MICHAEL BARBER
Brigham Young University
ALEXANDER BOLTON
Emory University
SHARECE THROWER
Vanderbilt University

Legislative Constraints on Executive Unilateralism in Separation of Powers Systems

Can legislatures effectively check unilateral executive power? One prominent and counterintuitive finding in previous work is that executives pursue unilateralism less often under divided government. While executives see greater potential policy gains through unilateral action during divided government, we argue that their likelihood of acting unilaterally depends on an opposed legislature's ability to retaliate. When polarization is high and majorities are marginal, executives are freer to act unilaterally given the difficulties legislatures have in statutorily responding. Unilateralism is also more likely when facing opposition if legislatures lack nonstatutory means of punishment, such as regulatory review. In the largest analysis of gubernatorial executive unilateralism to date, we use a new data set of 24,232 executive orders in the 50 American states between 1993 and 2013 to evaluate this argument and find strong support for its predictions. These results provide insights into how legislative policymaking capacity can influence the functioning of separation of powers systems.

Introduction

For centuries, institutional designers have debated the merits of distributing power between a legislative and executive arm of government (Hamilton, Madison and Jay 2009; Lijphart 2012; Montesquieu 1949; Tsebelis 1995). A primary argument for these arrangements 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, 263). The degree to which legislatures shape the exercise of executive power and the

mechanisms that underlie legislative influence on executives are questions of paramount importance in separation of powers systems. In few other realms is this concern so central as in the exercise of unilateral power, where executives may have a seemingly unfettered ability to bypass the legislative process in pursuit of their own preferred policies. The degree to which they limit their unilateral behavior in response to legislatures is potentially variable and relevant in a diversity of contexts, from the use of decree powers by Latin American presidents (e.g., Shair-Rosenfield and Stoyan 2017) to the issuance of presidential and gubernatorial executive orders in the United States (e.g., Mayer 2002; Sellers forthcoming).

There are frequently conflicting views on this issue. Public perception and media commentary in the United States, for instance, often suggest that executives are able to freely use unilateral actions as a way to sidestep and evade ideologically hostile legislatures.Yet studies of unilateral policymaking most often find evidence to the contrary: Presidents issue fewer executive orders under divided government (e.g., Chiou and Rothenberg 2017; Fine and Warber 2012; Young 2013), suggesting they curb their unilateral activity when their preferences are the most divergent from Congress. In this article, we seek to better understand the mechanisms that underlie these seemingly counterintuitive results and examine circumstances in which they do and do not hold.

We build upon previous theories of unilateralism and argue that legislatures possess, under particular circumstances, the institutional mechanisms and powers (which we refer to as *policymaking capacity*) necessary to induce executive restraint. Legislative majorities high in policymaking capacity can retaliate against executives who pursue unilateral policies that make them worse off relative to the status quo. This has important incentive effects for executives. Previous work has highlighted periods of divided government as times when executive incentives for unilateralism may be tempered by legislatures. We argue that this relationship is contingent on the legislature's ability to effectively respond to unfavorable policy changes and identify specific mechanisms that can produce patterns of constraint (and evasion). In this way, the divided government findings are not universal; rather, they depend on important factors in the political environment.

In brief, we argue that legislatures are inhibited from acting statutorily to counter the executive when ideological polarization is high or supermajoritarian veto-override thresholds are

insurmountable. Furthermore, when nonstatutory sanctions on the executive are unavailable to legislatures, their relative power is also diminished. In these cases, we argue that executives face few credible constraints from legislatures controlled by the opposing party and can thus more freely act unilaterally, in line with the "evasion" view of unilateralism. However, in the presence of large, unified majorities or significant extrastatutory tools, executives are hemmed in by legislatures, and less unilateralism should occur during divided government relative to unified. In other words, executive reactions to partisan division are conditional on the policymaking capacity of legislatures. Although previous studies have identified the importance of internal legislative fragmentation (e.g., Howell 2003) and extrastatutory mechanisms of constraint (Chiou and Rothenberg 2017) in shaping executive unilateralism, they largely do not examine how these factors can moderate the effects of divided government. Thus, our study contributes to this literature by delineating the conditional effects of these factors to identify important mechanisms for why and when executives adjust their unilateral strategies in the face of partisan opposition.

We evaluate this theory with an original data set of nearly 25,000 gubernatorial executive orders from all 50 states issued between 1993 and 2013. Focusing on the United States has a number of advantages over prior empirical investigations of unilateralism. Most previous work has examined a single time series at the federal level in the United States, leading to concerns about generalizability and lack of variation in key theoretical variables. For instance, nonstatutory powers are mostly constant at the federal level, offering little empirical leverage on their effects. Other key variables, such as polarization, evince far more variation in both magnitude and trends in the states. Furthermore, veto-proof majorities are incredibly rare in Congress, making it difficult to directly study veto power. We leverage this variation in the states to better identify the effects of interbranch partisan divergence on unilateralism and the mechanisms underlying it. As such, we offer the most extensive comparative study of executive order use to date, demonstrating the utility and generalizability of our theory. Our empirical results offer confirmation of our argument, suggesting that executives reduce unilateralism when facing divided government—but not always. Instead, we show that the relationship between interbranch conflict and unilateralism is contingent on a number of institutional factors. In doing so,

we illuminate mechanisms underlying patterns consistent with executive constraint that have been untested in previous work. Overall, this study contributes to our understanding of both *how* and *when* legislatures may limit executive power.

The Politics of Executive Policymaking

A central question surrounding executive power is whether executives employ unilateral directives to bypass hostile legislatures or whether they act, to some extent, in accordance with legislative preferences. While the former behavior (termed "the evasion hypothesis in the existing literature") may seem intuitive, previous federal policymaking studies consistently find evidence to the contrary: Presidents issues fewer unilateral directives during periods of divided government (e.g., Chiou and Rothenberg 2014, 2017; Howell 2003). Despite the prevalence of this finding, the political dynamics that underlie it remain opaque in existing work. As Mayer notes, "we do not have a complete understanding of the interbranch dynamics of unilateral actions" (2010, 441).

Here, we build upon previous work to understand the mechanisms through which legislatures may curb executive action and, consequently, the conditions under which executives show restraint in the face of interbranch disagreement. We argue that opportunities for legislative action that could impose costs on executives are a key factor that underlies the relationship between divided government and unilateralism in previous work, even if legislatures are unlikely to directly overturn orders. However, the presence of these opportunities is by no means assured, and their absence provides executives a freer hand. Our contribution is to highlight the role of a number of lawmaking-related and nonstatutory factors that may underlie the relationship between divided government and unilateralism. Although some of these factors have been previously mentioned as potential determinants of unilateralism, generally, scholars have not directly examined how such determinants may underlie and condition interbranch partisan or ideological effects.

We begin by noting that executives can use unilateral directives as a meaningful tool to impact policy outcomes (Cooper 2002; Howell 2003). They most frequently instruct agencies on how to implement the law and shape the executive branch in ways that facilitate the executive's policy agenda. Through unilateralism, executives can move policies closer to their preferred positions

relative to what they might obtain through the legislative process. This is especially true given supermajority requirements that can skew policies towards more extreme pivotal legislators, even when the legislative majority is ideologically in line with the executive (Krehbiel 1998).

