

Inter-Branch Conflict and Policy Implementation: Instructing Agencies with Presidential Signing Statements¹

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With the bureaucratic implementation of the law also comes the inter-branch conflict that accompanies a separation of powers system. Congress can delegate to ideologically proximate agencies that are more likely to implement favorable policies. However, the president can also influence policy implementation through signing statements, often instructing these same agencies on how to interpret the law. Finally, the courts can adjudicate between the differing statutory interpretations. This paper examines such conflict by developing a formal model of the president's decision to issue a signing statement given the potential actions of the Supreme Court and the agency granted statutory authority. Empirically testing its predictions, I find that the president is more likely to issue a signing statement when Congress has delegated authority to an agency that is ideologically distant from his own policy preferences, when he is ideologically aligned with the Court, and when he is given greater discretion.

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I Introduction

On July 19, 1986, President Ronald Reagan signed the Safe Drinking Water Act Amendments of 1986 into law,² giving the Environmental Protection Agency (EPA) authority to regulate containments of ground water supplies. Additionally, the act also included grant awards to those states establishing certain EPA-approved programs. Concerned that these provisions could infringe upon states' rights, Reagan issued a signing statement clarifying how the EPA should interpret and implement these potentially questionable sections. Reagan states:

“I am assured that the ground water grant program in S. 124 as enrolled cannot be used as an instrument to create a new Federal regulatory program... Neither can the bill's provisions establish a major Federal presence in highly sensitive local land-use decisions that could affect ground water. I read the bill as not authorizing direct and detailed Federal intervention in State planning and control of land use, and I hereby direct the EPA to recognize to the fullest extent the primacy of State Governments in decisions affecting ground water in the implementation of this act.”³

By instructing the EPA on how to interpret these provisions, Reagan attempted to preempt the possibility that the agency would implement them to be too intrusive upon the states.

This case provides just one of many examples in which the president can use signing statements as a way to guide or direct agencies in implementing the law, particularly when there is the possibility that it could be implemented in a manner not preferable to the president. However, this presents the question of when and how do presidents use signing statements to provide instruction to agencies, particularly given which agency has been authorized to implement the legislation?

This paper seeks to address this question by building a formal model of the president's decision to issue signing statements considering the ideological preferences of the agency as well

² P.L. 99-339

³ Ronald Reagan: "Statement on Signing the Safe Drinking Water Act Amendments of 1986 ," June 19, 1986. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=37485>.

as Congress, and the Supreme Court. The model yields several predictions. First, I find that the president is more likely to issue a signing statement when the agency responsible for implementing the legislation is ideologically distant from his preferences. Second, I find that the president is more likely to issue a signing statement when he is ideologically aligned with the Supreme Court, consistent with previous findings (Thrower 2010). Finally, the model predicts that when the president is faced with an ideologically extreme agency, he is more likely to issue a signing statement when he is given more discretion. I find empirical support for the model's predictions by examining the probability of the president issuing a signing statement on all legislation passed between 1981 and 2008.

The remainder of the paper proceeds as follows. First, I discuss background and related literature on signing statements (Section 2). I then present the complete information model (Section 3) followed by the incomplete information model (Section 4). Next, I discuss the data and method and then present the results (Section 5). Finally, I discuss the findings and implications (Section 6) and then offer concluding remarks (Section 7).

II Background

What is a signing statement?

A signing statement is an official written statement issued by the president when he signs a bill into law. It can serve a variety of functions including providing general comments, highlighting positive or negative aspects of the bill, offering interpretations of the bill's sections, and instructions on how to implement it into law. Signing statements have been used since the early 19th century. However, only modern presidents since Harry Truman have used signing statements more frequently. Scholars typically argue that Ronald Reagan was the first president

to strategically use signing statements, in an effort to systematically expand presidential power (Cooper 2002, 2005; Kelley 2006; Pfiffner 2008). This is evidenced by Reagan's former Attorney General Edwin Meese's successful campaign to publish signing statements in legislative histories. Presidents since Reagan have continued to heavily rely on signing statements as a policymaking tool.

What are the functions of a signing statement?

Signing statements are typically placed into different categories based on their functions. Former Attorney General Walter Dellinger (1993) first categorized signing statements into three types: rhetorical, political, and constitutional (Kelley 2002). Subsequent scholars tend to focus on two of these types of signing statements – rhetorical and constitutional. Rhetorical signing statements are those designed to target a particular constituency by drawing positive or negative attention to certain aspects of the bill. Constitutional statements raise objections to certain sections of the bill based on the grounds that it violates the Constitution. These are the most controversial type of signing statements, particularly due to the recent negative attention garnered by President George W. Bush's use of them during his presidency.

While scholars have mostly focused on rhetorical and constitutional signing statements, there is another function of signing statements that has garnered less scholarly attention. Presidents often use these statements to provide instructions to agencies on how to interpret and implement the bill into law, often in alternative ways than as specified in the legislation.⁴ Consequently, presidents have the potential to move policy to more preferable outcomes through these instruction or interpretations from where Congress specified in the bill.

⁴ I will often refer to this type of statement as an agency signing statement.

Agency signing statements are not necessarily mutually exclusive from rhetorical or constitutional statements. In fact, presidents often object to certain sections of the law and then provide agencies with instructions on how to alternatively implement those sections. For example, George H.W. Bush objects to a certain section of the Student Aid Bill of 1982 and then gives the Secretary of Education instructions to interpret the section differently in his accompanying signing statement:

“Such a provision unconstitutionally encroaches on the principle of the separation of powers that is at the foundation of our government. Accordingly, the Secretary of Education will implement this law in a manner consistent with the Constitution.”⁵

Presidents can also support the bill, but still give agencies instructions in the signing statement, as Bill Clinton does in signing the Government Management Reform Act of 1995:

“This Act's requirement for an audited consolidated financial report is a step in achieving this goal. To advance the process of accountability, I have requested that the Secretary of the Treasury, with the Director of the Office of Management and Budget (OMB), also produce an Annual Accountability Report to the Citizens in 1995, as recommended by the Vice President in the NPR report.”⁶

Presidents can give vague instructions, as the Reagan example above demonstrates, or more specific instructions to agencies, such as in the Clinton example. Further, these instructions can be extremely detailed, as evidenced in George H.W. Bush's signing statement of the Clean Air Act Amendments of 1990:

“To address the serious concerns raised by the cost of this legislation, I am directing Bill Reilly, Administrator of the Environmental Protection Agency, to implement this bill in the most cost-effective manner possible. This means ensuring that plants can continue to use emission trading and netting to the maximum extent allowed by law; that the Administration's proposed policy on WEPCO is implemented to the extent allowed by

⁵ Ronald Reagan: "Statement on Signing a Student Aid Bill," October 14, 1982. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=43125>.

