

Presidential Policymaking at the State Level: Revision through Waivers

by

Elizabeth K. Mann

A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
(Political Science)
in The University of Michigan
2016

Doctoral Committee:

Professor Charles R. Shipan, Chair
Professor Elisabeth R. Gerber
Professor William G. Howell, University of Chicago
Emeritus Professor John E. Jackson
Associate Professor Robert Mickey

© Elizabeth K. Mann 2016

All Rights Reserved

ACKNOWLEDGEMENTS

Writing this dissertation was a challenging and rewarding undertaking. I am deeply grateful for the support, mentorship, and encouragement of many people who helped me throughout this process.

The members of my dissertation committee provided an unfailing source of support and advice. Liz Gerber provided essential guidance on how to pursue a question that speaks to important policy issues while contributing to the field of political science in a meaningful way. Her thoughtful feedback from the beginning of this project helped me find my direction. Before I even stepped on campus as a graduate student in Ann Arbor, Rob Mickey became a valuable and trusted mentor. His questions and feedback made me think harder and more carefully about the claims I wanted to make, and there were many times throughout not only this dissertation project but graduate school more generally when his patience and sound advice kept me grounded. Will Howell's enthusiasm for this project helped sustain my energy throughout the long and sometimes frustrating process of writing a dissertation. His insightful feedback was instrumental as I worked to define my contribution and carve out a place for this research. From my first day of graduate coursework, I have had the privilege to learn from John Jackson. First as an instructor and then as a mentor and committee member, John has taught me what it means to be a social scientist. This project, and more generally my understanding of how to pursue research, are much richer as a result of John's mentorship.

Finally, choosing to have Chuck Shipan serve as the chair of my dissertation committee is the single best decision I made in graduate school. Chuck advised me on everything

from how to identify an important and tractable question to how to interpret my results to how to create an accurate, clear, and persuasive argument. Chuck always made time to answer my questions, whether he was down the hall or on sabbatical in Australia. Through his careful consideration of my work and our many discussions over this project, Chuck not only contributed to this dissertation in important ways but also taught me how to think and write like a political scientist. I am deeply grateful for his guidance.

As an undergraduate at the University of Michigan, I was lucky enough to meet two people who would become invaluable mentors. Leanne Powner was my Graduate Student Instructor for the first political science course I ever took. She set an example for the kind of researcher and teacher I aspired to be, and she has provided support and encouragement from day one. Mika LaVaque-Manty taught the Honors political science seminar during my senior year, and since then, he has helped me find my way forward. His mentorship and friendship over the years have been invaluable.

The University of Michigan Department of Political Science, the Institute for Social Research, and the Rackham School of Graduate Studies generously provided resources and fellowships that allowed me to undertake and complete this project. Without Kathryn Cardenas, I do not know how I would have navigated life as a graduate student. My fellow graduate students were a constant source of feedback and support. I am especially grateful to the participants in the Interdisciplinary Workshop on American Politics for creating an inviting and constructive scholarly community. I was also lucky enough to work with a wonderful group of undergraduate research assistants, each of whom I thank for their contributions and insights: Carlton Shane, Daniel Hensel, Josh Hasler, and Shiyuan Yin.

A heartfelt *thank you* goes out to my amazing friends, near and far. Writing this dissertation would not have been possible without you and all that you do to keep me smiling. Lastly, to my family, words can only begin to express my gratitude for the thousands of ways in which your patience, good humor, and love support me, in this and every endeavor. Mom and Dad, together and each in your own way, you have supported me

through everything. Whether talking on the phone, spending time together over a meal, or even just texting, you have sustained me. I cannot possibly thank you enough. Kate, you are my best friend. I do not know where I would be without you. Tim, you have always believed in me and encouraged me every step of the way. To the newest member of our family, my niece and birthday buddy, Cece: you have brought more joy to my life than I ever thought possible. And finally, to Marc: I could not have made it to the end of this road without you. Onward, to the next adventure!

This dissertation is dedicated to my family: Mom, Dad, Kate, Tim, Cece, and Marc.

TABLE OF CONTENTS

| | |
|--|------------|
| ACKNOWLEDGEMENTS | ii |
| LIST OF FIGURES | vii |
| LIST OF TABLES | ix |
| ABSTRACT | xi |
| CHAPTER | |
| I. Introduction | 1 |
| 1.1 An Introduction to Waivers | 4 |
| 1.2 The Central Argument | 17 |
| 1.3 Bottom-Up vs. Top-Down? | 19 |
| 1.4 Plan of the Dissertation | 20 |
| II. Presidential Use of Waivers Across Policies | 24 |
| 2.1 Waiver Authority | 25 |
| 2.2 Structure of the Waiver Process | 29 |
| 2.3 Exploring Waivers across Presidencies | 33 |
| 2.4 Conclusion | 65 |
| III. Introducing the Data and Testing the Common Assumption | 68 |
| 3.1 A Common Assumption about Presidents and Waivers | 70 |
| 3.2 Weaknesses in Existing Large- <i>n</i> Analyses | 72 |
| 3.3 Introducing an Original Dataset | 73 |
| 3.4 Modeling the Common Assumption | 91 |
| 3.5 Conclusion | 100 |
| 3.6 Appendix | 102 |
| IV. A Theory of Presidential Policymaking through Waivers | 107 |

| | | |
|--|---|------------|
| 4.1 | Theoretical Foundations: Presidential Power and Policymaking . . . | 108 |
| 4.2 | Executive Federalism: A Starting Point | 111 |
| 4.3 | A Theory of Presidential Policymaking through Waivers | 113 |
| 4.4 | Central Propositions | 124 |
| 4.5 | Conclusion | 129 |
| V. The Politics of Waiver Submissions | | 131 |
| 5.1 | Proposition 1 | 133 |
| 5.2 | Analysis of Proposition 1 | 139 |
| 5.3 | A Simpler Explanation? | 147 |
| 5.4 | Additional Implications | 153 |
| 5.5 | Conclusion | 154 |
| 5.6 | Appendix | 157 |
| VI. The Politics of Waiver Approvals | | 164 |
| 6.1 | Data | 165 |
| 6.2 | Assessing Proposition 2 | 166 |
| 6.3 | Assessing Proposition 3 | 179 |
| 6.4 | Extension: Waivers in the Context of Legislative Durability | 189 |
| 6.5 | Additional Implications | 195 |
| 6.6 | Conclusion | 196 |
| VII. Conclusion | | 216 |
| 7.1 | Summary | 217 |
| 7.2 | Contributions | 220 |
| 7.3 | Additional Implications | 223 |
| 7.4 | Future Research | 228 |
| 7.5 | Final Thoughts | 233 |
| BIBLIOGRAPHY | | 235 |

LIST OF FIGURES

Figure

| | | |
|------|---|-----|
| 3.1 | Section 1115 Waiver Applications, 1984-2012 | 77 |
| 3.2 | Approved Section 1115 Waivers, 1984-2012 | 80 |
| 3.3 | Approved K-12 Education Waivers, 1995-2012 | 83 |
| 3.4 | Proposition 2: No ARRA | 105 |
| 3.5 | Proposition 2: No Hurricane | 105 |
| 5.1 | Marginal Effect of <i>Distance</i> on Submissions, "No Alignment" Specification | 141 |
| 5.2 | Marginal Effect of <i>Percent Governors</i> , "No Alignment" Specification | 145 |
| 5.3 | Marginal Effect of <i>Distance</i> with Pre Law, "No Alignment" Specification . | 150 |
| 5.4 | Marginal Effect of <i>Percent Governors</i> with Pre Law, "No Alignment" Spec- ification | 153 |
| 5.5 | Proposition 1 Alternative Specification, Marginal Effect of <i>Divided Gov- ernment</i> | 160 |
| 6.1 | Marginal Effect of <i>Distance</i> , All Policies – Unconditional | 173 |
| 6.2 | Marginal Effect of <i>Distance</i> , Unconditional – Section 1115 | 175 |
| 6.3 | Marginal Effect of <i>Distance</i> , Conditional – Section 1115 | 176 |
| 6.4 | Marginal Effect of <i>Percent Governors</i> , Unconditional – All Policies | 177 |
| 6.5 | Marginal Effect of <i>Percent Governors</i> , Conditional – Section 1115 | 177 |
| 6.6 | Simple Extension of Proposition 2 with <i>Pre Law</i> | 185 |
| 6.7 | Proposition 3, <i>Pre Law</i> =1 | 187 |
| 6.8 | Proposition 3, <i>Pre Law</i> =0 | 187 |
| 6.9 | Basic Durability, <i>Pre Law</i> =1 | 193 |
| 6.10 | Basic Durability, <i>Pre Law</i> =0 | 193 |
| 6.11 | Proposition 2: No ESEA Flexibility | 202 |
| 6.12 | Proposition 2: Divided Government | 202 |
| 6.13 | Proposition 2: Alternative Conditional Model | 202 |
| 6.14 | Unsatisfied = 1, Proposition 3, Alternative <i>Pre Law</i> Coding | 209 |
| 6.15 | Unsatisfied = 0, Proposition 3, Alternative <i>Pre Law</i> Coding | 209 |
| 6.16 | Triple Interaction, <i>PreLaw</i> =1 | 212 |
| 6.17 | Triple Interaction, <i>PreLaw</i> =0 | 212 |
| 6.18 | Simple Extension with Durability Measures | 212 |

| | | |
|------|--|-----|
| 6.19 | Marginal Effect of Chamber Differences | 215 |
|------|--|-----|

LIST OF TABLES

Table

| | | |
|------|--|-----|
| 2.1 | Clinton Administration Section 1115 Welfare Waivers | 42 |
| 2.2 | Section 1115 Medicaid Waivers, 1992-1996 | 47 |
| 2.3 | Clinton Administration K-12 Education Waivers, 1995-2000 | 54 |
| 2.4 | Bush Administration K-12 Education Waivers, 2001-2008 | 57 |
| 2.5 | Obama Administration K-12 Education Waivers, 2009-2012 | 61 |
| 3.1 | Dependent Variable Summary Statistics | 78 |
| 3.2 | Waivers requested and granted by the Department of Education in response to states and local education agencies, as seen in Gormley (2006), Table 3, page 532. | 89 |
| 3.3 | Assessing the Common Assumption, Submitted Waivers | 96 |
| 3.4 | Assessing the Common Assumption, Approved Waivers | 99 |
| 3.5 | Alternate Models, Submitted Waivers | 103 |
| 3.6 | Proposition 2: Omitting Approved ARRA and Hurricane Waivers | 104 |
| 3.7 | Alternate Models, Approved Waivers | 106 |
| 5.1 | Submitted Waivers, Dependent Variable Summary Statistics | 136 |
| 5.2 | Assessing Proposition 1 | 140 |
| 5.3 | Assessing Proposition 1 with Pre Law | 149 |
| 5.4 | Summary Statistics | 157 |
| 5.5 | Assessing Proposition 1: Fixed Effects Reported | 158 |
| 5.6 | Alternative Specifications: Proposition 1 | 159 |
| 5.7 | Assessing the Role of Pre Law | 161 |
| 5.8 | Year of Law Passage | 162 |
| 5.9 | Frequency of <i>Percent Governors</i> | 162 |
| 5.10 | Percent Governors, by Year | 163 |
| 6.1 | Approved Waivers, Dependent Variable Summary Statistics | 167 |
| 6.2 | Assessing Proposition 2 | 171 |
| 6.3 | Year of Law Passage | 182 |
| 6.4 | Assessing Proposition 3 | 186 |
| 6.5 | Assessing Durability | 192 |
| 6.6 | Summary of Findings, Marginal Effect of <i>Distance</i> | 197 |

| | | |
|------|--|-----|
| 6.7 | Summary Statistics | 200 |
| 6.8 | Alternate Proposition 2 Specifications: No ESEA Flexibility and Divided Gov. | 201 |
| 6.9 | Assessing Proposition 2: All Policy and President Fixed Effects Reported . | 203 |
| 6.10 | Alternate Proposition 2 Specifications: Alignment and Additional Controls | 204 |
| 6.11 | Alternate Proposition 2 Specifications, Unconditional Model | 205 |
| 6.12 | Proposition 2, Conditional Model Alternative Specifications | 206 |
| 6.13 | Assessing Proposition 3: Fixed Effects Reported | 207 |
| 6.14 | Assessing Proposition 3: Alternative Pre Law Measurement | 208 |
| 6.15 | Proposition 3, With Alignment | 210 |
| 6.16 | Alternative Specification: Proposition 3 | 211 |
| 6.17 | Durability Models with Fixed Effects Reported | 213 |
| 6.18 | Alternative Durability Specifications, Proposition 3 | 214 |

ABSTRACT

Presidential Policymaking at the State Level:
Revision through Waivers

by

Elizabeth K. Mann

Chair: Charles R. Shipan

Presidents in the modern era face daunting institutional hurdles to accomplishing their policy goals. In this environment, presidents often rely on innovative policymaking strategies to implement their agendas. This dissertation explores an avenue of presidential power that has received scant attention in existing scholarship. I examine how and when presidents use a waiver strategy to pursue policy reform at the subnational level. Presidents have approved hundreds of waivers in welfare, Medicaid, and education, yet we lack a theory that examines the incentives that shape how presidents exercise waiver authority. I propose a theory of presidential policymaking through waivers in which I examine the horizontal *and* vertical relationships that motivate (and constrain) the president's use of this strategy.

I argue that the president is initially motivated to use a waiver strategy when it is difficult for him to implement policy reforms through legislation. If the president seeks a route that circumvents Congress in order to implement national-scale reform, a waiver strategy is only viable if enough governors participate. While the president enjoys broad waiver authority in welfare, Medicaid, and K-12 education, he cannot force states to adopt reforms via waivers. Ultimately, I propose that the president pursues a waiver strategy

when he is ideologically far from Congress, contingent on the share of the nation's governors in his party. I assess the core theoretical propositions using an original dataset of submitted and approved waivers in welfare, Medicaid, and K-12 education from 1984 through 2012.

The results here suggest that the president can indeed use a waiver strategy to bypass Congress, although he faces a vertical constraint from the nation's governors. This analysis provides insight into the paradox of presidential power in the modern era. The president enjoys broad authority, but the system of checks and balances often frustrates the president's efforts to exercise this authority. A waiver strategy provides the president with a policymaking avenue where otherwise one might not be available given the horizontal constraint imposed by Congress. In turn, the federal system's distribution of authority between levels of government forms a vertical constraint on the president's exercise of power.

CHAPTER I

Introduction

On September 23, 2011, President Barack Obama seized the reins of education reform from Congress. In public remarks introducing his administration's new waiver initiative, President Obama criticized Congress for failing to address the widely noted failings of the No Child Left Behind Act of 2001 (NCLB):

I've urged Congress for a while now, let's get a bipartisan effort, let's fix this. Congress hasn't been able to do it. So I will. Our kids only get one shot at a decent education. They cannot afford to wait any longer. So, given that Congress cannot act, I am acting.

The president leaves little room for interpretation – in this speech, he announced his intention to act *without* Congress. This statement alone may not be surprising, given the strong incentives for the president to act decisively (Howell 2013) and the many types of unilateral action at the president's disposal (Mayer 2009). However, the waiver strategy that President Obama introduced in this speech and subsequently used to bypass Congress was indeed unexpected.¹ Despite the many pages that have been written on the president's strategies for acting without Congress, the president's use of a waiver strategy is almost completely absent from the literature on the president's alternative policymaking routes.²

¹Specifically, in this speech President Obama introduced its waiver strategy as the ESEA Flexibility initiative. "ESEA" refers to the Elementary and Secondary Education Act of 1965; NCLB was the 2001 reauthorization of this Act.

²See Gais and Fossett (2005) for a notable exception.

This absence is striking given that presidents can and do use waivers strategically in pursuit of their own policy goals. The Obama administration's use of waivers from NCLB is a case in point: this waiver strategy provided states with an opportunity to apply for flexibility from NCLB, one of President George W. Bush's signature domestic policy achievements, and in turn required states to implement components of President Obama's education agenda. By the fall of 2015, 43 states and Washington, D.C. were implementing reforms to NCLB via waivers authorized by the Obama administration.

This use of waivers is impressive in its own right. But presidential use of this policy-making tool is not confined to President Obama's revision of NCLB.³ In core domestic policy areas, including welfare, education, and Medicaid, presidents from Reagan through Obama have used waivers to substantially revise existing laws at the subnational level and, in doing so, have facilitated implementation of their preferred policies. The implication is startling: over the past three decades, revisions to federal law, authorized by the president's administration without oversight from Congress and implemented at the state level, have shaped policies that bear on millions of Americans' everyday lives. And yet, the president's systematic use of this tool remains largely unexamined.

In this dissertation, I explore this unconventional presidential policymaking strategy. As I discuss below, waivers are exemptions from federal law granted by the president's administration. Waivers are often designed to facilitate experimentation with innovative policies at the state level. A key feature of waivers is the necessity of state cooperation: presidential administrations cannot mandate that states use waivers. Rather, individual governors must apply for waivers and receive approval from the administration in order to implement policy changes. Perhaps because a waiver strategy neither fits into the category of formal powers outlined in Article II of the Constitution nor constitutes unilateral action, we lack an explanation of presidents' strategic use of waivers.

³The Obama administration's use of conditional waivers, which required states to implement new policies not found in existing law, is an important innovation compared to how previous presidents have exercised waiver authority (Skinner and Feder 2012).

The chapters that follow address two related questions: how do presidents use waivers, and when do presidents pursue this subnational strategy? Two central observations shape this inquiry. First, a waiver strategy offers the president a remarkable opportunity to circumvent Congress. But second, despite the relative freedom the president enjoys, his use of a waiver strategy is constrained by a group of actors we rarely consider when discussing presidential policymaking: governors. This strategy, then, is paradoxical. It offers the president a surprising degree of flexibility but, at the same time, does not offer a unilateral route to policymaking.

This dissertation makes an important contribution to our understanding of presidential power by investigating the horizontal *and* vertical constraints that influence the president's use of a waiver strategy. The vast majority of scholarship on the presidency focuses on how the president exercises power at the national level; in turn, scholars ask how the president navigates the constraints imposed by the system of checks and balances. As a result, this scholarship generally considers horizontal constraints on presidential power – that is, constraints imposed by other national actors, such as Congress. In this project, however, I examine how the president exercises power at the *subnational* level through waivers. Given the nature of waiver authority, as discussed at length in Chapter 2, the president faces a vertical constraint as well as a horizontal constraint when using a waiver strategy. Specifically, a waiver strategy may allow the president to implement national-scale policy reform absent legislative revision *if* enough governors are willing to participate in this strategy. By investigating how and when presidents use waivers, I assess not only the constraints imposed on the president by the system of checks and balances, but also how the federal system's distribution of power between levels of government shapes the president's exercise of power.

This chapter proceeds as follows. First, given that waivers are not well-known policy tools, I provide an introduction to waivers. I then describe the types of waivers that I focus on in this dissertation and summarize the policies implemented through these waivers to

provide a more concrete basis for subsequent discussion and analysis. Next, I introduce the central argument of the dissertation. Finally, I outline the plan of the dissertation, explaining the role each chapter plays and the relationship between these chapters.

1.1 An Introduction to Waivers

Waivers are exemptions from federal law granted by the secretary of the relevant department. These exemptions are often granted to allow states to implement new programs, frequently referred to as demonstrations or demonstration projects.⁴ This definition is admittedly quite broad, but with good reason – other than this distinguishing feature, waivers vary quite a bit. In this project, I focus on a specific subset of waivers. Specifically, the theory-building and analyses here are based on waivers granted in three policy areas during specific time periods: welfare from 1984 through 1996, Medicaid from 1992 through 2012, and K-12 education from 1995 through 2012.⁵

1.1.1 Policies Studied: Welfare, Medicaid, and K-12 Education

I focus on waivers granted in these policy areas for three reasons. First, the waivers I study within these policy areas allow states to implement substantive policy changes rather than mere administrative adjustments. While the extent of these changes varies, across each type of waiver considered here, the potential exists for presidents to authorize substantive revisions to existing law. And indeed, presidents and their administrations have exercised this authority extensively in these three policy areas during the years I

⁴Waivers may or may not require an evaluation component, depending on the requirements set by the administration. Waivers are not grants, and waivers are not competitive across states. If the administration makes waivers available, the invitation to apply is open to all states, and one state's receipt of a waiver does not impact whether or not other states will remain eligible for approval.

⁵Specifically, I focus on Section 1115(a) waivers in welfare and Medicaid and Section 14401 (later known as Section 9401) waivers in K-12 education. Chapter 2 explains the nature of waiver authority in each of these policy areas in depth. Throughout this project, when I discuss "welfare" waivers, I am referring to waivers granted from the Aid to Families with Dependent Children program. When I discuss "education" waivers, I am referring to waivers granted from federal requirements governing kindergarten through high school, or K-12 education.

include.

