LSQ
LEGISLATIVE STUDIES QUARTERLY
Published by the Department of Political Science at Washington University in St. Louis

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Legislative Constraints, Ideological Conflict, and the Timing of Executive Unilateralism

Whether unilateral actions are used to circumvent legislative policy preferences is a central question in separated systems. Although executives have incentives to engage in this behavior, US policymaking studies offer little evidence of it. We explore how intervals between legislative sessions can create such opportunities, depending on interbranch policy disagreement and legislatures' special session powers. During intersession breaks, executives issue more executive orders under divided government relative to unified, but only when legislatures lack control over special sessions. Executives facing legislatures with such powers cannot exploit these breaks. We demonstrate these dynamics in the US states. Additionally, we find governors "wait out" legislatures without special session powers, engaging in more unilateral activity following the adjournment of sessions. This study has implications for understanding the conditions under which legislatures can constrain executive power and the balance of power in separated systems.

Balancing legislative and executive power is a fundamental objective of separation of powers systems. Even as these systems have changed over time, one question looms at the forefront of scholarly inquiry and public discourse: are executives constrained by their legislative counterparts, or do they exert their powers without fear of reprisal? In few contexts is this concern as salient as in the case of executive unilateralism. When presidents or governors disagree with legislatures over policy, they can seemingly use unilateral actions, like executive orders, to bypass the statutory process and obtain more favorable outcomes.

Yet, political scientists generally find little support for this "evasion" hypothesis; rather, presidents appear constrained by congressional preferences, issuing fewer executive orders on

DOI: 10.1111/lsq.12318
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average during divided government (Chiou and Rothenberg 2017; Howell 2003). The few state-level studies of unilateralism that exist find governors exhibit similar restraint when legislatures are controlled by the opposition party, though to varying degrees (e.g., Barber, Bolton, and Thrower 2019; Cockerham and Crew 2017). Why might executives temper their unilateralism in this manner?

Perhaps the most likely source of this constraint lies in the power of legislative majorities to sanction executives through statutory or nonstatutory means. Most scholarship, however, takes legislatures' ability to impose such constraints for granted and does not specify what these powers are or their potential limits. As such, the mechanisms behind this empirical phenomenon have largely remained unexplored. Here, we emphasize the importance of legislatures' policymaking capacity, i.e. their political opportunities and powers to perform key legislative functions, as a central factor underlying executive restraint.

We focus on one understudied, but powerful, facet of legislative policymaking capacity—the timing of and control over legislative sessions. We argue that when legislatures are in session, they have greater opportunities to constrain executives and impose costs on them through activities like oversight hearings, exercising legislative vetoes, and lawmaking. The threat of these costly legislative sanctions is particularly salient during periods of interbranch policy disagreement, when executives have the most incentives to use unilateral actions to circumvent legislative preferences. If legislatures are in session, executives should be more reticent to employ such actions for fear of retaliation.

When session is out, however, executives can act unilaterally with less threat of legislative reprisal, and their orders are more likely to persist. Legislative agendas fill up out of session, raising the opportunity costs of addressing any given order when the legislature reconvenes. Orders create constituencies benefiting from newly created policies, likewise heightening the political costs for legislatures seeking to overturn them after they have gone into effect. Finally, coordinating effective responses to unilateralism is difficult when legislators are out of the capital. These factors all give executives increased incentives to pursue orders outside of sessions.

Whether governors act on these incentives depends, however, on legislatures' power to call special sessions and to set their agendas. If legislatures can dictate the terms of their special sessions, they have more opportunities to retaliate against unilateral action and can more expeditiously respond to unilateral actions, even when adjourned. Thus, executives should on the margins be more restrained regardless of whether sessions are convened. If legislatures lack these powers, however, executives can evade legislative opponents during divided government when sessions are adjourned with less fear of reprisal.

We evaluate these arguments in the US states, where legislative session timing and powers vary substantially. To do so, we use data on gubernatorial executive orders issued between 1993 and 2013 (4,739 of which were issued during legislative recesses). We find empirical support for our theory, showing legislatures prevent executive evasion when they are in session and when they can independently govern their special sessions. These results hold even after accounting for alternative explanations, including legislative resources, productivity, and total session length. We supplement our findings by demonstrating that unilateral activity significantly increases following the adjournment of sessions, but only in states where legislatures cannot dictate their special sessions. Thus, governors appear to "wait out" legislatures that are less able to retaliate once their members leave the capital.

Governors' recent spate of COVID-19 related executive orders illustrates the importance of interbranch conflict, session timing, and legislative powers for tempering gubernatorial ambitions. Executive orders played an important role in managing state-level responses to the pandemic. For example, governors directed residents to shelter in place (California Gov. Gavin Newsom EO N-33-20); suspended elective medical procedures (New Jersey Gov. Phil Murphy, EO 109); and relaxed requirements for unemployment benefits (Ohio Gov. Mike DeWine, EO 2020-03D). In some cases, legislators objected to what they lamented as abuses of executive power, but they varied in their ability to counter these orders based on the factors identified above.

Maine and Connecticut Republicans, for instance, petitioned to convene special sessions to reduce gubernatorial power, but they were thwarted in both states by majority Democratic legislators protecting their copartisan governors. These episodes (consistent with our argument) illustrate the importance of legislative-executive alignment for gubernatorial calculations about legislative responses. In Kansas, a special session pitted Democratic Governor Laura Kelly against Republican legislative majorities over the scope of her unilateral powers. Unlike in some states, Kansas legislators control their agendas during special sessions and were able to pass legislation that, among other things, curbed the governor's power to unilaterally close businesses and spend federal aid. This case demonstrates how special session powers and interbranch conflict can together lead to limits on executive authority, as articulated in our argument.

Altogether, this study contributes to the separation of powers literature by shedding new light on the question of whether and under what conditions legislatures can cabin executive unilateral power. It illuminates mechanisms of executive constraint rooted in the policymaking opportunities of legislatures in the US states. By leveraging state-level variation in policymaking capacity, this study advances a theoretical literature that largely takes these political opportunities for granted. This work also sheds light on the long-standing puzzle in American politics of why executives do not always use their seemingly broad powers to unilaterally bypass legislative opponents. In doing so, we gain new insights into the bases of legislative power in separated systems.

Executive Unilateralism, Legislative Constraint, and the Political Dynamics of Timing

The exigencies of modern policymaking demand delegation to executive branch officials. Chief executives can use delegated authority to guide implementation to benefit themselves, potentially at the expense of legislative preferences. This concern is particularly salient in the context of unilateral directives that instruct agencies on how to execute the law. In this section, we explore why executives use these orders and how legislatures' power to control the timing of their sessions can constrain executive unilateralism.

Previous Literature and Puzzles

Given their vast potential to influence public policy and expand executive power, many studies examine when and why unilateral actions are deployed. Most of this research focuses on presidential executive orders, linking their use to a wide variety of factors such as economic or foreign crises, beginning and end of term effects, public approval, and election years (Christenson and Kriner 2019; Krause and Cohen 1997; 2000; Mayer 2002; Rottinghaus and Warber 2015; Williams 2020; Young 2013). A smaller literature on gubernatorial orders has examined other explanatory factors, including legislative power (Barber, Bolton, and Thrower 2019; Cockerham and Crew 2017) and partisanship (Sellers 2017). Yet, the literature as a whole largely centers on one key question: do executives use unilateral action to bypass an unfriendly legislature, or are they actually constrained by their legislative opponents?

Media reports and conventional wisdom seem to suggest the former. Unhampered by the collective action problems of legislatures, chief executives can unilaterally impose their will (Moe and Howell 1999), particularly when facing opposed legislative majorities. Scholarly research, however, yields more mixed results. Some studies find inconsistent or insignificant effects of legislative preferences on unilateralism (Belco and Rottinghaus 2017; Cockerham and Crew 2017; Deering and Maltzman 1999; Mayer 2002; Williams 2020). Most, however, reveal modern presidents and governors tend to issue fewer unilateral directives during divided government (Barber, Bolton, and Thrower 2019; Bolton and Thrower 2016; Chiou and Rothenberg 2017; Fine and Warber 2012; Howell 2003; Lowande 2014; Young 2013), suggesting executives are significantly constrained. But, why do executives choose not to evade legislative opponents, especially given the seeming advantages of unilateralism?

