominant and widespread ways of public participation (Berman 1997; Furlong 1998; Adams 2004) and many agencies such as the EPA have used public meetings as the primary method for linking interest groups (Dalton 2001; Lubbers 2008). If public meetings are well organized, they can guarantee consistent contacts between interest groups and, as a result, minimize interest conflicts and unexpected challenges to agency decisions (Adams 2004; McComas et al. 2006; Stewart 2007; McComas et al. 2010) and sustain robust policy communities to prevent uncertainties during policymaking and implementation (Tepper 2004; McComas et al. 2010). However, there are not robust rules to control the quality of public meetings and successful negotiations are not common in public meetings (Checkoway 1981; Cole and Caputo 1984; Richardson et al. 1993; Rowe and Frewer 2000). Relative to public meetings, advisory committee meetings tend to allow agencies to link major stakeholders with more concrete institutional designs, thanks to the Federal Advisory Committee Act (P.L. 92-463, FACA) that provides broad guidelines for membership and committee management. In advisory committees, stakeholders negotiate about regulations, and adjust agency proposals through transparent meetings (Beierle and Long 1999; Bingham 2010). Based on significant communications, advisory committees contribute to resolving interest conflicts thereby limiting negative contingencies. For example, the Federal Aviation Administration (FAA) suffered from serious interest conflicts and rulemaking stalemate in regulating flight time, duty time, and rest of flight crewmembers in the 1980s. As a way to resolve the impasse, the FAA established the Regulatory Negotiation Advisory Committee for the Federal Aviation Administration’s Flight and Duty Time Rulemaking and was successful in drawing agreements among stakeholders (Gormley and Balla 2004).

In contrast, informal meetings are less related with brokerage capacity. Though informal contacts are highly important in connecting agencies and stakeholders (Fritschler and Hoefler 1989; Alpert et al. 2006; Yackee 2012), they “tends to be unstructured and idiosyncratic and to lack the assurances of openness” without formal rules and procedures (West 2009, 576). Moreover, because many agency leaders tended to be appointed politically and are likely to be ideologically biased, it is highly probable that informal meetings can promote only ideologically partial communications in policymaking and implementation processes, thereby failing to ensure brokerage between conflicting interest groups. Therefore, informal participation methods are unlikely to provide sufficient procedural justice in agency policymaking processes and to lead to resolving interest conflicts. Though many studies have emphasized historical importance of

27 In addition, some agencies used diverse alternative dispute resolution (ADR) methods to limit interest conflicts through mediation, arbitration, and settlement judges. However, relative to advisory committees (and public meetings), it is hard to assume that ADR is a widespread method to resolve stakeholder conflicts. Only a limited number of agencies such as the EPA employed ADR methods to promote stakeholder interactions. Many agencies tend to use ADR methods to solve internal problems (e.g., wage disputes of employees or labor environments). See Federal Interagency Alternative Dispute Resolution Working Group (2007) for an overview of the ADR usage of federal agencies.

28 Moreover, the participants of informal contacts tend to be highly selective and, therefore, the consensus from the closed meetings could cause another conflict between the stakeholders who took part in the meetings and those not participated.
informal communications in agency policy decisions, it is hard to assume that these administrative behaviors significantly contribute to enhancing brokerage capacity.

If agencies have sufficient brokerage capacity and resolve interest conflicts appropriately, they are able to affect interest groups’ fire alarm behaviors by transforming IIC. It implies that agencies with sufficient brokerage capacity can manipulate the “opportunity cost” of fire alarms. To pull fire alarms, interest groups may have to spend significant monetary and human resources: Judicial challenges and lobbying for fire alarms are highly costly for interest groups (Austen-Smith and Wright 1994; Kollman 1998; Bok 2001). Moreover, fire alarms (in particular, judicial challenges) frequently cause serious administrative delays and implementation interruptions (Asimow 1994; West 1995; Pierce 1997). In addition, because courts and legislatures are adversarial rather than facilitative (Bok 2001; Daniels and Walker 2001), interest conflicts would persist even after decisions are made in the policy venues. A “war of attrition” among interest groups occur, when a group triggers fire alarms. Therefore, interest groups may refrain from pulling fire alarms, when agencies have sufficient brokerage capacity that can eliminate administrative delays and implementation interruptions. In other words, interest groups would have little incentive to sound fire alarms when agencies can provide additional benefits to interest groups by removing administrative inefficiencies. In terms of venue choice, it implies that agencies with high brokerage capacity can increase the “opportunity cost” of interest groups for selecting congressional or judicial venues instead of bureaucratic venues, and convince interest groups to choose the bureaucratic venue. In this respect, agencies with high brokerage capacity can maintain broad discretionary authorities by “turning off” fire alarms.

1.3.3. Specification of Brokerage Capacity

Though there are only a limited number of studies about agency political capacities, it is not a novel idea that agencies can maintain their discretionary authorities by affecting interest groups’ behaviors and resolving interest conflicts. Several studies have already noticed that agencies want to avoid the opposition of interest groups to prevent congressional intervention in agency decisions (Arnold 1979). For example, Carpenter (2001a, 2010) argued that the agencies that have significant reputation in their policy communities can be autonomous by drawing political

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29 Opportunity cost is the cost of any activity measured in terms of the value of other possible alternatives. In an economic sense, additional benefit from brokerage capacity by removing administrative inefficiencies implies that brokerage capacity increase the “opportunity cost” of fire alarms, decreasing the incentive of fire alarms.

30 For example, the Environmental Protection Agency (EPA) promulgated a rule to set standards for cooling water intake structures for power plants in 2004 (69 Fed. Reg. 41,576). Dissatisfied with the insufficiently brokered decision, several interest groups such as Riverkeeper, Inc. initiated fire alarms through judicial challenges. In January 2007, the Second Circuit remanded critical portions of the rule (Riverkeeper, Inc. et al. v. US EPA, 2007). In other words, the judicial challenge caused implementation interruption: The EPA had to suspend the rule (72 Fed. Reg. 37,107). However, the Second Circuit’s decision was also petitioned by industry groups. The Supreme Court reversed the Second Circuit (Entergy Corp. v. Riverkeeper, Inc., 2009) and uphold the EPA’s decision in 2009. Though these judicial challenges would alert legislators of potential agency misbehaviors, interest groups had to endure serious administrative delays and uncertainties, due to the costly fire alarms.

31 A variety of studies have consistently argued that when agencies enhance their network ties with policy stakeholders, they can improve administrative performance and the legitimacy of policy decisions (e.g., Crosby et al. 1986; Desario and Langton 1987; Kennedy and Carpenter 1988; Wang and Van Wart 2007; Coglianese et al. 2009; Herian et al. 2012; Neshkova and Guo 2012; Guo and Neshkova Forthcoming).
supports from interest groups and affecting congressional incentive to intervene in agency behaviors. Even when legislators have high incentive to limit agency discretionary behaviors, they could not do that because of interest groups’ opposition. Moreover, Huber (2007) argued that the agencies that behave in a neutral manner can limit the complaints of interest groups and maintain their discretionary authorities. If agencies make ideologically biased decisions, dissatisfied interest groups would like to expand conflicts to other venues and alert legislators of bureaucratic misbehaviors. Because these studies emphasized agency political capacities to affect their policy stakeholders that are similar to brokerage capacity, it is necessary to specify the concept of brokerage capacity with a comparison with the political capacities suggested by Carpenter (2001a, 2010) and Huber (2007).

Huber (2007) argued that “strategic neutrality” of agencies in implementing public policies allows agencies to avoid hostile responses from interest groups. He noted, “by implementing policy that is “strategically neutral,” an agency can attempt to prevent the formation of political coalitions that might otherwise garner the support necessary to change agency behavior” (4). Thus, strategic neutrality is related with consistent law enforcement in implementation stage rather than intervening in interest group relations, while brokerage capacity implies active efforts to link interest groups prior to policymaking stage. Moreover, even when agencies do not behave neutrally, agencies may have significant brokerage capacity, if they provide sufficient chances to link interest groups to their policy stakeholders. Therefore, strategic neutrality is different from brokerage capacity, though both capacities may contribute to resolving interest conflicts. One other comparable concept is “organizational reputation.” (Carpenter 2001a; Roberts 2006; Carpenter 2010); agencies become autonomous when developing reputation for trustworthy policy implementation in their policy networks. Carpenter (2001a, 4) said that “autonomy prevails when agencies can establish political legitimacy—a reputation for expertise, efficiency, or moral protection and a uniquely diverse complex of ties to organized interests and the media—and induce politicians to defer to the wishes of the agency even when they prefer otherwise” (4). His argument implies that the bureaucratic capacity to enhance positive responses from a constituency is important in increasing bureaucratic autonomy. When an agency has significant reputation and public supports in policy networks, it is hard for legislators to deny agency decisions. In contrast, administrative brokerage is more about reducing negative responses from policy stakeholders rather than maximizing positive responses. In other words, the main effect of brokerage capacity is to limit legislators’ attention to agency misbehaviors by discouraging interest groups from sounding fire alarms. Moreover, organizational reputation is “a set of beliefs about an organization’s capacities, intentions, history, and mission that is embedded in a network of multiple audiences” (Carpenter and Krause 2012, 27). On the other hand, brokerage capacity is less related with stakeholder beliefs or agency images. Rather, it is more about promoting communications among interest groups, regardless of stakeholder beliefs.32

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32 It might be unquestionable that strategic neutrality and unique reputation of agencies contribute to agency discretion or bureaucratic autonomy. However, in recent decades characterized by the development of interest groups and political polarization, it has become highly difficult for agencies to accomplish strategic neutrality and unique reputation. Strategic neutrality might be highly meaningful, if interest groups can believe that agencies would always commit to consistent policy implementation. However, many agency leaders are politically appointed, they cannot neglect the political pressures from their political employers. Given the recent political polarization, the implication of the political appointment is more significant for interest groups. Therefore, interest groups tend to have high incentive
Not only Carpenter (2001a, 2010) and Huber (2007), several other studies have pointed out the issues of administrative brokerage and political power of agencies. Although traditional bureaucratic politics studies have touched on the brokerage role of public agencies (Aberbach et al. 1981; Susskind and Ozawa 1983) and coalition building activities (Ringquist 1995; Eisner et al. 1996), they have generally neglected the political impact of administrative brokerage—in particular, the political influence of broker agencies on their principal. Moreover, though several other studies have discussed the political power of agencies (e.g., Fritschler and Hoefler 1989), they have been more concerned about how to keep the “deviant” bureaucrats in line with Congress: the causal mechanism between administrative brokerage and congressional delegation/oversight has been rarely discussed.

1.4. Outline of the Dissertation
The following chapters elaborate these theoretical arguments in greater detail. Chapter 2 suggests a formal model to understand the effect of brokerage capacity on agency discretion. Based on the game theoretic model, several propositions are provided in the chapter. These propositions reflect the two stage causal relationships of administrative brokerage, IIC, and LIC. In Chapter 3, the main assumption and propositions from the administrative broker model will be examined by several statistical tests. The statistical tests show that agencies with high brokerage capacity are able to limit interest conflicts and, as a result, can acquire broader discretionary authorities. Then, in Chapters 4 and 5, the main propositions are examined using case studies of the EPA and the Federal Communications Commission (FCC). Historical overviews of the use of brokerage by these agencies complement the general statistical analysis of Chapter 3. Whereas the EPA has developed significant brokerage capacity since the mid-1980s and has maintained broad discretion, the FCC has frequently failed to broker interest groups and its discretion has been significantly decreased. In Chapter 6, an overview of the congressional response to the growth of brokerage capacity is developed. As agencies have increased their brokerage capacity, Congress has changed its strategies of monitoring agencies. The final chapter summarizes the finding of this dissertation.

to lobby legislators and presidents, rather than expect consistent law enforcement of agencies, especially after substantial political changes from presidential or congressional elections. Thus, strategic neutrality is hardly achievable under significant political polarization. Moreover, as explained above, it is nearly ended that agencies can monopolize administrative information. Thus, it is extremely hard for agencies to maintain “unique reputation” in administration in recent decades. Recently, interest groups never unconditionally believe in agency decisions and have become able to challenge to the agency authorities with their own professional researches and analyses. To illustrate, depending on Gallup surveys, the trust in the executive branch has continuously decreased and even near the record low from the Watergate era (The data are “http://www.gallup.com/poll/110458/Trust-Government-Remains-Low.aspx”). Compared with strategic neutrality and agency reputation, brokerage capacity is more meaningful in recent decades characterized by political polarization and interest groups development.
Chapter 2.
The Administrative Broker: Formal Model

2.1. Game Theory of Brokerage Capacity
In this chapter, I suggest the “administrative broker” model to show how agencies politically affect their stakeholders and what happens to bureaucratic discretion as a result of their political influence. In the arena of political science and public administration, there are multiple political actors involved in policymaking and implementation processes and their interactions with public agencies have become more complex (Meier and O’Toole 2006). As a consequence, it has not been easy to observe all the intricate interactions and to examine the effects of the interactions inductively. Therefore, a deductive framework is necessary for consistent empirical examination of public agencies and their interactions with policy stakeholders (Gill 1995). This formal model of “administrative broker” offers a parsimonious framework in which to explain the influence of “political” agencies.

The formal model for this analysis is based on the venue choice of interest groups. To illustrate, if interest groups can reach a satisfactory agreement in the “bureaucratic venue” prior to signaling in the “legislative venue,” they do not have any incentive to provide information to legislators, which results in expensive access costs. In this case, agencies could maintain significant discretion without the threat of fire alarms. Otherwise, interest groups would provide information to legislators and agencies’ discretion would decrease. The basic result of the model is that agencies with high brokerage capacity are likely to have more discretion. To put it another way, information asymmetry preserved by political brokerage compels legislators to delegate more discretion.

Although this result is based on the assumption of information asymmetry between Congress and agencies, the “administrative broker” model is different from traditional principal-agent theories on several points. The relationships between Congress and agencies are dependent not only on expertise, but also on political “brokerage capacity.” In recent decades, information has become cheaper and more prevalent. 33 Thus, what is really important in legislative–bureaucratic relations is not information itself, but the political capability to affect the behaviors of information sources. In addition, the administrative broker model shows that administrative brokerage occasionally transforms traditionally hostile principal-agent relations (between Congress and agencies) into more favorable ones. Thanks to the contingency control benefits from ex ante administrative brokerage, their relationships can be cooperative under limited conditions.

2.2. Formal Structure of the Game
In this game, there are four players: two policy venues and two interest groups. The two policy

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33 Many agenda-setting and policymaking studies have argued that information is plentiful in recent US politics (Jones and Baumgartner 2005; Baumgartner and Jones 2009). According to Jones and Baumgartner (2012, 7), “Policymakers are bombarded with diverse information from many different sources.”
venues are Congress (denoted by \( L \)) and an agency (denoted by \( A \)). Without loss of generality, \( L \)'s ideal point is \( x_L = 0 \) and \( A \)'s is \( x_A > 0 \). Moreover, there are two different types of interest groups named Fromleft (denoted by \( FL \)) and Fromright (denoted by \( FR \)), where \( x_{FL} < x_L = 0 < x_{FR} \). All the players’ actions are based on a compact and convex policy space, which is denoted by \( X \subset \mathbb{R}^1 \). Similar to the traditional bureaucratic politics model, the policy outcome (denoted by \( x \), such that \( x \in X \)) is determined by policy (denoted by \( p \)) and the state of the world (denoted by \( \epsilon \sim U[-\epsilon, \epsilon] \)), that is, \( x = p - \epsilon \). Moreover, the state of the world is observable only by \( A, FL, \) and \( FR \), which are assumed to possess “expertise.” The observed current state of the world is denoted by \( \epsilon^* \).

The sequence of the game is:

1. Administrative brokerage in the bureaucratic venue:
   - \( A \) makes a take-it-or-leave-it (TIOLI) policy offer \( p_T \). Then, \( FL \) and \( FR \) either accept or reject the offer.
2. Signaling in the legislative venue:
   - If administrative brokerage is successful, \( FL \) and \( FR \) cannot signal.
   - If administrative brokerage fails, \( FL \) and \( FR \) send their signals, \( \theta_{FL} \) and \( \theta_{FR} \), to Congress.
   - Each interest group should pay congressional transaction cost \( TC_L \geq 0 \), unless \( \theta_j = \emptyset \), \( j \in \{FL, FR\} \).
3. \( L \) decides a discretionary window, \( D = \{p, \bar{p}\} \).
4. Implementation: bureaucratic action is realized; that is, \( p_A \) is implemented by \( A \).

In the sequence of the game, steps 1 and 2 represent interest groups’ sequential venue choices. It is assumed that bureaucratic agencies can mediate between interest groups (step 1) prior to their access to Congress (step 2), because \( A \) can move quickly in response to specific social problems by their experience and standard operating procedures. This assumption does not imply that agencies can constrain interest groups. Rather, this game sequence is related with interest groups’ incentive to send costly signals. In reality, interest groups can contact legislators to provide information even during administrative brokerage in the bureaucratic venue. However, if interest groups are sufficiently satisfied with the administrative brokerage, they have no incentive to send costly signals to Congress during or after the brokerage in the bureaucratic venue. The game sequence represents this situation. If administrative brokerage fails, \( FL \) and \( FR \) have a chance to signal in the legislative venue. Thus, step 2 is a threat to \( A \) during their brokerage in step 1. Because administrative brokerage in step 1 is frequently informal and secretly performed, \( L \) cannot know \( p_T \), regardless of brokerage results.

34 There are various versions of game theory models to examine Congress and agencies. In particular, in terms of interest group signaling or fire alarms, almost all the game studies assume three players of Congress, agency and an interest group (e.g., Epstein and O’Halloran 1995; Sloof 2000; Boehmke et al. 2005). Following this tradition, this model is also based on the interactions of these three kinds of actors. However, many interest groups studies have also argued that there are almost always two opposite interest factions regarding specific policies (Wright 1996; Hula 1999); many formal models on interest groups’ signaling have been based on this assumption (e.g., Grossman and Helpman 2001). Following the traditions of political formal models, this administrative broker model also assumes two opposite interest groups that have distinctive views on a policy issue.
Players’ utility function \( u_i(x, c(\cdot)|x_i), i \in \{L, A, FL, FR\} \) is given by \( u_i: X \times \mathbb{R}^1 \times X \to \mathbb{R}^1 \) and is twice differentiable and negative quadratic in \( |x - x_i| \), where \( c(\cdot) \) denotes the contingency function. In this dissertation, contingencies represent all kinds of unexpected administrative inefficiency (e.g., administrative delay, slowness, and interruption) caused by interest groups’ behaviors against policy implementation such as resistance, violation, and litigation.\(^{35}\) If agencies are capable of making robust contracts with interest groups prior to policy implementation, they can enhance the quality of the policy outcome, limiting unnecessary contingencies. Specifically, \( c(b) \) is strictly increasing with \( \dot{c}(1 - \beta b) \), where \( b \) denotes constant brokerage capacity such that \( b \in [-\infty, 1) \) and default contingency, denoted by \( \dot{c} \), is positive. When brokerage in the bureaucratic venue is successful at step 1 and the brokered contract is implemented as promised (i.e., \( p_A = p_T \) at step 4), \( \beta \) is equal to 1. Otherwise, \( \beta \) is equal to zero.

Because of ideological differences (or inseparable property rights of public goods), interest groups frequently incur negative contingencies, though they are detrimental to all stakeholders by reducing administrative efficiency. However, if agencies have sufficient brokerage capacity, they can minimize the probability of interest groups becoming discontent with suggested solutions. In the game sequence above, if bureaucratic agencies make successful compromises under \( b \geq 0 \) at step 1, and implement \( p_A = p_T \) as promised at step 4, all the game players can acquire additional utilities from reducing contingencies. To simplify, it is assumed that the additional utility from contingency control is the same for all the four game players and independent from policy outcome. However, even when agencies suggest acceptable policy options to minimize contingencies, if the transaction costs of the bureaucratic venue are significant, it is nearly impossible for interest groups to make a successful compromise in the bureaucratic venue. Negative brokerage capacity \( (b < 0) \) represents this situation. In other words, negative \( b \) stands for the case that administrative brokerage is meaningless because of the high transaction costs of the bureaucratic venue. In terms of the discretionary window, \( D = [p, \bar{p}] \) at step 3, Congress has few concerns about the lower bound of the discretionary window, because \( x_A > x_L = 0 \). Thus, it can be assumed that \( p = -\infty \) and that equilibrium discretionary window is represented only by upper bound \( \bar{p} \). This assumption has been used by many bureaucratic politics studies especially regarding bureaucratic discretion (e.g., Huber and McCarty 2004). Because \( A \) has no incentive to implement policies that are lower than what an informed Congress would have wanted, only the location of the upper bound is meaningful in this game setting. Moreover, following traditional delegation models, it is assumed that \( x_A \) is not ideologically extreme in terms of \( x_L \)—specifically, \( x_A < \frac{\sqrt{\frac{2}{3}}E^3}{E} \). It implies that the legislature prefers full delegation to any tight control, if it knows only \( \varepsilon^* \in [-E, E] \). In addition, \( x_{FL} < -\frac{E}{2} \) and \( x_{FR} > \frac{E}{2} \) is assumed to make the model parsimonious. The opposite case (i.e., \( x_{FL} > -\frac{E}{2} \) or \( x_{FR} < \frac{E}{2} \)) will be examined later when explaining the benchmark model. Based on these game settings, perfect Bayesian equilibria (PBE) will be characterized.

\(^{35}\) Traditional contingency theory is regarded together with organizational management. The main argument is that managers can enhance organizational efficiency by removing ambiguity and uncertainties. The term contingency in this dissertation relies on this basis, although it accentuates the political aspects further.
2.3. Results
In this section, two different models are proposed. One is the benchmark, which represents traditional bureaucratic politics arguments, especially congressional dominance and bureaucratic drift models. Compared with the benchmark, the “administrative broker” model is suggested to analyze the relations between brokerage capacity and discretion. Then, the model is examined in terms of the Pareto-improving solution of administrative brokerage.\footnote{This administrative broker model is based on the assumption that interest groups are sufficiently capable of providing information to Congress. In contrast, if FL and FR do not have expertise (i.e., if step 2 is meaningless), the equilibrium outcome is that L is to provide full discretion to A, that is, $\bar{p} = x_A + E$, unless $x_A$ is not very distant from $x_L$, that is, $x_A < \sqrt{\frac{2}{3}}E^3$. In other words, A can acquire full discretion even without any brokerage capacity if information sources for Congress are limited. This result reflects the “abdication principle” claimed by Scher (1963) and Ogul (1976).}

2.3.1. Benchmark ($b < 0$)
Before discussing administrative brokerage, it is necessary to examine the negative brokerage capacity ($b < 0$) case—meaningless administrative brokerage—as a benchmark. There are two purposes for this examination. One is that this benchmark supplies an overview of traditional bureaucratic politics arguments. Thus, this benchmark provides a convenient comparison with the administrative broker model, which will be suggested in the next section. Moreover, the equilibrium outcome of the benchmark denotes the “credible threats” or “disagreement points” of interest groups when successful administrative brokerage is available under $b \geq 0$.

Congressional dominance theorists have argued that the legislature can control bureaucratic agencies based on the signals from interest groups. Several signaling models support this view that complete information can be delivered by two opposite informants (Krishna and Morgan 2001a, 2001b). However, interest groups cannot always provide complete information about current state of the world ($\epsilon^*$). Rather, their signals are sometimes mere babbling, partly because of the congressional transaction costs and interest groups’ ideal points. If $p_A = x_A + \epsilon^*$ is considered sufficient by interest groups given the congressional transaction cost ($TC_L$), they would be reluctant to provide information to Congress. In this case, agencies can maintain information asymmetry.

Suppose that $L$ believes that $\epsilon^* = \theta_{FR} - x_{FR} = \theta_{FL} - x_{FL}$, only if $\theta_{FR} - x_{FR} = \theta_{FL} - x_{FL}$ and that if $\theta_{FR} - x_{FR} \neq \theta_{FL} - x_{FL}$, L cannot infer anything from this signals and believes only $\epsilon^* \in [-E, E]$. In this case, if $\theta_{FR} = x_{FR} + \epsilon^*$ and $\theta_{FL} = x_{FL} + \epsilon^*$, $L$ can acquire complete information about $\epsilon^*$ in equilibrium. In other words, complete information provision necessitates the cooperation of the two interest groups. So, only if $u_j(0, \hat{c}) - TC_L > u_j(x_A, \hat{c})$ where $j \in \{FL, FR\}$, interest groups can provide complete information about $\epsilon^*$ in cooperation. This case represents the congressional dominance argument, which holds that the legislature can overcome informational asymmetry thanks to help from interest groups. Otherwise, at least one interest group does not have any incentive to provide information to L under the assumption that $x_{FL} < -\frac{E}{2}$ and $x_{FR} > \frac{E}{2}$. In this case, the legislature knows only $\epsilon^* \in [-E, E]$. This case represents the bureaucratic drift argument: agencies have enjoyed remarkable discretion based on information asymmetry. Even when interest groups have expertise, if the congressional
transaction cost is not negligible, information asymmetry can persist and agencies can acquire much discretion. Accordingly, a benchmark’s equilibrium discretionary upper bound (denoted by $\hat{p}_{b<0}$) and policy outcome (denoted by $x_{b<0}$) are:

$$
(p_{b<0}^*, x_{b<0}^*) = \begin{cases} 
(e^*, x_t) & \text{if } u_j(0, \hat{c}) - TC_L > u_j(x_A, \hat{c}) \\
(x_A + E, x_A) & \text{otherwise}
\end{cases}, j \in \{FL, FR\}
$$

This result simplifies traditional bureaucratic politics arguments. If interest groups have sufficient incentive to provide information to the legislature (partly) because of low congressional transaction costs, there can be separating PBE. Then, Congress can strictly control agencies. In contrast, if the congressional transaction cost is high given the interest groups’ ideal points, only pooling PBE is available. Then, bureaucratic drift might be prevalent based on information asymmetry. These outcomes represent two extreme cases in signaling under the assumption that $x_{FL} < -\frac{E}{2}$ and $x_{FR} > \frac{E}{2}$. In contrast, if $x_{FL} > -\frac{E}{2}$ or $x_{FR} < \frac{E}{2}$, partitional equilibria in the signaling are available, which implies somewhat “moderately” credible threats. In this case, the legislature can incompletely update its belief about $\epsilon^*$, that is, $\epsilon^* \in [E_1, E_2]$, where $|E_2 - E_1| < 2E$, depending on congressional transaction costs and interest groups’ ideal points. Expecting this result, agencies can suggest $p_T$, considering the “moderate” threats in step 1. Thus, the basic result is the same even when allowing $x_{FL} > -\frac{E}{2}$ or $x_{FR} < \frac{E}{2}$. However, this argument is omitted in this dissertation to simplify the examination of brokerage capacity. Only two cases of separating and pooling equilibria suggested above will be considered hereafter.

This benchmark assumes that administrative brokerage is not available because of negative brokerage capacity. Thus, the equilibrium outcomes of the benchmark, $\hat{p}_{b<0}^*$ and $x_{b<0}^*$, are a “credible threat” of interest groups against $A$ at the administrative brokerage of step 1. In other words, the results show the reserved outcomes for interest groups even when they do not accept $p_T$ at step 1. Therefore, successful brokerage is possible only when $A$ can suggest a policy alternative, which ensures at least $u_j(x_{b<0}^*, \hat{c})$, $j \in \{FL, FR\}$ for both interest groups.

2.3.2. Administrative Broker ($b \geq 0$)

In contrast, suppose that administrative brokerage is now available with $b \geq 0$. In this case, $A$ can broker interest groups by suggesting a TIOLI offer between $\epsilon^* \leq p_T \leq x_A + \epsilon^*$ so as to block information leakage to $L$. In other words, $A$ limits interest groups’ incentives to reach the legislative venue. Because there is a trade-off between $u_A$ and $u_{FL}$ (sometimes, and $u_{FR}$) with respect to $p_T$, $A$’s TIOLI offer is dependent on how much $FL$ can acquire from $x_{b<0}^*$. In other words, $A$ suggests distinctive $p_T$ to interest groups depending on the “credible threats” of the benchmark. Specifically, $A$’s TIOLI offer should ensure at least the value of $u_{FL}(x_{b<0}^*, \hat{c}) - TC_L$ to $FL$. Thus, suppose that $EP_{FL}(b) = u_{FL}^{-1}(u_{FL}(x_{b<0}^*, \hat{c}) - TC_L, c(b)) + \epsilon^*$. In words, $EP_{FL}$ is the indifferent policy option to $FL$, compared with the benchmark outcome, under the relieved contingency level of $c(b)$ $\leq \hat{c}$. In this case, $A$ will suggest $p_T^* = \min(x_A + \epsilon^*, EP_{FL})$. Because $p_T^*$ is weakly dominant for $FL$, $FR$, and $A$, compared with the benchmark, there could be successful brokerage in equilibrium with this suggestion. In this case, if the administrative brokerage of step 1 is binding, successful bureaucratic bargaining under $p_T^* = \min(x_A + \epsilon^*, EP_{FL})$ and babbling messages are the unique PBE.

However, in this case, $A$’s commitment problem arises. In other words, administrative
brokerage is not binding and it is probable that $A$ deviates at the implementation stage (step 4) to $p_A \neq p_T$. Because public policy is implemented at the end of the game, interest groups cannot reverse $A$’s implementation after step 4. In real policy implementation, agencies sometimes withdraw their proposed rules without much procedural burden such as notice and comment. Moreover, when agencies already initiate administrative programs, it is much harder for stakeholders to turn down the policy implementation because of the significant fixed cost already invested in the program. In other words, when bureaucratic agencies make fait accomplis betraying their compromised public policies, it is difficult for interest groups and political principals to overturn the agencies’ decisions. Therefore, $A$’s brokerage is successful only when the commitment problem is already resolved. In other words, it should be impossible for $A$ to deviate profitably to $p_A \neq p_T$ for successful brokerage. Otherwise, interest groups would not participate in the administrative brokerage.

From this perspective, $L$’s decision on the discretionary window is important. If $L$ provides broader discretion, it is highly probable that serious commitment problems occur and that administrative brokerage cannot be successful. Although $L$ cannot know $\varepsilon^*$ and $p_T^*$, the actor has the information on $c$, $b$, and $TC_L$. Therefore, the legislature can infer $p_T^* - \varepsilon^*$. In other words, $L$ can conjecture the policy outcome of the administrative brokerage, although $L$ cannot know $p_T^*$ itself. From the assumption above ($x_A < \sqrt[3]{\frac{2}{3}E^3}$), the legislature prefers $\bar{p} = x_A + E$ to $\bar{p} = 0$, if the actor knows only $\varepsilon^* \in [-E,E]$. Because Congress can acquire (at least) additional contingency control gains through administrative brokerage, the actor would like to minimize $A$’s commitment problem at step 3. Thus, $L$ has the incentive to eliminate $A$’s commitment problem by deciding the strictest discretion, even as allowing $A$ to implement $p_T^*$. Under this situation, $\bar{p} = p_T^* - \varepsilon^* + E$ is a weakly dominant strategy of $L$. Even in this case, it is probable that $A$ deviates from $p_T^*$ to $\min(x_A + \varepsilon^*, p_T^* - \varepsilon^* + E)$ after successful brokerage. In other words, only when $u_A(p_T^* - \varepsilon^*, c) \geq u_A(\min(x_A, p_T^* - 2\varepsilon^* + E), c)$ is $A$’s commitment ensured. Otherwise, interest groups (especially, $FL$) would not accept $p_T^*$ and administrative brokerage would fail. Then, the equilibrium would be the same as the benchmark, $\bar{p}_{b<0}$. Because of this commitment problem, $A$ cannot always broker interest groups, though non-negative $EP_{FL}$ always exists under $b \geq 0$. One way to eliminate the commitment problem is high brokerage capacity. Because players’ utility functions are negative quadratic in terms of policy outcomes, $A$ has more incentive to deviate from $p_A = p_T^*$, when low brokerage capacity makes $p_T^*$ distant from $x_A$. As an extreme example, significantly high $b$ makes $x_A + \varepsilon^* < EP_{FL}$. In this case, $p_T^*$ will be decided at $x_A + \varepsilon^*$, where $A$ has no incentive to deviate. As a consequence, the probability of successful brokerage is weakly increasing in $b$.

