State Legislatures and Agency Policy-Making: An Examination of Legislative Influence over Bureaucratic Action

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Abstract

Given the necessity of delegating authority to bureaucracy to implement public policy, a central question in a democratic system is how elected officials seek to maintain control their authority when administrators might pursue their own preferences. While having been challenged at a conceptual and empirical level, the use of ex ante control mechanisms are a plausibly efficient response to delegation problems. We attempt to accomplish two objectives in this paper. First we develop a logic of macro-level ex ante control mechanisms by examining the utility of state legislative rulemaking review. Second, we test this mechanism by looking not only at its use in facilitating greater influence over bureaucratic rulemaking activity but also by testing how political contextual factors combined with variable levels of ex ante review authority to jointly produce legislative influence over state bureaucracy. We use data from Deil Wright's American State Administrator Project and find evidence demonstrating ex ante control does significantly affect influence over bureaucracy and, further, that use of that control capacity is contingent on factors like legislative-executive partisan conflict and the nature of state interest group environments.

I. Introduction

Public policy implementation necessarily entails the delegation of authority from elected officials to bureaucratic personnel. The question of how elected officials seek to maintain their authority over policy-shaping decisions by bureaucrats once delegation occurs has occupied a great amount of scholarly attention. In a democratic system the question is trenchant because the informational and technical complexity of so many public policy areas affords the possibility of agency policy-making. This means that elected officials may not be able to provide an effective "democratic check" on the modern administrative state. Likewise, from the narrower perspective of an elected official, the possibility of limited effective control over policy implementation creates potential political/electoral difficulties. So for normative reasons and because of apparent political imperatives, understanding how elected officials "control" the bureaucracy when delegating authority retains a fundamental importance.

Explanation of the logic and manner by which elected officials – specifically legislatures - exercise control has focused on the efficiency and/or efficacy of ex post monitoring vs. ex ante structuring.[1] That is, control might flow from traditional oversight tools or it might follow from legislators designing the structure of policy administration to predispose policy outcomes. We discuss below the debate in this literature over which approach is more effective and hence more likely pursued. While there are compelling reasons to take seriously the notion that legislators would prefer to predispose policy outcomes through ex ante structuring, it is not entirely clear from the existing literature to what extent ex ante formulations create legislative influence – realized control over bureaucracy – and how such influence might vary across political and institutional contexts. We join the conversation on the logic of political control by examining legislative effectiveness in influencing bureaucratic rulemaking through an important ex ante control mechanism – review and approval power over proposed rules. We examine this issue of influence on rulemaking because rulemaking is a central component of policy implementation.

Using data from a survey of agency administrators in all fifty states, we explore whether differences in legislative authority to review and reverse agency rules leads to greater or lesser legislator influence in a state's rulemaking processes. We also explore connections between legislative authority and political context to determine whether certain situations, such as divided government or legislative heterogeneity, enhance or blunt the level of influence legislatures exert in agency rulemaking. These data offer unique leverage on the question of ex ante influence because we have a direct measure of how influential the legislature is in agency decision making permitting inferences of how much control a legislature exerts in policy implementation.

Our project builds on prior efforts at testing theoretic claims pertaining to ex ante political control. But we depart from those empirical studies in several important ways. First, prior tests have been domain-specific and have produced conflicting findings on the utility of ex ante structuring (Balla 1998, Hamilton and Schroeder 1994, Huber, Shipan

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[1] Huber and Shipan (2000) provide a useful review of this literature.

and Pfahler 2001, Potoski 1999, Spence 1999). We avoid domain specificity through our consideration of legislative rulemaking review, a control power generalizable across policy domains. This, along with the state-level analysis that affords necessary institutional variation enhances the external validity of our findings. Making a distinction between levels of ex ante control mechanisms is also something of a departure from prior works. We provide a rationale for considering ex ante tools that function in the aggregate as distinct from domain-specific applications. Finally, examining the influence of a legislature in state rulemaking is distinct from prior studies that have looked at use of, or selection of, a specific policy instrument. Measuring influence per se speaks directly to the ultimate aim of instituting mechanisms of control and allows us to answer the question: has control been realized?

II. The Exercise of Political "Control"

Legislators delegate authority to bureaucracy to administer policy for a number of related reasons, including expertise (Martin 1992, Bawn 1995), management of legislators' workload (Ripley and Franklin 1984), efficiencies gained regarding logrolling difficulties (Lohman and O'Halloran 1994) and blame avoidance when policy costs are imposed (Fiorina 1982). But the process of authority delegation produces its own set of problems – broadly covered under the "agency problem" rubric.[2]

Recognizing the inevitability of delegation in most policy areas, a first principles question is whether legislative officials are fundamentally reactive or proactive with respect to bureaucratic policy-making activity. An earlier literature on congressional oversight held that legislators were basically reactive, but inadequately so, in monitoring bureaucratic behavior (Huntington 1973, Ogul 1976, Pearson 1975). Fiorina (1977) explained this as resulting from the lack of strong incentives for congressional members to be more attentive to such duties, arguing limited benefits exist relative to the costliness of careful oversight monitoring. An optimistic view of oversight effectiveness, the "congressional dominance hypothesis," argues Congress utilizes effective ex post oversight tools to constrain agency policy-making (bureaucracy pursuing its own policy goals) selectively using incentives and sanctions to mitigate potential problems associated with delegation (Calvert, Moran, Weingast 1987, Calvert, McCubbins, Weingast 1989). This view of efficacious oversight is compatible with the McCubbins and Schwartz (1984) challenge to the neglected oversight claim. Their recognition of distinctly

