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Presidential action and the Supreme Court: The case of signing statements

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Sharece Thrower
Department of Political Science, Vanderbilt University, Nashville, Tennessee, USA

Abstract

Recent attention to presidential action recognizes the legal and constitutional questions surrounding the controversial use of many of these powers. Yet, scholarly research on executive policymaking tends to ignore the role of the courts, instead focusing on presidential–congressional relations. I develop a formal theory of the president's decision to issue a signing statement in the face of constraints from the Supreme Court. The model produces several novel predictions. First, I predict that the president is more likely to issue a signing statement when he is ideologically aligned with the Court. Second, contrary to previous literature, the president is more likely to issue a statement when his preferences are also aligned with Congress. Finally, when reviewing legislation that is constitutionally challenged, I predict that the Court is more likely to rule in favor of the president's position when he has issued a signing statement.

Keywords

Executive politics; inter-branch policymaking; separation of powers

Fears of an 'imperial' president, acting beyond the limits of the Constitution, have long persisted in the United States. The increased reliance on unilateral actions has only continued to fuel fears of a president unconstrained in his ability to move policy without the approval of Congress. Signing statements, in particular, have drawn public scrutiny, evidenced by the recent controversies surrounding George W. Bush's use of this tool. Because of the president's ability to ignore or alter sections of the law, many view signing statements as unconstitutional encroachments

Corresponding author:
Sharece Thrower, Vanderbilt University, Department of Political Science, 329 Commons Center, Nashville, Tennessee, USA.
Email: sharece.d.thrower@vanderbilt.edu

upon Congress's ability to make the law and the courts' ability to interpret it. They are often viewed as inconsistent with the fundamental principles of separation of powers, by giving an advantage to one branch over the others. Consequently, scholars and pundits alike fear the unbridled and unconstitutional use of these and other presidential actions.

There is evidence, however, to suggest that the president is not completely unconstrained in his actions. Scholars recognize that the executive can anticipate the behavior of other political actors and moderate the use of policy actions accordingly (Ferejohn and Shipan, 1990; Howell, 2003; Moe and Howell, 1999), similar to Congress proposing bills based on the likelihood of a veto (Cameron, 2000; Krehbiel, 1998). While much of the literature considers how the president contemplates the actions of Congress when deciding how to exercise his policy tools, it largely fails to consider how the courts can also influence this decision-making. This is surprising given the constitutional and legal concerns surrounding many of these tools.[1]

To address this gap in the literature, this paper considers how the president anticipates the courts in policymaking by examining his use of signing statements. This particular tool allows us to examine this question because the president writes these statements in the hopes that the courts consider his interpretation of the law (Alito, 1986; Cooper, 2002). Signing statements are published in legislative histories and indeed there are cases in which the courts have relied on their interpretation when reviewing legislation (e.g. *Bowsher v. Synar* 1986; *U.S. v. Lopez* 1995).

Because signing statements have the ability to influence policy outcomes through court decisions, presidents may strategically consider the role of the courts when deciding how to issue them. However, similar to much of the policymaking literature, the research on signing statements tends to exclusively focus on the president's interactions with Congress, while ignoring the role of the courts. Consequently, little is known about how the courts may shape the way presidents use signing statements. Moreover, a good deal of variation among presidents remains unexplained even after accounting for presidential–congressional relations.

I seek to further our understanding of the courts' influence on presidential decision-making by presenting a formal model of signing statements that incorporates the Supreme Court and Congress. Unlike previous spatial models of inter-branch policymaking, this one is the first to consider the use of signing statements as a bargaining chip amongst all three branches of the government. Overall, the model predicts that the president is more likely to issue a signing statement when his views are ideologically consistent with those of the Court, since he expects the Court is more likely to side with such a statement. Further, because the president is able to anticipate judicial behavior in this way, the model predicts that the Court is likely to rule in favor of the president's position when legislation with a signing statement is challenged. Finally, contrary to several arguments in the literature and conventional wisdom, I find that the president is more likely to issue a signing statement when his preferences are aligned with those of Congress. When faced with an ideologically extreme president, it is often more beneficial for Congress not to propose legislation in the first place in order to avoid drastic changes in policy

via signing statements. However, this relationship is conditional on the president's proximity with the Court. The remainder of the paper discusses the empirical implications of these predictions and avenues for future theoretical extensions.

Overall, this study demonstrates the importance of the Supreme Court in presidential decision-making by examining just one way in which the Court influences the exercise of his policy tools. Thus, it helps further our understanding of separation of powers politics and inter-branch policymaking. Moreover, it suggests that future research should examine the impact of executive-judicial dynamics on the use of other unilateral powers; this would enrich a literature largely focused on congressional influences.

1. Background

Signing statements are official written pronouncements issued by the president, usually prepared by the Department of Justice, accompanying a bill he signs into law. They serve a variety of purposes, such as to state the president's support or opposition of the law, highlight its benefits or shortcomings, provide objections to certain sections, and provide agency instructions on how to implement it. Political scientists typically identify two types of signing statements, based on their functions. Rhetorical statements are those that target a particular constituency, drawing positive or negative attention to the bill. Constitutional statements are those in which the president objects to sections of the bill based on grounds that it violates the Constitution. Recent public and scholarly attention to signing statements has focused on George W. Bush's controversial use of constitutional statements and many argue that this type of statement has the most potential to impact policy (Cooper, 2005; Kelley and Marshall, 2009; Ostrander and Sievert, 2012).

Signing statements are not a new phenomenon, but have been used by presidents since James Monroe. Table 1 shows the total number of signing statements, the number and percentage of constitutional statements, and the total number of constitutional objections issued by every presidential term since Hoover.[2] These statements were used infrequently and mostly rhetorically until Truman increased their use and constitutional content. Scholars argue that presidents since Reagan have wielded signing statements in a more systematic way, in an effort to expand presidential power (Cooper, 2005; Kelley, 2006; Pfiffner, 2008). Accordingly, Reagan and George H.W. Bush began issuing more constitutional statements, though Clinton issued fewer.

George W. Bush's presidency has been the most publicly criticized for his questionable use of signing statements to increase presidential power. Bush far surpasses every previous president in constitutional objections, with over 80% of his statements raising constitutional concerns while objecting to over 1100 sections of statute. Conversely, Obama, who was critical of their previous abuse,[3] significantly decreased the number of signing statements and constitutional objections relative to previous presidents. With only two years of data reported from the Trump administration, he is already on par with his predecessor in the number of total and constitutional statements issued –eight and six, respectively. Yet, 75% of

Table 1. Signing statements by presidential term.