Affecting policy this way is not costless. It takes time, effort, and coordination to develop an order, leading executives to absorb transaction and opportunity costs (Rudalevige 2012). Orders can also garner costly public scrutiny and opposition (Christenson and Kriner 2017; Reeves and Rogowski forthcoming) and may be short-lived (Thrower forthcoming). As such, executives are reticent to issue them if legislatures will react negatively by overturning the order or inflicting some other punishment on the executive branch through statutory or nonstatutory means.

Executives appear then to have the greatest motivation to act unilaterally when legislative majorities do not share their preferences, notably during periods of divided government. In times of partisan division, legislative outcomes will be less favorable towards executives relative to periods of unified government, incentivizing them to use unilateral directives to avoid these suboptimal outcomes. Yet, empirical research at the federal level has generally found the opposite result— divided government is associated with fewer executive orders. To obtain predictions that align with these empirical results, formal models of executive action have assumed that presidents can only move policy within a discretionary window and in the direction of the majority-party median, thus introducing partisanship into preference-based theories of policymaking (Chiou and Rothenberg 2014, 2017; Howell 2003)[1] Under this majority-party directional assumption, when the executive and legislative majority disagree, there are relatively fewer possible status quos that can be moved in mutually beneficial ways, leading to fewer executive orders during periods of divided government. Ostensibly, this requires that the legislature be able to compel this type of executive behavior through some retaliatory mechanism. Executives, having incurred substantial costs to develop executive orders, are wary to have them overturned and perhaps incur additional costs associated with a legislative rebuke.

Under unified government, two incentives then lead to greater unilateral action compared to divided government according to these theories. First, there is more interbranch policy agreement. This expands the set of policies that the executive can

unilaterally change that would also benefit the legislative majority and satisfy the directional assumption described above. Second, even though legislative outcomes will be better on average for executives under unified government, unilateralism may still be preferred given the role of critical legislative veto pivots who can potentially skew policy outcomes (Krehbiel 1998). As Chiou and Rothenberg write of the unified/divided government prediction, "it can only hold when assuming that [the ideal point of the majority party median] directionally constrains presidential action" (Chiou and Rothenberg 2017, 59). Further, Chiou and Rothenberg (2014, 2017) demonstrate that this directional assumption is well-supported empirically, finding that the implications of models that relax the assumption do not fit the federal executive order time-series data nearly as well.

How, then, do legislative majorities compel executives to limit their unilateral activity in this way? We now consider some ways in which legislatures induce this type of behavior. In general, one can imagine two strategies legislative majorities can employ to defend their interests. First, they could pass statutes that revise or overturn the order (e.g., Howell 2003) or that inflict costs on the executive in some other way. Second, legislators could use nonstatutory mechanisms to discipline executive behavior or retaliate, as Chiou and Rothenberg (2017) speculate. These tools might take the form of legislative vetoes of executive branch actions, blocking appointments, or engaging in oversight.

Here, we consider situations where threats of legislative retaliation may or may not be credible to identify potential empirical implications if these factors indeed underlie patterns of constraint in previous work. In some cases, a legislature may be unable to sanction an executive who moves policy in a way that does not benefit the majority party. If legislative sanctions are not credible threats, executives will use more unilateral orders during periods of divided government. Thus, we argue, executives may not always reduce their unilateral activity during periods of interbranch partisan conflict, and under some conditions, may actually exercise higher levels of unilateralism.

First, we consider potential statutory responses to unilateral action and their incentive effects for executives. These could take two forms—direct revision of the order or an indirect statutory response that imposes costs on the executive. While the former is the most straightforward option, it is unlikely to occur. Legislatures can adjust policies that have been moved by the

executive through statute, but strategic executives will place policies in the gridlock interval to avoid this scenario.[2]

Though direct revision may be rare, legislatures could use statutes to otherwise punish executives that move policy away from the legislative majority. This might take the form of passing laws that stymie the implementation of an order by defunding it or imposing a limitation rider if the action does not have a specific budget account (MacDonald 2010). Other possibilities include laws limiting the executive's power to politicize agencies and/or requiring confirmation of nominees. Additionally, they could pass legislation that does not incorporate executive policy demands or could refuse to act altogether on issues that are not salient to them. These impose real costs on executives; however, there are a number of factors that may inhibit a legislature's ability to respond via lawmaking in these ways (Moe and Howell 1999).

Legislation passed in U.S. separation of powers systems is subject to executive veto. Executives are certain to veto bills that alter their unilateral actions or otherwise impose costs on them. Unless the legislature is able to overcome often cumbersome supermajority requirements for overturning a veto, the prospect of statutory sanction will not deter executives. In other words, when there is not a sufficiently large coalition to override a veto, executives possess greater incentives to unilaterally evade an unfriendly legislature. However, if the executive from the opposing party of the legislature has a veto-proof majority, then statutory retaliation is a real possibility. In these cases, the legislature has both the will and ability to respond. Thus, we should observe less unilateralism during divided government when veto-proof opposition exists.

We also expect that polarization will moderate the effects of interbranch conflict on executive action. Internal polarization affects the ability of legislatures to punish the executive through statutory means. Whether or not the majority party can mobilize enough legislators (including some from the minority party in the case of marginal majority sizes) to pass a veto-proof law is a particularly salient consideration for an executive contemplating unilateral action unfavorable to the legislative majority party. When polarization is high, statutory retaliation against a unilateral action becomes difficult because sufficient levels of mobilization across party lines are less likely. Therefore, we expect executives to issue more unilateral orders during divided

government relative to unified. This is due to the comparatively larger policy gains that can accrue to executives who are able to move policy away from the preferences of an oppositional legislative majority without fear of retaliation.

On the other hand, when polarization is low, legislatures are better positioned to act against a unilateral policy given the relative ease in passing legislation. Majority parties can more easily pick off the votes of moderate members of the opposition party when responding to executive actions. Thus, executives are more willing to issue those orders that are mutually beneficial to them and the majority to avoid retaliation. Given there are relatively fewer opportunities for actions that both the executive and legislature agree upon during divided government, we would expect fewer directives under conditions of low polarization during divided government relative to unified.

We expect no effects of polarization or veto-proof majorities on executive incentives under unified government. Legislative majorities are unlikely to oppose unilateral action in this case because they share more of the executive's goals and preferences. Thus, the question of whether or not they can mobilize against the order is a much less important consideration for an executive contemplating unilateralism.

In sum, when legislatures can credibly challenge the executive through statutory means—such as during periods of veto-proof majorities or low polarization—executives are reluctant to move policies in ways that dissatisfy partisan majorities during divided government. However, when legislatures cannot overcome the veto pen or are less able to act because of internal gridlock, executives have a freer hand in moving policies. This logic leads to our first hypothesis:

H1 (Statutory Response Hypothesis): When barriers to legislative retaliation are low, executives issue fewer unilateral directives during divided government relative to unified government. As barriers to statutory retaliation increase, executives issue more directives during periods of divided government relative to unified government.

