

**Assessing the Effect of LARRI:
Legislative Authority to Review Rules as a “Flexible” Ex Ante Control
Over Agency Decision-Making**

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Abstract

Scholars have argued that a key strategy for exercising policy control when delegating authority to bureaucracy is for legislatures to specify, ex ante, administrative procedures to constrain bureaucratic discretion to conform to the preferences of the enacting coalition. However, the effectiveness of this framework can be challenged on conceptual and empirical grounds. We offer an alternative view of ex ante controls by suggesting they legislators have at their disposal flexible controls that encourage bureaucratic accountability through creating incentives for bureaucrats to identify and respond to legislative preferences on an on-going basis. We identify one such mechanism available state legislators – the legislative authority to review agency rule proposals and explore whether this mechanism is effective at influencing bureaucratic decision-making. We find that legislatures who score higher on our “legislative authority to review rules index (LARRI)” are viewed by agency heads as more influential in their rulemaking decisions.

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Elected officials necessarily delegate substantial decision making authority to bureaucracy for a variety of reasons.¹ Although delegation can enhance legislative efficiency, it also creates a representational dilemma because it provides opportunities for bureaucrats to pursue policy preferences at odds with those of legislators. This is problematic from a democratic normative perspective because elected officials act as a conduit for citizen preferences and should ensure that bureaucratic decisions are consistent with those preferences. From their own strategic perspective, elected officials wish to control policy implementation to avoid outcomes that create political or electoral costs for themselves. Both rationales imply that legislators require mechanisms of control to ensure that bureaucratic agents are responsive to their preferences on an on-going basis.

This draws attention to a question central to policy making: how do legislators ensure policy control in the face of necessarily delegated authority? Ex post oversight of agency decisions offers one solution to the control dilemma, but its effectiveness is limited by the high costs legislators must bear to monitor and sanction agencies (Fiorina 1977). McCubbins, Noll and Weingast [hereafter McNollgast] (1987, 1989) propose that legislators can specify, ex ante, administrative structures or procedures to “hardwire” or “stack the deck” in favor of particular policy positions as a more efficient means to circumscribe delegated authority. But critiques of the ex ante control framework have suggested this approach imposes unrealistic foresight demands on legislators (Spence 1997a) and insulates agency behavior, ironically producing less agency attentiveness to future legislative preferences (Moe 1990).

We agree with McNollgast’s basic premise that an ex ante approach to oversight is a more efficient means of controlling bureaucracy than ex post mechanisms, however we argue that scholars have focused too narrowly on the question of whether legislators can use of ex ante approaches to bias outcomes toward the preferences of the enacting coalition. Equally important (indeed, perhaps more important) is whether legislators can use ex ante controls to enhance legislative control of bureaucracy more generally, without biasing outcomes toward some *a priori* policy preference. We argue that both types of ex ante tools are available to legislators, yet the effectiveness of the latter has not been explored. Moreover, because the current conceptualization of the ex ante framework fails to make important distinctions about the aims and scope of different types of ex ante controls, empirical assessments of the effectiveness of the ex ante framework are misleading.

Prior literature has conflated those ex ante procedures designed to create durable policy biases, which we label “fixed-preference” controls, with a separate category of ex ante mechanisms we label “flexible-preference” controls. Flexible controls are designed to create on-going opportunities for legislative intervention in agents’ policy decisions through the specification of bureaucratic procedures. However, they do not necessarily bias outcomes toward an *a priori* “fixed” preference point. Instead, they create incentives for bureaucrats to respond to the contemporaneous preferences of legislators and the relevant coalitions *de jour*.

This distinction is important because much of the ex ante literature rests on the assumption that legislators are willing to, and indeed seek to, create enduring policy biases in favor of an enacting coalition in exchange for “rents.” While there may be specific instances where legislators find this to be advantageous, there are a number of reasons to believe that following a “fixed preference” strategy could be costly to legislators, particularly if they expect coalitions to shift over time. Thus, we reconsider the problem of bureaucratic drift, and the “ex ante solution” in light of legislators’ long term career goals.

Our goal in this paper is twofold. First, we develop the logic for distinguishing fixed ex ante controls from flexible ex ante controls and suggest how each might be useful to legislators. Second, we test our claims that flexible ex ante controls can be an effective oversight tool by examining one such mechanism available to state legislators – the authority to review rule proposals by agencies.

Using data from a survey of state administrators in fifty states, we find that as state legislatures possess relatively stronger formal review authority, their influence in agency rulemaking decisions is greater. This suggests that flexible-preference controls, like rulemaking review procedures, can enhance legislative policy control capacity; it also provides strong support for the notion that ex ante mechanisms offer a solution to the problems associated with delegation. Examining legislative influence in a comparative context across all states and agencies yields greater external validity than prior empirical analyses that examine single policy domains.

REVIEWING THE ASSUMPTIONS OF THE EX ANTE CONTROL FRAMEWORK

The common conceptualization of ex ante control, elaborated by McCubbins (1985), McCubbins and Page (1987), McNollgast (1987, 1989), and others, is that legislators can specify administrative structures or processes as part of an initial policy enactment to prevent bureaucratic drift, where agents pursue preferences at odds with the objectives of the enacting coalition. Participation incentives for certain groups, procedures that dictate information use patterns, and procedures that circumscribe agency discretion can be used to create enduring biases toward particular policy outcomes.² “Stacking the deck” or “hardwiring” through ex ante controls is seen as an efficient means of promoting legislative control of policy implementation because legislators need not intervene directly after the initial policy “bargain” is struck to ensure that the bargain is maintained over time. Instead, institutional structures or procedural requirements ensure that agencies make decisions consistent with the preferences of the enacting coalition.

Scholars highlight two benefits from this type of control: the gains in efficiency over ex post monitoring, and the benefits to legislators from exchanging durable policy bargains for “rents.” The former stems from the fact that legislators are able to limit the policy choices available to agents, which reduces the costs of legislative monitoring to detect instances of bureaucratic “shirking.” Limiting agency discretion also reduces the likelihood legislators must bear future costs of collective action to pass new policy to sanction recalcitrant agents. The latter benefit stems from the assumption that interests in the enacting coalition would be willing to “pay” more for a policy outcome that they believe will endure over time than for a policy outcome subject to revision by future legislators.

While ex ante controls that “hardwire” decisions or “stack the deck” in favor of particular interests are, in the abstract, less costly to legislators than ex post monitoring, we argue that the current conceptualization of the ex ante framework is too narrow and warrants revision. The current framework is premised on the idea that legislators wish to create an enduring bias toward the policy preferences of the enacting coalition at the time of enactment, meaning that legislators seek a long term bias toward a “fixed” or unchanging policy preference. However, this premise rests on several rather restrictive assumptions. First, the policy goals of the enacting coalition are assumed to be harmonious and unambiguous, permitting legislators to develop, ex ante, clearly defined constraints to impose on an implementing agency. Second, it assumes that legislators wish to minimize bureaucratic drift from the preference point of the enacting coalition *at the time of enactment*, rather than from some future (and unknown) preference point.