President	Years	Total statements	Constitutional statements	Percent constitutional	Constitutional objections
Hoover	1929–1933	16	0	0.00	0
Roosevelt I	1933–1936	21	0	0.00	0
Roosevelt II	1937–1940	9	0	0.00	0
Roosevelt III & IV	1941–1945	14	0	0.00	0
Truman I	1945–1948	47	0	0.00	0
Truman II	1949–1953	60	2	3.33	2
Eisenhower I	1953–1956	88	3	3.41	4
Eisenhower II	1957–1961	57	5	8.77	7
Kennedy	1961–1963	36	0	0.00	0
Johnson	1963–1969	177	6	3.39	8
Nixon	1969–1974	117	6	5.13	7
Ford	1974–1976	137	12	8.76	12
Carter	1977–1981	228	26	11.40	31
Reagan I	1981–1984	121	29	23.97	45
Reagan II	1985–1988	128	47	36.72	78
H.W. Bush	1989–1993	228	123	53.95	284
Clinton I	1993–1996	166	30	18.07	61
Clinton II	1997–2001	217	55	25.35	118
W. Bush I	2001–2004	112	91	81.25	713
W. Bush II	2005–2009	50	42	84.00	429
Obama I	2009–2012	21	8	38.10	61
Obama II	2013–2016	20	12	60.00	45
Trump	2017–2018	8	6	75.00	149
Total		2078	503	24.21	2054

Source: *The American Presidency Project* (online by Peters G and Woolley JT). A signing statement is coded as constitutional if it raised an objection on the basis of a violation of the Constitution. The number of constitutional objections is coded by summing the number of sections of the law the president objected to based on constitutional grounds.

Trump's signing statements raise constitutional concerns, totaling 149 objections – surpassing Obama and mirroring Bush in their intensity.

Overall, the number of signing statements has decreased in recent years. This relative decline is likely due to the increased political costs of this controversial policy tool, particularly in the wake of heavy congressional and media criticism under the George W. Bush administration (Sievert and Ostrander, 2017). On the other hand, the number of constitutional objections within these statements has not faced an analogous decline. In fact, they have resurged in the first two years of the Trump presidency. Though issuing fewer signing statements in their second terms, both Reagan and Clinton increased the number of constitutional objections raised. In contrast, George W. Bush and Obama issued fewer statements and constitutional objections in their second terms. Taken together, this rich variation in signing statement use over time and within administration raises the question of why (and when) some presidents issue more than others. This paper suggests that one answer lies in the president's relationship to the courts.

1.1. Signing statements and the Court

The president's use of signing statements raises many constitutional concerns that would give reason for the courts to pay attention and possibly constrain their use. First, the ability to alter the content of legislation through the interpretation of the law is often viewed as encroaching upon the constitutionally granted powers of the Court to interpret the law and Congress to write it (Broomfield, 2006; Garber and Wimmer, 1987). Second, signing statements can raise questions regarding the president's attempts to expand his authority. He often cites constitutional intrusions on presidential power as grounds for ignoring or alternatively interpreting sections of statute.[4] But whether the Constitution intended to permit the president to exercise his powers in this way raises oft-debated questions surrounding his use of signing statements and his authority to object to or not enforce unconstitutional laws (Buthman, 2007; Cass and Strauss, 2007; Crabb, 2008; Garber and Wimmer, 1987; Rappaport, 2007).

While there are many constitutional questions surrounding their use, signing statements can be used to influence court decisions. In fact, presidents want the courts to pay attention to their interpretation of the law, often writing signing statements in the hopes that the judiciary will side with their position in future litigation (Cooper, 2002; Devins, 2007). This desire is further evidenced by former Attorney General Edwin Meese's successful campaign to publish signing statements in legislative histories. Whether signing statements are reliable sources of legislative history is a legally debated issue (e.g. Cross, 1988; Garber and Wimmer, 1987), but the literature provides support that courts often do consider the president's interpretation in signing statements as a part of legislative histories when reviewing challenged statutes (Carroll, 1997; Cross, 1988).

The Supreme Court can come to consider a signing statement, either directly or indirectly, when the constitutionality of legislation is challenged. In footnotes, the Court directly referenced Reagan's signing statement opposed to a section of the Balanced Budget and Emergency Deficit Control Act in *Bowsher v. Synar* (1986) and Bush's one opposed to the Guns Free School Zone Act in *U.S. v. Lopez* (1995). It invalidated both acts based on arguments referenced in these signing statements. The Court also discussed signing statements challenging statutes in both *U.S. v. Stevens* (2010) and *Zivotofsky v. Kerry* (2015), ultimately declaring these statutes unconstitutional. Finally, the Supreme Court can indirectly rely on signing statements, even if it does not explicitly cite them, by reviewing lower court rulings that directly reference them more often and through its frequent reliance on legislative histories that include these statements (Carroll, 1997).

1.2. Signing statements as a policy tool

Signing statements are widely viewed as a potentially influential policy tool. They are commonly perceived as an effective line item veto, used to nullify sections of the law deemed unconstitutional (Brownell, 1998; Cooper, 2002, 2005, 2007; Evans, 2011). As such, many scholars recognize the ability of presidents to obtain policy gains with these statements, giving them an advantage in the legislative bargaining

process (Cutrone, 2008; Kelley and Marshall, 2008, 2009; Moraguez, n.d.; Rice, 2010; Rodriguez et al., n.d.). In particular, signing statements can influence policy outcomes through both the interpretation and the implementation of the law (Cooper, 2002, 2005, 2007; Dellinger, 1993; Devins, 2007). First, as previously discussed, these statements can impact the judiciary's reading of the law (see Waltes, 1987), which ultimately has implications for final policy outcomes (e.g. Ferejohn and Shipan, 1990).

Second, given agencies' vast potential to influence policy through regulatory actions (e.g. Ferejohn and Shipan, 1990), signing statements are a way in which presidents can guide the implementation of the law – often compelling bureaucratic responsiveness (Devin, 2007). Consistently, there is some evidence suggesting that agencies do follow the instructions given in signing statements (Kepplinger, 2007; May, 1998). However, their definitive impact remains somewhat inconclusive given that some provisions of the law are not triggered while others' implementation are difficult to determine. Nevertheless, even when agencies comply with the law, it still leaves open the possibility of presidential policy gains through subsequent legislation and judicial review (May, 1998).[5]

Finally, in addition to scholars, the executive branch (e.g. Dellinger, 1993), and even the media (e.g. Savage, 2006), the legislature too views signing statements as an important policy tool used to further the president's agenda. In response to an American Bar Association report (2006) likening these statements to line item vetoes that threaten 'the rule of law,' Congress attempted to pass legislation aimed at limiting their influence. In particular, the three bills[6] prohibited the courts and other government entities from considering signing statements when interpreting the law. Though ultimately failing, these attempts demonstrate Congress's belief – or even fear – that signing statements can substantially impact policy, particularly through judicial review.[7] As such, both Congress and the president have the perception that signing statements influence policy outcomes and behave accordingly. Though some may view these statements as more akin to facilitating a 'dialogue' between the three branches of government concerning the interpretation of the law (Korzi, 2011; Ostrander and Sievert, 2013), such a dialogue has important implications for communicating the president's policy and constitutional views to both the courts interpreting the law and the agencies implementing it.

