

Legislative Institutions, Ideological Polarization, and the Exercise of Executive Power*

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Abstract

We develop a theory of executive policymaking accounting for both inter- and intra-branch ideological conflict in conditioning executive unilateralism. Ideological disagreement between the executive and the legislature can constrain executive unilateral power; however, this is only the case when legislative ideological polarization is low and varies with the ability of parties to overcome supermajority barriers. When polarization is high and majorities are marginal, executives have a freer hand to act unilaterally. Thus, inter-branch constraint is conditional on intra-branch fragmentation and its interaction with institutional rules. To empirically evaluate this theory, we use a new dataset of 24,232 executive orders at the U.S. state level between 1993-2013 and find strong support for our predictions. Executives are constrained by opposition legislatures, but only if polarization is low and large majorities exist. These results provide insights into how legislative fragmentation and associated dysfunction can subvert the functioning of separation of powers systems.

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For centuries, institutional designers have debated the merits of distributing power between an executive and a legislative arm of government (Montesquieu 1949; Hamilton, Madison and Jay 2009; Tsebelis 1995; Lijphart 2012). A primary defense of such an arrangement lies in the ability of each governmental branch “to be the means of keeping each other in their proper places” (Hamilton, Madison and Jay 2009, p. 263). Notably, the degree to which executives are constrained by legislatures has remained a question of paramount importance in separation of powers systems. In particular, the ability of executive branch actors to circumvent legislative preferences unchecked has the potential to subvert the functioning of these designs, which are predicated upon institutions limiting the actions of one another. In few other realms is this concern so central as in the exercise of unilateral power, where executives have the seemingly unfettered ability to circumvent the legislative process in pursuit of their own preferred policies. But, the degree and circumstances under which executives are actually constrained are variable and relevant in a diversity of contexts, from the utilization of decree powers by Latin American presidents (e.g. Shair-Rosenfield and Stoyan 2016) to the issuance of presidential and gubernatorial executive orders in the United States (e.g. Howell 2003; Sellers 2016).

There are frequently conflicting views on this issue. Public perception and media commentary in the US, for instance, often suggest that executives are able to freely use unilateral actions as a way to bypass an ideologically hostile legislature.¹ Yet studies of unilateral policymaking often find evidence to the contrary: fewer executive orders are issued under divided government (Bailey and Rottinghaus 2013*b*; Fine and Warber 2012; Howell 2003; 2005; Young 2013), suggesting executives face considerable constraints from legislatures when their preferences are the most divergent. Though ostensibly in conflict, we argue that these dueling perspectives on executive unilateralism can be reconciled by the fact that existing research largely overlooks the important ways in which political factors internal to legislatures (such as polarization and supermajoritarian requirements) moderate the effects of inter-branch conflict. While previous work examines these

¹For example, see “Assessing the Balance of Power in an Era of Widespread Mistrust”, *New York Times*: <https://goo.gl/kqjlvH> (Accessed October 24, 2016) and “The Gridlock Clause” *The National Review*: <https://goo.gl/tEvWR2> (Accessed October 26, 2016) as illustrative examples.

factors in isolation, this paper develops a new theory of executive unilateral power based on the conditional relationship that exists between them.

Similar to previous studies, we argue that executives issue fewer unilateral actions under divided government because of the threat of legislative retaliation. However, contrary to these studies, we posit that this relationship is contingent on the legislature's ability to actually retaliate against the executive based on its own ideological and institutional constraints. When legislatures are highly polarized or when majorities fail to reach the requisite majority size to override a veto, it is substantially more difficult for them to pass legislation that would successfully overturn executive action. Thus, executives are more able to act unilaterally to bypass an oppositional legislature, resulting in more unilateral action under divided government when these conditions are met. However, when polarization is low or the legislature has a veto-proof majority under divided government, we should observe less unilateralism because it can more easily respond to executive action. Finally, we do not expect to find any relationship between these legislative constraints and unilateral action during unified government, when there is less overall opposition to executive policy preferences. The identification of this conditional effect is a significant departure from previous work and a novel contribution to our understanding of inter-branch relations.

We test our theory by examining an original dataset of nearly 25,000 gubernatorial executive orders from all 50 states issued between 1993 and 2013. We choose to evaluate our hypotheses on executive orders in the US states for several reasons. First, executive orders are an important policy tool across the United States. In 2013 alone, governors issued 2,115 orders in a wide variety of substantive policy areas ranging from education to the environment to transportation policy. Second, a state-level approach moves the study of executive orders in the US beyond the single time series at the federal level. This allows for substantially more variation not only in the number of executive orders issued but also in the political conditions in which the legislature and executive operate. In recent years, divided government at the federal level has become increasingly common while polarization has steadily increased over time (McCarty, Poole and Rosenthal 2008). This leads to concerns about how time trends may conflate results from studies that rely on one particular

time series (albeit an important one). On the other hand, divided government and polarization vary much more frequently at the subnational level over time and across states in any given year. Unlike the federal government, for instance, states have experienced both increases and decreases in polarization over time (Shor and McCarty 2011). Similarly, there are few instances of veto-proof congressional majorities at the federal level, whereas they occur with greater frequency at the state level due to fluctuations in coalition sizes and supermajority requirements – allowing for more direct tests of the role of veto power in policymaking. Thus, empirical tests in the states offer substantially more variation for testing general theories of executive unilateral action. Finally, while executive action has been extensively explored at the federal level, there exist very few state-centered studies. Given the crucial role of states in policymaking and implementation in the American federal system, understanding gubernatorial policymaking is an important substantive advancement in its own right.

Overall, our paper offers three primary contributions to the study of executive politics. First, we advance a novel theory of executive policymaking that highlights the conditional relationships between inter-branch and intra-branch constraints. Previous studies of unilateral actions have only examined these factors in isolation and do not consider the ways in which they interact with one another. Second, our work contributes to a growing literature on the role of polarization and legislative dysfunction in the United States. Most studies of polarization and marginal majorities tend to focus on legislative outputs. We take a larger view and highlight the important effects that institutional impairment has on the performance of legislatures in the larger separation of powers system. In particular, our arguments and evidence suggest that the ills of polarization extend further than just statutory outputs, but it actually weakens the legislative branch by giving executives the incentives and means to bypass the preferences of enfeebled legislatures. Third, we offer the most extensive study of executive order use at the state level to date, demonstrating the utility and generalizability of our theory. Overall, this study advances our understanding of both how and when legislatures limit executive power, providing insights into the conditions under which the legislative branch serves as a constraint on the exercise of unilateral power and when it can exist

relatively unbridled.

The remainder of the paper proceeds as follows. First, we describe our theory of unilateral action based on the conditional relationship between intra-branch and inter-branch constraints. Second, we present background information on executive orders as well as the related literature. Next, we describe the state-level data and empirical model employed to test the theory's predictions. We then present our results, followed by a discussion of those results and concluding remarks.