Implicitly, this assumes that legislators expect the preferences of relevant members of the enacting coalition, such as constituents or interest groups, to be stable over a long period time.³ Finally, scholars either implicitly or explicitly assume that legislators seek to maximize “rents” in a single legislative period, thus the only rents of value to legislators are the rents associated with policies that create a durable outcomes. We address each of these assumptions in turn.

The first assumption is problematic because of the difficulties associated with building and maintaining a policy-enacting coalition. Hill and Brazier (1991) and Moe (1989, 1990) note that the costs of resolving conflicts among coalition partners can be high since enacting coalitions consist of partners with diverse goals. Legislators must balance the interests of various constituency groups, interest organizations, and executive branch officials during the process of statutory enactment. Coalition partners often do not agree on all aspects of an enacted policy, and legislators seek to find policy solutions to overcome diverse views. Thus, legislators frequently rely upon ambiguous language (or even incongruous objectives) to maintain a winning coalition. This makes it difficult for legislators to craft effective structural or procedural constraints and opens the door to bureaucratic drift.

The second assumption places significant foresight burdens on legislators and potentially requires them to act against their own long-term career interests. McNollgast (1987) acknowledge that for ex ante control to be effective, legislators must know the precise nature of the policy problem, relevant options and their consequences, the interests of all relevant parties and their reaction to each option. These foresight demands make effective deck stacking problematic (Spence 1997a, 1997b).

More importantly, “hardwiring” or “deck stacking” implies that legislators are willing to jeopardize future electoral success in order to gain immediate benefits from interests in the enacting coalition. While both legislators and interests may work together to enact policy, each has different long term goals. Tightly focused private interests desire policies that create long-term advantages for their preferences. As a result, they are willing to pay “rents” to legislators for the creation of durable “bargains.” But, strategic politicians must balance short term “rent seeking” against long-term electoral costs that might arise from creating durable advantages for particular interests.

Legislators are well aware that, over time, constituent preferences and the strength of organized interests wax and wane. Such changes can produce a “coalitional drift,” where the participants and preferences of coalition members shift away from those at the time of enactment (Horn and Shepsle 1989). As a result, the “optimal” position for a reelection oriented legislator may change. For elected officials, procedures or structures that limit agency responsiveness to evolving coalitions and preferences also limits their ability to respond to new demands from constituents (Moe 1990). Oversight strategies that minimize bureaucratic drift from enacting preferences can be problematic if they lead to a gap between future constituent preferences and government performance.

The potential for coalition drift highlights the problem with the third assumption. Thus far, scholars either explicitly or implicitly assume that legislators seek to maximize rents during the current electoral cycle. However, this assumption is overly restrictive for legislators who seek long term careers in office. We offer two compelling reasons to reconsider how legislators seek to maximize rents with respect to coalition interests in light of long term career goals. First, legislators who maximize rents over a career may find that the prospect of longer term electoral costs from coalition change may exceed the short term rent available from creating a fixed, durable policy bargain. Second, for career politicians, rent seeking is a multi-period problem

where legislators have a choice between maximizing the rent for a durable bargain in one period, or maximizing a stream of rents over multiple periods through creating on-going opportunities for legislative intervention in agency decision-making.

As Shepsle points out, interest groups may discount the “price” they are willing to pay for legislation that can be altered in the future by legislators or bureaucrats (Shepsle 1992:117). However, this does not negate the possibility that interests would be willing to “pay” for influence at any point, current or future, where the legislature holds power to sway policy outcomes. Thus, it is possible that legislators may see opportunities to create a stream of rents over time through setting up regular opportunities for intervention in agency rulemaking. At the very least, consideration of long term career objectives leads us to question the validity of the assumption that legislators seek to maximize rents from the enacting coalition and suggests that creating durable implementation biases is not necessarily the only means to seek rents.

Together, the problems with these three assumptions lead us to question the degree to which “hard wiring” or “deck stacking” is broadly applicable as a means of agency control. While these types of controls can be effective in some narrow or specific situations where coalitions are well defined and policy preferences are expected to endure, they do not offer a complete solution to the oversight dilemma. Many policy problems are fraught with uncertainty and fragile coalitions, making these types of controls an impractical solution. Further, the potential gains from rents today must be balanced against potential costs tomorrow. Very often, the control dilemma, from the perspective of legislators, is their need to make use of low cost “ex ante” strategies yet retain flexibility to respond to changes in the political landscape.

REFINING THE EX ANTE CONTROL PERSPECTIVE

We suggest that solution to understanding how legislators resolve the control dilemma is to recognize that ex ante strategies come in two varieties – those that create durable policy biases toward enactment preferences (fixed preference controls), and those that encourage agency responsiveness to shifting preferences (flexible preference controls). Like others, we assume that legislators wish to minimize bureaucratic drift, but we argue that in many cases legislators seek to minimize drift from *contemporaneous* preferences and that ex ante controls are an efficient and effective means of doing so. However, to properly evaluate the effectiveness of ex ante controls, we must first identify the aims and scope of the particular ex ante controls being examined. We reconsider the ex ante framework in this light.

We begin by defining the term “ex ante control” broadly to mean *any* procedure or structure imposed on agencies that limit their set of policy choices, either explicitly or coercively. This broad definition includes everything from constitutionally designed checks and balances to policy specific provisions that serve to structure the decision environment of agents. Such structures and processes can be defined as ex ante if they influence agent choice *prior to* a policy decision. In other words, ex ante controls serve to constrain the initial policy choice of agents. In contrast, ex post controls such as oversight or monitoring occur after an agency has made and implemented a policy decision. Ex post action requires legislators to engage in costly efforts to identify agency discrepancies and reverse the actions of non-compliant agents.

To some degree, the distinction we make between “fixed” and “flexible” controls has been implicit in the literature, however scholars have not fully recognized the importance of this distinction either theoretically or empirically.⁴ Spence (1997a, 205), for example, calls attention to the distinction between procedures that “increase the transaction costs of agency decision making,” and those that increase the “costs of making a *particular* decision” (emphasis added). The latter constitutes fixed-preference ex ante constraints because they restrict or impose costs

on agency decisions that deviate from enacting coalition preferences. This might be an agenda constraint, such as the Occupational, Safety and Health Administration's inability to identify on its own health hazards to regulate (see McNollgast 1987). Or it might be burden of proof requirements placed on manufacturers in one case (e.g. under the Federal Food Drug and Cosmetics Act) but on the regulating agency in another (e.g., the Toxic Substance Control Act) under otherwise similar circumstances (see McNollgast 1987). These choices are designed to create a bias in terms of prescribing/proscribing future bureaucratic action on those specific issues.