1.3. Overview of the literature

Previous political science research recognizes the president's ability to anticipate the behavior of other political actors when bargaining over policy (e.g. Cameron, 2000) and his ability to use unilateral actions to influence outcomes (e.g. Chiou and Rothenberg, 2014, 2017; Howell, 2003). However, most of this literature focuses on his relationship with congressional actors (Bailey and Rottinghaus, 2014; Belco and Rottinghaus, 2017; Bolton and Thrower, 2016; Chiou and Rothenberg, 2014; Deering and Maltzman, 1999; Fine and Warber, 2012; Howell, 2003; Krause and Cohen, 1997; Lowande, 2014; Mayer, 2001), while ignoring the role of the courts. Although there is an abundance of research examining judicial review of executive

branch actions (Black and Owens, 2012; Carruba and Zorn, 2010; Caruson and Bitzer, 2004; Cohen and Spitzer, 1996; Crowley, 1987; Ducat and Dudley, 1989; Howell, 2003; Humphries and Songer, 1999; Johnson, 2014, 2015; Sheehan, 1990, 1992; Smith, 2007; Willison, 1986; Wright, 2010; Yates, 1999, 2002; Yates and Whitford, 1998), little attention is given to how the threat of such review can influence the behavior of administrative actors (Canes-Wrone, 2003; Howard and Nixon, 2002; Wood and Waterman, 1993) and even less consideration is given to judicial influences on presidential action (Thrower, 2017). One reason for this oversight is the perception that the courts are ineffective at constraining presidential power, due to possible non-enforcement from the executive branch (Moe and Howell, 1999).

On the other hand, scholars do tend to recognize the legal and constitutional concerns surrounding presidential power. Further, some even identify the judiciary's ability to limit these powers (Cooper, 2002; Genovese, 1980). The courts may not only constrain the president, but also use presidential directives in interpreting the law. Further, some scholars acknowledge the president's ability to anticipate the likely actions of the courts (Howell, 2003); yet, the literature largely fails to incorporate the role of the courts in presidential decision-making (though, see Thrower, 2017).

Consistently, the existing research on signing statements mostly focuses on how the president's relationship with Congress influences their use in policymaking. These empirical studies have produced mixed results. Some studies find that divided government increases the probability that the president issues a signing statement (Berry, 2009; Kelley and Marshall, 2008, 2009, 2010), while other studies find that divided government has mixed or no effects (Kelley et al., 2013; Ostrander and Sievert, 2012; Sievert and Ostrander, 2017). Yet, some suggest that these relationships should also account for the internal fragmentation of Congress (Kennedy, 2014; Moraguez, n.d.). In addition, scholars have consistently found that presidents are more likely to issue statements on legislation that is significant and related to appropriations or foreign policy (Berry, 2009; Kelley et al., 2013; Kelley and Marshall, 2008, 2009, 2010; Ostrander and Sievert, 2012; Sievert and Ostrander, 2017).

While there is a growing body of empirical work on signing statements, theoretical research in political science has lagged behind. There is a substantial body of legal literature and some political science studies examining the constitutional issues surrounding this power (Cooper, 2002, 2005; May, 1998; Pfiffner, 2008). Correspondingly, there exist a few theoretical models of signing statements, but they concentrate on presidential–congressional relations (Cutrone, 2008; Kelley and Marshall, 2009; Moraguez, n.d.; Rodriguez et al., n.d.) and do not consider the role of the courts.

2. Theory

To address this gap in the literature, I present a formal model of presidential signing statements accounting for both Congress and the Supreme Court. Though this

is certainly not the first attempt to model executive-legislative bargaining over policy (e.g. Chiou and Rothenberg, 2014, 2017; Howell 2003; Krehbiel, 1998), this model is the first to incorporate signing statements as a bargaining tool amongst all three branches of government. It expands upon existing veto bargaining models (e.g. Cameron, 2000) by offering the president another option in the legislative process, beyond just accepting or vetoing the legislation.

Similar to other theories of unilateral actions (e.g. Chiou and Rothenberg, 2014, 2017; Howell, 2003), this model conceptualizes signing statements as a device presidents can use to move policy closer to their policy outcomes. As detailed in the previous section, this assumption is justified by the fact that signing statements have the potential to influence policy through agency implementation and court interpretation of the law – with the model focusing more squarely on the latter. Not all signing statements are equal, however. Some are more consequential for policy outcomes than others. As such, this particular theoretical model focuses on constitutional signing statements since they are the most likely to influence the courts' interpretation of the law – either directly or indirectly, as previously discussed. In the remainder of this section, I present the assumptions of this model and then the equilibrium outcomes, deriving predictions about when the president issues a signing statement.

2.1. Policy space

This model builds off previous reversion point spatial models (e.g. Ferejohn and Shipan, 1990; Krehbiel, 1998; Romer and Rosenthal, 1978) with players representing all three branches of government (as further specified below). Policies are contained within a unidimensional policy space, $x \in X = \mathbb{R}$, which can be interpreted as a continuum of liberal to conservative policies. This space contains an exogenous status quo policy q, representing the previous policy prior to any decision-making. Let x' denote the policy outcome following the final stage of the game.

2.2. Players' preferences

The three players – the president, Congress,[8] and the Court – have single-peaked preferences over policy outcomes and p, c, j are their respective ideal points representing their most preferred policies. I assume that these players are ideologically motivated and thus try to move policy as close to their ideal locations as possible, consistent with the inter-branch bargaining literature (e.g. Ferejohn and Shipan, 1990; Krehbiel, 1998). This also comports with studies finding that the Court makes decisions, including ones involving presidential power, not solely on legal considerations but based largely on ideology (George and Epstein, 1992; Segal and Spaeth, 2002; Yates and Whitford, 1998). Players' single-peaked utility functions are represented by $u_i = -|x - i|$, where $i \in \{p, c, j\}$. Let $j(q) = 2j - q$ represent the point in which the Court is indifferent between $j(q)$ and the status quo. Also, let $A_j(q) = [q, j(q)] \cup [j(q), q]$ represent the set of polices the Court prefers to the status quo. I use similar notation for the preferred sets of Congress and the president.[9]

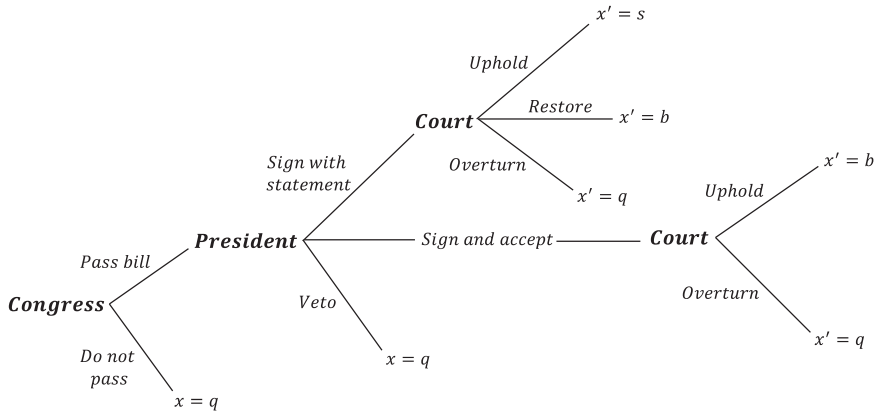

Figure 1. Game sequence of the model.