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[2] The idea of the 'agency problem" comes into play whenever some task is delegated. A principal retains an agent to perform some task that the principal is unable/unwilling to do him/herself. When a task is delegated, the agent can be expected to faithfully perform the task only to the extent that it is in her/his self-interest. The agent has leeway in performing the task because the agent possesses expertise, is best informed of his/her daily activities, and monitoring agent activities is difficult and costly for the principal. In short, the agency problem is a consequence of information asymmetry and conflicting interests. In a public policy context though, the agency problem is one of elected officials' guaranteeing the integrity of their authority over bureaucratic personnel (who are unelected and thus do not possess the uniquely legitimating authority manifest in the democratic electoral process). Elected officials are intermediaries between the preferences of the mass citizenry and the actions in which government authorities actually engage. So in this sense, not only does there exist a potential for agency problems as just defined, but these problems in turn extend into issues of democratic accountability.

different types of oversight asserts that interests (often organized groups) affected by a policy possess a powerful incentive to monitor its implementation and call attention to bureaucratic deviation. Elected officials then can perform oversight effectively and on the cheap.

Closely related to such examination of traditional oversight is the substantial literature utilizing principal-agent theory in explaining political control dynamics. Wood and Waterman's series of publications (1991, 1993, 1994) are an excellent representation of this theory applied to the specific mechanisms employed by elected officials to engender control, especially integrating both executive and legislative tools and actions in prompting preferred bureaucratic responses.

While the oversight literature mentioned above generally contends that legislators are reactive, and hence political control proceeds ex post, a number of positive theorists have argued a more proactive view of legislators producing policy control through ex ante administrative specifications (McCubbins, Noll, and Weingast [McNollgast]1987, 1989 establish the logic of this claim). The basic premise is that by selecting procedural and other organizational features of policy administration strategically, a legislature can limit the range of bureaucratic options and create predictable patterns of interest representation and bureaucratic behavior. The ex ante perspective calls attention to three distinctive dimensions of the delegated authority problem: bureaucratic drift, legislative drift, and uncertainty. While ex post arguments stress the efficiency of reacting to external signals of bureaucratic performance, ex ante arguments suggests this view is problematic for several reasons. First, the ex ante perspective suggests legislators have meaningful constraints on their capacity to sanction agencies precisely because oversight, new legislation, budget battles are all costly. Second, legislative preferences are uncertain over time, making an ex post control strategy itself uncertain. And third, coalitions may arise to support bureaucratic preferences at odds with original policy choices and trump ex post monitoring as a means of controlling For these three reasons, an ex post monitoring strategy alone to maintain the integrity of the original policy goal, and the authority of elected superiors, is quite likely to be inefficacious. In other words, ex post monitoring has limited utility in addressing agency problems.

McNollgast (1987) characterize the agency problem as a process of "bureaucratic drift" [BD] and establish the idea that legislatures use administrative procedural requirements as control mechanisms because ex post techniques will not mitigate BD problems. McNollgast assert that beyond the costliness of agency monitoring and sanctioning, ex post control can be shown to be significantly limited in realizing desired objectives. Instead, specification of a policy's procedural requirements resolves the BD problem in favor of the legislature by limiting the range of bureaucratic action and by giving relatively more or less access to decision-making to certain constituent interests. This "ex ante" design of a policy's procedural framework entails lower costs and is more effective than direct agency monitoring and sanctioning.

Horn and Shepsle (1989) point out legislative drift [LD] – the original enacting coalition will dissolve or be subsequently overridden - as a related problem. Setting

administrative procedures to control bureaucratic drift does not necessarily resolve this second problem. However, Macey (1992) suggests the choice of agency organizational format (single-interest or a multi-interest agency) determines the dynamics of organized interest access to the agency in question and in what manner. Choice of agency type, is a solution to both BD and LD because the initial organizational design provides a strong predisposition to certain agency actions which produce the type of outcomes that perpetuate the coalition of interests that gave rise to that particular agency design.

Choices over the scope of legislatively provided bureaucratic discretion is a function of uncertainty over future policy outcomes, a third dimension of the agency problem. Bawn (1995) suggests that the administrative structure of a given policy reflects a tradeoff between political control by legislators and discretion allowed to bureaucrats due to their policy expertise. Constraints on elected officials' expertise may prompt greater delegated bureaucratic discretion leading to lesser political control. Excessive political controls will largely preclude the ability of an agency to generate sufficient information and/or expertise to resolve the policy problems in question. Bawn makes the argument that administrative procedures have the net effect of enfranchising some, but not other, organized interests involved in a given policy domain. Thus when legislators make these procedural decisions which affect the scope and content of bureaucratic discretionary authority, they are not completely determining the choices an agency will make in the future, but are fundamentally affecting the distribution of available policy choices to the agency.