Legislatures may also be more or less capable of reacting to a unilateral directive *outside* of the normal legislative process, often in ways that do not require supermajorities. For instance, many legislatures can veto executive regulations before they have

the force of law and can sometimes do this without executive assent (Huber and Shipan 2002).[3] This may be a particularly relevant power given that executive action often spurs rulemaking proceedings (Cooper 2002). Similarly, they can use investigations and hearings to impact the implementation of executive actions and/or inflict political costs on executives (Kriner and Schickler 2016). These powers are examples of the types of "nonstatutory" factors that could play an important role in ensuring that executive actions move policy toward the majority-party median. Because they do not require supermajorities and in some cases are executed through committees, they bypass many of the collective-action problems identified in previous work emphasizing legislative weakness (Moe and Howell 1999). By imposing costs through these nonstatutory means (or the threat of them), legislatures may be able to deter executives from issuing unilateral actions that contravene the preferences of the legislative majority.

When such nonstatutory mechanisms are weak or absent, however, executives may be drawn toward greater unilateralism under some conditions given the lower likelihood of legislative retaliation. The logic is similar to that discussed above. During unified government, nonstatutory tools are relatively unimportant given that there is greater executive-legislative agreement over policies. If there is little incentive to deploy them in the first place, then their presence or absence is of little consequence for executives' calculations.

Under divided government, however, nonstatutory powers should play a more important role in executive strategic considerations. When contemplating a legislature with these powers, executives may be more likely to pursue actions that are mutually agreeable to the legislative majority. These opportunities are much more limited when partisan disagreement exists between these two branches of government. This leads to the hypothesis that when legislatures possess powerful nonstatutory tools, executives will be cautious and on average issue fewer unilateral orders during divided government relative to unified. However, when legislatures lack these tools, executives do not face this barrier. Given the relatively higher policy gains they enjoy from unilateralism under divided government relative to unified coupled with the absence of credible nonstatutory retaliation, we expect that executives will issue more unilateral actions during such interbranch division when nonstatutory powers are low. This leads to our second hypothesis:

H2 (Nonstatutory Response Hypothesis): When nonstatutory forms of sanctions are weak, executives issue more unilateral directives during divided government relative to unified. As nonstatutory factors strengthen, executives issue fewer directives during divided government relative to unified government.

In sum, we argue that, consistent with previous work, the degree to which executive unilateralism is affected by divided government depends fundamentally on both intralegislative politics as well as a legislature's institutional powers. The ability to pass legislation over the objections of the executive, occurring during periods of low polarization or large veto-proof majorities, allows legislatures to challenge executives who may have incentives to pursue unilateral policies during periods of partisan division. Nonstatutory powers, such as a legislative veto or regulatory oversight, can also facilitate greater legislative muscle. Consequently, executives may be more reticent to unilaterally move policies away from legislative preferences, reducing the incidence of particularly conflictual orders.

However, when these nonstatutory factors are weak and when executives can expect to foil statutory sanctions with vetoes, they have less to fear from acting unilaterally. This, in turn, gives executives greater opportunities to unilaterally impose policies that make the legislature worse off. This argument highlights specific legislative powers that might lead to unilateralism patterns consistent with constraint and demonstrates important interdependence between divided government and legislative politics in affecting unilateralism.

While previous work does recognize the importance of internal legislative fragmentation and nonstatutory legislative powers in constraining executive unilateralism (e.g., Chiou and Rothenberg 2017; Howell 2003), the literature largely studies these effects in isolation. Here, we consider how such factors can moderate the effect of divided government on unilateralism and therefore identify the interactive conditions most conducive for executive restraint.[4] Our inquiry is also distinct from much of the previous work on legislative capacity that solely focuses on material resources (e.g., Bolton and Thrower 2016) by highlighting the importance of policymaking capacity and the opportunities available to legislatures to challenge the executive. We now turn to an empirical evaluation of our theoretical framework and its

implications with an analysis of executive order issuance in the 50 American states states from 1993 to 2013.

Background

Executive orders are written directives issued by chief executives to instruct executive branch officials on implementing or interpreting the law. Although presidential executive orders are most well-known, every state governor issues them as well. Despite their commonality, some differences exist in their usage among state and federal governments.

At the federal level, the ability to issue executive orders is considered an inherent power of the president, as it is not explicitly granted by statutory or constitutional provisions. Presidents derive this power from vague language in Article II of the Constitution, most notably the "Take Care" clause (Belco and Rottinghaus 2017; Cooper 2002). On the state level, there is variation in the sources of unilateral power. Some governors use orders on the basis of inherent or implied powers claimed from the Constitution, statutes, or by nature of the executive office. Others are empowered by specific statutory or state constitutional language.

Chief executives use executive orders for various functions. They can create new programs, empower agencies to take particular actions, interpret existing statutes, or structure the executive branch (e.g., create, reorganize, or terminate agencies, modify policymaking procedures, and transfer authorities). Presidents and governors respond to emergencies with these orders, though the former can deal with international and economic crises while the latter mostly addresses natural disasters. Executive orders are also used for ceremonial purposes, such as commemorations or designating holidays.

Most importantly, state and federal executive orders are used to substantively influence policy processes and outcomes. For example, Governor George Ryan of Illinois issued an executive order in 2002 establishing the Illinois Agenda for Excellence in Education (E.O. 2002-1) that created several new programs, including a pilot universal preschool program as well new policies for complying with the No Child Left Behind law. In Alabama, Governor Jim Folsom issued a 1994 order that delegated authority to the State Department of Economic and Community Affairs concerning the administration of a drug abuse and violent crime

program, while also creating an accompanying advisory board (E.O. 26). See the online supporting information for more examples of substantive executive orders.

There is uncertainty as to when governors began issuing executive orders due to inconsistencies in records. 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 states, there is substantial variation in the frequency of their usage over time both within and between states. For instance, Georgia governors issue an average of 422 orders per year, while this figure is 5 for Connecticut chief executives, with other states falling somewhere in between.

Despite the prominence of gubernatorial executive orders, there is little research devoted to explaining 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 systematic explanations for state executive order use based on various political and institutional conditions over time and between states (although, see Cockerham and Crew Jr. 2017; Sellers forthcoming).

The literature on presidential executive orders is more extensive. Much of this research is concerned with whether presidents use this unilateral tool to bypass an opposition-controlled 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 2014; Chiou and Rothenberg 2017; Fine and Warber 2012; Howell 2003; Young 2013). Other work considers additional ways Congress can influence presidential decisions to act unilaterally, such as its internal fragmentation as well as the president's seat share and legislative success (Bolton and Thrower 2016; Howell 2003; Krause and Cohen 1997; Young 2013). 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, issue areas, and international crises (Belco and Rottinghaus 2017; Krause and Cohen 1997, 2000; Marshall and Pacelle 2005; Mayer 1999, 2002; Young 2013). Most of these theories have yet to be tested on the state level where

institutional, political, and economic variation is substantially more abundant. Finally, there is a small but growing literature on how legislative capacity influences unilateralism (Bolton and Thrower 2016; Cockerham and Crew Jr. 2017; Shair-Rosenfield and Stoyan 2017). This work focuses primarily on the the material resources legislatures possess. Our work on policymaking capacity is distinct in that it explores the opportunities that legislatures have to challenge executive power.[5]

Data and Methods

To evaluate our hypotheses, we gather data on gubernatorial executive orders issued in the fifty states from a combination of state governmental websites, registrars, and Lexis-Nexis.[6] While some states have data beginning in the 1800s, most states have available records of executive orders extending back into the mid-1990s. Thus, we have a complete panel for 28 states from 1993 through 2013 with the remaining states having partial coverage during this period for a total of 24,609 orders (see Table A1 in the online supporting information).[7]

Based on the presidential literature (e.g., Howell 2003; Mayer 2002; Warber 2006), we recognize the value in isolating policy-related orders because they best fit the theoretical conditions we outline. Thus, we exclude executive orders used for purely ceremonial functions, pardons, and those related to routine administrative tasks—leaving 15,762 orders. We detail the executive order collection and coding procedures as well as include examples of orders in Section 1 of the online supplemental materials. The analyses are robust to including and excluding various order categories (see Tables A5–A7 in the online supporting information).