2.3. Sequence of the game

Similar to other sequential bargaining models (e.g. Cameron, 2000; Crombez et al., 2006; Groseclose and McCarty, 2001; Matthews, 1989), I consider a three-stage game between Congress, the president, and the Court. The sequence of the game is shown in Figure 1 and proceeds as follows. First, Congress chooses whether or not to propose a bill b. If it does not propose a bill, then the status quo q is retained. Unlike many other models of sequential bargaining between Congress and the president, the bill is not a take it or leave it offer. If Congress proposes b, then the president can either veto to revert policy back to q, sign the bill as it is presented($x = b$), or sign the bill with a signing statement s. After the president signs a bill (with or without a signing statement), the model assumes that the Court reviews the policy.[10] It can overturn the policy resulting in the outcome q, uphold the policy amended to s, or restore the policy to where Congress originally set it with b.[11]

2.4. Behavior

Players make decisions based on both the maximization of their own utility functions and the possible decisions of the other players. In other words, players wish to choose policies that are the closest to their ideal point such that the other players will not overturn them. The equilibrium concept is sub-game perfect Nash and let x^* represent the equilibrium outcome. The Court decides how to rule on policy reviews based on whether the signing statement s, the original bill b, or the status quo q is located closest to its ideal point j. In other words, the bill and the signing statement must be within the Court's preferred set $A_j(q)$ in order for it to not overturn either of these policies in favor of q. If both $s \in A_j(q)$ and $b \in A_j(q)$, then the Court upholds the policy that is closest to j.

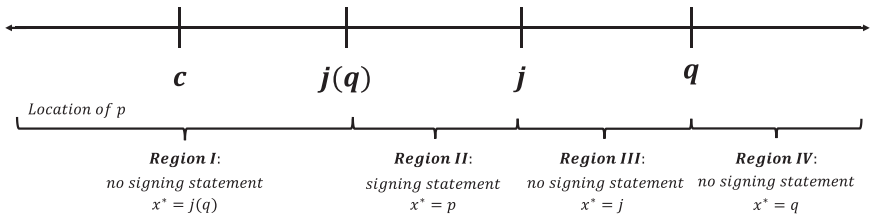

Figure 2. Equilibrium outcomes when varying location of the president.

The president decides whether or not to issue a signing statement s based on the location of his ideal point p, the bill b, and the status quo q, relative to the Court's ideal point j. If the president is able to move policy with s, in such a way that it is closer to his own ideal point p and that of the Court's j than b and q, then the president always issues a signing statement. Otherwise he either signs the bill or vetoes it, based on whether b or q is closer to p.

Finally, Congress decides whether and where to propose a bill b based on how the Court will decide, where the president could move policy with a statement, 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, considering the actions of the president and the Court, it proposes b such that it maximizes its own utility. If this is not possible, Congress allows the status quo q to remain the policy. Appendix A (online) provides a summary of the decision rules for each player.

2.5. Equilibrium outcomes

Based on these strategies, equilibrium outcomes can be found by backwards induction. Outcomes are also based on the configuration of the ideal points of Congress, the president, and the Court (c, p, j respectively), relative to the status quo q. Figure 2 demonstrates the occurrence of signing statements and policy outcomes in equilibrium based on one such configuration, when Congress is located to the left of the Court and the status quo is on the opposite side ($c < j < q$). Here, I illustrate the occurrence of signing statements and policy outcomes in equilibrium based on changes in the location of the president (p) relative to c, j, and q. Recall that $j(q)$ represents the point at which the Court is indifferent to q. Bills and signing statements must lie within $A_j(q) = [q, j(q)] \cup [j(q), q]$ for the Court to prefer them to the status quo and thus avoid being overturned.

When the president is relatively distant from the Court ($p \notin A_j(q)$), he never issues a signing statement. In these cases, the equilibrium outcome is either $x^* \in \{q, j(q)\}$ based on which side of q the president lies. If the president is in Region I ($p < j(q)$) in Figure 2, then Congress proposes a bill at $b = j(q)$ because this is the closest policy it can obtain to c within $A_j(q)$. If Congress proposes a bill that is any closer to c, then the Court overturns it, given $b \notin A_j(q)$, and q is restored. Since it prefers $j(q)$ to q, Congress proposes $b = j(q)$. For similar reasons, the president cannot move policy any closer to p than at $j(q)$. Thus, he signs the bill

without a signing statement and the final outcome is $x^* = b = j(q)$. If the president is located in Region IV ($p>q$), then Congress cannot move policy closer to c with a bill from q. If Congress proposes anything closer to c, then the president will veto it given that he prefers q to such a bill (i.e. $b \notin A_p(q)$). The president cannot move policy closer to p from q with a signing statement because the Court would overturn such a statement that makes it worse off relative to q. Instead, his best option is to veto. Anticipating this veto, Congress does not propose b and the final outcome is $x^* = q$.

When the president is located relatively close to the Court ($p \in A_j(q)$), these are the conditions under which he issues a signing statement. In this interval, the president is more likely to issue s when his ideal position p is also proximate to Congress's ideal position c. Specifically, when p is located in Region II ($p \in [j(q),j]$), Congress chooses to propose a bill at $b = j(q)$ for the same reasons as outlined above. Yet in this case, the president can use a signing statement to move policy closer to p than $b = j(q)$ and q. Since $p \in A_j(q)$, the president can issue a statement at $s = p$ and the Court prefers it to both $b = j(q)$ and q. Thus, the final outcome is $x^* = s = p$.

On the other hand, the president does not issue a signing statement when he is located further away from Congress. In particular, when p is located in Region III ($p \in [j, q]$), Congress proposes a bill at $b = j$. If Congress proposes a bill any closer to c, the president could issue a signing statement s to move policy closer to both p and j– thus ensuring the Court upholds s over b and q. Consequently, Congress proposes $b = j$ to prevent the president from moving policy away from Congress toward p. If he does, the Court will overturn s and upholds b, since it prefers $b = j$ over any signing statement the president would prefer. In these scenarios, the final policy outcome is $x^* = b = j$.

In summary, this example demonstrates that presidents only issue signing statements when their preferences are proximate to those of the Court ($p \in A_j(q)$). In these situations, presidents can move policies with signing statements toward their own preferences in such a way that the Court prefers them to the status quo. Presidents must not only align with the Court to issue a signing statement, however, but also with Congress. Otherwise, Congress would have the opportunity to propose bills the Court would prefer more than a signing statement or could forgo legislation altogether. The logic from this figure applies more generically at various locations of the status quo.

Formally, the equilibrium outcome x^* is given by the following proposition:

Proposition 1

(a) When the president's ideal policy is in between that of Congress and the Court ($c<p<j$), the president issues a signing statement only if he is close to both Congress ($p \in A_c(q)$) and the Court$\left(p \in A_j(q)\right)$. In these situations, $s = p = x^*$. If $p \notin A_j(q)$ and $p \in A_c(q)$, then $x^* \in \{q,j(q)\}$ based on which policy maximizes Congress's utility. If $p \notin A_c(q)$, then $x^* = q$.

(b) When Congress's ideal point is in between that of the Court and the president ($j<c<p$), the president never issues a signing statement. If $c \in A_j(q)$ and $c \in A_p(q)$, then $x^* = j$. If $c \in A_j(q)$ and $c \notin [p(q), q]]$, then $x^* = p(q)$.