In contrast, flexible preference controls encourage responsiveness to the current political climate. For instance, state governments choose how state legislatures review rulemaking, and make quite varied choices at that. Some state legislatures enjoy very strict veto power over proposed rules; others have no formal review authority. This allows them to determine, in light of current political conditions, the acceptability of proposed agency decisions. We also see federal-level rulemaking affected by flexible-preference procedural choices. The Congressional Review Act of 1996, for example, gave Congress the capacity to reject rules by a resolution of disapproval. Its sponsors claimed it was "designed to change the behavior of federal agencies, encouraging them to be more cautious in how they craft their rules and more observant of objections from members" (Skrzycki 2001:E1).⁵ The key lies in recognizing that flexible *ex ante* veto power over rules allows legislators to evaluate agency performance in light of the preferences *de jour*.

While our focus in this paper is on the use of flexible controls to minimize drift from contemporaneous preferences, we also note that flexible preference controls can take the form of procedural obligations that fulfill other needs in the oversight process, such as such as reducing information asymmetries to facilitate the use of other *ex ante* or *ex post* oversight procedures. McNollgast, for example, specifically claim that statutes such as the Administrative Procedures Act (APA), the National Environmental Policy Act (NEPA), or the Regulatory Flexibility Act (RFA) of 1980 create policy control and coalition stability by enfranchising private interests affected by a policy. They describe the utility of this in the following way: "procedures [such as] those imposed under the APA...reduce an agency's information advantage over its political sponsors...(and) *greatly increase the efficacy of ex post sanctions*" (original emphasis). We identify the APA and similar process-oriented statutes as spelling out a series of flexible controls that augment other legislative control strategies, regardless of the policy area or enacting coalition preferences. As such, these types of policies enhance the ability of legislators to counter the tactics bureaucrats might employ to insert their own preferences into policy decisions during implementation without creating a bias towards a specific set of fixed policy preferences. These types of controls are equally effective under any preference structure. These types of procedural obligations help bring to light the preferences of bureaucrats and relevant interests each time agents consider a policy change. From the perspective of legislators, this helps them to identify the key players and positions in policy arenas that may have shifted over time and alert them to potential electoral costs.

The various examples serve to reinforce our point that legislators can and do use flexible *ex ante* controls to address the oversight dilemma, yet scholars have failed to explicitly recognize the fundamental difference in the goals that underlie the use of fixed versus flexible controls. By highlighting the distinctions between fixed and flexible preference *ex ante* controls, we are heeding Shepsle's call (1992:115-116) to recognize that "politicians, *ex ante*, seek to solve both [coalition and bureaucratic drift] problems." He notes that there is an inherent trade off between

solutions to drift from enacting preferences (which he defines as the problem of coalitional drift), and drift from contemporaneous preferences (which he defines as the problem of bureaucratic drift); ex ante controls that insulate agencies from the effects of coalition drift serve to exacerbate the problem of bureaucratic drift. This suggests that legislators face a “legislative possibility frontier” where the solution to each type of drift occurs at the corner points and legislators must identify some optimal mix of processes and structures to address the two types of drift (Shepsle 1992: 116).

The relevant questions, from Shepsle’s perspective, are to ask “how politicians pose this optimization problem for themselves” and “how the solutions change as various environmental features change.” While the full answers to these questions are beyond the scope of this paper, we do offer a few preliminary thoughts. First, we expect career oriented legislators to view this optimization problem as a multi-period problem where they must balance the rents from various policy bargains against the potential costs of such bargains over multiple electoral cycles. Fixed controls offer an opportunity to extract a high payment from interests in the initial period, but fewer rents in subsequent periods because the durable policy bargain has been “bought and paid for” in a previous period. In this sense, we might consider the policy bargain as a one time “sale” instead of a potential stream of rents. Flexible controls also have the ability to generate “rents,” but the extraction of rents might occur over multiple election cycles. Each time a legislature has a meaningful opportunity to intervene in the policy decisions of agents, private interests associated with that agency or policy area have an incentive to exchange rents for influence. Note, this does not imply that the same interests or coalition of interests will pay rent at each point of intervention – simply that legislators have the opportunity to obtain rents from the interests and coalitions *de jour*.

Further, it is easy to see that each strategy potentially entails some costs for legislators. Implementing fixed preference controls limits legislators’ ability to respond to problems associated with policy implementation in the future, and potentially creates a gap between future constituent preferences and government outcomes. Legislators must gauge the likelihood of such gaps and their potential impact on electoral fortunes. Flexible controls allow legislators to respond to shifts in electoral preferences, but are less valuable to interests in the enacting coalition, thus result in a discounted “price” for the enactment of the policy. The optimization problem, then, depends on how legislators value a stream of rents from flexible preference policies relative to how they value the net benefit from the “sale” of fixed preference policies. A number of factors will influence the contours of the implementation choices, such as legislators time preference for rents, their views of the stability of policy coalitions, and the stability of their own preferences and the stability of constituents preferences.

While the question of how legislators might optimize their gains from these different oversight strategies warrants further attention, we must start with a more fundamental question: do flexible preference ex ante controls serve to influence agency decisions? To date, scholars have not explored, empirically, the effectiveness of this type of ex ante control. Determining the effectiveness of this control strategy is particularly important because we claim legislators are willing to trade off the rents obtained from fixed preference controls for a stream of rents from flexible preference controls. However, if such controls are ineffective (meaning they do not serve to influence agency decision making), they are of little value to interests. The remainder of the paper turns to this question.

ASSESSING THE EFFICACY OF EX ANTE CONTROL STRATEGIES

Previous empirical research illustrates the importance of distinguishing among different types of ex ante strategies when testing the efficacy of the ex ante control framework. Failure to identify the aims of specific ex ante controls prior to evaluating them has led to mixed results in empirical tests (Balla 1998, Hamilton and Schroeder 1994, Huber Shipan and Pfahler 2001, Potoski 1999, Spence 1999). Several such tests have evaluated the effectiveness of ex ante procedures from a “fixed-preference” perspective without recognizing that some ex ante controls that are tested function as “flexible controls.”

For instance, Balla’s (1998) analysis of rulemaking in Medicare reimbursement tests an ex ante control mechanism derived from a procedural specification in the APA - notice and comment - and draws an adverse conclusion about its effectiveness as an ex ante control tool. However, his expectation is premised on the idea that all ex ante procedures promote replication of the enacting coalition’s preferences in the rulemaking process. This is entirely understandable because the McNollgast articles do not clearly distinguish between fixed and flexible controls in their elaboration of the ex ante control framework. This is precisely our point. Failure to make explicit distinctions between these types of controls creates confusion about the nature and effectiveness of procedural control. Balla’s study is an examination of fixed-preference claims executed by testing a flexible-preference mechanism. That is, the delay created by a notice and comment procedural obligation represents a flexible mechanism created to accommodate shifting coalitions and preferences. Such a flexible-preference control mechanism provides opportunity for legislative intervention on behalf of selected interests, but does not guarantee a replication of the enacting coalition interests.