1 The Politics of Executive Policymaking

There is a rich and longstanding literature devoted to examining the effects of executive-legislative conflict on policy change, most notably legislative production (e.g. Cameron et al. 2000; Mayhew 1991; Krehbiel 2010). With increasing polarization in the US (e.g. McCarty, Poole and Rosenthal 2008), research has also emerged on the influence of intra-legislative dynamics on legislative policymaking, including the cohesion within and between congressional parties and chambers as well as the supermajoritarian coalitions required to override vetoes and overcome filibuster threats (e.g. Binder 1999; Bowling and Ferguson 2001; Coleman 1999; Ferguson 2003; Jones 2001*a;b*; Kiewiet and McCubbins 1991; Klarner and Karch 2008; McGrath, Rogowski and Ryan 2016). Concurrently, there has been a steady growth in studies examining how executive-legislative conflicts influence unilateral policymaking (Bailey and Rottinghaus 2013*a*; Deering and Maltzman 1999; Fine and Warber 2012; Howell 2003; 2005; Young 2013). Though some of this work explores how legislative politics influences executive action (e.g. Bailey and Rottinghaus 2013*b*; Howell 2003; 2005; Young 2013), it tends to consider these factors separate from other conditions. As such, questions involving the relationship between executive-legislative conflicts and intra-legislative constraints remain when explaining executive policymaking, particularly in the study of unilateral action.

In this paper, we seek to synthesize these insights to better understand how inter-branch ideological conflict and internal legislative politics *interact* to shape the incentives for executives to

exercise unilateral power. In short, we argue that the constraining effects of ideological divergence between the legislature and the executive are conditioned by the degree of legislative polarization and whether parties can overcome supermajoritarian rules. In the remainder of this section, we first review our assumptions about the political environment in which executives operate and then develop several empirical implications that emerge from the theory.

To begin, we assume that executives have the ability to use unilateral actions as a meaningful tool to impact the final outcome of a policy (Cooper 2002; Howell 2003). In particular, they can be used to instruct agencies as to how the law should ultimately be implemented. In their implementation role, agencies have broad power to affect the outcomes that result from a particular piece of legislation, which determine the utility that eventually accrues to political actors. Thus, the power to affect the link between policies promulgated through legislation and real world outcomes is significant.

Affecting policy through unilateral actions is not costless, however. It takes significant time, effort, and coordination across the executive branch to develop a unilateral order. Legal advisors as well as individuals in affected agencies may be involved in consulting with executives on the shape of a final order. Evidence from the federal level suggests that these transaction costs are significant, with presidential orders sometimes taking years to develop (Rudalevige 2012). Furthermore, the issuance of unilateral actions can garner public scrutiny and political opposition that are costly to the president (Cooper 2002; Warber 2006). There is no reason to believe these same costs do not also exist for executives more generically.

Executives depend on discretion from a number of sources in order to issue orders. Most rely on constitutionally derived authority or particular statutes to justify their directives. This discretion can be thought of as the “leeway” that the executive has to alter the outcomes of policies promulgated by the legislature through statute. Acting outside of implicitly or explicitly granted discretion can result in rebukes from other political actors (Howell 2003; Thrower Forthcoming).

When legislatures do not agree with a unilateral action, they have the power to counter these orders through various legislative means. In particular, they can pass laws that could either directly

overturn a particular unilateral action or indirectly prohibit its implementation through funding restrictions. For example, several legislators have attempted to overturn Obama's executive order (EO 13672) prohibiting sexual and gender discrimination among federal contractors through amendments attached to the 2017 Fiscal Year National Defense Authorization Act.² Similar actions followed the issuance of President Obama's memoranda on immigration enforcement. Some states have even adopted procedural requirements to facilitate greater legislative monitoring. For example, Alaska and Missouri have formal procedures for the legislative review of executive orders, suggesting the potential for significant constraint of gubernatorial power by the legislature. Similarly, other states, such as Minnesota and Virginia, require executive orders to be subject to administrative procedures laws, generating observable information about executive action that gives legislatures and the public time to react (McCubbins, Noll and Weingast 1989).

Because executives face other political actors who have the power to invalidate, overturn, or amend their unilateral actions, they must take into account these likely interventions when deciding whether or not to issue them. In particular, they consider the potential policy benefits that result from moving a status quo policy to a new location as well as the costs to developing an order. If the executive believes that there is a substantial likelihood that it will be overturned or amended by the legislature and that this new legislation would shift policy away from her preferred position, then she may forgo the cost of issuing a unilateral action altogether (Deering and Maltzman 1999).

Accordingly, during periods of divided government, the legislature is much more likely to object to the content of a unilateral action reflecting the policy preferences of an ideologically opposed executive. As such, these are the times when executives issue fewer actions given the increased likelihood of legislative reversal. Conversely, more unilateral actions are issued during unified government when legislatures are more likely to agree with executive preferences expressed in these actions (Howell 2003).

While inter-branch politics play an important role in influencing expectations about the likely fate of a particular unilateral action, our theory extends beyond inter-branch relations to also con-

²See here for the full text of the most successful of these amendments: <http://bit.ly/2drF2pd> (Accessed 10 October 2016).

sider intra-branch concerns that may be equally influential. Particularly, we argue that legislative responses to a particular unilateral action will be dependent upon internal, ideological divisions within the legislature, as well as their partisan alignment with the executive. Even in periods of divided government when legislatures may want to retaliate against executive actions, supermajoritarian institutions may preclude this possibility. In particular, any legislative sanction is subject to a veto; and the federal and most state constitutions stipulate that a veto override requires supermajority support. In this way, the veto – or the threat of it (Cameron 2000) – offers the executive greater assurance that her unilateral actions will survive any legislative response. In other words, when there is not a large enough supermajority coalition to override a veto, executives are more likely to act unilaterally to bypass an ideologically unfriendly legislature.

However, if the legislature has a veto-proof majority and is ideologically opposed to the executive, then she must fear legislative retaliation. Such retaliation is more likely to occur when the legislature disagrees with the policy preferences of the executive, which happens more frequently during periods of divided government. In these cases, the legislature has the will and capacity to strike back against unilateral action and a veto threat carries little weight. Thus, we should observe less unilateralism in the case of veto-proof opposition in the legislature. Taken together, this discussion suggests that executives are more easily able to circumvent ideologically hostile legislatures with unilateral actions when legislative coalitions are small. Yet, when veto-proof majorities exist, executives are much more constrained by their legislative adversaries. We derive our first and second hypotheses from this line of reasoning:

Hypothesis 1 - Executive Empowerment Hypothesis: When the legislature does not have a veto-proof majority, more unilateral actions are issued under divided government than unified.

Hypothesis 2 - Legislative Constraint Hypothesis: When the legislature has a veto-proof majority, fewer unilateral actions are issued under divided government than unified.

In addition to periods where large, supermajority coalitions are lacking, legislatures may also

have difficulty responding to a unilateral action when there are high levels of ideological polarization within the legislature. More specifically, polarization in the legislature can lead to increased internal disagreement among legislative actors between parties and across chambers, generating greater obstacles to passing legislation (Barber and McCarty 2015; Binder 1999; Brady and Volden 2006; Krehbiel 2010). Consequently, legislative retaliation against a unilateral action by statute becomes more difficult. As a result, executives are better able to implement their preferred policies through unilateralism.