Otherwise, $x^* \in \{q, j(q)\}$ *based on which policy maximizes Congress's utility.*

(c) *When the Court's ideal policy is in between that of Congress and the president*($c < j < p$)*, the president never issues a signing statement. If* $j \in A_c(q)$ *and* $j \in A_p(q)$*, then* $x^* = j$*. Otherwise,* $x^* \in \{q, p(q)\}$ *based on which policy maximizes Congress's utility.*

The proof of Proposition 1 is provided in the online appendix.

2.6. Predictions

Predictions about the occurrence of signing statements can be derived from these equilibrium outcomes. As demonstrated by Figure 2, the only configuration in which the president issues a signing statement is when his ideal point is in between that of Congress and the Court. Specifically, signing statements only occur when the president's ideal point is within the preferred set of both of these other branches of government. In other words, Congress and the Court must prefer the president's preferred policy location to the status quo. As the distance between the president and the Court decreases, the probability that the president lies within the Court's preferred set increases; therefore he is more likely to issue a signing statement. The same is true for president–Congress distance. Thus, the president must be ideologically proximate to both Congress and the Court, relative to the status quo, in order to issue a signing statement.

Because the president is able to anticipate how the Court will rule if legislation is challenged, he will not issue a statement that the Court is likely to overturn given the associated costs related to his reputation and public standing. Since the Court is more likely to side with the president's position when they are ideologically aligned, the president is also more likely to issue signing statements during these times. Likewise, when Congress is located further away from the president, it may be better off by not proposing a bill in the first place, precluding opportunities for signing statements. Taken together, the first prediction states:

> ***The Alignment Prediction***: The president is more likely to issue a signing statement when he is ideologically aligned with both the Court and Congress.

Based on the logic above, the president only issues constitutional signing statements when faced with an ideologically friendly Court which he anticipates will favor these statements. Consequently, when legislation is challenged, we should expect the Court to side with the position articulated in the signing statement, if issued. This logic leads to the second prediction from the model:

> ***The Court Agrees Prediction***: When legislation with a signing statement is challenged, the Court will likely agree with the president's position.

3. Empirical implications of the model

The predictions yielded from this theoretical model can be empirically tested in a number of intuitive ways. To test the *Court Agrees Prediction*, researchers could examine all legislation challenged in the Supreme Court to determine the influence of presidential signing statements. One might estimate whether the presence of a signing statement issued on a law being reviewed in court increases the probability that said law is overturned, particularly on the basis of the same constitutional objections raised by the president. Furthermore, this design could determine whether the Court's interpretation of the law in such cases aligns with the president's articulated position in the signing statement. In this way, scholars can also uncover the effects of signing statements on court rulings, even if they are not explicitly mentioned in the opinion. Alternatively, one might instead track all legislation passed to determine whether a signing statement increases the probability that a particular law is both reviewed and overturned by the courts. Such an approach would bypass issues of selection bias inherent to the previous design (Harvey and Friedman, 2009).

For the *Alignment Prediction*, researchers should consider various ways to measure preference configurations from the model. One could use partisanship as a proxy for when the president lies within the preferred sets of Congress and the Court, expecting signing statements to occur more often under partisan alignments. Alternatively, researchers could more directly measure policy preferences using ideal point estimates (e.g. Bailey, 2007). Additionally, scholars should consider ways to measure the occurrence of signing statements. First, one could simply count the number of constitutional signing statements issued each year to examine how it is driven by yearly changes in inter-branch ideological conflict. Second, one could estimate the probability of a signing statement using the law as the unit of analysis. This strategy might best approximate predictions from the model based on likelihoods rather than counts. Relatedly, the bill could be used as the unit of analysis to examine the range of presidential decisions depicted in Figure 1 (i.e. veto, sign, signing statement). In either empirical design, researchers should isolate the most significant laws or bills given they are most likely to garner the attention of presidents and the courts, as conceptualized in the theoretical model.

4. Possible extensions of the model

Though the baseline model presented here is valuable in establishing the intuition for the use of signing statements with respect to ideological preferences, there might be a variety of extensions future scholars could employ to capture other nuances of our political system. I consider a couple of extensions and their empirical implications in the remainder of this section.

4.1. Position-taking

One possible extension to the model is to allow Congress to gain additional utility from the location of its bill proposal. As a body consisting of members primarily motivated by reelection (Mayhew, 1974), the value that Congress places on its proposal could reflect the benefits it gains from engaging in public position-taking. If we conceptualize Congress's ideal point as not only reflecting its own policy preferences but also the preferences of its constituents,[12] then proposing a bill at its ideal point could demonstrate to its constituents that it is actively advocating for their interests – which can be helpful in persuading voters to reelect members. Representatives can easily be held accountable due to the high visibility of their actions in Congress.[13] Thus, Congress may sometimes prefer to propose a bill at its ideal point if it places a high value on position-taking, which can vary depending on the salience of the issue to the voters and the intensity of their preferences (Arnold, 1990).

Such position-taking may be important in considering why – despite its awareness of the other actors' likely actions – Congress sometimes chooses to propose bills at its ideal point, even if it leads to a less preferred final outcome. Situations in which congressional decisions are motivated by high proposal values may create opportunities for presidential signing statements, given Congress is not prioritizing final policies. Increased congressional incentives for position-taking may occur when legislators' constituents are paying close attention to issues they care about, which could be measured by issue salience, public opinion, or election years. With respect to the latter, moreover, Congress may have incentives to induce signing statements in order for the president to appear extreme in the minds of the voters – similar to the blame game dynamics of veto politics (Groseclose and McCarty, 2001).

Costs. Another extension to the model could require presidents to incur a cost when issuing a signing statement (Moraguez, n.d.), which can take two forms. Administratively, crafting a signing statement requires the time, resources, and expertise of the executive branch – particularly the Office of the Counsel within the Department of Justice. Such administrative costs could be particularly relevant for statements seeking to drastically change policy through numerous constitutional objections. On the political side, signing statements can be costly to presidents given the potential backlash they often receive from the media, affected interest groups, and the public at large. These political costs have become particularly relevant following the increase in negative attention surrounding this previously unknown power during the Bush administration. Such costs could help explain why presidents, particularly recent ones, may forgo issuing signing statements – even when opportunities are present.

Consistently, Sievert and Ostrander (2017) argue that increases in political costs are responsible for decline rates of signing statement use over time (also see Table 1). Future research could track the media's coverage and tone toward these statements as one way to more directly measure this rise in political costs. Even within administration, political costs could vary based on the salience of the issue and which

opposing interest groups are mobilized. Administrative costs could also vary because some statements are more difficult to write than others, due to the complexity of the issue or cross-cutting agency jurisdictions.

5. Discussion and conclusion

This paper examines how the president considers the courts when using policy actions, demonstrating the constraints he faces in exercising his power. To explore this question, the paper builds a theory of the president's decision to issue a signing statement conditional on his relationship to the Supreme Court and Congress. While earlier work largely explores the impact of Congress on presidential actions, the potential impact of the courts has largely been ignored. The theory accordingly produces novel predictions, all of which can be tested empirically – as considered in this study as well.

First, the model predicts that the president is more likely to issue a signing statement when he is ideologically aligned with the Court. These are the instances in which the president anticipates judicial support for his signing statements. As a result of this anticipation, when the Court reviews legislation with a signing statement, the model predicts that we are more likely to observe the Court ruling in favor of the president's position.

