

The Gift of Gridlock: Divided Government, Bureaucratic Autonomy, and the Politics of Rulemaking in the American States.

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Abstract

Scholars of American politics debate the consequences of divided government on lawmaking, but have largely neglected the impact of institutional conflict on the policy outputs of the bureaucracy. We argue that institutional gridlock empowers bureaucrats, who exploit disagreement among competing principals to pursue policy goals through rulemaking. To explore these dynamics, we draw upon a comprehensive dataset of over 150,000 proposed and adopted rules issued by state agencies from 1994 through 2010, allowing us to model aggregate and policy-specific changes in rulemaking over time. Our focus on the state-level contributes to a fuller understanding of the political and institutional sources of bureaucratic autonomy, as we find that divided government results in an increase in the volume, content, and breadth of state rulemaking. Our research also highlights the importance of legislative oversight powers, as rulemaking increases most sharply in states where legislatures lack the ability to veto regulations. In addition, we observe that bureaucratic influence is most pronounced in states with “citizen legislatures,” indicating that legislative deprofessionalization has made state assemblies increasingly dependent on the bureaucracy to guide lawmaking.

In July of 2012, Kentucky Democratic Governor Steve Beshear issued the first in a series of executive orders directing state agencies to implement the Affordable Care Act (ACA), making Kentucky the first Southern state to adopt a state-based health insurance exchange and expand its Medicaid program (Kentucky Executive Order 2012-587; Kentucky Executive Order 2013-0418). Governor Beshear justified his unilateral actions as “a moral decision” (Sargent 2014), arguing that uninsured citizens could ill afford to wait as “naysayers...worried more about partisan politics than Kentucky families” played “gamesmanship” with health reform (Beshear 2013). Following the orders, the Kentucky Cabinet for Health and Family Services initiated a dramatic reorganization of the Commonwealth’s public health system—issuing new rules expanding Medicaid and the Children’s Health Insurance Program (CHIP), reforming the state’s hospital and mental health systems, and creating an entirely new administrative unit to regulate the health insurance marketplace. Although the state Senate’s Republican majority opposed these rules, they were powerless to stop implementation of the ACA. A state court held that the new regulations were consistent with the statutory authority of the Secretary of Health and Family Services, while a bill that would have required the legislature’s approval prior to enacting health reform was killed by the Democrat-controlled House of Representatives. In response to Republican charges that his administration had overreached its constitutional authority, Governor Beshear suggested brusquely that they “get over it” (Beshear 2013).

The prominent role of executive agencies in the development and implementation of public policy is a defining feature of contemporary federal and state policymaking. Elected officials rely heavily on the expertise and resources of bureaucracy, often establishing the general contours of policy through statute or executive order while relying on administrative agencies to fill in the details through rulemaking. Federal and state administrative agencies issue thousands of rules a year, establishing policy in areas as diverse as education, criminal justice, food and drug safety, transportation, immigration, national defense, and environmental protection (Congressional Research Service 2015). The influence of rulemaking is magnified in the states, where the erosion of legislative professionalism has made state assemblies more dependent on bureaucratic expertise to guide lawmaking (Boushey and McGrath 2015). Once enacted, administrative rules and regulations carry the force of law and affect every citizen and business in the United States, sometimes dramatically affecting state and national economies and individual behaviors (Kerwin and Furlong 2011).

Rulemaking is pervasive and it can also be controversial. This is especially true when agencies draw upon their statutory authority to create policy without the explicit direction of the legislature, or when a president or governor is perceived to encourage rulemaking to pursue policy priorities in the face of legislative disapproval. In recent years, leaders across American legislatures have questioned whether bureaucratic autonomy blurs the separation of powers by concentrating authority in the executive branch. Indeed, restoring legislative control over the bureaucracy has become a salient goal of party leaders in Congress and the state legislatures. Outrage over the Obama administration's use of rulemaking to advance policy goals spurred Congressional Republicans to re-introduce the "Regulations from the Executive in Need of Scrutiny" (REINS) Act of 2015, which would require that the House and Senate jointly approve all new major regulations before they go into effect (H.R 427, 2015). Similarly, Republican officials in Kentucky reacted to the state's ACA expansion by calling for a constitutional amendment granting the legislature new powers to veto administrative rules.

The ongoing controversies over political use and misuse of rulemaking highlights an important and under-appreciated dynamic of contemporary American politics. In an era of unprecedented party polarization in the federal (McCarty, Poole and Rosenthal 2006) and state legislatures (Shor and McCarty 2011), administrative agencies are positioned to play an increasingly central role in policy development. Yet surprisingly, research on the impact of interbranch conflict on American policymaking has focused primarily on legislative productivity (Mayhew 1991; Binder 1999; McCarty 2007), leaving aside important questions about how ideological polarization or partisan gridlock influence other policymaking institutions. Pragmatically, legislative gridlock may shift the responsibility for meeting policy demands to the bureaucracy. Strategically, gridlock creates opportunities for bureaucrats, who have their own policy preferences, to directly and autonomously influence policy through rulemaking (Hammond and Knott 1996; Wilson 1989). Without accounting for the behavior of the bureaucracy, we have only a limited understanding of how the polarization and partisan divides that characterize contemporary American politics shape the overall production of public policy.

This paper explores the institutional determinants of administrative rulemaking in American state politics. Following an emerging literature on the politics of federal notice and comment rulemaking (O'Connell 2008; Yackee and Yackee 2009; Potter and Shipan 2013; Potter 2015; Acs 2015), we explore how interbranch conflict structures incentives for bureaucrats to strategically pursue their policy

goals. Our research is grounded in a theory of bureaucrats as strategic political actors (Hammond and Knott 1996; Carpenter 2001; Gailmard and Patty 2007; Potter 2015; Acs 2015). We anticipate that interbranch conflict creates opportunities for bureaucrats to act as pivotal players in policy development. When government is unified, lawmaking itself is relatively easy and bureaucrats, although they have much discretion in implementation (Epstein and O'Halloran 1999; Huber and Shipan 2002), have limited opportunities to *autonomously* influence policy through rulemaking (Shipan 2004). When government is divided, however, agencies have more leeway to move policy away from one of their elected principals toward the preferences of the other, so long as a law shaped by such regulation is closer to that institution's ideal preferences than any policy generated through legislative/executive compromise (Hammond and Knott 1996). Bureaucrats are sensitive to this dynamic, and use their first mover advantage to increase rulemaking activity when they can exploit disagreement among elected officials to advance their own policy goals. Although this might be attributed to executive unilateralism (Howell 2003), we argue that strategic rulemaking is foremost the result of bureaucratic autonomy. When government is unified, bureaucrats must carefully attend to the common preferences of both branches or risk swift and severe sanction. Under divided government a strategic bureaucrat is free to propose policy that aligns closely with *either* the preferences of the legislature or the governor, leading to a larger volume of status quo policies that agencies can move toward their preferences.

To explore these dynamics, we draw upon a comprehensive data set of proposed and adopted regulations issued by state agencies across from 1994 through 2010. Our focus on the state level provides for a robust assessment of the strategic politics of rulemaking. Between 1994 and 2010 there were only three instances of unified government at the federal level. Meanwhile, over 40 percent of state governments were unified over these years. Furthermore, focusing on states provides an opportunity to test the implications of interbranch conflict more broadly than is possible in a single case study of federal policymaking. We draw upon new comparative measures of state legislative polarization (Shor and McCarty 2011), legislative/executive parity (Boushey and McGrath 2015), and legislative veto powers (Grady and Simon 2002) to evaluate the partisan and institutional determinants of agency lawmaking across state governments. This approach pushes us towards a generalizable understanding of the political origins of bureaucratic autonomy.

The paper proceeds as follows. In the next section, we review existing literature on policy delegation and bureaucratic autonomy and draw on these studies to advance a series of propositions regarding how partisan balance and state institutional capacity shape the volume, breadth, and policy content of state-level rules over time. Our data provide an entirely novel look at the rulemaking process in state governments, and we proceed with a brief overview of trends in the volume and policy scope of the state regulatory agenda over nearly two decades. We then turn to our empirical tests of theory and estimate models of the overall volume, breadth, and content state rulemaking. We show strong support for our hypotheses, suggesting that the volume and breadth of agency rulemaking increases during divided government—especially when the upper and lower chambers of the legislature are controlled by different parties. Furthermore, we find that these effects are most pronounced in contentious and salient policy areas (such as health, financial and business regulation, insurance, and labor relations). Finally, we find evidence that the institutional powers of state legislatures can moderate bureaucratic drift, with rulemaking increasing less sharply with divided government in legislatures with the power to suspend or veto new regulations.

The Politics of Delegation

The incentives leading to the delegation of policymaking discretion from legislatures to bureaucracy have been well-documented in the literature (Moe 1984; Bendor, Glazer and Hammond 2001). Elected officials suffer severe constraints with respect to time, resources, and energy, and cannot allocate political attention equally across all agenda items requiring legislative attention (Baumgartner and Jones 2009). Such constraints are exacerbated when policy development is complex, or when policy implementation requires specialized knowledge of science or industries (Teske 2004; Ringquist, Worsham and Eisner 2003; Gailmard and Patty 2013). Even when policy development is fairly straightforward, legislators generally prefer to allocate their energy to activities that offer higher electoral returns than writing detailed legislation or engaging in oversight (Mayhew 1974; Ogul and Rockman 1990; Huber and Shipan 2002; Woods and Baranowski 2006). In short, elected officials hold practical and strategic reasons for delegating policymaking discretion to administrative agencies. Rulemaking is in part the product of this delegation.

Such delegation is not without peril for elected officials. Bureaucrats are political actors who

themselves hold strong and independent preferences for the production of public policy (McCubbins, Noll and Weingast 1989; Epstein and O'Halloran 1996; Gailmard and Patty 2007). When elected principals delegate authority to implement legislation to a bureaucracy, they empower an agent whose policy goals may be quite different from their own. This describes a central complication of modern policymaking. Elected officials benefit from delegating to bureaucracies, yet they must select instruments of oversight and control to ensure that policy implementation matches the spirit and intent of the enabling legislation (McCubbins, Noll and Weingast 1989; Epstein and O'Halloran 1996; Huber, Shipan and Pfahler 2001). Politicians adopt a wide range of such control strategies, including appointing and confirming agency managers (Wood and Waterman 1991), reviewing administrative rules (Woods 2015), controlling agency budgets (Kiewiet and McCubbins 1991; Carpenter 1996), and mandating administrative procedures (McCubbins, Noll and Weingast 1987; Huber, Shipan and Pfahler 2001; Van Sickle Ward 2010) to narrow the policy options available to agencies. The same logic governing the incentives for delegation also applies to the selection of these instruments of administrative control. Legislators prefer mechanisms of oversight that limit the costs of monitoring bureaucratic behavior and maximize potential electoral returns (McCubbins and Schwartz 1984; McCubbins, Noll and Weingast 1989; Epstein and O'Halloran 1996; Wood and Waterman 1991; Volden 2002; Huber and Shipan 2002; McGrath 2013*a*).