We argue that these intra-legislative, ideological dynamics are most relevant to executives during periods of divided government. Under unified government, legislative leaders are less likely to oppose or retaliate against a unilateral action, given their ideological alignment with the executive. Furthermore, in these relatively amicable periods, the majority party can largely govern without the input or assistance of the minority. Because of this, polarization between parties is less consequential during periods of unified government. However, during divided government, increased polarization heightens the likelihood of unilateralism given the necessity of bipartisan consent to pass legislation. As the two parties diverge, the likelihood of agreement between them decreases, and passing legislation becomes markedly more difficult. Consequently, the ability of the legislature to respond to an objectionable unilateral action is significantly diminished, giving executives the opportunity to unilaterally move policy for their ideological gain when disagreeing with legislative preferences. On the other hand, when polarization is low, internally cohesive legislatures are better positioned to act against a unilateral policy given the relative ease in passing legislation. This logic leads to our third hypothesis:

Hypothesis 3 - Conditional Polarization Hypothesis: Conditional on divided government, unilateral actions increase in periods of high polarization compared to periods of low polarization. During periods of unified government, polarization does not significantly impact unilateral action usage.

2 Background

In the sections to follow, we test the theory’s hypotheses at the US state level with gubernatorial executive orders in order to exploit the rich institutional and ideological variation this context provides. We specifically examine executive orders because they have the force of law on both the federal and state levels.³ But first, this section provides background on the use of executive orders in the United States and reviews the literature explaining their use.

An executive order is a written directive issued by a chief executive giving instructions to executive branch officials and agencies on how to implement or interpret the law. Although presidential executive orders are most well-known, such unilateral directives are issued by every state governor as well. Despite their commonality, important differences do exist between many states’ usage of executive orders that can make them distinct from each other and the federal government.⁴

On the federal level, the ability to issue executive orders is usually considered an inherent power of the president. That is, no statutory or constitutional provision explicitly grants the power to issue this policy tool to the president. Instead she derives this capability from vague sections of the Constitution, most notably the “Take Care” clause (Article II, Section 3, Clause 5).⁵ On the state level, however, there is wide variation in how governors derive the power to issue executive orders. Similar to the president, some governors use orders on the basis of inherent or implied power claimed from the Constitution, statutes, or by nature of the executive office. Unlike the federal government, specific language in statutes or their constitution often empowers governors to issue executive orders. Further, some states explicitly grant the ability to issue executive orders for specific purposes such as to reorganize the executive branch (see Alaska Constitution, Article III, Section 23) or to declare a disaster emergency (see Colorado Constitution, Article VIII, Section 3).⁶

³We suspect that this theory would also apply to other similar unilateral tools such as memoranda, which are mostly issued on the federal level.

⁴As we mention in later sections, we account for these differences by including state-level fixed effects in each of our models.

⁵Specifically, this clause states: “he shall take care that the laws be faithfully executed.”

⁶As we describe in greater detail in Section 4, because of this variation across states we include state-level fixed effects in all of the models we present below to account for time-invariant differences across the states in their use and

Even so, governors still typically use executive orders for a variety of other functions, much like presidents. Both state and federal orders are used to create or reorganize executive offices, commissions, councils, boards, task forces, etc. as well as to establish or guide programs operated by these agencies. Similarly, they can rescind, amend, or extend previous orders, often issued by preceding governors. Both the president and a state governor can respond to emergencies with executive orders, though the former can deal with international and economic crises while the latter mostly addresses natural disasters. In addition to these policy-related functions, executive orders can also be used for ceremonial purposes. Federal orders can create flags or seals, while state orders are often used to lower statewide flags to half-staff in response to a death or tragedy. Both levels of government also use these orders to declare holidays and days-off for their employees. While presidents use ceremonial orders somewhat infrequently relative to substantive ones, the rate at which individual states use ceremonial orders varies substantially. For instance, between 2003 and 2010, 59% of executive orders issued in Wisconsin under Jim Doyle were ceremonial, mostly related to lowering national and state flags to half-staff (198 out of 337). On the other hand, during the same time period, less than 0.01% of the executive orders issued by Florida governors Jeb Bush and Charlie Crist were for ceremonial purposes (2 out of 1768). Despite these differences, it is clear that both state and federal executive orders are used to substantively influence policy – though to varying degrees (Ferguson and Bowling 2008).⁷

Although presidents have used executive orders since the 1860s, there is much more variation and uncertainty as to when governors began issuing executive orders due to inconsistencies in recording their usage in earlier years. For instance, Iowa has documented orders since 1857, while most other states have available data beginning only in the mid-1990s or early 2000s. Even among the consistently documented executive orders, there is substantial variation in the frequency of their usage over time both within and between states, as shown in Table 1. For instance, Georgia governors issue an average of 422 orders per year, while Connecticut chief executives issue about

interpretation of executive order usage.

⁷In our main analysis we omit ceremonial orders and pardons. In the supplemental materials we also specify models that omit disaster related order. We also include models that incorporate all executive orders. Our results are robust to each of these strategy.

five on average, with many other states falling somewhere in between.

Despite the widespread use of gubernatorial executive orders, there is a scarcity of research devoted to explaining this variation in their usage. Ferguson and Bowling (2008) offer one of the first examinations of state executive orders, providing useful descriptive information on the functions and frequencies of orders across 49 states between 2004 and 2005. However, the literature on the whole lacks studies providing systematic explanations for state executive order use based on various political conditions over time and between states (although, see Sellers 2016).

The literature on presidential executive orders, however, is extensive. Much of this research is concerned with whether presidents use this unilateral tool to bypass an ideologically opposed Congress or if they are actually constrained by their legislative counterparts (e.g. Deering and Maltzman 1999), with many scholars finding the latter to be true (Bailey and Rottinghaus 2013*b*; Fine and Warber 2012; Howell 2003; 2005; Young 2013). Other work considers additional ways Congress can influence presidential decisions to act unilaterally such as its internal fragmentation, legislative capacity, as well as the president's seat share and legislative success (Bolton and Thrower 2016; Young 2013; Shull 2006; Howell 2005; 2003; Krause and Cohen 1997; Gleiber and Shull 1992*a*). Finally, many studies examine the importance of other political factors that influence executive order use, including presidential approval, the beginning and end of an administration, the size of the executive branch, the economy, foreign policy issues, and international crises (Young 2013; Shull 2006; Marshall and Pacelle 2005; Mayer 2002; Krause and Cohen 2000; Mayer 1999; Krause and Cohen 1997).

Despite this abundance of research, we address three important and unanswered questions that are critical to understanding unilateral executive action. First, even though some elements of internal legislative fragmentation are explored, the existing unilateral policymaking literature largely ignores polarization and supermajority institutions as well as their interaction with inter-branch factors. This is surprising given the dramatic rise in political polarization and gridlock in the United States and its importance in hindering legislative functions. These factors have important influences on executives' decisions to act unilaterally. Second, most of these theories focus on