Additionally, in a challenge to the conventional wisdom, I find that the president is more likely to issue a signing statement when he is also ideologically close to Congress – contrary to previous research. Presidents do not issue signing statements exclusively as a tool to bypass a hostile Congress. Instead, Congress acts as a constraint to the president's ability to move policy. However, as this study demonstrates, the impact of president–Congress alignment on the use of this policy tool is conditional on the president's relationship to the Court. Consequently, the effects of ideological conflict with Congress on the exercise of presidential power, a relationship widely explored in the literature, may be conditioned on other political factors (e.g. see Kennedy, 2014).

This study also discusses a number of extensions to the model based on other features of separation of powers politics, including proposal utility for Congress as well as administrative and political costs incurred by the president when issuing signing statements. Future extensions of the model could also consider other interesting dynamics such as agency implementation, veto overrides, the probability of judicial review, and signaling within the judiciary hierarchy. Additionally, researchers could model the use of signing statements in a multi-dimensional policy space (McCubbins et al., 1989), by perhaps including discretionary windows or electoral incentives as additional dimensions beyond ideology.

Future studies could further explore the relationship between presidential vetoes and signing statements as a joint strategy in policymaking. One possible avenue to explore this relationship is through the introduction of incomplete information into the formal model. Previous models of bargaining where Congress is uncertain of the president's preferred policy position show that the president is more likely to effectively use both vetoes and veto threats (Cameron, 2000). Further, there is some

evidence suggesting the president uses both signing statements and veto threats to advance his agenda (Kelley and Marshall, 2009; Rice, 2010). The model offered in this paper is an important first step in understanding these various policy tools that can serve as the basis for future theoretical and empirical research in this area.

These results are also consistent with recent findings showing that signing statements often lead to congressional response via oversight (Ainsworth et al., 2012). Since oversight is more likely to occur when the president is ideologically opposed to Congress, he may wish to avoid such oversight by decreasing controversial signing statements during divided government. These findings also align with prominent scholarship that demonstrates the president's decreased reliance on unilateral actions under divided government due to the possibility of congressional retaliation (Howell, 2003). Thus, while my findings are contrary to much of the signing statement research, it is consistent with other important work on presidential unilateralism.

Further, these results demonstrate the importance of signing statements as a policy instrument for the president. Though there has been some evidence, albeit inconclusive, that signing statements can influence policy implementation by agencies (Kepplinger, 2007; May, 1998), the results in this paper demonstrate that signing statements are also important for the interpretation of the law by the judicial branch – who are often the final say in setting policy. They can serve as a signal to the Court as to where the president wishes to set policy through his interpretation of the law. While many have debated the actual implications of this tool, this study shows at least one important influence of signing statements on policy.

Overall, the analysis demonstrates that the Court is an important influence in the president's decision to issue a signing statement. Further, this study raises the question of how else the courts influence presidential decision-making. Signing statements are just one of the many ways in which the president can influence policymaking. While scholars recognize the many constitutional and legal concerns surrounding the president's use of many extra-legislative policy tools, the literature still tends to largely focus on presidential–congressional interactions. In addition to signing statements, the president may consider the actions of the courts when deciding how to exercise other means of power including various unilateral directives and administrative actions. This possibility calls for the reexamination of previous theories of presidential decision-making.

This paper has implications for our understanding of separation of powers and policymaking. It suggests that the president is actually constrained by Congress and the courts – contrary to media portrayal and public perceptions. Many view the courts as ineffective at constraining presidential power due to its dependence on the president for enforcement. Yet this study shows that presidents faced with opposition courts do restrain their use of at least one facet of power, suggesting that courts may not be as ineffective in constraining presidential power as once thought. Perhaps even more pervasive in the common portrayal of presidential power is the perception that presidents use and often abuse their policy tools to bypass hostile congresses. Yet, this study shows that the president is more constrained in the exercise of his power than conventional wisdom proposes. Overall,

this paper reveals that the president is not as imperial as he may appear, but he is constrained in his actions by both Congress and the Supreme Court. Instead, the president anticipates the actions of these branches and tailors his behavior accordingly, knowing the true limits of his power. This also has implications for role of Congress and courts vis-à-vis the president. Contrary to popular perception, the balance of power is not as skewed toward the president as the media, the public, and many scholars believe. Understanding inter-branch constraints on presidential power furthers our understanding of rational expectations and policymaking in our separation of powers system.

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ORCID iD

Sharece Thrower https://orcid.org/0000-0002-6136-2369

Supplemental material

Supplemental material for this article is available online.

Notes

1. Though see Thrower (2017) for an exception.
2. Table 1 begins in 1929 due to limited data availability of signing statements prior to that year.
3. See Barack Obama, March 9, 2009. Memorandum on Presidential Signing Statements.
4. He often claims that the statute violates the Take Care Clause (Article II, Sec. 3), the Presentment Clause (Article I, Sec. 7), or his role as commander in chief (Article II, Sec. 2).
5. For example, in the case of the Balanced Budget and Emergency Deficit Control Act of 1985 – a law that Ronald Reagan objected to in a signing statement – the president eventually received policy gains through both judicial (*Bowsher v. Synar* 1986) and legislative means (the Budget and Emergency Deficit Control Reaffirmation Act of 1987). See Cooper (2002: 216–217).
6. See the Presidential Signing Statement Act of 2006 (S. 3731, 109th Congress), the Presidential Signing Statement Act of 2007 (S.1747, 110th Congress), and the Congressional Lawmaking Authority Protection Act of 2007 (H.R. 264, 110th Congress).
7. Additionally, congressional committees increase executive branch oversight in response to signing statements (Ainsworth et al., 2012), providing further evidence that Congress views this tool as a viable means of policy influence through agency implementation.

Similarly, Moraguez (n.d.) shows that the prospect of a signing statement shapes congressional negotiations over legislation.