One explanation, which we take up here, focuses on the ability of legislatures themselves to curb unilateral power. In particular, executives might face costly punishments if they shift policies away from the preferences of legislative majorities and thus avoid doing so. For instance, legislatures may seek to amend or reverse unilateral directives by passing a law. This is unlikely to occur, however, because strategic executives can unilaterally move policy into the gridlock interval to prevent direct legislative subversion (Howell 2003). Therefore, nonstatutory means of retaliating against unilateral action are a more promising avenue for legislatures. These responses do not require executive consent, thus allowing legislatures to impose costs on executives without passing a law. Nonstatutory responses include increased oversight of executive-branch actions that erode the executive's public approval, refusals to act on executive priorities that are less salient to the legislature, and legislative vetoes of agency regulations promulgated pursuant to an order (Barber, Bolton, and Thrower 2019; Chiou and Rothenberg 2017; Kriner and Schickler 2016). Such punishments are detrimental to executives' policy agendas and can impose substantial costs upon them. If executives perceive that these costs are likely, unilateral strategies making legislatures worse off become relatively less attractive.

Whether legislatures can impose these costs depends fundamentally on their degree of policymaking capacity (i.e., the opportunities they possess to create policies that can meaningfully constrain executive power). Those with sufficiently high policymaking capacity can credibly punish executives for unfavorable unilateral actions. If policymaking capacity is lacking, however, executives have strong incentives to evade hostile legislatures through unilateralism.

Scholarly accounts of unilateralism generally take legislatures' opportunities to influence policy for granted, failing to specify their mechanisms of sanctioning executives or link them systematically to executive behavior. An exception is Barber, Bolton, and Thrower (2019), but they focus only on specific policymaking factors such as legislative coalition sizes and regulatory review powers. A particularly important aspect of policymaking capacity overlooked in the literature is the time legislatures are actually in session. The execution of nearly all of the statutory and nonstatutory responses to unilateralism outlined above requires legislatures to be convened. Passing bills necessitates a legislative meeting. Legislators must sit at the rostrum and question witnesses at an oversight hearing. Legislative vetoes demand affirmative action by the chamber or committees. We now to turn to understanding how this element of policymaking capacity can have important implications for both legislative and executive power.

Session Timing, Legislative Power, and Executive Incentives for Unilateralism

Legislative sessions are considered either "regular" (i.e., occurring at prespecified times, either by constitutional or statutory mandate) or "special" (i.e., irregularly timed and ad hoc). In regular sessions, legislatures can freely engage in the activities discussed above that challenge executive power. However, legislatures' special session powers—their ability to call special sessions and determine the agendas of these sessions—vary across the US states.[1.] These limitations have implications for whether legislatures can hold governors accountable for their unilateral activity and, consequently, for executive calculations about both whether and *when* to unilaterally change policies. When legislatures lack control over their sessions, it opens up new avenues for evasion by giving executives incentives to act when legislatures are not convened and cannot immediately retaliate. In this way, legislative session timing and special session powers have important impacts on both legislative *and* executive power.

Why would governors bother waiting for legislatures to leave session to issue unilateral orders? After all, there is no time limit for legislative responses and nothing to stop legislatures from rebuking a governor's order in the future. We argue there are at least three advantages governors might gain from issuing unilateral orders while the legislature is out of town.[2.]

First, many different issues may arise between sessions. Thus, when the legislature comes into session again, the opportunity costs of addressing any given gubernatorial action will increase; this lessens the likelihood of legislative response on the margins. Consequently, governors can expect a higher likelihood of their order standing even after the legislature comes back into session. Second, the creation of a new policy can create additional constituencies that support its entrenchment (Baumgartner et al. 2009). The presence of such public support for the governor's action may make a legislative response costlier when session reconvenes, because constituents are now benefiting from a recently created policy or its anticipated implementation. This dynamic lowers the likelihood of legislative response on the margins and insulate gubernatorial policies. Finally, many of the possible responses to a new order require substantial coordinated action by the legislature; this may be complicated when legislators are back in their districts and exacerbated by these other two barriers.

Indeed, political observers frequently identify abbreviated legislative sessions as an important driver of enhanced executive power. For instance, political commentator Paul Burka attributed Texas Governor Rick Perry's controversial expansion of executive power through his use of executive orders to the legislature's short sessions: "The legislative branch can try to fight back. It can pass a law overturning an executive order. It can cut appropriations for the governor or his pet projects. It can investigate … The Senate can refuse to confirm gubernatorial appointments … But the bottom line is that the Legislature can take action for 20 weeks every two years, and the governor can take action for 52 weeks every year. The governor has the advantage if he wants it … Keep an eye out on the items in his legislative wish list that fail to pass: They could reappear as the subject of executive orders."[3.]

However, just because the legislature is out of session does not mean governors will necessarily be able to reap these benefits. Legislatures may still be able to effectively retaliate through special sessions (or the threat of them), which allow relatively expeditious responses and prevent agendas from filling up or new constituencies from forming to support the order. Special sessions are not a panacea, however. Even if legislatures wanted to call a special session, this is not always a viable strategy for two reasons. First, many face legal and constitutional barriers to doing so. For instance, 15 state legislatures in 2018 did not have the ability to call special sessions. These restrictions can empower executives during intersession breaks. Second, some legislatures are unable to control their agendas once they come into special session. Instead, these sessions are focused on only one or a few issues, most often dictated by the governor. In states like Kentucky, for instance, governors are solely charged with determining the agendas of special sessions (Council of State Governments 2018). In these cases, external agenda controls hinder the capacity of legislatures to confront executive power.[4.]

Thus, whether legislators possess special session powers has important incentive effects for executives' calculations about the use of evasive unilateral strategies. To demonstrate, first consider contexts in which legislatures (as in states such as Arkansas, Idaho, and Texas) do not have power over special session timing or agendas. Here, we argue the effect of interbranch partisan division depends on the timing of legislative sessions. When the legislature is adjourned and lacks special session powers, we expect patterns consistent with evasion. Governors have strong incentives for unilateralism during divided government to achieve more favorable policy outcomes than what they would otherwise obtain through the normal lawmaking process. Understanding that opposed legislatures without special session powers lack opportunities to respond when out of session, governors will have less hesitation in issuing unilateral actions that make legislative majorities worse off relative to the status quo. If the legislature is in session during divided government, however, it can more readily retaliate against these orders through statutory and nonstatutory sanctions. As such, we expect the effects of divided government to be dampened during legislative sessions as governors seek to "wait out" the legislature.

Likewise, in a complementary fashion, the effect of whether a legislature is in session on unilateralism will depend on interbranch partisan alignment. Under unified government, governors will largely issue orders in line with the preferences of the legislative majority. Thus, there is little incentive for executives to time unilateral actions around legislative sessions because the fear of retaliation is abated. Therefore, we expect no relationship between session timing and unilateralism under conditions of unified government. During divided government, however, executives want to time their orders to avoid legislative sessions and evade adversarial legislatures. They can effectively do so because legislatures with limited special session powers are inhibited in responding to unfavorable executive actions. As such, we expect the effect of session timing to matter a great deal during divided government. In particular, chief executives should pen significantly fewer unilateral directives when legislatures are in session relative to when they are not.

This logic leads us to our first hypothesis:

If legislatures lack the power to control special sessions:

H1a (Executive Evasion): When the legislature is out of session, executives issue more unilateral actions during divided government relative to unified government. This effect should be null when the legislature is in session.