Second, and critically, presidents enjoy a high degree of discretion over exercising waiver authority in each policy area during the years considered here. Specifically, as Chapter 2 discusses at length, the relevant secretary enjoys authority over waiving provisions of federal law and, in doing so, approving each governor's proposed program change. It is important to note here that throughout this dissertation, I often refer to the president's use of waiver authority, although this authority is directly vested in the relevant secretary. Welfare and Medicaid waivers fall under the purview of the Secretary of Health and Human Services, while the Secretary of Education enjoys authority over K-12 education waivers. In practice both the Secretary of Health and Human Services and the Secretary of Education are reliable agents of the president who work closely with his administration to develop and implement the president's waiver strategy. As such, I refer to the president's use of waivers.

Despite the broad discretion granted to the relevant secretary, the secretary cannot instruct or mandate that a state use a waiver. Rather, a governor must apply for a waiver. An administration's use of waivers, then, depends fundamentally on cooperation from governors. Throughout this project, I focus on the governor as the primary state actor with whom an administration interacts throughout the waiver process. This is of course a simplification – bureaucrats, other elected officials, and interest groups at the state level may contribute in important ways to a state's waiver application and subsequent implementation of a demonstration program. However, as the chief state executive, governors are ultimately the actors who decide whether or not to apply for a waiver, who sign off on waiver applications, who interact with members of the president's administration, and who agree to implement a waiver if approved.⁶ Evidence in Chapter 2 speaks to this interaction between the president's administration and governors; as I argue throughout this project, whether or not a critical mass of governors cooperates with a president's waiver

⁶For example, see Thompson (2012) for a discussion of the prominent role that governors play in the waiver process with respect to Section 1115 Medicaid waivers.

strategy is an important constraint on the president's use of this policymaking tool.

Third, a substantial degree of variation characterizes presidents' waiver strategies within and across these three policy areas.⁷ In the case of welfare, for example, President Clinton dissolved the Interagency Low Income Opportunity Advisory Board (IL-IOAB) that President Reagan established and relied upon to centralize review of welfare waivers in the White House (Teles 1996). In addition to presidents revising their predecessors' systems for reviewing specific types of waivers, individual administrations often develop different approaches to waivers across these policy areas. For example, President Clinton offered governors expedited review of welfare waivers that implemented his administration's five preferred reforms, while his administration made no comparable offer in the case of Medicaid waivers. Further, immediately after President George W. Bush signed the No Child Left Behind Act of 2001, his administration made it clear that they were unwilling to entertain requests for waivers from this law; in contrast, his administration actively courted Medicaid waivers as part of the Health Insurance Flexibility and Accountability initiative (Thompson 2012). In all, these three policy areas provide for meaningful variation in terms of when and how presidents use waivers in pursuit of their own policy goals.

This analysis of welfare, Medicaid, and education waivers is well-suited to reaching generalizable conclusions about the president's use of waivers. Most existing work on waivers focuses on these policy areas individually, and as a result, conclusions remain specific to each policy (Teles 1996; Arsneault 2000; Thompson and Burke 2007, 2008; Weissert and Scheller 2008; Weissert 2008; Thompson 2012; Shelly 2012, 2013). Here, I use welfare, Medicaid, and education waivers to assess my theory of presidential policymaking through waivers. By assessing my theoretical propositions using data on three policy areas, the results are not specific to one type of policy, but rather, can be used to gain insight into the president's strategic use of waivers across policies.

⁷Chapter 2 describes this variation in detail.

Further, these policy areas do not address niche issues or populations. Indeed, each of these three policies perennially occupies an important place on the president's domestic agenda.⁸ Consider, for example, that funds distributed under programs in these policy areas impact millions of Americans. Medicaid covered more than 62 million Americans in 2013, including "more than one in every three children" (Kaiser Commission on Medicaid and the Uninsured 2013, 7). In the case of welfare, 3.3 million households received public assistance benefits in 2012 (Irving 2014). Finally, more than 21 million children attended schools that received Title I funds in the 2009-10 school year; over 56,000 public schools received these funds (National Center for Education Statistics 2015). In short, these policy areas occupy an important role in mainstream government service provision and politics; we can be confident that results from this analysis may be generalizable to additional domestic programs.

There are two potential limitations to the generalizability of the results here. First, programs administered in these policy areas are intergovernmental in nature; power and authority is shared, to varying degrees, between the federal, state, and local governments. As such, these results may not be generalizable to programs operated only at the national or state levels. However, this limitation is inherent to the inquiry at hand. If the goal is to investigate how presidents use subnational policymaking strategies in the context of waivers, we should not expect the results to bear on presidential strategy vis-à-vis policies in which authority lies solely at the national or state level. On the other hand, these results are indeed generalizable to policy areas in which federal and state governments share authority.

The second potential limitation stems from the redistributive nature of all three policy areas here. Indeed, the results may only be applicable to programs that involve government redistribution of funds. However, these results are not specific to one type of redistributive spending, given the variation across welfare, Medicaid, and K-12 education.

⁸Chapter 2 discusses the salience of these policy areas in detail.

For example, the current welfare program, Temporary Assistance to Needy Families, provides cash transfers to individuals (Irving 2014), while Medicaid is a health insurance program for low-income Americans (Kaiser Commission on Medicaid and the Uninsured 2013). Medicaid remains an entitlement program, while welfare transitioned from an entitlement program to a block grant following passage of the Personal Responsibility and Work Opportunity Act of 1996.

Unlike welfare and Medicaid, in the case of K-12 education, the federal government does not redistribute funds to individuals. Rather, the federal government addresses inequality in K-12 education through Title I, first established in the Elementary and Secondary Education Act of 1965. Title I specifies a formula grant to redistribute funds to states, Local Education Agencies (LEAs), and ultimately schools based on the income of their student populations (Department of Education 2015). While these results may only be generalizable to redistributive programs, then, they are not specific to one type of government redistribution.

1.1.2 Years of Analysis: 1984 – 2012

In each policy area, I identified the starting year for analysis based on when waivers in each policy area were first used systematically. I begin with a description of the years studied in welfare policy. As Chapter 2 describes, waiver authority in welfare and Medicaid was established in Section 1115(a) of the Social Security Amendments of 1962 (SSA). However, welfare waivers were used only intermittently until the Reagan administration (Greenberg and Wiseman 1992; Lieberman and Shaw 2000). In particular, President Reagan developed a specific process for reviewing and approving waivers during his second term (Teles 1996; Fishman and Weinberg 1992). For this reason, I begin my analysis of welfare waivers in 1984. In 1996, with the passage of the Personal Responsibility and Work Opportunity Act, welfare waivers were rendered moot in the transition to the new

Temporary Assistance to Needy Families (TANF) program.⁹ Consequently, in this project analysis of the president's use of welfare waivers extends through 1996.

As with welfare, I similarly begin analysis of Medicaid waivers well after passage of the SSA in 1962. Specifically, in this project the analysis of Medicaid waivers begins in 1992. While Medicaid waiver authority existed since 1962, President Bill Clinton was the first to regularly use this authority to authorize demonstration projects that allowed for "comprehensive, enduring reforms," according to Thompson and Burke's analysis of Section 1115 waivers (2007, 974).¹⁰ Presidents continue to exercise Section 1115 Medicaid waiver authority; analysis here of Medicaid waivers extends from 1992 through 2012.

An obvious question here is why presidents did not systematically use Section 1115 waivers earlier, given the availability of this authority since the Kennedy administration. As I discuss below, the central argument of this dissertation is that waivers provide presidents with an alternative policymaking strategy when presidents are unable to revise existing law via the legislative process. A plausible explanation for the systematic use of waiver authority beginning in the mid-1980s is the increasing difficulty of achieving legislative goals as party polarization began to dramatically increase starting in the late 1970s (McCarty et al. 2006). This is not to say that presidents gave up on implementing their policy preferences through the legislative process in the face of this polarization, nor that important laws are no longer enacted under divided government (Mayhew 1991, 2005). However, with increasing party polarization and the simultaneous increase in income inequality that McCarty et al. (2006) document, it may indeed be the case that reaching satisfying compromises with Congress over the design of redistributive social welfare policies became more difficult for the president in the 1980s, motivating the use

⁹Under TANF, states enjoyed substantial flexibility in developing their welfare programs compared to under AFDC (Teles 1996; Lieberman and Shaw 2000; Weaver 2000). The new status quo under TANF made it unnecessary for states to request additional flexibility via waivers. The Department of Health and Human Services has not granted any new Section 1115 welfare waivers since passage of TANF in 1996 (Government Accountability Office 2012).

¹⁰The Center for Medicare and Medicaid Services (CMS) records for approved Section 1115 Medicaid waivers begin in 1992, which is why my analysis of Medicaid waivers begins in 1992 rather than at the start of Clinton's first term in 1993.

of waiver authority. Indeed, Chapter 2 describes prolonged battles with Congress over changes in welfare and Medicaid across the time period studied here.

Finally, in the case of K-12 education, comparable waiver authority that gave the secretary the power to authorize state-level changes to existing federal law was first included in President Clinton's 1994 reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). The federal government's involvement in education policy was limited until this point in time. That is, ESEA was originally designed to redistribute funds to schools that served economically disadvantaged students, and this was the primary purpose the law served for the first thirty years of its existence. McGuinn (2006) explains:

ESEA laid the foundation for a policy regime in education that persisted for almost thirty years. At the heart of this regime was a policy paradigm, meaning a set of views about the nature of the country's educational problems and the appropriate means of government response. The core beliefs of this paradigm were that most public schools were doing fine, that problems were concentrated in schools located in poor areas, and that issues of school governance and improvement were the responsibility of local and state governments. ESEA created a narrow federal role in education and proscribed both the means and the ends of national policy – providing additional resources and procedural safeguards to promote equity and access for disadvantaged students (22).

In this environment, as McGuinn (2006) makes clear, the federal role in education was quite circumscribed, such that the federal government had little say in the administration of K-12 education. However, this paradigm began to shift in 1983 with the publication of the federal report *A Nation at Risk*, which McGuinn describes as a "crucial focusing event" that spurred reform (22). In particular, "a new push for standards, accountability, and choice began to emerge," and as it did, education increasingly occupied a center-stage role in presidents' domestic agendas (22). Beginning with the Clinton administration, the federal government began asserting a more active role in education policy. With the Department of Education's increasing involvement in the administration of K-12 education at the state and local levels, Congress also granted general waiver authority to the Secretary of Education in the Clinton administration's 1994 reauthorization of ESEA. The

first waivers were granted under this authority in 1995, and presidents have continued to exercise this waiver authority through the present day. As a result, this study focuses on waivers in K-12 education policy from 1995 through 2012.

1.1.3 Waivers as Policy Tools

In this dissertation, I argue that presidents use waivers as policymaking tools to authorize substantive changes to existing law. The goal of both the qualitative and quantitative analysis that follows is to examine how the president's institutional constraints shape his use of this tool, rather than to explain the specific policies implemented through waivers. As a result, this dissertation discusses the president's use of waivers extensively but does not focus primarily on the programs authorized via waivers. To ground the chapters that follow in a concrete understanding of waivers as policy tools, here I provide a summary of the policies implemented via the waivers analyzed in this dissertation.

Welfare: 1984 – 1996

Section 1115 welfare waivers have authorized states to implement a variety of different programs. As Chapter 2 discusses, the Reagan administration's goal with regard to welfare reform was to incentivize recipients to become self sufficient. A total of sixteen Section 1115 welfare waivers were approved by the Reagan administration (Fishman and Weinberg 1992); in practice, the programs proposed and implemented via these waivers varied. For example, a Heritage Foundation report on these welfare waivers notes that "[e]normous diversity is reflected in the initiatives sent to the [Interagency Low Income Opportunity Advisory] Board. Even when states address the same problem, the approaches tend to differ" (Heritage Foundation 1989, 6).

Despite this variation, the Heritage Foundation identified several categories of program changes implemented via these waivers, acknowledging that individual states of-

ten adopted different approaches in pursuing each goal.¹¹ I summarize these categories as follows: workfare (generally, programs designed to "test work programs for mothers with young children"); other requirements for benefits (including additional "penalties or incentives" for teen AFDC parents to remain in high school); eligibility rules (including adjusting formulas for determining benefits and "[creating] financial incentives for recipients to choose employment rather [than] welfare"); streamlining rules ("making rules more uniform, thereby reducing erroneous payments and administrative complexity and making it easier for needy families to claim benefits and services"); child support ("[n]early all states applying for waivers are seeking ways to improve the collection of child support payments from absent parents); and entrepreneurship ("West Virginia and Pennsylvania are proposing demonstrations that would aid welfare recipients seeking to gain independence by starting their own small business"). The workfare programs in particular reflect the Reagan administration's goal of encouraging states to incentivize individuals on welfare to transition successfully to employment. As Chapter 2 discusses, the George H.W. Bush administration largely continued the Reagan administration's approach towards waivers (Teles 1996).

While the Clinton administration actively adapted the waiver process to meet its own needs, the administration's goals echoed those of the Reagan administration. For example, in a Federal Register Notice published in August 1995, the Department of Health and Human Services described its intent to authorize waivers that "[improve] the efficacy of the welfare system in helping recipients become self-sufficient (42574)." The programs the Clinton administration encouraged states to adopt via waivers reflect this goal of encouraging individuals to transition from welfare to employment. Specifically, in this Notice the Clinton administration identified the following five programs they considered promising:

1) requiring people on welfare to work and providing adequate childcare to

¹¹Please see pages 6-8 in the Heritage Foundation report, *How the White House Spurs Welfare Reform* (1989), for a complete description of each category.

permit them to do it; 2) setting time limits for welfare receipt, to be followed by work; 3) requiring fathers to pay child support or go to work to pay off what they owe; 4) requiring minor mothers to live at home and stay in school, and 5) paying the cash value of welfare and food stamps to private employers as wage subsidies when they hire people who leave welfare and go to work (42575-6).

A 1997 Department of Health and Human Services report summarized the programs states implemented through waivers under the Clinton administration in the following categories: work and training requirements, time limits, family cap provisions, expanded income disregards, increased resource limits, extended transitional assistance, expanded eligibility for two-parent families, and improved child support enforcement.¹² As in the case of the Reagan and Bush administrations, the specific programs implemented via waivers during the Clinton administration varied in nature and scope.¹³

Medicaid: 1992 – 2012

As in the case of Section 1115 welfare waivers, presidents have authorized Section 1115 Medicaid waivers that implement a variety of new, substantive programs. Thompson and Burke (2007) discuss in depth the nature of Section 1115 Medicaid waivers implemented under the Clinton and George W. Bush administrations.¹⁴ They argue that, despite concerns that these waivers would be used to roll back federal Medicaid benefits, there is little evidence of policy retrenchment, or in other words, "erosion of Medicaid,"

¹²For more details on these categories, please see "State Welfare Waivers: An Overview" in the Health and Human Services Setting the Baseline report.

¹³These experimental programs provided an excellent opportunity to conduct rigorous analysis of which reforms worked and which did not. The Manpower Demonstration Research Corporation (MDRC), in particular, was intensely involved in overseeing and assessing the outcomes of demonstration projects implemented through Section 1115 welfare waivers. A thorough discussion of the efficacy of these programs is outside the scope of this dissertation; see Gueron and Rolston (2013) and Manski and Garfinkel (1992) for a thorough account of the evaluation, implementation, and results of these demonstration projects in welfare from the Reagan, Bush, and Clinton administrations.

¹⁴Also see Thompson (2012) for a thorough discussion of how presidents have used Section 1115 Medicaid waivers. For example, Thompson (2012) notes the Bush administration's attempts to encourage specific types of policy changes via Section 1115 Medicaid waivers: "The Bush administration evinced little interest in learning from the Section 1115 waivers. Instead, it attempted to foster top-down diffusion by encouraging states to try approaches it favored on ideological grounds. In essence it acted more as a teacher of states than a student of them" (511).

due to policies implemented under waivers (2007, 971). Instead, they find that "these waivers have often enhanced health services for low-income people; above all, they have helped preserve Medicaid as an entitlement by undercutting support for those seeking to convert the program into a block grant" (971). Thompson and Burke (2007) show that under both the Clinton and Bush administrations, waivers were most frequently used to implement managed care programs. More broadly, these Medicaid waivers authorized a variety of programs. Thompson and Burke (2007) identify the following ten major categories of policies implemented under Medicaid waivers: "managed care, broad system reform, adult/general eligibility expansions, health care for children/pregnant women, employer-based expansion, family planning, [Hurricane] Katrina waivers, long-term care, patient cost sharing, prescription drug, and other" (980).

In the Obama administration's use of Section 1115 Medicaid waivers, we see the continuing theme of using these waivers to expand, rather than contract, provision of Medicaid services, reflecting Thompson and Burke's (2007) argument that Section 1115 Medicaid waivers have not been used as vehicles of retrenchment. For example, Bagenstos (2012) summarizes the Obama administration's use of Section 1115 Medicaid waivers as such: "The Obama Administration has used its Medicaid waiver authority to grant broad flexibility to the states in providing health care to indigent and disabled persons" (3). As in the case of welfare waivers, a variety of policies have been implemented via Section 1115 Medicaid waivers. The programs authorized across administrations are not simply logistical or administrative adjustments; rather, they allow states to implement new policies not found in existing federal law.

Education: 1995 – 2012

From 1995 through 2012, the substance of K-12 education waivers varies across presidential administrations. Under President Clinton, the Department of Education granted waivers to states enthusiastically. In the first Federal Register Notice describing approved

waivers granted under the administration's 1994 reauthorization of the ESEA, the Improving America's Schools Act (IASA), and the administration's related education law, the Goals 2000: Educate America Act, the Department of Education announced that "[s]tates and communities have new opportunities for flexibility in the use of Federal education funds in order to improve school effectiveness and academic achievement (44390)." In practice, these waivers were granted from a wide range of provisions in IASA. Often, waivers were granted from provisions governing the distribution and use of funds under Title I, a centerpiece of the federal government's role in education since passage of ESEA in 1965. For example, in a March 1996 Federal Register Notice the administration described the waivers approved thus far as such:

[i]n addition to the waivers of targeting and within district allocation provisions described in the earlier notice, this notice includes, among others, waivers that have been approved regarding provisions governing the statutory poverty thresholds for implementing schoolwide programs under Title I, the proportions of funds devoted to professional development in core subject areas under the Eisenhower Professional Development Program, the formation of consortia under the Perkins Vocational and Applied Technology Education Act, and the Public Charter Schools Program (11816).

Subsequent Federal Register Notices indicate that the Clinton administration continued to approve similar waivers throughout Clinton's second term. In addition, according to the Office of Elementary and Secondary Education (1997), the administration granted Ed-Flex authority to several states under the Goals 2000: Educate America Act. This authority delegated the Secretary's waiver authority to a state education agency; to be eligible for Ed-Flex authority, states were required to complete accountability plans as outlined in Goals 2000.

With the passage of the No Child Left Behind Act in 2001 (NCLB), the federal government's role in education changed dramatically (McGuinn 2006). Under IASA, the Department of Education required states to adopt content standards and to assess students regularly to increase student achievement and, further, to close the achievement gap between students at the low end of the economic spectrum compared to those at the high

end. However, IASA included no penalties for failing to meet these requirements. On the other hand, NCLB included highly prescriptive testing and accountability requirements as well as a series of escalating consequences for schools that failed to make adequate yearly progress, as defined by NCLB (182).

In contrast to the Clinton administration's use of waivers, as Chapter 2 describes, following passage of NCLB in 2001 the Bush administration was not open to granting waivers from this law through 2005. In 2006, however, the administration began to allow states to apply for waivers to implement specific programs that allowed states more flexibility in limited areas, including how to measure and define student growth. The defining feature of the Bush administration's approach towards waivers was its limited willingness to authorize flexibility from federal law in exchange for state experimentation with different approaches.

I describe the Obama administration's approach to NCLB waivers in depth in Chapter 2 – here, I provide a brief summary. As discussed above, the Obama administration introduced the ESEA Flexibility waiver initiative in 2011. In doing so, President Obama invited states to apply for flexibility from NCLB, which had proved onerous to successfully implement and was widely unpopular. But the administration did not simply excuse states from key provisions of the law and then grant states wide latitude to come up with alternative programs. Rather, the administration outlined the specific provisions they were willing to waive and, critically, specified four policy principles that state waiver plans had to adopt. These policy principles were aligned with the objectives of NCLB but were not part of existing law.¹⁵ Further, the administration quite clearly spelled out the

¹⁵Not surprisingly, however, these policy principles aligned closely with the Obama administration's own legislative "Blueprint for Reform" that had failed to make headway in Congress. Further, these principles were far from agreed-upon strategies for improving student and school performance. For example, the administration required states to adopt "college- and career-ready standards," broadly understood as a reference to the Common Core State Standards (CCSS), developed by the National Governors Association and the Council of Chief State School Officers. The CCSS have long been a lightning-rod of debate over the proper role of the federal government in education. Many conservatives view the CCSS as national standards, constituting an overreach of authority and an intrusion into the state domain of education (Fuller 2014). In contrast, the National Education Association (2015), the nation's largest teacher's union that is also an important ally of the Democratic Party, endorses the standards as an important tool for improving

policy options that states could choose from as alternatives to the system set up in NCLB for identifying and intervening in underperforming schools.

In all, presidents from Clinton through Obama have taken advantage of the general waiver authority available in both IASA and NCLB, the 1994 and 2001 reauthorizations of EASA, respectively. However, the substance, scope, and availability of waivers granted in K-12 education varies to a considerable degree across administrations.