8. I assume that Congress is a unitary actor, consistent with previous models (e.g. Canes-Wrone, 2006; Huber and Shipan, 2002; McCubbins et al., 1989). Given the fact that signing statements respond to final legislative actions after intra-congressional bargaining has already occurred, I argue that it is reasonable to represent the legislative branch as one actor in this model.
9. The implementing agency could serve as another player given that presidents give instructions to agencies on how to implement or interpret the law with signing statements. Following previous literature (e.g. Epstein and O'Halloran, 1999), this model implicitly assumes that agencies follow the policy preferences of the president given the various mechanisms he uses to control agencies such as appointments, removals, budgets, centralized review, and reorganization (e.g. Lewis, 2008; Moe, 1985). However, future research could more thoroughly examine the role of agencies in presidential uses of signing statements.
10. Following previous models of judicial review (Ferejohn and Shipan, 1990; Howell, 2003), I assume that the Court reviews every law passed. This assumption is made in this model for the sake of simplicity, to establish the intuition behind presidents issuing signing statements when anticipating judicial preferences. Not every law is reviewed in court, however. Not only must the law be challenged in the first place, but also the Supreme Court can select which cases involving legislation it hears. Therefore, the theoretical model does not account for how the president calculates the likelihood a statute is scrutinized in court when issuing a signing statement. Yet, scholars find that judicial review occurs more frequently on the most significant laws that raise many legal or constitutional issues (Black and Owens, 2009, 2011). These same laws are also more likely to attract the attention of presidential signing statements (Berry, 2009; Kelley and Marshall, 2008, 2009, 2010; Ostrander and Sievert, 2012). Furthermore, given that signing statements can flag constitutional issues, they can raise the likelihood of judicial review. As such, the model focuses on constitutional signing statements in an effort to best apply to those scenarios where judicial review is the most likely for highly salient and often constitutionally problematic legislation. Future theoretical and empirical studies, however, could more explicitly consider the probability of review in the use of signing statements, by incorporating features such as incomplete information, salience, costs, and the judicial hierarchy (e.g. Beim, 2017; Beim et al., 2014).
11. Following previous separation of powers models that include judicial decision-making (Ferejohn and Shipan, 1990; Howell, 2003; Spiller and Tiller, 1996), I assume that the Court selects from a finite set of policies when reviewing law. In reality, it could move policy along a continuum. Such a dynamic can be explored in future models. However, for the purposes of simplicity, I present this basic model instead to establish intuition.
12. Arnold (1990) provides support for this conceptualization, arguing that members account for the preferences of their constituents when proposing policy.
13. For example, Mayhew (1974) argues that the way members of Congress vote on roll calls can be an important form of position taking.

References

Ainsworth S, Harward BM and Moffett KW (2012) Congressional response to presidential signing statements. *American Politics Research* 40(6): 1067–1091.

Alito SA Jr (1986) Using presidential signing statements to make fuller use of the president's constitutionally assigned role in the process of enacting law. *Memo*. February 5. Office of Legal Counsel, US Department of Justice.
American Bar Association (2006) American Bar Association policy regarding presidential signing statements, August 7–8.
Arnold D (1990) *The Logic of Congresional Action*. New Haven: Yale University Press.
Bailey J and Rottinghaus B (2014) Reexamining the use of unilateral orders: Source of authority and the power to act alone. *American Politics Research* 20(10): 1–31.
Bailey M (2007) Comparable preference estimates across time and institutions for the Court, Congress, and Presidency. *AJPS* 51(3): 433–448.
Beim D (2017) Learning in the judicial hierarchy. *The Journal of Politics* 79(2): 591–604.
Beim D, Hirsh AV and Katstellec JP (2014) Whistleblowing and compliance in the judicial hierarchy. *American Journal of Political Science* 58(4): 904–918.
Belco M and Rottinghaus B (2017) *The Dual Executive*. Palo Alto: Stanford University Press.
Berry M (2009) Controversally executing the law. *Congress & the Presidency* 36(3): 244–271.
Black RC and Owens RJ (2009) Agenda setting in the Supreme Court: The collision of policy and jurisprudence. *The Journal of Politics* 71(3): 1062–1075.
Black RC and Owens RJ (2011) Solicitor General influence and agenda setting on the U.S. Supreme Court. *Political Research Quarterly* 64(4): 765–778.
Black RC and Owens RJ (2012) *Solicitor General and the United States Supreme Court Executive Influence and Judicial Decisions*. Cambridge: Cambridge University Press.
Bolton A and Thrower S (2016) Legislative capacity and executive unilateralism. *The American Journal of Political Science* 60(3): 649–663.
Broomfield E (2006) A failed attempt to circumvent the international law on torture. *The George Washington Law Review* 75: 105
Brownell RE II (1998) The unnecessary demise of the Line Item Veto Act: The Clinton administration's costly failure to seek acknowledgment of 'national security rescission'. *The American University Law Review* 47: 1273–1351.
Buthman G (2007) Signing statements and the president's non-enforcement power. *Oklahoma City University Law Review* 32: 103.
Cameron C (2000) *Veto Bargaining*. Cambridge: Cambridge University Press.
Canes-Wrone B (2003) Bureaucratic decisions and the composition of the lower courts. *American Journal of Political Science* 47(2): 205–214.
Canes-Wrone B (2006) *Who Leads Whom?* Chicago: Chicago University Press.
Carroll K (1997) Whose statute is it anyway? *The Catholic University Law Review* 46(2): 475–521.
Carruba CJ and Zorn C (2010) Executive discretion, judicial decision making, and separation of powers in the United States. *The Journal of Politics* 72(3): 812–824.
Caruson K and Bitzer JM (2004) At the crossroads of policymaking: Executive politics, administrative action, and judicial deference by the DC Circuit Court of Appeals (1985–1996). *Law & Policy* 26(3–4): 347–369.
Cass R and Strauss P (2007) The constitutional implications of presidential signing statements. *William & Mary Bill of Rights Journal*, 16(1): 11–26.
Chiou F-Y and Rothenberg L (2014) The elusive search for presidential power. *American Journal of Political Science* 58(3): 653–668.
Chiou F-Y and Rothenberg L (2017) *The Enigma of Presidential Power*. Cambridge: Cambridge University Press.

Cohen L and Spitzer M (1996) Judicial deference to agency action: A rational choice theory and an empirical test. *Southern California Law Review* 68: 431–476.
Cooper P (2002) *By Order of the President*. Lawrence: University Press of Kansas.
Cooper P (2005) George W. Bush, Edgar Allan Poe, and the use and abuse of presidential signing statements. *Presidential Studies Quarterly* 35(3): 515–532.
Cooper P (2007) The last word? The constitutional implications of presidential signing statements as declaratory judgments: The president as judge. *William & Mary Bill of Rights Journal* 16: 253–282.
Crabb M (2008) The Executive Branch Shall Construe *Kansas Law Review* 56: 711–743.
Crombez C, Groseclose T and Krehbiel K (2006) Gatekeeping. *The Journal of Politics* 68(2): 322–334.
Cross FB (1988) the constitutional legitimacy and significance of presidential 'signing statements.' *Administrative Law Review* 40(2): 209–238.
Crowley DW (1987) Judicial review of administrative agencies: Does the type of agency matter? *The Western Political Quarterly* 40(2): 265–283.
Cutrone M (2008) *Essays on presidential signing statements*. Unpublished dissertation, Princeton University.
Deering CJ and Maltzman F (1999) The politics of executive orders: Legislative constraints on presidential power. *Political Research Quarterly* 53(4): 767–783.
Dellinger W (1993) The *Legal Significance of Presidential Signing Statements*. Washington DC: Office of Legal Counsel, Department of Justice.
Devins N (2007) Signing statements and divided government. *Wm. & Mary Bill Rts. J.* 16: 63–79.
Ducat C and Dudley R (1989) Federal district judges and presidential power during the postwar era. *The Journal of Politics* 51(1): 98–118.
Epstein D and O'Halloran S (1999) *Delegating Powers*. Cambridge: Cambridge University Press.
Evans K (2011) Challenging law: Presidential signing statements and the maintenance of executive power. *Congress & the Presidency* 38: 217–234.
Ferejohn J and Shipan C (1990) Congressional influence on bureaucracy. *Journal of Law, Economics, & Organization* 6: 1–20.
Fine J and Warber A (2012) Circumventing adversity: Executive orders and divided government. *Presidential Studies Quarterly* 42(2): 256–274.
Garber M and Wimmer K (1987) Presidential signing statements as interpretations of legislative intent. *Harvard Journal of Legislation* 24: 363.
Genovese M (1980) *The Supreme Court, The Constitution, and Presidential Power*. Washington DC: University Press of America, Inc.
George T and Epstein L (1992) On the nature of Supreme Court decision making. *The American Political Science Review* 86(2): 323–337.
Groseclose T and McCarty N (2001) The politics of blame: Bargaining before an audience. *American Journal of Political Science* 45(1): 100–119.
Harvey A and Friedman B (2009) Ducking trouble: Congressionally induced selection bias in the Supreme Court's agenda. *The Journal of Politics* 71(1): 574–592.
Howard RH and Nixon DC (2002) Regional Court influence over bureaucratic policymaking: Courts, ideological preferences, and the internal revenue service. *Political Research Quarterly* 55(4): 907–922.
Howell W (2003) *Power Without Persuasion*. Princeton: Princeton University Press.
Huber JD and Shipan CR (2002) *Deliberate Discretion?* Cambridge: Cambridge University Press.