Thus, given the costs of doing so, elected officials are most likely to curtail the discretion of agencies when they fear goal incongruence, as exists when divided government and/or polarization heighten the ideological differences between competing principals (Bendor, Glazer and Hammond 2001). Classic scholarship on ex ante control of bureaucracy finds that legislatures invest time to limit bureaucratic through administrative procedures (McCubbins, Noll and Weingast 1987) and statutory precision (Epstein and O'Halloran 1996; Huber and Shipan 2002) when government is divided. These same pressures influence the legislature's reliance on the tools of ex post oversight, as Congress and the state assemblies are more likely to hold public oversight hearings, revise program budgets, and rewrite statutes to reign in administrative autonomy when there is partisan disagreement across the branches (McCubbins and Schwartz 1984; McGrath 2013*a*). Additionally, Farhang and Yaver (2015) have shown that Congress tends to fragment policy implementation across multiple agencies during divided government, thus making it more difficult for presidents to direct decisively pro-administration agency

policymaking.

While research on the delegation of policymaking authority has produced robust findings regarding the strategic behavior of legislative and executive principals, scholars have only recently directed attention to the policy outputs of the agencies themselves through notice and comment rulemaking (O’Connell 2008; Yackee and Yackee 2009; Potter and Shipan 2013). The neglect of rulemaking in principal-agent studies of delegation is puzzling for several reasons. First, the delegation dilemma exists entirely because legislative principals fear that bureaucrats will abuse their statutory authority to subvert legislation they find objectionable. Second, research on the political origins of bureaucratic autonomy anticipates that civil servants strategically make use of their expertise and administrative powers to influence policy outcomes (Carpenter 2001, 2010; Acs 2015; Potter 2015), and rulemaking is a primary way that civil servants shape the content and scope of new and enduring regulations. Without accounting for macro-level changes in the volume, scope, and policy content of the regulatory agenda, we have no way of assessing whether bureaucratic engagement in the policy process systematically responds to interbranch conflict, and thus have no real evidence that *ex ante* and *ex post* political controls have any real bite in constraining bureaucratic drift. In the following section we draw upon the literature on bureaucratic autonomy to advance a series of propositions related to the impact of interbranch conflict on state notice and comment rulemaking.

Bureaucratic Autonomy and the Politics of Rulemaking

Although normative theories of public administration expect civil servants to adhere to a norm of “neutral competence,” empirical studies of the bureaucracy reject the idea that bureaucrats are indifferent to the partisan and ideological context of policymaking. Instead, studies of bureaucratic autonomy assume that civil servants are ideologically driven actors who make significant investments in policy expertise precisely because such skills provide them with a unique ability to influence policy outcomes (Gailmard and Patty 2007; Carpenter 2001; Brehm and Gates 1997).¹ Rather than being

¹While a fraction of the civil service is comprised of “slackers” who shirk their responsibilities, we feel comfortable with this generalization of bureaucrats as dedicated policy actors (Brehm and Gates 1997). It is unlikely that indifferent civil servants would rise to positions in the administrative hierarchy that allow them to influence policy through rulemaking.

passive, civil servants work diligently to shape the content and reach of public policy—participating in committee hearings, assisting legislative staff in writing legislation, and refining laws and developing implementation plans through rulemaking. When civil servants disagree with the directives of their legislative and executive principals, they do not necessarily or unconditionally yield to their elected principals. Instead, bureaucrats draw upon a broad set of strategies to guard their autonomy and obstruct unwelcome policy directives, ranging from mobilizing coalitions of key stakeholders from Congress, the public, and the regulated interest group community (Carpenter 2001), to strategically altering the timing and/or the speed of the rulemaking process to maximize the likelihood that a proposed rule becomes adopted (Acs 2015; Potter 2015).

Each of these tactics were evident in the Federal Communication Commission’s (FCC) 2015 promulgation of its “Open Internet” rules, which asserted the commission’s power to regulate broadband internet service as a public utility and established a controversial set of regulations preserving the principles of “net neutrality.” Although the decision was roundly criticized by the broadband industry and Republican leadership in Congress, the FCC benefited from overwhelming support of stakeholders from the tech industry, consumer rights organizations, and the Office of the White House.² The net neutrality rules were issued at the outset of the 114th Congress, allowing the commission to preempt a Republican Senate bill that called for more limited regulation of the broadband industry. By moving first, the FCC ensured that the proposed legislation would fail—as the White House and Democratic leadership in Congress preferred the comprehensive rules proposed by the FCC to the more limited version put forward by Senate Republicans. Although Republicans criticized the rules as “Obamacare for the internet,” they recognized that they were unlikely to persuade Congressional Democrats or the President to sign a law overturning the new regulations (Weisman 2015).

As the FCC’s Open Internet regulations indicate, bureaucracy is responsive to interbranch conflict—

²The FCC’s decision was influenced by the “longest, most sustained campaign of Internet activism in history” as a “swarm of small players, like Tumblr, Etsy, BoingBoing and Reddit, overwhelmed the giants of the broadband world” (Weisman 2015). The FCC and Obama Administration’s decision to support a dramatic expansion of regulations governing “net neutrality” was influenced by the over 4 million public comments that preceded the regulatory action (Weisman 2015).

although perhaps not in the way that traditional theories of delegation anticipate. While classic treatments of principal-agent dynamics suggest that divided government complicates the job of civil servants—this perspective is rooted in a problematic assumption that bureaucracies struggle (or intend) to establish centrist policy that meets the ideological preferences of their fractured executive and legislative principals. This view neglects the strategic calculations of policy-minded bureaucrats who (as evidenced by ACA reform in Kentucky and FCC regulation in Washington, D.C.) are willing to risk upsetting *some* of their principals in order to achieve their policy goals. Rather than acting as a barrier to rulemaking, interbranch conflict instead opens avenues for bureaucrats to assert an influential role as pivotal actors in the policy process.

This dynamic has been described in the literature on the political origins of bureaucratic autonomy. Rather than viewing bureaucratic policy influence as fixed, scholars anticipate that the policy influence of bureaucracy is conditioned by the degree of cohesion or fragmentation of the legislative and executive branches of government (Hammond and Knott 1996; Wilson 1989). When interbranch conflict is low, it is relatively easy for the elected principals of government to control the bureaucracy, as the executive and legislative branches can coordinate legislative and oversight powers to ensure that bureaucrats do not exceed their statutory authority (Shipan 2004). On the other hand, fragmentation of legislative/executive principals complicates oversight and control of the bureaucracy, as competing principals have diverging policy preferences and differing views on the risks of bureaucratic discretion (Whitford 2005). Although elected principals give more attention to oversight under divided government (McCubbins, Noll and Weingast 1987; Kriner and Schwartz 2008; Parker and Dull 2009; McGrath 2013*a*), these controls are insufficient to limit the overall autonomy of bureaucracy. Hammond and Knott (1996, p. 163) explain:

Whatever the extent of constraints on an agency, one cannot single out any one institution as primarily responsible for these constraints. Instead, control of the bureaucracy must be seen as a systemic matter: the president, House, and Senate collectively control the bureaucracy. It is.....a matter of joint custody, and this means that no one institution will necessarily like the bureaucratic autonomy, or the bureaucratic policies, that may result. But in the nature of our separation-of-powers system of government, no one institution may be able to do much about it.

The key insight here is that increasing institutional fragmentation leads to increasing bureaucratic influence in policymaking. When government is unified, bureaucrats have incentives to hold back on

issuing potentially controversial rules, as any proposed regulation that does not meet the preferences of their elected principals can be easily overturned through legislative or gubernatorial fiat (Shipan 2004). Furthermore, bureaucrats who violate the preferences of elected principals in unified government are more likely to face severe sanctions (in the form of budget cuts, revision of statutory authority, administrative reorganization, or termination of employment), as such coercion is easier for the multiple principals to administer when there is consensus across branches. When government is divided and interbranch conflict is high, however, bureaucrats will be strategically motivated to broadly engage policy through rulemaking in pursuit of their own ideological goals. This is because the fragmentation of principals increases an agency’s policy influence, allowing bureaucrats to propose a new rule that is closer to the preferences of one of their fractured principals than would be a law enacted through legislative/executive compromise. This heightened probability that the regulatory action will draw political support (coupled with the diminished threat of effective oversight) leads bureaucrats to increase efforts to shape policy through rulemaking. In this regard partisan interbranch conflict does not reduce the overall production of public policy, but rather shifts policy authority to bureaucrats, who in the wake of gridlock, increase rulemaking activity in response to both mundane and salient issues on the agenda—an efficiency gained at the expense of allowing bureaucrats to shape policy to their own liking. This leads to a preliminary expectation regarding the impact of divided government on state agency rulemaking:

Hypothesis 1: *Rulemaking will increase when government is divided.*

Interestingly, theory implies that it is not simply the *fact* of divided government—but its *type*—that conditions bureaucratic influence in policymaking. Because bureaucratic policy autonomy is derived from the degree of “policy conflict among multiple principles,” (Hammond and Knott 1996, 127) the policy influence of administrative agencies will be especially pronounced when the legislature is itself divided along party and ideological lines. This dynamic is a product of diminished oversight powers in divided legislatures coupled with the increased number of potentially sympathetic allies who bureaucrats can recruit to support rulemaking initiatives. Under simple divided government, a unified legislature is still able to draw upon considerable institutional powers to check unwelcome

administrative policymaking.³ When the upper and lower chambers of the legislature are divided along party lines, however, the exercise of basic ex post oversight tools are much more difficult, while the likelihood that the leadership of one of the two chambers will support regulations proposed by rule is much higher. In such instances bureaucracies have especially broad latitude to pursue their policy goals. This suggests the following refined hypothesis regarding interbranch conflict and rulemaking:

Hypothesis 2: *Rulemaking will increase most sharply when the control of the legislature is divided along party lines.*

While the preceding discussion focuses mostly on the implications of divided government on the *volume* of administrative rulemaking, a theory of bureaucratic autonomy also holds that these same institutional factors can determine the policy *content* and *breadth* of rules proposed by agencies. When agencies are assured of their policy autonomy, they will propose more ambitious rules that make significant changes to public policy. In practical terms this implies that bureaucracy will prepare more sweeping rules when interbranch conflict is high, as civil servants are more confident that these proposed regulations will survive oversight. On the other hand, when faced with the threat of strong and certain oversight, agencies will be more guarded in their proposals. To the extent that rules reflect policy change at all in these circumstances, such change will be narrow in scope and content. Broad reforms during unified government are more likely to come from the legislature, and agencies implementing these policy choices may do so with minimal modification of the state code. Although this precise dynamic not been explored systematically, it is consistent with recent research on federal notice and comment rulemaking, which finds that agency pursuit of policy goals leads them to manipulate the timing (Acs 2015) and speed (Potter 2015) of rule adoption in order to complicate Congressional oversight. This leads to the following expectation regarding the impact of divided government on the breadth of proposed and adopted rules.

Hypothesis 3: *Proposed and adopted rules will be broader in their effects on existing law when interbranch conflict is high.*

³For example, a unified legislature can limit executive influence over policy by coordinating oversight hearings and by passing new laws that, depending on the strength of the legislative majority and a state's veto rules, can weather a gubernatorial veto.