But just as McNollgast and others have pointed out the limitations of ex post control mechanisms, equally valid skepticism has been directed at ex ante control propositions. Questions have been raised about the foresight of legislators to fashion such constraints (Spence 1997a, 1997b), about the viability of constraints on bureaucratic actions (Hamilton and Schroeder 1994), whether agency policy-making might actually be preferable is some respects (Kelman 1981, Mashaw 1985), and whether affected interests participate in policy-making as anticipated by McNollgast (Balla 1998, Potoski 1999). Both Spence (1997a) and Arnold (1987) suggest that the very possibility of ex ante specification of a policy domain is highly circumscribed because of the infrequency of opportunity to shape the overall administrative structure of a policy domain.

While these are important conceptual and empirical challenges, it is reasonable to expect that elected officials would consciously attempt to shape a policy's administrative aspects to benefit interest constituencies and accomplish certain goals, thereby helping ensure their own future political viability. Further, whatever the limits on creating control ex ante, the constraints on the use of other possible political control mechanisms are also important and tangible. Because the basic premise of ex ante control is so plausible it merits further empirical scrutiny.

Examining Ex Ante Control: Formulation & Critical Hypotheses

Previously, scholars have focused primarily on the use of ex ante controls in specific policy contexts. McNollgast (1987) nicely illustrate how establishing different

burden of proof requirements on specific regulatory questions can create totally different implementation dynamics. But legislatures at the same time create and use more general sets of ex ante controls, or procedures, which are applicable across multiple domains. That is, a legislature might not only create an issue-specific procedural constraint, it might also create procedures that apply to a variety of different policy contexts, but with the same intent to shape the preferences of agents.

Macey's (1992) argument about single versus multiple client agencies (e.g. single medium environmental regulatory agencies versus "mini EPAs" – see Ringquist 1993) highlights the distinction. His argument boils down to the basic proposition that the legislature must decide on the creation of a single-interest or a multi-interest agency and either choice will lead to certain outcomes. This initial organizational design determines the nature of private interests-agency interaction *across* discrete issues. So if the political environment that gives rise to the agency is dominated by a single set of interests, it is likely that the legislature will create a single-interest agency.

Other common examples of global or macro-level control tools – specified ex ante but not necessarily domain specific - include powers relating to appointment or appointment confirmation, budget authority, and the power to review agency activities. These types of global controls create a specific set of conditions within which implementation occurs and are designed with the intent to induce bureaucratic responsiveness to legislative preferences. As a result, agencies are aware of legislative authority/capacity to "punish" agencies that are unresponsive and their behavior can be expected to follow accordingly.

This is a critical distinction that should be emphasized for two important reasons. First, there is a measure of ambiguity when the concept of administrative structure is employed in the literature. That is to say, is it just administrative procedures, or should it include personnel expertise (Eisner 1992, Moe 1989), organizational arrangements (Macey 1992), jurisdictional location (Lowry 1992, Wood 1991), and other such procedures? This ambiguity has lead to quite different approaches to testing theoretic claims. Prior empirical tests of ex ante claims have focused on discretion granted to agencies by inferences about statute length (Huber et al 2001), on notice and comment participation by affected groups (Balla 1998), on choice of policy analytic instrument (Potoski 1999) and on procedural choices made by agencies themselves (Hamilton and Schroeder 1994). While each of these studies has merit and sheds light on micro level ex ante controls in specific policy domains, collectively they are limited in shedding light about the *general* effectiveness of ex ante procedural controls.

Second, the study of global or macro-level ex ante mechanisms can illustrate the degree to which broad legislative powers can be used to induce bureaucratic responsiveness while remaining flexible in the face of uncertain political environments. Legislators are faced with competing tensions - the tension to retain control of decisions at the implementation stage while retaining the ability to "pass the buck" for costly and uncertain political decisions. Existing research focuses on understanding how Congress deals with these competing tensions for particular policy areas. However, we maintain

that these tensions can be, indeed are, addressed at a more fundamental level of structure through general legislative powers to approve or reverse agency decisions during the implementation process. The granting of macro level control procedures is ideal to resolve the tensions between the need for control and the desire to grant discretion by affording legislators flexibility to use the powers of control when necessary or cede powers when desired.

Macro Level Ex Ante Controls in State Legislatures

Our basic objective is to examine whether legislatures with broad global authority over agencies exert greater influence in agency decision making, regardless of the specific rules associated with policy. In addition, we are especially interested in whether or not the use of these powers differs across political contexts. Notably, there is a great deal of variation in the powers held by legislatures across states. This variation enables us to test, empirically, the effects of macro ex ante controls in ways that are not testable when looking at the single institution of Congress.

The tack we take here differs from other empirical tests in another important respect. We examine the influence of the legislature over bureaucratic rulemaking as reported by state agency administrators. This speaks directly to the issue of whether a legislature can and/or does exercise control – the ultimate objective of creating a system of political control. While we are not measuring control over discretion per se as Huber, et al. (2001) attempt, we are measuring the effects of the control capacity a legislature grants itself to review the rulemaking activities of bureaucracy.

Table one shows the differences across states in the authority to approve and suspend agency rules. Using data from the *Book of the States*, we categorize states into three groups based on their rule review authority: states with no authority, states that give legislative committees authority to review and give advice on rules, and states that allow a committee to review, approve and/or suspend rules proposed or enacted by an agency. We consider committee level review to be one of the strongest form of ex ante control over rulemaking because a small group of legislators are empowered to alter an agency's rules. In some states, the committee takes the form of a joint, bi-partisan committee, while in others this take the form of review by committee of jurisdiction, however we do not distinguish states on this basis. As table one shows, there is substantial variation in these powers across states. However, just over half of the states afford the legislature this broad procedural control.