We use negative binomial regressions to analyze the number of executive orders issued in each state-year.[8] We include state fixed effects to account for time-invariant state-specific factors that could confound our results, including differences in party systems and majority agenda control as well as possible differences in executive order practices, legal statuses, and attitudes (see Table A9 and Figures A4–A6 in the online supporting information for further discussion and robustness checks on these issues). Year fixed effects are also included to account for nationwide shocks affecting all states.[9] These data and models do not allow for the identification of clearly causal effects, but we chose the fixed effects and control variables to eliminate clear sources

of confounding. However, because we cannot randomly assign partisanship, preferences, or legislative institutional powers or find plausibly exogenous simultaneous variation in all of these factors, there is some possibility that time-varying state factors we are not controlling for could bias our results.

Our main independent variables of interest are divided government, whether the legislature has a veto-proof majority, legislative polarization, and the presence of nonstatutory powers. *Divided Government* is coded as "1" if the governor is from an opposing party to the majority of at least one chamber of the legislature, and "0" otherwise.[10] We create a variable coded as "1" if there are *Veto-Proof Majorities* in both chambers of the legislature and "0" otherwise. Figure 1 displays the proportion of states with either divided government or a legislature with a veto-proof majority that is opposed to the governor. Veto-proof majorities are less common than divided government more generically; but, nevertheless, these supermajorities occur in approximately 10 percent of the state-years between 1993 and 2013.

Interestingly, significant variation in veto-override thresholds exists among state governments, as shown in Table 1. Many states require the same two-thirds majority to override gubernatorial vetoes as the federal level, while six states require simple majorities and 14 states have a three-fifths threshold. These lower thresholds increase the likelihood of legislatures obtaining a veto-proof majority, allowing enough variation for more direct

FIGURE 1
Percent of States with Divided Government or
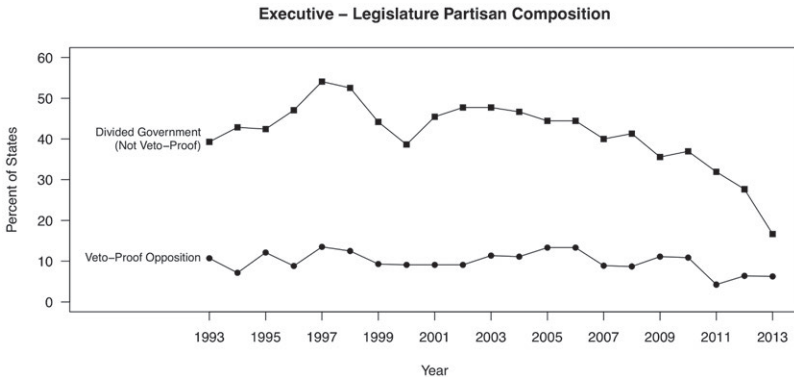Veto-Proof Majorities

TABLE 1
Veto Override Majority Threshold by State

Veto Override %	States
> 50%	AL AR IN KY TN WV
3/5 Majority	AK AZ CA CO
	CT DE FL GA
	IL MD NC OH RI
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

studies of veto power within states as legislative majority sizes move above and below the threshold more than at the federal level where the requisite supermajorities are rare (see Figures A1–A2 in the online supporting information for more descriptives).

To measure polarization, we use the Shor and McCarty (2011) ideal point measures for state legislators in each lower chamber, which have less missing values than the upper chamber.[11] We calculate the absolute ideological distance between the median Democrat and Republican in the lower chamber, *Lower Chamber Polarization*. Unlike the federal level, there is quite a bit of variation in polarization within states, with some states even experiencing depolarization at times (see Figures A7 and A8 in the online supporting information).

To measure nonstatutory factors, we collect data on one of the most salient powers that state legislatures maintain—the ability to delay or veto executive branch regulations without the consent of the governor (Huber and Shipan 2002). Regulation is one of the most consequential policymaking powers of the executive branch. By hampering regulation, legislatures can strike against governors who attempt to bypass them. Since unilateral directives often initiate rulemaking processes (Cooper 2002), regulatory review is a particularly powerful way to counter unilateralism. Using data from *The Book of States*, we construct two different variables. First, we create a scale of review powers, where "0" represents no legislative rule review power, "1" indicates that the legislature can review but not suspend rules, and "2" indicates that the legislature can suspend regulations (*Rule Review Scale*). Twenty states vary in this measure over the decades we examine. Second, we create an indicator variable, *Rule*

Review (Dichotomous), which takes the value of "1" if the legislature has the ability to review executive branch regulations and "0" otherwise. Nine states show variation on this blunter measure of review power in our data set.

While the degree of variation in polarization is different across states and not all states vary in terms of the nonstatutory factors, this analysis is still an important contribution to existing work. The vast majority of studies of unilateralism in the United States (beyond the exceptions noted previously) are based on a single case and time series—the federal level—which has no meaningful variation on nonstatutory factors and heavy trends in other variables of interest.

We also control for possible confounding variables that change within states. First, previous work argues that Democratic presidents should issue more executive orders than Republicans given their tendency to pursue more active agendas (Deering and Maltzman 1999; Fine and Warber 2012; Mayer 2002). As such, we include an indicator variable for the party of the governor (*Republican Governor*).