⁶ William J. Clinton: "Statement on Signing the Government Management Reform Act of 1994," October 13, 1994. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=49278>.

law as quickly as possible; and that the permit program is phased in over time in an orderly, nondisruptive manner. This Administration will also pursue the use of more realistic assumptions when estimating risk. These implementation strategies will help keep unnecessary costs and job losses down, while ensuring the achievement of the environmental goals of this bill in the most efficient manner possible.”

Finally, agency signing statements can address specific agencies, as the above examples demonstrate, or just generally address the executive branch – as President George W. Bush often did in his signing statements. Even statements that vaguely address executive branch agencies or that do not mention any agencies at all still have the potential to influence policy outcomes if the president chooses to communicate to the agencies in different ways (e.g. executive orders, memorandum, or informal communication) in pursuit of a policy position or interpretation clearly stated in the signing statement.

Previous Literature on Signing Statements

While signing statements that instruct agencies have the potential to influence policy outcomes through the way they direct agencies – either directly or indirectly – on how to implement the law, the literature neglects to consider how the ideological position of the agency influences the president’s decision on when or how to issue a signing statement. Instead, most of the literature examines how presidents use signing statements in the face of possible constraints from Congress, with varying results.

Some studies find that the probability of a signing statement increases under divided government (Berry 2009; Kelley 2008; Kelley and Marshall 2009, 2010), while others find that divided government has mixed or no effects on signing statements (Cutrone 2008; Ostrander and Sievert 2012). Studies have also found that the president actually issues fewer signing statements when ideologically distant from Congress and the Supreme Court (Thrower 2010). Additionally,

others find that a variety of other political factors such as significant legislation, foreign or defense policy areas, appropriation bills, and bills with restrictive requirements on the president also increase the likelihood of a signing statement (Berry 2009; Cutrone 2008; Evans 2011; Kelley 2008; Kelley and Marshall 2009, 2010a, b; Ostrander and Sievert 2012; Rice 2010; Thrower 2010).

While this body of literature examines various political factors that influence the president's use of signing statements, none of these studies examine how agencies can also influence this decision. This is particularly relevant given that Congress can choose which agencies to delegate to in legislation; they can delegate to agencies that are ideologically proximate and likely to implement policy in a favorable manner (Bendor and Meirowitz 2004; Epstein and O'Halloran 1999). Congress's decision about which agencies to delegate to can then influence when presidents decide to issue signing statements that instruct or even redirect these agencies. If Congress gives authority to an agency that is ideologically distant from the president, that agency's implementation of the law may result in outcomes unfavorable to the president. In these situations, the president can use signing statements as a tool to redirect agencies, giving them instructions on how to re-interpret or implement the law in a way more favorable to his preferences. The following sections explore this possibility by presenting a formal model of signing statements given the ideological position of the president and agency. I first present the complete information model and then extend it to situations under incomplete information.

III Basic Model – Complete Information

Policy Space

This model builds upon previous reversion point spatial models involving policymaking among various actors (e.g. Romer and Rosenthal 1978; Ferejohn and Shipan 1990; Krehbiel 1998). In this model, the president and Congress bargain over the location of policy, which is then implemented by an agency and reviewed by the Supreme Court. The policies are contained within a unidimensional policy space, $x \in X = \mathbb{R}^1$, which represents a continuum of conservative to liberal policies. Let q represent the exogenous status quo policy and let x' represent the final policy following the Court review.

Players' Preferences

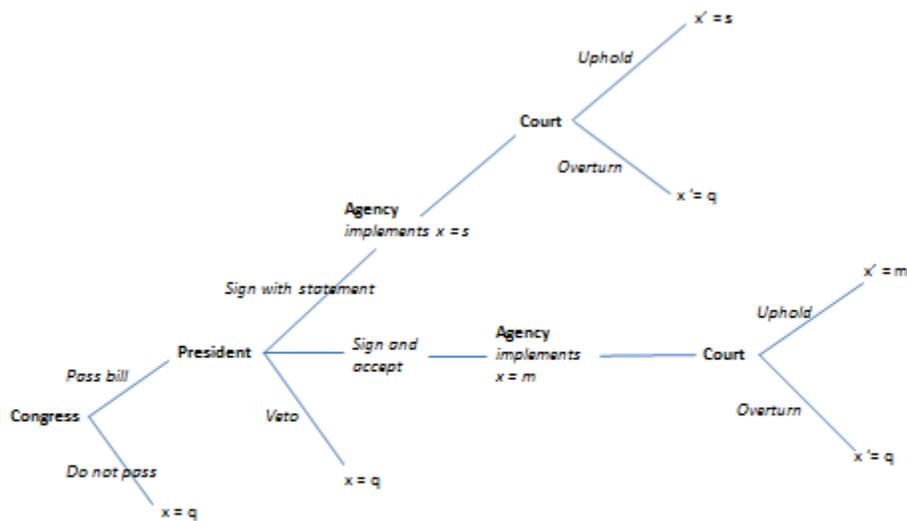
The four players – Congress, the president, the agency, and the Court – have single-peaked policy preferences and let c, p, a, j be represent their most preferred policies, respectively. Players decide based on their utility functions, represented by $u_i = -|x - i|$, where $i \in \{c, p, a, j\}$. Let $j(q) = 2j - q$ represent the point that makes the Court is indifferent to the status quo q . Additionally, let $A_j(q) = [q, j(q)] \cup [j(q), q]$ represent the set of polices the Court prefers over the status quo. Similar notation is used for Congress and the president.