We expect this variation to have meaningful effects on agency outcomes. Control of rulemaking is central to control of agency policy making because rulemaking is key to policy implementation. It fleshes out broad statutory principles and provides an on-going opportunity for important policy revisions absent full-blown statutory re-specification. Thus, broad powers to alter agency rules afford a legislature tremendous power over shaping agency outcomes. This type of agency rulemaking review power sets up, in effect, a legislative veto of agency action. As Congressional literature shows, the power of veto forces the executive to anticipate and respond to the preference structure of the

legislature to avoid veto (see, for example Krehbeil 1998). We expect a similar response from agencies.

From the perspective of administrative leaders, legislatures that hold broad authority to alter agency rules should be seen as much more influential in their policy formulation than those who lack such powers. We assume that greater legislative influence is associated with lesser agency autonomy (all else equal) for an agency to shape policy toward its own preferences, independent of the legislature.

Our core hypothesis then is:

H1: A legislature's influence over rulemaking increases as a legislature possesses stronger ex ante powers of rulemaking review.

In other words, our basic question of interest is whether a macro-level ex ante control mechanism – here the capacity to review and modify agency rulemaking actions – corresponds to greater reported legislative influence by state administrators. At the same time we recognize, as do virtually all research efforts in this area of inquiry, that the exercise of control mechanisms are dependent on a variety of contingencies. As we indicated at the outset, the question is not just whether ex ante control mechanisms are functional in practice, but also of whether political contingencies affect the use and effectiveness of macro ex ante controls. Variation in legislative authority combined with variation in political context allows us to evaluate the interaction between legislative institutions and the ex ante possibilities for control.

As discussed above, legislators face tensions between the desire to maintain control and the desire to "pass the buck" in difficult decision processes. We suggest that macro ex-ante controls allow legislators to select, at each point in time, the degree to which they will exercise the control available to them. Interestingly, the vast majority of committees approve rules through *not objecting*. This is significant because it is legislators' passive responses that allow agencies discretion, while an active response, objecting, exercises control. Such procedures are ideally designed to allow legislators to to pass tough decisions in implementing policy to agencies without taking any overt action themselves.

Existing theories of effects of political conditions on legislative control focuses on the relationship between uncertainties or conflict in the political environment and the selection of control procedures (see, for example, Bawn 1995, McCubbins and Page 1987). In this case of policy specific, the selection of level of control is endogenous and closely related to the context of the policy area. In contrast, when legislators hold macro-level procedural authority, the choice becomes whether to *use* those procedural controls to influence outcomes. Thus, while we draw heavily from the procedural selection literature in forming our hypotheses, we are hypothesizing that legislators vary in their use of macro control powers. As such, we expect political contingencies *combined with macro ex-ante powers* to affect how influential the legislature is in agency rulemaking. In other words, we are hypothesizing an interactive relationship between political context and legislative ex ante controls. We outline three specific hypotheses derived from

existing literature to produce a more detailed expectation of legislative use of their macro ex ante controls.

Divided government

A central claim of Epstein & O'Halloran (1994, 1999) and re-stated in Huber, et al. (2001) is that "Elected politicians will have the greatest incentive to constrain the actions of an agency when there is a conflict of interest between the politician and the agent" (332). Conflict of interest is meant to indicate the likely conflict in policy preferences between elected officials and bureaucrats. We expect this conflict will be greatest when the executive and legislative branches are controlled by two different political parties. Translating this premise into a general hypothesis produces the expectation that:

H2: As conflict of interest between the legislature and executive increases, legislative influence over the bureaucracy should increase.

The basic premise is that more influence is equated with less administrative autonomy for agencies. However, we take this a step further to suggest that legislatures which hold broad powers will exercise greater control in situations of divided government. This leads to the elaboration:

H2a: The <u>effect</u> of ex-ante control power on legislative influence over agency decisions will be greater in states with divided government than states with unified government.

Political Competition

While divided government is expected enhance legislative use of control procedures, conflicts in the electorate are expected to reduce the use of controls. Conflict across and within constituencies and interest groups gives legislators the incentive to shift discretion to the agency rather than actively making controversial policy decisions (Fiorina 1982, McCubbins and Page 1987). Situations where the electoral environment is heterogeneous in preferences and competitive across parties present a problem for the reelection minded legislator. It is difficult to make any decision without making a large opposing coalition unhappy. Legislators, from both parties, find it to their advantage to allow agencies to make decisions. Global macro controls that allow inaction to substitute for approval provide legislators the flexibility needed to avoid making conflictual decisions. This leads to the hypotheses:

H3: Competitive electoral environments will be associated with greater autonomy granted an agency (hence less legislative influence).

H3a: The effect of competitive electoral environment on legislative influence will be greater in states with strong ex-ante macro controls.

Interest Group Environment

A similar situation should arise in states which are populated by a dense, competitive interest group system. Bawn (1995) asserts that when the political

environment confronting the legislature presents a more unified or narrow set of interests (e.g. a single dominant industry coalition in a domain), the legislature is more likely to give little independence (little discretion) to an agency; when the interest group environment is more numerous – hence less likely agreement - then the legislature is more likely to grant more discretion (enhance expertise). In other words, the legislature will not grant an agency too much autonomy when it responds to a specific or narrower set of organized interests, but when there are more competing groups, the legislature likely cannot act so decisively and is more inclined to let an agency sort things out. This is consistent with the Fiorina (1982) claim that a legislature might shift responsibility to an agency when the political environment is more contentious, as evidenced by more competing groups (and thus entails more potential for political costs).This leads to the following hypotheses:

H4: When there are relatively many interest groups in a state's policymaking environment the legislature will be less influential.