Second, scholars have long argued that executives with public support tend to have bargaining advantages with legislatures (Kousser and Phillips 2012). We include the governor's vote share in the previous election (*Govn'r Previous Vote Share*) as a proxy for popularity given insufficient data on gubernatorial public approval. However, voters tend to pay more attention to national politics over state and local affairs, often rewarding or punishing state politicians in accordance with opinions about the president of the same party (Rogers 2016). Thus, we suspect that presidential support may influence gubernatorial unilateral behavior and include the percent of the presidential vote won by the governor's party (*Presidential Vote for Govn'r Party*).[12]

Third, final-term governors face different incentives for action than those earlier in their term, being more motivated by securing their legacies or seeking higher office than avoiding legislative sanctions (Kousser and Phillips 2012). Evidence suggests that governors also face slumps in midterm elections that diminish their majority sizes over time (Folke and Snyder 2012). We include an indicator for a governor's final term in office (*Term Limited*). Similarly, the incentives for unilateral action may change during election years, when executives seeking re-election for themselves or members of their party may be vulnerable to public scrutiny, which could lead to blame-game-type dynamics

in periods of divided government (Groseclose and McCarty 2001). Thus, we include a variable indicating any gubernatorial election year (*Governor Election Year*).[13]

Next, institutional powers of the governor could influence both the frequency of unilateralism as well as the development of various legislative powers and resources within a state. Thus, we include a general measure of *Gubernatorial Institutional Power* based on a modified Beyle (2008) index, which includes information on gubernatorial tenure potential, appointment powers, budgetary powers, and veto powers.[14]

We also control for conditions related to the state's legislature and economy. Legislatures' institutional resources could influence their performance as an effective policymaking institution and thus their ability to constrain executive action. Recent studies also suggest that resources are related to polarization in a state (Hinchliffe and Lee 2016). We control for legislative professionalism using measures of *Legislator Salary* and the number of *Legislative Staff*.[15]

Governors may be impelled to use executive orders in response to economic crises, as was the case during the 1970s at the federal level. Economic outcomes may also have implications for the electoral fortunes of gubernatorial copartisans. As such, we include *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.[16]

Results

We now turn to our empirical analyses of both the statutory and nonstatutory response hypotheses. We find strong support for each hypothesis and include many additional robustness checks in the online supporting information, as referenced throughout this section.

Statutory Retaliation

Table 2 displays the coefficients from models evaluating Hypothesis 1 (the statutory response hypothesis). The first model shows no statistically significant unconditional relationship between divided government, veto-proof majorities, or political polarization and the frequency of executive orders. This is

TABLE 2
Statutory Retaliation—Negative Binomial Models

Variable	Model 1	Model 2	Model 3
Divided Government	0.004 (0.05)	0.09** (0.04)	−0.45* (0.23)
Veto-Proof Majority	0.02 (0.11)	0.11 (0.11)	0.02 (0.11)
Lower Chamber Polarization	0.11 (0.21)	−0.01 (0.21)	−0.04 (0.21)
Divided Government × Veto-Proof Majority		−0.62*** (0.23)	
Divided Government × Lower Chamber Polarization			0.31** (0.14)
Rule Review (Scale)	0.01 (0.07)	0.06 (0.06)	0.04 (0.07)
Governor Institutional Power	−0.28*** (0.10)	−0.27** (0.11)	−0.30*** (0.10)
Presidential Vote for Govn'r Party	0.85** (0.39)	0.74** (0.33)	0.95** (0.37)
Govn'r Previous Vote Share	−0.26 (0.41)	−0.37 (0.43)	−0.37 (0.42)
Republican Governor	−0.25*** (0.07)	−0.19*** (0.06)	−0.22*** (0.06)
Governor Election Year	−0.12** (0.05)	−0.12** (0.05)	−0.12** (0.05)
Term Limited	−0.16*** (0.06)	−0.15** (0.06)	−0.16*** (0.06)
Ln(Legislative Staff)	0.09 (0.10)	0.07 (0.09)	0.06 (0.10)
Ln(Legislative Salary)	0.06 (0.09)	0.03 (0.08)	0.06 (0.09)
Ln(State Income Growth)	−0.01 (0.01)	−0.01 (0.01)	−0.01 (0.01)
PseudoR^2	0.22	0.22	0.22
LogLikelihood	−2389.58	−2376.36	−2382.95
N	752	752	752

Note. Coefficients reported from negative binomial regression models, with robust standard errors clustered by governor in parentheses. All models include state and year fixed effects. $^{*}p < .1$, $^{**}p < 0.05$, $^{***}p < 0.01$, two-tailed tests.

consistent with our expectations, however, as this model lumps together conditions in which policymaking capacity is high and low, producing countervailing effects that result in small and insignificant results. Given that we are exploring many different theoretical contexts, our models must take into account the important interactions between these factors that we outline in our theory. When accounting for the conditional effects of partisan conflict and policymaking capacity on unilateralism, the expected relationships emerge.
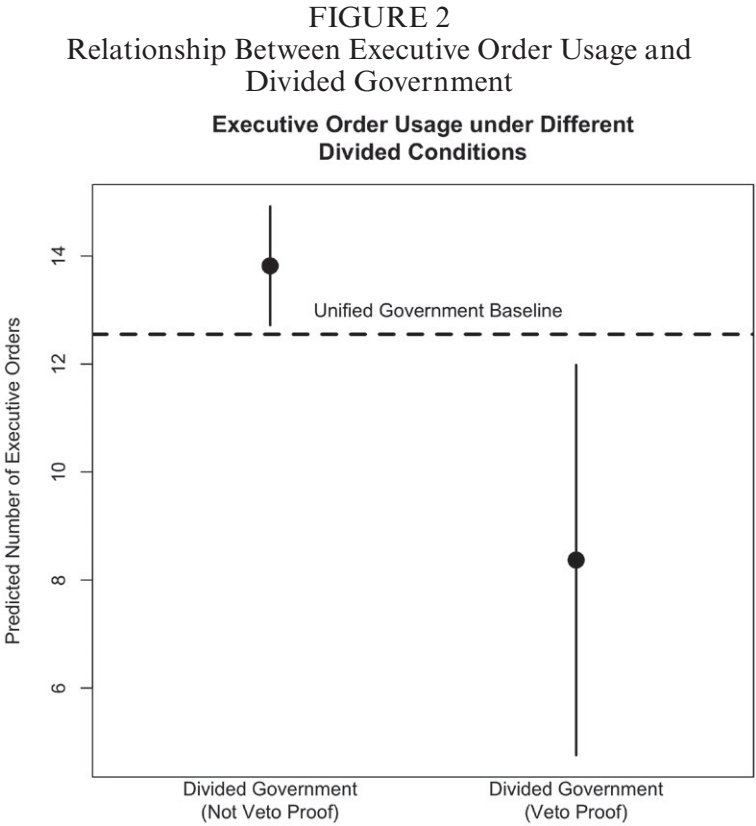
As previously argued, executives should issue more unilateral orders under divided government when the threat of statutory retaliation is low. We find evidence of this relationship in

Models 2 and 3 of Table 2 by interacting divided government with both veto-proof majority and polarization. First, the results in Model 2 show that divided government without a veto-proof majority is significantly associated with greater executive order use. In particular, governors issue 10% more orders per year during times when legislatures lack a veto-proof majority under divided government relative to unified. These results are consistent with the idea that executives rely more on unilateralism when legislatures cannot credibly sanction their actions through the statutory process and identify important political contexts in which evidence consistent with the "evasion" hypothesis may exist.

Model 2 also reveals that unilateral actions diminish when oppositional legislatures obtain a veto-proof majority. On average, governors issue four fewer executive orders per year when divided government occurs with a veto-proof majority relative to unified. This effect is equivalent to a 51% percent decrease in order usage. These results are consistent with our theoretical framework, suggesting that executives exercise restraint when facing sufficiently strong oppositional legislative majorities. Figure 2 displays these estimated effects, showing a significant difference between the predicted number of executive orders under divided government with and without a veto-proof majority.