Sequence of the Game

The sequence of the game is depicted in Figure 1. Congress chooses whether or not to pass a bill b . If it fails to pass a bill, then the policy remains at q . However, if it passes b , then the president decides whether to veto, sign the bill as written, or sign with a signing statement. If he vetoes, the policy returns to q . If he signs without a signing statement, then the agency selects

how to implement the bill by moving policy to m – the policy location the agency selects when it implements the bill into law. If the president issues a signing statement s , the agency must implement policy at s . Following the passage of a bill, the Court reviews the law. It can uphold the policy – where the final outcome becomes s if the president has issued a signing statement or m if he has not issued a statement – or it can overturn the policy to restore the status quo.

Figure 1: Sequence of the Game



Discretion

The model also contains a discretion parameter d . Similar to how it is conceptualized by previous models (Epstein and O’Halloran 1999; Howell 2003), this parameter represents how far the president or the agency is permitted to move policy with a signing statement s or agency implementation m .⁷ This is an exogenously set parameter and is a positive number such that $d \in [0, R]$. Neither the president nor the agency is permitted to move policy further than d from

⁷ Conceptually, this discretion parameter could have originated from specific grants of authority from previous statutes and the Constitution or from broad interpretations of vague language from these sources.

the original bill b . In other words, when the agency implements policy it is restricted such that $m \in [b - d, b + d]$. Similarly, a signing statement is restricted by $s \in [b - d, b + d]$.

Behavior

Players make decisions based on the maximization of their own utilities and the possible choices of the other players. In other words, players choose based on which choice will result in outcomes closest to their preferred policies that the other players will not overturn. The Court chooses to uphold the policy it is reviewing – whether it be s or m – if that policy is closer to its ideal point j than the status quo q . However, if q is closer to j than the reviewed policy, then it overturns and restores q .

If the president has issued a signing statement, then the agency will implement the policy at the signing statement s . However, if the president signs the bill without a statement, then the agency decides where to implement the bill b at m , based on the location of its own ideal point a , the Court's ideal point j , the status quo q , and how much discretion d it has been given to move policy from b . The agency will select m in such a way as to move policy closer to a from b within $\pm d$ such that the Court prefers m to q .

The president chooses whether to issue a signing statement based on the location b , how much d he is granted, and the location of his ideal point p as well as the agency's ideal point a and the Court's ideal point j . If the president can issue s that will move policy closer to p from b by d or less such that the Court will not overturn it, then he will issue that statement only if the agency will not already move policy in the same way with m .⁸ Further, the president will only

⁸ Here, I implicitly assume that if the agency and the president will move policy in the exact same way with m and s , then the president chooses to defer to the agency and not issue a signing statement. This could be because there is an implicit cost (not modeled here) to issuing a signing statement and thus the president will not do so if the agency plans to implement the same policy.

issue a signing statement if it can issue s in such a way that it moves policy closer to p than both b and q . If b is closer to p than q and he cannot move policy any closer with s without being overturned, then the president will sign the bill without a statement. However, if q is closer to p than b and any possible s , then the president will veto the bill and the policy returns to q .

Finally, Congress decides whether or not to propose a bill b and where to propose it based on how the Court will rule on the policy review, where the president could possibly move policy with a signing statement, where the agency will implement the policy, and which possible outcome is closest to Congress's preferred policy. If Congress can propose a bill that results in an outcome closer to c than q without being overturned, it proposes b such that it maximizes its own utility. Congress must also anticipate how far the president or agency can move policy according to d and proposes a bill accordingly. If it is not possible to propose b that maximizes its utility, Congress chooses not to propose b , allowing q to remain the policy. The appendix provides a summary of the decision rules of each player.

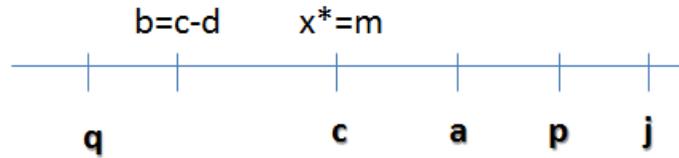
Equilibrium Outcomes

Based on the players' decision, the equilibrium outcomes are found using backwards induction. The equilibrium concept for this game is sub-game perfect Nash. Let x^* represent the equilibrium outcome. I present examples, depicted in Figures 2a – c, to demonstrate the possible outcomes of the game – depending on the location of the agency. For these examples, I assume $c < p < j$ and vary the location of the agency a . However, I solve for all possible configurations in the appendix.

In Figure 2a, where $c < a < p < j$, Congress could propose a bill b at its ideal point c , but it knows that both the agency and the president wish to move policy closer to their ideal

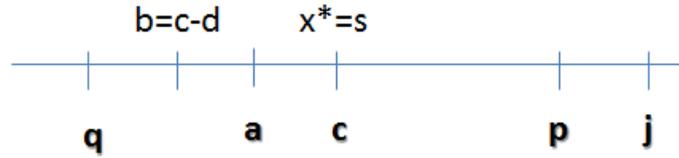
points with the discretion d . Anticipating this move, Congress proposes the bill at $b = c - d$, so that either the president or the agency will move policy to Congress's preferred policy. If the president does not issue a signing statement, the agency would move policy closer to its ideal point a such that $m = b + d = (c - d) + d = c$. Knowing he cannot move policy any closer to his ideal point p than the agency will with m , the president chooses not to issue a statement. Additionally, the president will not veto the bill because $m = c$ is closer to p than q , the policy following a veto. Similarly, the Court chooses to uphold this policy because c is closer to its ideal policy j than q . Thus, the final policy outcome is $x^* = m = c$.

Figure 2a: Example 1, $c < a < p < j$



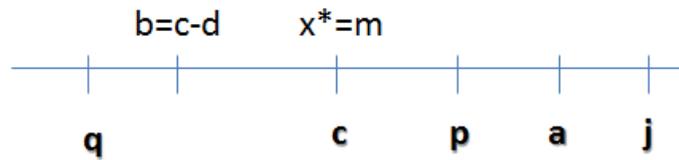
In Figure 2b, where $a < c < p < j$, Congress chooses to propose $b = c - d$ for similar reasons as discussed in the previous example. If the president does not issue a signing statement, the agency will want to implement policy at $m = a$ and can do so because this is within the granted discretion. However, the president would like to move policy even closer to his ideal point p and thus issues a signing statement at $s = b + d = (c - d) + d = c$, a policy closer to p than b , a , and q . For the same reasons as above, the Court upholds this policy and the final policy outcome is $x^* = s = c$.