**Lemma 1:** There is a successful brokerage PBE, only if $u_A(p_T^* - \varepsilon^*, c) \geq u_A(\min(x_A, p_T^* - 2\varepsilon^* + E), c)$ and $b \geq 0$, where $u_A(p_T^* - \varepsilon^*, c) - u_A(\min(x_A, p_T^* - 2\varepsilon^* + E), c)$ is weakly increasing in $b$ and decreasing in $TC_L$.

**Lemma 2:** $\bar{p}_{b \geq 0} = p_T^* - \varepsilon^* + E$ is weakly higher than $\bar{p}_{b<0}$ and is weakly increasing in $b$, where $\bar{p}_{b \geq 0}$ denotes the equilibrium discretionary upper bound under $b \geq 0$.

In sum, $\bar{p}_{b \geq 0} = p_T^* - \varepsilon^* + E$, only if $u_A(p_T^* - \varepsilon^*, c) \geq u_A(\min(x_A, p_T^* - 2\varepsilon^* + E), c)$. 20
By the definition of $EP_{FL}$, $\bar{p}_{b>0}$ is also weakly higher than $\bar{p}_{b<0}$ and weakly increases in $b$. Moreover as seen above, higher $b$ increases the probability of successful brokerage. In other words, $\bar{p}$ always weakly increases in $b$. Therefore, Proposition 1 and 2 are derived from above-mentioned lemmas:

**Proposition 1:** Fire alarm rarely sounds as agencies have higher brokerage capacity.

**Proposition 2:** Bureaucratic discretion is weakly increasing in brokerage capacity.

### 2.3.3. Pareto-improving Brokerage

The administrative broker model shows that agencies can acquire additional distributive gains from information asymmetry, similar to other bureaucratic politics models. However, the model is different from the traditional arguments in the sense that “administrative brokers” can provide Pareto-improving solutions through brokerage, especially when the congressional transaction cost is insignificant. From the benchmark, $x_{b<0}^*$ is Pareto-optimal. This is the basic assumption of traditional bureaucratic politics that all the public policies between the ideal points of Congress and an agency are Pareto-optimal and the gain of one player implies loss to the other player. Therefore, the benefits of “principal” and “agent” are likely to be traded off. The benchmark model reflects the assumption that the loss of Congress is dependent on the gain of the agency. However, administrative brokerage occasionally yields Pareto-improving public policies. This does not imply that agencies can be fully accountable through brokerage. Rather, additional utilities from contingency control to the legislature can be greater than the distributive loss from bureaucratic drift under some limited conditions. Pareto-improving brokerage is highly important because legislators have sufficient power to limit agency efforts to enhance brokerage capacity by cutting down budgetary and human resources. If Pareto-improving brokerage is not ensured, the positive effect of brokerage capacity on agency discretion would be at best ephemeral.

Basically, when the congressional transaction cost is not significant, the legislature can acquire more benefits from administrative brokerage, even compared with $u_L(x_{b<0}^*, \hat{c}|\bar{p}_{b<0})$. Suppose that $TC_L = 0$ and $b > 0$. In this case, $u_L(p_T^* - \epsilon^*, c(b)|\bar{p}_{b>0})$ is always strictly greater than $u_L(x_{b<0}^*, \hat{c}|\bar{p}_{b<0})$, if there is no commitment problem, because $u_i$ is negatively quadratic with respect to $x$, that is, $u_L(p_T^* - \epsilon^*, c(b)|\bar{p}_{b>0}) - u_L(x_{b<0}^*, \hat{c}|\bar{p}_{b<0}) > u_{FL}(p_T^* - \epsilon^*, c|\bar{p}_{b>0}) - u_{FL}(x_{b<0}^*, \hat{c}|\bar{p}_{b<0})$. In other words, Congress strictly prefers administrative brokerage at any $b > 0$ to brokerage failure under $TC_L = 0$, if there is no commitment problem. However, as $TC_L$ increases, $p_T^*$ is closer to $x_A + \epsilon^*$ and $u_L(p_T^* - \epsilon^*, c(b)|\bar{p}_{b>0}) - u_L(x_{b<0}^*, \hat{c}|\bar{p}_{b<0})$ is decreasing, because the congressional distributive gain is decreasing whereas contingency control gain is static. Therefore, Pareto-improving brokerage is available only under low congressional transaction costs. However, low transaction cost is a necessity, not a sufficiency, for Pareto-improving brokerage, because of the commitment problem. Minimal congressional transaction costs force the agency to decide $p_T^*$ around $\epsilon^*$. This would increase the distributive gain for Congress. However, this also provides the agency with sufficient incentive to disobey the compromise solution. Thus, Pareto-improving brokerage necessitates high brokerage capacity, which allows the agency to set up $p_T$ sufficiently close to $x_A + \epsilon^*$. Otherwise, Pareto-improving brokerage may not be available under low transaction costs, because of the commitment problem.
In sum, administrative brokerage weakly increases all stakeholders’ utilities compared with the benchmark case, if the congressional transaction cost is minimal and brokerage capacity is sufficiently high, despite some distributive losses of $L$ and $FL$ compared with the benchmark. These relations between brokerage capacity and discretion and the threshold of Pareto-improving brokerage are summarized in Figure 2-1.

**Lemma 3:** $u_I(p^*_T - \varepsilon^*, c(b) | \tilde{p}_L b > 0) > u_I(x_J^* b < 0, \hat{c} | \tilde{p}_L b < 0)$ is more probable as $TC_L$ is smaller, under sufficiently high $b$ such that $u_A(p^*_T - \varepsilon^*, c) > u_A(\min(x_A, p^*_T - 2\varepsilon^* + E), \hat{c})$.

**Figure 2-1. Brokerage Capacity and Bureaucratic Discretion**

This result is meaningful in the senses that Pareto-improving administrative brokerage may derive favorable congressional response to agency discretionary behaviors and, as a result, the agencies with high brokerage capacity can enjoy significant discretionary authorities robustly. Moreover, if administrative brokerage yields adverse outcomes for legislators, they would be reluctant to authorize administrative programs of the agencies. Moreover, they would like to enact laws that hamper the brokerage. For example, if legislators enhance appeal procedures that enable interest groups to challenge agency decisions more easily, even when agencies provide many contact opportunities to interest groups, the effect of brokerage capacity on discretionary authorities may be limited. In other words, legislators can decrease the marginal effect of brokerage capacity on $c(b)$ by legislating stricter procedural statutes. In this case, even when agencies have significant brokerage capacity, it is much hard for agencies to limit negative contingencies and to resolve conflicts. As a result, brokerage capacity would become less
meaningful in increasing discretionary authorities. However, as Lemma 3 shows, the administrative brokerage can be Pareto-improving when agencies have significant brokerage capacity (and congressional transaction cost is sufficient low). It implies not only that the agencies with high brokerage capacity may maintain significant discretionary authorities consistently (i.e., Proposition 2 can be robust), but also that legislators would like to encourage the agencies with high brokerage capacity to launch new administrative programs or broaden their jurisdictions by appropriating more budgets, rather than preventing the agencies from broadening their jurisdictions.

In addition, Pareto-improving brokerage is also important for endogenous efforts of agencies to increase brokerage capacity. Propositions 1 and 2 imply that agencies can acquire significant benefits from enhancing brokerage capacity. From these propositions, it can be inferred that all the agencies should make efforts to improve their brokerage capacity. However, this inference is valid only when Congress can have more benefits from agency brokerage, relative to those from fire alarms. Because legislators can affect \( b \) by amending fire alarm provisions, they would prevent administrative brokerage, if the brokerage is “harmful” to Congress. In this case, agencies would not have sufficient policy benefits despite their investment in brokerage capacity. Therefore, if Pareto-improving brokerage is not available, agencies may have little incentive to increase their brokerage capacity.

**Proposition 3:** Pareto-improving brokerage is possible, if the levels of agency brokerage capacity are sufficiently high. In this case, legislators would be likely to encourage administrative brokerage and weaken fire alarm mechanisms.

### 2.4. Implication

This model is meaningful in the sense that brokerage capacity is a “political power,” not a neutral capability, and that this capacity is meaningful under the current pluralistic society and prevalent information. Traditional bureaucratic politics models that have mainly focused on bureaucratic expertise and ideological conflicts between agencies and political principals (Epstein and O’Halloran 1999b; Huber and Shipan 2002). Although several studies have emphasized bureaucratic capacity (Huber and McCarty 2004; Ting 2009), the capacities are also organizational and neutral, rather than political. Given this tradition, the only meaningful principle developed regarding bureaucratic politics was the ally principle, which implies that a bureaucratic agency can acquire much discretion only when its ideology is similar to that of their political principal (Bendor and Meirowitz 2004). However, the ally principle is robust only under the limited situations where brokerage capacity is minimal. The principle is vulnerable and even meaningless if agencies have political “brokerage capacity” to affect political environments and actors, especially when the agencies can achieve Pareto-improving results with high brokerage capacity. In the case of the EPA as seen above, although the agency tends to be definitely “liberal” (Clinton and Lewis 2008), its discretion was not much restrained much even during the mid-1990s and early 2000s, when Republicans were dominant in the Congress. As several studies have asserted, bureaucratic agencies are by nature political (Majone and Wildavsky 1979; Bardach 1980; Carpenter 2001a). However, this does not only mean that

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37 There are several studies which partly oppose to ally principal (Boehmke et al. 2005; Gailmard and Patty 2012).
agencies have their own ideological stances. Rather, agencies have their own “political power” to affect policy stakeholders through brokerage.

Based on these theoretical arguments, in subsequent chapters, the propositions from the administrative broker model will be examined by several regression tests at Chapter 3 and case studies at Chapters 4 and 5. Then, at Chapter 6, congressional response to Pareto-improving administrative brokerage will be examined by reviewing the evolution of procedural statues in recent decades.
Chapter 3. Brokerage Capacity and Discretion: Statistical Tests

The administrative broker model in the previous chapter shows a two stage causal chain of brokerage capacity, interest conflict, and agency discretion. In other words, fire alarms derived from interest conflicts cause congressional incentive to control agency discretion. Thus, if agencies can resolve interest conflicts with high brokerage capacity, they can maintain significant discretion. Given these propositions, in this chapter, the causal links will be examined by several regression tests. For the statistical examinations, data on twenty-seven US federal regulatory agencies (see Table 3-1-1) over ten years (1999–2008) were used for the regression tests: The largest domestic, and regulatory federal agencies (i.e., the agencies that have more than one thousand employees and more than three hundred CFR [the Code of Federal Regulations] page regulations) are included in the dataset, to make samples uniform, controlling agency characteristics that can affect agency discretion. In other words, small agencies (e.g., the Consumer Product Safety Commission), agencies involved with international issues (e.g., the Federal Trade Commission), and non-regulatory agencies (e.g., the National Aeronautics and Space Administration) are excluded from the dataset in order to prevent possible biases from agency-specific characteristics.

3.1. Direct Effects of Brokerage Capacity

3.1.1. Brokerage Capacity and Fire Alarms
In this subchapter, the Proposition 1 will be examined by several regression tests. To measure the dependent variable of fire alarms, this study uses the number of judicial challenges to agency decisions. Among diverse ways for interest groups to alert legislators of administrative malfeasance, judicial challenges have been the most dominant (McCubbins et al. 1987, 1989; Asimow 1994; Law 2009). Because judicial review provides reliable, low-cost information about agency conduct (Law 2009), legislators can notice agency misbehaviors observing significant judicial challenges against agency actions. In reality, the number of judicial challenges to agency decisions has increased significantly for decades. To illustrate, the number of administrative appeals in the courts of appeals was only 456 in 1961, doubled to 887 in 1979, and then tripled to 2,454 in 1984. Likewise, the number of civil cases involving the US government was only 621 in 1961, increased sharply to 1,882 in 1979, and 4,483 in 1984 (Davis and Songer 1988). In addition, the numbers of judicial challenges can be measured highly consistently, compared with other possible fire alarm measures such as the number of lobbying behaviors. In this respect, this study uses the numbers of courts of appeals cases and the Supreme Court cases in which each agency (or the administrator of the agency) is a defendant as the measures of fire alarms. It does not mean that legislators pay attention to all judicial cases, especially those of court of appeals. Because there are plenty of court of appeals cases and large portion of the cases can be moved to

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38 Many other studies have reaffirmed the increase in administrative appeals. For example, see Golden (2010).
the Supreme Court, legislators may have less attention to individual court of appeals cases. However, legislators can notice at least that specific agencies are frequently challenged in courts of appeals and that the agencies may have lots of administrative problems. In other words, even though individual court of appeals cases may not be important fire alarms to legislators, the frequency of court of appeals cases can affect legislative incentive to control administrative behaviors. Therefore, court of appeals cases can function as a fire alarm to alert legislators of administrative malfeasance.

However, though court challenge is the most important way to sound fire alarms, it is not the only method. There are various ways for interest groups to attract legislators’ attention to agency behaviors. To supplement court case, mass media exposure is also used as a dependent variable. If agencies can resolve interest conflicts and turn off fire alarms, administrative behaviors of the agencies may be rarely reported in the mass media and, as a result, issue salience which promotes legislators attention could decrease. Otherwise, administrative malfeasances (and subsequent interest conflicts) might be frequently exposed to mass media reports, promoting legislators’ incentive to control agency behaviors. The number of the *New York Times* articles about interest groups’ protest/opposition against specific agency decisions and the ratio of the protest/opposition article number to the number of *New York Times* articles that cited specific agencies are used to measure the media exposure of agencies.

The main independent variable, brokerage capacity was defined as “the capacity that agencies promote communications and contacts among diverse interest groups through appropriate rules and procedures” in Chapter 1. From this definition, as explained in Chapter 1, network centrality and tie strength in policy networks given agenda size of an agency are the primary factors to determine brokerage capacity.\(^{39}\) In other words, if an agency has broad (i.e.,

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\(^{39}\) Given this definition, there can be several alternative ways to operationalize brokerage capacity, other than network centrality and tie strength. One possible alternative is diversity of public participation; if agencies have used diverse methods for stakeholders to participate in policymaking processes, it implies that the agencies may make high efforts to promote more communications among stakeholders. While some agencies such as the EPA and the Food and Drug Administration have used a variety of dispute resolution methods such as negotiated rulemakings, ombudsman, and conflict coaching, other agencies such as the Securities and Exchange Commission and the Small Business Administration have used a limited number of participation methods. However, even when agencies made diverse conflict resolution methods, the relative weights of the methods may not be the same. For example, the weights of negotiated rulemaking and ombudsman (in terms of stakeholder brokerage) may not be the same. Thus, it is nearly impossible to determine the relative weights of different participation methods without biases. One other alternative operationalization is the frequency of regulatory negotiations. Regulatory negotiations have been one of the most important methods for federal agencies to improve stakeholder communications. In reality, several agencies such as the EPA and the Federal Aviation Administration have used the method to promote stakeholder communications since the 1980s. Moreover, many studies have expected that negotiated rulemakings have contributed to resolving many regulatory disputes in rulemaking and avoiding adversarial battles in the courts, thereby allowing agencies to maintain administrative consensus (Harter 1982; Pritzker 1990). In addition, negotiated rulemaking as a typical way of regulatory negotiations is consistent across agencies based on the Negotiated Rulemaking Act of 1990 (P. L. 101-648). However, use of the negotiated rulemaking process has significantly decreased since the mid-1990s and only few agencies have used the method since the early 2000s (Coglianese 1997; Lubbers 2008); the importance of negotiated rulemakings have been dramatically changed. Moreover, several studies have argued that negotiated rulemakings cannot contribute to resolving interest conflicts. Rather, they maintained that negotiated rulemakings frequently incur decision stalemates and do not prevent litigation,
high degree centrality) and strong (i.e., high tie strength) relationships with policy stakeholders, the agency may have significant brokerage capacity. Regarding network centrality, social network studies have developed diverse concepts to measure network centrality such as *betweenness* and *degree centrality*. Betweenness generally implies the extent to which an actor sits between two other actors and the concept has been most frequently used in measuring brokerage. However, betweenness of federal agencies in policy networks is relatively less important. Since agencies are public institutions and their decisions affect all policy stakeholders and their meetings are generally open to all types of interest groups, agencies almost always position between interest groups in policy networks. For example, the Federal Advisory Committee Act (P.L. 92-463, FACA) requires all federal advisory committees to be “fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee” and demands agencies to give prior notice of meetings, to hold open meetings, and to keep detailed minutes. Moreover, agencies frequently need to link more than two groups simultaneously, though betweenness is in particular about linking two network participants. Therefore, in measuring agency network centrality, the number of network ties that an agency holds (i.e., degree centrality), rather than betweenness, is more meaningful. When an agency has diverse network ties, it implies that the agency can mediate multiple interactions simultaneously. Moreover, high degree centrality also means that interest groups tend to resolve interest conflicts in the bureaucratic venue rather than other policy venues. 40 However, network centrality cannot fully explain agency brokerage capacity. Even when an agency has direct links with interest groups, the agency might fail to broker interest groups unless they have strong relationships with the stakeholders. Thus, tie strength is another important factor in measuring brokerage capacity. In addition, this brokerage capacity measure should be divided by the number of agency agendas to limit possible biases from agency size. In this respect, this study calculated brokerage capacity as:

\[
\text{Brokerage Capacity} = \frac{\text{Degree Centrality} \times \text{Tie Strength}}{\text{Number of Agendas}}
\]

Degree centrality can be counted with the number of interest groups that have significant communications with agencies. However, not all the interest groups linked with agencies are important in terms of fire alarms. Because minor interest groups have only limited human and monetary resources and tend to be incapable of pulling fire alarms effectively, it is necessary to filter out these groups. Moreover, since cross-agency comparisons are necessary for the purpose of this study, the data about degree centrality should be consistent across agencies. Considering these requirements, the number of advisory committee participants is used for measuring degree centrality.

Advisory committees have contributed to promoting stakeholder interactions through transparent meetings (Beierle and Long 1999; Bingham 2010). In advisory committees, stakeholders learn policy issues, adjust their opinions, develop alternative solutions, and make efforts to reach a consensus solution through deliberative processes (Landre and Knuth 1993; because consensus approaches themselves can create new conflicts (e.g., Coglianese and Allen 2003). Therefore, the frequency of regulatory negotiations is not sufficiently appropriate for operationalizing brokerage capacity.

40 Many public administration studies have used degree centrality to measure network centrality (Huang and Provan 2007; Akkerman et al. 2011; Provan and Huang 2012).
Applegate 1998; Balla and Wright 2003; Balla 2004; Gormley and Balla 2004); advisory committees allow significant stakeholder interactions in bureaucratic venues. Admittedly, there are several alternative ways to measure stakeholder interactions. However, the data of advisory committees are somewhat superior to other alternative measures in several points. Since advisory committees have been one of the most common participation methods for US federal agencies (US federal agencies operated 1,077 advisory committees in 2012) and FACA provides broad guidelines for committee management, the numbers of advisory committee participants are relatively consistent across agencies; the qualities of individual advisory committees are unlikely to be biased. In addition, because advisory committees are not comprised of ordinary citizens, but of major policy stakeholders, minor network nodes can be excluded. To reduce possible biases from advisory committee characteristics further, only advisory committees that were active and held at least one meeting in a year’s time are considered. Regarding tie strength, major policy stakeholders tend to participate not only in advisory committees but also in diverse

41 There are several other participation methods that agencies have used for mediating interest conflicts such as alternative dispute resolution methods and negotiated rulemakings. However, when measuring network centrality or tie strength with these participation methods, significant biases can be inevitable. US federal agencies have used a variety of alternative dispute resolution (ADR) methods such as mediation, adjudication, facilitation, and arbitration. However, they have used the methods mainly for internal issues such as wage negotiations. Moreover, because of the diversity of ADR methods across agencies, it is nearly impossible to measure network properties consistently. Likewise, it is also problematic to use the data of negotiated rulemakings to measure network properties. Though this method had been highlighted in the 1980s and the 1990s, US federal agencies have rarely used the participation method since the 2000s. Thus, when using negotiated rulemaking data for measuring network properties, significant measuring biases may be inevitable; even the agencies that have used negotiated rulemakings only once can be assumed to have huge brokerage capacity. Therefore, though ADR or negotiated rulemakings are important participatory methods, they cannot be used for measuring network properties.

42 In this study, the number of the advisory committees is counted regardless of establishment authority and committee functions. In terms of establishment authority, some committees are established by congressional/presidential mandates and others are based on agency authority. However, whatever establishment authority is, advisory committees are managed by agencies and generally promote communications among policy stakeholders. In other words, even when some advisory committees are established by congressional or presidential authorities, they can all contribute to enhancing network links between agencies and stakeholders. In addition, individual advisory committees have their own functions (e.g., regulatory negotiations, scientific technical program advisory board, non scientific program advisory board, national policy issue advisory board). Though regulatory negotiation committees may be most closely related with administrative brokerage, other committees also contribute to resolving conflicts. Moreover, individual agencies have used different types of advisory committees to promote communications among stakeholders. For example, Food and Drug Administration (FDA) tends to establish diverse scientific program advisory boards rather than regulatory negotiation committees to promote stakeholder meetings, because the FDA’s main issues are technically complex and its stakeholders tend to have significant information about drugs and chemical substances. Thus, when excluding some committees depending on establishment authority and committee functions, it can cause serious biases in measuring brokerage capacity. In contrast, inactive advisory committees are excluded because they are the committees that are waiting for legislation of committee abolishment or funding and cannot contribute to linking network participants. The advisory committee data are from the dataset of the Federal Advisory Committees Database (FACD) (http://www.fido.gov). In addition, the Federal Register was consulted for the data of some agencies whose advisory committees are not clearly indicated in the FACD dataset.
kinds of policy-related meetings. Thus, counting only the number of advisory committee meetings may underestimate tie strength; to correct this problem, tie strength is measured by the number of meetings among policy stakeholders held by individual agencies (including advisory committee meetings) that are publicly announced in the Federal Register. In addition, the denominator—number of agendas—was measured by the number of agency regulatory proposals published in the Federal Register. One possible problem in measuring brokerage capacity is that this measure can be rising over time, not because of anything the bureaucrats are doing to affect degree centrality, but because there are simply more interest groups with which to maintain network ties. However, as Tables 1-1 and 1-2 indicate, the growth rate of interest group numbers has stabilized since the 1990s. Therefore, this problem may not be significant. To read statistical data conveniently, the network tie measure is divided by one thousand.

In addition, agency investment for administrative brokerage is also used as another main independent variable. As an agency invests resources to resolve interest conflict through meetings and negotiations, this behavior might positively affect brokerage capacity. In this respect, this variable will be included in regressions to enhance statistical robustness in checking the effects of brokerage capacity. However, this brokerage investment does not directly imply brokerage capacity. If an agency has sufficient brokerage capacity, the agency may resolve interest conflicts without significant brokerage investment. In contrast, if an agency suffers from significant interest conflicts due to the lack of brokerage capacity, the agency may have high incentive to invest in administrative brokerage. In other words, brokerage investment at time $t$ does not directly imply brokerage capacity at time $t$, though they may be positively correlated. To measure brokerage investment, advisory committee spending data (constant in 2008 million dollars) are collected and are divided by the number of proposed rules to limit possible bias from agency agenda size. Tables 3-1-1 and 3-1-2 below summarize the average brokerage capacities and brokerage efforts of federal agencies.\footnote{In Table 3-1-1, the brokerage levels of specific agencies such as Bureau of Land Management, Forest Service, and National Park Service are significantly high. Therefore, the regression tests in this chapter were reexamined excluding these agencies. Even when excluding these agencies, basic regression results tend to be consistent.}


Table 3-1-1. Average Brokerage Capacities Over Time

<table>
<thead>
<tr>
<th>Federal Agencies</th>
<th>Average Brokerage Capacity</th>
<th>Brokerage Capacity SD</th>
<th>Average Brokerage Investment</th>
<th>Brokerage Investment SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Marketing Service</td>
<td>.002</td>
<td>.001</td>
<td>.005</td>
<td>.002</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>.010</td>
<td>.006</td>
<td>.002</td>
<td>.001</td>
</tr>
<tr>
<td>Bureau of Alcohol, Tobacco, Firearms, and Explosives</td>
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<td>.000</td>
<td>.000</td>
<td>.000</td>
</tr>
<tr>
<td>Bureau of Indian Affairs</td>
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<td>.000</td>
<td>.000</td>
<td>.000</td>
</tr>
<tr>
<td>Bureau of Land Management</td>
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<td>6.021</td>
<td>.321</td>
<td>.185</td>
</tr>
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<td>.061</td>
<td>.060</td>
<td>.024</td>
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<tr>
<td>Environmental Protection Agency</td>
<td>.367</td>
<td>.069</td>
<td>.037</td>
<td>.009</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>.004</td>
<td>.009</td>
<td>.046</td>
<td>.031</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>.000</td>
<td>.000</td>
<td>.014</td>
<td>.011</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>.413</td>
<td>.204</td>
<td>.002</td>
<td>.001</td>
</tr>
<tr>
<td>Federal Communications Commission</td>
<td>.065</td>
<td>.043</td>
<td>.006</td>
<td>.003</td>
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<td>Food and Drug Administration</td>
<td>2.095</td>
<td>.562</td>
<td>.209</td>
<td>.080</td>
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<td>Federal Emergency Management Agency</td>
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<td>.008</td>
<td>.003</td>
<td>.005</td>
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<td>Federal Highway Administration</td>
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<td>.177</td>
<td>.004</td>
<td>.004</td>
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<td>.003</td>
<td>.007</td>
<td>.007</td>
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<td>.041</td>
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<td>.011</td>
<td>.027</td>
<td>.007</td>
</tr>
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<tr>
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</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>.042</td>
<td>.022</td>
<td>.027</td>
<td>.014</td>
</tr>
<tr>
<td>Patent and Trademark Office</td>
<td>.000</td>
<td>.001</td>
<td>.001</td>
<td>.003</td>
</tr>
<tr>
<td>Small Business Administration</td>
<td>1.226</td>
<td>.657</td>
<td>.065</td>
<td>.036</td>
</tr>
<tr>
<td>Securities and Exchange Commission</td>
<td>.004</td>
<td>.005</td>
<td>.014</td>
<td>.023</td>
</tr>
<tr>
<td>Social Security Administration</td>
<td>.014</td>
<td>.026</td>
<td>.135</td>
<td>.120</td>
</tr>
</tbody>
</table>

*Notes: The data are averages and standard deviations between 1999 and 2008.*

Table 3-1-2. Average Brokerage Capacities Across Agencies

<table>
<thead>
<tr>
<th>Year</th>
<th>Average Brokerage Capacity</th>
<th>Brokerage Capacity SD</th>
<th>Average Brokerage Investment</th>
<th>Brokerage Investment SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>.593</td>
<td>1.471</td>
<td>.030</td>
<td>.038</td>
</tr>
<tr>
<td>2000</td>
<td>.893</td>
<td>2.522</td>
<td>.044</td>
<td>.073</td>
</tr>
<tr>
<td>2001</td>
<td>1.180</td>
<td>2.694</td>
<td>.076</td>
<td>.113</td>
</tr>
<tr>
<td>2002</td>
<td>2.224</td>
<td>9.010</td>
<td>.062</td>
<td>.103</td>
</tr>
<tr>
<td>2003</td>
<td>1.767</td>
<td>5.458</td>
<td>.066</td>
<td>.125</td>
</tr>
<tr>
<td>2004</td>
<td>2.166</td>
<td>7.088</td>
<td>.073</td>
<td>.127</td>
</tr>
<tr>
<td>2005</td>
<td>2.320</td>
<td>6.744</td>
<td>.090</td>
<td>.184</td>
</tr>
<tr>
<td>2006</td>
<td>1.533</td>
<td>5.403</td>
<td>.071</td>
<td>.102</td>
</tr>
<tr>
<td>2007</td>
<td>1.763</td>
<td>5.394</td>
<td>.071</td>
<td>.123</td>
</tr>
<tr>
<td>2008</td>
<td>.616</td>
<td>1.574</td>
<td>.057</td>
<td>.089</td>
</tr>
</tbody>
</table>

*Notes: The data are averages and standard deviations across agencies.*
Using these independent and dependent variables, Tables 3-3 and 3-4 examine the first causal chain between administrative brokerage and fire alarms. In examining the relationships between administrative brokerage and judicial challenges, several agency-specific variables were included in regression tests to prevent possible biases. Basically, more rulemaking behaviors may have a positive effect on the number of court challenges unquestionably. To account for this possibility, the number of rulemakings is included as a control variable. To prevent possible biases from rule significance, only “significant” regulatory rules are counted using the *Unified Agenda.* Moreover, if agencies have substantial policy resources for their regulatory activities, interest groups may have more incentive to overturn or interrupt agency decisions, because they imply huge changes in the distribution of policy benefits. Thus, it is probable that the agencies with larger budgets and many human resources are likely to face frequent judicial challenges. In this respect, the number of agency employees and the size of budget authorities are included in the regression models as controls. In measuring these variables, one unit of “Total Employees” means one thousand employees and the size of the budget authority is revised to be constant in 2008 dollars (in billions of dollars) to adjust for inflation. In addition, several studies have argued that if agencies have sufficient expertise in administration, they can acquire sufficient political supports from interest groups (Carpenter 2001a, 2010). Given this theoretical assumption, highly professionalized agencies may face only a limited number of judicial challenges. Therefore, the number of professional employees is also included as a control variable; each unit of “Professional Employees” means one thousand professional employees. The descriptive statistics for these variables are suggested at Table 3-2.