1.2 The Central Argument

In this section I offer a preview of my theory of presidential policymaking through waivers, which Chapter 4 explains in detail.¹⁶

I argue that presidents consider two factors when they decide whether to pursue a waiver strategy. First, presidents consider whether implementing their policy goals by signing new legislation is a viable option. The more difficult it is to secure new legislation, the more likely presidents are to begin looking for alternative policymaking strategies. But if presidents anticipate an easy time working with Congress, there may be little reason for them to pursue waivers, which require ceding some control to states and negotiating policy changes on a state-by-state basis. The president's initial motivation to pursue waivers, then, stems from his relationship with Congress.

However, the president's inability to move his preferred agenda through Congress is not a sufficient condition for him to pursue waivers. When considering a waiver strategy in lieu of a legislative strategy, the president evaluates how many governors are likely to cooperate with his waiver strategy. That is, if the president invites states to apply for waivers, how many governors are willing to invest the time and resources in submitting an application, negotiating over the details, and implementing a policy change that sat-

student achievement.

¹⁶This theory and subsequent investigation is firmly rooted in an understanding of how the president's institutional environment shapes his exercise of power. That is, I adopt a presidency-centered approach (in contrast to a president-centered approach) as I investigate how and when presidents use waivers.

isfies the president's administration? If the answer is "not many," the president may want to pursue a different alternative that does not rely on state cooperation. While a small number of participants may not hurt the president in a meaningful way, it will also not go very far in helping him achieve anything approaching national-scale policy reform. Consider, for example, if only three or four states had applied for ESEA Flexibility when the Obama administration offered it. President Obama would not have solved his problem of revising NCLB – while he might have gained some currency with the handful of states that his administration helped, President Bush's unpopular law would have still been operating in full force while President Obama's reform proposal remained stuck in Congress. In turn, President Obama would not have been able to credibly claim to have revised an unpopular law.

However, if the president can count on cooperation from a critical mass of the nation's governors, then a waiver strategy may in fact be an attractive alternative when the president views the likelihood of signing a new law as low. Further, I argue that governors in the president's party are his natural allies. The primary constraint on the president's use of a waiver strategy, then, is the share of governors in his party. Based on this argument, I propose that the president is motivated to pursue a waiver strategy when he finds himself ideologically far from Congress, *contingent on* the share of governors in his party.¹⁷ To explain the incentives that motivate the president to pursue a waiver strategy, this theory incorporates a vertical dimension as well as the horizontal dimension generally included in the literature on presidential power.

¹⁷I also consider whether presidents who are dissatisfied with current law are more likely to use waivers when they are far from Congress, contingent on the share of governors in their party. In this case, granting waivers may help the president implement his preferred changes and simultaneously pressure Congress to reach a compromise that at least weakly satisfies the president's goals.

1.3 Bottom-Up vs. Top-Down?

Before proceeding to develop and assess this argument, I address a potential objection to the approach here. Specifically, I anticipate the objection that this work takes a "top-down" approach to studying waivers rather than a "bottom-up" perspective. Indeed, I approach waivers from the president's perspective, and as a result, my argument is shaped primarily by the president's motivations and constraints. However, state actors do indeed play an important role in the waiver process. For example, in the case of welfare waivers, an expert in the field emphasized the role that state leaders played in pushing for reform via demonstration projects.¹⁸ I do not dispute this reality. Indeed, my theoretical framework incorporates the crucial role that governors play in this process – in my argument, whether or not enough governors are willing to cooperate with a president's request for waivers is a central factor in explaining the president's use of a waiver strategy.

Nonetheless, as I explain in Chapter 2, I identify the president's decision to invite waivers as the first stage in the waiver process. One could argue, in contrast, that the first step is in fact governors' willingness to participate in this process. However, my argument about the president's decision to use waivers is rooted in his anticipation of whether governors will respond positively to his invitation. In this way, governors' desires to innovate and experiment with programs via waivers is very much a part of the waiver process as I describe it here. The choice I make, given my interest in explaining how and when presidents use a waiver strategy, is to include governors' attitudes towards waivers as part of the president's own decision-making process rather than investigating governors' goals regarding waivers in isolation. In this sense, my theory both incorporates the important role that governors play while simultaneously identifying how the president's goals and constraints shape his use of this strategy. Indeed, Chapter 5 is devoted to investigating when governors choose to submit waiver applications. Moreover, throughout this disser-

¹⁸Interview with the author, December 14, 2015.

tation, I explore how the president and his administration interact with governors and subsequently reflect on how governors' preferences and behavior shape the president's use of this tool.

1.4 Plan of the Dissertation

This dissertation proceeds as follows. In Chapter 2, I begin with a qualitative investigation of how and when presidents use waivers. Several scholars suggest that presidents use waivers strategically in pursuit of their policy goals (Thompson 2012; Gais and Fossett 2005; Hacker 2004; Bagenstos 2013; Arsneault 2000; Weissert 2008). However, we lack a theory that explains the conditions under which presidents are motivated to use this policymaking tool. The first step in this project, then, is to explore how presidents and their administrations have used waivers in welfare, Medicaid, and education from 1984 through 2012. The goal of this chapter is to identify conditions that seem to motivate and constrain this strategy. Without this work, we lack an adequate understanding of the president's use of this strategy and, as such, are ill-equipped to develop a theory of presidential policymaking through waivers. Overall, Chapter 2 lays the groundwork for the theory that I develop in Chapter 4.

Before developing this theory, in Chapter 3 I introduce an original dataset of submitted and approved waivers in welfare, Medicaid, and education from 1984 through 2012. I argue that this dataset improves on three weaknesses in existing datasets of waivers used in quantitative analysis. First, it allows for analysis of more than one policy area at a time, increasing the generalizability of results. Second, it covers a longer time period than existing work, allowing for enough variation on important institutional constraints in the president's policymaking environment. Third, it includes submitted waivers instead of only approved waivers, allowing us to investigate the conditions under which governors submit waivers and, thus, to assess whether these conditions are consistent with theoretical expectations.

I introduce the dataset at this point because doing so allows me to address an important question before developing my theory. In the small body of existing quantitative work on waivers, the president's role is only peripherally considered. Existing work has not developed a theoretical framework that accounts for the president's institutional incentives to use waivers, and a common assumption is that the president's involvement in this process is limited to him playing partisan favorites. That is, scholars reason that the president grants more waivers to governors in his party, despite a lack of evidence supporting this assumption. It is important to highlight the underlying implication of this approach: presidents passively react to waiver applications submitted by opportunistic governors. This existing framework poses a counter-narrative to the argument I propose here. Specifically, omission of the president's institutional incentives in existing work suggests that waivers are valuable policymaking instruments that governors take advantage of while the president simply authorizes proposals submitted by co-partisans.

Before developing my own theory, then, I use the original dataset introduced at the beginning of Chapter 3 to assess whether this common assumption is borne out. This quantitative analysis allows for a fair and perhaps even more thorough test of this assumption than previous work, given the improvements in the data described above. As a preview of the results, I find only weak and inconsistent evidence that governors in the president's party submit more waiver applications than governors in the opposing party. Further, I find no support for the assumption that the president grants more waivers to governors in his party than in the opposing party.

At this point, the qualitative evidence is clearly at odds with the way in which existing quantitative work models the president's role in the waiver process. While Chapter 2 suggests that presidents grant waivers under certain conditions based on their institutional constraints, existing models of waivers suggest that presidents simply grant waivers to co-partisans. Further, Chapter 3 illustrates that tests of this model yield little to no support for maintaining that this is the case. Together, Chapters 2 and 3 suggest that we

should move beyond current models of the waiver process that consign the president to a passive role.

In Chapter 4, I develop a theory of presidential policymaking through waivers. This theory is fundamentally rooted in scholarship on presidential power, and in particular, on how the president's institutional environment shapes his policymaking decisions. The qualitative evidence explored in Chapter 2 informs my argument that the president is particularly motivated to pursue a waiver strategy when he is unable to move his agenda through Congress. At the same time, based on the nature of waiver authority explored in Chapter 2, I consider the vertical relationship between the president and the nation's governors. As discussed above, my central argument is that the president's use of waivers depends on his ideological distance from Congress, contingent on the share of governors in his party. The primary contribution this theory makes is the argument that the president's policymaking strategy is shaped not only by the horizontal constraints imposed by Congress, but also by vertical constraints imposed by the nation's governors. From this theory, I develop a set of testable propositions. Using the original dataset introduced in Chapter 3, Chapters 5 and 6 assess these propositions.

Specifically, in Chapter 5 I explore a model of waiver submissions based on my theory. I assess the proposition that governors submit waivers strategically – that is, governors submit waiver applications when they expect that the president is motivated to approve waivers. Analyzing submitted waivers in welfare and Medicaid from 1984 through 2012, I find that governors do indeed submit more waivers precisely when my theory predicts that the president is motivated to approve these waivers. Specifically, when the president is far from Congress and a large share of governors is in his party, governors submit more waiver applications. This analysis offers support for the central argument in that governors' strategic application behavior reflects the president's own institutional incentives that, I argue, shape his waiver strategy. Yet this analysis does not offer a complete examination of the president's waiver strategy, nor does it provide definitive evidence that

these conditions motivate the president's waiver strategy.

Chapter 6 subsequently takes up the question at the heart of this dissertation: when do presidents approve waivers? I assess this question using the original dataset of approved waivers in welfare, Medicaid, and K-12 education from 1984 through 2012 introduced in Chapter 3. I first assess the central proposition and find strong evidence that the president approves waivers under the conditions my theory articulates: the president grants more waivers as he moves farther from Congress, contingent on the share of governors in his party. This evidence suggests that the president's waiver strategy is motivated by both horizontal and vertical constraints, consistent with theoretical expectations. Next, I address directly a consideration that is implicit throughout much of this dissertation: waivers are particularly valuable to presidents when they are dissatisfied with existing law. Here, I find evidence that is again consistent with my theory. Presidents grant more waivers when they are far from Congress, provided that they are dissatisfied with current law and contingent on the share of governors in their party. Finally, I assess whether we see waivers under conditions that predict more traditional types of legislative revisions and find initial evidence that this is in fact the case.

In Chapter 7, I summarize the theory and findings from the previous chapters. I discuss specific contributions this project makes to scholarship on the presidency and reflect on further implications of this argument. Finally, I enumerate a number of additional inquiries that would build on and extend the analysis here.

The chapters that follow explore how and when presidents use waivers, an unconventional policymaking strategy that looks quite different from the approaches we generally expect presidents to use. Fundamentally, in this dissertation I explore the possibility that a waiver strategy allows the president to pursue policy change that is otherwise beyond his reach via traditional avenues. As such, this inquiry contributes to existing scholarship by incorporating vertical as well as horizontal relationships into our understanding of the institutional constraints that shape the exercise of presidential power.

CHAPTER II

Presidential Use of Waivers Across Policies

A growing chorus of voices suggests that presidents approve waivers in pursuit of their own policy goals (Teles 1996; Thompson 2012; Bagenstos 2013; Gais and Fossett 2005; Hacker 2004). For example, evaluating how Presidents Clinton and George W. Bush used Section 1115 Medicaid waivers, Thompson (2012) finds that "demonstration waivers at the national level have become a major tool of executive action" (158). Hacker (2004) describes the welfare waivers authorized by the executive branch in the late 1980s as "a telling example of strategic adaptation to a political context preventing legislated policy reform" (252). Teles (1996) similarly identifies waivers as a tool that Presidents Reagan and Clinton used to facilitate welfare reform. More generally, Gais and Fosset (2005) conclude that "[w]aivers have thus enhanced presidential control of domestic policy and have diminished congressional influence" (511).

However, these observations do not amount to a theory of presidential policymaking through waivers. This existing work establishes the plausibility of the argument that presidents use waivers strategically. Yet, we lack a systematic examination of how and when presidents use waivers across multiple policy areas. Existing work provides a valuable set of snapshots of the waiver process but does not thoroughly examine how the president uses waivers or, in particular, how his institutional environment motivates (and constrains) his use of a waiver strategy. This chapter takes up this task and, in doing so,

builds the foundation for a theory of presidential policymaking through waivers.

Specifically, this chapter has three goals. First, I explain the origin and scope of the president's waiver authority in welfare, Medicaid, and education. To do so, I introduce the statutes that create and define waiver authority in these areas and discuss the broad discretion the president enjoys in exercising this authority. Second, I outline the three steps that constitute the waiver process. Here, it becomes clear that governors' cooperation is critical to the president's successful use of a waiver strategy. Third, the majority of this chapter is devoted to exploring when and how presidents have used waivers as part of a policymaking strategy. I use a qualitative approach here, examining cases in welfare, Medicaid, and education in which waivers have been used extensively. Ultimately, the goal is to develop an understanding of the constraints and incentives that systematically motivate the president's waiver strategy.

2.1 Waiver Authority

Waivers in welfare and in Medicaid are governed by the same statute in the Social Security Act Amendments of 1962, while comparable K-12 education waiver authority has been available since President Clinton's reauthorization of the Elementary and Secondary Education Act in 1994. Both statutes grant the president and his administration broad authority over the waiver process, with little formal oversight from Congress or the bureaucracy. I begin by discussing waiver authority in welfare and Medicaid, followed by K-12 education.

2.1.1 Welfare and Medicaid

Section 1115(a) of the Social Security Act Amendments of 1962 governs the welfare and Medicaid waivers I focus on in this project (Swendiman 2012).¹ Section 1115 explic-

¹Following common practice in the literature on these waivers, I refer to Section 1115(a) simply as "Section 1115." As mentioned in Chapter 1, throughout this discussion "welfare" refers to Aid to Families with Dependent Children (AFDC). AFDC was originally included in the Social Security Act of 1935 as Aid

itly authorizes the Secretary of Health and Human Services (HHS) to "waive compliance" with certain sections of the Social Security Act "[i]n the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives" of certain titles in the Act. Over time, this authority would cover AFDC, Medicaid, and the State Children's Health Insurance Program (Swendiman 2012, 2). Section 1115 is designed to encourage state innovation and to facilitate flexibility at the state level at the discretion of the Secretary, which President Kennedy specifically endorsed:

No study of the public welfare program can fail to note the difficulty of the problems faced or the need to be imaginative in dealing with them. Accordingly, I recommend that amendments be made to encourage experimental, pilot, or demonstration projects that would promote the objectives of the assistance titles and help make our welfare programs more flexible and adaptable to local needs (Swendiman 2012, 1).

The House and Senate reports on the Social Security Act Amendments of 1962 echo this rationale, recognizing that "the Secretary would be authorized to waive plan requirements to the extent he believes this action is necessary to carry out a demonstration or experimental project" (Swendiman 2012, 2).

The Congressional Research Service (CRS) reports that this waiver authority, delegated to the Secretary of Health and Human Services, is indeed as broad as it sounds in the legislative text: "While there is little legislative history accompanying this section, what history there is suggests that the Secretary's authority is very broad in approving demonstration projects" (Swendiman 2012, 2). Wiseman's description of the Bush administration's use of Section 1115 waivers from AFDC underscores the substantive implications of this delegation: "The standards for determining just what promotes the objectives of the AFDC program are left up to the Secretary and thus reflect, among other things, administration policy regarding the direction of welfare reform" (Wiseman 1993b, to Dependent Children (Weaver 2000, 16), while Medicaid and Medicare were added through Titles 19 and 18 of the Social Security Amendments of 1965, respectively (Smith 2002, 13). Section 1115 also governs waivers under the State Children's Health Insurance Program (Baumrucker 2008).

4). Finally, CRS also highlights the deference shown by courts to the administration's use of this waiver authority: "In general, the courts have been unwilling to circumscribe the Secretary's authority to approve experimental projects under Section 1115 and have rejected challenges to such waivers on numerous occasions" (Swendiman 2012, 10-11).

The original goal of Section 1115 was to provide an opportunity for states to experiment with new policies, although as this discussion makes clear, authority over authorizing this experimentation was expressly delegated to the Secretary of Health and Human Services (HHS). Given that the president appoints the Secretary of HHS as a member of his administration, this delegation effectively grants control to the president's administration over when and how states are authorized to implement demonstration programs via waivers.

2.1.2 Secondary Education

The education waivers that I study in this project are governed by a statute that similarly gives the president's administration broad authority over the waiver process. The Elementary and Secondary Education Act of 1965 (ESEA) is the centerpiece of federal education policy (McGuinn 2006). Congress first included general waiver authority in the 1994 reauthorization of ESEA, the Improving America's Schools Act (IASA), which formed the cornerstone of President Clinton's education agenda.² This broad waiver authority was included amidst concerns over the perceived encroachment of the federal government into education, traditionally a state domain. IASA was the first reauthorization of ESEA to include requirements that states develop content standards and administer assessments to measure whether students were meeting "adequate yearly progress" benchmarks (McGuinn 2006, 95).

The newly expanded waiver authority in IASA, found in Section 14401, allowed the

²Prior to IASA, the only waiver authority in ESEA was circumscribed and gave the Secretary "specific, program-based waiver authority" in order, for example, to "waive maintenance of effort requirements as they applied to specific programs due to exceptional or uncontrollable circumstances or a precipitous decline in the financial resources of a state" (Skinner and Feder 2012, 5).

Secretary of Education to waive requirements of the Act in order to "(i) increase the quality of instruction for students; or (ii) improve the academic performance of students" (P.L. 103-382). This provision was included to provide state and local education agencies with flexibility in implementing federal law. The House and Senate reports on IASA reflect this interpretation of Section 14401:

The Committee recognizes the need for greater local flexibility in the administration of Federal education programs and supports the use [of] waivers for the purpose of improving services and student performance. Administrative ease is not, in and of itself, a sufficient justification for a waiver of Federal requirements (Skinner and Feder 2012, 5).³

Despite the language of flexibility, as with Section 1115, authority over K-12 education waivers was expressly delegated to the Secretary of Education in IASA. This waiver authority was "retained" in Section 9401 of the George W. Bush administration's subsequent reauthorization of ESEA, the No Child Left Behind Act of 2001 (Skinner and Feder 2012).

Ultimately, the 1994 and 2001 reauthorizations of ESEA grant the Secretary of Education broad authority over the waiver process. Skinner and Feder (2012) in fact interpret the Secretary of Education's waiver authority as "discretionary, not mandatory" – the Secretary of Education is not required to exercise this authority but can invoke it at her discretion (10). Indeed, a 2006 federal district court upheld this interpretation that the Department of Education (ED) is not required to grant waiver requests from states.⁴ Further, Skinner and Feder note that "thus far, there do not appear to have been legal challenges to ED's authority to waive statutory requirements under the ESEA" (10).

³Limits to Section 14401 waiver authority include the following: "the Secretary was prohibited from waiving maintenance of effort requirements, equitable participation of private school students and teachers, and applicable civil rights requirements" (Skinner and Feder 2012, 5).

⁴Specifically: "the court rejected a state's challenge to ED's denial of its waiver request" (Skinner and Feder 2012, 10).

2.2 Structure of the Waiver Process

Both statutes governing welfare, Medicaid, and education waivers were designed to provide states with an option to experiment with programs that depart from the original legislation but, at the same time, are aligned with the law's intent. Crucially, authority over this flexibility resides with the sitting secretary of the relevant department. To date, the secretary's authority over waivers in these policy areas has not been successfully challenged. Skinner and Feder (2012) summarize:

...although individual waivers may face legal challenges and may even be struck down on occasion, the courts will generally uphold an agency's exercise of its statutory waiver authority so long as the agency develops an adequate record regarding its decision to grant a waiver and ensures that the waiver is granted consistent with the statutory purposes and procedures set forth in authorizing such waivers (12).

These statutes give the president, via the relevant secretary, authority over granting and denying waiver requests. While authority is specifically granted to the secretary rather than to the president, the Secretaries of Health and Human Services and of Education are appointed by the president and, as such, act as the president's agents (Lewis 2003). As Cabinet members, these secretaries are high-ranking members of the president's administration whose goal is to implement the president's domestic agenda. Consequently, the delegation of waiver authority to the secretary effectively provides the president and his administration with control over this policy tool. Indeed, the qualitative evidence below strongly suggests that the relevant secretaries and their agencies work closely with the president and his domestic policy team in designing and implementing waiver strategies.

Granting statutory authority over waivers to the relevant secretary has had important consequences, perhaps unintended, for the structure of the waiver process and the strategic value of waivers to presidents and their administrations. In practice, the waiver process generally unfolds through the following three steps.⁵

⁵These steps are not specifically prescribed in the relevant statutes; exceptions to these steps occur, and

First, presidents invite states to apply for waivers. Strictly speaking, states can submit applications that have not been invited by the administration. But, the administration retains authority over whether to review these applications, and from there, whether to approve or deny them. As I discuss in subsequent chapters, submitting applications when the president is not open to approving them is not in a governor's interest. Indeed, the only specific reference to "uninvited" waiver applications, to my knowledge, is in the Obama administration's 2010 report on ESEA waivers that they approved in 2009; the Department of Education lists these "uninvited" waivers in contrast to those waivers the administration invited. However, the administration at that point had indicated that it was open to using its waiver authority to approve flexibility from federal law for states, rather than specifically discouraging states from requesting flexibility in general.