Figure 2b: Example 2, $a < c < p < j$



The final example, depicted in Figure 2c where $c < p < a < j$, is similar to Example 1. Congress proposes $b = c - d$ and the president chooses not to issue a signing statement because it cannot move policy any closer than the agency would implement it. So, the agency implements policy at $m = c$, the Court upholds, and the final policy outcome is $x^* = m = c$.

Figure 2c: Example 3, $c < p < a < j$



The intuition from the previous examples holds more generally. The equilibrium outcomes are formally given by the following proposition:

Proposition 1.

(a) When the agency's ideal policy is located between that of Congress and the president, $c < a < p$ (**moderate agency**), then the president issues a signing statement only when the president is located close to the Supreme Court ($p \in [j(q), q]$ holds) and when one of the following conditions also holds:

- i. $a \notin [j(q), q]$ when $c < a < p < j$ or $c < a < j < p$
- ii. $a \in [j(q), q] \cap a \notin [p(q), q]$ when $c < a < j < p$ or $c < j < a < p$ or $j < c < a < p$

(b) When the Congress is located in between the agency and the president, $a < c < p$ (**extreme, Congress-favoring agency**), then the president always issues a signing statement when he is located close to the Supreme Court ($p \in [j(q), q]$ holds). He also issues a signing statement under each of the following conditions:

- i. $a < c < p < j$
- ii. $c \in [q, j(q)]$ when $a < c < j < p$ or $a < j < c < p$
- iii. $a \in [q, j(q)] \cup [j(q), q]$ when $j < a < c < p$

(c) When the president's ideal policy is located in between that of Congress and the agency $c < p < a$ (**extreme, president-favoring agency**), then the president never issues a signing statement.

The proof of Proposition 1 is located in the appendix.

Predictions

Predictions can be derived from these equilibrium outcomes. First, the president never issues a signing statement unless he is relatively close to the ideological position of the Court ($p \in [q, j(q)] \cup [j(q), q]$). Thus, the first prediction states:

President-Court Alignment Prediction: The president is more likely to issue a signing statement when he is ideologically aligned with the Court.

Second, the president issues a signing statement most often when the agency is ideologically extreme and relatively far from his ideal point but closer to Congress ($a < c < p$). However, he never issues a statement when faced with an agency that is relatively closer to his ideal point and far from Congress ($c < p < a$). Finally, when faced with a moderate agency ($c < a < p$), the president is more likely to issue a signing statement as the agency moves further from his ideal point ($a \notin [j(q), q] \cup p \in [j(q), q]$ or $a \in [j(q), q] \cup a \notin [p(q), q]$). Taken together, the second prediction states:

President-Agency Misalignment Prediction: The president is more likely to issue a signing statement when is not ideologically aligned with the agency.

IV Extension of the Model – Incomplete Information

The basic model demonstrates clear intuitions behind when the president is more likely to issue a signing statement given the ideological positions of the agency, the Court, and Congress. However, policy outcomes may not be known by all political actors. Agencies may have certain expertise when implementing legislation, which could further constrain the decision-making of

the other political actors. To explore this possibility, I present an extension of the basic model with incomplete information.

Assumptions

This model builds upon previous models of delegation to agencies under incomplete information (Epstein and O'Halloran 1999; Volden 2002). The players are the same as in the basic model with the same ideal points. However, for simplicity purposes, the Court does not have an ideal point in this extension but instead decides based on whether the policy has been moved within its bounds of discretion, such that $x \in [b - d, b + d]$. The other players' utilities are represented by $u_i(x) = -(i - x)^2$, where $i \in \{c, p, a\}$. Without loss of generality, let $p = 0$.

Additionally, let the final policy outcome be represented by $x' = x + w$, where w represents an exogenous shock to the policy. Congress and the president do not know the location of w but they do know that it is uniformly distributed such that $w \sim [-R, R]$. Because of expertise, the agency and the Court discover the location of w . The sequence of the game remains the same as in the basic model (see Figure 1).

Equilibrium Outcomes and Predictions

The Court makes decisions based on whether or not the policy implemented by the agency has been moved further than the allotted discretion allows. Thus, the Court upholds if $m \in [b + w - d, b + w + d]$, resulting in a final outcome of $x' = b + w$, and overturns if $m \notin [b + w - d, b + w + d]$, which reverts policy back to the status quo q .

The agency selects where to implement policy based on how close it can move policy to its ideal point a , given the discretion level d and the realization of the exogenous shock w . If the

agency's ideal point is within the boundaries of discretion, i.e. $a \in [b + w - d, b + w + d]$, then it will implement policy at $m = a$. However, if a is outside this boundary then it will choose either $b + w - d$ or $b + w + d$, depending on which one is closest to its ideal point, because these are the closest policies it can obtain with d to its ideal policy.

The president decides whether to veto, sign without a statement, or sign with a statement based on which decision gives him the greatest utility, given the possible outcomes and the distribution of w . If he decides to veto the policy, the outcome will always be q . Thus his expected utility of vetoing is $EU_p(\text{veto}) = -(p - q)^2 = -q^2$. If the president decides to sign without a signing statement, then he calculates his expected utility of signing the bill based on the outcomes that will occur when the agency implements policy, dependent on the location of w . This expected utility is given as follows:

$$EU_p(\text{sign with no statement}) = - \int_{a-b-d}^{a-b+d} (p - a)^2 * \frac{1}{2R} dw$$

$$- \int_{-R}^{a-b-d} (p - (b + w + d))^2 * \frac{1}{2R} dw - \int_{a-b+d}^R (p - (b + w - d))^2 * \frac{1}{2R} dw$$

If the president decides to sign the bill with a signing statement, then his expected utility of issuing a signing statement is based on the where the signing statement places the outcome, given the distribution of w :

$$EU_p(\text{signing statement}) = - \int_{b-s-d}^{b-s+d} (p - (s + w))^2 * \frac{1}{2R} dw$$

$$- \int_{-R}^{b-s-d} (p - q)^2 * \frac{1}{2R} dw - \int_{b-s+d}^R (p - q)^2 * \frac{1}{2R} dw$$

Note, that with the signing statement there is the possibility that the Court will overturn the statement and restore the status quo because the president does not know the exact location of w .