H1b (In-Session Constraint): During divided government, executives issue fewer unilateral actions when the legislature is in session relative to being out of session. During unified government, whether or not the legislature is in session has no effect on unilateral actions.

Furthermore, we expect patterns of constraint to be most prevalent in regular sessions. When legislatures cannot control special sessions, these powers typically redound to the chief executives instead. Executives who can call special sessions and determine their agendas are unlikely to do so for the purposes of executive constraint. In these cases, such constraint must occur in regular sessions, where legislatures can more freely pursue retaliatory measures against the executive. Accordingly, our second hypothesis contends:

H2 (Session Type): The interactive effects between session timing and divided government stated in Hypothesis 1a and Hypothesis

1b should only be significant for regular sessions. The interactive effect between divided government and being in or out of special session should be null.

Now consider legislatures possessing special session powers. In these contexts, we do not expect the same interactions between session timing and partisan division as described above. Here, if a chief executive unilaterally shifts policy away from legislative preferences, then legislatures can expeditiously respond by reconvening.[5.] The evasion strategy is costlier in these contexts and therefore less desirable from the perspective of the executive, all else equal. Thus, the timing effects of legislative sessions on unilateralism will not be evident when legislatures can control their special sessions. Similarly, while executives have incentives to evade during recesses, they will only act on these impulses when legislatures lack special session powers. When these legislative powers exist, the evasion strategy becomes relatively unattractive to executives, regardless of the timing of sessions, given a greater ability and likelihood of legislative retaliation. As such, the effect of interbranch policy disagreement will not depend on whether or not the legislature is in session, or vice versa. The difference between session types should not be relevant when legislatures have special session powers, as implied by the theoretical argument since they can use both to act against executives.

H3 (Legislative Constraint): If legislatures can control special sessions, the effects of divided government will not depend on session timing. Similarly, the effects of session timing will not depend on partisan division.

Empirical Context, Data, and Statistical Modeling

Dependent Variable: Executive Orders

To evaluate our argument, we examine the timing of gubernatorial executive order issuance in the US states. Executive orders are written directives giving instructions to executive branch officials on interpreting and implementing the law. They serve a variety of functions. On the more inconsequential end, governors use them for ceremonial purposes (e.g., lowering flags or declaring a holiday) or mundane administrative tasks (e.g., closing state offices on holidays or making technical corrections to previous orders). However, orders are also employed for more substantive administrative purposes, such as appointments and the creation, reorganization, extension, and termination of agencies, commissions, and task forces. In this way, executive orders help governors control the bureaucracy and its policy outputs.

Governors also frequently use orders to create new programs, initiatives, policies, or guidelines on salient issues. For example, in 2018, Ohio Governor John Kasich signed an executive order (2018-04K) authorizing the testing of autonomous vehicles and delineating guidelines for their operation. The order simultaneously created the Ohio Autonomous Vehicle Pilot Program to assist municipalities in working with local auto technology companies. Executive orders also establish agencies or administrative structures, as when Governor Ben Nelson created the Nebraska Transportation Industry Task Force to oversee the newly designed Transportation Efficiency Project in 1995 (EO 95-3). Likewise, orders commonly delegate or transfer authority to agencies, allocate funds for projects, and alter or reverse existing policies. Given this diversity of purposes for which they are employed, executive orders play an important role in helping governors advance their policy programs.

There is uncertainty surrounding how long governors have used executive orders due to inconsistencies in publicly available sources. While some states, like Iowa, have recorded orders from the 1800s, most only have accessible records of executive orders beginning in the early/mid 1990s, which is where we begin our data analysis. We rely on a dataset collected by Barber, Bolton, and Thrower (2019) on the use of executive orders between 1993 and 2013 in 49 states.[6.] We augment this data by determining the date each order was issued. Doing so allows us to evaluate the relative timing of legislative sessions and executive action. We limit our analysis to policy-relevant orders, which are best explained by the theory. We omit orders related to ceremonial functions (e.g., lowering flags to half-staff and naming highways) and routine administrative tasks (e.g., salary increases and scheduling special elections) from the analysis. We also disregard orders related to appointments and removals of public officials because they are only used for this purpose in some states. Finally, we omit orders pertaining to disaster relief, given their issuance is more closely tied to events outside of the governor and legislature's control. Overall, this leaves 11,109 policy-oriented executive orders in our analysis.[7.]

Our dependent variable is the number of policy-oriented executive orders issued in every state for each month between 1993 and 2013. Thus, our unit of observation is the state-month-year.[8.] On average, governors issued 0.98 executive orders per month. This figure is comparable to presidential unilateral activity. Chiou and Rothenberg (2017) find that, depending on the significance measure, presidents issued between 0.04 and 1.55 executive orders per month between 1946 and 2003. Table 19 in the online supporting information lists summary statistics for substantive executive orders issued monthly for each state in our dataset, along with the available years. The monthly average ranges from 0.29 orders in North Dakota to 6.9 orders in Kentucky. The maximum number of observed monthly orders is as high as 69 (Kentucky). Likewise, the within-state standard deviation ranges from 0.58 (Wyoming) to 14.26 (Kentucky).

Given the dependent variable is a count, we employ negative binomial regressions.[9.] We include fixed effects for the issuing governor to account for the idiosyncrasies of individuals that may influence their tendency to issue executive orders. These fixed effects also control for unobserved differences between states, including the attitudes, norms, and practices related to unilateralism and sessions, as well as invariant features of legislative professionalism and the executive branch broadly (such as the degree of control governors have over agency heads).[10.] Additionally, we include month-year fixed effects to account for factors or trends that may influence all states in any given month-year. We cluster standard errors at the state-year level.[11.]

Key Independent Variables

The key test of our hypotheses are indicators for interbranch preference divergence, whether a legislature is in session, whether a legislature can call or control the agendas of their special sessions, and their interactions.

Legislative Session Timing and Powers

We code both the timing of special sessions and whether legislatures have the power to call or control the agendas in their special sessions. First, *In Session* is assigned the value of “1” in every month the legislature is in either regular or special session and “0” otherwise. State legislatures vary substantially in the amount of time they meet, depending on constitutional or statutory limitations on session timing and length.[12.] For instance, in 2016, Wyoming met for 20 legislative days, California met for 246, while Montana, Nevada, North Dakota, and Texas did not meet at all (Council of State Governments 2017). Legislatures were only in session (regular or special) in 50.4% of the state-months in our dataset.[13.]

To test Hypothesis 2, we use separate measures for each session type, based on data collected from the Book of States. Accordingly, *Regular* is coded as “1” when the legislature is in regular session (“0” otherwise), while *Special* is coded “1” when it is in special session (“0” otherwise). As discussed in our theoretical argument, we expect patterns of constraint to be most prevalent in regular sessions.

Next, we code *Special Session Power* as “1” if the legislature has the ability to either call a special session or set the agenda in special session and “0” otherwise. Legislatures can call special sessions in 35 states. In the remaining cases, only governors have the power to convene special sessions. Once in special session, legislatures can face additional constraints on the conduct of those sessions. Only 39 legislatures can determine the subject of special sessions (Council of State Governments 2018). These legislative powers have not been totally static over time. Fifteen states changed these legislative powers in some way during our study period: eleven altered the legislature’s ability to call special sessions, nine modified agenda control rules, and five did both. Further, five states (Indiana, Iowa, Tennessee, Utah, Vermont, and Wisconsin) changed one of these powers and reversed course at some point within this 20-year span. Importantly, as we show in Tables 14 and 15 in the online supporting information, there does not appear to be any correlation between interbranch ideological factors or time in session and variation in these powers.

While these two powers are mostly paired in states, neither necessarily implies the other. In some state-years only governors call special sessions but legislatures control their agendas (e.g., Minnesota). Others allow legislatures to convene these sessions without giving them the authority to control the agenda (e.g., Georgia). Having either power allows the legislature to play a retaliatory role.[14.]