---

44 Under Executive Order 12866, “significant” regulatory actions are defined as those that: Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order. The executive order requires the Office of Information and Regulatory Affairs (OIRA) to determine which agency regulatory actions are significant.  
45 Budget authority means the authority provided by law to a federal agency to obligate revenues.  
46 The US Office of Personnel Management classifies professional employees as highly skilled employees who have achieved a level of proficiency in the theoretical and practical application of a body of highly-specialized knowledge for personnel management and payment purposes. The data regarding Total Employees and Professional Employees are retrieved from the Office of Personnel Management (http://www.fedscope.opm.gov/employment.asp). The data are based on the number of employees in August each year. The data of budget authorities and discretionary budgets are from the Government Printing Office (http://www.gpo.gov).
Table 3-2. Descriptive Statistics

<table>
<thead>
<tr>
<th>Variables</th>
<th>Mean</th>
<th>SD</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Discretion and Discretionary Budget</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Discretionary Laws</td>
<td>.14</td>
<td>.38</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>R/L Ratio</td>
<td>.05</td>
<td>.19</td>
<td>0</td>
<td>1.73</td>
</tr>
<tr>
<td>Discretionary Budget (in 2008 billion dollars)</td>
<td>3.82</td>
<td>7.62</td>
<td>-12.58</td>
<td>80.78</td>
</tr>
<tr>
<td><strong>Court Cases, Mass Media Exposure, and Congressional Monitoring</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Courts of Appeals Cases</td>
<td>20.79</td>
<td>50.72</td>
<td>0</td>
<td>422</td>
</tr>
<tr>
<td>Supreme Court Cases</td>
<td>1.08</td>
<td>2.23</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>Number of protest/opposition articles</td>
<td>8.19</td>
<td>13.07</td>
<td>0</td>
<td>93</td>
</tr>
<tr>
<td>Ratio of protest/opposition articles</td>
<td>.083</td>
<td>.200</td>
<td>0</td>
<td>3</td>
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<tr>
<td>Hearings</td>
<td>4.43</td>
<td>5.51</td>
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<td>29</td>
</tr>
<tr>
<td>GAO Reports</td>
<td>5.96</td>
<td>10.68</td>
<td>0</td>
<td>93</td>
</tr>
<tr>
<td><strong>Agency Rulemakings/Regulations</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CFR Pages</td>
<td>1.97</td>
<td>3.62</td>
<td>.17</td>
<td>22.44</td>
</tr>
<tr>
<td>Significant Rules</td>
<td>7.50</td>
<td>10.87</td>
<td>0</td>
<td>63</td>
</tr>
<tr>
<td>Rule Numbers</td>
<td>16.493</td>
<td>19.969</td>
<td>0</td>
<td>132</td>
</tr>
<tr>
<td>Rulemaking Productivity</td>
<td>1.71</td>
<td>1.65</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td><strong>Agency Resources/Capacities and Others</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brokerage Capacity</td>
<td>2.76</td>
<td>9.22</td>
<td>0</td>
<td>75.44</td>
</tr>
<tr>
<td>Brokerage Investment (in 2008 million dollars)</td>
<td>.064</td>
<td>.113</td>
<td>0</td>
<td>.904</td>
</tr>
<tr>
<td>Professional Employees</td>
<td>2.24</td>
<td>2.45</td>
<td>.09</td>
<td>9.82</td>
</tr>
<tr>
<td>Total Employees</td>
<td>9.97</td>
<td>14.29</td>
<td>.92</td>
<td>64.00</td>
</tr>
<tr>
<td>Average Length of Service</td>
<td>16.95</td>
<td>2.10</td>
<td>10.2</td>
<td>20.4</td>
</tr>
<tr>
<td>Budget Authority (in 2008 billion dollars)</td>
<td>56.53</td>
<td>169.40</td>
<td>-1.06</td>
<td>881.59</td>
</tr>
<tr>
<td>EGI Width</td>
<td>.73</td>
<td>.07</td>
<td>.60</td>
<td>.79</td>
</tr>
<tr>
<td>Policy Mood</td>
<td>58.75</td>
<td>2.53</td>
<td>54.94</td>
<td>62.64</td>
</tr>
</tbody>
</table>

*Note:* The Number of Discretionary Laws, Marginal Increase in CFR Pages, R/L Ratio, and EGI Width are measures of year \(t+1\).

Because the dependent variables are skewed, with a lot of the data in the vicinity of the logical lower bound (i.e., zero), zero-inflated negative binomial regressions (constant inflations were assumed) were adopted in the count data to take care of the over-dispersion problem for Models A-1, B-1, C, and D.\textsuperscript{47} To limit possible heteroskedasticity and autocorrelation problems, cluster robust standard errors are reported for the models. Because zero observations for courts of appeals cases are not significantly high, the relationship between administrative brokerage and courts of appeals cases are reexamined by panel negative binomial regressions with fixed effects to check the robustness of regression results (Models A-2 and B-2). In contrast, because there are a large number of zero observations for Supreme Court cases, panel negative binomial regressions are not appropriate for the dependent variable.\textsuperscript{48}

\textsuperscript{47} Because inflate constant is highly significant in all the regressions, it can be said that the method of zero-inflated negative binomial regression is appropriate for the data.

\textsuperscript{48} When doing panel negative binomial regressions, p-values of \(\chi^2\) statistics for the models were significantly greater than .05.
The regression models of Table 3-3 show that the numbers of judicial challenges to agency decisions in the courts of appeals and the Supreme Court tend to decrease as agencies have more brokerage capacity or as their brokerage investment increases. These statistical results were robust even when including several political environment variables such as unified government (1 for unified government and 0 for otherwise) and Republican Congress (1 for Republican majorities in both houses and 0 for otherwise).\(^49\) Even when including these political environment variables, all the regression results of Table 3-3 are consistent at least under 10% significance level. In addition, the regression models were also reexamined by adding time dummies to prevent the possible trend of increasing interest group numbers. Even in this case, if legislators can easily enact administrative laws to restrict agency discretion, it may also increase the incentive for fire alarms. If legislative gridlock is serious, even when legislators notice administrative malfeasances, they can hardly restrict agency behaviors by enacting restrictive administrative laws. In this respect, the political factors to affect legislative gridlock are also included in the regressions as controls. Many legislative politics studies have argued that divided government (e.g., Coleman 1999; Binder 2003) has been the main factors to determine legislative gridlock. Regarding the variable of Unified Government, this study assumes that the government of 107th Congress is a unified government. At the beginning of the 107th Congress, the Republican Party made a unified government. However, it lost one seat (and had 49 seats) in the Senate, as Senator James Jeffords (I-VT) switched from Republican to Independent. Thus, the government of the 107th Congress is closer to a unified government, rather than a divided one. However, all the regression results are robust (especially about Brokerage Capacity), even assuming that the government of the 107th Congress is a divided government. Moreover, because the sample agencies are highly regulatory, legislators would have more incentive to restrict agency discretionary authorities under a Republican Congress.

\(^{49}\) If legislators can easily enact administrative laws to restrict agency discretion, it may also increase the incentive for fire alarms. If legislative gridlock is serious, even when legislators notice administrative malfeasances, they can hardly restrict agency behaviors by enacting restrictive administrative laws. In this respect, the political factors to affect legislative gridlock are also included in the regressions as controls. Many legislative politics studies have argued that divided government (e.g., Coleman 1999; Binder 2003) has been the main factors to determine legislative gridlock. Regarding the variable of Unified Government, this study assumes that the government of 107th Congress is a unified government. At the beginning of the 107th Congress, the Republican Party made a unified government. However, it lost one seat (and had 49 seats) in the Senate, as Senator James Jeffords (I-VT) switched from Republican to Independent. Thus, the government of the 107th Congress is closer to a unified government, rather than a divided one. However, all the regression results are robust (especially about Brokerage Capacity), even assuming that the government of the 107th Congress is a divided government. Moreover, because the sample agencies are highly regulatory, legislators would have more incentive to restrict agency discretionary authorities under a Republican Congress.
the statistical results are robust at least under 10% significance level. Detailed statistical results are omitted to avoid unnecessary redundancy. The regression results of Table 3-3 imply that fire alarms are rarely sounded if agencies have sufficient brokerage capacity, supporting the Proposition 1 that administrative brokerage can decrease fire alarms; conflict expansion can be prevented by administrative brokerage. In other words, when agencies have sufficient brokerage capacity or make efforts to enhance administrative brokerage, interest groups would be less likely to choose policy venues against agency decisions. In contrast, the number of professional employees is not significant or only positively significant, partly contradicting the argument that highly professionalized agencies are likely to have more political supports from interest groups. This result implies that even the agencies with high expertise can suffer from significant fire alarms, because interest groups have highly developed quantitatively and qualitatively and have employed many professionals by themselves.

In addition, Table 3-4 examined the relationship between administrative brokerage and media exposure. Because legislators can notice administrative problems or agency drift through stakeholders’ behaviors against agency decisions, media exposure regarding interest groups’ protests/opposition against agency decisions can play the role of fire alarms. Because of many zero observations and count outcomes, zero-inflated negative binomial regressions are employed for the number of protest/opposition articles. For the ratio of protest/opposition articles, linear panel regressions with fixed effects were employed to limit unobservable agency-specific factors. In addition, cluster robust standard errors are reported for all models to relieve heterogeneity and autocorrelation problems.

### Table 3-4. The Effect of Brokerage Capacity on Mass Media Exposure

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Number of Protest/Opposition Articles</th>
<th>Ratio of Protest/Opposition Articles</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Model E-1</td>
<td>Model E-2</td>
</tr>
<tr>
<td>Brokerage Capacity</td>
<td>-.056* (0.027)</td>
<td>-.002*** (0.000)</td>
</tr>
<tr>
<td>Brokerage Investment</td>
<td>.383*** (.109)</td>
<td>.355** (.126)</td>
</tr>
<tr>
<td>Professional Employees</td>
<td>-.023 (.090)</td>
<td>-.019 (.008)</td>
</tr>
<tr>
<td>Total Employees</td>
<td>-.263* (.357)</td>
<td>-.263* (.387)</td>
</tr>
<tr>
<td>Significant Rules</td>
<td>1.257*** (.357)</td>
<td>1.259** (.387)</td>
</tr>
<tr>
<td>Unified Government</td>
<td>13.685*** (3.487)</td>
<td>23.960*** (1.486)</td>
</tr>
<tr>
<td>Inflated Constant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>270</td>
<td>270</td>
</tr>
</tbody>
</table>

Notes: Cluster Robust Standard Errors in Parentheses,† Significant at .10 level, * Significant at .05 level, **Significant at .01 level, ***Significant at .001 level (two-tailed)

50 Though this result does not mean that agency expertise is nothing for interest groups’ political supports, it implies that agency expertise has limited influence on interest groups’ behaviors.
Models E-1 and F-1 support the statistical results of Table 3-3. As expected, the coefficients of brokerage capacity are negative; agencies with significant brokerage capacity are unlikely to be exposed to mass media reports. As a result, their administrative behaviors would be less noticeable and the agencies can prevent the informational leaks to legislators who determine the width of agency discretion. Though the results of Table 3-4 cannot directly show the relationship between brokerage capacity and information provision to Congress, it indicates at least the negative relationship between brokerage capacity and interest conflicts, which increases legislators’ attention to intervene in agency decision makings. In other words, similar to regression tests of Table 3-3, the regression tests of Table 3-4 show that the agencies with high brokerage capacity can decrease interest conflicts and issue salience that determine congressional incentive to intervene in agency decisions, supporting Proposition 1. However, brokerage investment is insignificant regarding the number of protest/opposition articles (Model E-2), though the coefficient of brokerage investment is negative. This result may be because high brokerage investment does not directly imply high brokerage capacity. There are diverse factors to affect brokerage capacity including monetary investment, leadership, and organizational history. Moreover, the agencies with low brokerage capacity may have high incentive to invest more in administrative brokerage to reduce negative effects of interest conflicts. Because of the reasons, Model E-2 failed to show significant relationship between brokerage investment and media exposure. Moreover, Model F-2 could not reject the hypothesis that all the coefficients of independent variables are zero (i.e., low F-statistic), though the model shows significant relationship between brokerage investment and media exposure. This result may be because of a large number of zero observations for media exposure (77 out of 270 observations).

In summary of this subchapter, the statistical results of Tables 3-3 and 3-4 generally support the hypothesis that interest groups choose bureaucratic venue rather than other policy venues to resolve their conflicts, when agencies have sufficient brokerage capacity. Without brokerage capacity, agencies frequently face significant fire alarms sounded by interest groups in other policy venues through judicial challenges, protests, and opinion campaigns against agency decisions.

**3.1.2. Brokerage Capacity and Administrative Inefficiencies**

Tables 3-3 and 3-4 imply not only that administrative brokerage prevents possible fire alarms, but also that more efficient administration may be possible by agency brokerage; significant judicial challenges tend to drain agency resources for implementing public policies, and frequent opposition to agency decisions deter timely administration (McGarity 1992; Pierce 1995; Verkuil 1995; McGarity 1997; Pierce 1997). These statistical results support the assumption of the administrative broker model (of Chapter 2) that administrative brokerage contributes to limiting negative contingencies denoted by \( c(b) \). It implies that administrative brokerage can decrease administrative inefficiencies derived from interest conflicts. This assumption is very important not only because interest groups (in particular, FL) are likely to choose the agency as the main policy venue due to the additional benefit, but also because removing administrative inefficiencies...

---

51 These regression models were also reexamined by adding time dummies to prevent the possible trend of increasing interest group numbers. Even in this case, the statistical results are robust at least under 10% significance level.

52 According to McGarity (1992, 1419), agencies have to make “extremely resource-intensive and time-consuming” efforts responding to the demands of judicial review.
inefficiencies are also beneficial to legislators. If administrative brokerage cannot contribute to eliminating administrative inefficiencies, Pareto-improving brokerage is never available. In this section, this assumption is reexamined with the data of rulemaking productivity.

There is no completely agreed way to measure administrative inefficiency of an agency in a cross-sectional manner. However, it is clear that the most prominent cause of administrative inefficiencies in recent decades is rulemaking stalemate (Asimow 1994; Pierce 1995). Rulemaking has been one of the most important policymaking methods (Yackee and Yackee 2009; Kerwin and Furlong 2011). According to Pierce (1995, 59), “rulemaking enhances efficiency by allowing an agency to resolve recurring issues of legislative fact once instead of relitigating such issues in numerous cases.” However, federal agencies have suffered from serious rulemaking stalemate which has hampered timely policy implementation for decades (Pierce 1988; Mashaw and Harfst 1990; McGarity 1992). In this respect, Table 3-5 provides regression tests for the relationship between brokerage capacity and rulemaking productivity to examine the assumption that administrative brokerage would contribute to administrative efficiency. In the regressions, the ratio of final rules to proposed rules are used for measuring rulemaking productivity based on the data of the Federal Register. To control possible biases from agency characteristics, the numbers of professional and total employees and budget authority are controlled. Moreover, several variables regarding political environments such as unified government, Republican Congress, policy mood, and honeymoon year are also inserted for Models G-2 and H-2 to ensure the robustness of regression results. To prevent autocorrelation and heteroskedasticity problems, fixed effects regressions with cluster robust standard errors are reported.

All the regression results of Table 3-5 indicate that brokerage capacity positively affects rulemaking productivity. Though these statistical results do not directly support the relationship between brokerage capacity and administrative efficient, they at least imply that agencies with high brokerage capacity can eliminate administrative inefficiencies derived from rulemaking stalemate. Therefore, the regression results of Tables 3-3, 3-4, and 3-5 generally support the assumption that if agencies have more brokerage capacity, agencies can provide higher administrative benefits to policy stakeholders including legislators who are surely delighted with efficient policy implementation.

Because NPRM (notice of proposed rulemaking) is not the only rulemaking method, the ratio is sometimes greater than 1.

Policy mood is a time series measure of public support for government programs on the liberal-conservative continuum. Under high policy mood (i.e., more liberalism), regulatory agencies can be demanded to make new public policies. The data (1st dimension policy mood) are from http://www.unc.edu/~jstimson/. Honeymoon is measured as a dummy variable: the first year of a new presidency. In honeymoon years, it can be inferred that more new public programs, which surely affect rulemaking productivity, can be launched. Moreover, because sample agencies are regulatory, Republican Congress can be negatively affect rulemaking productivity. In addition, as Yackee and Yackee (2009) argued, divided government can negatively affect rulemaking productivity.

This statistical result is consistent with many rulemaking ossification studies, which have argued that significant judicial intervention has been the most important factor to cause rulemaking stalemate. As seen in Table 3-3, brokerage capacity contributes to limiting judicial challenges to agencies. Consequently, the agencies with high brokerage capacity can effectively limit administrative inefficiencies derived from the waste of policy resources or policy implementation delays during administrative litigation.

These regression models were also reexamined by adding time dummies to prevent the possible trend of increasing interest group numbers. Even in this case, the statistical results are robust at least under 10%
Table 3-5. The Effect of Brokerage Capacity on Rulemaking Productivity

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Rulemaking Productivity</th>
<th>Rulemaking Productivity</th>
<th>Rulemaking Productivity</th>
<th>Rulemaking Productivity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Model G-1</td>
<td>Model G-2</td>
<td>Model H-1</td>
<td>Model H-2</td>
</tr>
<tr>
<td>Brokerage Capacity</td>
<td>.026*</td>
<td>.029*</td>
<td>2.658**</td>
<td>2.964*</td>
</tr>
<tr>
<td></td>
<td>(.010)</td>
<td>(.012)</td>
<td>(.844)</td>
<td>(.117)</td>
</tr>
<tr>
<td>Brokerage Investment</td>
<td></td>
<td></td>
<td>-2.96**</td>
<td>-0.63</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(.092)</td>
<td>(.173)</td>
</tr>
<tr>
<td>Professional Employees</td>
<td>-2.276**</td>
<td>-.054</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(.092)</td>
<td>(.175)</td>
<td>(.063)</td>
<td>(.060)</td>
</tr>
<tr>
<td>Total Employees</td>
<td>.007</td>
<td>-.067</td>
<td>.007</td>
<td>-.064</td>
</tr>
<tr>
<td></td>
<td>(.061)</td>
<td>(.060)</td>
<td>(.063)</td>
<td>(.060)</td>
</tr>
<tr>
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<td>-.000</td>
<td>.001</td>
</tr>
<tr>
<td></td>
<td>(.001)</td>
<td>(.001)</td>
<td>(.001)</td>
<td>(.001)</td>
</tr>
<tr>
<td>Unified Government</td>
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<td></td>
<td>.207</td>
<td>.108</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(.273)</td>
<td>(.286)</td>
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<td>Republican Congress</td>
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</tr>
<tr>
<td></td>
<td>(.343)</td>
<td>(.343)</td>
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<td></td>
</tr>
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<td>Honeymoon</td>
<td>-.018</td>
<td>.014</td>
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</tr>
<tr>
<td></td>
<td>(.352)</td>
<td>(.350)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policy Mood</td>
<td>-.124</td>
<td>-1.19</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(.080)</td>
<td>(.079)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>2.23***</td>
<td>9.80†</td>
<td>2.158***</td>
<td>9.304†</td>
</tr>
<tr>
<td></td>
<td>(.469)</td>
<td>(4.816)</td>
<td>(.506)</td>
<td>(4.725)</td>
</tr>
<tr>
<td>Prob.&gt; F</td>
<td>.0006</td>
<td>.0001</td>
<td>.0022</td>
<td>.0014</td>
</tr>
<tr>
<td>N</td>
<td>270</td>
<td>270</td>
<td>270</td>
<td>270</td>
</tr>
</tbody>
</table>

Notes: Cluster Robust Standard Errors in Parentheses, † Significant at .10 level, * Significant at .05 level, **Significant at .01 level, ***Significant at .001 level (two-tailed)

3.2. Fire Alarms and Congressional Incentive to Monitor Agencies

In this section, the second causal relationship in the two stage causal chain will be examined. Many congressional dominance studies have argued that fire alarms alert legislators of administrative misbehaviors, increasing congressional incentives to monitor agencies. The main propositions suggested in Chapter 2 are based on this argument that LIC is dependent on IIC. However, congressional dominance studies have rarely examined this assumption empirically (in particular with statistical data). Thus, as a preliminary step for checking Proposition 2, it is necessary to examine the relationship between fire alarms and congressional incentive to monitor agencies (i.e., congressional incentive to collect information about the alleged agencies).

For the dependent variable, congressional incentive to monitor agencies, this study used two measures: the numbers of congressional hearings and the GAO reports. When fire alarms can alert legislators of agency misbehaviors, legislators tend to gather more administrative information to enact appropriate administrative laws.\(^57\) In other words, when legislators face significant fire alarms and have sufficient incentives to control agencies, they may hold more congressional hearings on the challenged agencies or ask the GAO to investigate the administrative behaviors of the agencies. In this respect, the congressional incentive to monitor agencies is measured by the number of congressional hearings in which each federal agency

\(^{57}\) For example, Epstein and O’Halloran (1995) argued that the information from fire alarms is limited, which implies that legislators should collect more information by themselves to control agencies appropriately. Aberbach (1990) also showed that legislators have held more hearings for control agencies, in spite of increasing fire alarms.
participated as a witness and the number of GAO reports on specific agencies. The independent variable (i.e., fire alarms) are measured by the numbers of judicial challenges to agency actions and NYT articles about interest groups protest/opposition against agency decisions, as in Tables 3-3 and 3-4.

This study assumes that brokerage capacity affects fire alarms, and then fire alarms cause congressional attention to administrative problems. However, it is also possible that agency attitudes to the intervention of political principals (e.g., congressional oversight and judicial review) or the contentiousness of what an agency does can affect both court cases and legislative oversight. Therefore, it is necessary to control these internal/external factors that can bring about judicial challenges and congressional oversight simultaneously. To control the contentiousness, the ratio of the number of NYT articles about interest groups’ protests and opposition against agency actions to the number of NYT articles to cite agency behaviors is included. Moreover, the length of service is also inserted to control agency attitude to the intervention of political principals; if bureaucrats in an agency are frequently changed, they may be less responsible for their works and, as a result, less careful about the intervention of political principals. These two controls were included as a control for Models I-1, I-2, J-1, and J-2 (See Footnote #59 for the explanation about other controls). Because the numbers of congressional hearings and GAO reports are count variables and the dependent variables are skewed with many zero observations, zero-inflated negative binomial regressions were employed and cluster robust standard errors are reported, similar to the regression tests in the previous subchapter.

---

58 When legislators want to control agency behaviors, they can use not only oversight hearings, but also different types of hearings to collect administrative information. When considering only oversight hearings, it can underestimate congressional incentive to monitor agencies. In this respect, the number of congressional hearings in which each federal agency participated as a witness rather than the number of oversight hearings on agencies was used to measure congressional incentive to collect information about the alleged agencies.

59 Because sizeable agencies have more administrative work to do, the number of congressional hearings is certainly dependent on the agency size, regardless of fire alarms. In this respect, the budget size and amount of regulation (i.e., the number of significant rules) should be treated as a control variable. Similarly, if agencies are weakly professionalized, legislators may have little incentive to collect administrative information to control agency behaviors, even when there are significant fire alarms. Therefore, bureaucratic professionalism can positively affect the congressional incentive to investigate agency behaviors through hearings and GAO reports. From this viewpoint, the number of agency professional employees is also included as a control. In addition, internal factors of Congress should also be controlled. Even when legislators can collect administrative information, they cannot control agencies only with the information; they have to pass administrative laws to restrict agency behaviors. In this respect, if legislators cannot pass administrative laws due to internal conflicts in Congress, they may have less incentive to collect administrative information. From this perspective, the main variables of legislative gridlock, Unified Government is also included. Moreover, since the sample agencies are regulatory, it is probable that the congressional incentive to control agencies may be higher under Republican Congresses. Thus, a dummy variable of Republican Congress is also inserted as a control. In contrast, Congress may have less incentive to intervene in agency action in honeymoon years. Thus, a dummy variable of honeymoon year is also included.

60 However, even when excluding these controls (i.e., the ratio of protest/opposition articles and the length of service), the regression results of Table 3-6 are consistent at least under 5% significance level.

61 Because inflate constants are highly significant, it can be inferred that the method of zero-inflated negative binomial regressions is appropriate for the data.
The models of Table 3-6 show that fire alarms are likely to produce congressional incentive to control agency behaviors. Although there are some variances in terms of statistical significance that depend on the independent variables (i.e., courts of appeals cases are more significant regarding hearings and Supreme Court cases are more significant regarding GAO reports), it is generally clear that fire alarms tend to provoke congressional monitoring of the “accused” agencies. As interest groups initiate more judicial challenges (to specific agencies) or interest groups’ adverse reactions to agency decision are exposed to mass media more frequently, legislators are more likely to hold hearings about the agencies and ask GAO to prepare objective reports on agency decisions. It does not imply that legislators pay attention to all the administrative issues challenged in the courts. Rather, it means that the agencies with more judicial challenges or interest group opposition are likely to be scrutinized by Congress, because these political phenomena tend to imply serious administrative malfeasance. In sum, it can be inferred that fire alarms provide legislators with significant incentive to control agencies. Therefore, given the statistical results of Tables 3-3 and 3-4 that support the relationship between brokerage capacity and IIC, Table 3-6 about the linkage between IIC and LIC, implies that brokerage capacity may contribute to reducing congressional incentive to monitor agency behaviors.

### Table 3-6. The Effect of Interest Conflicts on Congressional Attention to Agency Behaviors

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Hearings</th>
<th>GAO Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Model I-1</td>
<td>Model I-2</td>
</tr>
<tr>
<td>Courts of Appeals Cases</td>
<td>.044**</td>
<td>.093*</td>
</tr>
<tr>
<td></td>
<td>(.001)</td>
<td>(.044)</td>
</tr>
<tr>
<td>Supreme Court Cases</td>
<td>.112†</td>
<td>.134*</td>
</tr>
<tr>
<td></td>
<td>(.058)</td>
<td>(.056)</td>
</tr>
<tr>
<td>Protest/Opposition</td>
<td>.019*</td>
<td>.011</td>
</tr>
<tr>
<td></td>
<td>(.009)</td>
<td>(.009)</td>
</tr>
<tr>
<td>Professional Employees</td>
<td>.196†</td>
<td>.250**</td>
</tr>
<tr>
<td></td>
<td>(.010)</td>
<td>(.191)</td>
</tr>
<tr>
<td>Significant Rules</td>
<td>-9.65***</td>
<td>-9.03**</td>
</tr>
<tr>
<td></td>
<td>(-.249)</td>
<td>(-.279)</td>
</tr>
<tr>
<td>Budget Authority</td>
<td>.267†</td>
<td>.224</td>
</tr>
<tr>
<td></td>
<td>(.152)</td>
<td>(.156)</td>
</tr>
<tr>
<td>Unified Government</td>
<td>-1.26</td>
<td>-0.97</td>
</tr>
<tr>
<td>Republican Congress</td>
<td>.042†</td>
<td>.044†</td>
</tr>
<tr>
<td>Honeymoon</td>
<td>(.043)</td>
<td>(.739)</td>
</tr>
<tr>
<td>Service</td>
<td>.685***</td>
<td>.665***</td>
</tr>
<tr>
<td></td>
<td>(.796)</td>
<td>(.739)</td>
</tr>
<tr>
<td>Inflated Constant</td>
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<td>(.405)</td>
</tr>
<tr>
<td>Prob.&gt;χ²</td>
<td>.0000</td>
<td>.0000</td>
</tr>
<tr>
<td>Log pseudolikelihood</td>
<td>-662.90</td>
<td>-661.90</td>
</tr>
<tr>
<td>Nonzero N</td>
<td>204</td>
<td>204</td>
</tr>
<tr>
<td>N</td>
<td>270</td>
<td>270</td>
</tr>
</tbody>
</table>

Notes: Cluster Robust Standard Errors in Parentheses, Inflation model: logit, † Significant at .10 level, * Significant at .05 level, **Significant at .01 level, ***Significant at .001 level (two-tailed)
3.3. Brokerage Capacity and Authority Delegation

3.3.1. Brokerage and Statutory Discretion
In this section, the relationship between brokerage capacity (or fire alarms) and discretionary authority will be tested to examine Proposition 2. To check the robustness of the relationship, several regression tests with different measures of agency discretion will be provided. Though many studies have suggested different measures of discretion, the measure suggested by Epstein and O’Halloran (1999b) (“EO Measure,” hereafter) is the most elaborated and has been widely used by many other delegation studies (e.g., Thomson et al. 2007; Ainsworth and Harward 2009). They set up detailed standards for executive delegation and categories of constraints in a law.\(^{62}\) Then, they measured the discretion level of a public law as:

\[
EO \text{ Measure} = \frac{\text{Provisions with Executive Deligation}}{\text{Total Provisions}} \cdot \left(1 - \frac{\text{Categories of Constraints in a Law}}{\text{Total Categories of Constraints}}\right)
\]

Because this dissertation is about agency brokerage capacity and the unit of analysis is an agency, the EO Measure cannot be used as it is in this study. Instead, the number of discretionary laws based on the EO Measure is counted to measure agency discretion.\(^{63}\) Since a high value of the EO Measure implies more discretion, only the public laws whose EO Measure scores are greater than average are assumed to be discretionary laws. To calculate the EO Measure scores, this study uses the Congressional Research Service (CRS) bill summaries provided by the Library of Congress.\(^{64}\) Moreover, to filter out minor laws, only public laws that have more than ten provisions are included in the dataset.\(^{65}\)

One other frequently used measure of discretion is the length (i.e., number of words) of legislation, as suggested by Huber and Shipan (2002). They argued that longer statutes leave

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\(^{62}\) See Epstein and O’Halloran (1999b, 275-284) for detailed explanation. For example, the provisions about delegation in new programs, decision-making criteria, issuing subpoenas, bringing suits, issuing waivers, and entering into contracts are those with executive delegation. The fourteen categories of constraints are appointment power limits, time limits, spending limits, legislative action required, executive action required, legislative veto, reporting requirements, consultation requirements, public hearings, appeals procedures, rulemaking requirements, exemptions, compensations, and direct oversight.

\(^{63}\) To figure out which public laws affect specific agencies’ jurisdictions, this dissertation uses a chronological list of the public laws provided by the Statutes at Large and the parallel table of authorities and rules provided by CFR. The chronological list of public laws provides information about which US Code sections are affected by specific public law provisions. Then, using the parallel table between US Code and CFR, it can be inferred which agencies are related with specific public laws.

\(^{64}\) Epstein and O’Halloran (1999b) use the Congressional Quarterly Almanac (CQA) to analyze detailed provisions of public laws. However, the CQA provides bill summaries only about major laws. Thus, this study uses the CRS summaries provided by the Library of Congress, rather than CQA. Similar to Epstein and O’Halloran (1999b), one sentence of the CRS bill summaries is assumed to be a provision. Moreover, each title (or subtitle) of a public law is assumed to be a public law, if the title is independent and contains significant sections. The CRS summaries are also used in calculating R/L Ratio.

\(^{65}\) Epstein and O’Halloran (1999b) use the list of major public laws suggested by Mayhew (2005). However, in this case, the public laws targeted some agencies whose works are highly salient could be overemphasized. To correct this problem, this dissertation filters out minor laws, depending on the length of public laws. From 2000 to 2009, there were thirty-eight discretionary laws that have more than ten provisions.
little room for agencies to behave discretionally. Their measure (henceforth, the “HS Measure,”) may be sufficiently valid when comparing discretionary authorities of similar agencies. However, it is necessary to consider agency characteristics in using the HS Measure for cross-sectional or panel studies, because the length of legislation is likely to be affected by agency characteristics. In this respect, Meier’s (1980) suggestion to measure agency autonomy is important: He recommended “the ratio of the number of pages of rules the bureau issues to the number of pages of substantive legislation that applies to the agency” (“R/L Ratio,” hereafter) as an indicator of agency legislative autonomy. Following his suggestion, the ratio of the length of agency regulation to the length of legislation is used as a measure of agency discretion. To prevent possible biases in measuring the length of legislation, only the provisions that clearly require agencies to do some administrative behaviors are counted to measure the length of legislation. Moreover, the length of regulation is measured by marginal increase in CFR pages. In calculating the R/L ratio, however, there are some mathematical problems: The denominators (i.e., the length of legislation) are frequently zero and the numerators (i.e., the length of regulation) are sometimes negative. To eliminate these problems, the R/L Ratio is calculated as follows:

\[
\frac{\text{R/L Ratio}}{\text{Max (Marginal Increase in CFR Pages, 0)}} = \frac{\text{The Length of Regulation}}{\text{The Length of Legislation}} = \frac{\text{Sum of Restrictive Provisions} + 1}{\text{Sum of Restrictive Provisions} + 1}
\]

Because there may be some time lapse between fire alarms and legislative action to restrict discretionary authorities, both measures of discretionary authorities (i.e., number of discretionary laws and R/L Ratio) are based on the data of year \(t+1\), given brokerage capacity data of year \(t\).