Fixed versus flexible ex ante procedural controls produce different expectations and require different empirical tests. The efficacy of fixed-preference controls should be assessed by comparing specific policy outcomes to original intent. However, the efficacy of flexible-preference controls should be assessed by exploring whether a legislature is influential in bureaucratic decision-making processes, in order to capture their utilization of procedural opportunities for intervention. Prior empirical tests have not drawn out this distinction, which is likely a major source of the mixed results on ex ante effectiveness. Attention to this distinction should provide an improved understanding of how legislatures maintain policy influence in the face of changing political environments.

Flexible Ex Ante Controls In State Legislatures

Given the theoretical distinction we have outlined, our key question of interest is whether flexible controls are efficacious in promoting legislative influence in bureaucratic activity (as we suspect). If so, then our argument that legislators could use flexible controls to extract rents from interests stands on firmer ground and a “rent-seeking” explanation of oversight mechanisms need not focus solely on fixed preference strategies as a source of rents.

We address this question by exploring the effectiveness of one particular control we identify as a flexible preference control: the power of state legislatures to review and approve proposed rules. Ex ante control over agency rulemaking constitutes an important avenue of oversight since rulemaking fleshes out broad statutory principles and presents an opportunity for bureaucrats to pursue their own policy preferences. This type of control is ex ante because it specifies a set of procedural obligations that materially affect the costs of agency decision making prior to an agents’ initial policy choice. It offers legislators an efficient mechanism of control because it effectively constrains the set of policy choices available to agents. In short, this type of control is tantamount to legislative gatekeeping over agency policy choices. It is a flexible-preference mechanism because it does not predispose agents to make policy consistent

with the enacting coalition preference, but rather encourages agencies to identify and respond to contemporaneous legislative preferences, whether they remain consistent with enacting preference or not.

(Table 1 about here)

We expect variation in legislative authority to review rules to produce variation in the influence of legislatures over agency decisions. Table 1 presents variations in approval authority across states, using information culled from the *Book of the States 1994 - 95*. Based on the authority of both the legislature and its committees, we have developed a four-category indicator of legislative authority to review rules (LARRI): states with no review authority; states with committee advisory power, but no veto power; states with advisory committee power in conjunction with legislative veto power; and states that allow a committee to approve rules or impose sanctions for unacceptable ones. While the scope of sanctions vary somewhat from state to state, all states in the top category can both impose significant costs on agents for unacceptable rules and veto proposed rules by action of the entire legislature. In South Carolina, for example, agencies must resubmit or withdraw rules within thirty days if they are not approved by the legislative review committee. Similarly Nevada agencies have ten days to revise rules to which the legislative committee objects. In other states, committees have delay or suspension power while the entire legislature considers a veto. At a step lower in authority (category 3), the legislature may veto objectionable rules, but the committee has an advisory role only, without authority to directly sanction agents. Lower yet (category 2), states such as Alaska and New York allow committees to review and advise the legislature on agency rules, but neither the committee nor the legislature can veto a rule.⁶

Strong committee approval power is an effective, low cost ex ante control mechanism because a small group of legislators are empowered to block or delay agency action. Although the final veto authority typically resides with the floor, these committees act as gatekeepers. They identify problematic rules and provide important cues to the floor about rule acceptability. Thus agencies should view stronger committee level review power as significant and potentially costly to their aims, and respond to committee sanction power much as they would to a veto threat.⁷

If we assume that the process of developing rules is at all costly to the agency, then it is also reasonable to expect that sophisticated agents would prefer to propose rules that will be accepted rather than rejected. Committee approval power, then, creates incentives for agents to identify the legislative preferences prior to proposal. This shifts the burden of oversight costs to the agency because the agency must identify and craft acceptable policy. In contrast, an ex post control approach requires legislators to bear the costs of determining whether the effects of an enacted rule or policy are consistent with their preferences.

Figure 1 illustrates the spatial properties of committee veto power on a liberal-conservative continuum in the absence of rule review. A is the position of the agency preference, and is identical to P, the agency proposal point. The median preference for the legislature falls at point L. L* represents the point where the median legislator is indifferent to a proposal or the status quo (SQ). With no ex ante rule review, bureaucrats can propose and pass policy at their preference point, A, without legislative intervention prior to their policy choice. The legislature must detect, ex post, the discrepancy between P and the set of acceptable positions that fall between L and L*. As many have noted, this strategy is problematic because legislators must bear the costs of ex post monitoring and remedial action. As a result, there is

some non-zero probability that the drift will not be detected or that legislators will choose not to bear the cost of sanctioning the agency.

(Figure 1 about here)

Now consider a scenario where legislators have ex ante gate-keeping power through rule review procedures. For simplicity, we assume that committee and floor preferences are identical, thus committee disapproval will lead to a subsequent floor veto.⁸ Proposed rules that fall between the status quo (SQ) and the point of indifference (L^*) fall closer to the median committee preference than the status quo, thus will gain committee approval. Proposed rules outside this area will encounter committee objection and floor veto. The sophisticated agency, then, would not propose A, but would propose $P=L^*$, the first acceptable point to the legislature in the direction of agency preference. Ex ante approval power, then should encourage agents to identify relevant legislative preferences prior to policy proposals to avoid sanctions or outright veto. This serves as a constraint on agency decisions because it limits the set of actions agents can successfully proposal. This is a flexible control in the sense that the legislative median is not fixed at a particular point. Instead, the median may drift from the status quo position, and agency policy must follow to gain approval of proposed rules. From this, we derive the following hypothesis:

H1: A legislature's influence over rulemaking greater when legislatures possesses committee level ex ante rulemaking review.

(Figure 2 about here)

Executive power as a mitigating factor While strong committee review powers should expand legislative influence, this effect would be mitigated by gubernatorial powers. Accordingly, the value of flexible controls, from a rent seeking perspective, could be adversely affected. From a representational perspective, executive power that blunts legislative ex ante control could open opportunities for bureaucratic drift.