Table 1: Executive Order Summary Statistics by State

State	Mean	Standard Deviation	Years
Alabama	14.6	13.11	1996–2013
Alaska	1.44	1.93	1995–2012
Arizona	18.44	7.96	1996–2013
Arkansas	17.0	0	2008
California	14.2	7.68	1999–2013
Colorado	29.06	11.78	1997–2013
Connecticut	5.86	3.88	1996–2013
Delaware	10.82	5.80	1997–2013
Florida	255.53	44.60	1998–2013
Georgia	422.64	103.99	2003–2013
Hawaii	28.93	21.47	1998–2013
Idaho	16.11	8.91	1996–2013
Illinois	9.67	6.33	1996–2013
Indiana	15.31	9.60	1999–2013
Iowa	5.88	3.01	1996–2012
Kansas	13.53	10.39	1996–2013
Kentucky	487.33	41.00	2012–2014
Louisiana	52.44	27.5	1996–2013
Maine	14.11	8.02	2003–2013
Maryland	6.5	3.00	1996–2013
Massachusetts	8.87	4.16	1995–2013
Michigan	19.56	10.87	1996–2013
Minnesota	17.8	6.07	1995–2013
Mississippi	7.89	3.77	1996–2013
Missouri	25.92	12.22	1996–2008
Montana	19.42	5.93	2000–2013
Nebraska	4.08	3.09	1965–2015
Nevada	16.0	5.29	2011–2013
New Hampshire	9.0	5.38	1996–2013
New Jersey	20.0	9.92	1996–2013
New Mexico	43.0	22.54	2011–2013
New York	39.0	6.0	2011–2013
North Carolina	22.89	8.89	1995–2013
North Dakota	14.5	11.33	1998–2013
Ohio	27.09	7.75	1999–2013
Oklahoma	21	6.44	1996–2013
Oregon	19.0	7.40	1997–2013
Pennsylvania	9.78	4.63	1996–2013
Rhode Island	14.07	4.51	1996–2010
South Carolina	27.71	11.95	1993–2013
South Dakota	15.39	8.31	1996–2013
Tennessee	8.50	4.42	1998–2013
Texas	6.43	4.26	1993–2013
Utah	12.58	3.59	1993–2013
Vermont	10.16	3.88	1995–2013
Virginia	21.19	11.12	1997–2013
Washington	5.38	2.36	1993–2013
West Virginia	14.47	5.97	1996–2013
Wisconsin	19.47	5.67	1995–2013
Wyoming	5.25	1.84	1996–2013

Data on executive orders are collected from various state governmental websites. These data are for non-ceremonial executive orders. The years included here are those for which we have complete data on all control variables included in models presented in Table 3, except for KY and NE where limited polarization data lead to them being dropped from the models. The supplemental materials contain a summary of executive orders by state that cover all years for which we have data.

divided government as the main explanatory variable but do not explore how its impact could be conditional on the ability of the legislature to constrain the executive through variation in levels of polarization and the presence or absence of veto-proof majorities. Finally, studies at the federal level are focused on a single time series of unilateral action. By turning to the states, we are able to exploit the panel structure of the dataset, which allows for greater confidence in eliminating potential confounders within states or over time. However, examining the U.S. states is not simply a method for correcting weaknesses in and buttressing results of federal-level research. As previously mentioned, these theories are largely unexplored on the state level, where rich variation in a variety of political factors exists. The empirical analysis of our theory addresses these three points, as presented in the following sections.

3 Data and Methods

3.1 Dependent Variable

To empirically test these hypotheses, we gather data on all gubernatorial executive orders issued across the fifty states from state governmental websites and registrars.⁸ While we collect data since 1857 in states such as Iowa, it is more common to find records of executive orders extending back into the mid-1990s. As such, we have coverage of 24 states from 1993 to 2013. The remaining states begin between 1996 and 2012 and run through 2013. Table 1 provides details on coverage for each state. In total, our dataset includes 24,232 executive orders for the years 1993-2013.

Based on the presidential executive order literature (e.g. Howell 2003; Mayer 2002), we recognize the value in isolating the most important and substantive orders because they are the ones mostly likely used to respond to the changing political conditions posited in our theory. As such, we only include those we determined to be related to non-ceremonial, substantive policy functions – leaving 22,613. Examples of ceremonial executive orders include activities such as lowering

⁸The analyses include only 49 states, as we drop Nebraska given that its unicameral, non-partisan legislature creates problems examining hypotheses about divided government.

flags to half-staff in mourning or closing state offices on holidays.⁹ Table A1 in the supplemental materials includes summary statistics of executive order frequency by state. We also present results of the analyses below including and excluding other particular groups of executive orders in Table A4.

Given that we are interested in the number of executive orders issued in each state-year, we use a negative binomial model specification.¹⁰ Following previous studies, we include state fixed effects to account for various factors specific to particular states, including possible differences in the attitudes towards and practices of executive order usage. In the supplemental materials (Tables A12 and A13 and Figures A1-A4), we also discuss ways in which executive orders may have different legal statuses or norms surrounding their use in different states and show that the results are robust to dropping states where this could be an issue. The models reported below also include year fixed effects to account for nationwide shocks that affect all states.¹¹

3.2 Independent Variables

Our main independent variables of interest are divided government with no veto-proof majority, divided government with a veto-proof majority, and political polarization within the legislature. In particular, *Divided Government (Not Veto-Proof)* is coded as “1” if the governor is from an opposing party to the majority of at least one chamber of the legislature, but it lacks a veto-proof majority,

⁹Although there are some studies of presidential orders that determine the significance of an order based upon mentions in newspapers and news magazines, *The Congressional Record*, *The Public Papers of the President*, court cases, and law reviews (Chiou and Rothenberg 2014; Howell 2003; Mayer 2002), these sources prove to be unavailable, unreliable, or not applicable on the state level. As such, we follow studies of presidential executive orders that use counts of non-ceremonial orders, instead, which consistently find substantively similar results to studies using outside evaluations (e.g. Bolton and Thrower 2016; Krause and Cohen 1997).

¹⁰Many studies analyzing the federal executive order time series opt for negative binomial regressions. In the appendix we also present results from an OLS model and use the natural logarithm of non-ceremonial orders as the dependent variable (Tables A4, A8, and A11).

¹¹We ran the models using governor fixed effects as well. We do not present these models in the main text given concerns about incidental parameters bias that arise with the use of unit fixed effects in negative binomial models and the lack of scholarly consensus about an appropriate remedy to the problem (see, for example, Allison and Watterman 2002). However, the results are substantively similar in magnitude and direction to the ones presented here, though they are unsurprisingly less precisely estimated given the lower power of the test and levels of variation within governorships (see Table A5).

and “0” otherwise.¹² We also create a dummy variable coded as “1” if there are *Veto-Proof Majorities* in both chambers during divided government in the legislature and “0” otherwise.¹³ Figure 1 shows the proportion of states with either divided government or a legislature with a veto-proof majority that is opposed to the governor. As we would expect, veto-proof majorities are much less common than divided government more generically (which is quite common); but, nevertheless, these supermajorities occur in approximately ten percent of the state-years between 1993 and 2013.