The president chooses the decision based on which yields the greatest expected utility.

Thus, for the president to issue a signing statement, two conditions must hold:

1. $EU_p(\text{signing statement}) > EU_p(\text{veto})$
2. $EU_p(\text{signing statement}) > EU_p(\text{sign with no statement})$

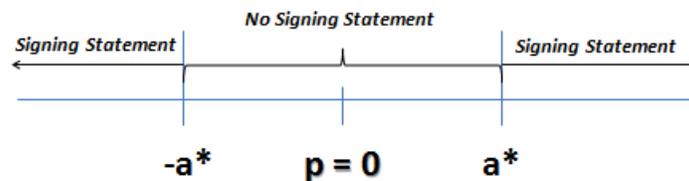
First, I will find what values of a must exist for these conditions to hold. To find this, I will focus on only the second condition because it is the only condition where a is present. We can think of this as conditional on the president signing a bill, when does he issue a signing statement.

Solving this inequality, I find the following inequality must hold for the president to issue a signing statement:

$$a > a^* \text{ and } a < -a^* \text{ where } a^* = \frac{\sqrt{6b^2d + 2d^3 + 3dr^2 - 3dq^2 - 3b^2r - 3q^2r - r^3}}{\sqrt{3} * \sqrt{d}}$$

Let a^* be the critical value for this condition to hold.

Figure 3: Equilibrium Condition to Issuing a Signing Statement



This equilibrium result is graphically demonstrated in Figure 3. When the agency is relatively close to the president, within the critical region $a \in [-a^*, a^*]$, then the president does not issue a signing statement. However, when the agency is relatively far from the president, outside this critical region, then the president issues a signing statement. This result confirms the President-Agency Misalignment Prediction from the basic model (the president is more likely to issue a signing statement when is not ideologically aligned with the agency).

Returning to the condition for when the president issues a signing statement, we can find what levels of discretion must exist. Re-solving this inequality for d , I find the following condition for d must hold:

1. $d > \frac{3b^2r+3q^2r+r^3}{2-3a^2+6b^2-3q^2-3r}$ and $a \leq -\frac{\sqrt{2+6b^2-3q^2-3r}}{\sqrt{3}}$
2. $d > \frac{3b^2r+3q^2r+r^3}{2-3a^2+6b^2-3q^2-3r}$ and $a \geq \frac{\sqrt{2+6b^2-3q^2-3r}}{\sqrt{3}}$
3. $d < \frac{3b^2r+3q^2r+r^3}{2-3a^2+6b^2-3q^2-3r}$ and $-\frac{\sqrt{2+6b^2-3q^2-3r}}{\sqrt{3}} < a < \frac{\sqrt{2+6b^2-3q^2-3r}}{\sqrt{3}}$

To summarize, when the agency is distant from the president, greater discretion results in a signing statement. But when the agency is close to the president, he issues a signing statement under less discretion. This result leads to us to the final prediction:

The Discretion Prediction: Conditional on the president being distant from the agency, he is more likely to issue a signing statement when given discretion.

V Empirical Analysis

Data and Methods

To empirically test the predictions of the model, I use a logit to estimate the probability of the president issuing a signing statement on all legislation passed between 1981 and 2008. For the dependent variable, I use an indicator for when the president issues a signing statement on the passed legislation. I collect data on signing statements from The American Presidency Project at the University of California, Santa Barbara.⁹ From the 7,301 laws passed between 1981 and 2008, the president issued 1012 signing statements (13.9% of the time). Additionally, I code signing statements as agency statements if the president gives any instructions to the agency in the statement. There were 230 agency signing statements – 3.15% of all legislation and 22.72% of all signing statements.

The main independent of interest is the ideological distance between the president and agency authorized in the legislation. To measure this variable, I use the absolute distance between their respective ideal points. I use DW-NOMINATE to measure the president's ideal point and Clinton-Lewis expert opinion agency ideal points (2008). To identify which agency to use, I code each legislation for which agency is primarily given authority to in the legislation.¹⁰ As another independent variable of interest, I measure the ideological distance between the president and the median justice of the Supreme Court, using Cameron and Park's (2009) Nominate-Scaled Perception scores for the Court. Because the model predicts presidents only issue signing statements when ideologically close to the Court, I include an interaction variable between president-Court distance and president-agency distance.

⁹<http://www.presidency.ucsb.edu/>.

¹⁰ Note that Congress does not necessarily give authority to an agency in every law – yielding about 2,550 cases in which there are missing values for this variable. However, as an alternative measure, I fill in these missing values by identifying which agency likely has domain over that legislation by looking at committee assignments, consistent with the method used by Clinton et al (2012). Using this measure yields substantively the same empirical results.

As an additional control, I measure the ideological distance between the president and the median congressional member (averaged between the House and Senate), using DW-NOMINATE. To test the Discretion Prediction, I use an indicator variable for whether or not Congress gives authority to an agency in each law as well as an indicator for whether Congress has given the president authority. Additionally, I include an indicator for significant legislation¹¹ and an indicator for legislation related to foreign or defense as control variables, both previously found to significantly increase the probability of a signing statement (Berry 2009; Cutrone 2008; Evans 2011; Kelley 2008, Kelley and Marshall 2009, 2010a, b; Ostrander and Sievert 2012; Rice 2010). Finally, I include president dummy variables to measure the possible effects of individual presidents. Summary statistics of all of these variables are found in the appendix.