H4a. The effect of the number of interest groups on legislative influence in rulemaking will be greater in states with strong macro ex ante controls.

In the next section we provide an analysis that permits inferences about our claim regarding ex ante control, and about the attendant expectations of relevant contingencies.

IV. Data and Analysis
Dependent variable

To address the efficacy of ex ante control, we test the four hypotheses listed above by utilizing data from the 1994 wave of Deil S. Wright's American State Administrators Project (ASAP).[3] As stated above, we are interested in testing our expectations of ex ante control against the reported amount of legislative influence in a state's rulemaking processes. Survey respondents are upper-level administrators in state agencies. Our dependent variable is state legislative influence as measured in the ASAP survey. Respondents were asked about the legislature as a major source of influence in making agency decisions (respondents were also asked about the governor, clientele groups and professional associations of agency employees). Respondents indicated the "degree of influence [the legislature] has on decisions your agency makes" on "agency rules/regulations." Respondents marked an ordinal scale for degree of influence that ranged from "none" "slight" "moderate" and "high." This measure is ideal for testing our hypothesis because it directly asks for administrators' evaluations of influence over rulemaking - the precise area that should be affected by the macro ex ante procedure of rule review and approval.

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[3] Wright, through the The American State Administrators Project, has conducted surveys of administrators each decade from 1964 through 1998. We use data from the 1994 wave. The survey was mailed to 3365 designated heads of administrative agencies in all fifty state governments. 1229 responded to the survey, yielding a response rate of 37%. Additional details on the project and the 1994 wave, specifically, can be found in appendices 1 and 2 in Bowling and Wright 1998.

Explanatory variables

We model administrator characterizations of legislative influence by considering four categories of variables: the ex ante review mechanism itself, legislative context, political context, and a set control variables related to individual respondents.

Our primary variable of interest is the nature of committee power to review rulemaking possessed by each legislature.[4] As detailed in table 1, review capacity of a legislative committee is comprised of three categories: no legislative committee review authority, a committee with only advisory power, or a legislative committee with the power to approve and/or suspend proposed and enacted rules. To facilitate comparisons between categories, we create dummy variables for each category and include the variables for advisory power and the approve/suspend power in our analysis.

Hypotheses 2 – 4 and each elaboration relate to legislative context and political conditions. In terms of a political context measure necessary to test H2, the variable used is a scale of how much partisan institutional control a legislature has vis-à-vis the governor. At the low end of the three-point scale, the legislature is unified in partisan opposition to the governor, the middle value indicates divided government (one house in opposition to the governor) and the upper end of the scale indicates unified partisan control of both the executive and legislative branches. The logic of measuring institutional conflict this way is based in part on the insight of Huber, et al. (2001) who suggest there is greater control over bureaucratic discretion exercised when divided government has a unified legislature opposed to a governor. There are likely higher lower internal bargaining costs in a unified legislature than in a divided government situation where only one chamber is in partisan opposition to the executive. Hence, we provide a scale for partisan institutional conflict rather than a simple indicator variable for divided government.

To test the effects of political conflict and competition, H3, we use Holbrook and Van Dunk's (1993) measure of state level political competition. This measure is well suited for this test because it offers an aggregate measure derived from the level of competition in each state legislative district in the state. This reflects the degree to which many legislators face competitive electoral situations. Competitiveness should lead to strong incentives to shift the costs of controversial decision making to the agency. Thus, we expect administrators in states with competitive political conditions to view the legislature as *less* influential.

H4 asserts that the interest group environment in a state should affect the incentive structure for legislative action toward bureaucracy. We use the Gray and Lowery's (1993) measure of interest group density in a state to capture the effects of the legislature's external environment. As density increases, we expect legislatures to shift more of the decision making burden to agencies. Therefore, we expect administrators in states with a dense population of interest groups to view the legislature as less influential in rulemaking decisions.

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[4] Data for this measure is drawn from the *Book of the States,* 1994-1995.

Control Variables

While the measures of ex ante review power, legislative and political context are of explanatory interest, there remain several other factors to be controlled for in modeling legislative influence over a state's bureaucracy. Perhaps the most important of these is the power and authority of the governor. In many states, the committee shares review powers with the governor. We include a dichotomous variable to indicate shared powers and expect a negative relationship. Similarly, we anticipate that the general strength of the governor might act as a check on legislative power and include Holbrook's (1993) measure of institutional strength of the governor.

To control for the professional characteristics of a state legislature, we use two measures. We include a measure of legislators' salary, the annual remuneration for a legislator, divided by 10,000 and the session length, in days.[5] Finally, since the dependent variable is measured at the individual level, it is important to control for the for characteristics of individual respondents. We include variables that tap the amount of contact a respondent reported having with a legislature and its staff and the number of years the respondent has held her/his position.[6] In addition, a series of indicator variables for the type of agency (functional categories such as education, health, natural resources, etc.) at which the respondent is employed are also included to control for any effects from the substantive work of the respondent's agency.