Interbranch Conflict

We measure executive-legislative conflict with an indicator for *Divided Gov't*., which is coded as "1" when the governor is from the opposing party of either chamber of the legislature. We obtain this information from the dataset introduced by Klarner (2003) and update it to accommodate the years of our study.[15.]

We subset our analyses on *Special Session Power*, while also interacting *Divided Gov't*. with *In Session* (as well as *Regular* and *Special* in alternate analyses) to test the conditional relationships between these three variables. This interaction term is the key test of our empirical hypotheses.

Control Variables

We also include control variables that could confound the results.[16.] First, governors often use executive orders to respond to natural disasters. Although we omit disaster-related orders, crises could generally augment executive power (Howell, Jackman, and Rogowski 2013). Accordingly, we control for the number of federally determined disasters declared by the Federal Emergency Management Agency for each state-month-year (*Natural Disaster*). Second, Rottinghaus (2015) argues executives use unilateral actions more during scandals. We use his data on the number of scandals occurring in each state-month-year (*Scandal*). Finally, governors often use unilateralism to respond to economic shocks (Krause and Cohen 1997). Thus, we control for monthly state unemployment collected by the Bureau of Labor Statistics.

Governors with greater institutional powers may not need to rely on unilateral tools, while legislatures with greater resources could be more capable of constraining unilateralism. With respect to the former, we use a modified version of the Beyle (2008) index of *Gubernatorial Institutional Power*, which includes gubernatorial tenure potential, appointment powers, budgetary powers, and veto powers.[17.]

We also control for other aspects of legislative capacity that might confound our results. We measure the institutional resources available to legislators by using factor analysis to create a score based on the logged number of permanent staff, special staff, and salary for each state by year (*Resource Capacity*).[18.] Including this measure ensures our focus on session timing is not tapping into other aspects of legislative professionalism that might drive the results. Accounting for salary also captures the opportunity costs of legislators for coming back into session, which might influence executive incentives for unilateralism based on timing.[19.]

Popular governors are better positioned in legislative bargaining (Kousser and Phillips 2012), which may influence unilateralism. Consistent measures of gubernatorial approval are not available, so we use the governor's vote share in the previous election as a proxy (*Previous Govn'r Vote*). We also include the Democratic presidential vote share in the previous election as a proxy for the state's liberalism and demand for governmental action (*Pres. Dem. Vote Share*). Governors may also be more reticent to act unilaterally before elections given increased public scrutiny. We therefore include an indicator for a gubernatorial election year (*Governor Election*).

Next, some states can hold their sessions over one or two years based on statutory or constitutional provisions. Differences in these institutional rules influence the windows legislatures have to constrain executive unilateralism in regular or special session and the frequency of their meetings. To control for this possibility, (*Two-Year Session*) is coded as "1" if the state legislature's session is held over two years and "0" if it is held annually. This data was gathered from the Book of the States. Finally, we include an indicator for a governor's final years in office (*Last Year*), coded as "1" if the governor is in her last term and cannot run for reelection because of term limits, and "0" otherwise. This variable captures the possibility governors, like presidents, adjust their behavior at the end of their terms (Kousser and Phillips 2012).

Results

Table 1 summarizes our theoretical hypotheses and their empirical implications. We specify which coefficients, along with their appropriate combinations for interactive effects, are used to test each prediction and the expected signs for those estimates. We will refer back to this table to connect the empirical results to our theoretical expectations.

But first, we examine baseline models without interactions in Models 1 and 4 of Table 2. The coefficients on *Divided Government* and the session variables are small and statistically insignificant in both models, suggesting they do not alone impact the number of

TABLE 1
Summary of Theoretical and Empirical Hypotheses

Hypotheses	Empirical Implications
H1a (Executive Evasion) When the legislature is out of session, executives issue more unilateral actions during divided government relative to unified government This effect should be null when the legislature is in session	When Special Session Powers = 0 • *Divided* (uninteracted) coefficient should be positive and statistically significant • *Divided* × *In Session* interaction should be negative and significant • Sum of interaction and *Divided* coefficients should be small and statistically insignificant
H1b (In-Session Constraint) During divided government, executives issue fewer unilateral actions when the legislature is in session relative to being out of session During unified government, whether or not the legislature is in session has no effect on unilateral actions	When Special Session Powers = 0 • *Divided* × *In Session* interaction coefficient should be negative and significant • Sum of interaction and *In Session* coefficients should be negative and statistically significant • *In Session* (uninteracted) coefficient should be statistically insignificant
H2 (Session Type) The timing effects in H1a and H1b are drive by regular session timing	When Special Session Powers = 0 • *Divided* × *Regular Session* interaction coefficient should be negative and statistically significant • *Divided* × *Special Session* interaction coefficient should be small and statistically insignificant
H3 (Legislative Constraint) If legislatures can control special sessions, the effects of divided government will not depend on session timing. Similarly, the effects of session timing will not depend on partisan division	When Special Session Powers = 1 • *Divided* × *In Session* interaction should be small and statistically insignificant

executive orders issued per month. Of course, our theory predicts important interactive effects among these variables.

As such, we consider the interactions between *Divided Government*, *In Session*, and *Special Session Power* to test our hypotheses, as summarized in Table 1. For simplicity, we subset on *Special Session Power* to capture the conditions specified in each hypothesis. Both the Executive Evasion Hypothesis and the In-Session Constraint Hypotheses should hold when legislatures do not possess special session powers. We test these hypotheses in Models 2 and 5, where the analysis is subsetted to these cases

TABLE 2
The Timing of Executive Order Issuance

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
In Session	−0.0252	−0.0603	0.0315			
	(0.0387)	(0.113)	(0.0540)			
Regular				−0.0231	−0.170	0.0451
				(0.0418)	(0.127)	(0.0559)
Special				0.0133	0.372***	−0.00981
				(0.0525)	(0.144)	(0.0865)
Divided Govt	0.00222	1.081***	0.0430	0.00135	1.187***	0.0366
	(0.0681)	(0.359)	(0.0787)	(0.0681)	(0.348)	(0.0784)
In Session × Divided Govt.		−0.457**	−0.0388			
		(0.187)	(0.0737)			
Regular × Divided Govt.					−0.371*	−0.00967
					(0.197)	(0.0748)
Special × Divided Govt.					−0.133	−0.0776
					(0.217)	(0.118)
Natural Disaster	0.0773*	0.0441	0.0743	0.0776*	0.0664	0.0739
	(0.0450)	(0.108)	(0.0489)	(0.0451)	(0.108)	(0.0490)
Scandal	−0.0225	0.385**	−0.0384	−0.0237	0.370*	−0.0360
	(0.0664)	(0.196)	(0.0705)	(0.0664)	(0.191)	(0.0705)
Unemployment	0.000620	0.0629	0.0162	0.0000927	0.0258	0.0167
	(0.0315)	(0.0836)	(0.0340)	(0.0315)	(0.0832)	(0.0339)
Governor Institutional Power	−0.432**	−1.244*	−0.409*	−0.432**	−1.406**	−0.410*
	(0.198)	(0.726)	(0.212)	(0.198)	(0.715)	(0.213)
Previous Govn'r Vote	−1.157**	0.763	−1.314**	−1.152**	1.274	−1.309**
	(0.461)	(1.025)	(0.514)	(0.461)	(1.014)	(0.514)

(Continues)

TABLE 2 (Continued)

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Pres. Dem. Vote Share	0.886	−0.814	0.851	0.879	−1.145	0.874
	(1.092)	(2.983)	(1.172)	(1.090)	(2.840)	(1.175)
Last Term	−0.0262	0.0634	−0.0371	−0.0268	0.0255	−0.0362
	(0.0712)	(0.183)	(0.0789)	(0.0711)	(0.179)	(0.0789)
Governor Election	−0.139***	−0.0382	−0.166***	−0.138***	−0.0468	−0.167***
	(0.0505)	(0.131)	(0.0532)	(0.0505)	(0.131)	(0.0533)
Resource Capacity	0.392**	0.181	0.595***	0.391**	0.236	0.600***
	(0.169)	(0.348)	(0.175)	(0.168)	(0.322)	(0.175)
Two-Year Session	0.0140	−0.204	0.0210	0.0126	−0.279	0.0203
	(0.174)	(0.296)	(0.195)	(0.174)	(0.312)	(0.195)
N	9,067	1,742	7,325	9,067	1,742	7,325
Governor FE	Yes	Yes	Yes	Yes	Yes	Yes
Month-Year FE	Yes	Yes	Yes	Yes	Yes	Yes
Special Session Powers	All	No	Yes	All	No	Yes

Note: Negative binomial regression coefficients with standard errors clustered by state-year in parentheses. Significance codes:

*$p < .10$; **$p < .05$; ***$p < .01$.