Inviting states to apply can entail issuing guidance for the application process, sending formal invitations to governors or other relevant state actors, such as the Chief State School Officer, and public speeches by the president that announce a waiver initiative. The administration must also create a system to process these applications; unlike proposed rules and regulations, waiver applications are not vetted through existing channels. The administration must decide, for example, whether the review process should take place in the White House or in the relevant department and what role the Office of Management and Budget (OMB) should play.

One objection to this framework is that states (governors, in particular) initiate the waiver process by pressuring the administration for flexibility. For example, according to an independent evaluator of welfare waivers, the Reagan administration began granting waivers from AFDC in response to an outpouring of innovative ideas from states.⁶ This type of bottom-up pressure may motivate presidents to pursue a waiver strategy if they see governors as potential allies. It may in fact be in the president's own interest to in-

these steps look different depending on the administration and the political context, as I discuss in the next section.

⁶Interview with the author, December 14, 2015.

vite states to apply for waivers once the administration is already confident that enough governors are willing to submit applications in response to the president's request. But as discussed above, the secretary's authority over waivers is discretionary. If the president and his administration feel that granting flexibility from federal law is not in their interest, they are not obligated to offer states the opportunity to apply for waivers.⁷ Ultimately, I interpret the president's decision to invite states to apply for flexibility from federal law as the first step in the waiver process.

Second, states submit applications. While the relevant secretary enjoys broad latitude in exercising waiver authority in all three policy areas considered here, the secretary cannot simply hand out waivers. Each governor's decision to submit a waiver may depend on many factors, ranging from partisan allegiance to the president and his administration, ideological agreement on relevant policy goals, the governor's own re-election concerns, pressure from fellow governors, state capacity, and public attitudes towards the relevant federal policy. Which factors are salient may vary, depending on the broader political context and on the specific policy at hand. Governors may be eager to submit waiver applications or, on the other hand, the administration may need to actively encourage governors to participate in this process. How successfully the administration secures cooperation from governors is, in large part, a determinant of a waiver strategy's success. Without participation from governors, the president will not be able to pursue his preferred policy changes at the state level.

Third, the administration reviews each application and decides whether to approve each request. Secretaries might grant intermediate approval based on subsequent fulfillment of certain requirements. For example, the Department of Education has offered this type of intermediate approval for states that have not yet implemented the four policy principles required under the Obama administration's ESEA Flexibility initiative (U.S.

⁷For example, the George W. Bush administration refused to consider substantive waiver applications from the No Child Left Behind Act during the president's first term despite repeated state requests for flexibility from the law.

Department of Education 2015). The length of the authorized implementation period varies by policy area, as does the opportunity to extend or renew a waiver.

In their account of evaluating Section 1115 welfare waiver proposals, Gueron and Rolston (2013) illustrate that this review process can be a complicated negotiation between actors with different priorities and goals, including administration officials, the Office of Management and Budget, bureaucrats in the relevant agencies, governors, and independent evaluators. Additional evidence from welfare and Medicaid waiver negotiations suggests that members of Congress may advocate on behalf of their state's governor during the review process (Teles 1996; Bagenstos 2013; Thompson 2012). Underscoring the interaction between state and federal actors during the negotiation process, in his analysis of Medicaid waivers Thompson (2012) discusses the pivotal role that governors can play.

While the review process may involve many actors, the administration's ability to modify the standards of review and the structure of the review process gives the administration significant influence over the content and design of policies implemented through waivers. For example, the Reagan administration created the Interagency Low Income Opportunity Advisory Board in 1987 to centralize the review of welfare waiver proposals under chairman Charles Hobbs, the director of the Office of Policy Development in the White House (Gueron and Rolston 2013; Teles 1996).

2.2.1 Implications for Presidential Policymaking

While these statutes provide a mechanism for states to implement new programs in place of existing federal law, authority over the use of waivers lies with the relevant secretary and by extension, as discussed above, with the president. In practice, presidents can make waivers available to states at their own discretion. Recall that the Congressional Research Service made a distinction between mandatory and discretionary authority, finding that waiver authority is discretionary. The central implication here is that

presidents are not in fact required to review applications submitted by states, allowing the president to deny states the opportunity to deviate from federal law via waivers. On the other hand, if presidents are motivated to use waivers, they are free to pursue this option by inviting states to apply.

Beyond making the final decision on whether or not to approve state waiver applications, presidents enjoy many opportunities to shape the policy content of waivers. The administration can decide the standards by which applications will be reviewed. These standards can have substantive implications – for example, by requiring that the cost of a program would not increase under Section 1115 waivers, the Reagan administration prevented waivers from being used as vehicles for additional federal funds (Gueron and Rolston 2013). Presidents can also explicitly outline the policy changes that they prefer and can offer to fast-track the approval process for waivers that implement these programs, as the Clinton administration did in the case of welfare. And as mentioned above, in the case of Obama’s use of No Child Left Behind waivers, the administration required states to adopt policies that were not a part of existing law as a condition for receiving (and maintaining) waivers. Although presidents *cannot* implement a waiver strategy unilaterally given the necessity of state cooperation, presidents enjoy a high degree of control over the waiver process.

2.3 Exploring Waivers across Presidencies

When and how presidents exercise waiver authority remains an open question that I investigate below. This qualitative work addresses the third goal of this chapter. Specifically, through cases in welfare, Medicaid, and education, I explore the president’s use of waivers and begin to identify the constraints and incentives that appear to shape this strategy. This qualitative work is not meant to test or assess a specific idea about when and how presidents use waivers. Rather, it is designed as a theory-generating analysis of relevant evidence.

As such, in the sections below I review different types of sources, including archival documents from the Clinton Presidential Library, secondary academic sources, interviews, public opinion data, reports from the Congressional Research Service (CRS) and Government Accountability Office (GAO), Congressional Quarterly (CQ), and primary sources including the text of policy documents and speeches.⁸ The goal is to identify how presidents and their administrations approach waivers and to explore how the political context influences the president's use of this policy tool.

2.3.1 Welfare Waivers: 1984 – 1996

In this section, I examine how presidents Reagan and Clinton approached the waiver process in the context of welfare reform. While Section 1115 created waiver authority in 1962, Lieberman and Shaw (2000) note that "fewer than a dozen significant welfare reform waivers were granted prior to 1977" (223). Following passage of the Omnibus Budget Reconciliation Act of 1981, this tool gained prominence (Shaw and Lieberman 2000). As a result, most accounts of welfare waivers begin with the Reagan administration (Greenberg and Wiseman 1992; Teles 1996; Lieberman and Shaw 2000; Gueron and Rolston 2013). The opportunity to invite states to apply for waivers dovetailed with President Reagan's domestic agenda that involved dismantling federal social programs through devolution, which may help explain the increased role this type of policymaking tool played during his administration.⁹ This discussion of welfare waivers ends in 1996, when President Clinton signed the Personal Responsibility and Work Opportunity Act (PRWORA). Welfare waivers were rendered moot with the transition to welfare as a block grant rather than an entitlement.

⁸The rhetoric typical of public speeches is certainly tailored to the audience and as such should not be interpreted as a forthright explanation of the president's goals or policy preferences. These speeches are nonetheless informative, particularly given the inquiry at hand. If presidents never mention waivers in public speeches, this could indicate that this tool did not play an important role in advancing their agendas. However, if presidents mention waivers in public speeches, this may indicate that the administration thinks strategically about this policy tool.

⁹And as discussed in Chapter 1, the increase in partisan polarization in Congress beginning in 1977 may similarly have contributed to presidents' uses of alternative policymaking strategies.

Reagan's Welfare Strategy: "Up from Dependency"

I begin by discussing the Reagan administration's approach to waivers. Reducing the federal role in welfare was one of President Reagan's primary domestic objectives during his second term (Fishman and Weinberg 1992; Teles 1996; Weaver 2000; Conlan 2010). President Reagan introduced his focus on welfare reform in his 1986 State of the Union address, in which he charged the Domestic Policy Council with developing a strategy for decreasing dependency.¹⁰ Following this call to action, the White House Domestic Policy Council created the Low Income Opportunity Working Group, which researched and published its findings in a report entitled "Up from Dependency: A New National Public Assistance Strategy" (Fishman and Weinberg 1992, 116). Reagan's subsequent welfare reform strategy, and in particular his administration's approach to waivers, was shaped by this report (Teles 1996), which concluded, perhaps not surprisingly, that national meddling in welfare reform was not productive. Rather, the Up from Dependency report concluded that states should be allowed additional flexibility to pursue innovative solutions:

Our mandate from the President was to study the welfare system and to propose a strategy to change that system so that it better serves the poor and the society...The federal government should first of all do nothing to add to the confusion of the current system by introducing more changes or "reforms" until this country better knows what both relieves poverty and reduces dependency. Instead, the federal government should initiate a program of widespread, long-term experiments in welfare policy through state-sponsored and community-based demonstration projects (3).

Reagan subsequently introduced a "new national welfare strategy" in his 1987 State of the Union address; this strategy relied on "reform through state-sponsored, community-

¹⁰"After hundreds of billions of dollars in poverty programs, the plight of the poor grows more painful. But the waste in dollars and cents pales before the most tragic loss: the sinful waste of human spirit and potential. We can ignore this terrible truth no longer....Tonight I am charging the White House Domestic Council to present me by December 1, 1986, an evaluation of programs and a strategy for immediate action to meet the financial, educational, social, and safety concerns of poor families. I'm talking about real and lasting emancipation, because the success of welfare should be judged by how many of its recipients become independent of welfare."

based demonstration projects," echoing the recommendations of the Up from Dependency report almost verbatim. However, Reagan's legislative proposal to reform welfare via this avenue of state experimentation was not embraced by Congress. As Teles (1996) explains, Charles (Chuck) Hobbs, an assistant to the President who worked in the White House Office of Policy Development, designed the administration's waiver strategy after this failed legislative effort:

Facing a Congress that was at best indifferent and at worst hostile, Hobbs followed an alternative course, acting on the changes that the administration desired without adjustments to law - in fact, as if those changes had already occurred. [Hobbs said:] 'So I went to Reagan and said, what we need to do is put together some kind of administration task force that's going to look at these waivers, because the secretariats are reluctant about granting waivers because their own bureaucracies are telling them, 'you don't want to let a state do that' (126).

Given these conversations between the president and one of his top policy advisors about how to approach waivers, it seems that despite the rhetoric of state flexibility, the administration viewed waivers as a valuable policymaking avenue after failing to decentralize welfare through legislation. Reagan took Hobbs's advice and created the Intergovernmental Low Income Opportunity Advisory Board (ILIOAB) via Executive Order on July 20, 1987 (Fishman and Weinberg 1992). Hobbs chaired the board, signaling the shift in authority over waiver review from different agency heads to this centralized board within the White House. According to both Fishman and Weinberg (1992) and Teles (1996), this reorganization was designed to give the administration more control over not only the review process but also the policy content of programs operated through waivers.¹¹

¹¹Indeed, Fishman and Weinberg (1992) describe how "[the] purpose of the Board was to enhance coordination of federal public assistance programs and policies that cut across department lines and to create a focal point for intergovernmental coordination. During its first year in existence, the Board focused its efforts on encouraging the submission and review of state welfare reform demonstration proposals" (117). Teles (1996) describes the substantive effect of creating this board: "Centralizing authority in the White House facilitated the subsequent explosion in waiver activity in three significant ways. First and most obvious, it simplified the administrative process of approving waivers. Second, it centralized, in the governors' mind, the relevant actors and motivations that they had to take into account. Third, it permitted the White House to take over the waiver process and use it as a means for pursuing long-term political goals, such as restructuring the federal nature of the program and encouraging welfare reform, and it convinced the governors that more petty, partisan motivations were no longer active considerations in the waiver

Specifically, the review criteria for waiver applications included consistency with the president's policy goals, cost neutrality (the demonstration implemented through the waiver would not result in increased federal spending), and an evaluation designed to measure the "net effects upon dependency and the cost effectiveness of the demonstration as a whole" (Fishman and Weinberg 1992, 118). Waiver applications were sent to the Board, and the Chairman would make a recommendation to the Secretary. Although the Board was technically advisory, "the formal Board recommendation was followed in all cases" (119). This case suggests that the Reagan administration capitalized on the broad authority granted to the Secretary of HHS in Section 1115 to design a waiver process that allowed his administration to authorize state-level innovation that aligned with Reagan's domestic agenda.

The Reagan administration's invitation for states to apply for waivers was met with twenty-six applications between July 1987 (creation of the ILIOAB) and October 1988, when Congress passed the Family Support Act (FSA). In only one year, just over half the nation's governors had submitted waiver applications. Of the twenty-six waivers submitted, sixteen were approved and ten were withdrawn or denied (Fishman and Weinberg 1992, 119).¹² These welfare demonstrations allowed the administration to at least partially follow-through on its promise to expand the state role in welfare while simultaneously working to reduce dependency *absent* a legislative success for the administration in this arena. In his 1988 State of the Union address, Reagan pointed to two specific demonstrations in Wisconsin and New Jersey as evidence of his reform strategy in motion; he also used these "successes" to advocate for his legislative proposal that relied primarily on state experimentation rather than federal intervention to reduce dependency on welfare. President Reagan subsequently signed a welfare reform bill, the Family Support Act, on

process" (Teles 1996, 127).

¹²Fishman and Weinberg's (1992) review of the sixteen approved AFDC waivers shows that the final evaluation methods in the approved waivers were in general more rigorous than the methods originally proposed by the states, reflecting that "approval of a state's demonstration request was related to its willingness to adopt a fairly rigorous evaluation design" (126).

October 13, 1988. By many accounts, the administration's use of waivers between his 1986 State of the Union address and this legislative victory in 1988 were a key part of his overall efforts to reform welfare.¹³

Clinton's Quest to "End Welfare as We Know It"

Similar to the Reagan administration's strategy, the evidence discussed below suggests that President Clinton adapted the waiver process as he pursued legislative reform of the nation's welfare system. Within weeks of taking office, in February 1993 Clinton spoke at the National Governors Association winter meeting and specifically invited the nation's governors to experiment with innovative approaches to welfare reform via Section 1115 waivers.¹⁴ This public appeal for waivers was not an anomaly; throughout his first term, Clinton encouraged governors to apply for waivers repeatedly via public speeches and touted his record on approving states' proposals.¹⁵ The Clinton administration also made its own procedural mark on the waiver process, dissolving the Interagency Low Income Opportunity Advisory Board (ILOAB) created under Reagan and shifting primary responsibility for review of waivers back to HHS (Teles 1996, 136).

Ultimately, Clinton aspired to sign the national welfare reform law that he promised in his campaign for president would "end welfare as we know it." Clinton introduced his first (and long-awaited) welfare reform proposal, the Work and Responsibility Act of 1994, on June 14, 1994. However, the House Ways and Means committee never reported

¹³While waiver activity continued under the George H.W. Bush administration, there were few substantial changes between the Bush administration's waiver process and the Reagan administration's waiver process. As Teles (1996) notes, welfare was not a central pillar of President Bush's domestic agenda; Teles interprets President Bush's discussion of welfare reform via waivers in the 1992 State of the Union as a response to then-Governor Clinton's focus on welfare reform during the presidential campaign. As Wiseman (1996) reports, twenty-two waiver applications were submitted between Bush's 1992 State of the Union address and the end of his administration the following January. Of these, fourteen waivers were approved during the Bush administration and eight were later approved under Clinton (617).

¹⁴As described in Chapter 5, Clinton reassured the governors that "[my] view is that we ought to give you more elbow room to experiment."

¹⁵For example, on July 20, 1995, President Clinton addressed the National Conference of State Legislatures and proudly advertised his administration's record on approving welfare waivers: "I've also tried to give you more say in your own affairs...In the last 2 1/2 years, more States have received waivers than in the previous 12 years of the previous two administrations combined."

it to the full chamber (248).¹⁶ A year and a half into his presidency, Clinton's welfare agenda had barely gotten off the ground in Congress.

Approximately at the same time as Clinton's first welfare legislative proposal sank in Congress, HHS published a Federal Register Notice outlining the administration's welfare waiver policies and procedures. This timing suggests that the Clinton administration began investing more heavily in a waiver strategy as the prospects of legislative reform dimmed. Specifically, on September 27, 1994, Secretary of HHS Donna Shalala issued a Notice inviting Section 1115 waiver applications and describing the procedure HHS would use to evaluate these waiver proposals. Simultaneously, this Notice underscored the administration's discretion over the process:

The Department desires to facilitate the testing of new policy approaches to social problems. Such demonstrations can provide valuable knowledge that will help lead to improvements in achieving the purposes of the Act. The Department also is committed to both a thorough and an expeditious review of State requests to conduct such demonstrations. In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals.

Through this Notice, the administration outlines its expectations for waiver applications, much as Reagan's ILIOAB outlined its own criteria for waiver approval. While the Clinton administration did not stake out clear policy preferences here, they note that "the Department will work with States to develop research and demonstrations in areas consistent with the Department's policy goals" and that HHS would also "[consider] proposals that test alternatives that diverge from that policy direction." Trying to walk this line of encouraging innovation and pursuing the Department's policy goals, the Notice also states that the Secretary reserved the right to "disapprove or limit proposals on policy grounds." This approach reflects the administration's broader strategy regarding welfare reform. As Weaver (2000) observes, Clinton did not stake out clear policy positions re-

¹⁶The bill's fate may have been sealed by the approaching midterm elections; according to Weaver, "many House Democrats...viewed the House consideration of welfare reform in 1994 as a potential political disaster in the November elections...committee markup and floor debate on welfare reform legislation posed a series of threatening "Bad choices" on amendments that the Republicans were certain to propose" (247).

garding welfare reform (324), rather remaining broadly committed to reform in general.

Concurrent with setbacks in the legislative arena during the administration's drawn-out and often frustrating negotiations with Congress over welfare reform, Clinton himself frequently pointed to his administration's authorization of welfare waivers as evidence of successful reform. He drew a sharp contrast between Congress's inability (or refusal) to work with him on welfare reform and his active efforts to work with states on welfare reform via waivers. Repeatedly, he emphasized that his administration had approved more welfare waivers than previous administrations combined. An interview with Tom Brokaw on NBC Nightly News on January 26, 1995, exemplifies this rhetoric:

I sent welfare reform legislation to the Congress last year, and when they didn't pass it, we just kept on giving States permission to get around the Federal rules to move people from welfare to work and to support responsible parenting, 24 States, more than were given waivers from the Federal rules in the previous 12 years combined.

In the fall of 1995, the president faced the unpleasant task of threatening to veto a welfare reform bill that Secretary Shalala argued "would push more than a million more children into poverty" (Weaver 2000, 312). In this atmosphere HHS announced an updated waiver review process on August 16, 1995. HHS offered an expedited approval process (30 days) for applications that proposed programs which implemented five policies the administration endorsed.¹⁷ As Clinton's legislative battle with Congress over welfare reform dragged on, and the president's veto threat left him vulnerable to Republican charges of obstruction, the administration remained committed to granting waivers.

However, the waiver process was not frictionless. The administration's difficulty in working with Republicans in Congress over welfare reform extended to negotiations with Republican governors as well.¹⁸ Defending the president's waiver program from these

¹⁷These policies included: "(1) Work requirements, including limited exemptions from such requirements; (2) time-limited assistance for those who can work; (3) improving payment of child support by requiring work for those owing support; (4) requirements for minor mothers to live at home and stay in school; and (5) public-private partnerships under which AFDC grants are diverted to private employers to develop jobs and training programs (42574)."

¹⁸The administration clashed periodically with the Republican Governor's Association (RGA). For example, an internal White House memo from July 7, 1996, notes that a Republican congressional proposal

partisan attacks was a priority for members of the president's Domestic Policy Council. For example, in preparation for the National Governors Association winter meeting in 1996, the administration anticipated questions such as, "Several Republican governors have complained that the Clinton Administration is holding up reform by refusing to grant states waivers. How do you respond?" (Welfare Waivers Briefing Book for NGA 1996). The administration's prepared response echoes the theme in Clinton's speeches on the subject, highlighting that the administration had approved more waivers than the Bush administration and maintaining that "[our] record on state flexibility is consistent and clear, and we're working hard with the states to approve the pending waiver requests."¹⁹ Further, the HHS welfare waivers briefing book shows that the administration was prepared to defend its efforts to compromise with Governor Merrill, a Republican, if asked whether the Clinton administration was "refusing" to grant his waiver:

No. In fact, after substantive and productive conversations with Governor Merrill's staff, we offered to "fast track" part of his waiver application in October. On November 8, having received no reply from New Hampshire, we again wrote Governor Merrill's human services director, restating our willingness to work with him. On January 24, after more than two months, we received the state's responses to our "fast track" offer, and we're currently working with Governor Merrill to resolve any remaining issues. In fact, Secretary Shalala personally called the governor this week to restate our desire to move promptly on his request (Welfare Waivers Briefing Book for NGA 1996).

The extent to which top members of President Clinton's Domestic Policy Council were briefed on how to respond to pushback on the waiver process suggests that the administration worked hard to create (and protect) a narrative in which the administration was

that the White House opposed was initially adopted in response to a letter from the RGA. This battle was one among many that suggests an ideological divide between not only members of Congress and the White House, but Republican governors and the administration as well.