For states italicized in Table 1, legislative rule review power is shared with the executive branch. Shared powers provisions require some form of gubernatorial approval of legislative rule vetoes. Figures 3 a, b, and c illustrate that legislatures lose influence over agency decisions when legislative and executive preferences diverge. To simplify the presentation of the spatial diagrams, we assume that the executive branch lacks the power to directly veto agency rules, but holds power to overturn or sustain a legislative rule veto.⁹

The first model assumes that the legislative and executive branches fall on opposite sides of the status quo policy (SQ), as might be the case with divided government. The range of policies acceptable to the governor extends to E^* , far left of the status quo. Agency proposals in the SQ to L^* range will be accepted given legislative approval and no independent gubernatorial veto. Proposed rules in the SQ to E^* zone will meet with legislative disapproval and veto, however this veto would be overturned by the governor. Thus, an agency's range of discretion in this model expands from L^* on the right to E^* on the left. Committee rule review remains important as it sets the rightmost boundary (L^*) and may impose short term costs on the agency through suspending the rule. Moreover, a veto may yield political costs the governor would like avoid. Nonetheless, agents are free to propose P at point A, because the governor will not sustain the legislative veto. Such is the case for a range of agency preferences, giving them wide latitude in policy making. Accordingly, the legislature is less influential in rule making when the agent's zone of discretion is increased through shared powers provisions.

(Figure 3 about here)

Interestingly, the degree of discretion available to agencies can increase even under unified government with similar, though not identical, legislative and executive preferences. Figure 3b reveals that anytime an executive preference is more extreme than the median legislator, the zone of discretion expands by the distance from L^* to E^* . Only when executive preferences fall closer to the status quo than the legislative median (Figure 3c) will the legislature fully control the range of policies available to agents. There is no point in Figure 3c where the governor would interfere with a legislative veto. In figure 3c, as in figure 2, the sophisticated committee would propose P_2 rather than P_1 , because P_1 would encounter a veto. In figures 3a and 3b, Our second hypothesis, then, is:

H2: Legislatures who share review powers with the governor will be less influential in agency rulemaking when gubernatorial preferences are more extreme than the median legislator.

DATA, CONTROLS, AND RESULTS

Dependent Variable We test our hypotheses using data from the 1994 wave of Deil S. Wright's American State Administrators Project in which he surveys the heads of all state administrative agencies in the fifty states.¹⁰ Our dependent variable is drawn from a survey question which asked respondents to indicate the "degree of influence [the legislature] has on decisions your agency makes" on "agency rules/regulations." Response categories consisted of an ordinal scale ranging across "none," "slight," "moderate," and "high." This measure is ideal for testing the effect of flexible ex ante controls because it directly taps administrators' views of legislative influence over rulemaking, and thus speaks directly to the assessment of influence over a key component of policy implementation.

Explanatory Variables In keeping with our first hypothesis, we expect that legislatures with stronger review powers will be viewed as more influential in agency rulemaking. We test this hypothesis using a series of dummy variables to represent the top three categories of LARRI, as shown in Table 1: advisory powers only; advisory committee with legislative veto; and committee power to approve and/or suspend rules. States with no review authority of any type provide the baseline category. Our use of dummy variables rather than the ordered index allows the effect of review powers to vary across categories. Thus, we need not assume a uniform effect for a shift from one category to the next. We anticipate a positive and significant relationship between each dummy variable and our dependent variable, but expect the strongest effects for bureaucrats in states that fall at in the top category of review powers.

A precise test of the second theoretical hypothesis would require knowledge of executive preferences and median legislator preferences over a host of issues across all fifty states – a practical impossibility. However, we can approximate a test by exploring the effects of shared review powers in situations of divided and unified government. Divided government generally means that legislative and executive preferences diverge substantially. Further, even weak governors have some appointment authority within the executive branch, and thus some degree of influence over rules proposed by state agencies.¹¹ 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). Such a situation is most likely to occur in states with divided government, leading to an increased use of legislative rule review authority to suspend, delay and veto rules. As a result, we expect agency heads to view legislatures as more

influential in states with divided government than in states with unified government, all else equal.

However, we expect the degree of influence in divided and unified government to be contingent on whether review authority is shared with the governor. Figure 3 suggests that when legislative and executive preferences diverge *and* review powers are shared, the governor can use his or her approval authority to expand the range of acceptable rules beyond legislative preferences. Situations of divided government are likely to lead to the largest divergence between executive and legislative preferences, thus should be most affected by shared review powers. So while we anticipate shared review powers to reduce the influence of the legislature generally, we expect the greatest effect to occur in states with divided government. This leads us to hypothesize an interactive effect between divided government and shared review powers.

To summarize, we expect the following main and interactive effects of divided government and shared review powers in the empirical model:

E1: Legislatures in states with divided government will be viewed as *more* influential than those states unified government, *ceteris paribus*.

E2: Legislatures with shared review authority will be viewed as *less* influential than states with sole review authority, *ceteris paribus*.

E3: *Diminished influence* from shared review powers will be greater in states with divided government than in states with unified government.

We test these empirical expectations by including a dummy variable for states with shared review powers, a dummy variable for divided government, and an interaction between the shared review powers and divided government. We use the strictest definition of divided government -- any case where the executive does not control both legislative chambers.

Control Variables To appropriately test *ex ante* review powers in different political contexts, several other factors need to be controlled in our model. In addition to the explanatory impact of divided government, we include whether the legislature itself has unified or split party control across the chambers. Huber, et al. (2001) suggest that greater control over bureaucratic discretion exists when the legislature is unified. Unified legislatures both make a veto by one house more potent and enjoy lower internal bargaining costs compared to divided chambers.

Political competition is another important control factor, for it reflects the degree to which legislators face competitive electoral situations. A risky electoral environment encourages legislators to shift discretion to the agency rather than to actively make controversial policy decisions (Fiorina 1982, McCubbins and Page 1987). Thus, we expect administrators in states with competitive political conditions to view the legislature as less influential. To incorporate this into our model, we use a folded Ranney index of political competition, coded so that higher values indicate greater competition between the two parties.¹²

Legislative professionalism is another potential confounding element since more professional legislatures might have more individual or committee level resources at their disposal to help monitor and oversee agency activities. To control for professionalism we use two indicators: the annual remuneration for a legislator, and the session length, in days. Legislative salary is indicative of the long term attractiveness of the legislature, as well as the degree of office resources at the disposal of members. Days in session indicates the time available to legislators and their staffs to engage in monitoring activities. Both could lead to

greater efforts on the part of legislators to influence bureaucrats and confound our assessment of the effects of review authority.¹³

In addition to state level controls, we include individual level controls since the dependent variable is measured at the individual level. We include variables tapping the amount of contact a respondent has with a legislator or legislative staff, and whether legislative consent was required for the respondent to be appointed to his or her position.¹⁴ We anticipate a positive effect for each. Last, a series of indicator variables for the respondent's agency type (education, health, natural resources, etc.) are included to control for any effects from the substantive nature of the agency.