---

\[\text{Huber and Shipan (2002) use their measure to compare similar agencies. They compared Medicaid managed care legislation in states in the US and labor-related legislation in countries of the International Labour Organization.} \]
Table 3-7. Statutory Discretion of Federal Agencies

<table>
<thead>
<tr>
<th>Federal Agencies</th>
<th>Number of Discretionary Laws</th>
<th>R/L Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Marketing Service</td>
<td>.10</td>
<td>.022</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>.10</td>
<td>.028</td>
</tr>
<tr>
<td>Bureau of Alcohol, Tobacco, Firearms, and Explosives</td>
<td>.00</td>
<td>.002</td>
</tr>
<tr>
<td>Bureau of Indian Affairs</td>
<td>.10</td>
<td>.014</td>
</tr>
<tr>
<td>Bureau of Land Management</td>
<td>.40</td>
<td>.009</td>
</tr>
<tr>
<td>Centers for Medicare and Medicaid Services</td>
<td>.00</td>
<td>.046</td>
</tr>
<tr>
<td>Environmental Protection Agency</td>
<td>.40</td>
<td>.394</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>.20</td>
<td>.081</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>.20</td>
<td>.003</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>.10</td>
<td>.172</td>
</tr>
<tr>
<td>Federal Communications Commission</td>
<td>.00</td>
<td>.031</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>.50</td>
<td>.012</td>
</tr>
<tr>
<td>Federal Emergency Management Agency</td>
<td>.20</td>
<td>.004</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>.00</td>
<td>.007</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>.10</td>
<td>.010</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>.00</td>
<td>.015</td>
</tr>
<tr>
<td>Forest Service</td>
<td>.70</td>
<td>.000</td>
</tr>
<tr>
<td>Fish and Wildlife Service</td>
<td>.00</td>
<td>.084</td>
</tr>
<tr>
<td>Minerals Management Service</td>
<td>.10</td>
<td>.097</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>.10</td>
<td>.016</td>
</tr>
<tr>
<td>National Park Service</td>
<td>.30</td>
<td>.003</td>
</tr>
<tr>
<td>Nuclear Regulatory Commission</td>
<td>.10</td>
<td>.015</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>.00</td>
<td>.023</td>
</tr>
<tr>
<td>Patent and Trademark Office</td>
<td>.00</td>
<td>.014</td>
</tr>
<tr>
<td>Small Business Administration</td>
<td>.10</td>
<td>.014</td>
</tr>
<tr>
<td>Securities and Exchange Commission</td>
<td>.00</td>
<td>.205</td>
</tr>
<tr>
<td>Social Security Administration</td>
<td>.00</td>
<td>.026</td>
</tr>
</tbody>
</table>

Notes: The data in this appendix are averages between 1999 and 2008.

Prior to examining the relationship between brokerage capacity and statutory discretion, the relationship between fire alarms and statutory discretion will be examined. This study argues that brokerage capacity does not directly affect discretion. Rather, there are two causal chains; brokerage capacity $\rightarrow$ fire alarms $\rightarrow$ agency discretion. Regarding the second chain, in the previous section, Table 3-6 already showed that if fire alarms about specific agencies are sufficiently loud, legislators tend to have more intention to do congressional oversight on the agencies. From the regressions, it can be inferred that legislators “may” have more administrative information to control agencies, thereby decreasing agency discretion. This inference was briefly examined by regression tests in Table 3-8; the number of court of appeals cases was used as the proxy of fire alarms. To examine the relationship, zero-inflated negative binomial regressions were employed and cluster robust standard errors were reported for Model K. In contrast, for Model L, fixed effects regressions with cluster robust standard errors were employed to mitigate heteroskedasticity and autocorrelation problems.

---

67 In the regressions of Table 3-8, agency regulation size may affect both judicial challenges and statutory discretion. To limit the problem, the numbers of CFR pages and the number of agency rules based on the Unified Agenda are included. Because these variables are closely related with agency budget size, budget authority was not inserted in the regressions.
Table 3-8. The Effect of Fire Alarms on Statutory Discretion

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Number of Discretionary Laws</th>
<th>R/L Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Model K</td>
<td>Model L</td>
</tr>
<tr>
<td>Court of Appeals Cases</td>
<td>-.032*</td>
<td>-.490***</td>
</tr>
<tr>
<td></td>
<td>(.015)</td>
<td>(.127)</td>
</tr>
<tr>
<td>Professional Employees</td>
<td>.218**</td>
<td>30.907</td>
</tr>
<tr>
<td></td>
<td>(.066)</td>
<td>(33.751)</td>
</tr>
<tr>
<td>Unified Government</td>
<td>.176</td>
<td>-.967</td>
</tr>
<tr>
<td>(t+1)</td>
<td>(.284)</td>
<td>(20.808)</td>
</tr>
<tr>
<td>Honeymoon</td>
<td>-14.224***</td>
<td>22.211</td>
</tr>
<tr>
<td>(t+1)</td>
<td>(.329)</td>
<td>(15.850)</td>
</tr>
<tr>
<td>Republican Congress</td>
<td>.760</td>
<td>-36.709†</td>
</tr>
<tr>
<td>(t+1)</td>
<td>(.589)</td>
<td>(18.526)</td>
</tr>
<tr>
<td>Total Employees</td>
<td>.025</td>
<td>-47.204*</td>
</tr>
<tr>
<td></td>
<td>(.017)</td>
<td>(18.690)</td>
</tr>
<tr>
<td>CFR pages</td>
<td>.000*</td>
<td>-.066†</td>
</tr>
<tr>
<td></td>
<td>(.000)</td>
<td>(.036)</td>
</tr>
<tr>
<td>Rule Numbers</td>
<td>-.020†</td>
<td>-2.286†</td>
</tr>
<tr>
<td></td>
<td>(.012)</td>
<td>(1.283)</td>
</tr>
<tr>
<td>NYT Articles</td>
<td>.000</td>
<td>.559***</td>
</tr>
<tr>
<td></td>
<td>(.001)</td>
<td>(0.86)</td>
</tr>
<tr>
<td>Constant</td>
<td>-3.221***</td>
<td>591.790**</td>
</tr>
<tr>
<td></td>
<td>(.626)</td>
<td>(209.227)</td>
</tr>
<tr>
<td>Inflate Constant</td>
<td>-20.756***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(.885)</td>
<td></td>
</tr>
<tr>
<td>Prob.&gt;χ²</td>
<td>.0000</td>
<td></td>
</tr>
<tr>
<td>Prob.&gt;F</td>
<td>.0000</td>
<td></td>
</tr>
<tr>
<td>Log pseudolikelihood</td>
<td>-97.140</td>
<td></td>
</tr>
<tr>
<td>Nonzero N</td>
<td>35</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>270</td>
<td>270</td>
</tr>
</tbody>
</table>

Notes: Cluster Robust Standard Errors in Parentheses, † Significant at .10 level, * Significant at .05 level, **Significant at .01 level, ***Significant at .001 level (two-tailed)

As expected, Table 3-8 generally supports the assumption that fire alarms negatively affect congressional delegation to agencies. Based on the regression results, the relationship between brokerage capacity and statutory discretion will be examined in Table 3-9. Because the number of discretionary laws is skewed, with a lot of the data in the vicinity of the logical lower bound (i.e., zero), zero-inflated negative binomial regressions were employed and cluster robust standard errors were reported for Models M-1 and M-2. In contrast, for Models N-1 and N-2, fixed effect regressions with cluster robust standard errors were employed to prevent heteroskedasticity and autocorrelation problems.68

68 To prevent biased results, several variables related to agency characteristics and political environments are also included, as in the previous regression tests. Regarding agency discretion, two factors have been highlighted by many bureaucratic politics studies; agency expertise and divided government. Many bureaucratic dominance studies have emphasized bureaucratic expertise as the most important factor to determine agency discretion (Rourke 1984; Meier 1987; Eisner and Meier 1990; Aghion and Tirole 1997; Worsham et al. 1997; Gailmard and Patty 2007). In a slightly different tradition, several legislative-bureaucratic politics studies have argued that divided government has significantly affected agency discretion, increasing legislators’ incentive to control agencies (Epstein and O’Halloran 1996, 1999b; Huber and Shipan 2002). Therefore, “Professional Employees” and “Unified Government” are included in the regressions of Table 3-8. Several other variables regarding legislators’ incentive to control agency behaviors are also inserted in the regressions. If issue salience is high or legislators have more concerns
Table 3-9. The Effect of Administrative Brokerage on Statutory Discretion

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Number of Discretionary Laws</th>
<th>R/L Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Model M-1</td>
<td>Model M-2</td>
</tr>
<tr>
<td>Brokerage Capacity</td>
<td>.057*</td>
<td>2.735**</td>
</tr>
<tr>
<td></td>
<td>(.026)</td>
<td>(.868)</td>
</tr>
<tr>
<td>Brokerage Investment</td>
<td>.058</td>
<td>.159***</td>
</tr>
<tr>
<td></td>
<td>(.166)</td>
<td>(.059)</td>
</tr>
<tr>
<td>Professional Employees</td>
<td>.111</td>
<td>.203</td>
</tr>
<tr>
<td>(t+1)</td>
<td>(.351)</td>
<td>(.364)</td>
</tr>
<tr>
<td>Unified Government (t+1)</td>
<td>.147</td>
<td>.361</td>
</tr>
<tr>
<td></td>
<td>(.438)</td>
<td>(.415)</td>
</tr>
<tr>
<td>Republican Congress</td>
<td>-14.159***</td>
<td>-15.643***</td>
</tr>
<tr>
<td>(t+1)</td>
<td>(-279)</td>
<td>(-298)</td>
</tr>
<tr>
<td>Significant Rules</td>
<td>.039†</td>
<td>.027</td>
</tr>
<tr>
<td>Total Employee</td>
<td>(.021)</td>
<td>(.020)</td>
</tr>
<tr>
<td></td>
<td>.000</td>
<td>.002</td>
</tr>
<tr>
<td></td>
<td>(.014)</td>
<td>(.012)</td>
</tr>
<tr>
<td>Budget Authority</td>
<td>-0.007**</td>
<td>-0.006***</td>
</tr>
<tr>
<td></td>
<td>(.002)</td>
<td>(.002)</td>
</tr>
<tr>
<td>Protest/Opposition</td>
<td>.006</td>
<td>-0.005</td>
</tr>
<tr>
<td></td>
<td>(.013)</td>
<td>(.012)</td>
</tr>
<tr>
<td>News Articles</td>
<td>-.012</td>
<td>-0.008</td>
</tr>
<tr>
<td></td>
<td>(.015)</td>
<td>(.014)</td>
</tr>
<tr>
<td>GAO Reports</td>
<td>-2.584***</td>
<td>-3.092***</td>
</tr>
<tr>
<td></td>
<td>(.538)</td>
<td>(.543)</td>
</tr>
<tr>
<td>Constant</td>
<td>-23.421***</td>
<td>-24.940***</td>
</tr>
<tr>
<td></td>
<td>(.664)</td>
<td>(1.260)</td>
</tr>
<tr>
<td>Inflate Constant</td>
<td>.0000</td>
<td>.0000</td>
</tr>
<tr>
<td>Prob.&gt;χ²</td>
<td>.0000</td>
<td>.0000</td>
</tr>
<tr>
<td>Prob.&gt;F</td>
<td>.0000</td>
<td>.0000</td>
</tr>
<tr>
<td>Log pseudolikelihood</td>
<td>-95.755</td>
<td>-95.050</td>
</tr>
<tr>
<td>Nonzero N</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>N</td>
<td>270</td>
<td>270</td>
</tr>
</tbody>
</table>

Notes: Cluster Robust Standard Errors in Parentheses, † Significant at .10 level, * Significant at .05 level, **Significant at .01 level, ***Significant at .001 level (two-tailed)

From Table 3-9, all the models show that brokerage capacity and investment positively affects agency discretionary authorities. Relative to these variables, “Professional Employees” about administrative behaviors, Congress would be reluctant to delegate significant discretion (Ringquist et al. 2003). Thus, the numbers of GAO reports and NYT articles about interest groups’ protest/opposition to agency decisions are included. Likewise, a dummy variable of honeymoon is also included because legislators would be less likely to enact restrictive laws. Moreover, unquestionably, the bureaucratic drift of the agencies with higher policy resources or greater regulations may be more detrimental to legislators; large amount of human and monetary resources can be wasted depending on agency size. Therefore, legislators may have more incentive to control sizeable agencies to limit unfavorable policy consequences from agency drift. In this respect, significant rules, budget authority, and total employees are also included in regressions. In addition, because sample agencies are highly regulatory, conservative legislators are more likely to control the regulatory agencies. In this respect, a dummy variable of “Republican Congress” is also included. All these political environment variables of Table 3-8 (Unified Government, Republican Congress, and Honeymoon) are measures of year t+1.

69 When agencies have broad discretion, it would provide higher incentive for interest groups to participate in agency decision-making processes. It implies that endogeneity problem may be possible for the regression tests in Table 3-9. However, the dependent variables are based on the data of year t+1.
is only weakly significant; only Model M-2 indicates that agency professionalism positively affects agency discretion. In other words, Table 3-9 indicate that administrative brokerage is an important factor for agencies to maintain its discretionary authority and that the agencies without sufficient brokerage capacity would have only limited discretion even when they have significant expertise, supporting Proposition 2.\textsuperscript{70} However, this result does not imply that agency expertise is not meaningful. Rather, agency expertise would positively affect the effect of administrative brokerage on agency discretion. In Chapter 2, administrative broker model assumes that \( A \) is capable of understanding policy environments and alternatives perfectly relative to \( L \) and that \( A \) can maintain information asymmetry based on its brokerage capacity. However, if information asymmetry is not significant, even when \( A \) has high brokerage capacity, \( L \) would be reluctant to delegate broad discretion. In other words, agencies with high brokerage capacity can acquire greater discretion as their expertise is more significant. Table 3-10 examines this inference with interactive variables of brokerage capacity/investment and professional employees.

The models of Table 3-10 are basically similar to those of Table 3-9 except the interactive variable between Brokerage Capacity and Professional Employees. The regression results indicate that the interactive variable of brokerage capacity/brokerage investment and professional employees positively affects the number of discretionary laws; administrative brokerage and expertise increase agency discretion in a synergistic manner.\textsuperscript{71} As many bureaucratic politics studies have argued, the main reason of congressional delegation is agency expertise. Even when agencies are capable brokers in policy networks, if they do not have sufficient expertise to understand policy environments and alternatives, the effect of brokerage capacity on discretion would be much weaker.\textsuperscript{72}

given brokerage capacity data of year \( t \). Thus, endogeneity problem may be insignificant, because it is impossible that the discretion increase at \( t+1 \) affects brokerage capacity at \( t \). Moreover, the regression results of Table 3-9 are consistent at least under 10\% significance level, even when including time dummies to prevent possible time trend effects.

\textsuperscript{70} An unexpected result is that “Unified Government” is statistically insignificant. This result might be caused because of high political uncertainties in recent decades. Since the 1980s, divided government has been prevalent. Given the high political uncertainties, legislators may have high incentive to insulate agency from future Congresses (e.g., Moe 1989, 1990). Thus, even under unified government, legislators may have high incentive to control agencies with passing strictly restrictive administrative laws.

\textsuperscript{71} To enhance statistical robustness, the models of Table 3-10 were reexamined with measuring agency expertise with average general schedule (GS) rating for individual agencies instead of the number of professional employees. Because professional employees tend to have high GS ratings, this measure can also measure agency expertise. All the statistical results of Table 3-10 were consistent even in this case.

\textsuperscript{72} When inserting Brokerage Capacity additionally in Models O-1 and O-2, both Brokerage Capacity and the Brokerage Capacity \( \times \) Professional Employees were insignificant. However, considering other statistical results of Table 3-10, it is not irrelevant to conclude that there would be a positive interactive effect between Brokerage Capacity and Professional Employees.
Table 3.10. The Effect of the Interaction between Administrative Brokerage and Expertise

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Number of Discretionary Laws</th>
<th>R/L Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Model O-1</td>
<td>Model O-2</td>
</tr>
<tr>
<td>Brokerage Capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brokerage Capacity×</td>
<td>.004*</td>
<td>.369***</td>
</tr>
<tr>
<td>Professional Employees</td>
<td>(.002)</td>
<td>(.099)</td>
</tr>
<tr>
<td>Brokerage Investment×</td>
<td>.784*</td>
<td></td>
</tr>
<tr>
<td>Professional Employees</td>
<td>(.347)</td>
<td></td>
</tr>
<tr>
<td>Professional Employees (t+1)</td>
<td>.106</td>
<td>19.635</td>
</tr>
<tr>
<td></td>
<td>(.107)</td>
<td>(35.083)</td>
</tr>
<tr>
<td></td>
<td>(.334)</td>
<td>(25.369)</td>
</tr>
<tr>
<td>Republican Congress (t+1)</td>
<td>.270</td>
<td>-25.139</td>
</tr>
<tr>
<td>Significant Rules</td>
<td>.030</td>
<td>-1.926</td>
</tr>
<tr>
<td></td>
<td>(.023)</td>
<td>(.202)</td>
</tr>
<tr>
<td>Total Employees</td>
<td>(.155)</td>
<td>(.12)</td>
</tr>
<tr>
<td></td>
<td>(.015)</td>
<td>(.12)</td>
</tr>
<tr>
<td>Budget Authority</td>
<td>-0.007**</td>
<td>-0.007**</td>
</tr>
<tr>
<td></td>
<td>(.002)</td>
<td>(.002)</td>
</tr>
<tr>
<td>Protest/Opposition</td>
<td>0.03</td>
<td>5.799*</td>
</tr>
<tr>
<td></td>
<td>(.013)</td>
<td>(.012)</td>
</tr>
<tr>
<td>News Articles</td>
<td>-0.012</td>
<td>3.374***</td>
</tr>
<tr>
<td></td>
<td>(.016)</td>
<td>(.014)</td>
</tr>
<tr>
<td>GAO Reports</td>
<td>-2.710***</td>
<td>-2.791***</td>
</tr>
<tr>
<td></td>
<td>(.536)</td>
<td>(.508)</td>
</tr>
<tr>
<td>Inflate Constant</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-25.437***</td>
<td>-25.805***</td>
</tr>
<tr>
<td>Prob.&gt;</td>
<td>χ²^2</td>
<td>.786</td>
</tr>
<tr>
<td>Prob.&gt;</td>
<td>F</td>
<td>.0000</td>
</tr>
<tr>
<td>Log pseudolikelihood</td>
<td>-97.411</td>
<td>-95.050</td>
</tr>
<tr>
<td>Nonzero N</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>N</td>
<td>270</td>
<td>270</td>
</tr>
</tbody>
</table>

Notes: Cluster Robust Standard Errors in Parentheses, † Significant at .10 level, * Significant at .05 level, **Significant at .01 level, ***Significant at .001 level (two-tailed)

3.3.2. Brokerage Capacity and Discretionary Budget Distribution

The administrative broker model predicts that legislators prefer administrative brokerage to tight controls followed by fire alarms, because the agency of high brokerage capacity can yield Pareto-improving brokerage. Given this theoretical expectation, legislators would be likely to authorize more programs and provide more resources to agencies with high brokerage capacity. To check this theoretical inference, the causal relationship between brokerage and annual budget appropriations is examined with another regression test. If the relationship is positive, it implies that legislators are likely to authorize more programs and provide more resource to the agencies with high brokerage capacity. The amounts of annual budget appropriations are measured by discretionary budget authorities whose amounts are determined by annual appropriation bills, not by mandated by existing law. The data on discretionary budgets are revised to be constant in 2008 dollars (in millions of dollars). 73 In the regression tests, brokerage investment was not used.

73 Because legislators do not have significant information about administrative performance and political conflicts prevent remarkable changes in budget distribution, budgets tend to increase only incrementally
as an independent variable, because of possible endogeneity problem.\textsuperscript{74} Fixed effects panel regressions with cluster robust standard errors are employed to prevent heteroskedasticity and autocorrelation problems.

### Table 3-11. Brokerage Capacity and Discretionary Budget Distribution

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Discretionary Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Model Q-1</td>
</tr>
<tr>
<td>Brokerage Capacity</td>
<td>.024**</td>
</tr>
<tr>
<td></td>
<td>(.008)</td>
</tr>
<tr>
<td>Brokerage Capacity×</td>
<td></td>
</tr>
<tr>
<td>Professional Employees</td>
<td></td>
</tr>
<tr>
<td></td>
<td>-.069</td>
</tr>
<tr>
<td></td>
<td>(.133)</td>
</tr>
<tr>
<td>Professional Employees</td>
<td></td>
</tr>
<tr>
<td></td>
<td>-.000*</td>
</tr>
<tr>
<td></td>
<td>(.000)</td>
</tr>
<tr>
<td>CFR Pages</td>
<td></td>
</tr>
<tr>
<td></td>
<td>.013</td>
</tr>
<tr>
<td></td>
<td>(.015)</td>
</tr>
<tr>
<td>Protest/Opposition</td>
<td></td>
</tr>
<tr>
<td></td>
<td>.013</td>
</tr>
<tr>
<td></td>
<td>(.320)</td>
</tr>
<tr>
<td>News Articles</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>4.258***</td>
</tr>
<tr>
<td></td>
<td>(.320)</td>
</tr>
<tr>
<td>Prob&gt;F</td>
<td>.0008</td>
</tr>
<tr>
<td>N</td>
<td>270</td>
</tr>
</tbody>
</table>

Notes: Cluster Robust Standard Errors in Parentheses, † Significant at .10 level, * Significant at .05 level, **Significant at .01 level, ***Significant at .001 level (two-tailed)

The regression tests of Table 3-11 shows that brokerage capacity positively affects size of discretionary budget authorities.\textsuperscript{75} Basically, it indicates that legislators have little incentive to intervene in the administration of the agencies with high brokerage capacity. According to Art (1985, 228), “annual budgeting is a powerful congressional tool for closely controlling executive action.” Thus, the regression results imply that the agencies with high brokerage capacity are less likely to be the targets of congressional investigations. It supports the results of Table 3-9. Moreover, it also indicates that legislators tend to authorize more programs for the agencies that have high brokerage capacity. In other words, legislators are likely to provide more administrative resources to the agencies of high brokerage capacity. This result also partly supports Lemma 3 about Pareto-improving brokerage assumption; more budgets to the agencies with high brokerage capacity imply that legislators expect high returns from the investment to (Wildavsky 1964). It implies that budget changes are likely to depend on total regulation size, rather than political environments. However, depending on public attention, legislators sometimes make huge changes in budget distribution (Jones and Baumgartner 2005; Baumgartner and Jones 2009). Therefore, two variables of total regulation size and public attention should be included as controls. The former is measured by total CFR pages. The number of NYT articles about protest/opposition against agency behaviors was used for the latter.

\textsuperscript{74} In other words, the dependent variable (discretionary budget) may significantly affect brokerage investment size.

\textsuperscript{75} The coefficients of CFR Pages are negative different from expectations. This regression result may be because the agencies with large regulations tend to have significant mandatory budgets and legislators can have less incentive to provide more budgets to the agencies. When excluding CFR Pages, Brokerage Capacity and the interactive variable of Brokerage Capacity and Professional Employees are statistically significant.
the agencies. Proposition 3 derived from Lemma 3 will be examined in Chapter 6 regarding recent changes in administrative laws.
In Chapters 4 and 5, the administrative histories of two federal agencies, the EPA and the FCC, will be reviewed in terms of administrative brokerage and agency discretion. These two agencies share similar characteristics in many respects. Basically, they are ones of the largest federal agencies. Moreover, since environmental and telecommunications regulation issues have been highly complex (Gormley 1986), both agencies have enjoyed a significant informational asymmetry with Congress.\textsuperscript{76} Further, the EPA and the FCC behaved in a similar manner regarding brokerage capacity development in the early 1980s. Both the EPA Administrator Anne M. Gorsuch (later known as Anne M. Burford) and the FCC Chair Commissioner Mark S. Fowler had despised administrative brokerage and, as a result, faced significant fire alarm threats. Despite similar starting points, however, these two agencies have taken different paths. While the EPA has developed its brokerage capacity since the late 1980s, the FCC made only minimal efforts to broker between interest groups. Thus, the case studies on these two agencies can provide not only longitudinal, but also cross-sectional comparisons in the relationship between brokerage capacity and discretionary authorities.

Clearly, they have different interest group societies. For example, relative to the EPA, the FCC has faced weak challenges from public interest-type groups. However, the FCC also have faced diverse interest conflicts not only between industry and public interest groups, but also among diverse policy stakeholders such as networks, local broadcasters, and Hollywood producers. Therefore, in Chapter 4, regarding the EPA, the case study would focus on the interest conflicts between environmental groups and industry. In contrast, in Chapter 5, two different cases will be reviewed in terms of the FCC regulation; media management regulation and television content regulation. The latter is generally regarded with interest conflicts between public interest groups and broadcasting industry and the former is about that among different industry groups. In all kinds of cases, interest conflicts tend to sound fire alarms and administrative brokerage is a key to turn off the alarms. This chapter reviews the historical changes in the EPA’s administrative brokerage and discretionary authorities in particular regarding hazardous waste disposal problems and the Superfund.\textsuperscript{77}

\section*{Chapter 4.
The Environmental Protection Agency and Hazardous Waste Problems: Case Study (1)}

\subsection*{4.1. Environmental Conflicts and the EPA}

\subsubsection*{4.1.1. Overview of Environmental Conflicts and the EPA’s Administrative Brokerage}

The EPA was established by President Nixon in 1970 as a response to significant pollution accidents such as oil well blowout in Santa Barbara. The first administrator, William D. Ruckelshaus (1st term: 1970-1973, 2nd term: 1983-1985) made efforts to develop the credibility

\textsuperscript{76} In addition, their main oversight committees have been partly overlapped in the House (i.e., House Committee on Energy and Commerce).

\textsuperscript{77} The cases studies in Chapters 4 and 5 will focus on the two agencies administrative behaviors and consequences from the 1980s to the 2000s. Because sufficient interest group development is a preliminary condition for fire alarms, brokerage capacity might be meaningful only after the 1980s.
of the EPA. Because the EPA is newly born, the agency faced significant resistance from diverse stakeholders including industry groups and state pollution control agencies. Under the contentious policy environments, Ruckelshaus accentuated public participation and administrative brokerage. In an academic paper, he said:

Unquestionably, the public must not only be allowed to participate in environmental decision making; it should be encouraged to do so. ... A realization that most solutions require pragmatic compromises or balancing of interests usually rids the citizen of any nagging suspicion that an agency knuckled under to private interests. (Ruckelshaus 1971, 636-38)

However, the basic strategy of the EPA for interest mediation was gradually changed in the late 1970s. The agency felt that administrative negotiations tended to slow down policymaking and implementation and caused significant administrative inefficiencies. As a result, the EPA decided to move toward civil litigation as a response to conflicts of interest, rather than administrative brokerage. In particular, Administrator Douglas Costle (1977-1981) (and Assistant Administrator Marvin Durning) in the late 1970s preferred lawsuit-based administration to negotiation, under the slogan “file first and negotiate later” (Mintz 2012). Likewise, Administrator Anne M. Gorsuch (1981-1983) in the early 1980s rebuked environmental groups rather than building bridges between environmental groups and industry. She preferred informal meetings only with her favorable policy stakeholders, but refrained from linking diverse interest groups. Even in May 1982, an article of the Washington Post reported that Gorsuch met privately with representatives of Thriftway, a private refinery, and promised that the company would not be persecuted for violating the standard (The Washington Post 1982). Clearly, the EPA became an adversarial venue before the mid-1980s, not a collaborative venue. As a result, the EPA generally failed to satisfy interest groups and to limit conflict expansion to the legislative venue. Though the agency had allowed some public participation because of the mandates of environmental laws such as the Federal Water Pollution Control Act Amendments and the Toxic Substances Control Act in the 1970s, the EPA had little incentive to resolve environmental conflicts in the bureaucratic venue and, as a result, frustrated many of its stakeholders (Rosenbaum 1976; Plumlee et al. 1985). As a consequence, disfavored groups by the EPA’s administration began expanding environmental conflicts through protests, lobbying, and litigation.
Figure 4-1. US Environmental Lawsuits and Protests

Note: The data on environmental protests are from Agnone (2007, 1601), which counted the environmental protests reported in the New York Times Annual Index. Only non-institutional actions such as public demonstrations and marches, sit-ins, rallies, and boycotts are included. The data on Supreme Court environmental cases are from the Policy Agendas Project dataset (http://www.policyagendas.org).

Figure 4-2. Judicial Cases against the EPA Given Regulation Size

Note: The data of court cases are from the LexisNexis database. (http://www.lexisnexis.com/hottopicslnacademic/?verb=sf&sfi=AC07STCseCmnSrch)
During the period from the 1970s to the 1980s, environmental conflicts became quite intense: Frequent environmental protests and litigations increased public and legislators’ attention to environmental issues (Bowling and Ferguson 2001; Pralle 2006a). Figure 4-1 shows that the number of environmental protests was peaked in the late 1970s and the early 1980s. Moreover, the number of Supreme Court environmental cases was high in the 1970s and the 1980s. Considering the increasing number of environmental problems in recent decades, the numbers of Supreme Court cases in the 1990s and the 2000s are significantly small, compared with those of the 1970s and the 1980s. Likewise, interest groups had frequently litigated against the EPA and resisted the administrative decisions of the EPA in the 1970s. Considering the fact that the EPA’s regulation size was much smaller in the 1970s and the early 1980s, the numbers of judicial challenges to the EPA in the period are highly significant.78 Figure 4-2 shows the ratios of the number of court cases involving the EPA as a defendant to the number of CFR pages. These ratios demonstrate the frequencies of judicial challenges to the EPA’s decisions per page of regulation. Ratios for both the Courts of Appeals and the Supreme Court were exceptionally high in this period. During a 1984 conference, the EPA Administrator William Ruckelshaus (in his second term) indicated that more than 80% of the EPA’s rules had been challenged and these judicial challenges were damaging agency autonomy seriously.79

**Figure 4-3. CQ Almanac Articles and NYT Indexes on Environmental Issues**

<table>
<thead>
<tr>
<th>Year</th>
<th>NYT Indexes</th>
<th>CQA Articles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1948</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1951</td>
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<tr>
<td>1954</td>
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</tr>
<tr>
<td>1957</td>
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<td>1960</td>
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</tr>
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<td>1963</td>
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<tr>
<td>2005</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: The data are from the Policy Agendas Project dataset (http://www.policyagendas.org). This dataset of the NYT Indexes is a systematic random sample of the *New York Times Index*, the first entry on every odd-numbered page of the Index.

78 The number of EPA’s CFR pages prior to the early 1980s was only around 5,000. The number increased to more than 10,000 in the 1990s, and to more than 20,000 in the 2000s.

79 See William D. Ruckelshaus, Environmental Negotiation: A New Way of Winning, Address to the Conservation Foundation’s Second National Conference on Environmental Dispute Resolution (1 October 1984), cited in Susskind and McMahon (1985). Though fewer than 80% of rules are challenged in courts (Coglianese 1997), it is true that many agency rules have been challenged by diverse interest groups.
Partly because of the significant environmental fire alarms, public and legislators’ attention to environmental problems increased in this period. Figure 4-3 shows that the percentage of newspaper articles on environmental issues were high in the 1970s and the 1980s (compared with the 1990s and the 2000s). Acknowledging environmental problems as a result of the fire alarms, legislators had more incentive to control the administrative behaviors of the EPA. Figure 4-4 indicates that the numbers of congressional hearings on environmental issues and GAO reports on the EPA had increased in the 1970s and the 1980s. Based on the information from fire alarms (and subsequent congressional information collection activities), legislators had introduced a number of environmental bills in this period (Figure 4-5). It implies that legislators wanted to be the agenda setter instead of the EPA in this period and they had high incentive to influence on the EPA’s administrative decisions.\(^{80}\)

**Figure 4-4. The Congressional Hearings on Environmental Issues and GAO reports on the EPA**

![Graph showing the number of congressional hearings and GAO reports on the EPA from 1970 to 2000.](image)

Note: The data on congressional hearings are from the Policy Agendas Project dataset (http://www.policyagendas.org), which codes the number using the Congressional Information Service Abstracts.

The data on GAO reports on EPA are from US GAO website (http://www.gao.gov/browse/date/week).