Next, we examine how polarization conditions the relationship between partisan division and executive unilateralism. We previously argued that during divided government, highly polarized legislatures should empower executives from the opposing party to act but that reduced polarization should lead to fewer executive orders during divided government. By interacting these variables in Model 3, we find evidence for this prediction. As expected, the estimated coefficient for this interaction is large, positive, and statistically significant, in line with the idea that polarization moderates the effect of interbranch partisan division in the expected ways.[17]

At the median observed levels of polarization (1.38, about the level of polarization in Florida in 2001), the difference in the predicted number of executive orders between divided and unified government is statistically indistinguishable from zero. At the 10th percentile of polarization (0.86: WV-2003), executive order use decreases by two per year under divided government relative to unified. However, at the 90th percentile (2.05: WA-2010), governors issue an additional two orders per year during

FIGURE 2
Relationship Between Executive Order Usage and
Divided Government

**Executive Order Usage under Different
Divided Conditions**

executive-legislative partisan conflict relative to periods of unity. This represents a roughly 21% increase.

Figure 3 depicts these results visually. The solid black line represents the difference in the predicted number of executive orders under various levels of polarization between divided and unified government. The figure suggests that the effect of divided government is increasing in polarization. As hypothesized, this relationship is positive under divided government when polarization is high. Furthermore, there is no statistically significant relationship when polarization is less severe, and there is even a negative and significant relationship when polarization is at its lowest observed levels. The stipple points along the x-axis show the distribution of polarization in the data.

All three models in Table 2 indicate that a number of other related factors are associated with executive order prevalence.

FIGURE 3
Relationship Between Executive Order Usage and Polarization
Under Unified and Divided Government

Marginal Effect of Divided Government at Different
Levels of Polarization
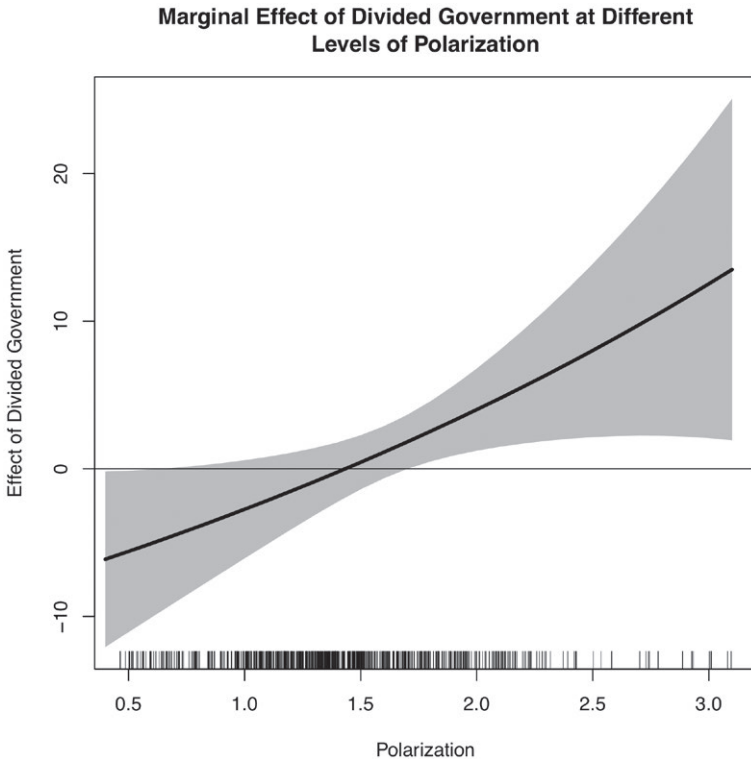
For instance, unilateralism is positively related to a governor's party vote share in presidential elections but is not significantly correlated with gubernatorial vote share itself. Moreover, governors issue fewer orders during an election year. Interestingly, governors with more institutional powers tend to issue significantly fewer executive orders, perhaps suggesting an increased reliance on other tools when available. Contrary to federal-level findings (Mayer 1999; Warber 2006), we find that governors rely less on unilateralism during their final years in office as a result of term limits. As expected, Republican governors tend to issue fewer executive orders than Democratic executives. Finally, legislative professionalism (staff and salary) appears to be unassociated with levels of order usage. State-level economic factors are apparently unrelated as well.

Nonstatutory Retaliation

We now consider Hypothesis 2 (the nonstatutory retaliation hypothesis) and investigate situations when legislatures may be more or less capable of reacting to an executive action *outside* of the normal legislative process. Although previous theoretical work has asserted that legislatures may use nonstatutory devices as a means to check executive unilateralism, this has not been systematically examined given the relative lack of variation in these powers at the federal level.

We explore the impact of regulatory review in moderating the effect of divided government in Table 3. The variable we use in Model 1 takes on three values. Legislatures with both the power to review potential rules and the power to suspend these rules are coded with the highest scores. Model 2 of Table 3 measures rule review using a dichotomous variable rather than a three-point scale. During periods of divided government, we expect legislatures with greater review powers are better positioned to react to a unilateral directive outside of the statutory process, leading to fewer executive orders. The results in Table 3 support this conjecture, showing that governors issue significantly fewer executive orders under divided government when legislatures possess greater review powers compared to when they are absent.

Figure 4 shows the substantive effect of this difference using the results of Model 1. In states without legislative rule review, governors issue approximately 4.8 more executive orders per year during divided government relative to periods of unified. However, when a state allows for legislative suspensions of rules, the effect is reversed. In this case, the predicted number of orders issued in divided government is actually lower than during unified government (by approximately three per year). Thus, consistent with Hypothesis 2, when sanctioning tools are available to the legislature outside of the statutory process, executives reduce unilateral activity when facing a legislature run by their partisan opposition. The reverse is true when legislatures do not possess these strong nonstatutory powers, producing patterns consistent with the evasion hypothesis in the existing literature.[18]

With respect to the remaining control variables, the results are largely similar to those reported in Table 2. Republican partisanship, gubernatorial institutional powers, election years, and final years in office due to term limits are all negatively associated with executive orders, while presidential vote share for the

TABLE 3
NonStatutory Retaliation—Negative Binomial Models

Variable	Model 1	Model 2
Divided Government	0.23** (0.10)	0.39*** (0.11)
Rule Review (Scale)	0.09 (0.07)	
Rule Review (Dichotomous)		−0.02 (0.14)
Divided Government × Rule Review (Scale)	−0.18** (0.08)	
Divided Government × Rule Review (Dichotomous)		−0.44*** (0.14)
Veto-Proof Majority	0.04 (0.11)	0.03 (0.11)
Lower Chamber Polarization	0.14 (0.20)	0.16 (0.21)
Governor Institutional Power	−0.29*** (0.11)	−0.33** (0.12)
Presidential Vote for Govn'r Party	0.91** (0.38)	0.84** (0.37)
Govn'r Previous Vote Share	−0.22 (0.41)	−0.18 (0.40)
Republican Governor	−0.29*** (0.08)	−0.29*** (0.08)
Governor Election Year	−0.12** (0.05)	−0.11*** (0.05)
Term Limited	−0.17*** (0.06)	−0.19*** (0.06)
Ln(Legislative Staff)	0.08 (0.10)	0.09 (0.10)
Ln(Legislative Salary)	0.07 (0.09)	0.07 (0.09)
Ln(State Income Growth)	−0.01 (0.01)	−0.01 (0.01)
PseudoR^2	0.22	0.22
LogLikelihood	−2385.91	−2383.01
N	752	752

Note. Coefficients reported from negative binomial regression model, with robust standard errors clustered by governor in parentheses. All models include state and year fixed effects. *$p < .1$, **$p < 0.05$, ***$p < 0.01$, two-tailed tests.

governor's party is positively related. As before, the coefficients for legislative staff, salaries, and state economic growth are small and statistically insignificant.