The Institutional Determinants of Increased Policy Autonomy

Although theories of bureaucratic autonomy provide a compelling framework for thinking about variation in rulemaking, students of state politics have cautioned that the standard model of delegation in the federal government may not map neatly onto the dynamics of subnational policymaking. Such concerns center on important differences in the capacity, expertise and resources between the federal and state governments. Policy in the federal government is developed by extremely high capacity political institutions that face fewer resource constraints than their counterparts in the states. Furthermore, there is remarkable parity across the executive and legislative branches in the federal government. Such parity is largely absent in the states, where recent expansions of executive power have coincided with legislative deprofessionalization, tipping the balance of power to the governor and administrative agencies (Boushey and McGrath 2015). Krause and Woods (2014) argue that such variation in the professionalism and capacity of state political institutions may create unique incentives for policy delegation that are not accounted for in existing models of federal policymaking. For example, part-time state “citizen legislatures” lack the time, expertise, and resources to write detailed legislation, and therefore depend heavily on the expertise of more professionalized administrative agencies to guide lawmaking (Krause and Woods 2014; Boushey and McGrath 2015). The diminished professionalism of many state legislatures means that bureaucracy often plays a more prominent role in policy development than is appreciated in studies of federal policy making.

Perhaps because of this dependence on bureaucracy, state governments have also experimented with a wide range of ex post oversight reforms intended to increase the power of legislatures to check bureaucratic discretion. The constitutions of state governments provide for a wide range of formal powers related to executive and legislative rule review. In many states these powers are very limited—and legislatures can do little more than issue a joint resolution declaring opposition to administrative regulations. In other states the legislature can suspend or veto administrative rules without gubernatorial approval. (Grady and Simon 2002; Woods 2004, 2015).

Research on state politics has therefore explored whether policy delegation is influenced by the professionalism and oversight powers of state governments (Huber and Shipan 2002; Volden 2002; Woods and Baranowski 2006; McGrath 2013b; Boushey and McGrath 2015). Most prominently, researchers have evaluated how variation in state legislative professionalism shapes delegated lawmaking, predict-

ing that professional politicians have a higher capacity for policy development and are therefore more likely to adopt appropriate administrative procedures to guide policy implementation. Alternatively, researchers expect that states with citizen legislatures will be generally more dependent on expert rulemaking to manage the political agenda. While we anticipate that interbranch conflict will lead to increased rulemaking even in the most professionalized government, the policymaking expertise and capacity of the state legislatures may impact the overall dependence of state governments on bureaucracy. This suggests the following hypothesis regarding the professionalism of state legislatures:

Hypothesis 4: *Rulemaking will decrease in response to increasing state legislative professionalism.*

State politics research has also explored whether the considerable variation in the powers of regulatory review shape policy delegation and bureaucratic autonomy across state governments. While some states grant the legislature extensive powers to review, alter, or veto proposed and adopted regulations, others allow the legislature only weak powers to register symbolic objections to administrative actions (Grady and Simon 2002). The threat of oversight could work as an important check on strategic rulemaking, as the threat of veto may lead agencies to hold back controversial rules that will be overturned by the legislature (Woods 2015). Indeed, surveys of state civil servants which reveal that bureaucrats are most sensitive to the preferences of elected principals in states where the legislature possess strong powers of ex-post oversight (Wood and Bohte 2004; Gerber, Maestas and Dometrius 2005). If state rulemaking declines in response to the of the threat of legislative policy reversal, than the effect of divided government on rulemaking will be most pronounced in states with limited powers of legislative rule review and veto authority. This leads to a final hypothesis regarding the impact of divided government on agency rulemaking:

Hypothesis 5: *Rulemaking will increase most sharply when divided government occurs in states with weak powers legislative rule review.*

An Alternative View: Legislative Productivity and Rulemaking

While we derive our expectations from theories of bureaucratic autonomy, this perspective is not universally shared by students of administrative behavior. Where our study anticipates that

rulemaking activity is influenced primarily by the increased policy autonomy of agencies under divided government, other scholars imagine that rulemaking is most directly influenced by changes in legislative productivity in the policymaking branches (Yackee and Yackee 2009). This argument is based on the expectation that legislative productivity is the primary driver of administrative rulemaking. The logic here is straightforward. Legislative gridlock results in a decline in both the volume and ambiguity of legislation, which in turn leads to reduced rulemaking (as agencies are given fewer and more precise policies to implement).⁴ Complementing this dynamic is the fact that Congress and/or the President become more suspicious of bureaucratic autonomy during divided government (Epstein and O'Halloran 1996), leading them to impose greater restrictions on autonomous bureaucratic rulemaking. Yackee and Yackee explain (2009, p. 130) that under divided government "circumscribed grants of regulatory authority may make it more difficult for an agency to identify or to achieve a regulatory outcome that satisfies both Congress's and the agency's own policy preferences. In response, the agency may resist issuing regulations at all, despite the command or the authority to do so." There has been mixed empirical support for this theory in recent literature on federal notice and comment rulemaking. Yackee and Yackee (2009) find that the overall volume of federal rulemaking and the incidence of major rules increases during unified government. However, this finding has not been reproduced in subsequent studies of federal rulemaking that account for changes in legislative productivity in the empirical models (Potter and Shipan 2013).

We are skeptical that legislative productivity alone drives variation in administrative rulemaking in the states. Our reservations are drawn from the logic described above, but can be reiterated here. First and foremost, a model of rulemaking based on changes in legislative productivity overlooks the impact of bureaucratic drift on the regulatory agenda. Once given rulemaking authority to establish policy in a given area, civil servants have considerable and enduring latitude to pursue their own policy objectives. While many rules are created in response to new legislative directives, many more are initiated by internal administrative decisions. Indeed, legislative gridlock may actually increase

⁴By this same logic unified government should create more downstream demand for rulemaking, as bureaucracies must generate new rules to implement major legislation passed in a current or prior legislative session. This occurred in the years following the passage of the ACA, when the Department of Health and Human Services issued thousands of pages of new rules to implement health reform

demand for autonomous rulemaking, as agencies face pressure from citizens, interest groups, and some elected officials to increase rulemaking activity in order to manage agenda items neglected by the legislature.⁵ Second, while legislative incentives to limit bureaucratic discretion increase during divided government, oversight capacity to enforce these limits is highest during *unified government* (MacDonald and McGrath 2015). Even if legislative productivity does increase during periods of unified government, new policies are likely to be carefully proscribed and extend only to a narrow policy area. Furthermore, it is notoriously difficult for even motivated legislators to comprehensively monitor the policymaking behavior of the bureaucracy through “police patrol” oversight, and the benefits of executing sweeping ex post oversight during divided government are unlikely to exceed the considerable costs for policymakers (McCubbins and Schwartz 1984). Fortunately our models allow us to differentiate between these rival explanations of the causes of increased rulemaking. A finding of increased rulemaking during divided government would be inconsistent with the legislative productivity argument. Similarly, a finding of increased rulemaking during unified government (or in the years immediately following unified government) would contradict the bureaucratic autonomy theory we propose here.

Data, Variables, and Methods

To assess these expectations we make use of a novel data set of state rulemaking from 1994-2010. Rulemaking is the primary way that bureaucracies shape public policy, and represents an integral activity for agencies of all types across state governments. To list just a few examples, state departments of health make rules regarding the regulation of state health insurance markets, Medicaid eligibility, and Medicaid reimbursement to hospitals. State environmental and conservation departments make rules that constitute the bulk of governmental regulations regarding hydraulic fracturing in the United States. And state licensing boards write rules establishing state educational

⁵Beyond the reasons stated here, the literature on the impact of interbranch conflict and legislative productivity questions whether divided government truly leads to a decrease in lawmaking (Mayhew 1991). Theories derived from models of legislative behavior may therefore be inadequate when exploring how political factors shape bureaucratic participation in policy-making.

and professional standards for doctors, dentists, teachers, lawyers, and chiropractors. Previous empirical work on state rulemaking has been illuminating, but has tended to focus on narrow geographic and substantive areas. Thus, prior work is ill-suited to demonstrate the true scope or impact of rulemaking in the U.S. states.⁶ As described below, our data include detailed information on the volume, timing, and content of the regulatory agendas of state agencies over nearly two decades. We intend our data to portray the policymaking activities of state bureaucrats as comprehensively as possible; and, in so doing, show how bureaucratic lawmaking responds to the opportunities and constraints created by interbranch conflict.

As a general matter, rulemaking follows a fairly standard sequence across the states.⁷ Agencies begin by formally publicizing proposed rules in dedicated bulletins akin to the *U.S. Federal Register*, or in prominent state newspapers. These publications then instigate sometimes vigorous public participation in the process. Stakeholders, sometimes including state legislators,⁸ publicly comment on these proposed rules, and seek to lobby, oppose, or advocate for the agency policy in question. After a variably long public comment period, agencies can choose to publish a final rule or to table the rule, letting it remain unadopted. Finalized rules carry the force of law and affect private citizens and businesses alike (Kerwin and Furlong 2011). Given our fundamental interest in the sources of

⁶For example, a legislature or governor may focus oversight attention on a single agency (or set of agencies) when interbranch conflict is high, but make minimal investments in monitoring the rulemaking activity of the broader bureaucracy. To detect the overall impact of divided government on bureaucratic policy-making requires that we gather broad measures of the overall rulemaking activity of state agencies. Such an approach allows us to assess the impact of interbranch conflict on the overall incidence of bureaucratic drift by state and policy area over time.

⁷This sequence can vary in substantively significant ways, especially regarding the adoption of so-called “emergency rules.” Thus, we limit our empirical focus to the standard “notice and comment” rulemaking that produces the vast majority of agency-created policy in the United States (Kerwin and Furlong 2011). State-specific rulemaking requirements are stipulated in Administrative Procedure Acts or other state law. While we are sensitive to varying requirements as a general matter, we control for state-specific variation using fixed effects empirical models below.

⁸Some states preclude this under certain circumstance as inappropriate ex parte communications, but enforcement of this norm is often difficult.

bureaucratic policymaking behavior, we collect information on both proposed and adopted rules. Proposed rulemaking captures bureaucratic agenda setting—as civil servants float trial proposals, solicit public feedback on new policy, and attempt to influence the future likelihood of rule adoption by “softening up” the agenda (Walker 1981; Kingdon 1984). Adopted rulemaking measures the volume and scope of those policies that are enacted and codified into the state administrative code of regulations.