¹⁹The briefing book in preparation of the 1996 NGA contains talking points for each state waiver application and illustrates that the administration consistently negotiated with states over specific details of each request. Anticipated questions about specific negotiations revealed that the administration stood its ground on certain policy issues rather than rubber-stamping proposed demonstrations. Specifically, the administration was prepared to answer questions about its negotiations with California over its proposed "family cap" waiver: "a family cap should be designed to limit benefits to an AFDC recipient if she has additional children, not to deny a teenage mother assistance when she has her first child...under California's proposal, a dependent minor could not receive benefits for her first child if she were living in a family receiving AFDC" (Welfare Waivers Briefing Book for NGA 1996).

committed to authorizing welfare reform via state-level demonstration projects. It appears that this message was not simply empty rhetoric. States responded quite positively to the administration's repeated invitations for waiver applications, and in turn, the administration approved many of these applications, as Table 2.1 shows below.²⁰

| <i>Year</i> | 1993 | 1994 | 1995 | 1996 |
|------------------|------|------|------|------|
| <i>Submitted</i> | 24 | 27 | 37 | 34 |
| <i>Approved</i> | 10 | 14 | 32 | 28 |

Table 2.1: Clinton Administration Section 1115 Welfare Waivers

2.3.2 Similarities Across Reagan and Clinton

Section 1115 authority provides presidents and their administrations with broad discretion over the waiver process, and the Reagan and Clinton administrations appear to have used this authority to their advantage. The evidence reviewed above suggests that both presidents viewed waivers as a valuable mechanism of policy change. It is also worth noting that both presidents pursued waivers while they simultaneously worked to reform welfare via legislation, a process that proved to be an uphill battle for both administrations. During these legislative efforts, both presidents routinely highlighted their commitment to authorizing reform via waivers, allowing them to claim credit for revising a widely unpopular program even in the absence of successful legislative revision.

This approach may have been particularly useful given the thorny nature of welfare politics. Indeed, Weaver (2000) observes that in the 1990s, "rather than a firm advantage for a single party on the welfare issue, poll data show a public that had high hopes and demands for reform but was quick to lose faith when politicians failed to deliver or delivered a program the public believed had serious flaws" (191). With these high

²⁰Please see Chapter 3 for a discussion of the rate of waiver approvals. Please note that throughout this dissertation, the reported number of approved and submitted waivers omits waivers for which I could not identify the relevant year of submission or approval, or the state of the applicant. The tables and graphs of submitted and approved waivers also omit territories and Washington, D.C., as these waivers are omitted from quantitative analysis since U.S. territories and D.C. do not have governors. The goal is to discuss the number of submitted and approved waivers relevant for the analysis consistently throughout the entire dissertation.

stakes, promoting state reform via waivers may have helped both administrations instigate reform at the state level that aligned with their own goals while diffusing some of the tension characteristic of debates over welfare reform.

2.3.3 Medicaid Waivers: 1992 – 2012

As with the welfare waivers discussed above, Medicaid waivers are governed by Section 1115 in the Social Security Act Amendments of 1962.²¹ Here, I continue my investigation of when and how presidents use waivers in the context of the Clinton, George W. Bush, and Obama administrations' use of Section 1115 Medicaid waivers.

Clinton and Healthcare Reform

At the beginning of Clinton's first term, there was widespread support for revamping the nation's healthcare system; similar to the issue of welfare, Clinton had campaigned heavily on achieving legislative reform in this area.²² Upon taking office, President Clinton quickly signaled his willingness to authorize revisions to Medicaid through waivers. At the same February 1993 National Governors Association winter meeting in which President Clinton encouraged governors to apply for welfare waivers, he made public remarks reassuring governors that he had ordered HHS "to take immediately a series of actions designed to streamline the Medicaid waiver process to enable the States of our country to serve more people at lower costs."

²¹While Medicaid waiver authority has technically been available since 1962, Thompson and Burke (2007) note that these waivers were "used sparingly during the first quarter century of the Medicaid program" (2008, 23). Beginning with the first Clinton administration, these waivers came into more regular use. For this reason, this analysis of Medicaid waivers begins with the first Clinton administration.

²²Congressional Quarterly (CQ) highlights the salience of this issue in President Clinton's first year in office: "the subject [of the U.S. health-care system] dominated the pages of the nation's newspapers; it was on prime time television; and it was the chief topic of conferences and seminars held not only by health groups, but by teachers, churches, unions and corporations" (Health-Care Debate Takes Off). Not only was the topic the subject of much public discussion – as with welfare, many Americans were ready for change, yet exactly what that change should look like was the subject of intense debate. CQ summarizes this atmosphere: "Most Americans also felt strongly about the system's failings. A Wall Street Journal/NBC News poll published March 12 showed that 74 percent believed an overhaul was needed...While there was broad agreement that something needed to be done, however, disputes quickly arose when the topic turned to what trade-offs to make and how to pay for a new system" (Health-Care Debate Takes Off).

The Clinton administration continued to publicly highlight this commitment to authorizing Medicaid waivers even as the president's legislative efforts to reform healthcare moved sluggishly. President Clinton had originally announced that his healthcare task force would produce a legislative proposal within 90 days, but this deadline came and went with no proposal while controversy plagued the task force (Health-Care Debate Takes Off). Finally, on September 22, 1993, President Clinton announced a sweeping legislative plan to overhaul the nation's healthcare system (Health-Care Debate Takes Off). However, by this point Congress was distracted with the Clinton administration's North American Free Trade proposal, and healthcare reform stalled again (Health-Care Debate Takes Off). Following the administration's failed efforts to secure legislative overhaul of the health care system, the Federal Register published a Notice from the Health Care Financing Administration (HCFA) in HHS on January 13, 1994, that highlighted the administration's interest in working with states to reform welfare via waivers.²³

As in the case of welfare reform, HHS and President Clinton worked in tandem to encourage governors to submit waiver applications. In particular, Clinton continued to publicly highlight his administration's commitment to reform via waivers as his legislative agenda continued to meet with resistance in Congress. For example, on July 19, 1994, Clinton discussed his personal commitment to authorizing state demonstrations via waivers in a meeting with the National Governors Association:

Finally, let me make this statement and ask for your help, I very strongly support the continued issues of comprehensive waivers in the areas of health care and welfare reform...I received a report before I came here on all the applications that any of you have pending for comprehensive waivers, and I reviewed them, and I have taken a personal interest in trying to push them through.

²³This Notice also reflects growing concerns over budget deficits, warning that the administration would pay close attention to the cost of proposed demonstrations: "the [State] agency must furnish the estimated yearly costs, before waivers and after waivers, for both service costs and administrative costs. These budgets are substantially more extensive than the budget for other applications." It is worth noting that although this Notice was published in January 1994, an editorial note in the Notice indicates that it was originally dated July 20, 1993, and authored by Bruce Vladeck, the Administrator of HCFA. This suggests that the administration was developing a Medicaid waiver process even as they worked on healthcare legislation during the summer of 1993.

By September 1994, Congressional Quarterly reported that the Clinton administration's ambitious healthcare reform plan was "laid to rest" – only two months later, the administration would suffer another setback when the Republican party took over both houses of Congress in the midterm elections (Clinton's Health Care Plan Laid to Rest). On the legislative front, the administration's ability to deliver on its campaign promise of healthcare reform seemed weak, at best. At the same time, HHS continued encouraging states to submit proposals for reforming Medicaid via waivers. A Federal Register Notice published in September 1994 detailed the administration's procedure for approving Section 1115 Medicaid waivers and specifically noted that the Department was "committed to both a thorough and an expeditious review of State requests to conduct such demonstrations."²⁴

However, this is not to say that the administration rubber-stamped state applications. For example, archival documents show a lengthy back-and-forth between the administration and Republican Governor George Pataki over New York's Section 1115 waiver proposal. In a memo dated May 18, 1995, Chris Jennings, a member of the White House Domestic Policy Council, advised a fellow administration member of the contentious politics surrounding this waiver proposal:

It is important to note that Governor Pataki's recent proposed cuts in Medicaid are creating firestorms of protest from our traditional "base." Many of the inner-city hospitals and the unions that represent them are claiming that the Governor's proposals...could result in significant layoffs, particularly in New York City. This controversy has already attracted the personal attention/involvement of Harold Ickes and [Secretary of Health and Human Services] Donna Shalala. In short, there are some major league politics here (Medicaid Waivers [3] 1995).

While President Clinton repeatedly reached out publicly to governors, asking them to submit applications and promising his administration's cooperation during the review

²⁴The Notice also indicates that it will apply the principle of cost neutrality "flexibly" and will consider the cost of the demonstration over the life of the demonstration, rather than on a year-by-year basis. This criterion is a more flexible interpretation of cost neutrality compared to the Reagan administration's application of this principle.

phase, these negotiations suggest that the administration remained committed to protecting its own political interests throughout this process. Further, this exchange suggests that negotiations over waivers with Republican governors were at times heated, echoing the partisan discord between President Clinton and Republicans in Congress.

In addition, perhaps sensing the policymaking opportunities that waivers provided the administration absent a compromise with Congress over legislation, the Republican-led Congress questioned the administration's use of Section 1115 waivers. The House Budget committee requested a Government Accountability Office (GAO) report on the administration's use of waivers, and memos between members of the administration in March and April of 1995 suggest that the draft did not reflect well on the administration. In fact, archival evidence suggests the administration defended itself from a number of what it perceived as inaccuracies in the GAO draft report. For example, the administration's response to the GAO draft report contested GAO's finding that the Medicaid waivers would increase spending, an accusation that Republicans could use to their advantage given the high salience of balancing the federal budget at this time.²⁵ Further, the administration justified its approach to reviewing Section 1115 demonstration waiver applications in response to the GAO draft report's finding that the Clinton administration had modified the Section 1115 waiver review policies (Medicaid Waivers [4] 1995).

As in the case of welfare, it appears that not only did high-level officials defend the administration's use of Section 1115 waivers, but the Clinton administration emphasized its role in promoting reform via waivers even as President Clinton found himself in the unfortunate position of vetoing healthcare reform legislation passed by the Republican Congress.²⁶ In all, states responded positively to the administration's repeated invitation for Section 1115 Medicaid waivers, as Table 2.2 shows. The administration approved

²⁵Specifically, the administration drafted this response: "We believe that each demonstration is budget neutral and disagree with GAO's preliminary analysis of the financing provisions of four Statewide Medicaid demonstrations discussed in the draft report" (Medicaid Waivers [4] 1995).

²⁶Clinton vetoed the 1996 budget reconciliation bill HR 2491 on December 6, 1995 (Presidential Veto Message).

the majority of these waivers before Clinton signed into law healthcare reform via the Balanced Budget Act of 1997 (BBA), which included the State Children’s Health Insurance Program (SCHIP).²⁷

| <i>Year</i> | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|------------------|------|------|------|------|------|------|------|------|------|
| <i>Submitted</i> | 4 | 13 | 24 | 20 | 8 | 7 | 3 | 2 | 2 |
| <i>Approved</i> | 2 | 18 | 4 | 18 | 6 | 4 | 4 | 2 | 2 |

Table 2.2: Section 1115 Medicaid Waivers, 1992-1996

After passage of the BBA of 1997, it was not guaranteed that states would eagerly implement a law that was passed not because of wide bipartisan consensus, but after years of contentious debate and grudging compromise. While Republicans in Congress were politically motivated to compromise over healthcare reform, governors and state actors responsible for implementing the federally-mandated changes did not necessarily face the same political pressure to cooperate with the administration’s healthcare overhaul. This political context may help explain why the administration continued to approve several Section 1115 demonstration waivers following passage of the BBA. A former White House policy advisor explains that the administration was interested in extending flexibility to governors to incentivize implementation of the new law while ensuring that the president’s priorities were maintained.²⁸ Specifically, the administration was willing to waive requirements for states if doing so would result in expanded coverage for the uninsured.²⁹ In particular, waiver negotiations were useful in working with governors whose goals aligned with the president’s focus on coverage expansion.³⁰

George W. Bush and HIFA

The George W. Bush administration continued to seek and grant Section 1115 Medicaid waivers. According to Thompson and Burke (2007), compared to the Clinton ad-

²⁷Clinton signed the BBA on August 5, 1997. According to CQ, the law "made sweeping changes" (Big Medicare, Medicaid Changes Enacted in Budget Bills).

²⁸Interview with the author, April 20, 2015.

²⁹Interview with the author, April 20, 2015.

³⁰Interview with the author, April 20, 2015.

ministration, the George W. Bush administration more clearly articulated specific policy goals for these waivers through its Health Insurance Flexibility and Accountability (HIFA) initiative. But in many ways, the administration's use of waivers continued along the path set out by the Clinton administration (Thompson and Burke 2007). Here, I briefly describe a particular aspect of the Bush administration's approach toward Section 1115 Medicaid waivers notable for its failure to generate state interest, in contrast to the episodes discussed above.

While the Bush administration successfully incorporated some of its preferred revisions to Medicaid in the Deficit Reduction Act of 2005, including market-based reforms, the administration failed to achieve its goal of transforming Medicaid into a block grant (Thompson 2012, 144). As Thompson explains, the administration's response was to "strongly encourage" states to adopt this change via waivers (144). Indeed, the Bush administration went out of its way to incentivize such waiver applications: "States that proved amenable to this approach would gain vast flexibility to reinvent their programs but would need to accept a five-year global cap on their Medicaid expenditures" (144). Despite pressure from the administration to adopt these reforms, Thompson finds that in fact, "[m]ost states resisted this approach" (144). This episode suggests that while the president can exercise control over the waiver process by inviting waivers and creating the standards for review, cooperation from governors is not a foregone conclusion. In this case, even when offering broad flexibility, the administration could not implement its preferred reforms via waivers.

The Unfolding case of "Obamacare" Waivers

Debate over and passage of the Patient Protection and Affordable Care Act (ACA) was infamously polarizing – not a single Republican voted for President Obama's landmark domestic achievement. As passed by Congress and signed by President Obama in March 2010, the ACA (otherwise known as "Obamacare") required states to expand

Medicaid coverage. Here, I discuss the Obama administration's approach toward Section 1115 waivers in the wake of the June 28, 2012, Supreme Court ruling *National Federation of Independent Businesses v. Sebelius* that effectively made state Medicaid expansion optional.

Bagenstos (2013) explains that the Obama administration was open to granting governors flexibility in order to facilitate implementation of the ACA, similar to Clinton's willingness to approve waivers following passage of the BBA in 1997:

With the statute already a target of vigorous political attack, Obama Administration officials felt an acute need not to unnecessarily alienate the state officials on whom they would rely for its implementation. And with the Medicaid expansion specifically under attack in the courts for being burdensome on and coercive of the states, administration officials were keen to limit the burdens imposed by Medicaid to the extent that they could do so. The Administration (in a process implemented by the Department of Health and Human Services, but encouraged if not driven by the White House) thus adopted a relatively general policy of flexibility toward states' efforts to carry out their obligations under the ACA (4).

However, given the divisive nature of Obamacare, opting into the ACA's Medicaid expansion via a waiver could be politically costly for governors, particularly Republicans. Indeed, Republican presidential candidate Governor John Kasich of Ohio has been criticized by Republicans during the primary campaign for using a waiver to expand Medicaid (Laszewski 2015). Nonetheless, governors appear to be pursuing the waivers on offer by the administration. As of November 2015, six states had Section 1115 waiver proposals from the ACA approved (Musumeci and Rudowitz 2015).³¹ Musumeci and Rudowitz (2015) seem to agree with Bagenstos's assessment that the administration has an incentive to use waivers to make Medicaid expansion more politically palatable for governors: "In some cases, alternative models to implement expansion through waivers are seen as a politically viable way to extend coverage and capture enhanced federal matching funds for newly eligible adults" (2015, 1). Nonetheless, the Center for Medicare and Medi-

³¹In addition, New Hampshire is moving from a state plan amendment to a waiver, and Pennsylvania had a waiver approved but is instead using a state plan amendment. Two other states, Arizona and Michigan, have waiver applications pending (Musumeci and Rudowitz 2015).

caid Services (CMS) has denied several Section 1115 waiver proposals under the ACA.³² Musumeci and Rudowitz underscore this point that the administration has not ceded all leverage to governors for the sake of implementing the law:

CMS has issued guidance that establishes some parameters for such waivers. Through this guidance, CMS has indicated that states cannot receive the enhanced federal funding available for newly eligible adults unless they implement the full expansion to cover all newly eligible adults through 138 percent FPL; it also will not approve enrollment caps for the adult expansion group" (2015, 4).

Facing repeated attempts by Republicans in Congress to repeal the ACA, the Obama administration appears to be using Section 1115 waiver authority to facilitate implementation of its central domestic achievement that is continuously vilified by Republican lawmakers. This case and the Clinton administration's use of Section 1115 Medicaid waivers post-BBA suggest that waivers are useful to presidents not only when negotiating with Congress over legislative revisions, but after passage of a new law as well.

Discussion of Section 1115 Medicaid Waivers

The evidence reviewed here suggests that presidents have used Section 1115 waiver authority to pursue their agendas in Medicaid reform. This approach involves a degree of decentralization and is arguably less efficient than other policymaking options available to the president, such as executive orders. Nonetheless, it seems that presidents can and do incorporate waivers into their domestic agendas. How they do so varies with the political context and the particular goals of each president; two observations seem particularly important here. First, Clinton pursued Medicaid waivers most aggressively when his efforts to revise healthcare via legislation were stymied by Congress. This suggests that presidents see waivers as particularly valuable instruments of policy change when their

³²Specifically, CMS has denied "[proposals that] include premiums for individuals with incomes under 100 percent FPL as a condition of eligibility; requirements to omit wrap-around benefits for Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) and free choice of family planning provider; and work requirements or incentives as a condition of Medicaid eligibility" Musumeci and Rudowitz (2015, 2).

legislative goals are frustrated. Second, the George W. Bush administration's unsuccessful effort to incentivize block grant reforms through waivers indicates that presidents may not always be successful in implementing their preferred reforms through this mechanism. Although the Bush administration communicated a clear desire to approve specific waivers, governors were not interested in applying for these waivers. This episode highlights the critical role that governors appear to play in the waiver process and suggests that their participation may serve as an important constraint on the president's use of this strategy.

2.3.4 Education Waivers: 1995 – 2012

In the final section of this chapter, I explore how Presidents Clinton, George W. Bush, and Obama have used the general waiver authority in the Elementary and Secondary Education Act (ESEA). As in the preceding sections, I examine how each president has attempted to use their broad discretion over waivers to pursue their goals as well as the conditions under which presidents seem to use this strategy.

Clinton Exercises IASA Waiver Authority

As mentioned at the beginning of this chapter, the Clinton administration introduced the General Waiver Authority in Section 14401 of the Improving America's Schools Act (IASA), the 1994 reauthorization of the Elementary and Secondary Education Act (ESEA). Less than three weeks after Clinton signed IASA into law on October 20, 1994, the Republicans took over both chambers of Congress. At this point, many saw IASA as an unwanted federal intrusion into education policy. McGuinn (2006) explains why the Clinton administration's approach to education reform sparked such backlash: "Clinton's ESEA proposal generated a great deal of resistance from many members of Congress on both the left and the right because it was seen as essentially mandating standards and assessments" (93). In this climate, it was far from a forgone conclusion that the administration's

new education law would be implemented smoothly or that it would be able to withstand legislative attacks from the Republican Congress. Indeed, it did not take long for the conservative Heritage Foundation to publish an attack on IASA following its passage (Olson 1994).

In this context, the administration quickly invited states to apply for waivers from its own law, perhaps to counter Republican attacks that IASA paved the way for unwarranted intrusion by the federal government into states' education decisions. In early December 1994, the Department of Education (ED) published a report entitled "Flexibility and Burden-Reducing Provisions in the Improving America's Schools Act" (Flexibility Materials [2]). As the title indicates, this document details strategies for providing states with flexibility from Clinton's landmark education law. Consistent with this approach, a draft memo dated December 19 from Michael Cohen, a member of the White House Domestic Policy Council, discussed the administration's plan to highlight the flexibility available to states under the new law:

As States continue to work on the implementation of Goals 2000, IASA, and School-to-Work, we need to take some visible steps to highlight the increased emphasis on results and the significant new flexibility in federal programs. This is important to support implementation at the state and local level, and to strengthen our position with the Congress in the next session.³³

As we saw in the cases of welfare and Medicaid, waivers were the subject of policy debates among the president's top advisors. This memo also suggests that the administration actively reached out to governors to invite them to apply for waivers. Specifically, Cohen recommended creating a "clear description of the waiver authority we have in Goals, ESEA, and STW [School to Work Opportunity Act], with examples of how it can be used." Working with governors from the outset appeared to be a high priority for the administration. Cohen suggested that the White House should "invite states (Gover-

³³A hand-written note on this memo underscores the administration's awareness of public concerns, and its subsequent efforts to reach out to state and local actors: "While we need governors[,] public is far more concerned about their local schools[,] not state[,] so we need to keep that in mind also" (Flexibility Materials to Governors and Chiefs).

nors???) to send teams to meet with us – starting immediately – to work with our staff to figure out how they can best take advantage of these authorities" (Flexibility Materials to Governors and Chiefs).³⁴ The administration also communicated to the public their intent to use waivers and to collaborate with governors throughout this process. Cohen suggested that Secretary of Education Richard Riley hold a press conference "ideally with Gov. Romer and Gov. Engler participation if they are available and willing" (Flexibility Materials to Governors and Chiefs). Cohen even recommended that it would be "ideal" if the President participated in this press conference.