Empirical Results

Because of the dependent variable's inherent ordinality, we used ordered probit estimation with robust standard errors, clustered by state. Clustering by state is necessary because the assessment ratings made by an administrator from a particular agency will be related to other administrator ratings from within the same state. Thus, there is a theoretic presumption that the responses are not independent within a state, but will be independent across states.

Table two presents the ordered probit coefficients for two approaches to modeling legislative influence, the baseline model and the interactive model. The sign and significance level of the strongest review indicator – the capacity to approve and/or suspend rules – provides evidence in support of H1 in both models. However, the more limited capacity of advisory power is not statistically significant. Taken together, a fairly coherent picture of ex ante rulemaking review power emerges. If a legislative review committee has the capacity to approve or disapprove a rule promulgated by a state agency, the legislature as a whole is more likely to be considered influential by administrators.

In addition, we see support for the other "main effects" hypotheses for legislative and political context. Legislatures in states which have unified government favoring the

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[5] Both measures are drawn from *The Book of the States, 1994 - 1995*.

[6] Individual data is drawn from responses to the ASAP survey. Contact with legislature is the mean of two questions asking the respondent to indicate the frequency of contact with legislators and with legislative staff.

governor's party are seen as less influential. Similarly, legislatures states with strong gubernatorial powers and shared review power are viewed as less influential by administrators. Interestingly, salary and session length have opposite effects from one another. We suspect that salary captures the general level of professionalism while session length reflects workload. Larger workloads leave legislators less time for oversight activities, thus may lead them to seem less influential in the eyes of administrators.

The second model includes three interactive measures to test our contingency hypotheses. The results show that it is the joint condition of ex ante power and political context that affects how administrators view the influence of the legislature. This indicates that Our findings are consistent with some established theoretic and empirical findings in the literature on political control. The coefficient estimates for the divided government interaction is statistically significant, while the main effect is not. This offers further evidence, building on arguments laid out by Epstein and O'Halloryn (1994, 1999) that under the condition of institutional conflict (in terms of divided partisan control) the legislature will be more assertive in trying to constrain bureaucratic action. The higher levels of influence reported by respondents is consistent with this basic premise.

Although the interaction with political competition was not significant, the interaction with our other explanatory variable of interest, interest group density, relates is significant and correctly signed. The basic expectation is that as an interest group environment is more complex, a disincentive is created for legislative assertion of authority over bureaucracy (Bawn 1995). A corollary to this claim is that as policy costs increase an incentive for responsibility shifting is created (Fiorina 1982). In this case, a large, complex, and heterogeneous interest group environment in a state – measured here by interest group density – should be associated with lower amount of influence exercised by a legislature. The coefficient estimate for the interaction is both negative and statistically significant, lending empirical support to these related claims.

Table three shows how the probability an administrator would give the response "high" changes with in response to differences in the interest group environment and the partisan control of the legislature. The differences between legislatures with and without committee review power is stark, as is the difference the perception of legislative influence across political contexts. The probability that an administrator would rank legislative influence as high is relatively low in states without ex ante rule review power. Moreover, there is little difference in these perceptions as the political context changes. In contrast, the difference in the chances an administrator views the legislature as highly influential is quite large in states that have ex ante powers, and varies substantially with political context. We interpret these findings to mean that legislators who hold genuine power to influence the rulemaking process make use of that power in ways that benefit them, given the prevailing political climate. However, legislators that lack such power have little discretion in responding to changing political conditions by altering their use of ex ante powers. As a result, political context makes little difference in administrator perceptions of legislative influence.

V. Conclusion

The nature and amount of authority a legislature exercises over administrative personnel responsible for the day-to-day implementation of public policy is important for several reasons. The practicalities of implementing policy require elected officials to delegate enormous amounts of authority to bureaucracy. But because bureaucrats are public officials not directly subject to citizen preferences through the electoral process it is a basic normative expectation that bureaucratic action is responsive to public preferences, translated through elected officials. Individual legislators should expect to possess a degree of authority, unless of course they prefer to shift responsibility to avoid accountability for policy actions. The key question becomes: how do legislators seek to ensure bureaucratic responsiveness to their preferences?

One potential solution is to design the administration of public policy in such a way as to predispose policy outcomes by "hardwiring" or "stacking the deck" so as to funnel delegated authority toward certain ends – the basic thesis of the McNollgast articles. This view has it critics, however. We have sought to contribute to this debate by calling attention to the idea that legislatures can seek to control delegated authority not only through specifying procedural requirements in a narrow or issue-specific sense, but in broader terms as well. Given the centrality of rulemaking to policy implementation, we examine state legislative influence over bureaucratic rulemaking. This affords us a direct and salient test of whether and when legislatures seek to "control" the bureaucracy.

While we have outlined here evidence strongly supportive of the efficacy of ex ante control over rulemaking processes in a state, two points are important to recognize. First, having a control mechanism at your disposal is not the same as making use of it. Hence, it is important to understand not only the logic behind the conditions creating a procedural constraint on bureaucracy, but the logic in when the procedural constraints are most likely to be used. We explore this logic in investigating the interactive relationships between political contextual factors and rule review capacity, finding evidence generally quite supportive of our hypothesized relationships. Second, examining the utilization of macro-level control mechanisms is important because of their relevance to legislators and because of their obvious flexibility. There is a constant tension in the incentive structure an individual legislator between attempting to exert more direct control over bureaucratic action (which presents both costs and benefits) and shifting responsibility for implementation decisions (also entailing costs and benefits). This paper takes a step toward developing a more specific logic of macro-level ex ante control mechanism and the conditions under which they are effectively used.