The Data: Lexis Nexis State Capital’s *Regulatory Tracking Report*

One major challenge in studying comparative state policy-making is locating a systematic resource that provides information on the state agenda and facilitates comparison of lawmaking across governments. Data for individual states could be constructed piecemeal through consulting each state’s analogue to the *U.S. Federal Register* and, where available, their counterpart to the national-level *Unified Agenda of Federal Regulatory and Deregulatory Actions*. Yet, most states provide somewhat limited electronic archives of historical rulemaking activity, and variation in the requirements for reporting administrative rules makes it a challenge to synthesize records across states and over time. We therefore draw upon Lexis Nexis State Capital’s *Regulatory Tracking Report* as a source of standardized information regarding rulemaking. The *Regulatory Tracking Report* is the most comprehensive data source on state rulemaking of which we are aware, providing rule level information on the agency that developed the rule, the stated legal basis for the rulemaking, the major and minor topics it covers, a synopsis of the rule, the number of sections of the state code the rule affects, and relevant dates of proposal, comment deadlines, public hearings, and adoption (when applicable). We collected all available information for all available rules from 1994-2010 as our primary data source.⁹ Using these raw data, we are able to create counts of rulemaking in state-years (in aggregate, and by

⁹We found the universe of rules by using empty keyword searches of the database by state and year. When a simple state-year search returned more than 1,000 total rules (the maximum number of documents that Lexis Nexis will return), we narrowed the search to specific months within a year and appended the data to create aggregate state-year measures. Lexis Nexis includes rules dating to 1990 reports, but these data are unreliable. In addition, we found information regarding rulemaking in Texas to be too voluminous to collect using our empty keyword strategy and have thus excluded Texas from our sample.

topic), and assessments of the breadth of each rule, as described below.

Measuring State Rulemaking Volume

We begin our research by generating simple counts of the number of proposed and adopted rules by state and year, creating a panel data set of rulemaking volume in the U.S. states. This panel is unbalanced, as Lexis Nexis reports irregular data for a number of state-years, usually near the beginning and end of the time period that we study. For example, the database reports 0 proposed rules in Virginia in 2010, after there were 224 in 2009. We manually identified observations that we found suspect and removed them from the data on rulemaking volume. Counting only data from reliable state-year observations, we identified 168,430 proposed rules, 157,780 adopted rules, and 19,421 emergency adopted rules from 1994-2010.

Figure 1 goes here.

Figure 1 reveals trends in rulemaking within and across states and over time. This figure shows only adopted rules (excluding emergency rules), but a figure of proposed rules would track this very closely. The figure also denotes the partisan configurations of government present in a state-year, distinguishing different types of unified and divided government. This allows for visual exploration of bivariate trends in divided government and rulemaking activity, which is the core relationship we explore in tables 1 and 2 below.

We categorize each rule by content to capture the policy areas most affected by state agency rulemaking. Our classification scheme is drawn from the Lexis Nexis subject field, which identifies “major” and “minor” topics for each rule. These topics are rank ordered by subject agreement, meaning that the first listed “major topic” classification represents the primary issue area affected by a given rule. Lexis Nexis limits these major topics to 27 potential areas, and the topic coding appears to be consistent across states and over time, allowing researchers to identify and compare state administrative law. We use these topic codes to calculate the number of proposed and adopted rules by issue area, allowing us to map policy trends in the state regulatory agenda from 1994-2005.¹⁰

¹⁰The topic coding is consistent only through 2005 in the data. From 1994-2005, topics were assigned to rules manually by Lexis experts. Starting in 2006, Lexis began machine coding rules for topic content, complicating

Figure 2 goes here.

Figure 3 goes here.

Figure 2 captures the policy composition of the US state regulatory agenda from 1994 through 2005. To facilitate interpretation of these data, we limit this presentation to the twenty most commonly occurring policy topics in our data set. We believe this research is the first to measure the policy reach of state rules over time, providing a unique view of the reach and scope of state law. Rules dealing with health topics constitute nearly one third of all state regulatory activity, with rules more normally distributed across other important policy areas, such as business, education, labor, and agriculture regulation. Figure 3 illustrates the stability of state regulatory agenda over time. Here, we plot the eight most common topic areas and their frequencies (for rule adoption) for each year from 1994-2005. Particularly noticeable here is a spike in state rulemaking that occurs in 2000, which affects all policies areas, though the proportional increase in “business” rules is statistically larger than the increases in the other areas from their 1999 levels. These two figures provide a very broad—but important—overview of the rulemaking activity of the state governments.

Measuring State Rulemaking Breadth

While measures of rulemaking volume tell us much about trends in state rulemaking activity, these counts are insufficient to capture the substantive policy impact of individual rules issued by state agencies. For example, for strategic or technical reasons, state agencies may bundle regulations into omnibus rules. Despite the fact that such a rule can broadly affect many different agencies, policy areas, and sections of the state administrative code, counting volume would equate an omnibus rule with a substantively insignificant rule that, say, simply changed the contact person in a single agency. Clearly, there is something qualitatively distinct about these two polar types of rules. To capture this distinction and better account for the substantive breadth of state rulemaking, we count the number

our analysis in two ways. First, at the time of data collection Lexis Nexis had not completed machine coding for all state years, leaving a large subset of regulations without topic classifications for 2006 and 2007. Second, the move from human to machine classification represents a series break in the rules governing subject/topic coding, making the categorization for these more recent rules potentially incomparable with the rules from 1994-2005. Therefore, whenever we use the major topic codes, we limit the sample to years 1994-2005.

of sections of the state administrative code that each rule amends, or seeks to amend. We do this by parsing the information available on Lexis Nexis, and counting the number of citations affected for each rule. The mean number of citations affected in the full data is 3.8 (SD: 12.75, Min: 0, Max: 200). We empirically model this rule-level breadth below in table 4.¹¹ This analysis not only allows us to directly model the policy impact of interbranch conflict on the breadth of proposed and adopted rules, but also provides for an important robustness check on the impact of divided government on rulemaking volume. One potential explanation for why the number of rules may increase during divided government is that bureaucracies strategically break up omnibus rules into smaller proposals when they fear oversight, thereby increasing the cost of monitoring and vetoing proposed regulations. If this is true, then the volume of proposed rules would increase, while the overall policy reach of the bureaucracy would remain relatively unchanged. Including a measure of rule breadth is therefore essential for assessing whether divided government leads to a true increase in the policy-making of bureaucracies, or whether an increase in rulemaking volume can be attributed to other strategic factors.

Finally, our census of US state rulemaking provides information regarding trends in state administrative rule making that help clarify how agencies translate statutory authority into law. For example, these data indicate that state administrative agencies are largely efficient in notice and comment rulemaking. Across state governments the mean time from rule proposal to rule adoption is 116.5 days (SD: 102.47, Min: 0, Max: 1,876). While in no state is the average time from rule proposal to rule adoption longer than a year, cross sectional comparisons reveal considerable variation in the time to rule adoption by state governments. For example, Mississippi agencies have the shortest mean time to rule adoption at 59.59 days, while Pennsylvania bureaucracies take the longest time, averaging of 325.96 days from proposal to adoption. Appendix Table A1 provides information differences in the mean time to rule adoption for state administrative agencies.¹²

¹¹There are a number of instances where the values we get from parsing are nonsensical (that is, below zero, or unbelievably large. We drop these observations for now, but continue to refine our method of counting these to avoid the nonsensical results. After parsing and manually cleaning the data, we are reasonably confident that our measure of rule breadth is consistent with the concept we describe above.

¹²This information on the speed of rulemaking reassures us that we can model the impact of contemporary political factors on both proposed and adopted rulemaking. However, we are also able to model the impact of

Explanatory Variables

To evaluate how political control of government shapes state agency rulemaking we employ several different measures of unified and divided government.¹³ To capture the impact of divided government on state agency rulemaking we included a measure of *Divided Government*, indicating when one party controls the governors office and another controls one or both chambers of the assembly.¹⁴ To account for instances of divided government where the upper and lower chambers of a state legislature are controlled by different parties, we created separate measures for *Unified Legislature*, where one party controls the governor’s office and another controls both chambers of the assembly, and *Split Legislature*, where upper and lower chambers of the state legislature are themselves controlled by opposing parties. We expect that rulemaking volume will increase under all forms of divided government, but that it should increase most drastically when there is a split legislature — that is, bureaucrats should have the most policymaking autonomy when there is the most conflict amongst the elected branches.

We have posited that legislative review powers and professionalism may serve to condition and constrain bureaucratic autonomy through rulemaking, and we measure legislative capacity in a number of ways in our empirical analyses. First, we follow recent research (Boushey and McGrath 2015) and use the salaries of elected officials as a proxy for the expertise necessary to make public policy. Although there are a number of different ways to measure legislative *professionalism* (Squire 1992, 2007; Bowen and Greene 2014), Boushey and McGrath (2015) argue that compensation is the dimension of professionalism most directly related to rulemaking. Simply, high compensation for legislative and bureaucratic jobs encourages highly expert individuals to seek these positions and to eschew jobs in the private sector. On the other hand, poorly compensated individuals (state legislators, in particular) need to split time between making policy and otherwise earning a living.¹⁵

changing partisan configurations on the probability that a proposed rule will be eventually adopted.

¹³The data on state party control were obtained from Carl Klarner’s State Partisan Balance Data, located at <https://dataverse.harvard.edu/dataset.xhtml?persistentId=hdl:1902.1/20403>.

¹⁴Nebraska has a unicameral state legislature and holds non-partisan elections, and is excluded from these measures.

¹⁵Low compensation can also attract wealthy individuals who enter politics for its prestige, rather than due to a sincere interest in effectively making public policy.

We thus measure *Legislative Salary* and *Executive Salary* using the mean compensation of legislators and executive department heads.¹⁶

We have also argued that legislative review powers should moderate increases in bureaucratic rulemaking when interbranch conflict is high. To capture state-level differences in formal ex post oversight powers we include a simple measure of *Legislative Review*, an indicator that identifies whether state legislatures have the power to suspend or veto existing and/or proposed rules. This measure is calculated from Grady and Simon’s (2002) ranking of state legislative review powers. This measure captures state review powers using an index, with higher values indicating stronger formalized powers of legislative review, and lower values indicating weak or non-existent powers of legislative oversight. We collapse this variable to isolate what we believe is the relevant difference—the ability of some state legislatures to veto or suspend proposed or adopted agency rules. Consistent with *Hypothesis 5*, we expect rulemaking will increase most sharply when divided government occurs in states where legislatures lack the power to suspend or veto administrative rules.

While our primary measures of divided government are meant to capture the impact of partisan gridlock on administrative rulemaking, we also wish to account for effect of legislative polarization on state policy-making (Krehbiel 1998). We thus follow Shor and McCarty (2011) and use individual legislator ideal points to measure the severity of *Party Polarization* in state legislative chambers for each state-year. Here, we employ Shor and McCarty’s (2011) scores to calculate the average ideological difference between the two parties in the legislature. Higher values are associated with increased *Party Polarization*. If bureaucratic policy influence activity is shaped by ideological gridlock in the legislature, then we would expect state rulemaking to increase in response to rising ideological polarization.