Ultimately, it seems that the administration implemented these recommendations for a swift and public waiver strategy. On January 25, 1995, Secretary Riley issued a statement that underscored the Clinton administration's commitment to granting waivers: "The department has created new partnerships with states that emphasize unprecedented flexibility in its programs, fewer regulations, and broad waiver provisions from red tape."³⁵ Consistent with this message, President Clinton publicized state flexibility as a central component of IASA in his remarks to the American Council on Education in February 1995:

This goes right to the heart of the whole approach of the national role in education...to set national standards and then give State and local governments the control, the power, the opportunity, and, where we can, the resources to get the job done, to give them the flexibility through waivers of complex Federal rules and reforms like charter schools and public school choice.

It seems clear that the Clinton administration was eager to exercise the new waiver authority delegated to them in IASA, and further, to promote the Department of Educa-

³⁴Emphasis, "(Governors???)", in the original.

³⁵Further evidence shows the administration's continued efforts to work with states on waivers. A draft letter from Secretary Riley to governors and/or state school chiefs dated January 8, 1995 outlines the "number of ways in which your state can tailor federal program resources to best meet your needs" and offers teams from the Department of Education (ED) to "help you understand how to take advantage of these opportunities" (Flexibility Materials to Governors and Chiefs). The letter then outlines the opportunities for flexibility, including the Ed-Flex program under Goals 2000 and the general waiver authority available under IASA. ED worked quickly to set up a streamlined waiver process; a draft of a guidance document circulated January 6, 1995, indicates that ED would "act upon waiver requests as expeditiously as possible" and attempt to make a decision on each waiver application within 60 days (Flexibility Materials to Governors and Chiefs).

tion’s (ED) willingness to work with its state and local counterparts. Even the language ED uses in the August 1995 Federal Register Notice that announces the first batch of waivers awarded under IASA echoes this message, describing the administration’s efforts to provide "significant new opportunities to seek waivers of certain requirements of Federal education programs in order to improve teaching and learning (44390)."

ED ultimately granted many waivers following passage of IASA and Clinton’s two related education laws, Goals 2000 and the School to Work Opportunities Act, as Table 2.3 shows.³⁶ This suggests that the Clinton administration accurately predicted that states would be eager to take advantage of the flexibility offered by the administration. This use of waivers in many ways seems to parallel the Clinton administration’s use of Medicaid waivers following passage of the BBA, although the volume of waivers granted is quite different. Nonetheless, it seems that in a contentious political environment, the administration saw the waiver authority as an opportunity to facilitate implementation of their new law while granting state-level exceptions.

| <i>Year</i> | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|-----------------|------|------|------|------|------|------|
| <i>Approved</i> | 87 | 61 | 91 | 112 | 101 | 0 |

Table 2.3: Clinton Administration K-12 Education Waivers, 1995-2000

2.3.5 George W. Bush and No Child Left Behind

Next, I discuss how the George W. Bush administration pursued two distinct strategies with regard to waivers from the No Child Left Behind Act of 2001 (NCLB). From 2002 to 2004 the administration had a firm policy of not offering states flexibility via waivers, but from 2005 onward they distinctly shifted this strategy and invited waiver applications from specific components of the law.

³⁶States could (and did) apply for more than one waiver in a year, sometimes on behalf of local education agencies, making possible more than fifty approvals per year.

The Bush Administration Enforces NCLB, 2001-2005

In 2000, Bush campaigned heavily on education reform, responding to multiple polls in which voters ranked education reform as the most important issue (Landmark Education Bill Signed). Within three days of taking office, Bush introduced No Child Left Behind, his legislative proposal to reauthorize ESEA (Executive Summary).³⁷

Similar to IASA, Bush's NCLB proposal relied on standards, testing, and accountability measures to increase student achievement. But Bush's proposal increased the federal government's ability to enforce the accountability provisions. A high-powered bipartisan group, including Reps. John A. Boehner (R-OH) and George Miller (D-CA) in the House as well as Sens. Edward M. Kennedy (D-MA) and Judd Gregg (R-NH) in the Senate, guided the bill towards passage (Landmark Education Bill Signed).

However, partisan differences over the federal government's proper role in education reform persisted. According to Congressional Quarterly, "Democrats wanted to hold on to Clinton-era education budget expansions. Republicans wanted to streamline federal education spending and leave program design to the states" (Landmark Education Bill Signed). And although House Republicans backed Bush's initial proposal, Republicans and Democrats alike were wary of the annual testing required in the law.³⁸

Despite these disagreements, Bush enjoyed important advantages in moving his reauthorization of EASA through Congress compared to Clinton in 1994. Bush introduced education reform at the beginning of his presidency and enjoyed a Republican-controlled House and Senate, although the Republicans lost control of the Senate by one seat in June 2001 (Party Division). NCLB ultimately passed with wide bipartisan margins: 381-41 in the House and 87-10 in the Senate.³⁹ IASA could hardly be described as bipartisan, and

³⁷The previous reauthorization, IASA, expired in 2000.

³⁸Democrats and Republicans had slightly different complaints about the testing provisions. Republicans worried that the "testing proposal could lead to a national test and curriculum that was outside the control of the states. Liberal Democrats argued that any testing plan had to be accompanied by a substantial increase in aid to poor schools to ensure that their students were equally prepared for the tests" (Landmark Education Bill Signed).

³⁹In the House: 182 Republicans and 198 Democrats in favor, 33 Republicans and 6 Democrats against.

the Clinton administration subsequently worked hard to protect this law from detractors.

In contrast, NCLB was strongly bipartisan, and Secretary of Education Rod Paige made it clear that the administration was planning to enforce, not grant flexibility from, the accountability provisions in NCLB.⁴⁰ In a letter to state superintendents on February 7, 2002, Paige wrote: "...No Child Left Behind is now the law of the land. I took an oath to enforce the law, and I intend to do just that" (Paige 2002a). A week later, Paige specifically clarified the administration's position on flexibility through waivers: "we do not intend to waive fundamental requirements on standards, assessments, adequate yearly progress, and accountability in the new law" (Paige 2002b).

Recall the Congressional Research Service's conclusion that waiver authority in NCLB is "discretionary, not mandatory" (Skinner and Feder 2012). The Bush administration's decision here illustrates how a president can exercise this discretionary authority to deny states the opportunity to deviate from existing law. Indeed, the Bush administration may have capitalized on political support to implement their law to the fullest extent possible. For example, in a national poll, the January 2003 Demanding Quality Education In Tough Economic Times Survey, 40 percent of respondents said that they favored NCLB, while only 8 percent opposed the law.⁴¹ In this political climate, the Bush administration denied flexibility through waivers through the first three years of NCLB implementation. As Table 2.4 shows, Secretary Paige's Department of Education approved a total of 41 waivers in 4 years (2002-2006), compared to 461 waivers approved from 1995 to 1999 under Clinton. The few waivers the Bush administration granted from 2002-2005 provided flexibility in various funding formulas and funding extensions, not flexibility from

In the Senate: 43 Democrats and 44 Republicans voting in favor, 6 Democrats and 3 Republicans opposed. In comparison, IASA passed 261-132 in the House (230 Democrats and 31 Republicans in favor, 4 Democrats and 128 Republicans opposed) and 77-20 in the Senate (54 Democrats and 23 Republicans in favor, 0 Democrats and 20 Republicans opposed).

⁴⁰As discussed above, NCLB retained the general waiver authority included in IASA. NCLB moved the waiver authority to Section 9401 rather than Section 14401.

⁴¹Favor: 24 percent strongly, 16 percent not so strongly. Oppose: 4 percent strongly, 4 percent not so strongly.

substantive components of NCLB.⁴²

| <i>Year</i> | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|-----------------|------|------|------|------|------|------|------|------|
| <i>Approved</i> | 0 | 1 | 19 | 8 | 11 | 28 | 22 | 38 |

Table 2.4: Bush Administration K-12 Education Waivers, 2001-2008

NCLB Under Attack: 2005-2008

However, the administration was forced to alter this strategy as support for NCLB eroded. The law's mandated accountability system proved deeply unpopular. As Tom Loveless describes in a 2006 Brookings Institution report: "The public favors the core idea of NCLB—testing students and holding schools accountable for student learning—but does not want accountability to include negative consequences" (8). This discomfort with negative consequences may help explain waning support for NCLB. In the June 2005 Attitudes Toward The Public Schools Survey, support for the law seemed shaky at best: 28 percent of respondents had a favorable opinion of the law, while 27 percent had an unfavorable opinion.

Opposition to NCLB did not just grow among the public during the implementation phase; state governors and legislatures pushed back on the Bush administration's implementation policies. In a study of "formal state resistance" (445) to NCLB, Shelly (2008) finds that by 2006, thirty-eight states had considered legislation "critical of NCLB" while five of those states actually passed laws critical of NCLB (444). Similarly, Loveless (2006) analyzes state legislation and legal action related to NCLB and shows that 16 states were neutral or supportive of NCLB, while 34 states opposed NCLB to varying degrees. In addition to dwindling support among the public and active legal challenges from states, congressional support for the law eroded. Letters exchanged in March 2004 between Senator Edward Kennedy, one of the key members of the bipartisan coalition that passed

⁴²The Department of Education did not publish a single Federal Register notice enumerating the waivers granted under Section 9401 authority until March 12, 2007, over five years after Bush signed NCLB.

NCLB, and Secretary Paige indicate disagreements about the flexibility offered through the Department.⁴³

Facing this rising tide of criticism, the Bush administration altered course. Signaling a shift in its implementation strategy, President Bush nominated Margaret Spellings as Secretary of Education on November 17, 2004 to replace Paige. Within a year of taking office, Spellings began inviting flexibility via waivers from substantive components of the law. The types of policy changes available via waivers were carefully circumscribed by the administration. For example, on November 21, 2005, Spellings announced the opportunity for states to apply for waivers that would allow for a less stringent measure of student achievement than the original measure required in NCLB.⁴⁴

Even as she offered flexibility, Secretary Spellings made it clear that her invitation to apply for flexibility should not be mistaken for the administration's retreat from NCLB's core principles. A few months after inviting states to apply for waivers to implement growth model pilot programs, in early 2006 Secretary Spellings clarified that states would only be eligible for these waivers if they continued to follow the "bright line principles" of NCLB, including administering the law's prescribed annual assessments:

...I remind you that, in order to remain in compliance with the law and to be eligible for additional flexibility, your State must meet the assessment requirements of NCLB and administer that system this school year...As States submit their growth model proposals, Department staff will conduct an initial review to determine basic eligibility, including examining how well States are implementing the "bright line principles" of the law (Spellings 2006).

Under Spellings, the Department of Education would eventually offer two additional types of waivers from NCLB, including flexibility in whether and how to offer supplementary education services and school of choice options, as well as flexibility in structuring differentiated accountability systems. With each additional offer of flexibility, how-

⁴³Sen. Kennedy petitioned for retroactively recalculating adequate yearly progress from 2002-2003 using more flexible formulas for students with significant cognitive disabilities; Secretary Paige denied this request for retroactive application of the more flexible standards (Paige 2004).

⁴⁴Specifically, Spellings announced the availability of waivers to implement growth model pilots in a letter to chief state school officers (Spellings 2005).

ever, Spellings reminded states that eligibility was dependent on continued adherence to the "bright line principles" outlined in NCLB.

NCLB was due for reauthorization in 2007. But given the growing opposition to its core principles, the Bush administration might have been wary of opening up discussions about how to revise the law. NCLB was President Bush's signature domestic law, and providing the growing ranks of NCLB's opponents with an opportunity to reauthorize the Elementary and Secondary Education Act might have resulted in a substantial rewrite or even repudiation of NCLB's original framework. Indeed, in September 2007, Education Week reported an outpouring of congressional proposals to revise the law: "Members of Congress have introduced more than 100 bills to amend the main federal law in K-12 education...While some of those bills would revise one or more provisions of the 5-year-old law or add new programs, a handful would go much further by comprehensively reworking its accountability system" (Klein 2007). Further, following the 2006 midterm elections, the House and Senate were controlled by the Democrats; reauthorization of ESEA under that Congress would in all likelihood not preserve NCLB as written six years earlier.

Ultimately, the 2007 reauthorization deadline came and went without a serious effort by the Bush administration to reauthorize NCLB. At the same time, the administration appeared to respond to rising opposition to NCLB with flexibility via waivers, perhaps deflecting some criticism. Overall, the administration carefully exercised discretion over how to use waivers as it worked to implement one of President Bush's primary domestic achievements.

Obama and ESEA Flexibility

In contrast to his predecessor, President Obama had no incentive to preserve NCLB – quite the opposite. But similar to the Clinton administration's experience with welfare, revising this unpopular law proved frustrating. By the time President Obama took office

on January 20, 2009, the No Child Left Behind Act was not only past due for reauthorization, but the public was ready for change. In the June 2008 Attitudes towards the Public Schools Survey, 42 percent of respondents said that the next president should "change the law significantly," while only 16 percent thought the next president should "extend the law without change." The Obama administration had a clear mandate for reauthorizing and significantly reforming the law. Further, reauthorization provided a chance for the Democratic administration to overhaul one of President George W. Bush's central domestic achievements.⁴⁵

However, the Obama administration did not initially attempt to reauthorize ESEA via Congress, as it was preoccupied with addressing the financial crisis that was in full swing when Obama took office. But a comparison of Table 2.4 with Table 2.5 shows that in 2009 and 2010, the Obama administration granted more waivers from NCLB than the Bush administration ever did, including 158 waivers available using funds from the American Recovery and Reinvestment Act in 2009. The Obama administration also continued to grant waivers under the pilot programs started in the Bush administration. While a 2010 waiver report distinguishes between invited and uninvited waivers, signaling that the administration preferred some types of state flexibility and innovation over others, the administration did not set a specific agenda through the waiver process during this time period, instead signaling general openness to state innovation and a willingness to allow states to depart from NCLB.⁴⁶

⁴⁵On the same survey a year later, public opinion continued to tilt against the law; only 28 percent of respondents viewed the law either favorably (9 percent very favorable, 19 somewhat favorable), while 48 percent of respondents viewed the law unfavorably (24 somewhat unfavorable, 24 very unfavorable, while 24 percent of respondents said they did not know enough about the law).

⁴⁶In the conclusion of the 2010 report, there is no clear statement of administration policy other than receptivity to state requests for flexibility from certain provisions of the law: "We believe that these waivers can serve as useful tools in facilitating State and local efforts to raise student academic achievement. While it is typically very difficult to measure the impact that particular waivers have on student academic achievement, we believe that they provide States and districts with needed flexibility by removing, under particular circumstances, specific statutory or regulatory impediments to State or local education reform efforts. The Department is conducting evaluations of the impact of the growth model, differentiated accountability, and SES pilot waivers on student academic achievement and, as data become available, we will include this information in future reports" (9).

| <i>Year</i> | 2009 | 2010 | 2011 | 2012 |
|-----------------|------|------|------|------|
| <i>Approved</i> | 283 | 218 | 0 | 415 |

Table 2.5: Obama Administration K-12 Education Waivers, 2009-2012

Over a year into his first term and just weeks before signing the divisive Affordable Care Act into law, on March 13, 2010, President Obama unveiled his legislative proposal to revise NCLB in his "Blueprint for Reform" (ESEA Reauthorization: A Blueprint for Reform). Despite opposition to NCLB across the political spectrum, President Obama's prospects for building a successful bipartisan coalition to reauthorize ESEA were dim. Not only were congressional Republicans unlikely to collaborate with Democrats, but Obama's proposed legislation faced detractors within the Democratic ranks as well. Specifically, the nation's two largest teachers' unions, an important Democratic constituency, were not thrilled with Obama's proposal. The National Education Association (NEA) president, Dennis Van Roekel, said the NEA could not support the plan as released (McCabe 2010). The American Federation of Teachers' leadership expressed similar concerns.⁴⁷ Those on the right also expressed opposition to Obama's plan. The conservative Heritage Foundation, for example, criticized the proposal in no uncertain terms: "the administration's blueprint offers what will likely be more lip service to reform and flexibility than actual freedom from federal red tape, which most states desperately need" (Burke 2010). Overall, legislative revision would be an uphill battle; Klein (2010) concluded that the chairmen of the House and Senate education committees "face[d] a difficult task" in turning the Blueprint into a bill with a chance of making it through Congress. Indeed, in 2011, Congressional Quarterly reported that Congress was "stymied" on the reauthorization.⁴⁸

⁴⁷Specifically: "Randi Weingarten, the president of the AFT, told the House Appropriations Committee this month that she doesn't like the proposal to ask states to adopt college- and career-ready academic standards and implement new teacher-evaluation systems in order to tap Title I grants for districts, which go to help disadvantaged students" (Klein 2010).

⁴⁸Specifically, the Senate Health, Education, Labor, and Pensions Committee approved a draft bill that never made it to the floor, and the House Education and the Workforce Committee "approved three bills to give local schools flexibility in spending federal money, but only one of them – a measure to expand successful charter schools – won bipartisan support and was passed by the House. House Republicans also

In fall 2011, the Obama administration initiated a new approach. Over the summer, the administration had announced its intent to pursue a waiver strategy failing congressional action.⁴⁹ Unsurprisingly, by the fall Congress had not passed a reauthorization of ESEA. As promised, on September 23, 2011, Secretary Duncan introduced the ESEA Flexibility program in a letter to Chief State School Officers:

Instead of fostering progress and accelerating academic improvement, many NCLB requirements have unintentionally become barriers to State and local implementation of forward-looking reforms designed to raise academic achievement. Consequently, many of you are petitioning us for relief from the requirements of current law. One of my highest priorities is to help ensure that Federal laws and policies can support these reforms and not hinder State and local innovation aimed at increasing the quality of instruction and improving student academic achievement (Duncan 2011).

The waiver process outlined in the ESEA Flexibility initiative departs in several ways from other administrations' waiver strategies discussed in this chapter. ED initially gave states the option to apply for ten waivers from specific provisions of NCLB – states had to apply for all ten waivers, not a subset thereof.⁵⁰ Eligibility for waivers was not defined by fealty to NCLB's "bright line" provisions, as articulated by the Bush administration. Rather, states had to demonstrate that they were in compliance with four policy principles outlined by the Obama administration that closely reflected the policies outlined in the administration's legislative proposal to revise NCLB. Notably, these four policy principles were not part of existing legislation.

had difficulty tackling accountability and teacher effectiveness, the two most divisive issues, and did not introduce legislation on either subject" (Congress Stymied on Education Law).

⁴⁹In a June 2011 press release, the Department of Education released the following statement: "The Obama Administration plans to provide regulatory flexibility around No Child Left Behind (NCLB) if Congress does not complete work on a reauthorization bill prior to the August recess, in order to help support reform efforts underway at the state and local level."

⁵⁰In an August 2012 "FAQ" guidance document, ED explained the requirement that states apply for all non-optional waivers, and not a subset thereof, as follows: "A [state education agency] may not request a portion of this flexibility or implement some of its principles. This flexibility is intended to build on and support the significant State and local reform efforts already underway in critical areas such as transitioning to college- and career-ready standards and aligned high-quality assessments; developing systems of differentiated recognition, accountability, and support; and evaluating and supporting teacher and principal effectiveness. Only through such comprehensive efforts can SEAs and LEAs truly increase the quality of instruction and improve student academic achievement" (3). Further, on June 7, 2012, ED added optional waivers that states could apply for in addition to the original ten waivers.

This creation of a "conditional" waiver process led to pushback, particularly from Republicans. For example, in its Spring 2012 edition, the journal *Education Next* asked policy experts whether attaching these conditions was legal, citing that "[k]ey Republican leaders, including Senators Lamar Alexander (TN) and Marco Rubio (FL), and Texas governor Rick Perry, have blasted the move as overstepping executive authority" (Derthick and Rotherham 2012). Further, in August 2014, Senator Alexander and Representative John Kline (R-MN), chairman of the House Education and the Workforce Committee, formally requested a Government Accountability Office study investigating the Obama administration's conditional waiver requirements (House Education and the Workforce Committee 2014).

Nonetheless, according to the Congressional Research Service, states responded swiftly to the administration's invitation for waiver applications:

Following the announcement of the ESEA flexibility package, 39 states, the District of Columbia, and Puerto Rico indicated that they intended to apply for it. Eleven states applied for the ESEA flexibility package by the first deadline of November 14, 2011. On February 26, 2012, 26 additional states and the District of Columbia submitted applications for the flexibility package (Skinner and Feder 2012, 4).