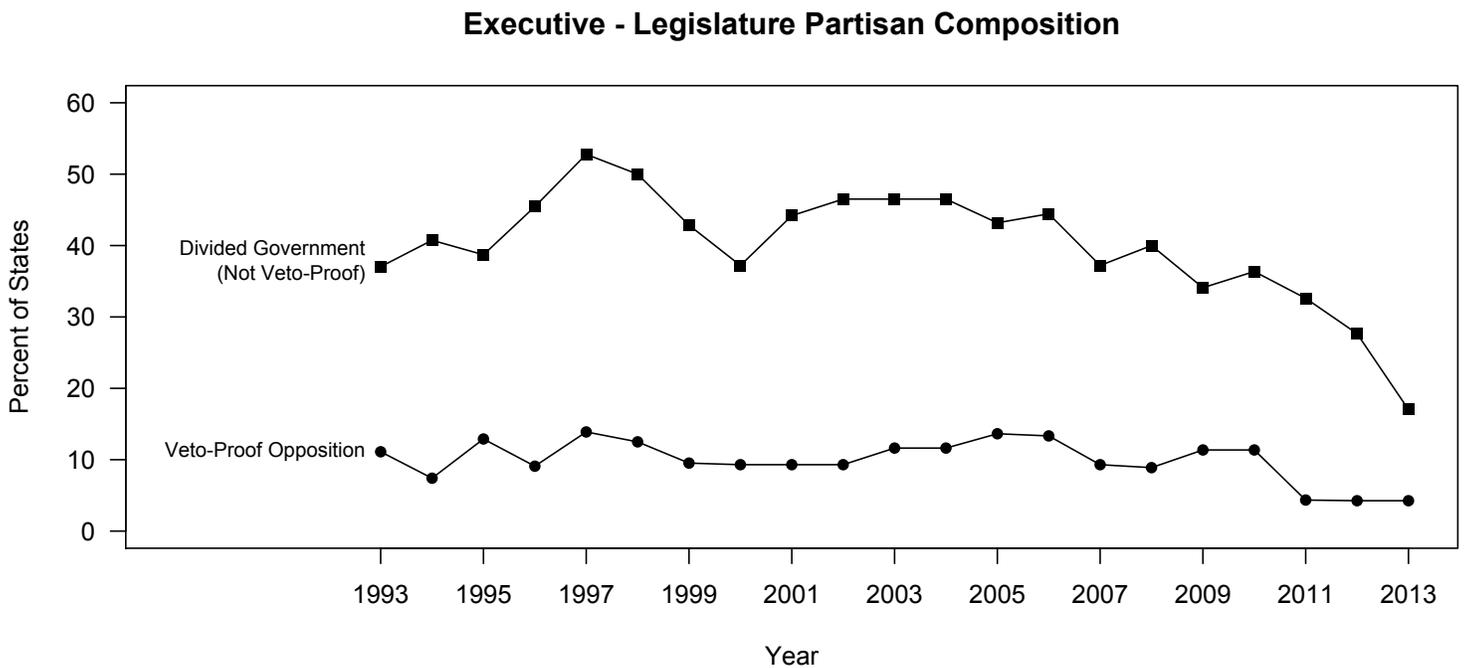


Figure 1: Percent of states with divided government or veto-proof majorities.

Additionally, Table 2 shows the thresholds required to override a veto in each state and illustrates one important feature of using state legislative data to study executive-legislative interactions. In particular, while many states require the same 2/3rds majority to override a governor’s veto as the federal level, a number of other states have different thresholds, ranging from a simple majority

¹²This data was collected by Klarner (2003): “State Partisan Balance Data, 1937-2011” (<https://dataverse.harvard.edu/dataset.xhtml?persistentId=hdl:1902.1/20403>), and updated from online state government resources through 2014.

¹³Note that we omit third party governors from the analysis given ambiguities about coding divided government in these cases. Table A3 in the appendix re-runs the analyses including these governors (and coding all of these observations as some version of divided government) and displays substantively similar results to those reported below.

Table 2: Veto Override Majority Threshold by State

Majority Needed to Override Veto	States
Simple Majority + 1	AL AR IN KY TN WV
3/5 Majority	DE IL MD NE NC OH RI AK AZ CA CO CT FL GA
2/3 Majority	HI ID IA KS LA ME MA MI MN MS MO MT NV NH NJ NM NY ND OK OR PA SC SD TX UT VT VA WA WI WY

to a 2/3rds supermajority. These lower thresholds increase the likelihood of a legislature having a veto-proof majority and allows us to study veto power in a more direct way than is typical in the United States context. A similar study would be nearly impossible in the US Congress as the number of cases with a veto-proof majority in Congress is quite small.¹⁴

To measure polarization, we use the Shor and McCarty (2011) ideal point measures for state legislators in both the upper and lower chambers of each state’s legislature.¹⁵ In particular, we calculate the absolute ideological distance between the median Democrat and Republican in both chambers to obtain two measures of polarization, *Lower Chamber Polarization* and *Upper Chamber Polarization*. We also use the average of the two as an alternative measure, *Chamber-Averaged Polarization*. In the supplemental materials, we present the results of analyses using polarization data based on campaign finance records (Table A9) and find the same results as those reported below.

Additionally, we control for a number of variables that could impact state-level executive policymaking. Given that the use of executive orders could be influenced by governors’ partisanship and political standing, we include controls for the party of the governor (*Republican Governor*) and the percent of the presidential vote won by the governor’s party (*Presidential Vote for Govn’r*

¹⁴The last time either party held veto-proof majorities in both chambers of the legislature was in the 89th Congress in 1965-1966.

¹⁵See <http://americanlegislatures.com>. Note, this data mostly begins in the early 1990s for each state, which is another reason why our analysis begins in 1993.

Party). Particularly, previous scholars argue that Democrats pursue more active agendas than Republicans and therefore should issue more executive orders (Gleiber and Shull 1992*b*; Mayer 1999; 2002; Warber 2006). The latter measure – the governor’s party’s share of the presidential vote – is meant to capture political capital and has similarity to controls for presidential approval at the federal level (e.g. Mayer 2002). Furthermore, we include a dummy variable that indicates whether a governor is serving in his or her final term due to *term limits*. This data comes primarily from Klarner (2003) and was extended forward by the authors.

We also account for the institutional strength of the legislature and chief executive by including measures of capacity for both institutions. In particular, we account for legislative capacity and professionalism with measures of *Legislator Salary* and the number of *Legislative Staff*.¹⁶ Similarly, *Gubernatorial Institutional Power* is based on the Beyle (2008) index that include factors such as a particular state governor’s tenure potential, appointment powers, budgetary powers, and veto powers.¹⁷ Both factors may influence the governors’s decisions over whether or not to issue executive orders.

In addition, state economic conditions may also play a role in structuring when governors are willing and able to use executive orders. In particular, governors may be impelled to use executive orders in response to economic crises, as was the case during the 1970s at the federal level. As such, we include a measure of *State Income Growth*, which is measured as the annual percentage change in per capita income for each state, collected from the Bureau of Economic Analysis. Relatedly, $\ln(\text{State Expenditures})$ is the natural log of all annual state expenditures, in 2015 dollars.¹⁸ States with more active governments (as measured by spending) will potentially provide more policy opportunities for governors to use executive orders.

¹⁶This data is collected from *The Book of States* and the National Conference of State Legislatures

¹⁷Specifically, we construct our measure by taking the average score of those four indices for each available state-years. We exclude other available factors, such as organizational power, if they were not consistently available across time. For the four remaining factors, Beyle measures them in only select years: 1948, 1960, 1966, 1968, 1980, 1988, 1994, 1998, 2000, 2001, 2002, 2003, 2005, and 2007. Because of this, we use linear interpolation to fill in the gaps between years in our dataset.

¹⁸This data is collected from the *The Book of States*.

4 Results

Table 3 displays the coefficients from the negative binomial models regressing the number of non-ceremonial executive orders issued in every state-year onto the previously described covariates. These results provide the key tests for the Executive Empowerment and Legislative Constraint Hypotheses. Each column shows the results using a different measure of polarization.¹⁹ Across all three models, we find strong support for the Executive Empowerment Hypothesis. That is, periods of divided government, when the legislature lacks a veto-proof majority, are associated with a significant increase in executive order usage. More specifically, this particular condition corresponds to approximately three additional executive orders per year relative to periods of unified government. Given that the predicted number of orders issued in a given year under unified government is twenty-seven, this translates to an eleven percent increase in executive orders during divided versus unified government. In addition to being substantively meaningful, the result is statistically significant across all of the specifications. Consistent with the theory, these results suggest that governors are able to use unilateral action to bypass legislative opponents when the legislature lacks a large enough majority to sanction them.