Empirical Results

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 2 About Here)

Table 2 presents the ordered probit coefficients for two approaches to modeling legislative influence, a baseline model and an interactive model. The first model offers a point of comparison, while the second, interactive model fully tests our hypotheses and empirical expectations. The results shows strong support for the idea that legislatures with strong authority to review rules are influential in agency decision-making.

The coefficient for the strongest review level – the capacity to approve and/or suspend rules – provides evidence in support of H1 in both models. The coefficients in both models are quite sizable and statistically significant with a probability of less than .01. However, limited capacity of advisory power where the legislature lacks veto authority, is not statistically significant in either, though the coefficients are properly signed. When advisory power is backed by legislative veto authority over proposed rules, the coefficients in each model increase markedly, and this authority reaches weak statistical significance in the interactive model. The coefficient for committee power is just over twice the size of the coefficient for advisory committees with floor veto.¹⁵

Taken together, a coherent picture of ex ante rulemaking review power emerges. As legislative rule review authority expands, the influence of the legislature expands correspondingly, though the model cannot distinguish, statistically, between legislatures with advisory review powers only and no review powers. Empirically, the dividing line seems to be the availability of veto power to legislators. However, vesting a committee with the power to impose direct costs on agencies who propose unacceptable rules leads to the greatest probability that the legislature will be viewed by agency administrators as influential in rulemaking. The analysis, then, provides support for the idea that legislative use of a flexible ex ante review mechanism can effectively influence agency decision-making.

As expected in E2, sharing review power with the executive weakens legislative influence in the eyes of agents, significantly so in the baseline model. Also as expected (E1), divided government significantly increases legislative influence in each model. This supports further the arguments laid out by Epstein and O'Halloran (1994, 1999), that under the condition of institutional conflict (divided partisan control) the legislature will be more assertive in seeking to constrain bureaucratic action. However, once the interactive effects between shared review and divided government are included in the model, the main effects of shared review powers

drop out. Instead, it is shared review power, combined with divided government, which serves to reduce the likelihood the legislature is viewed as influential.

While figure 3b shows that for any case where executive preferences are more extreme than the legislative median, legislative influence will be weakened, such effects are not discernible, empirically, among unified governments. However, the interactive results confirm our expectation in E3 that sharing review authority with an opposite party governor sufficiently expands agency discretion to the point of substantially reducing legislative influence. The cumulative impact of the coefficients shows legislatures still glean some influence from review powers, but at a much lower level when review is shared with an opposite party governor. In contrast, legislatures in states with divided government where review powers are not shared with the executive, are quite potent in their influence over agency rules.

Turning to the controls for legislative, political, and individual contexts, we find unified legislative chambers enhance legislative influence, though legislative professionalism (salary and session length) surprisingly has no effect. Political competition has a negative effect on legislative influence, as expected. Finally, agents confirmed by the legislature are no more likely to view it as influential than those not, but those having extensive contact with legislators or their staff do view the legislature as influential in rulemaking.

(Table 3 About Here)

Table 3 uses the estimates from the second model to identify the probability an administrator would give the response “high” when questioned about legislative influence in rulemaking, using different scenarios. Reading across the top line allows comparisons between the effects of sole and shared review authority in situations of divided and unified government. Reading down any particular column shows comparisons between legislatures with different levels of rule review authority.

Clearly, differences in rule review power affect the likelihood that agents will view a legislature as influential. Agents in states where the legislature falls in the strongest category of review authority have a higher probability of responding that the legislature’s influence is “high,” regardless of whether the state has divided or unified government. This suggests that, all else constant, legislators may be able to extract more “rents” in strong review states because they hold more influence over bureaucratic decisions.

However, this table also makes clear that legislative influence is highly contingent on context. Perhaps the most striking feature of this table is the relatively high probability (.39) that administrators in states with committee level power would view legislatures as influential, and the dramatic difference in this probability when rule review power is shared between branches. The probability of giving the top response drops from .39 (sole review) to .22 (shared review) in divided government states, for a net drop of .17. This is especially striking when compared to the small difference between sole and shared review in unified government states.

Of course, among states with sole review powers, legislatures in divided government states are much more likely to be viewed as highly influential (.39 compared to .28). We believe that this is because states that have sole review authority and face agents appointed by an opposite party executive are likely to be presented with agency preferences for rules that fall outside a zone of acceptability. This, in turn, causes them to exercise their powers of review more frequently than they would do so in situations of unified government, where agency preferences and proposals are likely to fall closer to legislative preferences. As committees exercise their oversight authority, administrators are reminded of the authority and influence of

the legislature, leading to a higher probability of responding in the top category of the survey question.

However, the stark difference between shared and sole review in divided government states reflects the degree to which executive powers can mute the influence of the legislature. This dramatic difference between shared and sole review is not apparent in unified government states because the governor expands the degree of agency discretion less than in states with divided government (see figures 3a and 3b).

DISCUSSION

The empirical evidence we present strongly supports the idea that flexible-preference controls can serve as effective ex ante tool of influence over agency decision-making. This evidence goes directly to the critical question of whether the ex ante framework offers an effective means of oversight for legislators as they delegate powers to bureaucratic agents. Our results show that committee-level review of proposed rulemaking is an important mechanism for legislative influence. Agents' views of legislative influence reflect the hypothesized incentive structure for agencies in ways that are consistent with variations in the flexible ex ante procedures across states. Looking at rulemaking is an important test because it is essential to policy implementation and represents an opportunity for bureaucrats to try to impose their own preferences in a policy domain. Further, the finding that such powers are influential suggests that legislators can extract rents from the interest coalitions *de jour* as they wield their influence. Hence, fixed-preference controls need not be the sole focus of "rent-seeking" explanations of ex ante control choices.

The results of this analysis have some important implications for Shepsle's "optimization" problem. He poses the problem in terms of a trade off between minimizing drift from enacting preferences and minimizing drift from contemporaneous preferences.¹⁶ In our terms, this suggests a trade-off between the use of fixed and flexible controls, each with their own set of benefits and costs. Accordingly, we can reframe the optimization problem as a trade off between net rents from different ex ante control strategies to highlight how differences across states create different incentives for the use of fixed versus flexible controls.

Our results suggest that flexible preference controls will be the most valuable to rent-seeking legislators when the legislature holds strong committee level rule review powers, and when they hold sole oversight authority. The use of flexible preference controls will be least valuable when review powers are shared with the executive branch, particularly when the executive is controlled by the opposite party. This implies that, *ceteris paribus*, legislators in states with shared review powers or in states that lack oversight authority should be more willing to seek "fixed" preference controls as a solution to the oversight dilemma. Whether such a trade off actually exists is an empirical question that, with proper data, could be easily tested across states with different levels of review powers.