\(^{80}\) Ferejohn and Shipan (1989) argued that many legislative bills imply that legislators exert a strong influence on agencies, even when no legislation is passed.
However, the EPA has made remarkable efforts to mediate among conflicting interest groups and to derive administrative agreements since the 1980s (Randolph and Bauer 1999). The initiation of brokerage efforts were made by William Ruckelshaus in the early 1980s. For example, in 1983, the EPA issued standards to regulate emissions of arsenic by copper smelting plants. However, interest conflicts were high in determining appropriate standards for safe emission of arsenic, in particular for a copper plant owned by the American Smelting and Refining Company (ASARCO) in Tacoma, Washington. To resolve administrative interruptions caused by interest conflicts, Ruckelshaus organized several workshops and public hearings to develop effective solutions that can be acceptable for all stakeholders. In spite of initial complaints of stakeholders and administrative delays, interest conflicts were gradually resolved; stakeholders began understanding their opponent groups’ arguments and made agreements on the standards (Scott 1988; Lipshitz and Mann 2005). Inspired by this positive result of administrative brokerage, the EPA has made more efforts to broker policy stakeholders; the agency has made the best use of negotiated rulemakings, has developed several collaborative projects such as Project XL and the Common Sense Initiative, and has held a number of meetings for mediating environmental conflicts (Furlong and Kerwin 2005). Figure 4-6 shows that the EPA’s advisory committee spending and the number of formal meetings have significantly increased since the late 1980s. Moreover, though several studies have claimed that the EPA’s collaborative programs such as Project XL have failed to lead to successful administration (Marcus et al. 2002; 81 The Common Sense Initiative was intended to work with individual industries (e.g., auto manufacturing) using industry-specific strategies to achieve consensus on reducing environmental challenges, while Project XL accentuated site-specific pollution control through ongoing communications among stakeholders.

Figure 4-5. Environmental Bills in the US House and Senate

Note: The data are from the Congressional Bill Project dataset (http://congressionalbills.org). These percentages are the proportions of environmental bills out of the total number of legislative bills of the US House and Senate.
Klyza and Sousa 2008), the agency has achieved significant success in preventing environmental conflict expansion; environmental stakeholders have been satisfied with the EPA’s environmental policymaking, which decreases their incentives to file their complaints at the legislative venue. Langbein and Kerwin (2000) showed that interest groups express greater satisfaction with the EPA’s negotiated rulemakings compared with conventional rulemakings. Similarly, Lubell (2000) also suggested that the EPA’s collaborative programs, such as the National Estuary Program, have yielded higher levels of attitudinal support or general satisfaction of environmental stakeholders. Though satisfaction may not be a synonym of successful administration (Coglianese 2003), at least it is true that environmental stakeholders’ satisfaction has limited conflict expansion to reach Congress. According to Foreman (2002, 160), “[T]o the extent that Project XL and other reinvention initiatives may have emanated from a desire to give environmental programs political cover against a hostile Congress, one might be inclined to view such efforts as sensible and successful.” Though many EPA’s collaborative programs were not successful and sometimes discontinued, it is clear that the EPA made significant brokerage efforts and its stakeholders recognized that the agency was an effective venue for interest mediation in the 1980s and 1990s.

As the EPA’s satisfactory brokerage increases, environmental conflict expansion has declined since the 1990s; the numbers of environmental protests and litigation have decreased significantly and the ratios of court cases to the EPA’s regulation size have also dropped down (see Figures 4-1 and 4-2). The number of US environmental protests reported in the New York Times (NYT) peaked in the 1970s, but remained active in the 1980s. Then, the trend slowly reversed, and the number of environmental protests has significantly decreased since the 1990s (Agnone 2007; Olzak and Soule 2009). In addition, the rate of environmental litigation has also declined (Gerrard 2000; Karkkainen 2002). Though the number of reported judicial opinions in environmental citizen suits was still high in the 2000s, the growth rate has slowed down since the 1990s, while the number had steeply increased in the 1970s and 1980s (May 2003). In a similar manner, lawsuits against the EPA have decreased: A GAO report shows that the number of environmental cases brought against the EPA have generally decreased at least since the mid-1990s (United States Government Accountability Office 2011).

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82 The National Estuary Program formed a management conference consisting of diverse stakeholders to limit interest conflicts and produces comprehensive conservation management plans to resolve estuary problems in a cooperative manner.

83 There are several alternative views to explain the decreasing environmental protests and lawsuits. One possible reason is the emergence of liberal presidency. Clearly, not only administrative brokerage, but also Clinton/Gore administration in the 1990s may affect the decreasing number of environmental protests and lawsuit. However, the number of environmental protests and litigation continuously diminished even after the emergence of Republican Congresses in the mid-1990s and even under Bush administration in the 2000s. Therefore, liberal presidency may not the main reason of the decreasing trend of environmental protests and lawsuits. Another alternative view is that environmental problems have been insignificant relative to those of the 1970s and 1980s. However, in the 2000s, environmental problems remained serious. For example, over seven-hundred new chemicals are introduced by manufacturers every year (Adelman 2010). Therefore, these alternative views cannot fully explain the decreasing environmental conflicts.
These protest and litigation trends have made environmental problems less noticeable to the public and to legislators. In other words, limited conflict expansion has lowered the public’s and legislators’ levels of attention to the EPA’s administrative behaviors; news coverage of environmental issues has decreased since the 1990s. Figure 4-3 shows that the percentage of NYT environmental news articles has gradually decreased since the 1990s. As a consequence, legislators have had little incentive to monitor and control agency behaviors (Mintz 2012). The numbers of congressional hearings on environmental issues and GAO reports on the EPA increased until the late 1980s, then decreased due to the limited environmental salience (Figure 4-4). This implies that Congress has made less effort to intervene in the EPA’s administration, and probably that the agency has maintained significant policymaking authority during this period. Moreover, as only limited administrative information about the EPA was delivered to

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84 Legislators are encouraged to limit the agency’s policymaking authorities by enacting restrictive public laws, when issues are salient because of conflict expansion (Epstein and O’Halloran 1999b; Ringquist et al. 2003).

85 It may be possible that the Republican Congress of the mid-1990s affected the reduced hearings trend, as conservative legislators have less interest in environmental issues. However, this factor cannot perfectly explain the political phenomenon. In the 1980s, when Republicans took over the Senate (and the presidential seat), the number of environmental hearings soared. The legislators tried to control and deprive the EPA’s authority and discretion in this period. Similarly, in the mid-1990s, Republicans had high incentive to control the EPA significantly (Klyza and Sousa 2008). Despite that fact, congressional hearings in this period decreased.

86 This era was marked by some large, landmark disputes, such as disputes over endangered species legislation (e.g., the spotted owl controversy). Some of endangered species issues were related with the
legislators, they could have hardly introduced legislative bills about the EPA. For example, the proportion of *Congressional Quarterly Almanac* (CQA) articles on environmental issues has also steeply declined since the mid-1990s (Figure 4-3). Moreover, Figure 4-4 shows that the percentage of environmental bills out of the total number of legislative bills has decreased since the mid-1990s, which reversed the increasing trend seen in the 1970s and 1980s. From this perspective, several studies have argued that limited environmental conflict expansion has caused the exceptional environmental legislative inaction (Agnone 2007; Chaloupka 2008). It implies that legislators had less incentive to intervene in the EPA’s administrative behaviors in this period (Mintz 2012).

In sum, the EPA that had been rarely interested in mediating among interest groups has initiated its brokerage efforts since the 1980s as a response to serious interest conflicts which provoked congressional attention to the EPA’s administrative behaviors. Thanks to the administrative brokerage, the agency could have maintained its discretionary authority by limiting congressional intervention in its administration (see Table 3-7). As a consequence, the EPA has increased its capacity for rulemaking without legislative intervention in the EPA’s administration. Figure 4-7 shows that the marginal growth in EPA regulation has increased for decades. Moreover, the annual budget appropriations of the EPA have generally increased since the 1980s; diverse new EPA’s programs have been authorized by Congress. Even though EPA budget appropriations decreased temporarily in the mid-2000s under Republican Congresses, they recovered promptly in 2009. These results imply that legislators are likely to authorize the EPA’s programs and provide budgetary resources to the agency that keep up with inflation. The agency’s significant brokerage capacity that can lead to Pareto-improving administrative outcomes is one of the reasons of the EPA’s position.

Forest Service or the Bureau of Land Management, rather than the EPA. However, even excluding legislative bills and hearings on endangered species based on the Policy Agendas Project dataset, the trends of environmental bills and congressional hearings on environmental issues were similar as suggested in Tables 4-4 and 4-5.

The CQA is a compendium of legislation from each annual session of Congress. Each CQA article typically covers one legislative initiative.

The limited environmental agenda-setting may be partly affected by the Republican Congress in the mid-1990s. However, in reality, Figure 3 shows that the percentage of environmental bills in both congressional chambers in the 104th Congress is greater than that of 103rd Congress. Moreover, even when Republicans seized the Senate in the 1980s, the rate of environmental bills increased compared with that of prior Congress. Thus, it is hard to assume that the Republican Congress is the main reason for the congressional inaction on environmental issues.

Meaningful environmental laws to restrict the EPA’s discretion have not been enacted since the early 1990s (Percival 2007; Klyza and Sousa 2010).
This overview of EPA history does not imply that the agency has made efforts to link interest groups in all its programs. Despite some fluctuations in developing brokerage capacity depending on politically appointed agency leaders and political environments, however, the EPA has institutionalized mechanisms to encourage interest groups to meet and discuss with one another. Thanks to this high brokerage capacity, the agencies have enjoyed significant discretion in spite of the remarkable development of environmental interest groups.

4.2. The Case: Hazardous Waste and the Superfund
To examine the propositions from the administrative broker model with specific cases, an administrative history of the EPA will be reviewed with regard to hazardous waste disposal and the Superfund, considering that these issues are more domestically oriented, as opposed to other environmental issues such as climate change and water pollution problems, which are inevitably affected by diverse international stakeholders. Though these two areas are slightly different, they are closely related, and the main stakeholders in the issues overlap. Thus, it would be better to examine both issues historically in a more general framework. Because the agency failed to mediate environmental conflicts over hazardous waste in the early 1980s, Congress became the forum for environmental clashes and passed significant public laws. As a result, congressional intervention in the EPA’s policymaking authority was inevitable. A typical example is the Hazardous and Solid Waste Amendments of 1984 (HSWA). However, the trend was reversed in the late 1980s. Since that time, the EPA has made significant collaborative efforts to resolve environmental conflicts. The result was environmental legislative inaction, and the agency was able to avoid congressional intervention.

In 1981, when President Reagan was inaugurated, Anne Gorsuch [Burford] was appointed as the EPA administrator. As a faithful loyalist of President Reagan, Gorsuch undertook deregulatory reform of the agency, saying that “there was no riper pasture for regulatory reform than EPA” (Environmental Protection Agency 1990). In carrying out the reforms, the administrator did not have much concern about conciliating environmental stakeholders. Rather, she assumed that unyielding administration was necessary for consistent regulatory improvement and that nongovernmental actors should not intervene in public administration or the policymaking process. In her autobiography Are You Tough Enough?, she described her first meeting with environmental groups as the EPA administrator:

When I had my first meeting as EPA Administrator with a group of environmentalists…they began the meeting by saying, ‘We want prenotification of any agency action’…. I said, ‘We don’t run this agency like that. I wouldn’t give prenotification to my mother or the Pope.’ And that was the end of that meeting. We never discussed issues at all. (Burford and Greenya 1986, 98)

Moreover, she significantly downsized the EPA’s advisory committees, which were set up to enhance administrative collaboration through client participation (Gormley and Balla 2004). The EPA’s budget for advisory committees was cut from $1,347,392 (149 meetings) in 1980 to $783,051 (87 meetings) in 1982. These administrative behaviors significantly decreased the transaction costs among environmental policy stakeholders. Further, her agency did not provide sufficient procedural justice in its policymaking processes. Though the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which set up the Superfund in 1980, required the agency to develop the National Contingency Plan (NCP; the federal government’s guidelines for hazardous substance contamination) by June 1981, the agency had asserted that more time was necessary for thorough analyses of hazardous waste sites, while the agency made a 30% cut in the number of its employees, including members of the hazardous waste program. These contradictory behaviors by the EPA were not acceptable to environmental interest groups; the agency failed to persuade environmental groups to accept the delay. Although there had been some public meetings on the NCP before May 1981, Gorsuch pre-empted further meetings. The participation of environmental groups in the Superfund was seriously limited in this period. The EPA’s administration under Gorsuch appeared to work through backroom dealings with industry, rather than through harmonious compromise (Rabe 1988). These administrative behaviors of the EPA could not guarantee procedural justice in policymaking processes and provoked serious complaints from environmental groups. David Lennett of the Environmental Defense Fund (EDF) said that the EPA made closed-door decisions with companies without local participation and that restricting public participation was harmful to the agency (Hanson 1982). Likewise, the executive director of the Sierra Club, Mike McCloskey, said “the agency is paralyzed…. [Gorsuch] has been getting away with chopping [the EPA] down day after day” (United Press International 1981). As a result, several environmental groups, including the Sierra Club, the Natural Resources Defense Council (NRDC), and the EDF decided to express their complaints outside the bureaucratic venue, especially in Congress and the courts. For example, the EDF filed a lawsuit against the EPA’s two-year extension of the promulgation of hazardous waste disposal regulations and presented a

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90 The data are from the Federal Advisory Committees Database, which is operated by the Federal Interagency Databases Online (http://fido.gov/facadatabase/databasesearch.asp).
court order denying the EPA’s extension request at a House hearing on 16 November 1981. Similarly, the NRDC also provided detailed reports about the EPA’s administrative delays in hazardous substance disposal. The uneasiness created by the environmental groups was detrimental not only to the environmental groups, but also to industry. Thus, many industrial executives urged environmental groups to resolve problems in the bureaucratic venue. For example, in an interview with the Washington Post, Edmund Frost, vice president of the Chemical Manufacturers Association, said, “Environmental groups have chosen to use the courts for decision-making rather than the agencies…. If they have something to say… tell EPA about it” (Omag 1981). However, environmental groups did not return to the EPA; they had no incentive to participate in the procedurally problematic EPA’s policymaking processes bearing significant transaction costs. As a result, the EPA’s administrative delays and inefficiencies continued. In the end, industrial executives also moved to address hazardous waste problems outside the EPA. They began lobbying Congress and complaining about the EPA’s poor administration (Pasztor 1982). An article in the Wall Street Journal described the situation well: “Mrs. Gorsuch has alienated not only environmental groups, but also many lawmakers and business leaders who otherwise support the administration’s goal” (Pasztor 1981). These environmental clashes increased issue salience and legislators’ attention (and their legislative initiatives) to the hazardous waste and Superfund issues. Figure 4-8 shows that the number of news articles on hazardous waste and the Superfund was high in the early 1980s and, as a result, many congressional hearings to control the EPA were held in this period. Congress requested the GAO to inspect the EPA’s behaviors, and the GAO published a report that supported the environmental groups’ view that the EPA’s Superfund implementation had been seriously delayed.

Figure 4-8. NYT Articles and Congressional Hearings on Hazardous Waste Disposal and the Superfund

![Graph showing NYT articles and congressional hearings from 1979 to 2005.](image)

Note: The data on NYT articles are collected by the author. The data of congressional hearings are from the Policy Agendas Project dataset (http://www.policyagendas.org).
Because legislators became more interested in hazardous waste and Superfund issues, and moved to prepare exhaustive bills, the agency realized that its policymaking authority would be damaged by congressional intervention. Therefore, the agency made some efforts to mediate among interests and to handle its policy stakeholders’ complaints. For instance, in September 1982, the EPA established the Resource Conservation and Recovery Act (RCRA) Permit Advisory Committee to encourage more public discussions. Moreover, the agency paid more attention to environmental groups’ complaints. However, it was too late to broker interests in the bureaucratic venue. Hazardous waste disposal and the Superfund had already become highly salient in this period due to the serious environmental conflicts, as Figure 4-8 shows. As a result, many legislators claimed that it was necessary to pass new laws to correct current environmental clashes. Moreover, they argued that the EPA’s discretionary authorities should be limited, given that the agency was not capable of dealing with the issues appropriately. Then, a flood of hazardous waste and Superfund bills were introduced in the 98th Congress (see Figure 4-9). For example, Rep. James J. Florio (D-NJ), then chairman of the House Energy and Commerce Committee’s Subcommittee on Commerce, Transportation and Tourism, criticized the agency for only spending $88 million of Superfund money, leaving a $364 million surplus as of September 1982. Moreover, Congress decided to rein in the EPA by requesting detailed information about its activities. Rep. John Dingell (D-MI), then chairman of the House Energy and Commerce Committee, asked the EPA to submit executive documents for an investigation of Superfund enforcement.\footnote{However, Gorsuch declined to submit the documents by asserting executive privilege. On 2 December 2017, the EPA submitted the documents.}

\footnote{However, Gorsuch declined to submit the documents by asserting executive privilege. On 2 December 2017, the EPA submitted the documents.}
administrator to establish health and environmental standards for facility operators that produced fuel from hazardous waste. Similarly, on 8 December 1982, Sen. Christopher Dodd (D-CT) introduced a bill (S. 3087) directing the EPA administrator to hold public hearings regarding the EPA’s decisions when evaluating petitions to delist hazardous waste. Moreover, much more restrictive bills were introduced in the 98th Congress.

Finally, on 3 May 1983, Florio proposed a bill (H.R. 2867) that included provisions to limit the EPA’s discretion, including ones suggested by other legislators, such as Christopher Dodd. Further, owing to the increased amount of information collected on environmental issues by legislators during the 98th Congress, dozens of provisions to reduce the EPA’s discretion were added to the original bill, which was eventually passed. President Reagan signed the Hazardous and Solid Waste Amendments of 1984 (HSWA, P.L. 98-616) into law on 8 November 1984. The law was “an extreme example of Congress using statutory language to limit agency discretion” (Corwin 1992, 518) and included 29 deadlines and several prohibitions to limit EPA’s activities (Rosenbaum 2005, 234). Florio, the sponsor of the bill, said:

“Instead of authorizing EPA to regulate the disposal of chemical wastes, Congress has prescribed the limits. Instead of relying on EPA to meet deadlines, Congress has established self-enforcing standards.... Instead of allowing EPA to establish technical standards of safety, Congress has set minimum requirements” (Florio 1986, 351).

In sum, the EPA failed to mediate environmental conflicts in the early 1980s. As a direct consequence, interest groups extended their efforts from the bureaucratic venue to other political venues through protests, judicial review, and legislative lobbying. The behavior of these interest groups enhanced legislators’ interest in hazardous waste and Superfund problems in the 98th and 99th Congresses. The legislators made efforts to collect information about environmental issues and to direct the EPA to act as that they wanted. In this process, the EPA’s discretionary authority shrank as a result of the passage of the restrictive HSWA.

4.2.2. Ruckelshaus’s Administrative Brokerage and SARA in the mid-1980s

However, the EPA began to reverse its legislative setbacks after William Ruckelshaus was appointed as the EPA administrator, replacing Gorsuch, in May 1983. Different from Gorsuch, he already perceived that sufficient administrative brokerage is a highly important factor for the EPA to avoid suspicious eyes of interest groups and its political principals. While Ruckelshaus initiated efforts to attract environmental groups back to the EPA venue, he also tried to persuade industrial groups to stay. Shortly after Ruckelshaus took office, the EPA updated its National Priority List (NPL) for cleanup in September, adding 133 hazardous waste dump sites. This relatively quick implementation attracted environmental groups, which had grown tired of repeated administrative delays. On the other hand, Ruckelshaus met with industrial groups and accentuated cooperation rather than confrontation regarding the hazardous waste problem. For example, in a meeting with the Boston business community, he said that “passionately factual and analytically sound” environmental regulation would be possible with the participation of

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1982, the House Public Works Investigations Subcommittee voted (9-2) to cite the EPA administrator for contempt of Congress. She resigned on 9 March 1983.

92 For example, the provision that land disposal of solvents and dioxins was prohibited effective 24 months after enactment—a provision that was absent in the original bill—was included in the conference report.
businesses in environmental discussions (Dumanoski 1983). Likewise, Ruckelshaus held diverse formal meetings to link between different environmental stakeholders. For example, in 1983, a serious hazardous waste dump problem—so called Tyson’s Dump—occurred in a residential area in Upper Merion Township, Pennsylvania. To resolve the contamination problem, the EPA held many public meetings in which residents, township managers, and potentially responsible chemical companies including Ciba-Geigy Corporation attended for years since 1983. Though they could not reach a perfect agreement on the first try, their interests had become adjusted gradually regarding the issues of contamination investigations and detailed cleanup plans until the late 1980s, as public meetings decreased the transaction costs between the policy stakeholders. Moreover, the formal and open discussions about the contamination issues increased procedural justice in confirming investigation results and cleanup schedules. Though it is hard to say that these EPA’s efforts were eagerly supported by any stakeholders, the agency was somewhat successful in arranging frequent contacts and decreasing transaction costs among diverse policy stakeholders. In addition, Ruckelshaus made efforts to enhance procedural justice in dealing with hazardous waste disposal problems. For example, he suggested a general settlement procedure for hazardous waste disposal in late 1983.93 After more than one year of discussion, the agency adopted a memorandum on the Interim CERCLA Policy in December 1984 (50 Fed. Reg. 5034). In the memorandum, the agency accentuated settlement of hazardous waste disposal issues by negotiations among responsible parties, rather than through EPA dictates. As a result of the EPA’s efforts to reduce transaction costs and strengthen procedural justice in administration, the agency succeeded in brokering several significant environmental settlements. One example was the settlement with Westinghouse Electric Co. regarding six contaminated sites in Bloomington, Indiana. In May 1985, the company agreed to spend $100 million to remove polychlorinated biphenyls (PCBs)—a group of chemicals composed of 209 individual compounds—from the dump sites. This successful brokerage reduced the congressional incentive to touch on the issue. Environmental interest groups also made compromises in the bureaucratic venue. Though the EPA’s brokerage capacity in the mid-1980s was premature, its’ efforts to resolve interest conflicts reversed the trend of “fire alarms” about hazardous waste disposal and the Superfund. As Figure 4-8 indicates, the numbers of NYT articles and congressional hearings about hazardous waste disposal and the Superfund were still high in the 1980s. However, the increasing trend was reversed since the mid-1980s and continuously decreased since that time.

The administrative history leading up to the passage of the Superfund Amendments and Reauthorization Act of 1986 (SARA, P.L. 99-499) was distinct from that of HSWA. Because reauthorization of the Superfund was necessary in 1985, the EPA suggested amendments to CERCLA. Some bills, such as H.R. 1342 and S. 494, were introduced in February 1985, responding to the EPA’s suggestions (Atkeson et al. 1986). However, some legislators introduced more restrictive bills. The administrative histories in the early 1980s had alerted legislators of the EPA’s administrative problems and they had significant incentive to control the agency. For example, Sen. Pete Domenici (R-NM) introduced a package of amendments that included mandatory settlement procedures (S. AMDT. 680) to compel the agency to accept

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93 The original guideline announced in October 1983 was somewhat tougher for industrial polluters in that the agency refused to be a broker for potential stakeholders unless firms were willing to shoulder at least 80% of cleanup costs. The EPA adopted a memorandum on the Interim CERCLA Policy, which relaxed the burden on polluters by eliminating the 80% threshold, partly accepting the industrial groups’ opinions.
settlement offers from environmental stakeholders. Likewise, House Public Works Committee members introduced a provision directing the EPA to list at least 1,600 sites on the NPL by 1 January 1988, as an amendment to H.R. 2817, which passed the House. The EPA’s brokerage efforts, however, began to limit environmental conflict expansion and legislators’ interest in the issues also diminished. Though some legislators eagerly introduced dozens of bills and hundreds of amendments, they could not persuade many of their fellow lawmakers to support them, as public attention and issue salience had already diminished due to decreased environmental conflicts (see Figure 4-8). Moreover, the legislators did not have much time to collect information on their own because Superfund’s taxing authority had already expired in September 1985, though it was maintained through emergency funds before the enactment of SARA. Congress was highly pressured to make a decision on the Superfund as soon as possible. As a consequence, the SARA legislation (H.R. 2005), signed by President Reagan on 17 October 1986, did not include many of the more restrictive provisions that had been proposed to control the agency. Though this law contained some cleanup standards provisions, they were only narrative and not compulsory (Sheridan 1986; Brown 1990); major revision did not occur. In the legislation, the EPA maintained broad discretion to determine standards. Likewise, the Superfund settlement procedures in the bill were based on the memorandum on the Interim CERCLA Policy adopted by the agency in 1984.

In sum, SARA was not a major piece of legislation compared with HSWA in terms of congressional intervention and subsequent regulatory rulemaking, because legislators had lost their interest in hazardous waste and Superfund issues. Due to the EPA’s brokerage efforts under the leadership of Ruckelshaus, the agency effectively reduced environmental conflicts and avoided serious restrictions on its policymaking authority in the mid-1980s. SARA’s impact on the EPA’s authority was limited.

4.2.3. The EPA as an Administrative Broker, 1990s–2000s
Ruckelshaus’s successors, Lee Thomas (1985–1989), who had been an EPA assistant administrator and led Superfund issues including the Interim CERCLA Policy, and William Reilly (1989–1992) made successful efforts at hazardous waste and Superfund brokerage. The EPA enhanced its brokerage adroitness further after the enactment of SARA. The agency increased the value of cleanup agreements significantly every year, amounting to $1 billion in fiscal year (FY) 1989 and $1.3 billion in FY 1990 (Weisskopf 1989; Taylor 1990). Because the agency had spent much of its funding arranging meetings among interest groups and managing stakeholder agreements, its investment in cleanup expertise had not increased (Weisskopf 1991). Despite this fact, however, successful brokerages caused interest groups to stay in the bureaucratic venue, which limited environmental clashes outside the EPA. As a result, in 1990, Congress extended CERCLA through FY 1994 without further restrictions on the agency (P.L. 101-508). This trend continued in the early days of the Clinton administration, when several cooperative programs, such as the Common Sense Initiative and Project XL, were launched by Carol Browner (1993–2001) to address issues beyond the Superfund. Based on brokerage between conflicting parties, compromise bills (S. 1834 and H.R. 3800), which were supported by the EPA in 1994, were introduced by Sen. Max Baucus (D-MT) and Rep. Allan Swift (D-WA), for the reauthorization of the Superfund and enhancement of the agency’s discretion, respectively. The bills aimed to authorize the EPA to manage the allocation of costs among potentially responsible parties for waste sites, as well as to provide the agency with the discretion
to delegate to states the authority for selected remedial actions (Markell 1994). The bills, however, were not enacted due to opposition from Republican legislators.

In 1995, the legislative environment was significantly changed when Republican legislators took majorities in both chambers of Congress. Because Republicans had majority for the first time since the 83rd Congress (1953–1955), they tried to reform federal agencies dramatically. Under the slogan of “Contract with America,” they called for lower taxes and greater entrepreneurial activity. This political phenomenon clearly increased the possibility that industry would provoke the expansion of environmental conflicts. Tempted by the significant political transition, some industry groups moved to the legislative venue rather than staying in the EPA. They contacted several Republican legislators including Rep. Michael G. Oxley (R-OH), who was chairman of the Commerce, Trade and Hazardous Materials Subcommittee, and Rep. Bud Shuster (R-PA), chairman of the House Transportation Committee. As a result, several Republican legislators introduced more legislative bills to restrict the EPA’s Superfund and hazardous waste disposal programs (see Figure 4-9). For example, Oxley introduced a bill (H.R. 2500) that would weaken the EPA’s Superfund policymaking authority, favoring industry by shifting the large share of the clean-up costs onto the taxpayers. However, Republican legislators’ incentive to intervene in the EPA administration was not long-lasting. As the EPA provided satisfactory dispute resolution services by arranging lots of formal meetings to many of the environmental stakeholders (Samson 2000; O’Leary and Raines 2001), the salience of Superfund and hazardous waste disposal issues remained low in this period. Consequently, Republican legislators could not maintain consistent attention to the environmental issues. As a result, the EPA was able to avoid congressional intervention in the mid-1990s; the number of congressional hearings on the issues significantly decreased (see Figure 4-8), and legislators introduced fewer bills on environmental issues after a temporary upsurge in the 104th Congress (see Figure 4-9).

Clearly, the emergence of Republican Congresses in the mid-1990s weakened the EPA’s policymaking authorities regarding hazardous waste disposal and the Superfund. In particular, though taxes on petroleum and chemicals and corporate environmental income tax that levied funding for the Superfund were expired on December 31, 1995, Republican Congresses refused to reauthorize the taxes. Despite the expiration of the special taxes, however, Congress increased the contribution of general revenues to support the Superfund, from about $250 million in the mid-1990s to about $1.31 billion in 2010.\footnote{As a result, the budget authority for the Superfund has been generally constant around 1.3 billion dollars in the late 1990s and the 2000s, under the Republican Congress, which had made efforts to cut the budgets of “liberal” agencies such as the EPA.} In other words, even though Republican legislators eliminated special taxes for the Superfund to decrease tax burdens on industries, they did not have much incentive to limit the EPA’s policymaking authority. In other words, in spite of seriously unfavorable political situations, the EPA had become the most important venue for hazardous waste and Superfund agreements and had reduced legislators’ intervention in the EPA’s administration. For instance, the EPA’s Office of Solid Waste and Emergency Response began to employ a cooperative method to link diverse policy stakeholders and resolve interest conflicts—the so-called alternative dispute resolution (ADR) process—for hazardous waste management to enhance the agency’s brokerage capacity in 1996. Though Congress proposed a number of tempting policy options to industry groups, almost all stakeholders stayed in the bureaucratic venue. To illustrate this point, in the case of the Helen Kramer Landfill in New Jersey, the EPA reached an agreement in 1998 with more than 200 polluters to pay more than
$100 million to clean up a 66-acre former garbage dump through various meetings. Moreover, in a survey of hazardous waste responsible parties between 1998 and 2001, they showed high satisfaction with the EPA’s dispute resolution process (O’Leary and Raines 2001). For example, a GAO report states that from 1994 through 2007, “the number of Superfund cases filed annually in US district courts decreased by almost 50 percent. Also, litigation in federally-initiated cases decreased as settlements prior to filing cases in court were reached more often, shortening court time.” (United States Government Accountability Office 2009). As a result, only a few legislators had an interest in environmental issues and introduced bills to control the agency. In other words, the EPA’s successful mediation of interest groups prevented Congress from having an interest in (and legislating on) hazardous waste issues.

Though several laws, including some specific provisions to restrict the EPA’s discretion, have been enacted since the mid-1990s, legislators have not been able to pass any significantly restricting laws to rein in the EPA, due to the limited salience of environmental conflicts. For example, Congress passed the Asset Conservation, Lender Liability and Deposit Insurance Protection Act (ALDA, P.L. 104-208) and the Land Disposal Program Flexibility Act (LDPFA, P.L. 104-119) in 1996, and the Superfund Recycling Equity Act (SREA, P.L. 106-113) in 1999. These laws had some provisions limiting the EPA’s discretion. Nevertheless, their range of application was narrow—significant limitation on the EPA’s discretion was absent. As environmental conflicts decreased continuously, legislators had little attention to environmental issues and restrictive provisions to limit the EPA’s discretion was absent in the environmental laws.

This trend has not changed much. Rather, as the EPA has increased its brokerage capacity and Pareto-improving brokerage became highly available recently, the agency could have broadened its jurisdiction over hazardous waste to brownfields—less seriously contaminated industrial sites—based on the legislative support from Congress. In January 1995, Browner announced the Brownfield Action Agenda, which accentuated cooperative resolution of brownfield site cleanup. Based on the scheme, the agency reached agreements with state governments and industry to clean up brownfields. Several state governments including the governments of Illinois, Minnesota, Wisconsin, and Indiana, promised to participate in environmental remediation. Successful brokerage in the brownfield area limited conflict expansion and congressional concerns about the issue, and the EPA’s brownfield programs have been enlarged during a period of legislative indifference (Reisch and Bearden 2003). Though President Bush signed, in 2002, the Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA, P.L. 107-118), which restrained the EPA from reevaluating a site for cleanup (if the state certified that the site had been cleaned), the law increased the funding for the cleanup and redevelopment of brownfields and provided the EPA with the statutory authority for brownfield management. Even after the enactment of the law, the EPA has made significant efforts to maintain its brokerage capacity. The agency established first negotiated rulemaking committee in ten years with regard to brownfield issue in 2003. Diverse actors

95 ALDA relaxed the burdens on lenders by providing specific requirements for participation in management, safe harbor, actions, and pre-foreclosure actions. The LDPFA required the EPA to conduct a study of risks to human health and the environment associated with the management of decharacterized waste. SREA exempted generators and transporters of recyclable scrap materials from cleanup liability in limited conditions.