On the other hand, the analyses in Table 3 show that executive order usage decreases when hostile legislatures obtain a veto-proof majority, consistent with the Legislative Constraint Hypothesis. Specifically, governors issue approximately eleven fewer unilateral orders per year compared to periods of unified government and fourteen fewer orders compared to periods of divided government without a veto proof majority. This is a very large effect, equivalent to a forty percent order reduction compared to unified government and a forty-seven percent reduction in orders compared to times of inter-branch division when the legislature does not have a veto-proof majority. These results strongly suggest that the governor is significantly constrained when facing an overwhelming legislative majority of the opposite party. Figure 2 visually shows the results by displaying the predicted number of executive orders under divided government and when the legislature has a

¹⁹Note that in the supplemental materials, we also present pared down models without controls and find similar results on our key variables for all of the analyses reported below (Tables A2, A7, and A10).

Table 3: Baseline Results - Negative Binomial Models

Variable	Model 1	Model 2	Model 3
Divided Government (Not Veto-Proof)	0.10** (0.047)	0.09* (0.048)	0.09** (0.047)
Veto-Proof Opposition	-0.53*** (0.20)	-0.55*** (0.19)	-0.51*** (0.19)
Lower Chamber Polarization	-0.05 (0.21)		
Upper Chamber Polarization		0.03 (0.13)	
Chamber-Averaged Polarization			-0.01 (0.21)
Gubernatorial Institutional Power	-0.27*** (0.10)	-0.26*** (0.10)	-0.27*** (0.10)
Presidential Vote for Govn'r Party	0.61* (0.34)	0.64* (0.35)	0.63* (0.34)
Republican Governor	-0.10* (0.06)	-0.10 (0.06)	-0.10* (0.06)
Governor Election Year	-0.14*** (0.044)	-0.14*** (0.05)	-0.14*** (0.044)
Term Limited	-0.17*** (0.051)	-0.16*** (0.05)	-0.17*** (0.05)
Ln(Legislative Staff)	0.07 (0.10)	0.07 (0.09)	0.07 (0.09)
Ln(Legislative Salary)	0.14 (0.12)	0.13 (0.12)	0.14 (0.12)
Ln(State Expenditures)	0.41 (0.35)	0.44 (0.34)	0.36 (0.35)
Ln(State Income Growth)	-0.001 (0.01)	0.002 (0.01)	0.001 (0.01)
<i>N</i>	727	719	735
State Fixed Effects	✓	✓	✓
Year Fixed Effects	✓	✓	✓

Dependent variable is the number of non-ceremonial executive orders issued in a state-year. Coefficients reported from negative binomial regression model, with robust standard errors clustered by governor in parentheses. Significance codes: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$, two-tailed tests.

veto-proof majority, while holding all other variables at their observed values.

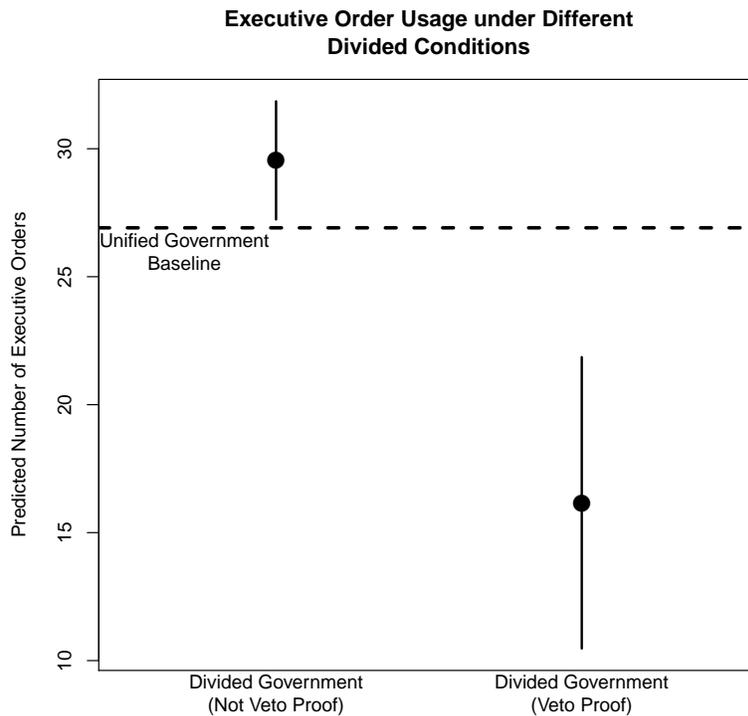


Figure 2: Relationship between Executive Order Usage and Divided Government – Compared to periods of unified government, governors issue more executive orders when the legislature is divided. However, when the legislature has a veto-proof majority, governors issue significantly fewer orders compared to either unified government or divided government without a veto-proof majority.

With respect to the other variables, all three models depicted in Table 3 indicate that polarization within the legislature appears to be uncorrelated with the number of executive orders issued by governors. However, a number of other executive-related control variables are associated with executive order prevalence. For instance, governor institutional power is negatively and significantly correlated with unilateral action, suggesting some substitutability among the various facets of gubernatorial power. Further, there is a large and positive effect of public support on unilateralism, as measured by the percentage of the state who voted for the presidential candidate from the same party as the governor. Consistent with previous literature, this suggests that executives are more empowered when they possess greater political capital with the public (e.g. Beckmann 2010). Moreover, governors appear less likely to use unilateral action during an election year. This

lends credence to the idea that these actions can be costly given public criticism surrounding them, which can be heightened during election years (Cooper 2002; Warber 2006). However, when governors are in their final years in office, as a result of term limits, they are also less likely to issue executive orders. Turning to variables controlling for legislative features, there is little evidence of a relationship between these factors and executive action. Legislative professionalism (staff and salary) and the level of expenditures in a state (a rough proxy for the size and scope of the state government) appear to be unassociated with higher levels of order usage. Furthermore, state-level economic factors are unrelated as well.

Now we turn our attention to evaluating the Conditional Polarization Hypothesis, which argues that inter-branch political effects are conditional on intra-legislative politics. In particular, we expect the effects of polarization to be contingent on divided government. Higher levels of gridlock in the legislature limit its ability to respond to a gubernatorial order with which it disagrees and provides more opportunities for executive action. Thus, the effect of polarization should only be significant under divided government. When the legislature is aligned with the governor, we do not expect the difference between the parties to substantially affect the legislature's response to an executive order. However, under divided government any legislative response to an order requires the consent of majorities from both parties. Since higher levels of polarization are correlated with decreases in legislative productivity (Binder 1999), we argue that the governor expects fewer legislative responses when the two parties are deeply divided, thus freeing her to pursue further unilateralism without fear of retaliation.

To analyze this relationship, we condition on divided government by subsetting the data and measure the relationship between executive order frequency and each of our three measures of polarization. This represents approximately forty-eight percent of the state-year observations in our dataset. Our expectation is that the coefficients on polarization will be positive. The results of this analysis are reported in Table 4.²⁰

²⁰In supplemental materials Table A6, we also present the results of an analysis where we interact both of the divided government measures with the polarization measures and find substantively identical results to those reported in Tables 4 and 5. By subsetting, we also allow for the possibility of interactions between divided government and other variables rather than assuming they are zero (as would be the case when specifying interactions directly).