While we have focused our test in this paper on legislative authority to review rules, this is but one of a number of flexible ex ante control strategies available at the state and national level of government. Legislatures continually make explicit choices about how to structure the institutional environment that permits greater or lesser on-going influence and intervention in the activities of executive agencies. Thus far, we have treated flexible preference controls as substitutes for fixed preference controls. That is to say, we have assumed that use of fixed preference controls necessarily reduces the amount of future discretion legislators have to bring agents into line with their shifting preferences, while the use of flexible controls reduces the ability of legislators to craft durable long term implementation biases. However, we recognize

that certain types of flexible preferences – such as APA or NEPA - could be used to augment the power of legislators to maintain strong control through fixed preference strategies by reducing information asymmetries between agents and the legislature. In this case, fixed and flexible controls might be viewed as complements rather than substitutes. Future research should fully explore differences among flexible ex ante controls to better understand which offer substitutes to fixed preference strategies and which are designed to complement fixed preference strategies.

We conclude by restating our caveat regarding tests of the ex ante framework: scholars must attend first to identifying the aims of ex ante controls before devising tests of their effectiveness. This point is germane regardless of whether flexible preference controls are substitutes or complements to fixed preference controls. The efficacy of flexible preference controls cannot be evaluated by using a “fixed preference” yardstick. Ex ante controls that are flexible in nature -- that is, controls that do not create a durable bias toward the fixed preferences of an enacting coalition -- cannot be evaluated as if they were meant to do so. Instead, they must be evaluated by whether they serve the purpose intended by the legislature. Thus, APA must be evaluated by whether it reduces information asymmetries, not whether the preferences of the enacting coalition are replicated. Similarly, flexible controls designed to shape agency decisions, such as rule review authority, must be judged by their ability influence agency decision-making on an ongoing basis rather than by comparing agency decisions to “enacting” preferences. Only fixed preference controls can be judged by the extent to which agency decisions reflect the preferences of the enacting coalition.

In sum, legislative delegation of authority to bureaucracy is a reality of the modern administrative state. But it is a basic normative expectation, as well as in legislators’ individual interests, that legislative preferences have a sizable influence over bureaucratic policy choices. How legislators handle this tension – controlling bureaucratic action, but not to the extent that they are bogged down in details – represents an enduring question for scholars. Precise explanation of the delegation-accountability issue remains a challenge, but it seems reasonable to expect that elected officials would consciously attempt to shape a policy’s administrative aspects to advantage interest constituencies as well as their own interests. But while ex ante procedural specification is a potentially efficient means of doing so, that basic framework has been called into question on several dimensions. We have attempted to explicate the merits of an ex ante approach, in part by calling attention to the idea that ex ante strategic choices encompass a range of tactics. The key is to recognize that some procedural specifications are intended to create an enduring implementation bias in specific policy areas, while other procedural specifications address the role and influence of the legislature toward executive branch agencies generally. We hold that failure to make this distinction is part of the reason the ex ante framework has been criticized as impractical and likely inefficacious.

¹ Legislative delegation of authority to administrative agencies is inevitable due to: the need for expertise (Bawn 1995), resource and time constraints on legislators (Ripley and Franklin 1984), efficiencies gained regarding logrolling difficulties (Lohman and O'Halloran 1994), and the shifting of responsibility for policy costs (Fiorina 1982, McCubbins 1985, Noll 1971). Together these explanations indicate significant policy making choices are delegated to bureaucratic personnel in the implementation of legislatively defined goals.

² For example, Macey (1992) asserts structural choices like agency organizations format (single or multi-interest) determine the dynamics of organized interest access to the agency, thereby perpetuating an enacting coalition's policy-making influence. Bawn (1995) contends that procedural controls do not determine an agency's policy ideal point but do influence the distribution of their ideal points, thereby managing future policy uncertainties for an enacting coalition.

³ If not, then we must assume that legislators fully discount any political costs that might result from changing political conditions – a rather heroic assumption.

⁴ Epstein and O'Halloran (1994), distinguish between policy specific “ex ante” controls that specify agency design or procedures and “on-going” controls, such as appropriations, or monitoring, that allow legislators multiple “check” points. However, their definition and subsequent formal analysis focuses on the use of ex ante and on-going controls as tools to minimize drift from the preferences of the enacting coalition. Under our definition, both policy specific and on-going controls could be used as fixed or flexible preference controls, depending on the aims of the controls. The distinction rests entirely on whether the controls are intended to create a permanent bias toward a specific policy position.

⁵ The Act was used in March 2001 to kill a sweeping ergonomics regulation issued by the Clinton administration late in its second term.

⁶ Rule veto is a simple action, often accomplished by a resolution. Obviously, legislatures can always adopt or amend statutes, but that is a much more demanding and costly action.

⁷ For related research on the influence of veto power in Congress, see Kiewiet and McCubbins (1988), Shepsle and Weingast (1987), or Schapp(1986).

⁸ This assumption is quite reasonable if the role of the reviewing committee is informative. Krehbeil (1991) and Gilligan and Krehbeil (1990) suggest that informative committees are designed to mirror the preferences of the floor.

⁹ This is a frequent scenario in the states where numerous executive branch entities are not part of the governor's team. the degree of legislative influence over agency rules would be further weakened if the executive has the power to directly veto agency rules, but would not disappear entirely since such vetoes may be avoided by the governor due to high political costs.

¹⁰ Wright, through The American State Administrators Project, has conducted surveys of administrators twice each decade from 1964 – 1998. We use data from the 1994 wave. The survey was mailed to 3365 heads of administrative agencies in all fifty states as listed in the Council of State Governments' publication, *State Administrative Officials Classified by Function*, with 1229 responses yielding a cooperation 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) and Brudney and Wright (2002).

¹¹ This is not to say that appointment confirmation by the legislature is ineffective. However, we expect the confirmation process to favor appointees who fall between the legislative and executive preferences.

¹² The Ranney index, originally developed by Austin Ranney (1965) is comprised of the averages of three indicators over a specified time period: percentage of popular vote for governor, percentage of state legislative seats held by Democrats, and the percentage of time the Democrats have held the executive and legislative branch. The index used in this analysis covers the 1980-1988 period, and is re-coded so that one party states score low, while strong two party competitive states score high.

¹³ Both measures are drawn from *The Book of the States, 1994-1995* (Council of State Governments, 1994).

¹⁴ Individual level data are drawn from responses to the ASAP survey. Contact with the legislature is the mean of two questions asking the respondent to indicate the frequency of contact with legislators and with legislative staff.

¹⁵ The chi-square value for the difference of coefficients test is 2.56, $p < .11$, thus is significant at a threshold level.

¹⁶ Macey (1992) notes that it is possible to construct controls that minimize both types of drift simultaneously, thus the need for legislators to trade off goals may be overstated.