96 For example, SBLRBRA authorized $200 million annually for grants for the assessment and cleanup of brownfields.
including environmental groups (e.g., Wasatch Environmental, Inc), real estate/finance industry (e.g., National Association of Homebuilders, Mortgage Bankers Association), and government interest associations (e.g., US Conference of Mayors) participated in the committee. Moreover, the EPA emphasized the partnership in November 2002 with publishing a report of *Brownfields Federal Partnership Action Agenda*. Moreover, the agency issued Public Involvement Policy, which establishes seven basic steps for effective public involvement in 2003, in order to decrease transaction cost in the EPA venue, though it was not legally enforceable. Given these EPA’s brokerage efforts, legislators encouraged the EPA to broaden its brownfield programs. For example, the American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5) provided $100 million to the EPA Brownfields Program for clean up, revitalization, and sustainable reuse of contaminated properties in 2009. Likewise, ARRA provides $600 million to the EPA regarding the Superfund without significant restriction in using the fund. Moreover, legislators have made efforts to provide more financial resources to the EPA by introducing Superfund bills. For example, Rep. Earl Blumenauer (D-OR) recently introduced several bills to reinstate the Superfund taxes that were expired in 1995 (e.g., H.R. 564 in 111th Congress). As a result of these consistent brokerage efforts, the agency has maintained significant discretion and has secured significant budgetary resources to broaden its jurisdiction, regarding hazardous waste disposal and the Superfund even recently in the early 2010s.

In sum, the EPA has avoided congressional intervention in Superfund and hazardous waste regulation through its mediation since the 1990s. As the EPA has increased its “brokerage capacity” over the Superfund and hazardous waste disposal, legislators have little incentive to intervene in the environmental issues and the agency has stabilized its discretionary authorities and broadened its jurisdictions.

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97 The URL for the report is http://www.epa.gov/brownfields/partners/fedparaa.pdf.
98 The seven steps are: 1) plan and budget; 2) identify whom to involve; 3) consider providing assistance; 4) provide information; 5) conduct involvement; 6) review, use input and provide feedback and 7) evaluate public involvement.
Chapter 5.  
The Federal Communications Commission and Broadcast Regulation: Case Study (2)

In the previous chapter, the hazardous waste disposal and the Superfund issues of the EPA were reviewed in terms of administrative brokerage. The case shows that the EPA could maintain its discretion as the agency successfully brokered policy stakeholders and resolved interest conflicts. In this chapter, as a cross-sectional comparison with the EPA case, the FCC’s administrative behaviors in terms of its brokerage capacity will be reviewed with the case studies of media management and television content regulations. Compared with the EPA, the FCC has frequently failed to develop sufficient brokerage capacity and, as a result, the discretion of the agency has highly weakened in recent decades.

The FCC has been one of the most powerful US federal agencies since its birth in 1934. Because many kinds of broadcast and telecommunications policies are complex (Gormley 1986), there has been significant information asymmetry between the agency and political principals. Therefore, the agency enjoyed remarkable discretion and policymaking authority at least until the early 1980s (Shapiro and Glicksman 1988). For example, in April 1981, Sen. Robert W. Packwood (R-OR), the chairman of the Senate Commerce Committee, co-sponsored a bill (S. 898) with Sen. Barry M. Goldwater (R-AZ), the chairman of the Subcommittee on Communications, to secure the legal grounds for the FCC’s discretionary authority about telecommunications competition. This delegation was inevitable, considering the information asymmetry between the FCC and the legislators, as Goldwater confessed—“Frankly, I don’t think we knew enough to write legislation”—when he tried to amend his bill in September 1981 (Brown 1981b). However, the interest groups related to broadcast and telecommunications issues have significantly expanded and become highly active in Washington politics in recent decades (Leech et al. 2005; Baumgartner et al. 2008). As a result, administrative brokerage, rather than expertise, has emerged as the most important factor to maintain the FCC’s policymaking authority since the 1980s; a former FCC chairman once observed: “[T]he key to being a successful chairman is to keep the power in equilibrium” as a referee (McChesney 2004b, 46). Nevertheless, the agency was not successful in promoting its capacity to broker interest groups and reach political equilibrium in the 1980s. Consequently, the FCC’s discretion was significantly reduced during this period. The trend was slightly reversed in the early 1990s, since agency leaders began to perceive the importance of administrative brokerage by experience. However, its administrative brokerage has generally been incomplete and the agency has generally failed to resolve interest conflicts compared with the EPA.

5.1. The Overview of the FCC’s Administrative Brokerage
When President Reagan was inaugurated in 1981, he began deregulating diverse policy areas. Broadcast policy was one of his targets. The president nominated Mark S. Fowler (1981-1987) to lead the FCC in May 1981. Immediately after his appointment was confirmed by the Senate, Fowler expressed his devotion to deregulation. In a meeting of the International Radio and Television Society in September 1981, he said, “I believe in a marketplace approach to broadcast regulation” (Fowler 1982, 52). To accomplish his goal, Fowler took an unyielding approach to
overcome all the political obstacles against deregulation; he wished to “command” rather than “broker” conflicting interests. He assumed that administrative brokerage is unnecessary and even harmful in timely policy implementation. As a consequence, the FCC’s brokerage efforts were minimized in this period. For example, the FCC’s advisory committees declined remarkably during his term. While there had been 76 advisory committee meetings and 1,056 members participating in 1981, there were only 18 meetings and 313 members in 1987. His opponents even called him “Mad Mark” for his nonconciliatory administration. Moreover, the number of formal meetings steeply decreased in the early 1980s. Figures 5-1 illustrates the trends of the number of the FCC’s formal meetings and the spending for the FCC’s advisory committees.

**Figure 5-1. The FCC’s Formal Meetings and Advisory Committee Spending**

![Graph showing the number of FCC formal meetings and advisory committee spending](image)

Note: Public meeting data are from the *Federal Register*. Advisory committee data are from the Federal Advisory Committees Database (http://www.fido.gov/). Advisory committee spending is in constant dollars (FY 2008, $1,000).

Limited administrative brokerage capacity brought about serious interest conflicts among policy stakeholders. As a result, interest conflicts were expanded highly in this period; Figure 5-2 shows that the ratios of the numbers of the court cases involving the FCC as a defendant to the FCC’s CFR page numbers, i.e., the frequency of court cases for one page CFR regulation. The ratio of the courts of appeals cases to CFR pages shows that the frequency of court cases increased in the 1970s and the 1980s. The ratio of Supreme Court cases to CFR pages had been high in this period. However, the FCC began increasing its brokerage efforts through holding more formal meetings and encouraging policy stakeholders to participate in advisory committees. The experience of the 1980s informed the FCC that administrative brokerage was critical for it to maintain discretion in policymaking. Since the late 1980s, several ways to mediate among conflicting interests have been developed by the agency. In May 1992, the FCC initiated its first negotiated rulemaking process on non-voice satellite services under Chairman
Alfred C. Sikes (1989-1993). Though it is hard to believe that the method increased the FCC’s brokerage capacity significantly, the commission action signaled to its stakeholders that the agency was trying to broker conflicting interests and build up a stable political equilibrium. Moreover, Sikes’ successor, Reed E. Hundt (1993-1997), established more negotiated rulemaking committees, such as the Hearing Aid Compatibility Negotiated Rulemaking Committee. Other advisory committees also were enhanced in this period. The number of advisory committees and their participants, as well as their budgets, increased. For example, total spending for advisory committees increased more than five times—from $62,289 in 1989 to $396,944 in 1997. When William Kennard (1997-2001) entered the FCC as a chair commissioner, he was advised by a former FCC chairman that the agency should maintain the equilibrium between powerful interest groups. He also tried to broker political groups based on the advice (McChesney 2004b). The FCC under Chairman Kennard held many public hearings to mediate policies and build up some advisory committees such as Public Safety National Coordination Committee and Technological Advisory Council. Though it is hard to say that all the efforts were fully successful, the FCC’s brokerage efforts under Sikes, Hundt, and Kennard yielded different results from the Fowler administration. In the 1990s, the agency increased its brokerage capacity by promoting more contacts among conflicting interests in a formal and legally arranged manner.

As a result, the agency recovered its brokerage capacity gradually to the level of the 1970s. Thanks to the efforts, the FCC could prevent some serious conflict expansions since the mid-1990s. However, it does not imply that the FCC achieved significant brokerage capacity. Though the agency’s brokerage capacity increased in the mid-1990s, it has still been low. Considering significant development of broadcast and telecommunications policy stakeholders, the FCC’s investment in brokering interest groups has been only minimal (see Figure 5-1). In particular, compared with the EPA (see Figure 4-6), the FCC’s brokerage efforts have been significantly limited. Because of the shortage of brokerage capacity, the agency frequently failed to resolve interest conflicts under significant political changes. Even in the late 1980s and the 1990s, the FCC could not decrease the frequency of courts of appeals cases; the FCC’s average frequency of courts of appeals cases have been nearly ten times as many as that of the EPA (see Figure 4-2).

Even though the FCC increased its brokerage capacity in the 1990s, the agency could not prevent interest conflicts appropriately in the late 1990s. Whereas many conservative interest groups expected that they could acquire high policy benefits to sound fire alarms in the Republican Congress, though the agency increased the capacity, the FCC had only limited brokerage capacity. As a result, significant increase in interest conflicts, which led to increased frequency of Supreme Court cases and remarkable upsurge of congressional oversight on the FCC in the late 1990s (see Figure 5-3). As the FCC maintained its brokerage efforts in the 2000s, however, interest conflicts regarding the FCC and congressional monitoring on the agency decreased in the period. This trend has not been much changed even in the 2000s under Mike Powell (2001-2005) and Kevin Martin (2005-2009), and Julius Genachowski (2009-) has made significant efforts to enhance the FCC’s brokerage capacity (e.g., Shane 2011).

99 Figure 5-2 shows that the frequency of Supreme Court cases was minimized in the late 1980s and the 1990s. It implies that the FCC could resolve important interest conflicts promptly and prevent the courts of appeals cases from moving to the Supreme Court, thanks to the increasing brokerage efforts in this period. However, in spite of the efforts, the brokerage capacity of the FCC had been significantly low, due to the legacy of the early 1980s. As a result, the frequency of courts of appeals cases was very high during this period.
Figure 5-2. Judicial Cases against the FCC Given Regulation Size

![Graph showing the number of Court of Appeals Cases to CFR Pages and Supreme Court Cases to CFR Pages over the years.]

Note: The data of court cases are from the LexisNexis database. (http://www.lexisnexis.com/hottopics/inacademic/?verb=sf&sfid=AC07STCseCmnSrch)

Figure 5-3. The Congressional Hearings on Telecommunications and Broadcast Issues and GAO reports on the FCC

![Graph showing the number of Congressional Hearings on the telecommunications and broadcast policies and GAO reports on the FCC over the years.]

Note: The data on congressional hearings are from the Policy Agendas Project dataset (http://www.policyagendas.org), which codes the number using the Congressional Information Service Abstracts. The data on GAO reports on FCC are from US GAO website (http://www.gao.gov/browse/date/week).
As a result, the FCC frequently failed to maintain its broad discretionary authority under significant fire alarms and subsequent congressional intervention in the FCC’s administration. As Table 3-7 shows, the discretion level of the FCC was much lower than that of the EPA. In a similar manner, the FCC could not have much discretion in yielding regulations. Figure 5-4 shows that the marginal increase of CFR pages of the FCC was limited and sometimes negative, while that of the EPA has generally increased (see Figure 4-7). Moreover, in terms of Pareto-improving brokerage, because the FCC has maintained only limited brokerage capacity, Pareto-improving administrative outcomes have been unavailable. Therefore, legislators have had little incentive to authorize the FCC’s new administrative programs; the FCC’s annual budget appropriations have been minimized in the 1980s and even significantly decreased since the mid-1990. Only the discretionary budgets about the account of salaries and expenses have been generally authorized; legislators have been reluctant to authorize the FCC’s new programs and provide more resources to the agency.

Figure 5-4. The Marginal Increase of CFR Pages of the FCC

![Figure 5-4](image)

Note: The data are from the Code of Federal Regulations.

In the subsequent chapters, case studies of media management and broadcast content regulations will be reviewed individually. In repeated battles over the two issues, only when the FCC brokered interests successfully did the agency maintain or enhance its discretionary authority. However, the agency could not have robust brokerage capacity, compared with the EPA.
5.2. The Case of the FCC (1): Media Management Regulation

5.2.1. Congressional Intervention in Media Management Regulation in the 1980s
Since 1981, Mark Fowler had made significant efforts to relieve diverse regulations of the FCC such as the prime time access rule (PTAR), the financial interest and syndication rules (fin-syn), and the multiple ownership limitations. Among these broadcast problems, multiple ownership regulation emerged as the most salient issue that brought about serious interest conflicts. For a long time, the FCC had maintained the “7–7–7” rule that limited single company’s ownership within seven AM radio stations, seven FM stations, and seven TV stations for decades. On 26 July 1984, the FCC voted to increase the long standing “7–7–7” rule into the “12–12–12” one. In addition, the FCC proposed that the agency would eliminate any ownership restriction in six years.

This FCC’s proposal brought about serious controversies. Though big commercial networks applauded the rule, the opponent groups such as the Motion Picture Association of America and the National Association of Black Owned Broadcasters criticized the FCC’s proposal (Shooshan and Krasnow 1986). However, despite the serious interest conflicts, the FCC never made efforts to broker the conflicting interest groups. Rather, the agency pushed forward the pro-industry rule adamantly. This FCC’s decisions neither guarantee any procedural justice, nor limit the transaction costs among media ownership policy stakeholders. As a result, serious conflicts among dominant networks (e.g., ABC, NBC) and other coalitions of small television stations (e.g., Westinghouse, Capital Cities, Metromedia), consumer groups (e.g., Telecommunications Research and Action Center), and trade guilds (e.g., Screen Actors, Directors, Producers, and Writers) were inevitable. Many disfavored interest groups prepared judicial challenges and lobbying to overturn the rule proposal. Responding to the fire alarm signals from interest conflicts, not only Democrats, but also even Republicans criticized the FCC’s decision. For example, Sen. Pete Wilson (R-CA) attached a rider to the Supplemental Appropriations Bill, which prohibited the FCC from changing its ownership rules until 1 April 1985 or sixty days after the FCC’s reconsideration (the Federal Communications Commission Authorization Act of 1983 (P.L. 98-214)). Likewise, Sen. Orrin G. Hatch (R-UT) criticized this policy in September 1984 with saying “I do not believe the commission has established an overwhelming case for the 12–12–12 rule” (Associated Press 1984). Finally, Congress enacted a six-month moratorium on the rule by the Second Supplemental Appropriations Act (P.L. 98-396, §304). As congressional intervention in the FCC’s administration intensified, the FCC changed its deregulatory plan in 1985; the agency revised the original “12–12–12” rule by including the provision that prohibits any station combinations that would reach 25% of the national audience.

Regarding the media ownership regulation issue, it is hard to say that legislators severely limited the FCC’s discretion; Congress put only six month moratorium rather than legislating detailed statutes to restrict the FCC’s discretion. However, the effect of the fire alarm about “12–12–12” rule was not limited only to the six month moratorium. Rather, the interest conflicts brought about significant congressional attention to the FCC’s misbehaviors on media management problems in the early 1980s. Congress enhanced its oversight on the FCC not only about multiple media ownership, but also about broadcast diversity, cable television competition, and must carry. Moreover, legislators began to restrict the discretionary authority of the FCC more tightly. One example is the FCC’s cable television regulation and the enactment of the Cable Communications Policy Act of 1984 (P.L. 98-549).

Historically, the FCC had had broad discretion based on its expertise in cable television
regulation. Though the Communications Act of 1934 had not clearly delegated cable regulation to the agency, its policymaking authority had been supported by the courts, which affirmed that the FCC had discretion as a result of its significant expertise. Especially in *United States v. Southwestern Cable Co.*, the Supreme Court decided, “There is no need here to determine in detail the limits of the Commission’s authority to regulate” cable television (392 U.S. 177-178, 1968). In other words, the “expert” agency enjoyed remarkable discretionary authority in this “lawless” policy area. However, the political landscape around the FCC had begun to change in the early 1980s, as fire alarm groups developed significantly in this period.

Similar to the multiple ownership issue, the FCC never brokered conflicting interests in the cable television regulation issues. The agency had only limited relationships with its favored interest groups. For example, Mark Fowler participated in several gatherings broadcast policy stakeholders and emphasized his deregulatory plans about cable television regulation. For example, he delivered a speech at the 1981 National Cable Television Association (NCTA) convention, in which he said, “Simply stated, we will eliminate all unnecessary regulations and policies. …The continued enforcement of pointless rules and policies imposes costs on business, discourages individual initiative and weighs down the government” (Brown 1981a). However, the FCC never arranged any formal meetings to connect conflicting policy stakeholders with the issue of cable television regulation. Although the FCC might have its own political supporters that favored cable television deregulation, the agency could not resolve interest conflicts. Many pro-regulation groups felt that the FCC’s policymaking was procedurally flawed and that their communication channels to their opponents were closed. This unresolved conflicts caused significant fire alarms to alert legislators of the FCC’s administrative malfeasance: Not only citizen groups such as the Media Access Project (MAP), but also to governmental actors such as the National League of Cities (NLC) and the U.S. Conference of Mayors (USCM) access to other policy venues for pulling fire alarms. For example, the NLC released a report on “Regulating Cable Television” in September 1981, in which the group argued that local communities should be allowed to regulate cable rates and minimum service standards to protect their citizens. Moreover, state and local governments urged many legislators including Sen. Goldwater to hold hearings on cable regulation. On the other hand, in April 1981 the NCTA sent Sen. Packwood a report entitled “The First Amendment: A New Interpretation Needed for Cable,” that argued that cable television should be provided with discretionary power. Both franchise authorities and the cable industry had performed their own surveys and provided expert knowledge supporting their views to legislators. As a result of the fire alarms, the information asymmetry between the FCC and Congress on cable television had begun to collapse in the early 1980s.

In January 1983, Goldwater introduced a bill (S. 66) for cable regulation. Though his original bill attempted to provide the FCC with significant discretion, the bill was changed to limit the delegation of authority to the FCC as a result of fire alarms from interest groups. Especially in terms of franchise fee regulation, the original bill authorized the FCC to set up or waive a “reasonable ceiling” for franchise fees. When the bill was reported to the Senate floor in April, legislators removed the FCC’s authority to decide franchise fee caps and instead authorized state and local governments to decide franchise fees within five percent of operators’ gross revenues. In these political surroundings, the FCC attempted to maintain its discretion by emphasizing its administrative expertise. In 1984, when the bill was held up in the House, the FCC initiated investigations into state and local governments. The agency said that franchise authorities had overcharged the cable industry, hindering cable TV’s growth. The commission
action was an attempt to signal to Congress that the “professional” agency had expertise in cable television regulation and that the FCC’s policymaking power should be secured. However, information asymmetry between the FCC and Congress was already eroded; the legislators that had been receiving expert information from fire alarm groups for years, decided to limit the FCC’s discretion in cable regulation. In addition, interest groups of cable television regulation such as the NLC, the USCM, and the NCTA began their own negotiation over regulation and forwarded their agreement to Congress in this period. Their compromise enabled more consistent information to be delivered to some legislators, who had been uncertain about which views were more plausible. Based on this compromise, Congress passed the Cable Communications Policy Act of 1984 (hereafter, the Cable Act of 1984), which was then signed by President Reagan on October 30, 1984 (P.L. 98-549). The FCC’s traditional discretion, which had been enabled by congressional ignorance of the issue and supported by its complexity, was significantly restricted, not only in terms of franchise fee caps, but also in terms of cable service rate and service content regulation. Similar to the EPA, the FCC failed to broker conflicting interest groups and lost its discretionary authority in the early 1980s in particular regarding multiple ownership and cable television regulation issues.

5.2.2. Temporary Brokerage on Cable Television, 1985-1992
The enactment of the Cable Act of 1984 transformed the policy environments of cable television regulation dramatically. Because the law allowed franchising authorities to regulate basic cable rates when “effective competition” was absent, the FCC’s decision on the effective competition standard was important. In April 1985, the agency released a rule that required at least three unduplicated broadcast signals to be present in a market to satisfy effective competition. This rule was essentially deregulatory. Because almost all the cable systems already met the standards, they were exempted from local rate controls; they took advantage of the FCC’s decision and dramatically increased their rates in the mid-1980s. As a result, municipality groups, which had been deprived of their right to regulate the cable industry due to the FCC rule, began sounding fire alarms in Congress. In the late 1980s, Congress took action again. The Senate Antitrust Subcommittee opened a congressional hearing on the cable issue in March 1988 and issued warning about cable rate hikes. Responding to this hearing, Rep. Edward J. Markey (D-MA), the chairman of the House Telecommunications Subcommittee, asked the GAO to conduct a survey of cable rates. Both sides in the cable rates debate again gathered in Congress. The NCTA, the NLC, and the USCM scrambled to provide information supporting their positions to the committees. On August 3, 1989, the GAO report that Rep. Markey had requested was released. The report said that basic cable rates had risen about 29 percent in the first two years after the FCC’s action and concluded that the cable industry was a monopoly. As a result, more than a dozen of bills to regulate the cable industry were introduced in the 101st Congress. Though many of them did not contain detailed provisions and covered only limited issues in an early stage, as time passed, Congress acquired more information from interest groups and prepared comprehensive bills restricting the FCC’s discretion. In contrast, the FCC that was infamous for its limited brokerage capacity in the early 1980s, had little chance to influence the legislative process through mediating conflicting interests.

However, the agency acquired an opportunity to change the political situation in its favor as the White House opposed any legislation concerning cable rate regulation. Moreover, the conflicts between Democrats and Republicans in Congress delayed the legislation. The legislative gridlock caused by the veto threat of President Bush and partisan conflicts was
detrimental to interest groups because continued interest conflicts and subsequent negative contingencies could drain their resources. They wanted to stop their “war of attrition.” In this period, cable industry groups preferred to solve the problem in the bureaucratic venue, because the FCC’s approach was not as harsh the alternatives being considered in Congress. Local communities, which had been concerned about a presidential veto, wanted a quick resolution in the bureaucratic venue. Though both groups wished to avoid serious “war of attrition,” however, these ideologically conflicting groups could not meet by themselves. As a result of the political situation, the FCC emerged as an alternative policy venue for interest groups. Though Chairman Alfred C. Sikes (1989-1993) shared similar ideological stances in media management regulation with his predecessor, Mark Fowler, his approach in brokering interests was somewhat different. Sikes felt that significant linking efforts between conflicting interests are necessary to avoid hostile congressional reactions to interest conflicts. Based on the belief, the FCC arranged several public hearings that included both conflicting groups to decrease transaction costs between conflicting interests and enhance procedural justice in its policy decisions. For example, the agency held three special hearings outside Washington DC in Los Angeles, Orlando, and St. Louis, to discuss competition in the cable television industry in February and March, 1990. In the hearings, many policy stakeholders including cable companies, city administrators, residents, and the FCC staffs participated in the hearing and conflicting policy stakeholders adjusted their interests, understanding their own and their counterparts’ political situations and expected policy benefits. Moreover, these hearings were open to the public and the agency promised to make formal reports about the hearing discussions to the participants. These FCC’s efforts increased the procedural justice of its subsequent cable television regulation decisions.

Based on the public hearings, the FCC proposed to revise the “effective competition” rules to provide local and state governments with more regulatory authority. Then, in July 1990, the agency reaffirmed its plan in a report (FCC 90-276) designed to solve the cable monopoly issue. In this report, the FCC concluded that the cable marketplace was not competitive and suggested that obstacles against effective competition be removed in order to solve the cable rate problem. Finally, on December 13, 1990, the agency approved a regulatory rule by a vote of 5-0. In this rule, the number of unduplicated signals in a local market required to qualify as effective competition was changed from three to six. Though any interest groups had not enthusiastically supported the rule change, there was no serious opposition; the FCC’s effort to broker interests was partly successful in resolving interest conflicts and blocking information flow from fire alarm groups to Congress. Consequently, limited fire alarms decreased congressional incentive to enact detailed legislation to restrict the FCC’s discretionary authority.

Though several legislators, who possessed expertise on cable regulation, had introduced bills to restrain the agency, it was hard for them to persuade fellow legislators without vigorous fire alarms from interest groups. In the 102nd Congress, Sen. John C. Danforth (R-MO) introduced a bill (S.12) that specified the conditions of “efficient competition.” However, the shortage of expert information from interest groups raised doubts about the specific provisions, in particular about the definition of effective competition. As a result, these provisions were eliminated when the House passed the bill on July 23, 1992. Finally, the Cable Television Consumer Protection and Competition Act of 1992 (hereafter, the Cable Act of 1992) was

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100 This suggestion was moderate, compared with the congressional bills, in that it intended to solve the cable rate problem by promoting competition rather than increasing regulation.
enacted over a presidential veto on October 5, 1992 (P.L. 102-385). Though the general direction of this legislation was slightly different from the administrative approach taken by the FCC, the law provided the agency with broad discretionary authority to regulate cable rates that could hinder efficient competition.

5.2.3. Another Failure of Cable Television Brokerage, 1993-1996
When Reed E. Hundt (1993-1997) arrived at the FCC in 1993, the cable rate problem was the most urgent issue for his agency. The new legislation required the FCC to revise cable rate rules within 180 days. Due to the expected regulation change, consumer groups and cable industry representatives, such as John Malone, the CEO of Tele-Communications Inc. (TCI), lobbied the agency. Moreover, Congress had been paying much attention to the cable issue, even before Hundt began his work in November 1992. According to Hundt’s biography, on his first day as the commission chairman, there “were letters from several hundred Congressmen and Senators complaining that the Commission had blundered…in its rules implementing the 1992 Cable Act” (Hundt 2000, 19-20). Though Hundt noticed the political pressures from diverse policy stakeholders, however, he did not care much about administrative brokerage in his early days as the FCC chairman. Rather, he believed that he could resolve administrative problem of media management by promoting the FCC’s administrative expertise. In other words, he assumed that neutral competence of the FCC is the main bureaucratic power to protect the agency from outside political pressures.

He put together a new economic team that included chief economist Michael Katz, an economics professor with the University of California at Berkeley, in order to develop a new method for computing appropriate cable rates. Moreover, he established the Cable Services Bureau to deal with the cable issue more efficiently. In addition, he initiated investigations of cable operators in the late 1993. Based on the enhanced economic analyses, the FCC found that 31 percent of subscribers had been overcharged and concluded that the introduction of “competitive prices” would lighten customers’ cable bill burden. Although this agency decision might be sufficiently reasonable based on objective scientific researches and the FCC’s historically accumulated expertise, however, the agency could not acquire significant supports from its policy stakeholders. Without sufficient administrative brokerage, the agency could not resolve interest conflicts; cable companies began to express their complaints about the FCC’s policy proposal. For example, Steve Effros, the president of the Cable Telecommunications Association, criticized the FCC’s decision, saying that “designing its regulations based on what looks good in a headline, rather than what makes real sense” (Farhi 1994).

Despite these political pressures from cable operators, the commission ordered a 7 percent cut in “expanded basic” cable service rates on February 22, 1994, by a 3-0 vote.\footnote{The FCC had already ordered a 10 percent cut in April 1993 under Acting Chairman James H. Quello (February 5 – November 28, 1993). Thus, the new rules imposed on the cable industry an overall 17 percent rate reduction.} The rule provoked severe criticism from cable operators. The NCTA said that the regulations would “drastically reduce the industry’s revenues and that cannot help but reduce our options when it comes to introducing new programming, new services and new technologies” (Sugawara 1994). Even in a magazine interview, Malone said that Hundt should be “shot” for ordering rate reductions. Regardless of the FCC’s expertise in cable television regulation, cable operators felt that the FCC’s policymaking process was procedurally unjustified and that their policy rights
could not be appropriately represented. The cable industry planned legal challenges and urged legislators to introduce bills to curb the agency’s authority. Hundt strove to overcome the opposition by arguing that his scheme was based on professional knowledge. For example, in July 1994, the FCC released data to indicate that the rate cuts had reduced basic cable service prices in the biggest cities by an average of 8.5 percent since August 1993. However, this FCC’s strategy to emphasize its “administrative expertise” was not much helpful for the agency to resolve interest conflicts and to avoid the criticism from cable companies.

Facing serious interest conflicts, Hundt came to realize his mistake; emphasizing only administrative expertise, ignoring brokering conflicting policy stakeholders. He wrote in his autobiography that “in the rulemakings…it was right and proper, then, for me to try to bargain with industry leaders on these hard details, not like a judge, but rather like a legislator” (Hundt 2000, 52). To put it another way, though objective information might be important to understand the current situation, without sufficient mediation between policy stakeholders, the FCC could not avoid serious interest conflicts. Hundt said:

“The gains from price regulation were small for each beneficiary; the losses huge for the regulated…. inevitably the regulator was buried under a mountain of resentment from an industry and its financiers” (Hundt 2000, 56).

Noting the importance of administrative brokerage, Hundt held several public meetings to link interest groups including cable executives, for months after the FCC’s new rules were established. He then attempted to shift the cable rate rules to limit the complaints of cable operators. For example, in November 1994, he eased the rules and allowed local cable companies to charge more ($1.50 more per month) if they added six new channels to their basic programs. However, his initial “political mistake” prompted a congressional attack on the FCC’s discretionary power over cable rate regulation.

After the Republicans took both houses of Congress and implemented their “Contract with America,” responding to the fire alarms from cable operators, Rep. Jack M. Fields (R-TX), chairman of the House Commerce Subcommittee on Telecommunications, and House Speaker Newt Gingrich (R-GA) led the effort to emasculate the agency. For example, Rep. Fields said, “There’s a strong feeling among those in industry and many of us in Congress that the FCC is an impediment to new technologies coming forward” (Mills 1995). Moreover, the Progress and Freedom Foundation (PFF), a think tank closely linked with the House speaker, submitted deregulatory plans for restricting the FCC’s discretionary authority. Finally, the Republican Congress repealed most of the price caps on cable operators, except for the ones on basic tier services, by enacting the Telecommunications Act of 1996 (P.L. 104-104). In this legislation, the commission’s authority over cable rate regulation was limited to only those cases where the cable rates were judged to be unreasonable, if they substantially exceeded the national average.