Table 4: Under Divided Government - Negative Binomial Models

	Model 1	Model 2	Model 3
Veto-Proof Opposition	-0.44*** (0.07)	-0.40*** (0.09)	-0.40*** (0.08)
Lower Chamber Polarization	0.72** (0.28)		
Upper Chamber Polarization		0.21 (0.22)	
Chamber-Averaged Polarization			0.62** (0.27)
Gubernatorial Institutional Power	-0.64*** (0.16)	-0.55*** (0.17)	-0.56*** (0.17)
Presidential Vote for Govn'r Party	-0.30 (0.40)	-0.29 (0.45)	-0.30 (0.41)
Republican Governor	-0.11* (0.07)	-0.16** (0.07)	-0.13** (0.06)
Governor Election Year	-0.19*** (0.07)	-0.21*** (0.07)	-0.20*** (0.07)
Term Limited	-0.14** (0.07)	-0.14* (0.07)	-0.14** (0.07)
Ln(Legislative Staff)	0.07 (0.08)	0.08 (0.08)	0.093 (0.08)
Ln(Legislative Salary)	0.01 (0.04)	-0.001 (0.04)	0.0032 (0.04)
Ln(State Expenditures)	-0.36 (0.48)	-0.26 (0.39)	-0.48 (0.40)
Ln(State Income Growth)	0.01 (0.02)	0.008 (0.02)	0.010 (0.02)
<i>N</i>	349	350	355
State Fixed Effects	✓	✓	✓
Year Fixed Effects	✓	✓	✓

Coefficients reported from negative binomial regression model, with robust standard errors clustered by governor in parentheses. Significance codes: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$, two-tailed tests.

The estimates for polarization are positive in all three models and statistically significant in two of the three. These coefficients suggest that during periods of divided government, polarization further increases the frequency of unilateral action. At the median observed levels of polarization in the dataset (about the same levels of polarization as in Florida in 2001), the predicted number of executive orders is twenty.²¹ At the 25th and 75th percentiles of polarization in the dataset (1.1: SD-2011 and 1.7: NH-2008), the predicted number of orders is seventeen and twenty-four respectively, leading to a marginal increase over the inter-quartile range of the data of approximately seven executive orders. Thus, an increase of eight additional executive orders represents a roughly forty-one percent increase in order frequency over the predicted number at the 25th percentile of polarization.

Another way of thinking about the magnitude of this effect is to consider the difference in the expected number of executive orders over time as a state's legislature polarizes. In 1997, the average ideological distance between the two parties in the Missouri state legislature was 1.23, which leads to an expectation of eighteen orders.²² As with the U.S. Congress, the state's legislature has steadily polarized over the last several decades. In 2013, the average level of polarization in Missouri was 2.00, which leads to an expectation of twenty-eight executive orders. Over these sixteen years of increased polarization, the model would predict an increase of ten orders (forty-three percent increase) as a result of increasing ideological division between the two major parties.

Figure 3 shows these results visually. The points show the predicted number of unilateral orders under different levels of polarization (with 95 percent confidence intervals). The stipple points along the x-axis show the distribution of polarization in the data. Additionally, we have identified several states in the figure that were mentioned earlier in the paper to provide reference to real-world situations in the states. As is displayed in Table 4 increasing levels of polarization are associated with higher numbers of executive orders under divided government.

²¹We use the third model of Table 4 that measures polarization as the average distance between Republicans and Democrats in both chambers for our calculations.

²²The measure of polarization used here is from (Shor and McCarty 2011). The units of the polarization measure are not especially meaningful except in comparison with other states and years – i.e. 1.23 does not mean much except when compared to another state or year.

Executive Orders and Polarization Under Divided Government

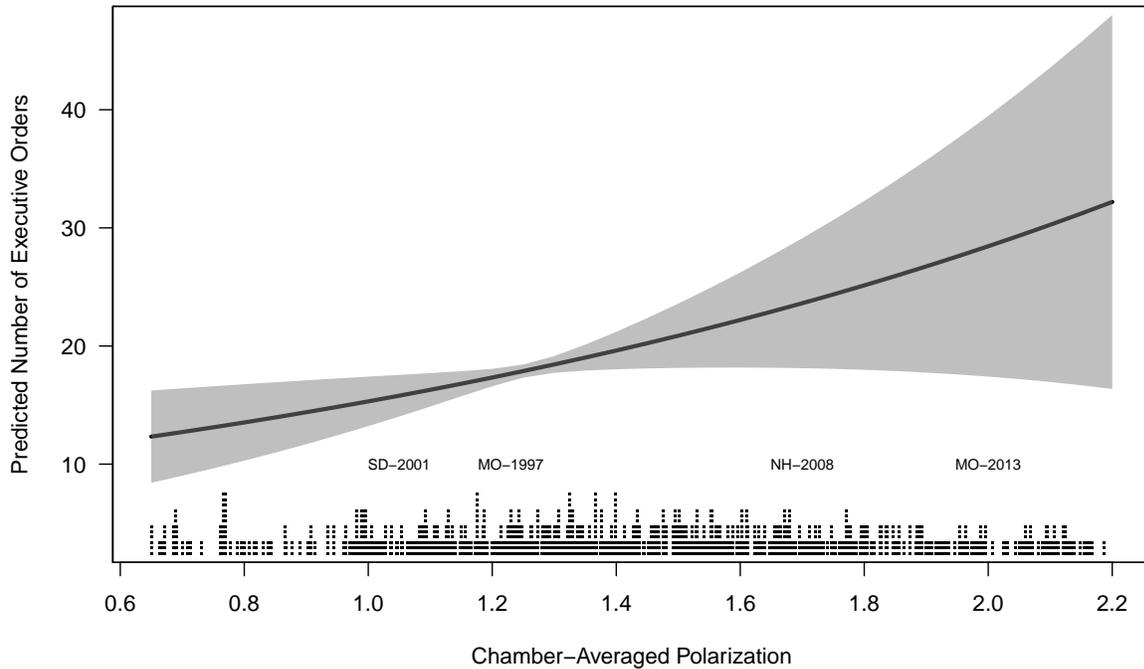


Figure 3: **Relationship between Executive Order Usage and Polarization Under Divided Government** - During periods of divided government, governors issue more executive orders when legislatures are increasingly polarized. The figure shows the predicted number of executive orders with 95% confidence intervals derived from Model 3 shown in Table 4 for the 5th to the 95th percentile of the polarization data.

In sum, these findings suggest that the legislature only serves as a constraint to the executive's ability to exercise power amidst inter-branch battles when it faces minimal intra-branch conflict. However, if members of the legislature have a difficult time agreeing ideologically, governors are more able and likely to act unilaterally. These results are consistent with our theoretical argument emphasizing the interaction of inter-branch and intra-branch politics in conditioning executive unilateralism.

With respect to the remaining control variables, the results are largely similar to those reported in Table 3. Governor institutional power, election years, and final terms due to term limits are all negatively associated with executive orders. As in Table 3, the coefficients for legislative professionalism, state expenditures, and economic variables are small and statistically insignificant.