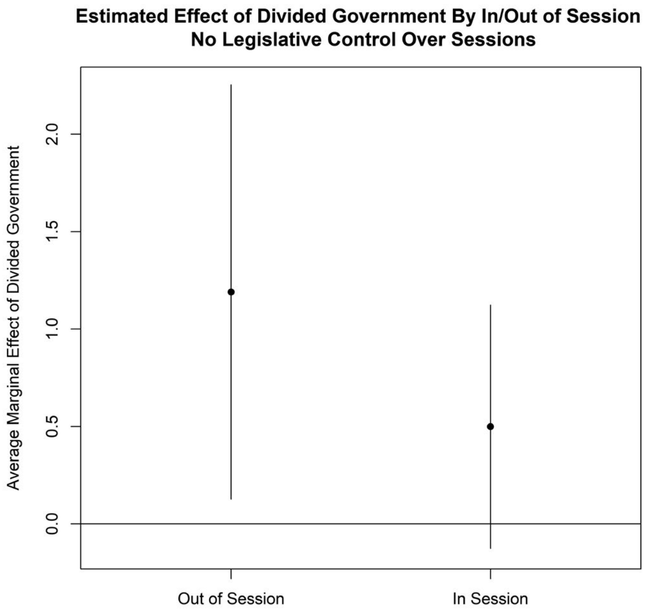
(i.e., *Special Session Power* = 0). While the *In Session* variable in Model 2 groups all session types, we also include separate measures for *Regular Session* and *Special Session* in Model 5 to evaluate the Session Type Hypothesis. To test the Legislative Constraint Hypothesis, we consider only cases where legislatures possess the power to call special sessions or determine agendas in Models 3 and 6.

To begin, the Executive Evasion Hypothesis predicts executives issue more orders under divided government relative to unified when the legislature is not in session, but only when it lacks special session powers. Accordingly, we interact *In Session* with *Divided Gov't*. in Model 2 (when *Special Session Power* = 0) and find strong support for this hypothesis. The coefficient for divided government is positive and significant, as expected (per Table 1), and indicates governors issue more executive orders relative to unified government when the legislature is not in session (i.e., *In Session* = 0). When legislatures are convened, this effect is substantially dampened. The interaction term (*In Session* × *Divided Gov't*) is negative and significant, thus diminishing the total effect of *Divided Gov't* after summing both coefficients.

To visualize the interactive effects, Figure 1 graphs the estimated effects of divided government when legislatures are in and out of session based on Model 2 (i.e., when legislatures lack special session powers). When session is out, governors issue 1.13 additional executive orders per month under divided government, and this effect is statistically significant, as expected. Given that on average governors issue 0.98 executive orders per month, this represents a doubling in unilateral activity under these conditions. When the legislature is in session, however, there is not a statistically significant difference between gubernatorial behavior in unified versus divided government, as we predicted in Table 1. These findings are consistent with the argument that governors have incentives to evade legislatures but strategically time their unilateral activities to avoid the possibility of legislative sanction.

The interaction in Model 2 (when *Special Session Powers* = 0) also provides a test of the In-Session Constraint Hypothesis. Here, we argue that during divided government, governors issue significantly fewer orders when legislatures without these powers are convened. Governors facing legislative opponents who cannot manage special sessions will exercise unilateralism modestly while the legislature is in session, because of the increased likelihood of retaliation. Instead, they wait until the legislature is adjourned

FIGURE 1
Marginal Effects of Divided Government When the Legislature is in and Out of Session, Conditional on No Legislative Special Session Powers

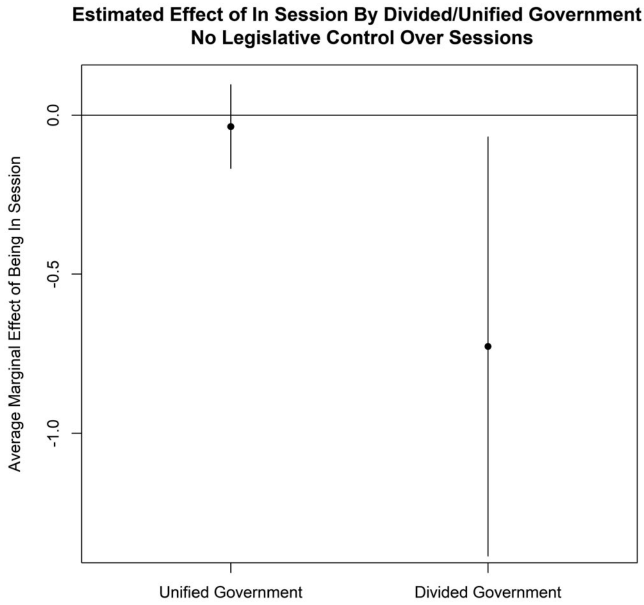


to engage in evasive action. Under unified government, however, we do not expect an effect of legislative sessions on unilateralism given that both branches are more likely to agree on policy; there is therefore little incentive for governors to evade or strategically time their actions.

We find strong support for this hypothesis. In particular, the estimated coefficient for *In Session* (which corresponds to its effect under unified government) is small, and the estimated standard error is large. However, the sizable, statistically significant, and negative interaction term (*Divided* × *In Session*) indicates governors facing divided government exercise restraint in unilateralism when legislatures are in session.

Figure 2 presents the estimated marginal effects of being in session under unified and divided government when legislatures cannot dictate the terms of their special sessions (i.e., *Special Session Powers* = 0). Under divided government, governors issue

FIGURE 2
Marginal Effects of Being in Session During Divided Government and Unified Government, Conditional on No Legislative Special Session Powers



0.71 fewer executive orders per month when the legislature is in session versus out of session. Though seemingly a small effect, it is substantial given that governors, on average, issue just under one executive order per month. As expected, being in session does not have a statistically significant impact on order issuance when executive-legislative preferences are aligned under unified government. Overall, when examining cases where legislatures do not possess special session powers, we find governors have significant opportunities for evasion between sessions but show patterns of constraint when legislatures are actually at work.

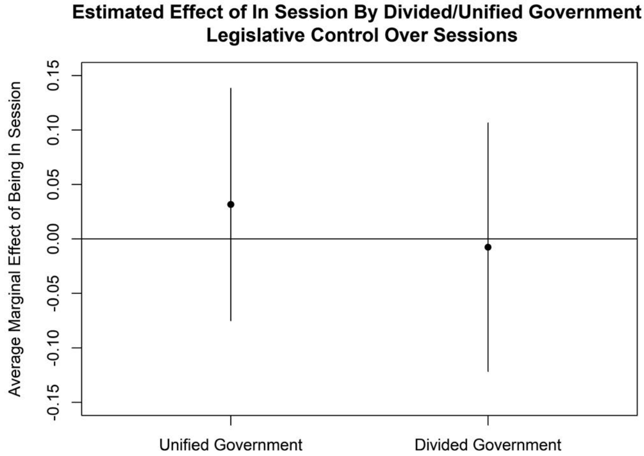
The analyses in Model 2 combine instances when the legislature is in regular and special sessions. However, the Session Type Hypothesis predicts these results will be driven by the former. If legislatures lack special session powers, they will not really be able to use these sessions to constrain executive unilateralism.