References

Arnold, R. Douglas. 1987. "Political Control of Administrative Officials." *Journal of Law, Economics, and Organizations* 3:279-86.

Balla, Steven J. 1998. "Administrative Procedures and Political Control of the Bureaucracy." *American Political Science Review* 92:663-673.

Bawn, Kathleen. 1995. "Political Control Versus Expertise: Congressional Choices about Administrative Procedures." *American Political Science Review* 89:62-73.

Bowling, Cynthia and Deil S. Wright. 1998. "Change and Continuity in State Administration: Administrative Leadership Across Four Decades" *Public Administration Review.* 58:429.

Calvert, Randall, Mathew McCubbins, and Barry Weingast. 1989. "A Theory of Political Control and Agency Discretion." *American Journal of Political Science* 33:588-611.

Calvert, Randall, Mark Moran, and Barry Weingast. 1987. "Congressional Influence over Policymaking: The Case of the FTC." In Mathew McCubbins and Terry Sullivan, eds., *Congress: Structure and Policy*. Cambridge: Cambridge University Press.

Eisner, Marc Allen. 1992. "Agency Professionalization and Policy Change: The Case of the Federal Trade Commission." Paper presented at the Midwest Political Science Association.

Epstein, David and Sharyn O'Halloran. 1994. "Administrative Procedures, Information, and Agency Discretion." *American Journal of Political Science* 38:697-722.

Epstein, David and Sharyn O'Halloran. 1999. *Delgating Powers*.

Fiorina, Morris P. 1977. *Congress: Keystone of the Washington Establishment*. New Haven: Yale University Press.

Fiorina, Morris P. 1982. "Legislative Choice of Regulatory Forms: Legal Process of Administrative Process?" *Public Choice* 39:33-60.

Gray, Virginia and David Lowery. 1993. "The Diversity of State Interest Group Systems" *Political Research Quarterly* 46 (March): 81-97.

Hamilton, James T and Christopher H. Schroeder. 1994. "Strategic Regulators and the

Choice of Rulemaking Procedures: The Selection of Formal vs. Informal Rules in Regulating Hazardous Waste." *Law and Contemporary Problems* 57:111-160.

Hill, Jeffery and James Brazier. 1991. "Constraining Administrative Decisions: A Critical Examination of the Structure and Process Hypothesis." *Journal of Law, Economics, and Organizations* 7:373-400.

Horn, Murray and Kenneth Shepsle. 1989. "Commentary on Administrative Arrangements and the Political Control of Agencies: Administrative Process and Organizational Form as Legislative Responses to Agency Costs." *Virginia Law Review* 75:499-505.

Holbrook, Thomas M. 1993. "Institutional Strength and Gubernatorial Elections" *American Politics Quarterly* 21:261-271.

Holbrook, Thomas M. and Emily Van Dunk. 1993. "Electoral Competition in the American States" *American Political Science Review.* 87:955-962.

Huber, John D., Charles R. Shipan. 2000. "The Costs of Control: Legisaltors, Agencies, and Transaction Costs." *Legislative Studies Quarterly* 25:25-52.

Huber, John D., Charles R. Shipan, and Madelaine Pfahler. 2001. "Legislatures and Statutory Control of Bureaucracy." *American Journal of Political Science* 45: 330-345.

Huntington, Samuel. 1973. "Congressional Responses to the Twentieth Century." In *The Congress and America's Future*, ed. David Truman. Englewood Cliffs, NJ: Prentice-Hall.

Kelman, Steven. 1981. *Regulating America, Regulating Sweden*. Cambridge: MIT Press.

Krehbiel, Keith. 1998. *Pivotal Politics: A Theory of US Lawmaking*. University of Chicago Press.

Lohmann, Susanne, and Sharyn O'Halloran. 1994. "Divided Government and U.S. Trade Policy." *International Organization*

Lowry, William R. 1992. *The Dimensions of Federalism: State Governments and Pollution Control Policies*. Duke University Press.

Macey, Jonathan R. 1992. "Organizational Design and Political Control of Administrative Agencies." *Journal of Law, Economics, and Organization* 8:93-125.

Mashaw, Jerry L. 1985. "Prodelegation: Why Administrators Should Make Political Decisions." *Journal of Law, Economics, and Organization* 81:91-99.

McCubbins, Mathew and Talbot Page. 1987. "A theory of congressional delegation" in Mathew Mcubbins and Terry Sullivan eds. *Congress, Structure and Policy.* Cambridge: Cambridge University Press.

McCubbins, Mathew and Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms." *American Journal of Political Science* 28:165-179.

McCubbins, Mathew, Roger Noll, and Barry Weingast. 1987. "Administrative Procedures as Instruments of Political Control." *Journal of Law, Economics and Organization* 3:243-77.

McCubbins, Mathew, Roger Noll, and Barry Weingast. 1989. "Structure and Process; Politics and Policy: Administrative Arrangements and the Political Control of Agencies." *Virginia Law Review* 75:431-82.

Moe, Terry. 1989. "The Politics of Bureaucratic Structure: in *Can the Government Govern?* Chubb and Peterson, eds. Brookings.