Of note, the indicator for veto proof majority during a period of divided government is negative

and significant, which is consistent with the finding in Table 3. One might also be interested in the effects of polarization during these periods, suggesting a further interaction between measures of polarization and the veto proof indicator. In order to address this, we re-ran the analyses, subsetting separately for periods of divided government with a veto proof majority and for periods without. The results for the latter are substantively identical to those reported in Table 4, with polarization having a consistently positive effect (Table A15). Though our theory does not directly address it, we would expect that during periods of divided government with a veto proof majority, polarization will likely have no significant impact on executive order usage. This is because the majority party does not necessarily need the votes of the minority in order to override the governor. Indeed, this is what we find – polarization has a statistically insignificant impact on executive order issuance and, further, the estimated sign is not in the same direction as that for divided government periods as a whole (see Table A14).

However, because there are relatively few cases in this condition, we also test the effect of polarization during unified government, where the number of observations is much larger. Recall the Conditional Polarization Hypothesis, which predicts that polarization within the legislature affects executive unilateral action only during periods of divided government and that polarization will have no impact on gubernatorial decision-making during unified government. We subset the data again to isolate periods of unified government when the governor and both chambers of the legislature are controlled by the same party. This represents fifty-two percent of the state-year observations in our dataset. Table 5 presents these results. In each model, the coefficient on polarization is relatively small and statistically insignificant, which is consistent with the Conditional Polarization Hypothesis. This sheds further light on the interdependent ways in which polarization and gridlock affect separation of powers systems.

Table 5: Under Unified Government - Negative Binomial Models

	Model 1	Model 2	Model 3
Veto-Proof Majority	0.05 (0.10)	0.004 (0.09)	0.03 (0.09)
Lower Chamber Polarization	-0.30 (0.30)		
Upper Chamber Polarization		-0.08 (0.16)	
Chamber-Averaged Polarization			-0.21 (0.25)
Gubernatorial Institutional Power	-0.25** (0.13)	-0.26** (0.12)	-0.27** (0.13)
Presidential Vote for Govn'r Party	0.06 (0.52)	0.09 (0.53)	0.15 (0.51)
Republican Governor	0.17 (0.12)	0.18* (0.11)	0.16 (0.11)
Governor Election Year	-0.03 (0.06)	-0.04 (0.06)	-0.03 (0.06)
Term Limited	-0.22*** (0.07)	-0.24*** (0.07)	-0.23*** (0.06)
Ln(Legislative Staff)	0.08 (0.17)	0.11 (0.16)	0.12 (0.16)
Ln(Legislative Salary	0.46*** (0.18)	0.41** (0.18)	0.49*** (0.17)
Ln(State Expenditures)	0.66 (0.47)	0.74* (0.43)	0.61 (0.47)
Ln(State Income Growth)	0.01 (0.01)	0.01 (0.01)	0.01 (0.01)
<i>N</i>	378	369	380
State Fixed Effects	✓	✓	✓
Year Fixed Effects	✓	✓	✓

Coefficients reported from negative binomial regression model, with robust standard errors clustered by governor in parentheses. Significance codes: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$, two-tailed tests.

5 Discussion and Conclusion

In this paper, we help answer a question that has confronted constitutional designers throughout time – how can executive power be constrained? As James Madison wrote with respect to the US, “To what expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments...?” Madison put forward an answer to his own question stating, “...by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places” (Hamilton, Madison and Jay 2009, p. 263).

We provide critical theoretical insights into when the legislative branch of government may be more or less capable of keeping the executive branch in its “proper place.” The empirical results provide strong evidence of the importance of intra-branch political dynamics, inter-branch preference divergence, and their interaction when considering the exercise of executive unilateral power. While previous studies have focused primarily on the relationship between executive-legislative partisanship or legislative gridlock in isolation, an executive’s calculations about likely legislative actions must take into account the challenges that legislatures face when seeking to respond to executive action. In particular, these two factors interact with one another in important ways when executives make decisions about whether to pursue unilateral actions.

This paper further contributes to our understanding of how polarization, one of the primary features of contemporary US politics, affects policymaking beyond legislatures. Polarization has been implicated by scholars as a root cause of contemporary legislative inaction, leading to missed deadlines, acrimonious and unproductive legislative sessions, and policy uncertainty. However, attention must also be paid to how and under what conditions this polarization-induced dysfunction affects the performance of the legislature in the broader political system. Importantly, legislative gridlock, dysfunction, and incapacity have enormous effects on the incentives of executives. For instance, previous work (e.g. Bolton and Thrower 2016) has demonstrated how the inability of earlier, lower-capacity congresses to check the executive branch gave presidents important opportunities to advance their policy interests in a relatively unconstrained manner. Shair-Rosenfield and

Stoyan (2016) uncover similar dynamics with respect to legislative professionalization and executive decrees in Latin America. Here, we deal with another type of incapacity – legislative paralysis due to ideological divisions and their interaction with supermajoritarian institutional rules – but the effects appear much the same. When polarization is low and majority sizes are sufficiently large, executives appear much more constrained in their use of unilateral actions in the face of an opposed legislature. However, the effects of ideological disagreement are amplified as polarization increases and majority sizes decrease, giving executives a seemingly freer hand in bringing about policy outcomes they prefer (and that the legislature may not). In this way, there is non-trivial interdependence between intra- and inter-institutional factors. Moreover, it is important to take both into account when contemplating the US separation of powers system and its functioning.

This paper also highlights the benefits of using state-level data to better understand the dynamics of executive policymaking in the United States. A multitude of studies examine presidential uses of executive orders. These studies are, of course, illuminating, but they are potentially limited in their explanatory power given their focus on a particular time series. Specifically, since polarization has consistently risen in Congress over the time period typically examined in unilateral power studies (i.e. post-World War II), it is difficult to estimate its impact separate from other broader trends in American politics. Similarly, there are exceedingly few periods of veto-proof majorities in the U.S. Congress, offering little direct empirical leverage on the question of how presidential veto power shapes their use of unilateral orders. This is a particularly salient consideration for theories of unilateralism centered on legislative retaliation.

The states offer exciting variation both in institutions and important variables of interest. For instance, states in our dataset have experienced both increases and decreases in polarization over time, allowing us to more confidently estimate its relationship to unilateral policymaking. The thresholds for veto overrides also differ across states, which allows for meaningful changes in the positions of governors vis-a-vis legislatures. In addition to providing important insights into state politics (a substantive contribution in its own right), these results also help us to better understand executive policymaking more broadly. We hope that the dataset created for the present study can

enrich our understanding of executive unilateralism by further exploiting the rich variation across the fifty states.

Finally, this paper is only a first step in beginning to explore the important factors that condition legislatures' abilities to check executive power and the ways in which governors and presidents can take advantage of legislative incapacity. For instance, legislative professionalism differs greatly across states, and might be an important factor in conditioning gubernatorial behavior and the effects of important political variables. Previous work on discretion, for instance, has implicated professionalism as an important mediating variable for ideological conflict (Huber and Shipan 2002). Furthermore, variation across states in terms of formal legislative review and administrative procedures for executive orders may also impact the effects of other variables. Finally, we have not here addressed the judiciary, which is an important constraint on executive power. This could also be an area for fruitful research. Exploring these and other factors has the promise of further illuminating separation of powers politics and the nature of constraints on executive policymaking in the states as well as more broadly in other comparative contexts.

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