Besides these theoretically-relevant variables, we include a number of controls to account for other

¹⁶We calculated such compensation from tables in annual volumes of the *Book of the States* (“Legislative Compensation and Living Expense Allowances During Sessions” and “Selected State Administrative Officials: Annual Salaries”). For the executive, we took the mean compensation level across 55 common agency heads listed in the *Book of the States*. These include officials such as the governor, lieutenant governor, secretary of state, attorney general, treasurer, etc., but also of less visible executives, such as the top administrators of state departments of health, fish and wildlife, public libraries, and parks and recreation.

political, institutional, and demographic factors that may influence the volume, scope, and breadth of state rulemaking. We control for a state having a *Democratic Governor* to account for the partisan preferences of the state executive, as well as an indicator variable for the *First Year of a New Governor* to evaluate whether agency bureaucrats might be more cautious adopting controversial regulations during an administrative transition. To account for differences between states with annual and biennial sessions, we include a variable indicating whether the state legislature was *Out of Session* in a state-year. We control for *Term Limits in Effect* to evaluate whether state legislative dependence on bureaucracies changed in response to turnover caused by term limitations.¹⁷ We also control for the *Number of Bills Enacted* by a state legislature in a given state-year.¹⁸ Potter and Shipan (2013) hypothesize that legislative activism, reflected in increased lawmaking volume, may signal an ability of the legislature to oversee and overturn bureaucratic policymaking, making agencies less likely to propose or finalize rules and regulations. Alternatively, legislative activity that delegates broad authority to bureaucrats may spur rulemaking activity by giving agencies more policy to implement.

Finally, we add several controls from the U.S. Census of States Governments to account for the changing size and resources of states. With *State Workforce (Log)*, we can assess how changes in the size of the administrative state affect the size and scope of bureaucratic policymaking. Likewise, *State Population (Log)* and *State Per Capita Income* control for changing state characteristics and serve as a proxy for state demand for regulations.

Empirical Strategy and Results

To assess our hypotheses related to rulemaking volume (hypotheses 1, 2, 4 and 5 from above), we organize the data as a panel of state-year observations from 1994-2010. This level of aggregation is appropriate since these hypotheses regard the impact of state-level political/institutional variation

¹⁷Although prior literature has found that term limits increase bureaucratic influence in state capitals, this may not extend to the rulemaking process. For example, Boushey and McGrath (2015) undertake a number of analytic strategies to assess the impact of term limits on rulemaking, but find little evidence that term-limited states shift policy-making to administrative agencies following these institutional reforms.

¹⁸We have also specified lagged versions of this variable and moving averages over 2, 3, and 5 years to capture recent, but not concurrent, lawmaking activity. Our results are robust to these alternative specifications.

on policy-making. We include state fixed effects to control for time-invariant sources of across-state heterogeneity. Thus, interpretation of our empirical tests are limited to the effects of dynamic change for each independent variable on rulemaking activity within a given state.

Our first set of dependent variables is the total count of proposed and adopted rules in a state-year.¹⁹ The dependent variable is a non-negative count of events. Diagnostic tests indicate that these data are overdispersed, but we do not fit negative binomial models, due to our inclusion of state fixed effects and the possibility that an unconditional fixed effects model introduces an incidental parameters bias (Allison and Waterman 2002). Following the recommendation of Cameron and Trivedi (2013) we instead estimate models using fixed effects Poisson regression with cluster robust standard errors (clustered by state), to ameliorate potential bias due to overdispersion.

Table 1 goes here.

Table 1, column 1, displays estimates from a model of state *proposed* rulemaking. Looking first to our *Divided Government* variable, we see that it is statistically distinguishable from zero ($p < 0.05$, two-tailed) and large in magnitude relative to the other estimated coefficients. Even controlling for fixed state-level effects and our time-varying controls, within-state switches from unified to divided government produce significant increases in agency rule proposals. We can exponentiate the coefficient (0.082) to get the incidence rate ratio (1.08), which tells us that we should expect roughly 8 percent more proposed rulemaking during divided government as compared to unified government, holding the effects of all other variables constant. Table 1, column 3, confirms that this relationship holds for *adopted* rulemaking as well, as agencies adopt about 6 percent more rules in divided government. These findings provide strong support for hypothesis 1.

Columns 2 and 4 of table 1 allow us to examine the variable effects of *Unified* and *Split* legislatures on rulemaking volume (Hypothesis 2). These models indicate that the effects found in columns 1 and 3 were driven largely by those configurations of divided government where the two legislative chambers were themselves at odds. As specified in our theory, this is when we would expect the most opportunity for agencies to exercise autonomy, as they can always find a political principal who might prefer their rules preferable to the status quo. Compared to both when there is a *Unified*

¹⁹We model proposed and adopted rules separately below.

Legislature and completely unified government, states should expect to see an increase of 14 percent in proposed rulemaking and 11 percent in adopted rulemaking when the upper and lower chambers of the legislatures are divided.

Table 1 also allows us to explore the impact of legislative polarization and professionalism on rulemaking. Columns 3 and 4 suggest that adopted rules increase significantly with the amount of *Party Polarization* that exists in the legislature. This is consistent with the theoretical argument that agencies engage in rulemaking to fill policy voids left by legislative gridlock, rather than solely to execute the will of productive legislatures. This perspective is bolstered by the insignificant effects of *Number of Bills Enacted* and by the additional tests reported in table 3 below. Finally, table 1 also indicates that *Legislative Salary* has a consistently negative impact on state rulemaking, consistent with hypothesis 4. As state legislatures become better compensated over time, they become more able to address policy problems themselves. This general result is consistent with a recent in-depth study of this dynamic (Boushey and McGrath 2015).

Table 2 goes here.

We turn now to evaluate hypothesis 5, which holds that legislative review power can serve as a constraint on agency rulemaking, even under the conditions of divided government that should lead to increased agency autonomy. Since the Grady and Simon (2002) measure of *Legislative Review* is static, we cannot estimate the unconditional effect of state administrative veto powers using the fixed effects models presented in table 1. Instead, we conduct a split sample analysis, estimating identical models for state legislatures with *Weak Review* powers and *Strong Review* powers. As stated above, this split allows us to estimate the impact of divided government on rulemaking volume in states where the legislature can (and cannot) formally veto or suspend administrative rules (see also Huber, Shipan and Pfahler (2001) and Woods (2015)).

Table 2, column 1, demonstrates that in states with weak rule review powers, both *Simple Divided Government* and those with a *Split Legislature* produce significant increases in proposed rulemaking, with a near 18 percent increase with a *Split legislature* over either of the other two configurations. Comparing these results to column 2 tells us that these effects deteriorate in those states with strong rule review powers. *Split Legislature* is still statistically significant, but its substantive impact decreases by a factor of 3. Even more illustrative of the ability of legislative review powers to attenuate

agency rulemaking autonomy, columns 3 and 4 show that when it comes to adopted rulemaking, strong review powers obviate the effects of split control altogether. Here, theory tells us that agencies wishing to create policy can strategically play the legislature off of the governor, but, with limited effects when the legislature possesses unilateral tools of rule review. The results from table 2 thus provide support for the perspective reflected in hypothesis 5.

Having established support for each of our hypotheses regarding rulemaking volume, we turn now to more directly specifying an alternative view. We have reviewed literature that predicts that rulemaking will increase during unified government (e.g., Yackee and Yackee 2009). This perspective views rulemaking as an activity generated primarily by legislative activism rather than agency autonomy in policymaking. Such a relationship would lead us to expect a positive empirical relationship between conditions amenable to legislative productivity and rulemaking. Tables 1 and 2 provide direct tests of this dynamic. Following Potter (2015) we operationalize legislative productivity using estimates of the *Number of Bills Enacted* in a state-year.²⁰

Although this simple measure of measure *Number of Bills Enacted* allows us to estimate how lawmaking volume may shape rulemaking volume, this approach is theoretically problematic in that it assumes that each piece of legislation delegates an equal amount of discretion to the bureaucracy. We can alternatively consider the perspective that periods of unified government may lead to increases in major legislation that, in turn, generate significant amounts of delegation. (Krehbiel 1998; Mayhew 1991). We test for this possibility in table 3 below.

Table 3 goes here.

Table 3 includes indicators for both contemporaneous party control (*Unified Legislature* and *Divided Legislature*), and lagged indicators for whether there existed *Unified Government* in the previous year (columns 1 and 2) or in the previous 2 years (columns 3 and 4). The lagged indicators for unified government are meant to explore whether major laws that delegate broad rulemaking powers to the state bureaucracy lead to increased rulemaking volume in subsequent years. Here, we confirm our null findings regarding the alternative theory, and further confirm the contemporaneous effects of

²⁰We have also specified lagged versions of this variable and moving averages over 2, 3, and 5 years to capture recent, but not concurrent, lawmaking activity. Our results are robust to these alternative specifications.

Split Legislature, in particular, on the volume of state rulemaking.²¹

While these results provide support for our hypotheses related to the conditions under which bureaucratic autonomy can produce policy change through rulemaking, they provide little context for understanding whether this increased rulemaking substantively affects the policy agendas of state governments. To explore the policy impact of administrative rulemaking we take two particular tacks below. First, we demonstrate that increases in rulemaking are driven by changes in salient policy areas, and therefore represent something more than an increase in the management of mundane and less policy-relevant topics. We then go on to explore whether the same factors that lead to increased rulemaking volume also generate broader rules (as predicted by hypothesis 3).

Figure 4 goes here.

To assess how *Split Legislature* might variably affect rulemaking based on the topic area, we created separate dependent variables measuring the volume of topic-specific proposed and adopted rules by state-year.²² We then modeled each topic-specific dependent variable with the exact specifications found in Columns 2 and 4 of table 1. Figure 4 presents the estimated coefficients, along with 95% confidence intervals, for the *Split Legislature* variable for these policy-topic models.

Figure 4 conveys a number of interesting insights about the relationship between divided government and rulemaking in the states. First, while significantly positive for a number of important policy areas (health, government, financial, business, labor, communication, insurance), having a *Split Legislature* does not lead states to increase rulemaking equally across policy topics. In fact, there is a null relationship between divided government and many less salient policies, as depicted in figure 4. Second, there are no instances where divided government produces significant *decreases* in rulemaking for any topics, contra the expectations of the pure delegation perspective. Finally, this figure serves to highlight that inter-institutional policy conflict generates changes to state regulatory agendas for the most important of policy area, including those (like health and business regulation) that make up the bulk of state regulatory agendas (as depicted in figures 2 and 3). It simply is not the

²¹The noted effects of *Legislative Salary* and *Party Polarization* (for adopted rules) remain consistent across these specifications.

²²As in figure 2, we did this for each of the 20 most prevalent major topics in the data.

case that agencies use their increased autonomy during split control to increase activity in trivial areas. Combined with the results from the final empirical analyses below, we are confident that state agencies increasingly legislate on important issues (as in our motivating examples) when institutional configurations provide them the opportunities.

As a final assessment of the relationship between divided government, bureaucratic autonomy, and rulemaking, we examine the disaggregated rule-level data to test the impact of divided government on the breadth and scope of proposed rules (hypothesis 3). The dependent variable here is the number of sections of the state’s administrative code that would be (or that were, given rule adoption) affected by the rule. The number of citations affected is a non-negative count, like the volume of rulemaking, so we continue to estimate fixed effects Poisson models with cluster robust standard errors. Here, we employ state-topic-year fixed effects to better control for unobserved sources of topic-level heterogeneity.

Table 4 goes here.