In addition, organizations of state school leaders worked to facilitate the application process. Less than a week after President Obama announced the initiative, the Council of Chief State School Officers held a meeting titled "Next-Generation Accountability Systems and Waiver Strategy Meeting." In this meeting, the opportunity for state leadership through waivers was repeatedly highlighted, and steps were outlined to clarify how states could apply for the newly available waivers.⁵¹

The Department of Education worked quickly to grant state waiver requests. In February 2012, just 5 months after the administration announced the ESEA Flexibility initia-

⁵¹In the powerpoint from this meeting, the title of the first substantive slide states that "ESEA Flexibility Is About STATE Leadership." Another slide explains that "To receive NCLB waivers, states must design and implement college and career ready accountability, with several broad requirements and many further opportunities for state leadership" (Wilhoit and Palmer 2011).

tive, the administration approved waiver requests submitted by 11 states (Duncan 2013). According to the Department, by October 2015, 43 states and Washington, D.C. were implementing these waivers and, in doing so, complying with ED's additional policy requirements. As Table 2.5 above shows, ED granted 435 waivers through this initiative in 2012 alone – the staggering volume of waivers is in part due to the 10-waiver package on offer from ED, and in part due to widespread state cooperation.

Secretary Duncan and President Obama alike described the ESEA Flexibility initiative as their answer to Congress's failure to reauthorize NCLB.⁵² Indeed, throughout this process, ED remained committed to its requirement that states follow the administration's prescribed policy principles in order to be eligible for flexibility; these principles were clearly outlined in guidance documents.⁵³ Further, in letters to states Secretary Duncan specified that waiver approval was contingent on his Department's determination that the state had demonstrated its commitment to the administration's policy principles.

Discussion of Education Waiver Authority

The three cases reviewed here illustrate the different ways in which presidents have exercised the waiver authority available in IASA and NCLB, the 1994 and 2001 reauthorizations of ESEA, respectively. While Clinton encouraged states to apply for waivers after signing IASA, George W. Bush initially refused to grant waivers from NCLB but eventually saw it in his interest to initiate this process. Finally, Obama developed yet another approach as his administration struggled to reform NCLB, inviting states to apply for waivers that offered substantive changes from NCLB, but in exchange, requiring states to adhere to policy principles not mandated by existing law.⁵⁴ Despite these differ-

⁵²As described in Chapter 1, in his remarks introducing the ESEA Flexibility initiative, Obama left no room for interpretation: "I've urged Congress for a while now, let's get a bipartisan effort, let's fix this. Congress hasn't been able to do it. So I will" (The White House 2011).

⁵³See, for example, the guidance document "ESEA Flexibility," as updated June 7, 2012.

⁵⁴On December 10, 2015, President Obama signed the Every Student Succeeds Act, a reauthorization of ESEA that replaces and substantially revises NCLB. The reauthorization came four years after the administration introduced the ESEA Flexibility program, and over five years after the President introduced his Blueprint for Reform.

ences, a common thread characterizes these cases of waiver use in secondary education: presidents have used the broad discretion provided in ESEA waiver authority to simultaneously pursue their policy goals and adapt to the constraints in their institutional and political environments.

2.4 Conclusion

This chapter had three goals. I began by explaining the origin and breadth of waiver authority. This discussion made three important points. First, despite the differences across policy areas, waiver authority in welfare, Medicaid, and education is quite comparable. In each case, the secretary is authorized to grant states exemptions from federal law in order to allow for state implementation of new programs. Second, waiver authority does not allow the secretary to mandate that states use waivers. Rather, the secretary is given approval authority. The implication here is key: presidents cannot exercise waiver authority without governors' participation in this process. Third, and crucially, the secretary's waiver authority across all three policy areas is quite broad and has rarely been curtailed by courts. This characteristic is crucial for understanding waivers as presidential policymaking tools. While governors play an important role in this process, presidents enjoy extensive control over waivers. Not only can presidents decide whether or not to provide states with an opportunity to apply for waivers, but their administrations can subsequently shape the substance of waivers during the review and approval process.

Second, this chapter outlined the three basic steps of the waiver process. These steps are not mandated by law, yet the nature of waiver authority confers this structure on the interaction between the president and governors. Given the discretionary nature of waiver authority, I identify the first step as the president inviting states to apply for waivers. After extending this invitation, however, the administration cannot simply hand out waivers. Rather, in the second step, governors must submit waiver applications in order for the administration to exercise its waiver authority. While this is a crucial compo-

ment of the waiver process, scholars have yet to examine the dynamics of the submission stage. Finally, the administration reviews waiver applications and decides whether or not to approve each application. The nature of waiver authority affords the president substantial latitude in reviewing these applications, as I discuss throughout this chapter.

Third, I reviewed cases in welfare, Medicaid, and education in which presidents have exercised their waiver authority. The goal of this qualitative work is to examine how and when presidents use waivers. In terms of how presidents use this tool, I found substantial variation across each president's approach to pursuing and approving waivers in these policy areas. The body of evidence reviewed here suggests that while presidents exercise waiver authority strategically, the specific policy goals they pursue vary. For example, in the case of welfare, the Reagan administration did not articulate specific policy changes they hoped that governors would implement via waivers. In contrast, the Clinton administration listed five policies that they encouraged states to experiment with via welfare waivers. The nature of requirements placed on states via waivers also varies. The George W. Bush administration only offered states flexibility from NCLB if governors agreed to continue implementing the "bright line principles" of the law. Operating under the same statutory waiver authority, the Obama administration stirred up controversy by requiring states to implement policies that were not a part of NCLB as a condition of receiving a waiver. This variation in how presidents approach the waiver process underscores the extent to which presidents can (and do) adapt the waiver process to meet their needs.

Crucially, this chapter also explored when presidents use waivers. Despite the multiple observations that presidents use waivers strategically discussed at the beginning of this chapter, we have yet to identify the specific conditions under which this strategy is both feasible and strategically valuable to the president. The evidence discussed in this chapter suggests that two conditions are central to explaining when the president uses this tool. First, presidents seem particularly inclined to use waivers when their efforts to revise an existing law are frustrated by Congress. Consider, for example, Clinton's use

of welfare waivers and Obama's use of education waivers. In both cases, the president's use of waivers coincided with drawn-out battles with Congress. Indeed, each president actively attempted to instigate widespread policy change via waivers even as they negotiated legislative changes with Congress.

Second, presidents and their administrations rely on governor cooperation in order to implement this strategy. As George W. Bush's failure to incentivize states to transform Medicaid into a block grant via waivers illustrates, presidents can only expect to implement their preferred policies via waivers if governors are willing to submit applications and to implement the waivers as approved by the administration. Indeed, President Clinton's repeated speeches to the National Governors Association in which he solicited waiver applications reflect his administration's consistent efforts to maintain a steady flow of waiver applications from governors. Across the policy areas discussed here, administrations consistently courted participation from governors. This observation suggests that presidents heavily value expected cooperation from governors when determining the viability of a waiver strategy.

This work provides a foundation on which to build a theory of presidential policy-making through waivers, something we currently lack. Before offering such a theory, in the next chapter I introduce a dataset that allows me to systematically test (and ultimately, dispel) a common assumption about the president's role in the waiver process. In contrast to the evidence discussed here, the model of waivers found in existing large- n analysis often assumes that presidents play a peripheral and passive role in this process. Using my dataset, I test the argument that presidents simply grant waivers to governors in their party. Finding little to no support for this existing empirical model of waivers, I then offer a new theory of presidential policymaking through waivers, informed by the observations in this chapter.

CHAPTER III

Introducing the Data and Testing the Common Assumption

In this chapter, I assess a common assumption about the president's role in the waiver process that emanates from existing models of approved waivers. Large- n work on waivers, to this point, often suggests that the president is more likely to approve waivers for governors in his party. This assumption is fundamentally different from the argument I offer in this dissertation about presidential policymaking through waivers. Indeed, the implicit assumption in existing work is that the president's institutional environment does not motivate him to pursue and approve waivers. Rather, he is assigned a passive role, approving states' applications based on shared partisanship but not actively using waivers in pursuit of his own goals.

While large- n work often finds little evidence in support of this assumption, alternative accounts of the president's role have yet to be offered. As such, from these null results one might be tempted to conclude that the president does *not* use waivers strategically. But this result is inconsistent with the evidence discussed in Chapter 2, which suggests that presidents do in fact grant waivers strategically. How are we to proceed with an explanation of presidential policymaking through waivers, given these conflicting accounts? I argue that the first step is to improve on existing data. As I explain below, current large- n work relies on limited datasets that do not allow for sufficient variation on key variables or for generalizable conclusions. To address these shortcomings, in this

chapter I introduce an original dataset that improves on existing work by including submitted and approved waivers in welfare, Medicaid, and education from 1984 to 2012.

I then use these data to re-examine the common assumption about the president's role in the waiver process; it may be the case that the null results thus far are an artifact of limited datasets. It is important to examine this possibility, given that existing accounts portray the president as playing a passive role in this process, in contrast to the evidence in Chapter 2 that suggests that presidents pursue waivers actively and strategically.

As a preview of the results, I find weak evidence that governors in the president's party submit more waiver applications than governors in the opposing party. In the analysis of approved waivers, I similarly find little evidence in support of the common assumption that presidents approve more waivers for governors in their party. Echoing previous work, we are left with null results regarding the president's role in this process. Enriching the dataset used to assess the common assumption, then, does not resolve the inconsistency between existing large- n work and the qualitative evidence discussed in Chapter 2. Based on this analysis, I argue that it is time to move beyond the current framework by considering the president's institutional incentives to use waivers.

This chapter proceeds as follows. First, I discuss how large- n work on waivers treats the president's role in the waiver process. Then, I argue that current large- n analysis of waivers is limited for the following three reasons: 1) only approved, not submitted waivers are analyzed, 2) models include waivers from single policy areas, and 3) analysis is conducted over limited time periods. Next, I introduce an original dataset of submitted and approved waivers designed to address these shortcomings. Finally, with this dataset in hand, I test the common assumption about the president's role in this process at both the submission and approval stages. Given the characteristics of this dataset, this analysis provides for a generalizable and fair test of the current framework that assigns the president a passive role in the waiver process.

3.1 A Common Assumption about Presidents and Waivers

Existing work on waivers does not assign the president an active role in the waiver process. Rather, the assumption is that he is simply more inclined to approve waivers for governors in his own party. This presumption is not motivated by a theory of presidential policymaking, yet it repeatedly surfaces in large- n work on waivers. Specifically, three studies examine the waiver process using regression analysis – analysis of the president’s role in this process extends no further than including a variable to measure whether the president and governor are in the same party, or alternatively, whether the president’s party won the majority of votes in a state in the prior presidential election. I elaborate on each study here.

First, Lieberman and Shaw (2000) examine whether welfare waiver approvals vary in response to state factors or national factors. Specifically, using the number of approved waiver provisions per state-year as their dependent variable, they assess whether policy diffusion through waivers is motivated by internal state concerns or by national factors. In doing so, they include a dummy variable that equals one if the governor and the president are in the same party and zero otherwise. Their results are sensitive to the inclusion of state fixed effects, and ultimately, they conclude that “[the] process of granting waivers did not favor either governors of one party or another or governors of the President’s party,” concluding that “political gamesmanship” does not characterize this process (230).¹ The implication of their model, and of the null results on governor-president alignment, is that waivers were approved based on administrative concerns like the national caseload, but not based on strategic policymaking decisions by the president.

¹Specifically, the coefficient on the governor-president alignment term is negative and statistically significant when state fixed effects are omitted, but this result fails to reach statistical significance when state fixed effects are included. Further, the authors include a dummy variable to indicate governor partisanship; accounting for this term, the net effect of the governor-president alignment term is nearly zero in both models. The exception is the case when the governor is a Republican and the president is a Democrat (that is, when Clinton is president, the only Democrat in their sample) – in this case, Republican governors receive slightly more approvals. Again, however, this effect is not significant in the model with state fixed effects, which the authors point to as a more precise test of their model (230).

In his examination of approved Medicaid and education waivers, Shelly (2013) similarly posits that presidents are only involved to the extent that they are more likely to grant co-partisans waivers. His inquiry focuses primarily on how internal state conditions influence waiver approval. The dependent variable here is the number of approved waivers, and like Shaw and Lieberman (2000), he includes a dummy variable that indicates whether the president and governor are from the same party. While he cites Gais and Fosset's (2005) discussion of executive federalism as the motivation for doing so, Shelly does not consider the role that the president's institutional environment plays in his decision to pursue waivers as an alternative policy-making strategy (2013, 459). Ultimately, the variable measuring governor-president alignment does not achieve statistical significance at conventional levels in either his model of approved Medicaid waivers or his model of approved education waivers (467).

Similarly, in his study of state workbook amendment provisions from the No Child Left Behind Act (NCLB) from 2005 through 2007, Shelly (2012) includes a variable that measures the presidential vote share that George W. Bush received in each state in 2004 to examine whether "[with] Bush appointees at its head, [the Department of Education] might have been more likely to grant flexibility requests to more Republican states" (124). Like previous work, this variable does not achieve statistical significance. Overall, then, this small body of quantitative work considers whether presidents grant more waivers to governors in their own party and finds little to no evidence in support of this hypothesis. An alternative proposition that considers the president's institutional incentives has not been offered. However, the qualitative evidence discussed in Chapter 2 suggests that in fact presidents are, under certain conditions, quite motivated to use this tool strategically. At this point, then, it appears that existing large-*n* analyses are missing a piece of the puzzle.

3.2 Weaknesses in Existing Large- n Analyses

It may be the case that these quantitative analyses of waivers are producing null results because of weaknesses in the data. Here, I discuss three drawbacks in existing data that may hinder the ability to assess the existing assumption that presidents grant more waivers to governors in their own party.

First, prior studies do not include variation across policy areas in one model, leaving them ill-equipped to produce generalizable analyses of waivers as policymaking tools. Recall that Shaw and Lieberman (2000) investigate welfare waivers, and Shelly (2013) analyzes Medicaid and education waivers in separate models. However, as discussed in Chapter 2, the nature of the president's waiver authority is in fact quite similar across welfare, Medicaid, and K-12 education. In this case, then, we should strive to build models that include variation across policy areas to learn about waivers as policymaking tools rather than focusing on how presidents use waivers in separate policy areas. By focusing on individual policy areas, existing work does not allow for generalizable results about the relationship between institutional factors and the president's waiver strategy.

Second, and relatedly, existing analyses cover relatively short time periods, limiting the variation on important explanatory variables. Specifically, Shelly (2013) separately analyzes Medicaid waivers from 1990 through 2008 and K-12 education waivers from 1995 through 2008, while Shaw and Lieberman (2000) analyze welfare waivers from 1982 through 1995. However, the institutional environment changes slowly. Consider that in most cases, each president serves for at least four years, the president works with the same Congress for a two-year period, and governors serve four-year terms with the exception of Vermont and New Hampshire, whose governors serve two-year terms (National Governors Association 2015). The longer the time period considered, the more variation will be available on the relevant components of the president's institutional environment.

Third, and importantly, these studies neither account for nor investigate the submis-

sion stage of the waiver process in which governors submit waiver applications.² As discussed in Chapter 2, governors play a crucial role in the waiver process. Without participation from governors, presidents cannot hope to implement or claim credit for policy changes. As such, it is certainly worth modeling and analyzing which governors participate in this process, and in particular, whether they submit waiver applications in anticipation of the president’s willingness to approve waivers.

3.3 Introducing an Original Dataset

The data described below is designed to improve on these limitations. I first explain the data on waiver applications and then introduce the data on waiver approvals.³

3.3.1 Submitted Waiver Applications

The data include submitted Section 1115 waiver applications from 1984 through 2012 in two policy areas: welfare and Medicaid.⁴ As Chapter 2 discussed at length, these waivers are governed by Section 1115 of the Social Security Act Amendments of 1962, in which Congress gave the Secretary of Health and Human Services (HHS) authority to waive certain statutory requirements to allow for “experimental, pilot or demonstration” projects (P.L. 87-543). Substantial variation exists both across and within these policy areas in terms of the programs authorized.⁵ Despite this variation, the president’s waiver authority in these two policy areas is highly comparable, particularly since waiver authority in each policy area stems from the same statute.

²One exception is Shelly (2012), who analyzes state workbook amendment requests to NCLB. However, these tools are distinct from waivers, although they allow the federal government to grant states flexibility.

³I refer to waiver applications and waiver submissions interchangeably.

⁴Waivers in these policy areas fall under the domain of two separate administrations within the Department of Health and Human Services: welfare waivers were under the jurisdiction of the the Administration for Children and Families, while Medicaid waivers were managed by the Health Care Financing Administration, renamed the Center for Medicare and Medicaid Services (CMS) by President George W. Bush.

⁵Please see Chapter 1 for a summary of the policies implemented via these waivers.

Comparability of Policy Areas

To my knowledge no existing work on waivers includes data from two different policy areas in one model. While Shelly (2013) analyzes Medicaid and education waivers, he does not pool these waivers in one analysis. This dataset of submitted waivers improves on existing work by including waivers from both Medicaid and welfare. The benefit of including more than one policy area over many years is straightforward: we gain confidence that our results in fact reflect strategic decisions motivated by institutional constraints and incentives, rather than reflecting the politics particular to one policy area or one time period.

At the same time, it is important that when including multiple policy areas in one model, there is sufficient comparability across observations. In this case, Medicaid and welfare share important characteristics. They are both programs designed and authorized via federal law but implemented largely at the state level. As a result, there is a wide range in program design at the state level, although all states are governed by the same federal standards. Further, both programs operate using federal and state funds. Perhaps the biggest difference between these two programs stems from the conversion of Aid to Families with Dependent Children from an entitlement to a block grant via the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996, while Medicaid remains an entitlement program. As a result, the federal government plays a dramatically reduced role in overseeing the design and implementation of state welfare programs compared to Medicaid. Despite this difference, however, both programs are intergovernmental social welfare programs that involve redistribution. Given the similar nature of waiver authority in these two policy areas and these similarities in fundamental program characteristics, models that simultaneously analyze waivers in both policy areas take an important step towards producing generalizable results about this policy tool.⁶

⁶Please see Chapter 1 for an extended discussion about why these policy areas were chosen for analysis.

Data Collection

I begin by describing the data collection process for welfare waivers. Prior to the first Clinton administration, there is no unified record of welfare waivers. I relied on secondary sources and archival documents to build as complete a record as possible of the submitted waivers from 1984 through 1993.⁷ In 1994, the Clinton administration initiated a monthly reporting process of submitted, approved, and denied Section 1115 waivers in the Federal Register. I used the Federal Register to collect data on these Section 1115 welfare waivers from 1994 through 1996, the last year these waivers were available.⁸ I also cross-referenced information from the Federal Register with secondary sources and archival sources to track down missing dates and pieces of information.⁹

After passage of the PRWORA in 1996 that overhauled the welfare system, the Clinton administration made it clear that they would no longer review these waiver applications, and subsequent administrations have followed suit. As a result, this dataset includes welfare waivers through 1996. In an ideal world, we would have observations on welfare waivers covering a longer time period to allow for more variation on key dependent variables. While imperfect, the solution here is to include Section 1115 welfare and Medicaid

⁷Secondary sources: Wiseman (1993a,b); Fishman and Weinberg (1992). Archival sources: Setting the Baseline: A Report on State Welfare Waivers (1997); Health and Human Services Fact Sheet (1996); and How the White House Spurs Welfare Reform (1989).

⁸The Federal Register was not always consistent with archival documents. For example, cross-referencing the Federal Register with two reports from the Clinton administration, the Setting the Baseline report issued in 1997 and the Health and Human Services Fact Sheet from January 1996, I discovered additional waivers that were not listed in the Federal Register. I included these waivers in my data, after making sure that no waivers were duplicated. Nonetheless, the inconsistency in the reporting of submitted waivers may be of some concern, as gaps in the records result in submitted (or approved) waivers that are not accounted for. As a result, the analysis here may suffer from a degree of bias due to missing data. I acknowledge this limitation despite my efforts to find and include all relevant data. Given my extensive search through the available sources, I am confident that the omission of relevant data has been minimized. However, future work could investigate relevant records in the Reagan presidential archives to further address possible missing data.

⁹Despite these efforts, it was not always possible to find all relevant information for submitted waivers. In particular, Fishman and Weinberg (1992) indicate that of the twenty-six welfare waivers submitted between 1986 and 1988, sixteen were approved and ten were withdrawn or denied. Searching all available sources, I was able to identify approval dates for the sixteen approved waivers, but not the date of submission. For the ten waivers that were submitted but not approved, I have searched in archival records, secondary sources, and have worked with a research assistant to conduct broad searches, to no avail. These ten waivers, as a result, are not included in the analysis of submitted waivers.

waivers in one model to allow for as much variation over time as possible.

As with the Section 1115 welfare waivers, there was no standard reporting system for submitted Section 1115 Medicaid waivers until the Clinton administration implemented a monthly Federal Register reporting system in 1994. I used these Federal Register records from 1994 through 1998 to record submitted Medicaid waivers.¹⁰ However, after 1998, the Clinton administration stopped reporting these waivers, and subsequent administrations did not reinstate this reporting practice, despite pressure from the Government Accountability Office to do so (Thompson 2012). The Center for Medicare and Medicaid Services (CMS) maintains an online list of submitted and approved waivers, which I used to identify Section 1115 waiver submissions and approvals from 1998 through 2012. I also used these CMS records to cross-reference data collected from the Federal Register and to collect data from 1992 and 1993, before waivers were reported in the Federal Register.