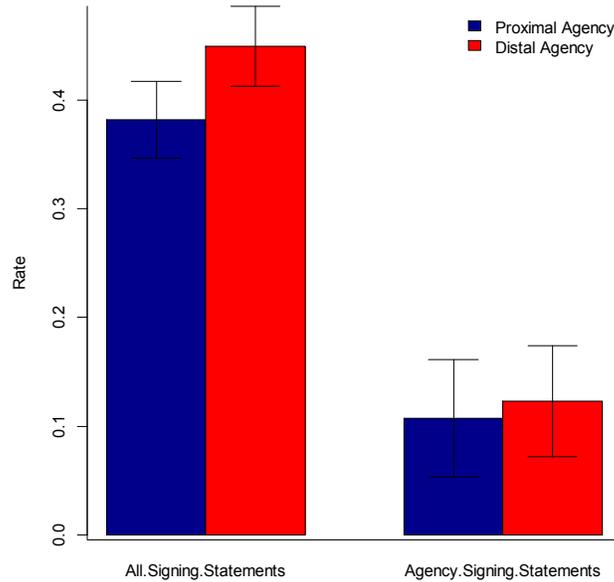
Descriptive Results

First, I examine the descriptive data and compare the rate at which the president issues signing statements when Congress has authorized an agency that is proximal to his preferred policy as opposed to when an ideologically distant agency is authorized (Figure 4).¹² When the president is faced with a proximal agency, he issues signing statements at a rate of 0.382. However, when faced with a distant agency, he issues statements at a higher rate of 0.450; this distance is significant at the 95% confidence level. Similarly, the president issues more signing statements explicitly giving agencies instructions at a higher rate when faced with an ideologically distant agency (0.123) than when faced with a proximal agency (0.107). This descriptive analysis lends suggestive support for the President-Agency Misalignment Prediction.

¹¹Based on Mayhew's (1991) list of significant legislation

¹² In this figure, I define an agency as proximal to the president if the agency authorized in the legislation has an ideal point that is closer to the president's than that of Congress. Similarly, a distant agency is one in which its ideal point is closer to Congress than the president.

Figure 4: Signing Statement Rate by Agency Distance



Regression Results

To further test this main prediction along with the others, I present the results of the logit analysis in Table 1. I find that the president's distance to the agency significantly increases his probability of issuing a signing statement. In other words, as Congress gives authority to agencies that are more distant to the president's preferred policy, he is more likely to issue a signing statement, lending further support to the President-Agency Misalignment Prediction.

Further, these results also hold for signing statements that explicitly give agencies instructions.¹³ Additionally, I find that the president's distance to the Supreme Court significantly decreases the probability that he issues a signing statement. In other words, as the president and Court move ideologically closer, the president becomes more likely to issue a signing statement, in support of the President-Court Alignment Prediction.

¹³ I find that these results hold when using alternative distance measures, such as an indicator of whether the agency is closer to Congress than the president, an indicator of when both the agency or the president are above the mean (median) of their respective distribution of ideal points. It also holds when using standardized measures of their ideal points.

Table 1: The Probability of Issuing a Signing Statement

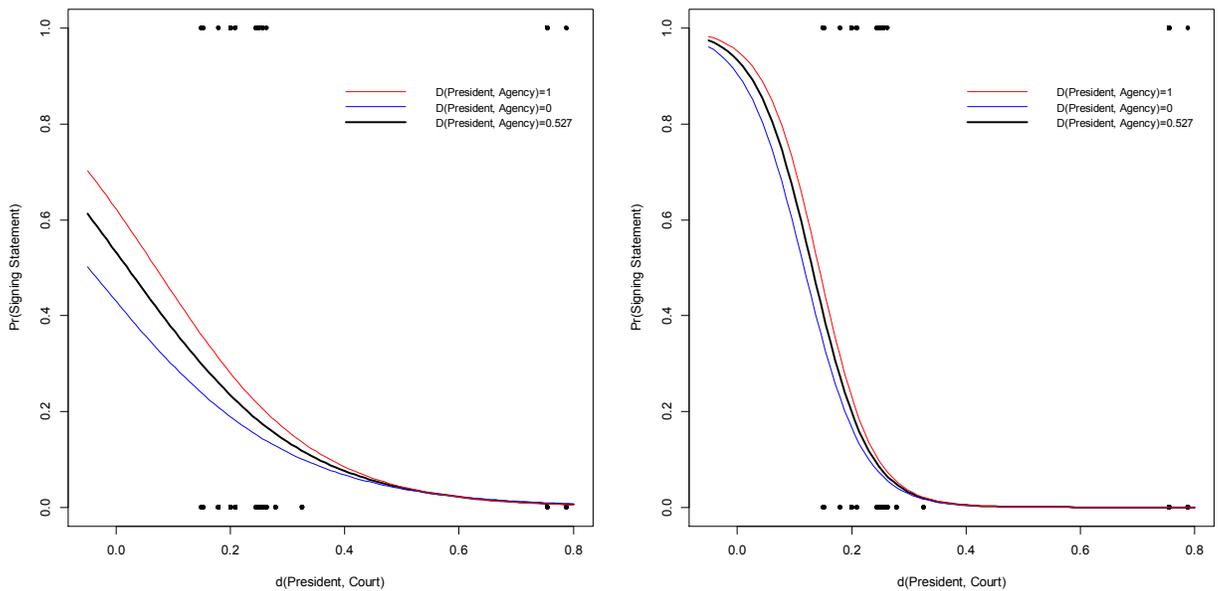
	All Statements	Agency Statements
d(President, Court)	-6.017 (2.89)**	-19.457 (7.642)**
d(President, Congress)	0.491 (0.448)	-1.878 (0.649)***
d(President, Agency)	0.791 (0.202)***	0.786 (0.362)**
d(President, Court)*d(President, Agency)	-1.401 (0.492)***	-1.846 (0.900)**
Agency Authority	2.109 (0.094)***	2.442 (0.223)**
President Authority	0.882 (0.131)***	0.791 (0.194)***
Significant Legislation	0.328 (0.234)	0.428 (0.307)
Foreign-Defense Legislation	0.750 (0.154)***	0.824 (0.204)***
Bush41	0.466 (0.2)**	-0.12 (0.448)
Clinton	4.607 (1.56)***	11.614 (4.19)***
Bush43	-0.06 (0.178)	2.295 (0.407)***
Intercept	-2.279 (0.673)***	-0.766 (1.64)
N	4751	4751

Logistic Regression coefficients reported with standard errors in parentheses.