Moe, Terry. 1990. "The Politics of Structural Choice: Toward a Theory of Public Bureaucracy." In Organization Theory, ed. Oliver E. Williamson. New York: Oxford University Press.

Ogul, Morris. 1976*. Congress Oversees the Bureaucracy.* Pittsburgh: The University of Pittsburgh Press.

Pearson, James. 1975. "Oversight: A Vital Yet Neglected Congressional Function." *Kansas law Review* 23:277-88.

Potoski, Matthew. 1999. "Managing Uncertainty through Bureaucratic Design: Administrative Procedures and State Air Pollution Control Agencies." *Journal of Public Administration Review and Theory* 4:623-639.

Ringquist, Evan J. 1993. *Environmental Protection at the State Level: Politics and Progress in Controlling Pollution*. Armonk, NY: M.E. Sharpe.

Ripley, Randall, and Grace Franklin. 1984. *Congress, the Bureaucracy, and Public Policy*. Homewood, IL: Dorsey Press.

Spence, David B. 1997a. "Agency Policy Making and Political Control: Modeling Away the Delegation Problem." *Journal of Public Administration Research and Theory* 7:199-220.

Spence, David B. 1997b. "Administrative Law and Agency Policy-Making: Rethinking the Positive Theory of Political Control." Yale *Journal on Regulation* :407-450.

Spence, David B. 1999. "Managing Delegation Ex Ante: Using Law to Steer Administrative Agencies." *Journal of Legal Studies* 28:413-460.

Wood B. Dan. 1991. *"Federalism and Policy Responsiveness: The Clean Air Case."* Journal of Politics *53: 851-59.*

Wood, B. Dan and Richard W. Waterman. 1991. "The Dynamics of Political Control of the Bureaucracy." *American Political Science Review* 85:801-28.

Wood, B. Dan. and Richard W. Waterman. 1993. *"The Dynamics of Political-* Bureaucratic Adaptation." *American Journal of Political Science* 37: 497-528.

Wood, B. Dan. and Richard W. Waterman. 1994. *Bureaucratic Dynamics: The Role of Bureaucracy in a Democracy*. Boulder, CO.: Westview Press.

Table 1. Legislative Power to Review, Approve and Suspend Agency Rules

No Committee Review Powers	Committee Review Powers are Advisory Only	Committee Can Approve and/or Suspend Agency Rules
Arizona	Alaska	Alabama
California	Arkansas	Colorado
Delaware	Florida	Connecticut
Hawaii	Indiana	Georgia
Massachusetts	Maine	Idaho
Mississippi	Oregon	Illinois
Montana	Texas	Iowa
Nebraska	Virginia	Kansas
New Jersey	Washington	Kentucky
New Mexico	West Virginia	Louisiana
Rhode Island	Wyoming	Maryland
Tennessee		Michigan
Utah		Minnesota
		Missouri
		Nevada
		New Hampshire
		New York
		North Carolina
		North Dakota
		Ohio
		Oklahoma
		Pennsylvania
		South Carolina
		South Dakota
		Vermont
		Wisconsin

Source: *The Book of the States, 1994-1995*

Table 2. Ordered probit model of legislative influence in agency rulemaking decisions (robust standard errors)

	Model 1	Model 2
Ex ante review powers		
Review powers advisory only	.003	.003
	(.110)	(.087)
Review powers to approve and/or suspend rules	.195**	1.308***
	(.120)	(.297)
Legislative Context		
Party of Governor Controls Legislature	-.118**	-.085
	(.066)	(.072)
Legislative Salary	.095**	.152***
	(.000)	(.004)
Legislative Session length	-.0008*	-.0011***
	(.0005)	(.0046)
Political Context		
Interest group density	-.0008***	-.00023
	(.0003)	(.00029)
Partisan competition	-.005*	-.005**
	(.004)	(.003)
Review powers shared with Governor	-.286***	-.308***
	(.088)	(.085)
Governor's powers	-.056***	-.042***
	(.021)	(.015)
Individual Context		
Amount of contact with legislator and staff	.140***	.136***
	(.051)	(.050)
Years in current position	-.008	-.008
	(.008)	(.008)
Dummies for agency type not reported.	----------	------
Interactive Effects		
Review – Approve/Suspend x Partisan competition		-.004
		(.005)
Review – Approve/Suspend x Interest Group Density		-.0022***
		(.0004)
Review – Approve/Suspend x Institutional partisan division		-.227**
		(.119)
Cutpoints		
m1	-1.758	-1.499
	(.319)	(.287)
m2	-.544	-.268
	(.313)	(.284)
m3	.521	.810
	(.322)	(.287)
N	970	970
chi sq	116.35***	256.06***

***p<.01 one tailed, **p<.05 one tailed, *p<.10 one tailed

Table 4. Predicted Probabilities from Model 2, Interactive Effects [a]

	Probability of responding "high" (top category)	
	None or Advisory only Review Powers	Strong Review Power
Party Control of Legislatures		
Unified Control, Opposite Party from Governor	.24	.39
Spilt Control	.21	.28
Unified Control, Same Party as Governor	.19	.18
Interest Group Density		
10th Percentile	.22	.43
Median Value	.21	.30
90th Percentile	.19	.07

a. Predicted probabilities based on the coefficient estimates in model 2, table 3. All variables other than committee review power, party control and interest group density set at the mean or mode value.