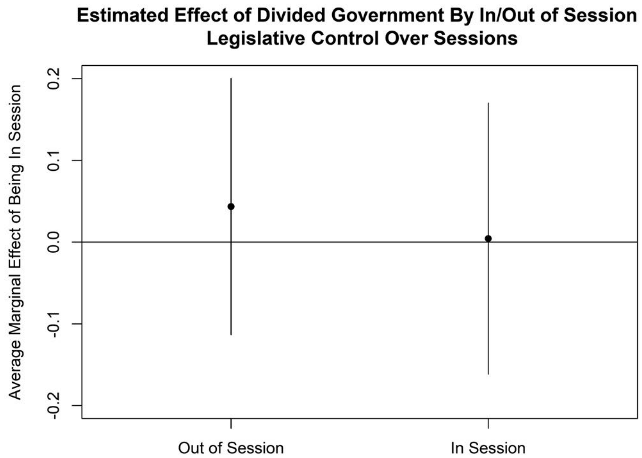
Legislatures may still have some vehicles to counter the governor, for example, by publicizing unpopular executive actions. But because special sessions are primarily governor driven when legislatures lack these powers, the effects in Model 2 should more greatly manifest during regular sessions. The analysis in Model 5 uses separate indicators for whether the legislature is in regular or special session in a given month in the subset of states where legislatures lack special session powers. As suspected, the effects in Model 2 appear driven by regular sessions. *Regular* × *Divided Gov't* is negative and statistically significant, while *Special* × *Divided Gov't* is not statistically significant. The coefficient for divided government remains positive and statistically significant. Taken together, these results demonstrate that the interactive effects between divided government and being in session are driven by the occurrence of regular sessions. These findings are consistent with the Hypothesis 2.

Next, we evaluate the Legislative Constraint Hypothesis in Model 3 (*Special Session Powers* = 1). When legislatures possess the power to call special sessions and/or determine the agendas of those sessions, governors will lack the opportunities to use the timing of unilateral action to strategically evade legislatures. In these cases, the occurrence of sessions should not influence executive order issuance, regardless of unified or divided government. Consistent with our expectations stated in Table 1, neither the estimated coefficient for *In Session* nor the interaction term is statistically different from zero. The magnitudes of the coefficients are extremely small compared to those in Model 2. These results provide strong evidence in favor of the Legislative Constraint Hypothesis, which suggests evasion is not as desirable a strategy for governors when legislatures maintain control over their sessions. Moreover, the results of Model 6, separating the effects of special and regular sessions, show the same patterns. Figure 3 presents the marginal effects plots for Model 2 (when legislatures possess special session powers). The lack of statistical and substantive significance displayed in the plots speaks strongly in favor of the Legislative Constraint Hypothesis.

Unilateralism is also correlated with some control variables. Interestingly, governors with high institutional powers tend to issue fewer orders, suggesting there may be a substitution effect between unilateral action and other policy powers. This finding is consistent with the idea that when governors possess greater control over the executive branch (through, for example, appointments) they

FIGURE 3
Marginal Effects for Models Where States Have Legislative Special Session Powers





have less need to command agency implementation through unilateral directives. However, the Beyle Index combines many different powers, and future work would benefit from theoretically and empirically exploring the relationships between different types of executive tools. We also find greater legislative resource capacity corresponds to higher rates of executive order use. The effect of such resources, however, may be conditional on interbranch conflict (Bolton and Thrower 2016; Cockerham and Crew 2017) or policymaking capacity (Barber, Bolton, and Thrower 2019).

Overall, then, we find strong support for our hypotheses. When legislatures lack control over when and whether they meet outside of regular sessions, governors see ample opportunities for using unilateral action in ways that are consistent with the evasion hypothesis, depending on whether session is in or out (the Executive Evasion Hypothesis and the In-Session Constraint Hypothesis). Such evasion, moreover, manifests more strongly for the timing of regular sessions rather than special sessions (the Session Type Hypothesis). However, when legislatures have the power to call special sessions or set their agendas, governors are more reticent to act unilaterally and unable to use strategic timing to bypass legislatures (the Legislative Constraint Hypothesis). These effects are also consistent when examining the analysis for the power of legislatures to call special session and the power for them to determine the agenda of special sessions separately in Table 11 in the online supporting information. Thus, both powers appear to be important for legislatures to possess when constraining executive unilateralism, although we note they are often paired in states.

We also carry out additional robustness checks that lend support for our results. In Table 16 in the online supporting information, we conduct a placebo test examining whether these same theoretical dynamics manifest for ceremonial and routine orders that are excluded from our dependent variable. According to our theory, we should only find meaningful effects of legislative timing on executive orders that influence policy because those are the ones used strategically to advance gubernatorial agendas. Such incentives should not affect the use of nonpolicy related orders. We do not find any empirical evidence that governors strategically time these less consequential executive orders, giving us greater assurance the main results reported here are not spurious.

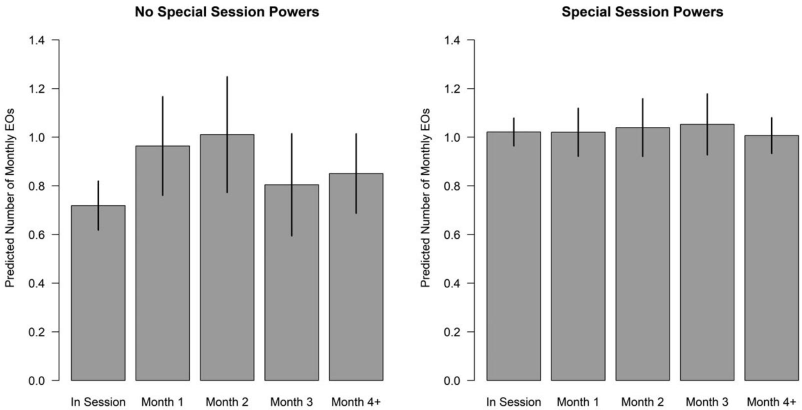
Finally, one might argue legislative productivity could drive the results. On the one hand, a high volume of laws passed in a legislative session might decrease the need for unilateralism as an alternative pathway to policymaking or deter its use. On the other hand, more legislation could provide more sources of statutory authority that could be used as a basis for unilateral actions. We account for these possibilities by controlling for legislative productivity in a given year in Table 17 in the online supporting information. We find that there does appear to be a positive association between the number of laws passed and unilateralism; however, it does not impact the substantive effects we estimated for our key independent variables. We interpret these results cautiously, given that legislative productivity is likely also a consequence of our key theoretical variables. Thus, "controlling" for it makes interpreting the rest of the results problematic due to the potential of posttreatment bias.

Do Governors "Wait Out" Sessions?

A final implication of our argument is that governors should "wait out" legislative sessions before issuing orders when the legislature lacks special session powers. In other words, if governors engage in strategic timing, unilateral activity should increase in the months immediately following legislative sessions. To examine this conjecture, we create dummy variables indicating whether a given month is the first one since a session ended, the second, the third, and then greater than the third. Our expectation for the effects of these variables differs based on whether a legislature has special session powers. In the absence of these powers, if governors are "waiting out" legislative sessions, we should observe a spike in unilateralism in the months immediately following the session. However, in states where legislatures have special session powers, these dynamics should not manifest. That is, governors will be just as active when legislatures are in session and out of session, no matter how recent the session.

The results of this analysis demonstrate that governors in states where legislatures lack session powers issue greater numbers of orders in the months immediately following the session. The same is not true of governors in states where legislatures hold these powers. Figure 4 illustrates these dynamics. As shown in the left panel, in states where legislatures lack special session powers, the estimated number of orders increases 34% and 41% during months one and two after a session ends, respectively. Both effects are statistically significant and increases relative to the in-session unilateralism rate. The predicted effects in months 3 and beyond are not statistically different from the in-session rate. The fact that this effect manifests only in states lacking special session powers helps to further rule out the possibility overall productivity is the driver of our key results. If governors issued more unilateral actions after sessions to implement new legislation, we would expect these effects to manifest in all states rather than this specific subset.