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Table 1. Legislative Authority to Review Proposed Rules

No Power	Advisory only, no legislative veto power	Advisory, with legislative veto power	Committee Powers to Impose Costs and/or suspend rules
(1)	(2)	(3)	(4)
Arizona	Alaska	Arkansas	Alabama
California	Nevada	Florida	Connecticut
Colorado ^a	New York	<i>Georgia</i> ^b	Idaho
Delaware	Texas	Kentucky	Iowa
Hawaii	<i>Virginia</i> ^b	<i>Massachusetts</i> ^b	Illinois
Indiana		<i>Maryland</i> ^b	<i>Louisiana</i> ^b
Kansas ^a		Montana	Michigan
Maine ^a		Pennsylvania	Missouri
Minnesota ^a		<i>Wyoming</i> ^b	North Carolina
Mississippi			North Dakota
Nebraska			New Hampshire
New Jersey			Ohio
New Mexico			South Carolina
Oklahoma ^a			South Dakota
Oregon			Tennessee
Rhode Island			Utah
			Vermont
			<i>Washington</i> ^b
			Wisconsin
			West Virginia

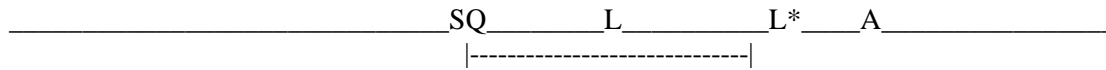
Source: *Book of the States 1994-1995*

a. Legislature has authority to review enacted rules but not proposed rules

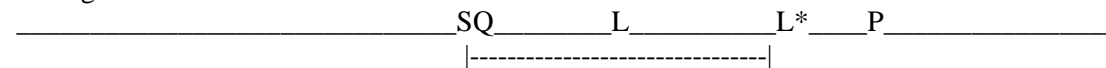
b. Shares review power with executive branch

Figure 1. Agency preferences and proposal, without legislative ex ante veto.

1a. Agency Preference Falls Further from Median than Status Quo, with No Ex Ante Review



Result: Agency proposes and passes point $P=A$, Legislature must detect and correct through ex post oversight



SQ = status quo

L^* = indifference point (boundary of set of policies preferred to status quo)

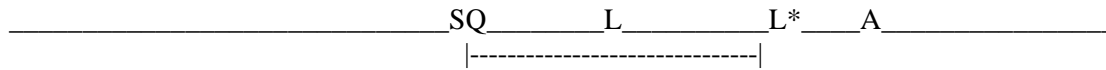
L = legislature median

A = agency preference

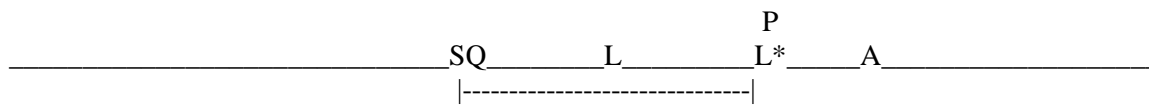
P = agency proposal

Figure 2. Legislative Veto of Agency Proposals

2a. Agency Preference Falls Further from Median than Status Quo, with ex ante rule review



Result: Agency proposes point P, legislature approves rule.



SQ = status quo

L* = indifference point for median voter (boundary of set of policies preferred to status quo)

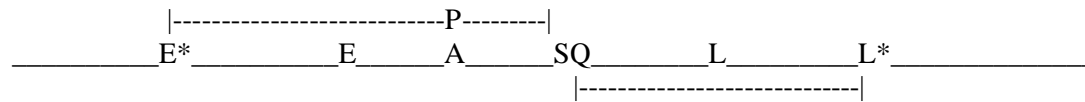
L = legislature median

A = agency preference

P = agency proposal

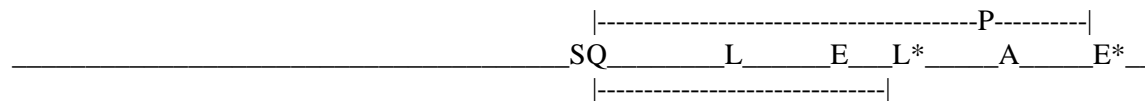
Figure 3. Shared powers, Governor must sustain legislative veto of proposed rule

Figures 3a. Divided Government



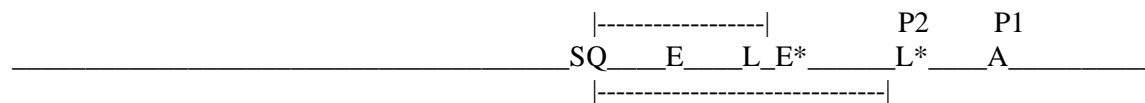
Result: Agent proposal is vetoed by legislature but veto is rescinded by governor; rule is enacted

3b. Unified Government, Governor preferences more extreme than legislature



Result: Agent proposal is vetoed by legislature but veto is rescinded by governor; rule is enacted

3c. Unified Government, Governor preference less extreme than legislature



Result: P1 - Agent proposal is sincere, but vetoed by legislature.

P2 - Agent proposal is sophisticated and accepted by the legislature, rule enacted

SQ = status quo

E = governor preference

E* = indifference point for the governor (boundary of set of policies preferred to status quo)

L = legislature median

L* = indifference point (boundary of set of policies preferred to status quo)

A = agency preference

P = agency proposal

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

	Model 1	Model 2
Ex ante review powers		
Advisory, no veto	.096 (.111)	.124 (.121)
Advisory with veto	.169 (.139)	.198* (.142)
Committee power, with veto	.402*** (.106)	.407*** (.105)
Shared Review Powers		
Share review powers with executive	-.254** (.135)	-.112 (.155)
Divided government	.193* (.121)	.269** (.137)
Shared powers X Divided government	--	-.370** (.161)
Political Context		
Unified chambers	.24** (.111)	.29*** (.115)
Legislative session length (hundreds of days)	-.013 (.072)	-.003 (.071)
Legislative salary (in 10,000's)	.028 (.053)	.017 (.053)
Political Competition Index (Ranney)	-.80** (.469)	-.806** (.462)
Individual Context		
Amount of contact with legislator and staff	.158*** (.047)	.155*** (.048)
Agency head appointed with consent of legislature	-.052 (.084)	-.054 (.085)
Dummies for agency type (coefficients not reported)	-----	-----
Cut points		
m1	-1.25	-1.18
m2	.02	.098
m3	1.02	1.099
N	999	999
chi sq	126.0***	154.67***

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

Table 3. Predicted Probabilities from Model 2, Interactive Effects^a

	Unified Government		Divided Government	
	Shared power	Sole power	Shared power	Sole power
Committee power, with veto	.25	.28	.22	.39
Advisory committee, with veto	.19	.22	.16	.31
No power to review rules	--	.17	--	.24

a. Predicted probabilities based on the coefficient estimates in model 2, table 3. All variables other than those listed in table are set at their mean or modal value.