Table 4 presents the results from the rule-level models of state code citations affected. In column 1, the data are organized by rule proposal date. That is, the state divided government indicators, as well as all the controls, are merged with the date of rule proposal. As rules occasionally take more than a year (or at least span the calendar year) to move from proposal to adoption, we then merge the data by adoption date in column 2.

The results from each column of table 4 confirm that rules are broader in scope when issued in either configuration of divided government. Furthermore, the coefficients on *Split Legislature* are each statistically significantly larger than those on *Unified Legislature*, indicating that the logic of hypothesis 2 likely applies to hypothesis 3 as well.

Conclusion

This paper explored the impact of interbranch conflict on administrative rulemaking in American state governments. While scholars of American politics have long debated the consequences of divided government and ideological polarization on legislative productivity, they have largely neglected the impact of institutional conflict on the policymaking behavior of the bureaucracy. We have shown that

institutional gridlock among elected officials serves to systematically increase the volume, agenda content, and breadth of administrative rulemaking in the states, and have contributed to a fuller understanding of the policy consequences of political polarization and ideological fragmentation.

Our argument and results support the view that state bureaucrats, and the agencies they comprise, are autonomous policy-motivated actors who use interbranch conflict as an opportunity to pursue policies that contravene at least some political preferences of their elected principals (as in, e.g., Acs 2015; Potter 2015). This argument rejects the view that bureaucratic organizations are mere and faithful agents of their legislative principals. In a way, then, these findings recall classic normative debates regarding democratic accountability in separation-of-powers systems. Bureaucrats do not respond to increased policy authority by acting as neutral caretakers of government. Instead, they seize upon opportunities to shape policy according to their own ideological preferences. In this regard concerns about the heightened risk of bureaucratic drift and executive unilateralism during divided government appear well founded. Administrative agencies are most active in policymaking when legislatures are least able to do much about it.

The battles over state-level implementation of the Affordable Care Act highlight the dynamic impact that interbranch agreement or conflict can have on precluding or creating opportunities for agency rulemaking. Following passage of the ACA, Idaho's unified Republican government took unprecedented steps to limit the discretion of state public health and insurance agencies, as leaders in both branches issued directives prohibiting state agencies from drafting regulations related to Medicaid expansion or establishing a health insurance exchange.²³ In Virginia, public health agencies in Democratic Governor Terry McAuliffe's administration issued rules expanding health care coverage for 25,000 mentally ill adults and poor children, but were blocked by the Republican controlled legislature from enacting full-scale Medicaid expansion that would have provided health insurance to an additional 400,000 state citizens (Mangan 2014). Finally, the Kentucky State Cabinet of Health and Family services issued sweeping health reform, in part because the same interbranch conflict that prevented the Commonwealth's divided government from achieving a compromise over health reform legislation also prevented Republicans in the state Senate from effectively exercising oversight. In each

²³Governor Butch Otter vetoed the legislature's resolution before issuing a similar executive order limiting bureaucratic discretion.

of these cases, the volume and reach of state rulemaking conformed to our theoretical expectation regarding interbranch conflict and the policy influence of bureaucracy.

While the rising influence of bureaucracy raises normative questions about democratic accountability, such concerns must be balanced against the important role that administrative agencies play in agenda setting and policy-making when legislative productivity declines (or is perceived to decline). Our study suggests that the wheels of government do not simply grind to a halt when legislative productivity is low. Instead, executive branch agencies pick up the slack during periods of divided and polarized government, allowing state capitals to continue to manage the agenda and respond to emerging policy problems. Future researchers may wish to explore these dynamics in even more detail, exploring whether interest groups, legislative committee leaders, and elected officials in the executive branch provide more guidance and lean more heavily on bureaucracy when interbranch conflict is high.

Similarly, our study indicates that bureaucracy may play an essential role in policy-making when legislative polarization is high. This finding makes sense in the broader context of how polarization impacts lawmaking. Polarized legislatures do not stop setting the agenda, however strong divisions over the ideological content and direction of policy challenges the enactment of new laws. Under such circumstances, bureaucracies may play an important role in translating agenda directives into concrete rules. This perspective is consistent with our finding that polarization impacts the volume of adopted (but not proposed) rulemaking in state governments.

Yet, our findings do not imply that increased rulemaking autonomy necessarily translates into unchecked bureaucratic dominance (Lowi 1969; Niskanen 1971; Peters 1981). Unified legislatures, in particular, can reign in ideologically recalcitrant and active agencies, especially when they possess strong powers of formal rule review (Woods 2015). This echoes much of the principal-agent responses to theories of bureaucratic dominance (e.g., McCubbins and Schwartz 1984; McCubbins, Noll and Weingast 1987; Ferejohn and Shipan 1990; Huber and Shipan 2002), that political actors can often find ways to benefit from agency policymaking, while limiting the costs of bureaucratic drift. While we tend to agree with this perspective, it is important to note again how different the institutional contexts of many states are from that found in the federal government (Krause and Woods 2014). These problems of bureaucratic accountability are exacerbated across state governments, where “citizen-legislatures” depend heavily on professionalized agencies to guide lawmaking. In particular,

our findings here are complemented by recent work (Boushey and McGrath 2015) demonstrating how legislative deprofessionalism and executive predominance additionally serve to bolster bureaucracy’s policy-making role in many states. Thus, especially in conjunction with state executive predominance, persistent divided government and polarization threaten the democratic nature of state policymaking.

Our research also raises questions about the extent to which increased rulemaking is fueled by bureaucratic autonomy or rising executive influence in state policy-making. We argue in this paper that increased rulemaking is best understood as a product of bureaucratic autonomy, however we acknowledge that to some extent this is a matter of degree. Future research is needed to clarify the extent to which increased rulemaking originates from gubernatorial directives or autonomous administrative decision-making. This could be accomplished by comparing executive orders to rulemaking, or exploring how often state agencies act upon key gubernatorial agenda items.

From an empirical perspective, the data we have collected on the rulemaking behavior of state agencies allows us to generate direct measures of the policy influence of state agencies over time. These data reveal the extraordinary reach of state administrative agencies in setting the agenda, defining policy alternatives, and implementing new programs. Furthermore, our measures of the regulatory agenda of state governments shows that state governments are active across a range of important issue areas. These data will be useful for researchers who wish to explore trends in federal and state regulatory policy, or the impact of interest group density on the diversity on the state regulatory agenda (Gray and Lowery 1996; Boehmke 2005; Woods 2015).

Finally, while our findings are consistently strong, future work can do more to definitively establish the connection between political gridlock and agency policymaking behavior. In particular, more research is needed on the microfoundations of the trends we have shown, especially with regard to whether divided government allows agencies to be autonomous from, or more closely controlled by, their governors. This is an important distinction that can be made with more nuanced data on gubernatorial agendas and particular bureaucratic policies. Along these lines, we also hope to refine our strategy for measuring rule content in future research. We have treated rulemaking, especially when rules affect many sections of a state code, as being substantively important, but we intend to be more precise about categorizing rules as regulatory or *deregulatory* in nature, in addition to being able to identify “major” rules more precisely.

Tables

Table 1: Models of Rules Proposed and Adopted by State-Year, 1994-2010 — Fixed Effects Poisson, with Cluster Robust SE

	Proposed Rules		Adopted Rules	
	(1)	(2)	(3)	(4)
Divided Government.	0.082** (0.033)		0.056** (0.026)	
Simple Divided Govt. (Unified Legislature)		0.043 (0.037)		0.025 (0.035)
Split Legislature		0.132*** (0.034)		0.099*** (0.032)
Legislative Salary (in thousand of dollars)	-0.003** (0.001)	-0.003** (0.001)	-0.004*** (0.002)	-0.004** (0.002)
Executive Salary (in thousand of dollars)	0.003 (0.003)	0.003 (0.003)	0.002 (0.003)	0.002 (0.003)
Party Polarization in Legislature	0.174 (0.180)	0.204 (0.174)	0.490** (0.207)	0.514** (0.200)
Democratic Governor	0.058 (0.036)	0.056 (0.036)	0.063 (0.040)	0.062 (0.041)
First Year of New Governor	-0.035 (0.023)	-0.035 (0.025)	-0.038 (0.024)	-0.037 (0.023)
Legislature Out of Session	0.006 (0.052)	0.006 (0.053)	0.099 (0.109)	0.099 (0.107)
Number of Bills Enacted (in hundreds)	0.002 (0.005)	0.002 (0.005)	-0.002 (0.005)	-0.002 (0.005)
Term Limits in Effect	-0.037 (0.067)	-0.037 (0.068)	-0.083 (0.065)	-0.083 (0.063)
Size of State Workforce (Log)	-0.295 (0.541)	-0.374 (0.517)	-0.064 (0.369)	-0.119 (0.357)
State Population (Log)	-0.901 (0.699)	-0.851 (0.710)	-0.642 (0.646)	-0.591 (0.654)
State Per Capita Income	-0.019 (0.016)	-0.019 (0.016)	0.002 (0.017)	0.001 (0.017)
Year FE	Yes	Yes	Yes	Yes
State FE	Yes	Yes	Yes	Yes
Observations	617	617	617	617
Log-likelihood	-5667.258	-5617.155	-6507.000	-6473.406
# of Clusters	48	48	48	48

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Note: Entries are fixed effects Poisson regression coefficients and standard errors, clustered by state. The dependent variable in models (1) and (2) is the total number of administrative rules proposed in each state-year, the dependent variable in models (3) and (4) is the total number of administrative rules adopted in each state-year. Nebraska and Texas are excluded from all models.

Table 2: Models of Rules Proposed and Adopted by State-Year, 1994-2010 — Fixed Effects Poisson, with Cluster Robust SE — Sample Split by Legislative Review Powers

	Proposed Rules		Adopted Rules	
	<i>Weak Review</i> (1)	<i>Strong Review</i> (2)	<i>Weak Review</i> (3)	<i>Strong Review</i> (4)
Simple Divided Govt. (Unified Legislature)	0.089* (0.050)	0.005 (0.043)	0.024 (0.044)	0.030 (0.051)
Split Legislature	0.159*** (0.049)	0.058** (0.029)	0.122*** (0.046)	0.033 (0.039)
Legislative Salary (in thousand of dollars)	-0.003* (0.002)	-0.010** (0.004)	-0.003 (0.003)	-0.009* (0.005)
Executive Salary (in thousand of dollars)	0.009** (0.004)	-0.002 (0.003)	0.005 (0.005)	-0.000 (0.003)
Party Polarization in Legislature	0.080 (0.231)	0.353* (0.203)	0.345 (0.304)	0.844*** (0.260)
Democratic Governor	0.075 (0.046)	0.062 (0.056)	0.035 (0.051)	0.093 (0.070)
First Year of New Governor	-0.019 (0.041)	-0.049 (0.031)	-0.008 (0.035)	-0.081** (0.034)
Legislature Out of Session	0.001 (0.090)	0.013 (0.050)	-0.029 (0.078)	0.391* (0.205)
Number of Bills Enacted (in hundreds)	0.002 (0.007)	0.007* (0.004)	-0.002 (0.006)	-0.009* (0.005)
Term Limits in Effect	-0.107 (0.070)	0.164 (0.102)	-0.095 (0.073)	0.008 (0.092)
Size of State Workforce (Log)	-1.359 (0.956)	0.297 (0.278)	-0.450 (0.675)	0.243 (0.396)
State Population (Log)	-0.145 (0.985)	-1.270 (1.018)	-0.185 (0.937)	-1.114 (1.079)
State Per Capita Income	-0.025 (0.023)	-0.009 (0.019)	-0.005 (0.029)	0.008 (0.024)
Year FE	Yes	Yes	Yes	Yes
State FE	Yes	Yes	Yes	Yes
Observations	332	285	332	285
Log-likelihood	-3202.628	-2110.642	-3285.050	-2897.860
# of Clusters	26	22	26	22

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Note: Entries are fixed effects Poisson regression coefficients and standard errors, clustered by state. The dependent variable in models (1) and (2) is the total number of administrative rules proposed in each state-year, the dependent variable in models (3) and (4) is the total number of administrative rules adopted in each state-year. Nebraska and Texas are excluded from all models.