Humphries MA and Songer DR (1999) Law and politics in judicial oversight of federal administrative agencies. *Journal of Politics* 61(1): 207–220.
Johnson G (2014) Judicial deference and executive control over administrative agencies. *State Politics and Policy Quarterly* 14(2): 142–164.
Johnson G (2015) Executive power and judicial deference: Judicial decision-making on executive power challenges in the American States. *Political Research Quarterly* 68(1): 128–141.
Kelley C (2006) *Executing the Constitution*. Albany: State University of New York.
Kelley C and Marshall B (2008) The last word: Presidential power and the role of signing statements. *Presidential Studies Quarterly* 38(2): 248–267.
Kelley C and Marshall B (2009) Assessing presidential power: Signing statements and veto threats as coordinated strategies. *American Politics Research* 37(3): 508–533.
Kelley C and Marshall B (2010) Going it alone: The politics of signing statements from Reagan to Bush II. *Social Science Quarterly* 91(1): 168–187.
Kelley C, Marshall B and Watts D (2013) Assessing the rhetorical side of presidential signing statements. *Presidential Studies Quarterly* 43(2): 274–298.
Kennedy JB (2014) Signing statements, gridlock, and presidential strategy. *Presidential Studies Quarterly* 44(4): 602–622.
Kepplinger G (2007) *Presidential Signing Statements Accompanying the Fiscal Year 2006 Appropriations Acts*. Washington DC: US Government Accountability Office.
Korzi MJ (2011) 'A legitimate function': Reconsidering presidential signing statements. *Congress & The Presidency* 38: 195–216.
Krause G and Cohen D (1997) Presidential use of executive orders, 1953–1994. *American Politics Research* 25(4): 458–481.
Krehbiel K (1998) *Pivotal Politics*. Chicago: University of Chicago Press.
Lewis D (2008) *The Politics of Presidential Appointments*. Princeton: Princeton University Press.
Lowande KS (2014) After the orders: Presidential memoranda and unilateral action. *Presidential Studies Quarterly* 44(4): 724–741.
Matthews S (1989) Veto threats: Rhetoric in a bargaining game. *Quarterly Journal of Economics* 104: 347–369.
May C (1998) *Presidential Defiance of Unconstitutional Laws*. Westport: Greenwood.
Mayer K (2001) *With the Stoke of a Pen*. Princeton: Princeton University Press.
Mayhew D (1974) *Congress: The Electoral Connection*. New Haven: Yale University Press.
McCubbins MD, Noll RG and Weingast BR (1989) Structure and process, politics and policy: Administrative arrangements and the political control of agencies. *Virginia Law Review* 75(2): 431–482.
Moe T (1985) The politicized presidency. In Chubb JE and PE Peterson (eds) *Can the Government Govern?* Washington DC: Brookings Institution Press.
Moe T and Howell W (1999) The presidential power of unilateral action. *Journal of Law and Economics* 15(1): 132–179.
Moraguez A (n.d.) *Policy making in the shadow of executive action*. Unpublished manuscript.
Ostrander I and Sievert J (2012) The logic of presidential signing statements. *Political Research Quarterly* 20(10): 1–13.
Ostrander I and Sievert J (2013) What's so sinister about presidential signing statements? *Presidential Studies Quarterly* 43(1): 58–80.
Pfiffner J (2008) *Power Play: The Bush Presidency and the Constitution*. Washington DC: Brookings Institution Press.

Rappaport M (2007) The constitutional implications of presidential signing statements. *William & Mary Bill of Rights Journal* 16: 113.

Rice LL (2010) Statements of power: Presidential use of statements of administrative policy and signing statements in the legislative process. *Presidential Studies Quarterly* 40(4): 686–707.

Rodriguez DB, Stiglitz E and Weignast BR (n.d.) *Executive discretion and the rule of law: A positive analysis of presidential signing statements*. Unpublished manuscript.

Romer T and Rosenthal H (1978) Political Resource Allocation, Controlled Agendas, and the Status Quo. *Public Choice* 33(4): 27–43.

Savage C (2006) Bush challenges hundreds of laws. *The Boston Globe*, April 30.

Segal J and Spaeth H (2002) *The Supreme Court and the Attitudinal Model Revisited*. Cambridge: Cambridge University Press.

Sheehan R (1990) Administrative agencies and the court: A reexamination of the impact of agency type on decisional outcomes. *The Western Political Quarterly* 43(4): 875–885.

Sheehan R (1992) Federal agencies and the Supreme Court: An analysis of litigation outcomes, 1953–1988. *American Politics Research* 20: 478–500.

Sievert J and Ostrander I (2017) Constraining presidential ambition: Controversy and the decline of signing statements. *Presidential Studies Quarterly* 47(4): 752–776.

Smith J (2007) Presidents, justices, and deference to administrative action, *The Journal of Law, Economics, & Organization* 23(2): 346–364.

Spiller PT and Tiller E (1996) Invitations to override: Congressional reversals of Supreme Court decisions. *International Review of Law and Economics* 16(4): 503–521.

Thrower S (2017) The president, the court, and policy implementation. *Presidential Studies Quarterly* 41(1): 122–145.

Waltes B (1987) Let me tell you what you mean: An analysis of presidential signing statements. *Ga. L. Rev*. 21: 755.

Willison DH (1986) Judicial review of administrative decisions: Agency cases before the Court of Appeals for the District of Columbia, 1981–1984. *American Politics Quarterly* 14(4): 317–327.

Wood BD and Waterman RW (1993) the dynamics of political-bureaucratic adaption. *American Journal of Political Science* 37(2): 497–528.

Wright JR (2010) Ambiguous statutes and judicial deference to federal agencies. *Journal of Theoretical Politics* 22(2): 217–245.

Yates J (1999) Presidential bureaucratic power and Supreme Court justice voting. *Political Behavior* 21(4): 349–366.

Yates J and Whitford A (1998) Presidential Power and the United States Supreme Court. *Political Research Quarterly* 51(2): 539–550.

Yates J 2002. Popular Justice: *Presidential Prestige and Executive Success in the Supreme Court*. Albany: State University of New York Press.