5.2.4. Low Powered FM Radio Regulation in the Late 1990s
This limited brokerage behaviors of the FCC in media management regulation continued even in the late 1990s. In this period, as William Kennard (1997-2001), who has high interest in pro-minority policies, was appointed as a chair commissioner, low powered FM radio regulation issue was emerged as a new media management problem. Since the 1980s, several people such as Mbanna Kantako, who is an African American activist, began to transmit radio signals on open FM dial slots in limited areas cheaply. When Kennard positioned in the FCC chairperson seat,
much more people participated in the “pirate” radio broadcasting without the FCC’s licenses, though the LPFM stations had been prohibited by the agency since late 1970s. Regarding the issue, Kennard showed mixed attitude toward LPFM until the early 1998. He admitted that they were “dangerous pirates” to bring chaos in radio broadcasting but had legitimate concerns. In particular, he thought that the LPFM might be a good method to promote competition and to guarantee minority ownership. In his tenure, giant media conglomerates such as the Clear Channel Communications had been emerged and media ownership had been concentrated, partly due to the Telecommunications Act of 1996. In terms of LPFM regulation, he said in April 1998, “I think it’s a big problem in America today that we have more stations in fewer hands. That creates access problems not only for people like a church group or a Hispanic group but small business in general” (Eaton-Robb 1998). However, the agency shut down hundreds of illegal LPFM studios in 1997 and 1998. Several LPFM studios and LPFM advocates began to access to the FCC since early 1998. They asserted that LPFM had not brought about much serious problems because they had used empty frequencies. As time went by, they had been more organized. For example, on 5 Oct 1998, about fifty “pirate” LPFM broadcasters marched around the headquarters of the FCC and the NAB, with claiming that they could serve the local demands for radio broadcasting diversity (Ahrens 1998). Moreover, it was not easy to police the “illegal” broadcasting systems for the agency due to the staff reduction in 1996 and the several “pirate” radio stations resisted giving up their transmission (Beach 1998). Thus, Kennard planned to legalize the LPFM and released the plan to establish more than one thousand LPFM stations in 2000. On 28 January 1999, the FCC decided to propose new rules to allow thousands of LPFM stations (-1,000 watts) to broadcast legally by a 4-1 vote.102 His plan without administrative brokerage caused immediate complaints from broadcaster groups, especially the NAB. They asserted that LPFM can interfere with their radio signals and prevent clear broadcasting. Dennis Wharton, senior vice president of communications for the NAB said, “Anyone who listens to radio knows that interference is a serious problem, ... If you shoehorn thousands of additional stations into already crowded airwaves, this can only lead to more interference and less service to the American public” (James 1999). However, almost all the shareholders noticed that the more important problem for the NAB was competition rather than signal interference, though the NAB could not officially claim that due to legitimacy problem (McChesney 2004b). The emergence of LPFM could reduce high power broadcasters’ advertisement profits.

However, Kennard did not have high interest in resolving the LPFM interest conflicts by brokering conflicting interest groups. The FCC never held any formal meetings about the issue in his term. Instead, he tried to persuade policy stakeholders by suggesting scientific data that the LPFM might not incur signal distortions. The lack of brokerage capacity caused the NAB to move to the congressional venue. Immediately before the FCC published its proposal in the Federal Register, Rep. Wilbert J. Tauzin II (R-LA), the chairman of the House Commerce telecommunications subcommittee, wrote a letter to Kennard, threatening that further the FCC’s action could incur legislative intervention by the Congress (The Advocate 1999). Although Kennard believed that the FCC could resolve policy controversies based on its significant administrative expertise, the agency was not the only professional entity that monopolized administrative information. During the public comment period for the FCC’s proposal, the NAB published its studies that the overcrowded LPFM could cause serious signal interference,

102 Proposed in the Federal Register (Creation of Low Power Radio Service) on Feb 16, 1999 (64 Fed. Reg. 7577-7587)
challenging to the FCC’s “professional” decision. With testing 28 common radios, engineers commissioned by the NAB concluded that LPFM broadcasting could incur serious interference problems. Other opponents such as the Consumer Electronics Manufacturers Association, which was supported by the National Public Radio and the Corporation for Public Broadcasting also announced similar study results (Sprinivasan 1999). The NAB President Edward O. Fritts asserted, “Every legitimate scientific study validates that additional interference will result from [low power FM]” (Ahrens 2000). Based on the research result, the NAB and other LPFM opponents submitted thousands of complaints not only to the FCC, but also to legislators. As it became less probable that the interest conflicts on the LPFM issue could be resolved in the bureaucratic venue, the LPFM proponents such as the National Lawyers Guild Committee on Democratic Communications, the Future of Music Coalition and the Prometheus Radio Project also tried to access to Congress. They announced their own study results that the NAB’s study overestimated the interference effect.

These fire alarms promoted congressional incentive to control the FCC’s discretion. Although Kennard accentuated the FCC’s experience and expertise in a Washington Post op-ed article to attract interest groups to return to the bureaucratic venue and prevent further interest conflict expansion (Kennard 2000), interest groups never returned. They continued to expand their conflicts to judicial and legislative venues. Responding to fire alarms derived from unresolved interest conflicts, legislators began to introduce telecommunications bills in late 1999 to limit the FCC’s discretionary authority. On 17 November 1999, Rep. Michael G. Oxley (R-OH) introduced a bill (H.R. 3439), which prohibited the FCC from establishing LPFM rules in the House. Likewise, on 10 February 2000, similar bills (S. 2068 and S. 3020) were introduced by Judd A. Gregg (R-NH) in the Senate. Facing these legislative actions, the FCC decided to tighten LPFM regulation to reduce the fire alarm sounds from LPFM opponents. On 20 January 2000, the agency increased restriction compared with its proposal of January 1999.103 In the rule, the FCC eliminated 1,000 watt LPFM allowance and limited advertisement for the LPFM. However, without sufficient brokerage efforts, the FCC could neither resolve interest conflicts nor turn off fire alarms. The NAB and other LPFM opponent continued to access the congressional venue to overturn the FCC’s decision and had no incentive to accept the FCC’s somewhat moderate suggestion. Despite the stricter regulation of the FCC, the NAB President Edward Fritts said on the date: “The FCC has chosen advancement of social engineering over spectrum integrity. It’s a sad day for radio listeners. … NAB will review every option to undo the damage caused by low-power radio” (Taylor 2000).

Responding to the fire alarms, Congress began to prepare bills to control the FCC’s discretion. For example, the House approved the Radio Broadcasting Preservation Act of 2000 (sponsored by Oxley, H.R. 3439), by a vote of 274-110, on 13 April 2000. The bill prohibited the FCC from extending the eligibility of LPFM stations without specific authorization by Congress and directed the FCC to promulgate strict rules to regulate unlicensed LPFM stations. In these political surroundings, the FCC further tried to comfort LPFM opponent groups and legislators. The agency built up signal interference complaint procedure for a political bargaining with LPFM opponents in September 2000.104 Moreover, the agency announced that it would permit only 255 licenses for the LPFM, which was less than a half of the original plan, from over 1,200

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103 The final rule (Creation of Low Power Radio Service) was published in Federal Register on 15 Feb 2000 (65 Fed. Reg. 7,616).

104 The final rule was published in Federal Register on 9 Nov 2000 (65 Fed. Reg. 67,289).
applications in late 2000. These FCC’s administrative gestures to block congressional actions failed. Without brokerage efforts, the agency could not resolve interest conflicts. Rather, these FCC’s uncommitted behaviors caused the political consequences that not only LPFM opponents, but also proponents moved to the congressional venue through Sen. John S. McCain (R-AZ), Chairman of the Senate Commerce Committee and Sen. Joseph R. Kerrey (D-NE).105

Finally, Congress passed an appropriation bill to restrict the FCC’s discretionary authority in terms of the LPFM (P.L. 106-553, §632).106 The law restricted the FCC’s discretion on minimum distance separation (for third-adjacent channels) and LPFM license issuance: Without explicit authorization from the Congress, the agency could not eliminate or reduce the minimum distance separations; only in limited cases, the FCC was allowed to extend the eligibility for application for LPFM stations; the FCC was required to conduct a test for signal interference. As Cheryl Leanza, deputy director of the Media Access Project, said, the appropriation bill might belittle the FCC’s expertise (Associated Press 2000). Although the FCC’s LPFM decisions might be scientific and professional, its expertise without brokerage capacity could not ensure its discretionary authority.

5.2.5. Controversies in Media Ownership Rules
Compared with the EPA, the FCC began to take a different path in administrative brokerage development. While the EPA made significant efforts to connect different interest groups in its bureaucratic venue, in spite of some brokerage efforts, the FCC tried to resolve interest conflicts of media management regulation relying on its administrative expertise. As a result, the FCC frequently failed to mediate among interest groups appropriately and the failure incurred serious fire alarms that negatively affected the FCC’s discretionary authorities. This trend continued even in the 2000s.

In the 2000s, media ownership issues have reemerged as Michael K. Powell (2001-2005) was appointed as a chair commissioner of the FCC.107 In this period, the FCC was demanded for biennial reviews on the broadcast ownership rules by the Telecommunications Act of 1996. Moreover, the U.S. Court of Appeals for the D.C. Circuit maintained that the 35 percent ownership cap for television was “arbitrary and capricious” on 14 February 2002.108 These statutory mandate and court decision provided the FCC with good chances to modify its ownership regulation rules. On 12 September 2002, the FCC decided to review six media ownership rules by a unanimous 4-0 vote.109 In changing media ownership rules, Michael J. Copps, one of the FCC’s commissioner, argued that nationwide hearings and comprehensive studies were necessary to modify ownership rules. He said, “The Commission faces a far more

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105 On 8 May 2000 and 27 July 2000, Sen. John McCain introduced legislative bills such as S. 2518 and S. 2989, in order to support LPFM allowance.
106 President Clinton reluctantly signed on 20 December 2000.
107 Since his appointment, Powell had expressed his deregulatory view on the marketization of mass media. In particular, television ownership deregulation was one of his main concerns. Even he said, “Monopoly is not illegal by itself in the United States” (McChesney 2004a, 227).
108 Fox Television v. FCC, 280 F.3d 1027, 1044 (D.C. Cir. 2002). This decision was supported by Sinclair Broadcast Group, Inc v. FCC, 284 F.3d 148, 152 (D.C. Cir. 2002)
informed and involved citizenry. The obscurity of the issue that many have relied upon in the past, where only a few down inside-the-Beltway lobbyists understood the issue, is gone forever. In other words, he noticed that the FCC would suffer from serious interest conflicts without sufficient administrative brokerage. However, the FCC Chairman Powell preferred prompt deregulatory actions to burdensome brokerage. He also noticed that interest conflicts can bring about serious political damages on the FCC’s administration. However, he believed that the FCC can implement its policies autonomously based on its significant expertise. For example, even in a public hearing on media ownership, he emphasized that the FCC would make and implement media ownership rules only based on its expertise, despising the linkage between conflicting interests. He said, “The FCC staff kicked off that effort by conducting a dozen studies on the workings of the media. … this rulemaking will be driven by evidence, not intuition or personal preference” (Federal Communications Commission 2003).

Since the FCC neglected administrative brokerage, its policy stakeholders began to sound fire alarms. The citizen groups such as the Consumer Union and the Consumer Federation of America published reports to refute the FCC’s studies. They hired media specialists and asserted that the FCC’s studies were biased with neglecting critical factors to estimate media ownership such as the size and diversity of population served by the media. Moreover, they argued that the FCC’s deregulatory rules would yield concentrated media markets, which betray the First Amendment (Associated Press 2002).

Until the early 2003, more interest groups such as the National Association of Hispanic Journalists, the National Organization for Women, the Center for Digital Democracy, and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) had expanded interest conflicts, expressing opposition to the ownership deregulation. As a result, several legislators tried to overturn the FCC’s media ownership decisions before the agency promulgated its deregulatory rules. Sen. Byron L. Dorgan (D-ND) said, “We are heading in exactly the wrong direction, ... You should have your foot on the brake, not your hand on the throttle.” Likewise, Sen. Ronald R. Wyden (D-OR) warned that media landscape could be dominated even by one company due to the FCC’s deregulation (Stern 2003). As the congressional concerns on media ownership had increased by public interest groups’ lobbies, the FCC made efforts to limit conflict expansion by emphasizing that its deregulatory plans were scientifically appropriate. For example, the FCC accentuated diversity index (DI), which quantified the number of media outlets (e.g., television, radio, newspaper, and the internet) and that of media companies, With the scientific data, the agency argued that deregulation in ownership was not threatening to localism and competition depending on the index.

However, the FCC was not the unique professional entity regarding media ownership regulation. Many interest groups refuted the FCC’s claims presenting their own scientific researches and data. Citizen groups of media management issues proclaimed that DI exaggerated real markets, neglected types of views, and used biased examples (Freedman 2008). Even the Appeals Court in Prometheus Radio Project v. FCC (2004) said, the index “requires us to abandon both logic and reality” due to “irrational assumptions and inconsistencies.” Although the agency tried to acquire political supports from interest groups through accentuating its expertise, the FCC failed to resolve interest conflicts; conflict expansion continued and interest groups sounded fire alarms in the judicial and legislative venues in this period.

111 Prometheus Radio Project v. FCC 373 F. 3d 372 (3d Cir. 2004)
As legislators noticed the fire alarms regarding media ownership regulation, they demanded the agency to delay its expected media ownership vote scheduled on 2 June 2003. Not only Democrats, but also several Republicans expressed serious concerns on the FCC’s deregulatory rules. For example, Sen. Olympia J. Snowe (R-ME) said that the FCC should “justify how any changes in media rules will promote the goals of diversity, competition and localism” and Sen. Chester Trent Lott (R-MS) said, “The media ownership rules are working well. We should leave them as they are” (Ahrens 2003c). Despite these political circumstances, however, the FCC decided to push forward the media ownership deregulation as planned, rather than mediating among interest groups. As a consequence, the FCC lost its chance to prevent conflict expansion: In mid-2003, legislators began to restrict the FCC’s discretionary authority before the agency finalized its deregulatory media ownership rules. For example, Sen. Theodore F. Stevens (R-AK) introduced a bill that the FCC should hold at least five public hearings for any rule changes (S. 1046) on 13 May 2003.

On 2 June 2003, the FCC relaxed important media ownership regulations including television ownership caps and cross-ownership restriction. \(^{112}\) Immediately after the promulgation, more “fire alarm” groups left the bureaucratic venue and tried to expand interest conflicts through judicial challenges and lobbies. Even before the rules went into effect on 4 September 2003, the U.S. Court of Appeals for the Third Circuit decided that the rules were “unlawful.” Moreover, the conflict expansion provoked heated discussions on the media ownership in the congressional venue. The Congressional Black, Hispanic and Asian Pacific American Caucuses argued that the rules would incur shutdown of minority broadcasting ownership. This does not mean that all the legislators disfavored the FCC’s deregulatory plan. \(^{113}\) Rather, the conflict expansion moved the main policy venue regarding media ownership policies from the FCC to Congress, which resulted in the serious restriction of the FCC’s discretionary authorities.

Though several legislators such as Rep. C. W. Bill Young (R-FL) and House Energy and Commerce Committee Chairman Wilbert J. Tauzin II (R-LA) supported the FCC’s rule amendment, many other legislators such as Sen. John F. Kerry (D-MA), Sen. Daniel R. Graham (D-FL), and Rep. Nancy Pelosi (D-CA) publicly opposed to the rules. For example, Sen. Olympia Snowe (R-ME) said that the rules “will undermine the basic tenets of democracy and objectivity in reporting and may have long-term consequences in terms of public access to information” (Ahrens 2003a). Sen. Ernest Hollings (D-SC) doubted on the FCC’s expertise about media ownership regulation, saying, “Where in the world do you find the grounds for 45 percent?” (Ahrens 2003b). As an action against the FCC in the Senate, Sen. Byron L. Dorgan (D-ND) led a “resolution of disapproval” (S.J.Res. 17) on the FCC’s ownership rules under the support of several legislators such as Sen. Ernest Hollings (D-SC) and Sen. Trent Lott (D-MS) on 15 July 2003. In the House, a bipartisan coalition passed an appropriation bill to prohibit the FCC from spending funds to carry out its new rules, by a 400-21 vote on 23 July 2003 (H.R. 2799, §624). Finally, legislators compromised at 39 percent ownership cap and enacted the

\(^{112}\) Depending on the rules, a broadcast network could increase its market coverage to 45% (old rule: 35%) and the bans on newspaper-broadcast cross-ownership and television-radio cross-ownership were eliminated. This rule was released on 2 July 2003 and published in Federal Register on 5 August 2003 (68 Fed. Reg. 46,286).

\(^{113}\) In reality, Rep. Clifford B. Stearns (R-FL) introduced a bill to amend the Telecommunications Act of 1996 to increase ownership cap up to 45 percent on 27 February 2003, favoring the FCC’s deregulatory plan (H.R. 1035).
Consolidated Appropriations Act of 2004 (P.L. 108-199) that instructed the FCC to modify its ownership rules (§ 629), was signed by the President on 23 Jan 2004. In June 2004, further, the United States Court of Appeal for the Third Circuit, in the Prometheus case, said that the FCC did not make reasoned analyses on the rules and that they should be remanded. These legislative and judicial interventions in the FCC’s administration highly damaged the discretionary authority of the agency. In sum, the FCC’s limited brokerage efforts caused serious conflict expansion and fire alarms that moved legislators to restrict the discretionary authority of the agency regarding media ownership management. Despite the FCC’s significant expertise, the agency failed to maintain its discretion in deciding media ownership regulation.

5.2.6. Controversies in Cross Ownership under Kevin Martin
The controversies in media ownership issues have not been resolved even in the mid-2000s. Because judicial and legislative venues are adversarial by nature (Bok 2001; Daniels and Walker 2001), interest conflicts tended to continue and interest groups were likely to suffer from “war of attrition.” As Kevin Martin (2005-2009), who had been a commissioner of the FCC since 2001, was promoted to the FCC chairman in March 2005, he initiated to change media ownership rules, which his predecessor, Michael Powell, failed to change much.

In June 2005, the Supreme Court declined to take the case about the constitutionality of ownership rules developed in June 2003. Thus, the FCC should draft new rules for media ownership. The Supreme Court decision provoked intensive lobbies of public interest groups and media groups. Citizen groups such as the MAP asserted that ownership limitation was necessary for diversity and democratic values. In contrast, media groups said that the old ownership rules were outdated. For the FCC, it is hard to change media ownership cap, which had been compromised at 39 percent in Congress years ago. Instead, the agency announced on June 21, 2006 that the agency would change cross-ownership rules that had banned multiple-ownership of newspapers and television (and television and radio) since 1975. Because interest groups of media ownership regulation had already experienced the FCC’s inefficient brokerage years ago, they gathered in the congressional venue immediately after the FCC’s announcement. Although Martin tried to take middle-ground positions in media ownership issues, however, interest groups had little incentive to choose the FCC as the main policy venue. The unfavorable history of the FCC in brokering interest groups and the FCC’s institutional shortage in administrative brokerage made interest groups to be reluctant to build consensus in the bureaucratic venue. In particular, public interest groups threatened the agency, if the FCC took the deregulatory plan, it would face serious congressional intervention initiated by their fire alarms. For example, Gene Kimmelman, vice president of Consumers Union said, “If the FCC goes too far down a deregulatory approach on media ownership or related areas, it will face a barrage of criticism from Congress” (Babington 2007a).

The quick conflict expansion opened congressional “watchful eyes” on the FCC. Even months before the agency try to mediate among interest groups and vote to change media ownership rules, legislators moved to monitor the FCC’s administrative behaviors, responding to the fire alarms. In a congressional hearing in January 2007, Byron L. Dorgan (D-ND) said that Democratic majority in the 100th Congress would make the FCC, which had “effectively emasculated any public-interest standards” to “beat a path to Capitol Hill to respond” (Babington 2007b). Despite these pressures, the FCC pushed forward its deregulatory scheme in media ownership and scheduled a voting in December 2007. Though several legislators including Chester Trent Lott (R-MS) and Byron L. Dorgan (D-ND) asked the FCC to delay the vote, the
agency pushed ahead and eased cross-ownership regulation on 18 December, 2007 by a 3-2 vote.\textsuperscript{114}

As a result, public interest groups including the MAP and the Institute for Public Representation (IPR), expressed discontent against the FCC’s vote. Josh Silver, executive director of Free Press, criticized the FCC’s decision, saying, “FCC chairman Kevin Martin is ignoring the public will and defying the U.S. Senate. ... Martin’s FCC relied on slanted research and a rigged process to reach today’s preordained outcome.” They began to challenge to the FCC’s policy decision in federal courts. Moreover, in the congressional venue, Sen. Byron L. Dorgan (D-ND) introduced a bill (S. 2332) to set up detailed administrative procedures to modify media ownership rules on November 8, 2007.\textsuperscript{115} Moreover, one day before the FCC’s vote, 25 senators sent a letter to the Chair Commissioner Martin, saying, “If you proceed to take final action on this rule on Dec. 18 without having given reasonable opportunity for comment on the actual rules and study of the related issues, we will immediately move legislation that will revoke and nullify the proposed rule” (Geewax 2007). Immediately after the FCC published its cross-ownership rule in the \textit{Federal Register} on February 21, 2008, a joint resolution of disapproval to stop the FCC from implementing the rule had been introduced in both congressional chambers (H.J.Res. 79 and S.J.Res. 28) on March 13, 2008 and the Senate bill was passed on May 15, 2008. On the day, Sen. Barack H. Obama (D-IL) said, “Today the Senate stood up to Washington special interests by voting to reverse the FCC’s disappointing media consolidation rules that I have fought against” (Associated Press 2007). In sum, continued shortage of the FCC’s brokerage capacity has brought about significant congressional intervention in its administration, damaging its discretionary authority.

\subsection*{5.3. The FCC Case Study (2): Television Content Regulation}

The administrative broker model propositions hold even under small policy complexity (i.e., small $E$ of the formal model). It implies that brokerage capacity is meaningful not only for complex policy areas in which the expertise of bureaucratic agencies easily overwhelms that of legislators, but also for less complex policy areas. Legislators may be able to restrict agency discretion more easily without significant information gathering, if policy issues are not complex. However, even for less complex issue areas, legislators have to be attentive to the issues and spend their political resources to enact public laws. Thus, if agencies can limit conflict expansion by appropriate brokerage, legislators would have little incentive to intervene in agency decisions even for less complex issues. In this respect, the case of television content regulation will be reviewed in this subchapter. This issue is not related with complex technical knowledge or economic analyses, different from the issues of the EPA’s hazardous waste management problems and the FCC’s media management regulation (Gormley 1986). Nevertheless, this case also supports the proposition that the FCC’s administrative brokerage was vital for its discretionary authority. Compared with the media management case in the previous subchapters, the FCC has made more efforts to link conflicting interests and partly maintained its

\textsuperscript{114} In detail, one entity would be permitted to own a newspaper and one broadcast station simultaneously in the 20 largest media markets, under the condition that at least eight independently owned-and-operated media voices must remain.

\textsuperscript{115} An identical bill was introduced in the House (H.R. 4835) by Rep. Jay R. Inslee (D-WA) on December 18, 2007.
discretionary authority regarding television content regulation. However, compared with the EPA, its efforts to mediate among interest groups have remained much lower.

5.3.1. Lack of Administrative Brokerage, 1981-1990
In terms of television content regulation, the main issue in the 1980s was about the negative effects of television commercials and programs to children. Regarding the issues, the FCC had adopted the guidelines of the 1974 Policy Statement that limit commercials in children’s programming and encourage broadcasting networks to make a “meaningful effort” to air programs for children on weekdays. However, the FCC Chairman Fowler began to relax the children’s television regulations in the early 1980s. Several citizen groups such as the Action for Children’s Television (ACT) complained about the FCC’s decision, arguing that more regulation of children’s television programs was necessary for their educational benefit. However, the FCC had no intention to mediate among interest groups on the educational television program issue. Rather, the agency was inclined to solve the problem based on its expertise, similar to media management case. On December 22, 1983, the agency refused to adopt minimum weekday quotas for children’s programming on commercial television stations. Moreover, the agency published a report entitled “Children’s Television Programming and Advertising Practices” in 1984; the report said that there had been a remarkable increase in the quality of programs for children. In conjunction with the report, the FCC repealed its guidelines by a 4-1 vote. The FCC’s stubbornness without any brokerage efforts made several citizen groups such as the ACT and the Public Advocates Inc. believe that the agency would never mediate among policy stakeholders regarding television content regulation. The ACT argued that the FCC had “acted arbitrarily and capriciously” and “failed to provide an adequate and rational basis” for its decisions (United Press International 1984). As a result of limited administrative brokerage, many citizen groups left the FCC and expanded interest conflicts to congressional and judicial venues, presenting their own scientific research results on the issue. For example, the National Coalition on Television Violence submitted statistical results on television violence during prime time and Saturday morning viewing hours at a congressional hearing on March 16, 1983, to vindicate their claims.

Responding to the fire alarms, several legislators such as Rep. Markey and Rep. Timothy Wirth (D-CO), had been concerned about the FCC’s actions on several issues and several bills limiting the FCC’s discretion on children’s television were introduced. Based on the administrative information delivered from child advocacy groups, such as the American Academy of Pediatrics, the American Psychological Association, the National Education Association (NEA), and the National Parent Teacher Association, legislators began introducing legislation to place stricter controls on the FCC. In the 98th Congress, Wirth introduced a bill (H.R. 4097) requiring that there be one hour per day of educational programming for children; Sen. Frank R. Lautenberg (D-NJ) introduced a companion bill (S. 2909) in the Senate. Moreover, in the next Congress, Rep. Wirth proposed another bill (H.R. 3216) to even more strictly control the FCC. The bill required the agency to prepare annual reports to Congress about television licensees whose licenses were renewed without the required children’s programming, as well as to report on the amount of commercials for children’s programs. In addition, some legislators tried to mediate among the conflicting interests by themselves in the congressional venue. For example, Rep. Markey held meetings between the ACT representatives and broadcasting industry leaders to broker a compromise on the issue. As a result, the groups reached a compromise that was included in the Children’s Television Education Act (H.R. 3966), a bill introduced by Rep.
John W. Bryant (D-TX) on February 18, 1988. Though this bill was pocket-vetoed by the President Reagan on November 5, it contained many provisions to restrict the FCC’s discretion based on professional information provided by the fire alarm groups.

To overcome the presidential veto, citizen groups prepared more concrete evidence to alert legislators of the FCC’s misbehaviors. For example, the ACT performed a monitoring study of the amount of commercial time during children’s television programming from September to December 1988 and submitted the survey during a congressional hearing on April 6, 1989. Likewise, the NAB published “Service to Children: Television Idea Book” in February 1988 and conducted several children’s television surveys to bolster their claims. This information flow to Congress undermined the FCC’s expertise monopoly. After debate over several bills in Congress, the Children’s Television Act of 1990 (P.L. 101-437) was enacted on October 18, 1990, without President Bush’s signature. The legislation required the FCC to develop standards for advertising during children’s programs and directed the agency to consider compliance with the standards when reviewing license renewals. Moreover, it mandated that the Secretary of Education, not the FCC, establish an Advisory Council on Children’s Educational Television. In sum, the FCC’s discretionary authority was damaged as the agency failed to broker interest groups and could not prevent conflict expansion. The fire alarms from policy stakeholders provoked legislators to limit the FCC’s discretion regarding television content regulation.

5.3.2. Successful Brokerage over Kidvid, 1994-1996

The educational television issue reemerged in 1994, as Reed Hundt, who had been an educator before taking the chairman’s seat, wanted to mandate broadcasters to carry a certain level of educational programming—so-called “kidvid.” Although Hundt and his agency failed to mediate among interest groups appropriately regarding cable rate regulation, the administrative experience let Hundt know the fact that administrative brokerage is important to limit fire alarms and maintain the FCC’s discretionary authority; the FCC adopted a somewhat different strategy to accomplish his “kidvid” plan.

In the mid-1990s, educational groups, such as the NEA, the ACT, and the Center for Media Education (CME), demanded at least seven hours of educational programming weekly. Peggy Charren, the head of the ACT, said, “There is a tremendous role for entertainment and there is also a role for junk. Parents can turn bad shows off. But they can’t turn on what’s not there” (Davidson 1994). On the other hand, networks and Hollywood producers opposed burdensome requirements of educational programs. To build consensus between the conflicting interests, Hundt met network moguls including Rupert Murdoch of Fox Television, Larry Tisch of CBS, and Bob Wright of NBC individually and informally. In the meetings, Hundt suggested a compromise—a repeal of the prime-time access rule in exchange for three hours of educational programming per week. However, the networks, except for Fox, did not look favorably on the compromise. The informal and closed meetings between network moguls and the FCC chairman could not provide procedural justice in agency policymaking that can increase the acceptance of policy stakeholders. Moreover, the network moguls had less incentive to accept the FCC’s proposal without interest adjustments between networks and educational groups; networks were not sure of educational groups’ responses to the FCC’s proposal. It was probable that educational groups would be dissatisfied with the three hour kidvid plan and incur negative contingencies, in spite of the networks’ acceptance of the FCC’s proposal. His efforts to persuade networks
without procedural justice failed to build consensus in kidvid policymaking.\footnote{116}

Therefore, Hundt slightly changed his strategy to mediate among interest groups. The FCC began to hold meetings to arrange the linkage between networks and educational groups in a more open manner. For example, in April 1995, the agency held an open meeting about kidvid in which many broadcasters and public interest groups such as the ACT and the CME. Even in the meeting, individual interest groups insisted their own opinions about broadcast regulation and educational programming. However, through the formal contacts among policy stakeholders, the agency could acquire procedural justice in developing its kidvid plan and reduce the transaction costs among different policy stakeholders. Finally, on September 20, 1995, the FCC reached an agreement for a three-hour quota from CBS in exchange for approval of its merger with Westinghouse Electric Corp. This agreement was reached through long negotiations with not only the companies but also public interest groups, such as United Church of Christ, the Center for Media Education, and Black Citizens for Fair Media. As Republicans took majorities in Congress in 1995, educational groups would not move the television content regulation issue to the congressional venue. Rather, they wished to resolve the issue quickly in the bureaucratic venue under the leadership of Reed Hundt. On the other hand, CBS noticed that serious conflict expansion regarding the television content regulation could be highly damaging to the network. Though networks might acquire favorable policy results by expanding conflicts to the congressional venue, it was highly probable that the interest conflicts might let TV viewers have negative feelings about CBS. Because CBS had aired educational programming only one hour per week—the smallest amount of any of the four major networks—the network had been the most dominant opponent to the kidvid plan (Mifflin 1995).\footnote{117} In short, the network could be assumed as the main culprit to prevent educational programming by viewers. Therefore, both CBS and educational groups noticed that their conflicts could cause “war of attrition” and adjusted their interests under the brokerage of the FCC to avoid negative consequences from the interest conflicts. Since CBS accepted the agreement, Hundt was able to preempt the most probable fire alarm. Moreover, the agreement gave momentum to the educational television requirement. Fox and NBC, which had aired about three hours per week of educational programming, accepted Hundt’s general idea. For example, NBC released an official paper in 1996, saying that the network “takes very seriously its responsibility to provide educational and informational programming” (Hodges 1996).\footnote{118}

\footnotetext[116]{In 1995, when the Republicans took control of both houses of Congress, Hundt prepared a number of suggestions to win his kidvid plan. Because networks preferred to solve the issue in the Republican-led Congress, which was relatively biased toward them, Hundt searched more vigorously for acceptable policy alternatives. For example, instead of a direct obligation, the FCC proposed a plan to allow TV stations to pay another station in the same market to air five hours a week of educational programming. Hundt also offered networks a free second channel for HDTV as a bargaining chip for kidvid. However, the networks publicly expressed opposition to these proposals.}

\footnotetext[117]{In 1995, the averages for educational programming were two and a half hours for NBC, two hours for ABC, and three hours for Fox.}

\footnotetext[118]{Because the FCC is a commission type agency, however, important decisions are dependent on the votes by the FCC commissioners. Thus, it was necessary for Hundt to assure policy stakeholders that the agency would implement policies as proposed. In other words, the FCC had to assure the policy stakeholders that the agency was fully committed to the plan. For the commitment, Hundt began persuading the FCC commissioners to accept his policy. Since he initiated the kidvid project, at least two commissioners had expressed opposition to the plan. James H. Quello, who had served at the FCC since 88
Because the FCC limited interest conflicts successfully through administrative brokerage, legislators did not have much incentive to control the FCC’s behaviors. Moreover, several legislators expressed their supports for the FCC’s kidvid decisions. For example, Rep. Markey, who had been one of Hundt’s most powerful supporters in Congress, encouraged legislators to sign a letter supporting the kidvid plan. As a result, 220 legislators signed the letter and sent it to the FCC. He said, “A majority of the members of the House now believe in this, and so do parents and the president” (Farhi 1996). In these political environments, networks agreed to take the three-hour-per-week plan at a summit meeting supported by President Clinton on July 29, 1996. About a week later, on August 8, 1996, the agency approved the kidvid agreement with the networks by a unanimous 4-0 vote. Unlike the educational television case, Hundt protected the FCC’s discretionary authority from congressional intervention and accomplished what he wanted through brokerage, rather than relying on expertise.