Table 3: Models of Rules Proposed and Adopted by State-Year, 1994-2010 — Fixed Effects Poisson, with Cluster Robust SE — Lagged Unified Govt, (Testing the Alternative Theory)

	1 Year Lag of Unified Govt.		1 and 2 Year Lags of Unified Govt.	
	Proposed Rules (1)	Adopted Rules (2)	Proposed Rules (3)	Adopted Rules (4)
Simple Divided Govt. (Unified Legislature)	0.040 (0.040)	0.005 (0.039)	0.030 (0.039)	-0.002 (0.036)
Split Legislature	0.129*** (0.037)	0.077** (0.037)	0.116*** (0.037)	0.066* (0.034)
Unified Govt. (lagged one year)	-0.007 (0.027)	-0.033 (0.026)	-0.039 (0.028)	-0.069** (0.030)
Unified Govt. (lagged two years)			0.046 (0.037)	0.063 (0.041)
Legislative Salary (in thousand of dollars)	-0.003** (0.001)	-0.004*** (0.002)	-0.003** (0.001)	-0.005*** (0.002)
Executive Salary (in thousand of dollars)	0.003 (0.003)	0.003 (0.003)	0.004 (0.003)	0.003 (0.003)
Party Polarization in Legislature	0.199 (0.174)	0.511*** (0.196)	0.224 (0.173)	0.551*** (0.202)
Democratic Governor	0.056 (0.036)	0.062 (0.041)	0.057 (0.036)	0.062 (0.039)
First Year of New Governor	-0.035 (0.024)	-0.037 (0.023)	-0.038 (0.024)	-0.029 (0.023)
Legislature Out of Session	0.011 (0.053)	0.097 (0.107)	0.024 (0.048)	0.081 (0.095)
Term Limits in Effect	-0.037 (0.067)	-0.081 (0.062)	-0.042 (0.068)	-0.087 (0.063)
Number of Bills Enacted (in hundreds)	0.002 (0.005)	-0.002 (0.005)	0.001 (0.004)	-0.003 (0.005)
Size of State Workforce (Log)	-0.352 (0.527)	-0.148 (0.355)	-0.319 (0.532)	-0.140 (0.354)
State Population (Log)	-0.870 (0.731)	-0.506 (0.686)	-0.940 (0.773)	-0.633 (0.691)
State Per Capita Income	-0.019 (0.016)	0.000 (0.017)	-0.018 (0.016)	-0.002 (0.017)
Year FE	Yes	Yes	Yes	Yes
State FE	Yes	Yes	Yes	Yes
Observations	610	610	602	602
Log-likelihood	-5575.335	-6395.168	-5481.117	-6223.285
# of Clusters	48	48	48	48

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Note: Entries are fixed effects Poisson regression coefficients and standard errors, clustered by state. The dependent variable in models (1) and (3) is the total number of administrative rules proposed in each state-year, the dependent variable in models (2) and (4) is the total number of administrative rules adopted in each state-year. Nebraska and Texas are excluded from all models.

Table 4: Rule-level Models of Citations Affected — Fixed Effects Poisson, with Cluster Robust SE

	Dates by Rule Proposal (1)	Dates by Rule Adoption (2)
Simple Divided Govt. (Unified Legislature)	0.119*** (0.045)	0.119** (0.050)
Split Legislature	0.128*** (0.048)	0.136*** (0.050)
Legislative Salary (in thousand of dollars)	-0.001 (0.001)	0.001 (0.001)
Executive Salary (in thousand of dollars)	0.000 (0.000)	0.000 (0.000)
Party Polarization in Legislature	-0.231 (0.214)	-0.312 (0.220)
Democratic Governor	0.122*** (0.045)	0.114** (0.050)
First Year of New Governor	-0.054 (0.041)	-0.025 (0.039)
Legislature Out of Session	-0.195** (0.098)	-0.332*** (0.089)
Number of Bills Enacted (in hundreds)	-0.001** (0.00001)	-0.001*** (0.00001)
Term Limits in Effect	0.005 (0.064)	-0.047 (0.059)
Size of State Workforce (Log)	0.838** (0.413)	0.653 (0.474)
State Population (Log)	-2.231*** (0.717)	-0.784 (0.759)
State Per Capita Income	0.070*** (0.018)	0.079*** (0.017)
(Constant)	21.719** (9.205)	3.943 (9.535)
Year FE	Yes	Yes
State-Topic FE	Yes	Yes
Observations	160,394	154,565
Log-likelihood	-842,274.080	-860,085.356
# of Clusters	1,094	1,094

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Note: Entries are fixed effects Poisson regression coefficients and standard errors, clustered by state-topic pairs. The state-level data for model (1) are merged by proposal year, where in model (2) they are merged by adopted year. Nebraska and Texas are excluded from all models.

Figures

Figure 1: Adopted Rules 1994-2010

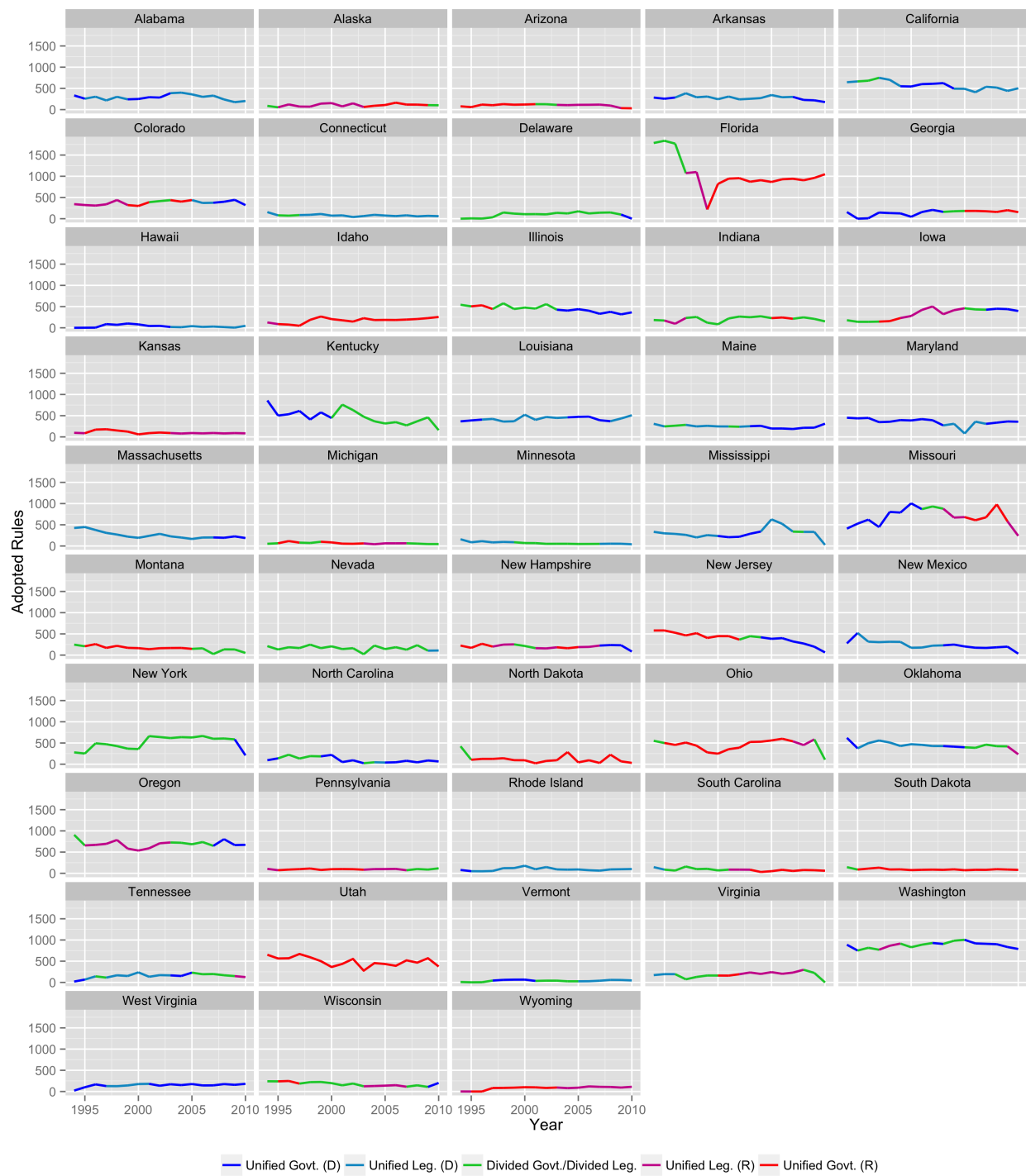


Figure 2: The State Regulatory Agenda: Adopted Rules, by Topic Area (1994-2005)