*p < .10, **p < .05, ***p < .01, two-tailed test

To further test the impact of these variables and their interaction, Figure 5 examines the predicted probabilities of the president issuing a signing statement given his ideological distance to the Supreme Court, holding all other variables at their means. As the black line shows, the probability of the president issuing a signing statement decreases as his distance to the Court increases.

Figure 5: The Estimated Probability of Issuing a Signing Statement



This relationship is further magnified, when the president is at perfect misalignment with the agency (when president-agency distance equals 1), increasing the probability that he issues a signing statement. However, when the president is at perfect alignment with the agency (when president-agency distance equals 0), this relationship is lessened and decreases the probability that he issues a signing statement. These predicted probabilities further demonstrate the President-Court Alignment and the President-Agency Misalignment predictions.

The regression results also support the Discretion Prediction, finding that the president is more likely to issue a signing statement when he and the agency are given authority in the legislation. Finally, I find that the president is more likely to issue a signing statement when he is ideological closer to Congress and when the legislation is related to foreign or defense policy.

VII Discussion

Overall, I find support for the predictions of both the complete and incomplete information models. First, I find the president is more likely to issue a signing statement when an ideologically distant agency has been given authority in the legislation (President-Agency Misalignment Prediction). Consistent with previous literature, agencies often implement policy according to their ideological preferences (Ferejohn and Shipan 1990). Thus, an agency that is ideologically distant from the president may implement policies in ways that result in outcomes that are unfavorable to the president. Additionally, Congress may prefer to delegate to agencies that are more likely to implement the law in a manner favorable to Congress. Therefore, the president may wish to give instructions to agencies on how to implement the legislation, particularly in those instances where ideologically distant agencies are likely to implement the law in a manner that results in more unfavorable policy outcomes for the president.

Further, I find that these results hold not only for signing statements that specifically give agencies instructions on how to implement the law, but for all signing statements. The president often includes his position, interpretation, or instructions on how to implement legislation even if he does not mention any agency specifically or gives any instructions directly. Thus, signing statements can have implications for the agencies regardless of whether or not they are mentioned directly. Further, this can be particularly true given presidents often use other unilateral directives such as executive orders and memorandum to directly and more formally give agencies instruction. Future research should explore how presidents use signing statements in conjunction with other presidential tools to implement favorable policies through agencies.

One remaining question is whether or not agencies actually follow presidential instructions or interpretations in signing statements when implementing the law. May (1998) observes several cases in which agencies adhere to the policy positions or instructions given in signing statements when implementing the law. However, more research should examine more of these cases. In the meantime, existing research suggests that agencies have incentives to follow presidential instruction – particularly given that presidents have budgetary, appointment, and removal powers over agencies that could induce them to follow presidential guidance.

Another result of the model that is supported by the empirical analysis is that the president is more likely to issue a signing statement when he is ideologically close to the Supreme Court (President-Court Alignment Prediction). The president often writes signing statements with the Court in mind in hopes that it sides with his position if the legislation is challenged (Cooper 2002). Since there is evidence that the Court decides cases, at least in part, based on ideology (George and Epstein 1992; Epstein and Knight 1997; Segal and Cover 1989),

then it makes sense that the president is more likely to issue a signing statement when faced with an ideologically friendly Court that is likely to side with his position.

The final finding is that the president is more likely to issue a signing statement when either he or the agency has been given discretion. Consistent with the model, the president is able to move policy further when given more discretion. However, one shortcoming of the empirical test is that discretion is a dichotomous measure when a more accurate test of the theoretical model would be a continuous measure of discretion that would better reflect how changes in the levels of discretion influence the way the president chooses to implement policy through signing statements. In future work I plan to test these predictions with continuous measures of discretion.

VIII Conclusion

This paper presents a formal model of when the president issues a signing statement given the ideological positions of the agency responsible for implementing the law. Consistent with the model's predictions, the president is more likely to issue a signing statement when an ideologically distant agency is authorized in the legislation. The president uses the signing statement as an opportunity to redirect agencies that are likely to implement ideologically distant policy outcomes. Further, I find the president is also more likely to issue a signing statement when his preferences are aligned with the Supreme Court and when given discretion. Overall, this paper contributes to a literature that focuses on presidential-congressional interactions to explain the use of signing statements by introducing the role of the implementing agency as a consideration to the president's decision-making. It also highlights the importance of signing statements as a tool to instruct agencies on how to implement policy.

Appendix A – Decision Rules and Proofs for Complete Information Model

Decision Rules

Court:

*Uphold if $x \in A_j(q)$
Overturn if $x \notin A_j(q)$*

Agency:

*When the president issues s , then $m = s$
Otherwise:
if $a \in [b - d, b + d]$, then $m = a$
if $a \notin [b - d, b + d]$, then $m = \{b - d, b + d\}$,
based on $\max\{u_a(b - d), u_a(b + d)\}$*

President:

Issue s if the following conditions hold:

1. $|p - s| < |p - b|$
2. $s \in A_p(q)$
3. $s \in A_j(q)$
4. $a \leq b + d$ or $b - d \leq p$

where $s \in [b - d, b + d]$ s. t. $\max u_p(s)$

Otherwise:

*If $|p - b| < |p - q|$, sign b
If $|p - q| < |p - b|$, veto*

Congress:

If $c \notin [q, j(q)]$ or $c \notin [q, p(q)]$ when $c < q$, then do not propose bill

Otherwise:

*$b = c - d$ if $c \in A_j(q) \cup A_p(q)$
 $b = p(q) - d$ if $c \notin [p(q), q]$ and $c \in [j(q), q]$
 $b = j(q) - d$ if $c \notin [j(q), q]$ and $j(q) < p$ or $j(q) < a$
 $b = j(q)$ if one of the following holds:*

1. $c \notin [q, j(q)]$ when $c > j(q)$
2. $c \notin [j(q), q]$ and $p < j(q)$ and $a < j(q)$

Proof of Proposition 1

This proof is derived by backwards induction considering all configurations of ideal points c, p, j , and the status quo q . This proof assumes $c < p$ but is symmetrical for $p < c$.