FIGURE 4
Gubernatorial Unilateralism After Sessions End, for States With and Without Legislative Special Session Powers



Furthermore, we investigated whether these effects were the same or not in divided and unified government. They are primarily driven by divided government, in line with our general theoretical argument. None of the counter variables is significant during periods of unified government in models including interactions between the indicators for months out of session and divided government. However, we estimate statistically significant interactions during divided government for the first two months after sessions end, suggesting that the dynamics in Figure 4 are primarily driven by governors "waiting out" sessions during divided government when they know the legislature cannot readily reconvene to respond. These same dynamics are clearly absent in the right panel of Figure 4, which displays the predictions for the states where legislatures possess special session powers. Here, the predicted volume of unilateralism is statistically indistinguishable whether the legislature is in session or not. Taken together, these results bolster our theoretical arguments. Governors facing legislatures lacking control over their special sessions concentrate their unilateral activity in the months immediately following session adjournment, thus providing some additional evidence that these chief executives engage in the strategic behavior we describe.

Discussion and Conclusion

Whether or not legislatures can constrain executive policymaking is a central question for evaluating the role of unilateralism in a separated system. Political observers and scholars often portray legislatures as ineffective restraints on executive power. The broad scope of unilateral powers fuels fears executives will use orders to undercut legislative power. Yet, there is little empirical support for this evasion hypothesis. Executives certainly have strong incentives to use unilateral strategies to move policies in their favor, potentially at the expense of legislative majorities. So, how do legislatures restrain executives?

We argue a legislature's ability to constrain executive power depends on its opportunities to challenge and impose costs on executives in the policymaking process. We highlight one important and relatively understudied component of such legislative policymaking capacity: the timing of and control over legislative sessions. Other tools to constrain executive power have no real power if legislatures cannot meet to use them. Recognizing these policymaking opportunities as a mechanism through which executives can skirt or be thwarted by legislatures offers an important qualification to previous work on executive-legislative relations.

When legislatures lack special session powers, executives will act in a constrained manner during regular sessions but will unilaterally bypass legislatures when session is out. This dynamic should be particularly true during periods of divided government, when executives have the greatest desire to "wait out" legislative sessions to engage in evasive strategies. On the other hand, if legislatures possess the power to control their special sessions, these timing effects should not manifest. In these cases, executives can expect to face relatively greater risks of reprisal if they pursue unilateral policies that make legislative majorities worse off, whether or not the legislature is in session. We find strong support for our arguments using a unique dataset on the timing of gubernatorial executive orders.

These results further our understanding about the role of legislative policymaking capacity in influencing executive branch behavior. By examining executive power through the lens of legislative capacity, we gain a better sense of the institutional sources of variation in executive influence over policy and the bases of legislative power. This analysis also highlights the importance of using the US states to study questions of executive-legislative relations. While many scholars speculate about the mechanisms underlying patterns of constraint at the federal level, many of the proposed mechanisms are invariant in that context. The subnational level provides opportunities to understand the dynamics and mechanisms of legislative power that lead to constraint at the federal level.

In the online supporting information, we examine presidential executive order timing around congressional sessions. The Constitution empowers the president to call special sessions, but Congress still retains the implicit ability to determine its rules and agenda. This provision indicates some special session legislative powers, and thus we would not suspect the timing effects to manifest. This is especially true given Congress adjourns sine die only for relatively short periods in the modern era. Table 12 in the online supporting information reports the expected null results, conforming with our broader theoretical argument and empirical results.

Finally, this study calls attention to the importance of observing the timing of executive actions within a given year, rather than just its annual aggregated frequency. Although the unilateralism literature largely focuses on the latter, our results illuminate that these strategic decisions can be just as revelatory for understanding legislative power vis-à-vis executive. Moreover, these findings contribute to a growing literature on strategic timing in executive policymaking (e.g., Potter 2017).

The argument and findings in this article suggest several paths for future research. First, scholars might do more to pursue the question of how session timing interacts with other powers and resources legislatures possess. Second, collecting additional data on gubernatorial unilateralism would also be a fruitful endeavor. Our claims are limited to a relatively short window (the state-years with available orders from 1993 to 2013); extending the data will allow researchers to leverage more variation in key variables. Finally, future theoretical work could further consider heterogeneity in these effects, due to factors such as legislative productivity, plural executives, and different issue areas.

Overall, our study shows that institutional features of a separated system—in this case, provisions concerning legislative sessions—play an important role in shaping the opportunities executives possess for employing unilateralism to advance their policy agendas. When legislatures can assert themselves in the policy process, such as through the ability to call and control special sessions, executive power may be cabined. Importantly, these results demonstrate that separation of powers is not a sufficient condition for inducing this kind of constraint. Instead, the variety of institutions that delineate the bounds of authority within a separated system play an important role in structuring the balance of power between legislatures and executives.

Conflict of Interest

The authors have no conflicts of interest to disclose.

Data Availability Statement

The data and replication code for the analysis in this manuscript are available for download on the Legislative Studies Quarterly Dataverse. https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/PWWSFP.

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NOTES

1. To build intuition, we focus here on the US states and the interplay between governors and state legislatures since that is the context for our empirical work. However, we believe the reach of the argument's conclusions are broader, and we thus apply the general hypotheses to analyze the federal level below.

2. Of course, waiting may also impose costs on governors, delaying the implementation of their priorities. If these waiting costs are generally higher than ones imposed by legislative rebukes, our theoretical expectations should not manifest empirically.

3. https://www.texasmonthly.com/politics/more-power-to-him-2/. Accessed June 19, 2019.

4. For the purposes of the theoretical argument, when we reference legislatures with "special session powers," we mean ones that have the ability to call and/or determine the agendas of special sessions because we lack a strong ex ante expectation about the relative importance of each power. Later, we examine whether one or the other drives the empirical patterns we observe and find both are sufficient to produce the constraint we hypothesize here. In practice, they are highly, though not perfectly, correlated, which makes separating their relative influence difficult.

5. Of course, the degree to which legislatures can respond may depend on additional costs to calling special sessions such as resources and opportunity costs, which we control for in the empirical analysis.

6. We omit Nebraska because its nonpartisan unicameral legislature presents difficulties in testing arguments about divided government.

7. In Table 16 in the online supporting information, we use the omitted orders to conduct a placebo test, since we would not expect our theoretical argument to apply to them.

8. Some state-years had executive orders with missing dates. In some cases, we inferred the month it was issued based on its assigned number in relation to other orders with dates. Where such deductions could not be made, we chose to drop those state-years to avoid miscounting. We do not believe that this missingness correlates with our variables or interest or outcomes and thus should not impact our substantive conclusions. The following state-years are dropped for those reasons: Vermont (pre-2010), Michigan (pre-2004), Montana (pre-2005), Wyoming (2000–2001), Delaware (2004, 2008), Illinois (2003-06), Alaska, Connecticut (2003–2004), Delaware (2001–2003, 2005), Florida (2000–2001, 2006), New Hampshire (1996), New Jersey (1994), Pennsylvania (1997–99; 2001; 2004–2006), and Wyoming (1994, 1999, 2002-03).

9. Table 10 in the online supporting information includes results from zero-inflated models.

10. Alternative models with state fixed effects yield similar results (see Table 2 in the online supporting information).

11. The results are robust to clustering at alternative levels as well. See Tables 4–6 in the online supporting information.

12. Most studies of state legislatures examining sessions focus on the length of the session, often finding it operates differently than other indicators of professionalism, such as expenditures or staff size (Bowen and Green 2014; Gamm and Kousser 2010; Kousser and Phillips 2012; Rosenthal 1996; Woods and Baranowski 2006). In this article, we do not examine the impact of session length per se. Instead, we focus on the timing of sessions relative to executive action—a related, but distinct, line of inquiry. We do control for overall annual session length in Table 18 in the online supporting information and find it does not impact our conclusions about timing.