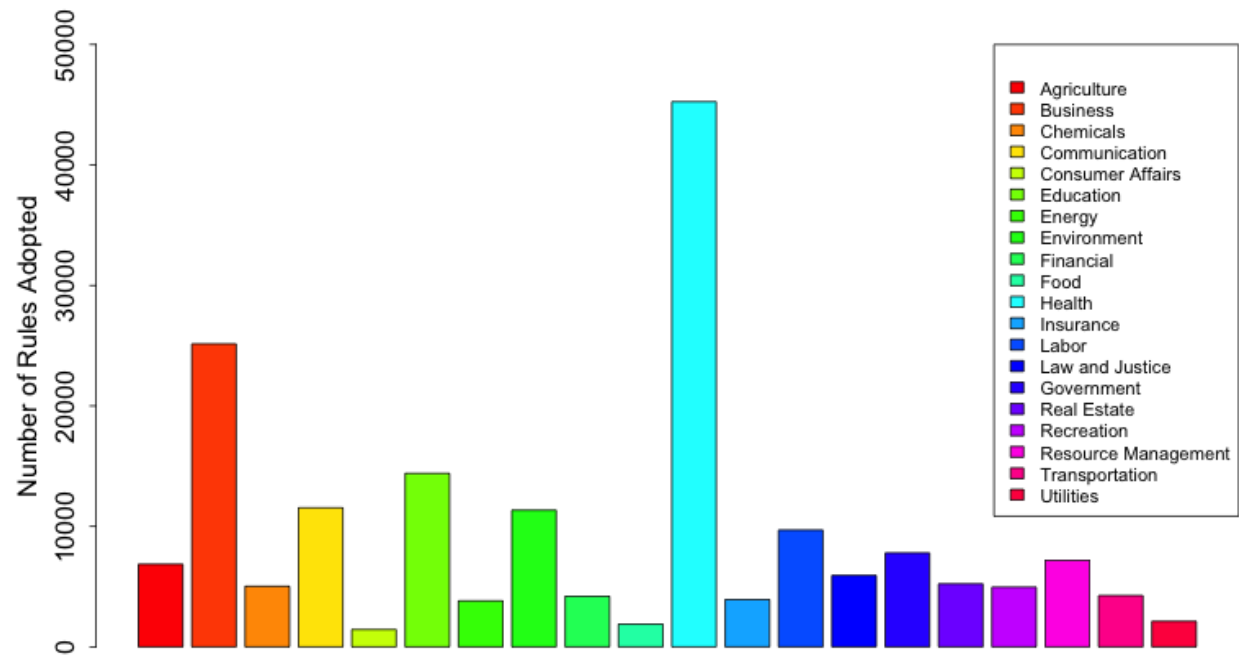


Figure 3: The State Regulatory Agenda: Adopted Rules over Time, by Topic Area (1994-2005)

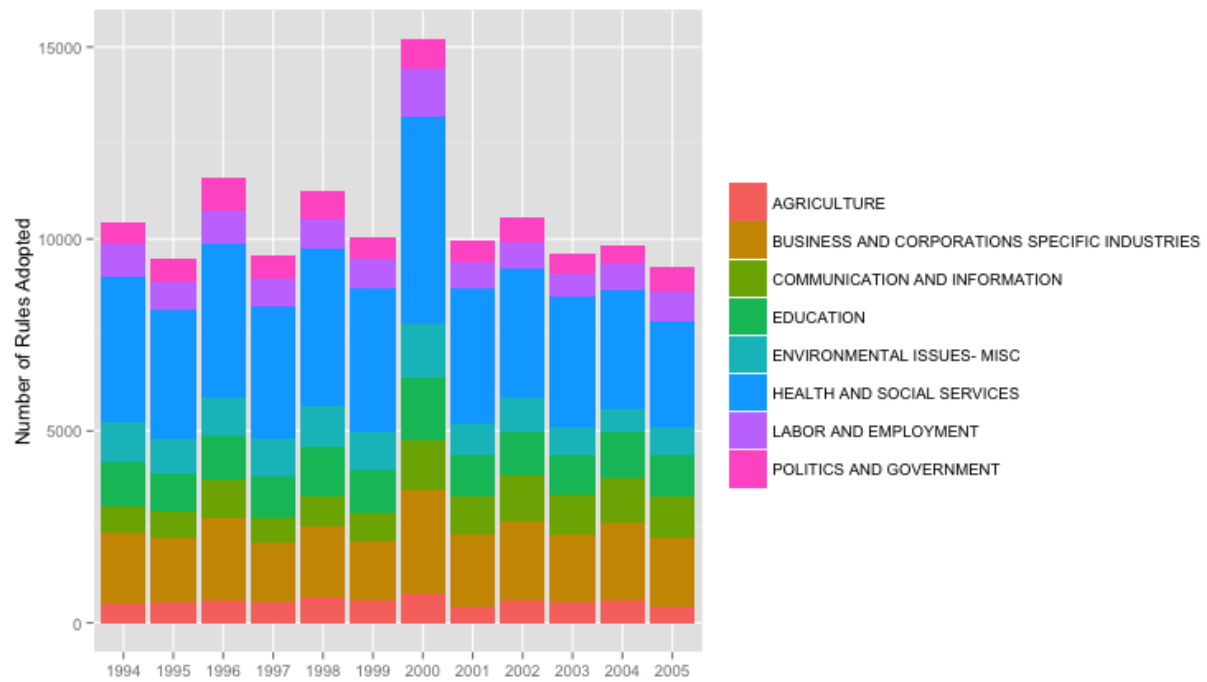
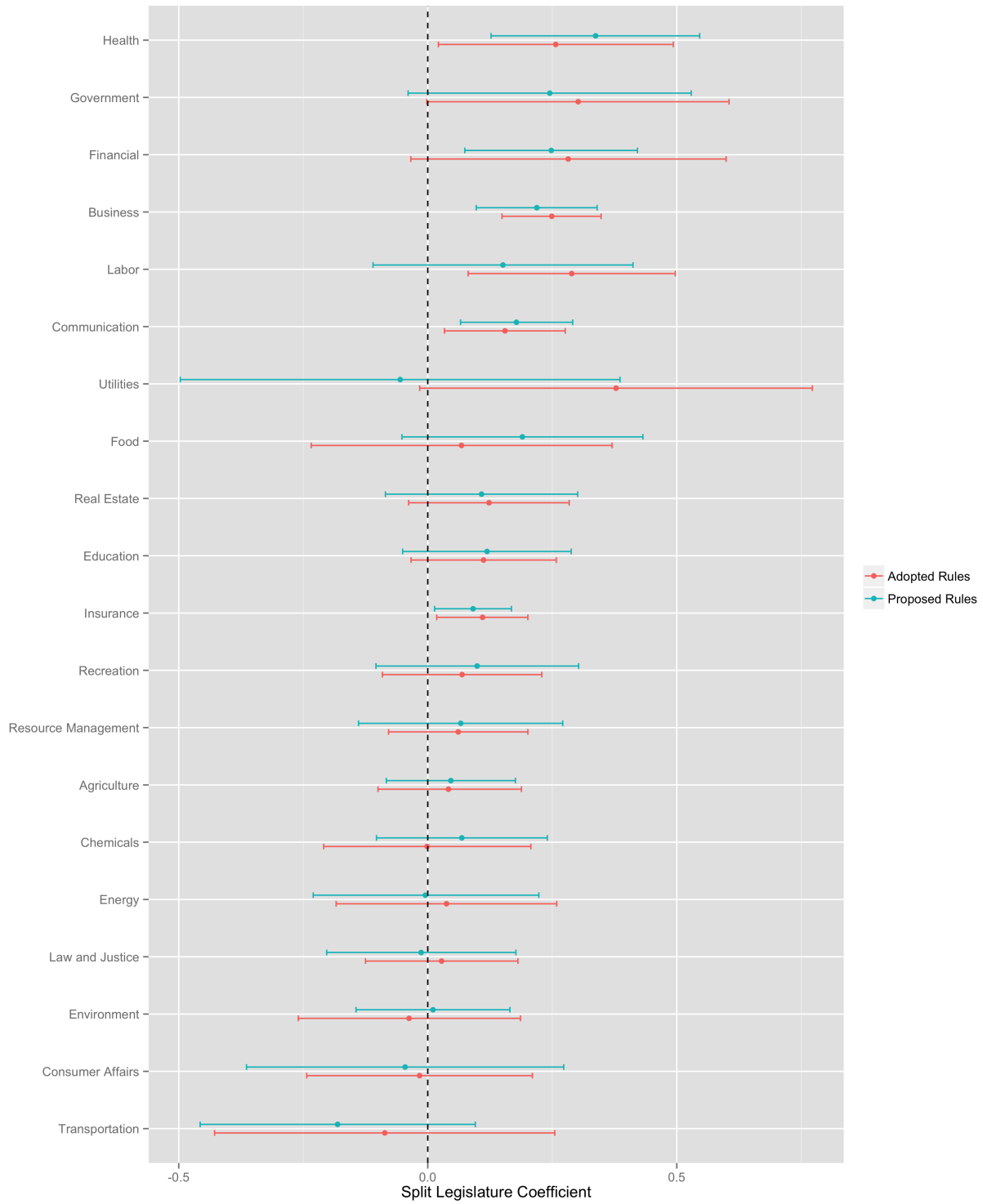


Figure 4: Split Legislature Coefficient, with 95% Confidence Intervals, by Topic-Specific Models (1994-2005)



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Appendix Table A1: Time to Rule Adoption, by State

State	Mean (Obs)	SD	Min-Max
All States	116.54 (160,814)	102.47	0-1,876
Alabama	70.86 (4,111)	34.46	0-614
Alaska	172.69 (1,144)	141.08	0-1,256
Arizona	182.91 (1,470)	107.86	0-1,876
Arkansas	93.12 (1,085)	98.43	0-1,027
California	215.50 (4,522)	131.67	0-1,426
Colorado	61.85 (4,949)	48.17	0-674
Connecticut	267.94 (1,112)	177.67	0-1,533
Delaware	84.43 (1,366)	80.95	0-1,126
Florida	76.30 (15,209)	67.79	0-1,228
Georgia	69.88 (757)	57.80	0-563
Hawaii	186.46 (215)	171.60	0-937
Idaho	270.32 (2,748)	103.34	0-690
Illinois	153.19 (6,283)	80.03	0-502
Indiana	164.35 (1,616)	77.80	0-939
Iowa	67.67 (4,573)	38.78	0-583
Kansas	111.93 (1,213)	69.74	0-1,133
Kentucky	111.96 (6,107)	58.30	0-779
Louisiana	120.71 (4,266)	61.40	0-1,371
Maine	104.09 (3,506)	70.93	0-1,104
Maryland	78.34 (5,127)	57.37	0-827
Massachusetts	103.23(2,069)	112.78	0-1,204
Michigan	213.06 (904)	151.16	0-915
Minnesota	151.31 (803)	68.30	0-461
Mississippi	58.59 (4,163)	74.27	0-997
Missouri	138.904 (10,219)	38.14	0-672
Montana	78.38 (2,300)	42.03	0-434
Nevada	134.09 (1,788)	123.80	0-1,323
New Hampshire	140.35 (3,027)	71.65	0-649
New Jersey	119.25 (6,255)	90.98	0-777
New Mexico	101.42 (1,804)	103.74	0-1,216
New York	121.26 (6,410)	105.14	0-1,184
North Carolina	177.82 (761)	87.35	0-641
North Dakota	198.74 (191)	76.22	0-549
Ohio	98.26 (5,868)	94.82	0-1,582
Oklahoma	137.29 (4,499)	66.78	0-848
Oregon	77.51 (9,904)	70.30	0-1,155
Pennsylvania	325.96 (1,262)	242.56	0-1,588
Rhode Island	88.94 (571)	82.64	0-693
South Carolina	271.24 (993)	127.50	0-1,071
South Dakota	64.79 (1,465)	27.63	3-385
Tennessee	259.24 (1,971)	214.92	0-1,641
Utah	65.04 (7,921)	41.89	0-351
Vermont	160.64 (516)	92.30	5-1,060
Virginia	185.01 (1,180)	153.70	0-1,594
Washington	67.47 (7,909)	47.60	0-773
West Virginia	232.06 (2,023)	138.16	0-1,270
Wisconsin	212.79 (2,053)	158.84	0-1,658
Wyoming	136.00 (605)	107.53	0-1,066