For $c < a < p$

When $c \notin [q, j(q)]$ or $c \notin [q, p(q)]$, Congress chooses not to propose a bill. This is because the president or Court will overturn any policy not within these regions. So, the closest policy Congress can obtain to c without being overturned is q . Thus, the final outcome is $x^* = q$.

When $c \in A_j(q) \cup A_p(q)$, Congress always issues $b = c - d$ because either the president or the agency will move policy closer to their respective ideal points with d ; thus with this bill will result in an outcome most favorable to Congress. In this situation, $a \in A_p(q)$ always holds and so the agency will always implement $m = c - d + d = c$. Knowing this, the president cannot issue a signing statement in such a way that would move policy closer to p within $\pm d$ and so he chooses to not issue a signing statement.

Further, since he prefers c to q , he does not veto. As a result, the president signs the bill without a statement, the agency implements $m = c$ and the Court upholds because it prefers c to q . Thus the final outcome is $x^* = m = c$.

When $c \notin [j(q), q]$, Congress proposes $b = j(q) - d$ because it knows either the president or the agency will move policy to $j(q)$, the closest policy the other players can obtain to their ideal points within their discretion and the closest policy Congress can obtain without the Court overturning. If $a \in [j(q), q]$ and $p \in [j(q), q]$, then the president does not issue a signing statement. This is because the agency will always move policy to $m = j(q)$, the closest policy to its ideal point within the allotted discretion. Since the president cannot move policy any closer to p with a signing statement and he is indifferent between $j(q)$ and q , the president chooses to sign the bill without a statement. The Court upholds since it is indifferent between $j(q)$ and q and the final outcome is $x^* = m = j(q)$. If $a \notin [j(q), q]$ and $p \in [j(q), q]$, the president chooses to issue a signing statement at $s = j(q) - d + d = j(q)$ because the agency would prefer to implement a policy closer to a which would be less preferable to the president because it would move policy further from p . For the same reasons, the Court upholds and the final outcome is $x^* = s = j(q)$. If $a \notin [j(q), q]$ and $p \notin [j(q), q]$, Congress instead proposes $b = j(q)$. Neither the president nor the agency can move policy closer to their ideal point that the Court would uphold. So the agency implements $m = j(q)$, the Court upholds, and $x^* = m = j(q)$.

When $c \notin [p(q), q]$, Congress proposes $b = p(q) - d$ because it knows either the president or the agency will move policy to $p(q)$, the closest policy the other players can obtain to their ideal points within their discretion and the closest policy Congress can obtain without the Court overturning or the president vetoing. If $a \in [p(q), q]$, then the president does not issue a signing statement. This is because the agency will move policy to $m = p(q)$, the closest policy it can obtain within its discretion. The president does not veto because it is indifferent between $p(q)$ and q . So, the president signs, the agency implements $m = p(q)$, and the Court upholds. Thus, $x^* = m = p(q)$. If $a \notin [p(q), q]$, then the president issues a signing statement because the agency would not want to move policy from its ideal point. So, the president issues $s = p(q)$, the Court upholds because it prefers $p(q)$ to q and the final outcome is $x^* = s = p(q)$.

For $a < c < p$

When $c \notin [q, j(q)]$ or $c \notin [q, p(q)]$, $x^* = q$. See above under $c < a < p$.

When $c \in A_j(q) \cup A_p(q)$, Congress always issues $b = c - d$ because the president will move policy closer to his ideal point with d . The president chooses to issue a signing statement at $s = c - d + d = c$ because it knows the agency wants to move policy closer to a with m , which would be further from the president's own ideal point. The president does not veto because he prefers c to q . The Court upholds the signing statement because it prefers c to q . Thus, the final outcome is $x^* = s = c$.

When $c \notin [j(q), q]$ and $p \notin [j(q), q]$, then Congress issues $b = j(q)$, this is the closest bill it can propose that would not be overturned by the Court. Similarly, neither the president nor the agency can move policy any closer to their ideal points without being overturned by the Court. Thus, the final outcome is $x^* = m = j(q)$.

When $c \notin [j(q), q]$ and $p \in [j(q), q]$, Congress issues $b = j(q) - d$ because it knows the president will move policy closer to his ideal point with s . The agency would want to move policy closer to a and further from p , so the president issues $s = j(q)$. Additionally, he does not veto because he prefers $j(q)$ to q . Similarly, the Court upholds and the final policy is $x^* = s = j(q)$.

When $c \notin [p(q), q]$, $x^* = s = p(q)$. See above under $c < a < p$.

For $c < p < a$

When $c \notin [q, j(q)]$ or $c \notin [q, p(q)]$, $x^* = q$. See above under $c < a < p$.

When $c \in A_j(q) \cup A_p(q)$, $x^* = m = c$. See above under $c < a < p$.

When $c \notin [j(q), q]$ and either 1. $a \in [j(q), q]$ or 2. $p \in [j(q), q]$, Congress proposes $b = j(q) - d$ because it knows the agency will move policy closer to $m = j(q)$, the closest policy to its ideal point that the Court will uphold. The president will not issue a signing statement because it cannot move policy any closer with s . He does not veto because he prefers $j(q)$ to q . Similarly, the Court upholds and the final policy outcome is $x^* = m = j(q)$.

When $c \notin [p(q), q]$, $x^* = m = p(q)$. See above under $c < a < p$.

Appendix B – Tables

Table B1 – Summary Statistics

	Min	Median	Mean	Max	Std. Dev.
Signing Statement	0	0	0.1386	1	0.345564
Agency Signing Statement	0	0	0.0315	1	0.1746834
President-Court Distance	0.15	0.25	0.3469	0.788	0.2332325
President-Congress Distance	0.271	0.5615	0.5356	0.654	0.1087088
President-Agency Distance	0.007	0.447	0.5269	1.477	0.3809692
Agency Authority	0	0	0.237	1	0.4252429
President Authority	0	0	0.2138	1	0.4100198
Significant Legislation	0	0	0.02027	1	0.1409361
Foreign Defense Legislation	0	0	0.05027	1	0.2185105
Bush41	0	0	0.1701	1	0.3757584
Clinton	0	0	0.2424	1	0.4285839
Bush43	0	0	0.2487	1	0.4323084

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