13. In the majority of cases, sessions end in the latter half of the month (the 25th is the modal adjournment date), so aggregating to the month level is unlikely to induce substantial measurement error. We alternatively use the percentage of calendar days the legislature is in session in a given month to account for heterogeneity in adjournment date and find equivalent results (Table 9 in the online supporting information). There are a few cases where we were unable to ascertain the dates of legislative sessions for some state-years from the Book of States, so these observations are omitted.

14. In Table 11 n the online supporting information, we examine each power separately and find that neither is alone driving our results. However,

the high correlation between the powers makes identifying the effects separately somewhat difficult.

15. The models exclude third party governors. We add them to the analysis in Table 8 in the online supporting information, coding their terms as divided government.

16. The inclusion of these controls does not materially affect the results (see Table 1 in the online supporting information).

17. We average these four indices and exclude factors not consistently measured over time, such as organizational power and election procedures, and exclude governor party given its overlap with our other variables of interest. Beyle (2008) provides data for the following years in our dataset: 1988, 1994, 1998, 2000, 2001, 2002, 2003, 2005, and 2007. We use linear interpolation to fill gaps between years. Table 7 in the online supporting information shows the results are robust to dropping 1993, which is problematic for the index (Krupnikov and Shipan 2012).

18. The analysis is robust to including these variables separately (Table 3 in the online supporting information).

19. In Table 13 in the online supporting information, we control for other formal policymaking powers of the legislature that might confound the effect of session powers, notably legislative veto powers (Barber, Bolton, and Thrower 2019).

REFERENCES

Barber, Michael, Alexander Bolton, and Sharece Thrower. 2019. "Legislative Constraints on Executive Unilateralism in Separation of Powers Systems." *Legislative Studies Quarterly* 33: 515–48.

Baumgartner, Frank R., Jeffrey M. Berry, Marie Hojnacki, Beth L. Leech, and David C. Kimball. 2009. *Lobbying and Policy Change: Who Wins, Who Loses, and Why*. Chicago, IL: University of Chicago Press.

Belco, Michelle, and Brandon Rottinghaus. 2017. *The Dual Executive: Unilateral Orders in a Separated and Shared Power System*. Palo Alto, CA: Stanford University Press.

Beyle, Thad, and Margaret, Ferguson. 2008. "Governors and the Executive Branch." In *Politics in the American States*, ed. Virginia Gray and Russell L. Hanson. 9th ed. Washington, D.C.: CQ Press.

Bolton, Alexander, and Sharece Thrower. 2016. "Legislative Capacity and Executive Unilateralism." *American Journal of Political Science* 60: 649–63.

Bowen, Daniel C., and Zachary Green. 2014. "Should We Measure Professionalism with an Index? A Note on Theory and Practice in State Legislative Research." *State Politics & Policy Quarterly* 14: 277–96.

Chiou, Fang-Yi, and Lawrence S. Rothenberg. 2017. *The Enigma of Presidential Power: Parties, Policies, and Strategic Uses of Unilateral Action*. New York, NY: Cambridge University Press.

Christenson, Dino P., and Douglas L. Kriner. 2019. "Does Public Opinion Constrain Presidential Unilateralism?" *American Political Science Review* 113: 1071–7.

Cockerham, Alexandra G., and Robert E. Crew Jr. 2017. "Factors Affecting Governors' Decisions to Issue Executive Orders." *State and Local Government Review* 49: 6–14.

Council of State Governments. 2017. *The Book of the States*. Lexington, KY: Council of State Governments.

Council of State Governments. 2018. *The Book of the States*. Lexington, KY: Council of State Governments.

Deering, Christopher J., and Forrest Maltzman. 1999. "The Politics of Executive Orders: Legislative Constraints on Presidential Power." *Political Research Quarterly* 52: 767–83.

Fine, Jeffrey A., and Adam L. Warber. 2012. "Circumventing Adversity: Executive Orders and Divided Government." *Presidential Studies Quarterly* 42: 256–74.

Gamm, Gerald, and Thad Kousser. 2010. "Broad Bills or Particularlistic Policy? Historical Patterns in American State Legislatures." *American Political Science Review* 104: 151–70.

Howell, William G. 2003. *Power without Persuasion: The Politics of Direct Presidential Action*. Princeton, NJ: Princeton University Press.

Howell, William G., Saul P. Jackman, and Jon C. Rogowski. 2013. *The Wartime President: Executive Influence and the Nationalizing Politics of Threat*. Chicago, IL: University of Chicago Press.

Klarner, Carl. 2003. "The Measurement of the Partisan Balance of State Government." *State Politics & Policy Quarterly* 3: 309–19.

Kousser, Thad, and Justin H. Phillips. 2012. *The Power of American Governors: Winning on Budgets and Losing on Policy*. New York, NY: Cambridge University Press.

Krause, George A., and David B. Cohen. 1997. "Presidential Use of Executive Orders, 1953–1994." *American Politics Quarterly* 25: 458–81.

Krause, George A., and Jeffrey E. Cohen. 2000. "Opportunity, Constraints, and the Development of the Institutional Presidency: The Issuance of Executive Orders, 1939–96." *Journal of Politics* 62: 88–114.

Kriner, Douglas L., and Eric Schickler. 2016. *Investigating the President: Congressional Checks on Presidential Power*. Princeton, NJ: Princeton University Press.

Krupnikov, Yanna, and Charles Shipan. 2012. "Measuring Gubernatorial Budgetary Power: A New Approach." *State Politics & Policy Quarterly* 12: 438–55.

Lowande, Kenneth S. 2014. "After the Orders: Presidential Memoranda and Unilateral Action." *Presidential Studies Quarterly* 44: 724–41.

Mayer, Kenneth R. 2002. *With the Stroke of a Pen: Executive Orders and Presidential Power*. Princeton, NJ: Princeton University Press.

Moe, Terry M., and William G. Howell. 1999. "The Presidential Power of Unilateral Action." *Journal of Law, Economics, and Organization* 15: 132–79.

Potter, Rachel Augustine. 2017. "Slow-Rolling, Fast-Tracking, and the Pace of Bureaucratic Decisions in Rulemaking." *Journal of Politics* 79: 841–55.

Rosenthal, Alan. 1996. "State Legislative Development: Observations from Three Perspectives." *Legislative Studies Quarterly* 21: 169–98.

Rottinghaus, Brandon. 2015. *The Institutional Effects of Executive Scandals*. Cambridge, UK: Cambridge University Press.

Rottinghaus, Brandon, and Adam L. Warber. 2015. "Unilateral Orders as Constituency Outreach: Executive Orders, Proclamations, and the Public Presidency." *Presidential Studies Quarterly* 45: 289–309.

Sellers, Mitchell Daniel. 2017. "Gubernatorial Use of Executive Orders: Unilateral Action and Policy Adoption." *Journal of Public Policy* 37: 315–39.

Williams, Raymond T. 2020. "The Historical Presidency Unilateral Politics in the Traditional Era: Significant Executive Orders and Proclamations, 1861–1944." *Presidential Studies Quarterly* 50: 146–62.

Woods, Neal D., and Michael Baranowski. 2006. "Legislative Professionalism and Influence on State Agencies: The Effects of Resources and Careerism." *Legislative Studies Quarterly* 31: 585–609.

Young, Laura. 2013. "Unilateral Presidential Policy Making and the Impact of Crises." *Presidential Studies Quarterly* 43: 328–52.

Supporting Information

Additional supporting information may be found in the online version of this article at the publisher's web site:

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Table 7. Dropping 1993
Table 8. Analyses Including Third-Party Governors
Table 9. Alternative Operationalization: Percentage of Calendar Days in Session
Table 10. Zero-Inflated Negative Binomial Regression Models
Table 11. Separate Effects of Legislative Powers