5.3.3. Emergence of Indecency Problems
As educational television issues were brokered in the bureaucratic venue consensually, the issue had not reemerged in the 1990s and the 2000s. Instead, the FCC faced a slightly different television content problem, broadcast indecency regulation. Since the Cable Act of 1992 was enacted, indecency problems had not been one of the main issues for the FCC, compared with media ownership regulation. However, the issue rapidly emerged immediately after rock musician Bono’s use of F-word in the 2003 Golden Globe Award. Due to the salience of the event, the agency received hundreds of complaints from citizen groups such as the Parents Television Council (PTC), which requested the FCC to sanction the broadcaster, NBC. However, in October 2003, the agency refused to accept the complaints because the F-word did not describe sexual or excretory organs or activities. This decision brought about strong opposition from public interest groups. Lara Mahaney, director of corporate and entertainment affairs for the PTC said, “The ruling is outrageous. It’s splitting hairs. … It’s not shocking to us on the FCC decision because they’re a toothless lion, … They don’t take indecency seriously and that’s why you see it proliferating on the broadcast airwaves” (Ho 2003). Following the PTC, several Christian organizations such as the Alliance Defense Fund, the American Family Association and the Concerned Women for America accessed to the legislators. As they began to sound fire alarms in the congressional venue, several legislators expressed concerns on the indecency issue. In particular, Republican legislators such as Rep. Jefferson B. Miller (R-FL) criticized the FCC’s decision on Bono’s F-word as “irrational and absurd.” (Wheeler 2003). They adopted several resolutions to reverse the FCC’s Bono decision. For example, Sen. Jefferson B. Sessions III (R-AL) introduced a resolution (S. Res. 283) on December 9, 2003. The resolution directed the FCC to reconsider the Bono decision and urged the agency to protect children from indecent materials and to investigate all indecency allegations. Likewise, Rep. John P. Gingrey (R-GA) introduced similar resolution to reverse the FCC’s decision in the House on December 8, 2003 (H. Res. 482). Also, Rep. Doug Ose (R-CA) proposed a bill which banned eight “profane” words and

174 and was referred to as the “dean” of the agency, was skeptical of the proposal. Because Quello’s opposition could cause congressional intervention and weaken the FCC’s commitment to the kidvid plan, Hundt exerted efforts to win the “dean” over to his side. In May 1996, Quello changed his mind and supported the general idea of kidvid, though he thought that Hundt’s detailed plan was too regulatory.

119 Moreover, Chip Pickering (R-MS) introduced a resolution in the House (H. Res. 500) on January 21, 2004, saying, “the House of Representatives does not support the lowering of standards or the weakening of the rules of the Federal Communications Commission prohibiting obscene and indecent broadcasts to
phrases directly (H.R. 3687) on December 8, 2003. Rep. Ose said about the bill, “If the commission wants to split hairs on this, that’s fine, … I and a number of my colleagues will be happy to hold them down and shave their heads for them” (Epstein 2004). Several other bills (e.g., H.R. 3717, S. 2056, and S. 2147) to enhance the penalties for indecency had also been introduced in early 2004.

In these political surroundings, Powell tried to reduce the political pressures from legislators and citizen groups. On January 13, 2004, he asked his fellow commissioners to overturn the Bono decision. Moreover, he also demanded legislators to increase in fines for the companies that broadcast profane, indecent, and obscene programming. Despite his effort to reduce the complaints from citizen groups, citizen groups were not much satisfied with the FCC’s proposal. For example, the PTC President Brent Bozell stated, “While we welcome the change of spirit on Powell’s part, and the FCC has tiptoed a little closer toward enforcing FCC decency rules by issuing this judgment, it still simply is not enough” (Ahrens 2004b). In this political atmosphere, the FCC enhanced sanctions on indecency materials to limit the fire alarms from indecency regulation proponents. For instance, the FCC proposed one of the highest fines amounted to $755,000 against the Clear Channel Communication on “Bubba the Love Sponge” on January 27, 2004. However, these FCC’s efforts without administrative brokerage could not resolve interest conflicts. Although the FCC’s regulatory decisions might slightly reduce the complaints from citizen groups, they angered broadcasters. The Clear Channel President Mark Mays said about the decision that “the government’s enforcement was haphazard and that broadcasters don’t have a clear idea of where the line is drawn” (Associated Press 2004). Likewise, Elliot Mincberg, legal director of the People for the American Way, said “We need to look at the standard for indecency and how it relates to other media like cable in a comprehensive way, rather than do hit-and-run work in this area” (Ostrow 2004).

As a result, significant conflict expansion was expected due to the lack of the FCC’s administrative brokerage. However, one other “indecent” television event had happened: Janet Jackson’s infamous “wardrobe malfunction” during the Super Bowl half-time show on February 1, 2004. The incident provided significant momentum to the indecency regulation proponents in the congressional venue. In other words, the broadcasters reduced their voice on the free broadcasting inevitably. The Clear Channel Radio president and chief executive John Hogan said, “We are going in a different direction. . . . That sort of inappropriate material does not have a place on our air” (Witts 2004). As broadcast industry could not effectively expand interest conflicts, the FCC had acquired an opportunity to enforce the broadcast industry without the political risk of fire alarms.

On March 18, 2004, the FCC decided that the rock singer’s remark was “indecent” and “profane.” Though there had been some petitions to reconsider the decision from a group of broadcasters including Fox Entertainment Group Inc. and Viacom Inc., they remained in the FCC venue, rarely moved to the congressional or judicial venue, because their voices could not be accepted in the congressional venue partly due to the salient “wardrobe malfunction” incident. It implies that the congressional transaction costs for the broadcasters were significantly high and they had to stay in the FCC despite limited administrative brokerage of the agency. In this atmosphere, the FCC tried to settle down several pending problems especially about indecency fines with negotiations in the bureaucratic venue. On June 9, 2004, the agency reached a settlement with the Clear Channel Communications with a $1.75 million fine, which had not allow network or other communications to use language that is indecent or vulgar.”

90
been resolved since 1995, through months of negotiations. Clear Channel’s chief legal officer, Andrew Levin, said “It was a tough negotiation, but a fair resolution, … We didn’t agree that all the complaints were legally indecent, but some clearly crossed the line and for those we have taken full responsibility” (Ahrens 2004a). Months later in August 2004, the FCC made another big settlement with Emmiss Communications Corp. about $300,000 indecency fine. In November, moreover, Viacom Inc. agreed to pay a record $3.5 million radio indecency fines including one against the “Opie & Anthony Show.” Viacom said, “We have now resolved all outstanding matters before the FCC related to indecency except for the Super Bowl” (Ahrens 2004c). Because interest groups, especially broadcasters could not effectively pull fire alarms in this period, the FCC could maintain its discretion despite limited brokerage capacity. For example, the President Bush signed the Broadcast Decency Enforcement Act of 2005 (P.L.109-235) on June 15, 2006, which increased the penalties for broadcast indecency by tenfold as Powell wished without reducing the FCC’s discretion in indecency fine.

As the impact of the national stir by Janet Jackson’s “wardrobe malfunction” decreased, however, the FCC without significant brokerage capacity was exposed to significant fire alarms and legislators moved again to limit the FCC’s discretion. For example, Rep. Bernard Sanders (I-VT) proposed a bill that would prohibit the FCC from extending its indecency regulatory authority to cable and satellite channels (H.R. 1440) in 2005. In April 2006, four major networks and affiliated stations tried to overturn the FCC’s indecency regulation with making a lawsuit against the agency, which had been led by the new chairman Kevin J. Martin since March 2005 (Fox Television v. FCC). They argued in a joint statement, “We strongly believe that the FCC rulings … are unconstitutional and inconsistent with two decades of previous FCC decisions” (Ahrens 2006). As a result, the U.S. Court of Appeals for the 2nd Circuit issued an indefinite stay of the ruling in September. Finally, the court ruled that the FCC’s decision was arbitrary and capricious and lacked reasoned analysis. Moreover, CBS sued the agency in the 3rd U.S. Circuit Court of Appeals in Philadelphia, challenging a $550,000 fine from the infamous “wardrobe malfunction” in November 2006. Even in March 2008, Fox Broadcasting refused to pay the FCC indecency fine amounted to $91,000. In these surroundings, the parent and religious groups accessed to the legislature again. Responding to these fire alarms, the legislature introduced several bills to intensify indecency regulations and to narrow down FCC’s discretion. On February 15, 2007, Mark L. Pryor (D-AR) had suggested a bill (S. 602) in the Senate, which was signed by the President Bush on December 2, 2008 (Child Safe Viewing Act of 2007, P.L. 110-452). The law required the FCC to develop blocking technologies for advanced communications devices, which should filter languages and be convenient for parents. The agency should issue a detailed report to the Congress. Likewise, James P. Moran (D-VA) introduced a bill (H.R. 2175) to restrict FCC’s discretion in regulation “indecent” material advertisement on April 29, 2009. In sum, even though the FCC temporarily made successful

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120 Then, the FCC appealed to the high court (FCC v. Fox). The Supreme Court ruled on April 28, 2009 that the FCC’s decision had not been arbitrary but that it declined to decide its constitutionality. As the Court sent the issue to the lower courts, the Second Circuit Court decided that the FCC’s policy was “unconstitutionally vague, creating a chilling effect.” on July 13, 2010.

121 The fine was voided by the court on July 21, 2008. The FCC appealed to the Supreme Court. The Supreme Court vacated the decision and sent the case back to the Third Circuit on May 4, 2009.

122 For example, H.R. 3559 and S. 1780 required the FCC “to maintain a policy that a single word or image may constitute indecent programming.”

123 The bill directed the FCC to revise the interpretations of, and enforcement policies concerning, the
enforcements thanks to the unexpected political event of “wardrobe malfunction,” the agency was easily exposed to significant conflict expansion and fire alarms without appropriate administrative brokerage.

FCC regulations on indecent material to treat as indecent, for purposes of broadcasting during specified hours. Specifically, it required the FCC to treat as indecent ads for erectile dysfunction and male enhancement drugs between the hours of 6 a.m. and 10 p.m.
From the statistical results and case studies in the previous chapters, it is clear that the agencies with higher brokerage capacity are likely to have more discretionary authorities. However, if legislators institute diverse mechanisms for interest groups to pull fire alarms more easily (e.g., establishing convenient appeal procedures or enhancing notice-and-comment procedures), even the agencies with significant brokerage capacity might frequently fail to resolve interest conflicts and hardly maintain their discretionary authorities. In other words, legislators are able to manipulate the opportunity cost of fire alarms in particular by amending administrative laws. Regarding the formal model of Chapter 2, prior to the step 1, if $L$ can transform the contingency function of $c(\cdot)$ and limits the effect of brokerage capacity on negative contingencies, or decrease $TC_L$, $\bar{p}$ will weakly decrease and the distributive gain of $L$ will weakly increase. In other words, legislators are capable of transforming the basic game settings of the administrative broker model. Therefore, if administrative brokerage is not Pareto-improving, legislators are likely to enhance fire alarm mechanisms to hinder the brokerage, though the fire alarms may promote more negative contingencies. However, as Lemma 3 of the administrative broker model indicates, Pareto-improving brokerage is available when agencies have sufficient brokerage capacity (and congressional transaction cost is low). Thus, as agencies have greater brokerage capacities, legislators would be more likely to encourage agencies to make successful administrative brokerage, rather than enhance fire alarm mechanisms. In other words, given significant administrative brokerage efforts of agencies, legislators would like to make efforts to promote institutionally favorable environments for administrative brokerage. From this perspective, this chapter reviews the evolution of congressional responses to the growth of agency brokerage capacity.

6.1. The Growth of Brokerage Capacity and Pareto-improving Brokerage
Prior to reviewing congressional responses to the growth of agency brokerage capacity, it is necessary to overview bureaucratic efforts to enhance brokerage capacity. The administrative broker model of the Chapter 2 assumes that brokerage capacity is exogenous. However, from a substantive viewpoint, agencies can increase their brokerage capacities endogenously. Because administrative brokerage is burdensome and can decrease administrative slacks of bureaucrats, if administrative brokerage is not beneficial for agencies, they would have little incentive to increase their brokerage capacity. However, the administrative broker model implies that agencies have had sufficient incentive to develop brokerage capacity in recent decades when congressional transaction cost has dropped down significantly. From Figure 2-1, the marginal increase rate of the discretionary window with respect to brokerage capacity increases as $TC_L$ decreases. Because $A$’s distributive gain is highly

124 Administrative slack means the difference between total budget and the minimum cost of producing the expected output (Niskanen 1975, 618-9). One of the main objective for bureaucrats is maximizing their slacks (Migúe and Bélanger 1974; Niskanen 1975) Thus, if administrative brokerage is not beneficial to the agencies, they had no incentive to invest resources to linking interest groups.
dependent on the discretionary window, it can be inferred that $A$ has a significant incentive to increase its brokerage capacity as $TC_L$ decreases—unless the endogenous cost for the capacity is exceptionally huge. Moreover, serious commitment problems in brokerage are more possible as congressional transaction costs decrease (Lemma 1). It means that $\bar{P}$ can be minimized to $\varepsilon^*$ because of brokerage failure (and subsequent information leakage) if $TC_L$ decreases. In this case, if $A$ increase its brokerage capacity endogenously, the agency can enjoy remarkable increases in its discretionary authorities and distributive gains by overcoming the commitment problem. As a consequence, it can be intuitively inferred that $A$ would be inclined to invest more resources to enhance its brokerage capacity, as $TC_L$ decreases. Simply put, as cheaper fire alarms allow legislators to overcome information asymmetry more easily, agencies have more incentive to increase their brokerage capacity to decrease the frequency of fire alarms by resolving interest conflicts.

This intuition is meaningful under the current political situation where congressional transaction cost has declined steeply since the 1980s. Interest groups have significantly developed and coalesced to share congressional transaction costs (Wright 1996; Hula 1999; Baumgartner et al. 2009). Moreover, the growth of communication systems and mass media has also decreased the cost. Given the decreasing congressional transaction cost, US federal agencies have enhanced their brokerage capacity since the 1980s. To illustrate, the number of formal meeting notices published in the *Federal Register* in the late 1990s and 2000s were more than 8,000, nearly doubled from that of the 1970s. Likewise, total investment in advisory committees has also steeply increased. Figure 6-1 shows that the total advisory committee spending and the number of advisory committee participants of US federal agencies has continuously increased in recent decades.

**Figure 6-1. The Growth of US Federal Agencies’ Advisory Committees**

![Graph showing the growth of advisory committees](image)

Note: Advisory committee data are from the Federal Advisory Committees Database (http://www.fido.gov/). Advisory committee spending is in constant 2008 dollars (ten thousand dollars).
From Lemma 3, Pareto-improving brokerage is available only under low transaction costs and high brokerage capacity. If brokerage capacity is static, the decline of congressional transaction costs can incur serious commitment problems in administrative brokerage and Pareto-improving brokerage may not be available even under low congressional transaction cost. However, brokerage capacity is not constant; agencies have developed various ways to interact with policy stakeholders and encourage contacts among conflicting interests through advisory committees and public meetings. As a result, both conditions of Pareto-improving brokerage (low $T_{CL}$ and high $b$) may become highly achievable recently.

6.2. Brokerage Capacity and Responding Congressional Strategies

If agencies have only limited brokerage capacity, administrative brokerage implies greater distributive loss to legislators, compared with additional policy gains derived from eliminating negative contingencies; legislators may have high incentive to decrease the effect of brokerage capacity on $c(\cdot)$ in order to hinder administrative brokerage. In contrast, provided that Pareto-improving brokerage is available thanks to high brokerage capacity, legislators might be reluctant to make it harder for agencies to broker interest groups, because additional policy gains by removing negative contingencies are greater than the distributive loss from administrative brokerage; legislators may become reluctant to enhance its procedural controls that allow interest groups to expand conflicts easily and that delay agency actions. In other words, congressional strategies in monitoring agencies might be changed depending on the growth of brokerage capacity.

6.2.1. The Choice of Congressional Oversight Method

Although there are many oversight measures, they can be divided into two types; fire alarm and police patrol. The latter referred to active surveillance over public agencies: Congress investigates a sample of agency behaviors to detect any violations of legislative goals through hearings, field observations, scientific studies, and examining agency documents as police patrol oversight. Because traditional principal-agent theories have emphasized only information asymmetry and costly information collection, fire alarms, the cheaper oversight method to acquire administrative information have been highlighted since the 1980s. Many legislative-bureaucratic politics studies have argued that fire alarms are more efficient than police patrols because legislators can monitor agency actions without bearing oversight costs (McCubbins and Schwartz 1984) and prohibit faits accomplis by incurring administrative slowness (McCubbins et al. 1989).

Fire alarm statutes have allowed interest groups to monitor agency behaviors and to inform legislators of bureaucratic drift. In other words, by enhancing fire alarms mechanisms, legislators could have decreased $T_{CL}$. However, fire alarms impose significant administrative burdens on agencies, which frequently incur administrative delay, rulemaking ossification, and unexpected contingencies (McGarity 1992; Asimow 1994; Spicer 1995; Sunstein 1995). In other words, fire alarms can cause serious negative contingencies. This means that remarkable fire alarm oversight makes successful administrative brokerage unavailable incurring serious commitment problems (see Lemma 1). Therefore, if legislators expect that administrative brokerage is not Pareto-improving, they may have high incentive to enhance fire alarm statutes, despite negative contingencies. In contrast, if legislators notice huge development of brokerage capacity, they may be reluctant to intensify fire alarm mechanisms.
This inference does not mean that legislators would abdicate monitoring agencies when facing high development of brokerage capacity. Rather, the inference implies that legislators might be more likely to use police patrols instead of fire alarms—unless the cost of collecting information by itself is overly high. Because legislators can acquire important administrative information through police patrols, the oversight method makes it easier for interest groups to provide complex administrative information to the legislators (Aberbach 1990). In this sense, police patrol oversight, similar to fire alarm oversight, contributes to reducing $TC_L$ by internalizing oversight costs and, as a result, can cause some commitment problems of administrative brokerage. However, the commitment problems are less serious relative to fire alarm oversight, because police patrols are less likely to impair the effect of brokerage capacity on negative contingencies.

In sum, when administrative brokerage is not Pareto-improving, Congress may enact additional fire alarm procedures to increase its distributive gains. In contrast, if administrative brokerage is expected to be Pareto-improving, legislators would refrain from enhancing fire alarms. It does not imply that legislators gave up fire alarm methods under significant development of brokerage capacity. Because some individual agencies have not yet developed much brokerage capacities (see Table 3-1-1), and legislators can monitor agency actions without bearing oversight costs (McCubbins and Schwartz 1984), fire alarms have still been sufficiently meaningful. However, at least, legislators may be reluctant to strengthen fire alarm mechanisms in the 1990s and the 2000s. Rather, legislators may prefer police patrols to fire alarms and would be likely to provide legitimate brokerage authorities to agencies. In the next subchapters, these inferences will be examined by reviewing the evolution of procedural statutes and requirements that have been the main methods for fire alarm oversight (McCubbins et al. 1987, 1989; Mashaw 1990).

6.2.2. The Evolution of Congressional Oversight Provisions in Procedural Statutes
The notice-and-comment procedure described in the Administrative Procedure Act of 1946 (APA; P.L. 79-404) is the most common fire alarm mechanism (Hall and Miler 2008). The procedure has allowed many interest groups to participate in the rulemaking process. If they are aware of attempts by the agency to deviate from legislative goals, they tend to pull fire alarms in congressional or judicial venues. In this respect, according to Asimow (1994, 127), the APA “energizes constituents who will alert legislators to instances in which agencies stray from the path of righteousness.” The enactment of the APA was the starting point for legislators to pass procedural statutes containing fire alarm oversight provisions. Since the enactment of the APA, Congress has passed several procedural statutes that allow interest groups to sound fire alarms more conveniently.

To illustrate, the National Environmental Policy Act of 1969 (NEPA; P.L. 91-190) requires all federal agencies to prepare environmental assessments and environmental impact statements. Because consultation and participation (for example, through the Citizen’s Advisory Committee on Environmental Quality) should be employed in assessing environmental impacts, this law legitimates the opinions of local communities and environmental groups. Also, the Government in the Sunshine Act of 1976 (GSA; P.L. 94-409) requires that every part of every meeting of an agency be open to public observation and that advance notice be given to the public before agency meetings take place. Likewise, Congress enacted the Regulatory Flexibility Act of 1980 (RFA, P.L. 96-354), which directs federal agencies to analyze the potential impact of regulations on small business. The RFA directs federal agencies not only to notify and solicit
comments from small entities (for example, small businesses, small organizations, and small governmental jurisdictions) concerning regulatory flexibility agendas, but also to assure that small entities are given an opportunity to participate in the rulemaking of any rule having a significant economic impact. These procedural statutes provide interest groups with significant information about administrative behaviors of federal agencies and sufficient time to analyze the information for challenging agency decisions when there are administrative malfeasances.

Though these laws have allowed many interest groups to express their interests in diverse policy venues, they emphasized multiple bilateral relations between interest groups and agencies, rather than multilateral relationships among interest groups. In other words, these procedural laws furnished interest groups with significant rights to challenge to agency decisions. On the other hand, they never provided sufficient brokerage chances to agencies. As a result, it has not been easy for agencies to resolve interest conflicts in their policy venue and serious administrative stalemate from the interest conflicts was inevitable. To illustrate, the number of rulemaking withdrawals, which has occurred often due to the adverse reactions from interest groups (Levin 1999; Noah 1999; Yackee 2012), has significantly increased (O’Connell 2011). Likewise, the number of final rules published in the Federal Register has significantly decreased (Kerwin and Furlong 2011), due to significant judicial challenges to agency decisions (Asimow 1994; Pierce 1995). Despite the administrative inefficiencies from administrative stalemate, legislators had had sufficient incentive to acquire administrative information from interest groups by enhancing fire alarms, during the period of limited brokerage capacity.

However, times changed as agencies have increased their efforts to broker interest groups since the late 1980s. In this period, legislators have less incentive to enhance fire alarm procedures that can hinder efficient administrative brokerage. Compared with major procedural statutes prior to the 1990s which had many provisions to strengthen fire alarms, those of the 1990s such as the Government Performance and Results Act of 1993 (GPRA; P.L. 103-62) and the Government Management Reform Act of 1994 (GMRA; P.L. 103-356), rarely included fire alarm provisions. Though these laws have important provisions about the annual performance plan and management improvement, they did not include the provisions to strengthen fire alarm process by increasing the ability of interest groups to challenge to agency decisions. Admittedly, legislators have enacted some fire alarm legislation even in the 1990s. In particular, legislators enacted the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; P.L. 104-121), amending the RFA. The law required the EPA and the Occupational Safety and Health Administration to convene panels to review rules for small business regulatory fairness, and directed the Small Business Administration to designate a Small Business and Agriculture Regulatory Enforcement Ombudsman. However, even in this case, the fire alarm oversight mechanisms were not very significant. The ombudsman is not a strong fire alarm method. This method cannot change, stop, or delay a federal agency enforcement action. Also, the panels have played no more than a symbolic role (Shapiro 2007).125

On the other hand, Congress has tacitly allowed agencies to avoid the notice-and-comment procedure—the most important fire alarm mechanism imposed by the APA. In particular, in the mid-1990s, agencies initiated the use of “interim final rules” and “direct final rules” in earnest.126 Because these ways of rulemaking can be used only when any significant

125 This law also includes police patrol provisions, requiring agencies to submit all the new final rules not only to Congress, but also to the GAO.
126 The APA allows agencies to bypass the public comment process, if there is “good cause” to exempt
adverse comments against agency rules are not expected, allowing these methods can increase the effectiveness of administrative brokerage in decreasing negative contingencies. In other words, if agencies can broker interest groups prior to rulemaking stage appropriately, they do not need to waste time unnecessarily for policy implementation. Though these exceptional procedures were recommended by the Administrative Conference of the United States (ACUS), not enacted by the legislature, Congress has not challenged the procedures. In the 1990s, bureaucratic agencies rapidly increased their use of the methods instead of using notice-and-comment rulemakings (Asimow 1999; O’Connell 2008). This trend persisted in the 2000s. Figure 6-2 displays the ratios of direct final and interim final rules to notice-and-comment rules across all federal agencies from 1996 to 2006. However, Congress has passed over the increasing use of interim final and direct final rulemakings, though these rulemaking processes can disenfranchise many policy stakeholders in fire alarms. In reality, the GAO has warned that publishing rules without a notice of proposed rulemaking generally limits the public’s opportunity to participate in the rulemaking process (see US General Accounting Office 1998). Nevertheless, legislators have not taken any meaningful action to control these rulemaking behaviors; they have had less incentive to enhance procedural controls.

**Figure 6-2. The Ratios of Interim Final or Direct Final Rules to Notice and Comment Rules**

<table>
<thead>
<tr>
<th>Year</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>0.05</td>
</tr>
<tr>
<td>1997</td>
<td>0.1</td>
</tr>
<tr>
<td>1998</td>
<td>0.15</td>
</tr>
<tr>
<td>1999</td>
<td>0.2</td>
</tr>
<tr>
<td>2000</td>
<td>0.25</td>
</tr>
<tr>
<td>2001</td>
<td>0.3</td>
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<tr>
<td>2002</td>
<td>0.35</td>
</tr>
<tr>
<td>2003</td>
<td>0.4</td>
</tr>
</tbody>
</table>

Notes: The data were drawn from the *Unified Agenda*. Only the rules of the final rule stage are included. The “Year” of the graph means the year when a specific rule appears in the *Unified Agenda* (published in April or in October).

Moreover, legislators have enhanced its police patrols instead of fire alarms to decrease congressional transaction costs without much impairing the effect of administrative brokerage on negative contingencies. Before the mid-1990s, though several administrative laws had required the rulemaking from the notice-and-comment requirements. Thus, rules can go directly to the final rule stage, if “good causes” exists to expedite the enactment of non-controversial rules (direct final rules) or to enact rules immediately in emergency situations (interim final rules).
agencies to submit administrative reports to Congress, the legislature had rarely used its instrumentalities to investigate agencies such as the GAO and the Congressional Budget Office (CBO).\footnote{Though the FACA allowed the Comptroller General to access to administrative records for audits, even the law does not require the GAO to investigate agencies for specific issues.} Thanks to the efficient fire alarms, legislators do not have much incentive to pass police patrol provisions to monitor agencies. However, since the mid-1990s, they have introduced significant police patrol provisions in procedural statutes. For example, the GPRA which declares its purpose is to improve “congressional decision making,” directs agencies not just to submit annual performance plans and annual performance reports to Congress, but also requires the Comptroller General to report to Congress on the implementation of this act, including the prospects for compliance by federal agencies.\footnote{The GMRA Modernization Act of 2010 (P.L. 111-352), an amendment of the law, also required the Comptroller General to evaluate the implementation of the act and to submit a report to Congress.} The GMRA directs the Secretary of the Treasury to submit an audited financial statement for the preceding fiscal year to Congress, and requires the GAO to audit the financial statement. In particular, the Congressional Review Act (CRA), as a part of the SBREFA, requires agencies to submit their major rules to Congress and the GAO before they take effect, and directs the Comptroller General to report on each major rule to the committees of jurisdiction of each house of Congress. For the first time, Congress established a mechanism by which the legislature can review and overturn virtually all federal agency rules.\footnote{Moreover, Congress has enhanced its actual police patrol behaviors. For example, since the 1980s, Congress has increased the number of oversight hearings on agencies (Aberbach 1990; Balla and Deering 2001; Aberbach 2002; Parker and Dull 2009).}

6.2.3. Legitimating Administrative Brokerage

Furthermore, as Pareto-improving brokerage became available, legislators might have had sufficient incentives to encourage agencies to enhance their brokerage capacity. As seen in Table 3-11, the agencies of high brokerage capacity are likely to have more discretionary budget authorities. In other words, legislators have urged agencies to broker interest groups by providing more monetary resources to effective “administrative brokers.” Similarly, as agency brokerage capacity has highly increased, legislators have had sufficient incentives to provide agencies with legitimate power of administrative brokerage, which may increase the effect of brokerage capacity on negative contingencies. For example, Congress enacted and reauthorized several laws such as the Administrative Dispute Resolution Act of 1990 (P.L. 101-552) and the Negotiated Rulemaking Act of 1990 (P. L. 101-648). These laws formally authorized agencies to broker interest groups in rulemaking and adjudication. Since the 1980s, negotiated rulemaking and administrative dispute resolution methods had been praised as an effective method to limit administrative inefficiency by discouraging judicial challenges and administrative appeals (Harter 1982; Susskind and Cruikshank 1987), and several agencies such as the EPA and the Federal Aviation Administration initiated negotiated rulemaking to limit administrative inefficiency in their rulemaking process. Because administrative brokerage can bring about Pareto-improving results, legislators decided to provide formal and legal brokerage authorities to agencies.
Bureaucratic expertise had been believed as a sufficient condition for bureaucratic agencies to maintain their discretionary authorities. Because legislators possessed little resources to collect administrative information and had little time to understand policy environments, agencies could have maintained monopolistic status regarding administrative expertise, and have enjoyed broad discretion. However, recent quantitative and qualitative development of interest groups stunned expertise monopoly of bureaucratic agencies. Their “fire-alarms” have weakened information asymmetry between agencies and legislators and, therefore, have contributed to decreasing bureaucratic discretion. As a result, bureaucratic discretion in recent decades has been dependent on the political capacity to affect the behaviors of interest groups to pull fire alarms. In this respect, brokerage capacity to resolve interest conflicts by promoting procedurally legitimate contacts among interest groups has been critical in determining the size of bureaucratic discretion. Through administrative brokerages, many agencies such as the EPA have lowered interest groups’ incentive to sound “fire-alarms” and have secured their discretionary authorities. In contrast, those agencies that have neglected administrative brokerage suffered from significant discretion reduction. To put it another way, “administrative brokers” rather than neutrally competent technicians can withhold information from political principals and defend their discretion nowadays—in the era of prevalent information.

However, this political capacity to broker interest groups has been generally neglected even nowadays. Although several studies have noticed the fact that agencies are political entities, only few studies have examined political capacities of agencies (exceptionally, Carpenter 2001a; Huber 2007; Carpenter 2010). Moreover, even those bureaucratic politics studies that assumed agencies as political actors have not statistically examined the political capacity of agencies with regard to their discretionary authorities. This dissertation suggests and statistically examines an alternative view that agency capacity to broker conflicting interests increases its discretionary authorities. Supporting this view, the statistical results indicate that the agencies with sufficient brokerage capacity decrease the frequency of fire alarms and, as a result, that the agencies are likely to maintain their discretionary authorities. These results never deny the fact that agency expertise is one of the most important factors to determine agency discretionary authorities (see Tables 3-9 and 3-10). However, even the most professional agencies can have only limited discretion if they do not have sufficient brokerage capacity. In sum, agencies with high brokerage capacity tend to acquire significant discretion, even in the era of interest group growth and subsequent prevalent information. They can block information leakage and maintain information asymmetry, despite the emergence of a professional and pluralistic interest group society. However, it does not mean that agencies with high brokerage capacity can be the “winners” in “zero-sum like battles.” Rather, high brokerage capacity even allows agencies to transform the relations with the legislature into more favorable ones: Pareto-improving relations between Congress and agencies are available. Further, as congressional transaction costs have declined in recent decades, these implications of the brokerage capacity have been increasing. Though administrative brokerage may cause some agency drift and distributional loss to legislators, it provides more policy benefits to the political principals, eliminating detrimental administrative inefficiencies.

100
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