A final question that arises is the degree to which statutory and nonstatutory retaliation are complementary or substitutable. We argue either should be sufficient to limit executive unilateralism. Given that simple majorities (or smaller in the case of gatekeeping and oversight powers employed by legislative committees) are sufficient to pursue nonstatutory means of imposing costs, majority size or polarization between the parties should not be necessary if legislatures possess these powers. Similarly, legislatures with large enough coalitions to punish the executive through the statutory process should be sufficient enough on their own to credibly react to an executive action, irrespective of their nonstatutory tools.

FIGURE 4
Rule Review and Executive Order Usage During Divided
Government
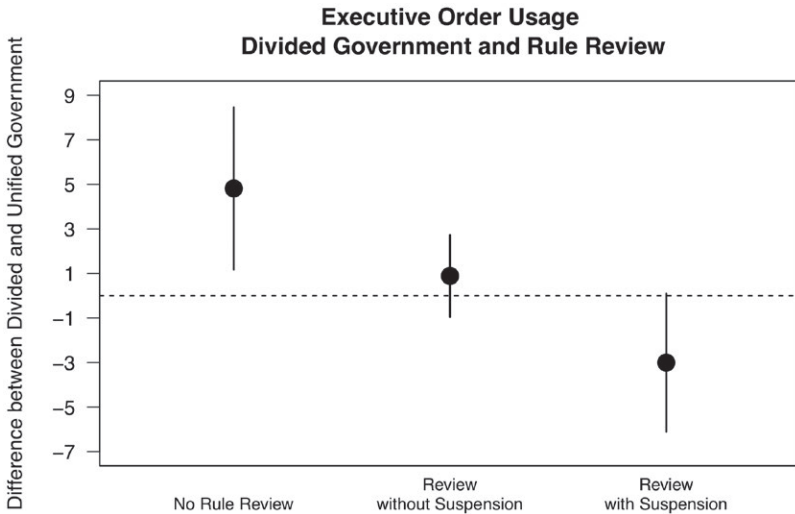
We test this contention in the online supporting informa-
tion, where we examine whether polarization, veto-proof majori-
ties, or legislative rule review alone is sufficient to lead to patterns
of constraint when the other factors are absent. The purpose of
these tests is to better identify if polarization, veto-proof majori-
ties, and rule review by the legislature are sufficient or simply
necessary conditions for limiting the actions of the governor. In
other words, do we see governors issuing fewer executive orders
if only one of these factors is present while the other two are not?

To examine this question, we conduct the above analysis in
a variety of different situations where two of the three key fac-
tors examined are absent to see if the other still has an effect on
executive behavior. We subset our data set in four ways: (1) ob-
servations with higher than average polarization, no veto-proof
majorities, and no legislative power to suspend rules; (2) obser-
vations with higher than average polarization and no legislative
power to suspend rules; (3) observations with higher than average
polarization and no veto-proof majorities (as at the federal level
in the United States); and (4) observations with no veto-proof
majorities, and no legislative power to suspend rules. The first

condition corresponds to a situation where legislatures are least powerful on the dimensions we examine. Here we expect governors to issue *greater* numbers of orders during divided government. The second through fourth conditions are ones in which the legislature possesses, only one of the three types of powers we examine (i.e., veto-proof majorities, low polarization, or legislative power). In those cases, if they are substitutable powers, we expect to find governors issuing *fewer* executive orders during divided government. The regression results for these models are reported in Models 1–4 of Table A19 in the online supporting information.

When nonstatutory and statutory tools are both weak or absent (Table A19, model 1), we estimate a positive effect of divided government. This result is in accordance with the idea that governors are free to act when legislatures lack these retaliatory mechanisms. In the other three subsets, where two of the three mechanisms of constraint are absent, we still estimate substantively similar effects as those reported earlier, suggesting that each factor is a potentially sufficient condition for curbing unilateralism. This is consistent with our argument and helps us to understand federal-level dynamics as well. Despite high polarization and marginal majorities since the 1970s, Congress still has a variety of the nonstatutory tools at its disposal, such as oversight, which may be the reason presidents have been more circumspect in their use of unilateral tools during the post-World War II era.

In sum, these findings suggest that executives could be responsive to legislatures' levels of policymaking capacity when engaging in unilateral action. When the legislature does not have sufficient majority sizes to overcome an executive veto, is divided internally because of high levels of polarization, or lacks substantial nonstatutory powers, its ability to react against an executive is significantly diminished. In these cases, we observe greater unilateralism with more potential for executives to move policy against legislative preferences. These results are consistent with the idea that when the balance of institutional power between the legislature and executive tips towards the latter, executives can take advantage of the situation by pursuing unilateral strategies during periods of divided government with less fear of legislative retaliation. The results also illustrate the important interactions between interbranch and intrabranch politics in influencing executive unilateralism.

Discussion and Conclusion

This article sheds light on a question that has confronted constitutional designers throughout time- –when and how can the exercise of executive power and action be influenced by other actors? When it comes to unilateralism, political scientists have consistently found that the executive branch appears restricted by the legislature during divided government. However, we argue and show this depends upon political and institutional contexts.

We examine conditions under which the legislature's ability to retaliate against an executive is more or less strong and how that influences the exercise of unilateral power during periods of partisan conflict. Testing our theory in the United States, we find that governors issue more executive orders under divided government when oppositional legislatures have the most difficulty stifling executive power—when polarization is high, veto-proof majorities are absent, and they lack extrastatutory means of reacting to the executive branch through regulatory review. We find evidence that governors are able to exploit legislative weakness and use unilateral actions to evade hostile legislatures in these contexts. However, when one or more of these factors is present, governors issue fewer orders under divided government. These findings suggest that chief executives do not always exercise restraint when it comes to facing their legislative opponents. Instead, they are more likely to do so when the legislature's ability to retaliate is strong.

Our study demonstrates the importance of the legislature's policymaking capacity in moderating the effects of interbranch disagreement on the use of unilateral executive power. While previous work has focused primarily on the relationship between executive-legislative partisanship or legislative gridlock in isolation, an executive's calculations about likely legislative reactions must take into account the challenges that legislatures face when seeking to respond to executive action. In particular, our work promotes the idea that these two factors interact with one another in important ways.

This article also highlights the benefits of using comparative, subnational data to better understand the dynamics of executive policymaking in the United States. Although a multitude of studies examine presidential uses of executive orders, they are limited in their explanatory power given their focus on a particular time series. This, in turn, limits our ability to make inferences about

executive power and the institutional features that facilitate or restrain it. The states offer exciting variation both in institutional arrangements as well as important variables of interest such as veto thresholds, polarization, and extrastatutory sanctions.

Beyond the 50 states, our argument may be applicable in other separation of powers systems, particularly those with executive decree authority such as in several Latin American countries, and to a lesser extent, Italy and France (Carey and Shugart 1998). The results from the federal level in the United States, which has been the primary system of study in past work, can also be rationalized in the context of our results. While one might think that high polarization or marginal majorities will stymie congressional responses and lead to more unilateralism, this article provides insights (consistent with the theoretical work of Chiou and Rothenberg [2017]) about the centrality of nonstatutory tools that require simple majorities (such as advice and consent powers, oversight, and agenda control) in limiting presidential power. Congress possesses strong nonstatutory powers that do not require supermajorities (or even majorities) to exercise that result in high policymaking capacity. These nonstatutory powers may be the reason why presidential unilateral actions have been constrained during periods of divided government in recent years, despite high levels of polarization and weak majorities in Congress.

This article is only a first step in beginning to explore the important factors that shape legislatures' abilities to check executive power and the ways in which governors and presidents can take advantage of legislative incapacity. For instance, legislative professionalism, resources, and expertise differ greatly across states and might be an important factor in influencing gubernatorial behavior. While previous work has focused on the role of legislative resources for expertise (such as personnel and spending) in moderating partisan conflict in a variety of contexts, including the United States (Bolton and Thrower 2016; Cockerham and Crew Jr. 2017; Shair-Rosenfield and Stoyan 2017), additional types of resources might be explored. Furthermore, these previous studies are distinct from ours in that they mostly focus on the material resources of legislatures. In our article, we argue that political opportunities and policymaking resources may also be an important dimension of capacity worth studying. Future research should work to synthesize these two domains of legislative capacity by exploring how they interact and which is more important in influencing both legislative and executive behavior.

To this point, work on executive unilateralism, including this article, has struggled to adequately account for the demand for executive orders given that we only observe their issuance and not the universe of opportunities for executive unilateralism. Thus, inferences about decisions over whether to issue an executive action are necessarily indirect and limit the causal claims about evasion, constraint, partisanship, and preferences we can make. Future work addressing this issue would be a major advance. A related area of interest may be the relative influence of partisanship versus preferences in determining unilateral outcomes. Our argument and approach does not allow us to distinguish between preference and partisan-based accounts of legislative power and organization. The states may provide future scholars a way to understand these dynamics better in the context of unilateral power. Relatedly, future research might explore how the effects of other measures of intralegislative partisan and ideological discord, such as majority-party size and unity, might be moderated by policy-making capacity. Beyond the legislative branch, scholars should also consider the conditions under which the courts and executive branch agencies could also impose meaningful constraints on the unilateral behavior of chief executives.

Finally, some governors, like presidents, have other unilateral tools at their disposal beyond executive orders. States such as West Virginia, Texas, and Alaska allow their governors to issue proclamations to citizens on matters related to states of emergency, special legislative sessions, and holidays or commemorations. Other state governors (e.g., Illinois and Alaska) can issue administrative orders tasked with managing daily executive branch functions. Future researchers could examine how our theoretical arguments apply to these other types of directives. Yet, we note that executives orders are unique in that they are the only unilateral tool issued by the governor in every state. Exploring these and other factors has the promise of further illuminating separation of powers politics and executive policymaking in the states as well as more broadly in other comparative contexts.

Michael Barber <barber@byu.edu> *is an assistant professor of political science at Brigham Young University. Alexander Bolton* <abolton@emory.edu> *is an assistant professor of political science at Emory University. Sharece Thrower* <sharece.d.thrower@vanderbilt.edu> *is an assistant professor of political science at Vanderbilt University.*

NOTES

1. Of course, this alone is not sufficient for disentangling the relative influence of parties versus preferences in affecting outcomes. Our aim in this article is more limited in focus, centered on understanding how partisan effects may interact with preferences to some degree, that is, through polarization. For one path forward for understanding the relative effects of partisanship versus preferences in unilateralism, see Chiou and Rothenberg (2017).

2. If executives err due to uncertainty about legislative preferences (e.g., Cameron 2000), for instance, we might expect this type of statutory action following an unilateral order.

3. This practice was proscribed at the federal level in *INS v. Chadha*, though it persists informally (Fisher 2005). State constitutions are not affected by *Chadha*, and the practice is widespread at the subnational level.

4. Chiou and Rothenberg (2017, 58) also predict an interactive effect, though different than ours. Their model generates a prediction that the effect of polarization will be increasing in unified government, but they do not test it given limitations in sample size and variation using federal-level data.

5. In the conclusion, we speculate further on the ways in which these domains of capacity—opportunities and resources—interact.

6. The analyses exclude Nebraska given that its unicameral, nonpartisan legislature creates problems when examining partisan-based hypotheses.

7. We drop states with only a few years of data and those without balanced panels, and we iteratively drop every state finding that does not change our results (see Tables A13 and A14; Figures A4–A6 in the online supporting information).

8. We also use ordinary least squares and models with logged dependent variables as alternative specifications (Table A16 in the online supporting information).

9. We also ran models with governor fixed effects (Table A8), but do not focus on them 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, e.g., Allison and Waterman 2002). The results are substantively similar but less precisely estimated, given the low levels of variation within governorships.

10. See Klarner (2003). The results are robust to examining instances where *both* chambers of the legislature are opposed to the governor (Table A17 in the online supporting information). We omit third-party governors from the analysis given ambiguities about coding divided government in these cases, but the results hold with their inclusion (Table A12).

11. We use different measures of polarization based on the upper chamber, chamber average, campaign contributions, and other measures of dispersion in the legislature (Table A11). All produce consistent results.

12. These data come from The Dave Leip Election Atlas at https://uselectionatlas.org/.

13. These data come from Klarner (2003) "Governors Dataset" at https://dataverse.harvard.edu/dataset.xhtml?persistentId=hdl:1902.1/20408.

14. We take the average score of those four indices for each available state-year. We exclude factors, such as organizational power and election procedures, that were not consistently available across time. We exclude governor party since we use that as another independent variable. The four remaining factors were measured in 1948, 1960, 1966, 1968, 1980, 1988, 1994, 1998, 2000, 2001, 2002, 2003, 2005, and 2007. We use linear interpolation to fill in the gaps between years in our data set. Krupnikov and Shipan (2012) show the Beyle index is problematic over time because budgetary power is measured differently beginning in 1994. In a robustness check, we drop years prior to 1994 (i.e., 1993), and our results are unchanged (see Table A10 in the online supporting information).

15. These data come from *The Book of States* and the National Conference of State Legislatures. See Table A2 for further information regarding their within-state variation

16. We test models in the online supporting information with additional control variables such as government spending, none of which substantively affect the results.

17. In the online supporting information, we present similar models using different measures of polarization (Table A11).

18. While we evaluated each hypothesis with separate interaction models, Table A19 in the online supporting information contains a model that combines all of the interactions in the same model; this model produces substantively identical results.

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Supporting Information

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

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FIGURE A5. Coefficient Sizes for Models that Omit One State
FIGURE A6. Coefficient Sizes for Models that Omit One State
FIGURE A7. Trends in Polarization by State—Difference in Party Medians (Shor and McCarty Data)
FIGURE A8. Trends in Polarization by State—Difference in Party Medians (Shor and McCarty Data)