This dataset allows us to assess, for the first time, the conditions under which governors apply for waivers. Specifically, three features of these data allow for fair and generalizable tests of the president's role in this process. First, this dataset includes observations from two policy areas, welfare and Medicaid, allowing for more generalizable results than models that only incorporate one policy area. Second, this analysis covers 1984 through 2012, a longer time period than has been covered in existing work. Third, these data allow for a dependent variable that measures the number of waivers submitted, while existing work focuses on the number of waivers approved, skipping over the submission stage of the process.

Ideally, these data would include submitted waivers in education as well as welfare and Medicaid. However, I was unable to obtain data on applications for education waivers. As a result, in this project models of submitted waivers are estimated using only

¹⁰Some waivers were categorized in the Federal Register as "welfare/Medicaid." I recorded these as welfare waivers, though in terms of the data analysis, this distinction is irrelevant since none of the explanatory variables are policy area-specific.

observations of Section 1115 welfare and Medicaid waivers, while models of approved waivers include observations in all three policy areas.¹¹

Description of the Data

Figure 3.1 below shows the number of waivers submitted per year, by policy area. This dataset includes 296 waiver applications submitted in welfare and Medicaid from 1984 to 2012. This number excludes waivers submitted by United States territories and the District of Columbia; it also excludes waivers with missing information on the year of submission or the state that submitted the waiver.¹²

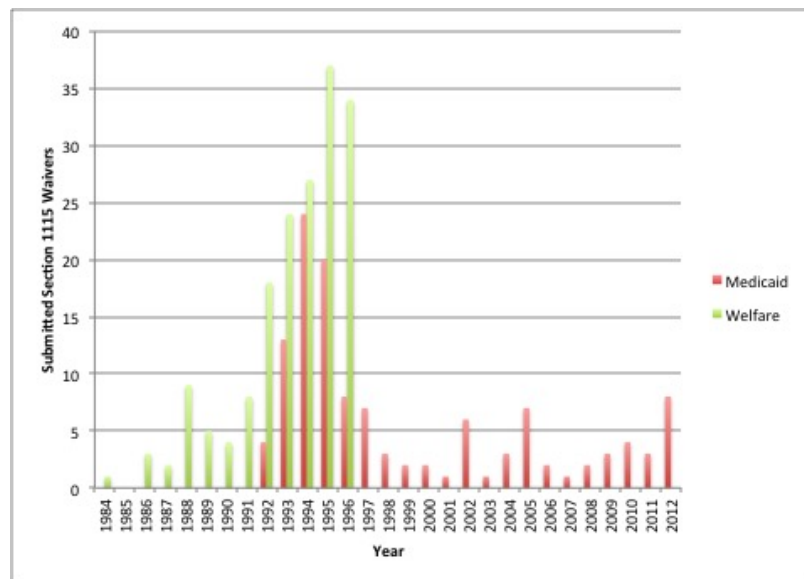


Figure 3.1: Section 1115 Waiver Applications, 1984-2012

These data are used to create the dependent variable for analyses of waiver submissions in this chapter and in Chapter 5. The structure of the data for analysis is by state-year-policy.¹³ For each state-year, the data contain two observations: one for the number

¹¹The Department of Education, unlike the Department of Health and Human Services, does not make information about submitted waivers publicly available. A Freedom of Information Act requesting submitted waiver applications was unsuccessful.

¹²Because of variation in the reporting processes over time, the same type of information is not available for all waivers. For example, for some of the welfare waivers, the Federal Register reported information on the date on which a waiver was submitted – but this was not the case for all waivers.

¹³Washington, D.C. and territories are omitted from the analysis, since they do not have governors.

of waivers submitted in welfare, and one for the number of waivers submitted in Medicaid. The dependent variable in the analyses below equals the number of waivers submitted by each state, in each year, for each of these two policies. This structure allows me to control for the policy area. For years before or after waivers were systematically used in each policy area, the value of the dependent variable for that policy area is missing.¹⁴ The first row in Table 6.7 describes the dependent variable used in the analyses below, while the last two rows provide information on the dependent variable by policy area.

Table 3.1: Dependent Variable Summary Statistics

| Policy | Years | Mean | Std. Dev. | Min. | Max. | N |
|-----------------------------|--------------|-------------|------------------|-------------|-------------|----------|
| <i>Welfare and Medicaid</i> | 1984-2012 | 0.174 | 0.509 | 0 | 8 | 1700 |
| Welfare | 1984-1996 | 0.265 | 0.667 | 0 | 8 | 650 |
| Medicaid | 1992-2012 | 0.118 | 0.370 | 0 | 4 | 1050 |

3.3.2 Approved Waivers

Next, I introduce an original dataset of approved waivers in Medicaid, welfare, and secondary education.¹⁵ The data on submitted waivers discussed above is a subset of this dataset. In addition to covering a longer time period than existing studies of approved waivers, this dataset includes observations from three policy areas: welfare, Medicaid, and K-12 education. These data allow for more generalizable and accurate tests of propositions about the waiver process, including the common assumption that presidents simply grant waivers to governors in their own party regardless of the president's institutional constraints and incentives.

In the latter half of this chapter, I use these data to assess this common assumption. Null, weak, or mixed results in support of this assumption should convince us that it is indeed time to move beyond this simple model and, specifically, to think more carefully

¹⁴In practice, this means that all values of the dependent variable for "welfare" observations are missing from 1997 through 2012. All values of the dependent variable for "Medicaid" observations are missing from 1984 through 1991.

¹⁵I use the terms "secondary education" and "K-12 education" interchangeably.

about the president's institutional incentives to use waivers. Before doing so, I explain the nature of the data on approved waivers.

Comparability of Policy Areas

As with the data on submitted waivers, these data contain observations on welfare and Medicaid waivers granted between 1984 and 2012 under Section 1115 of the Social Security Act Amendments of 1962. I was also able to obtain the number of K-12 waivers approved from 1995 through 2012. Overall, this dataset of approved waivers contains observations on approved welfare, Medicaid, and education waivers spanning 1984 through 2012.

Similar to the dataset on submitted waivers, including multiple policy areas allows for stronger tests of propositions about the waiver process. With more policy areas included in one model of waiver approvals, we add to the variation across policy areas and thus increase the generalizability of results. However, we should pause to assess whether comparing approved K-12 education waivers to Section 1115 waivers is justified. As Chapter 2 described, the general waiver provision in the ESEA, as reauthorized in 1995 and again in 2001, grants the Secretary of Education authority over waiver approvals. States may submit applications to waive portions of the ESEA and, if their proposals are approved by the Secretary, may implement alternative programs. The Secretary of Education enjoys broad discretion over this process, allowing the president and his administration to tailor the waiver process to their needs. This broad discretion also characterizes the Secretary of Health and Human Services' authority over Section 1115 welfare and Medicaid waivers. Despite variation in the programs implemented via waivers, then, ESEA waivers and Section 1115 waivers are quite comparable in terms of the scope of the president's authority and in terms of the structure of the waiver process. These shared characteristics are the critical features of waivers in terms of the theory and analyses that follow.¹⁶

¹⁶Further, as discussed in Chapter 1, all three policy areas are intergovernmental, redistributive programs.

Data Collection: Approved Medicaid and Welfare Waivers

The data on approved Section 1115 welfare and Medicaid waivers were collected from the same sources and following the same process as that described above in the section on submitted waivers; I spare the reader a review of that process here. Figure 3.2 below illustrates the number of Section 1115 waivers approved in welfare and Medicaid from 1984 through 2012.

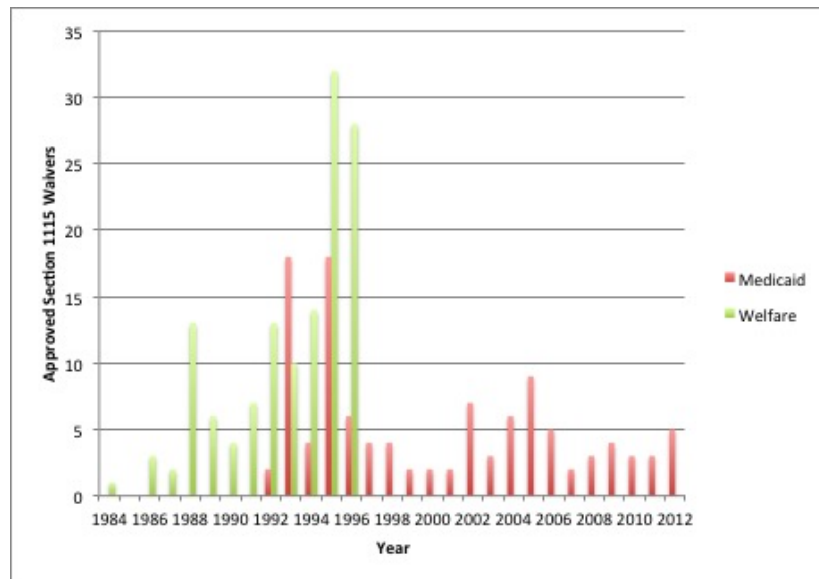


Figure 3.2: Approved Section 1115 Waivers, 1984-2012

Education Waivers: Policy Context

Before discussing the data collection process for education waivers, I briefly review the evolution of the federal government's role in education during the time period in which education waivers have been used.¹⁷ This context is important given the evolution of and continuing debate over the federal government's role in education. A great deal of skepticism, particularly on the part of Republicans, characterized the response to Clinton's reauthorization of EASA, which for the first time required states to develop challenging

¹⁷Please see Chapter 1 for a summary of the policies implemented via K-12 waivers from 1995 through 2012.

content standards and to assess students regularly to measure progress towards meeting these standards (McGuinn 2006, 95). After thirty years of a relatively stable policy regime as implemented under the initial ESEA, McGuinn characterizes Clinton's reauthorization, the Improving America's Schools Act (IASA), as "the most significant change to EASA since 1965" (95).

The No Child Left Behind Act of 2001 (NCLB) built on the framework that IASA implemented, mandating strict accountability measures for schools identified as failing to meet adequate yearly progress – McGuinn (2006) describes the law as "contain[ing] a large number of prescriptive mandates that reach into every major area of education policy and will require states and districts to fundamentally change the way they run their public schools" (182). As Chapter 2 discusses, however, the law was resoundingly unpopular and widely viewed as unsuccessful by the time it was finally reauthorized via the Every Student Succeeds Act (ESSA) in December 2015. Perhaps as a result of the perceived failures of NCLB, ESSA grants states more flexibility in determining how to improve schools and how to hold them accountable for student improvement, as Klein (2016) explains:

State and school district officials who have complained for years that an inflexible, over-prescriptive federal role in public education is at the heart of the No Child Left Behind Act seem to have finally gotten their wish: a replacement law that scales back Washington's K-12 footprint for the first time in more than a quarter-century (1).

In all, then, during the years in which the president has enjoyed broad waiver authority in K-12 education, the federal government's role in education has gone from limited to prescriptive and then been scaled back again. Throughout this evolution, as Chapter 2 discusses in depth, presidents have approved waivers from ESEA in order to provide states with flexibility from federal law, although across the Clinton, Bush, and Obama administrations, each president articulated different goals with respect to these waivers. As a result, while the president's statutory waiver authority remained virtually unchanged

from 1995 through 2012, the policies implemented through the waivers contained in this dataset vary. Below, I explain the process for collecting this data and discuss differences across the types of waivers included in the data and analysis.

Education Waivers: Data Collection

ESEA is the primary federal law governing K-12 education; as discussed in Chapter 2, general waiver authority was granted to the Secretary of Education in President Clinton's 1994 reauthorization of ESEA through IASA. This waiver authority was preserved in President George W. Bush's 2001 reauthorization of ESEA via NCLB (Skinner and Feder 2012, 6).

From 1995 through 2012, this general authority has been used to approve the vast majority of K-12 waivers, although a small number of waivers were approved under the Goals 2000: Educate America Act and under other provisions of ESEA. Specifically, out of 1,495 total K-12 waivers approved from 1995 to 2012 in this dataset, 10 waivers were approved under the Goals 2000: Educate America Act and 18 were approved under different ESEA provisions.¹⁸ Figure 3.3 shows the number of waivers granted each year from 1995 through 2012.

In 1995, the Department of Education began reporting approved K-12 education waivers from ESEA via the Federal Register. From 1995 to 2010, I relied exclusively on these Federal Register Notices to record approved K-12 waivers. The waivers granted under the Obama administration's "ESEA Flexibility" initiative launched in 2011 were not reported in the Federal Register, but rather, were reported via letters sent to chief state school officers and posted on the Department's website. From 2011 to 2012, I recorded approved waivers using these letters.

¹⁸This total number of waivers excludes those granted to U.S. territories and Washington, D.C., consistent with the discussion throughout the dissertation of the dataset analyzed.

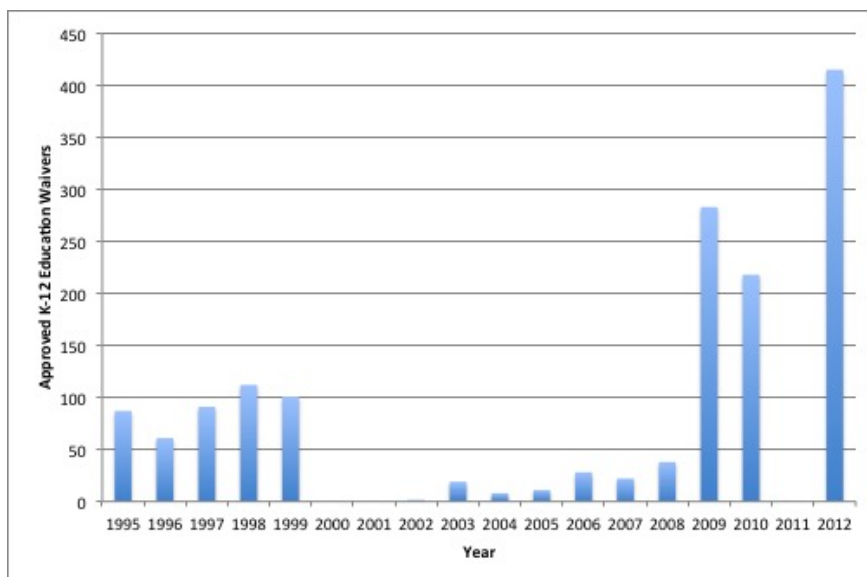


Figure 3.3: Approved K-12 Education Waivers, 1995-2012

Variation in Education Waivers

As in the case of welfare and Medicaid waivers, the types of policies implemented under K-12 waivers and the provisions waived have varied over time. During the Clinton administration, for example, it was common for local education agencies to be awarded waivers – as a result, states could have received more than one waiver per year. For example, Pennsylvania received 39 waivers in 1995. These waivers were submitted through the state education agency to the federal government, such that this interaction can still be categorized as a state-federal relationship rather than local-federal (Flexibility Materials to Governors and Chiefs 1994). Further, the Obama administration’s ESEA Flexibility program allows states to apply for up to 13 waivers in a year, and in fact, states are required to apply for at least 10 of these 13 waivers to be eligible for any of them. This requirement explains the spike in the raw number of approved waivers in 2012 following the announcement of the ESEA Flexibility program in September 2011.

This variation means that these education waivers could be categorized in any number of ways. Multiple waivers submitted by local education agencies or districts within one state could be counted as one waiver. Waivers granted under specific programs, like

those granted under the American Recovery and Reinvestment Act (ARRA) or granted to states dealing with the aftermath of Hurricanes Katrina and Ike, could be removed from the analysis.¹⁹ One could argue that the education waivers granted during the Obama administration from 2011 to present are quite different from previous education waivers because under the ESEA Flexibility program, as discussed in Chapter 1, Secretary of Education Arne Duncan granted waivers that were conditional on states agreeing to implement policies that were not a part of existing law.²⁰

However, the goal here is not to explain variation in the policy content of waivers granted by presidents and their administrations. Rather, the task at hand is to identify the conditions under which presidents are motivated to approve waivers, and relatedly, to assess the conditions under which governors submit waiver applications. As a result, in my analysis I do not distinguish between different types of waivers. The broad discretion granted to the Secretary of Education, and by extension to each president's administration, governs the waivers granted under both IASA and NCLB. Presidents Clinton, Bush, and Obama drew on this waiver authority as they developed waiver programs, designed review requirements, invited applications, reviewed state submissions, and decided whether or not to approve each waiver request. As such, in this dataset and in subsequent analyses I make only two narrow exclusions from the approved waivers listed in the Federal Register from 1995 through 2010 and in approval letters sent to states in 2011 and 2012.

These exceptions are as follows. First, I exclude waivers of administrative cost limitations to Indian education funds granted from 2002 through 2009 under the Indian Educa-

¹⁹Robustness checks of Proposition 2 (the central theoretical implication, introduced in Chapter 4) show that the results do not change meaningfully when either the waivers granted under ARRA or waivers granted for relief of Hurricanes Katrina or Ike are omitted from the analysis. Please see Table 3.6 in the Appendix and Figures 3.4 and 3.5 for specifications that omit ARRA and Hurricane Katrina waivers, respectively.

²⁰In Chapter 6, I include an alternate specification that omits these waivers from analysis. The central relationship expressed in Proposition 2 is robust to omission of the ESEA Flexibility waivers. In Chapter 7, I discuss the implications of conditional waivers in more detail.

tion Formula Grant program.²¹ I exclude these waivers because eligibility for application is dependent on the portion of Indian students in a school, or on a school's proximity to or location on an Indian reservation, according to the Office of Indian Education (2014). Because eligibility for these cost limitation waivers is tied specifically to this demographic requirement, the submission and approval decisions may be categorically different than the mechanism that otherwise informs the waiver process. Second, in the Federal Register Notice on approved waivers from the 2009 calendar year, the Obama administration reported that nineteen local education agencies in Massachusetts were awarded waivers from two sections that "preclude the 19 districts from using funds other than Title I, Part A funds for the 2008-2009 school year to meet the 10 percent professional development spending requirement." I count these nineteen waivers as one waiver granted to the state of Massachusetts – unlike the waivers granted to individual districts under the Clinton administration, this appears to be an exceptional case specific to Massachusetts during this year.

Other than these two exceptions, in the main analysis in this and subsequent chapters, I include all waivers granted by the Secretary of Education under the Elementary and Secondary Education Act and the Goals 2000: Educate America Act as listed in the Federal Register from 1995 through 2010 and all waivers reported by the Department of Education in approval letters posted online and mailed to states under the ESEA Flexibility program in 2011 and 2012.

3.3.3 Dependent Variable: Strengths and Limitations

Using these data on welfare, Medicaid, and education waivers, the dependent variable for subsequent analyses of approved waivers is the number of waivers approved, per state-year-policy area.²² Here, I discuss the logic behind this structure and the tradeoffs

²¹ 118 such waivers were granted from 2002 through 2009.

²² As discussed above, the dependent variable in analyses of submitted waivers equals the number of waivers *submitted* per state-year-policy area.

involved in using approved waivers unconditional on submission as a dependent variable.

Structure of the Dependent Variable

Including an observation for each state-year allows for incorporation of factors that vary across states and that influence whether a governor receives approval of their waiver applications. Measuring the total number of approvals by year would obscure the nature of the waiver process; waivers are not approved in batches each year. Rather, each state's application is reviewed individually. This structure of the dependent variable captures the variation across states that characterizes this process.

Further, including one observation per policy for each state-year allows us to assess the model using observations from more than one policy area. As discussed above, this analysis allows for more generalizable results. Pooling the number of approved waivers into one state-year observation is an option and would perhaps reduce noise and inefficiency that is introduced through the inclusion of three policy-specific observations per state-year. But this method would not distinguish between waivers approved in one policy area or another, and doing so is important, particularly given the large number of education waivers in the data. Including one observation per state-year-policy makes it possible to include control variables for each policy. For these reasons, the state-year-policy structure of the dependent variable is optimal for assessing the questions at hand.

Addressing Potential Selection Bias

In this chapter and in Chapter 6, I primarily focus on a model of approved waivers unconditional on submission. That is, I include all state-year observations for which waivers were available in each policy area regardless of whether a waiver was submitted in each state-year-policy area. Here, I explain this approach and explain my efforts to minimize bias in the results.

The primary concern with an unconditional model is that states in the applicant pool are not generated by a random selection process. Rather, states in the applicant pool select into the sample when the governor decides to submit a waiver application. Without accounting for this self-selection process, the estimates may suffer from omitted variable bias, where the omitted variables are those that drive the self-selection process.

One solution would be to estimate a conditional model that includes only state-years in which governors submitted a waiver application. By conditioning on this self-selection, we could directly measure the effects of the relevant explanatory variables on waiver approvals, *given* selection into the pool of applicants. But this approach narrows the scope of analysis to Section 1115 welfare and Medicaid waivers only, since data on submitted education waivers is not currently available, as explained above.

Omitting approved education waivers would reduce the ability to produce generalizable estimates about the president's use of waivers. Recall that no analysis of approved waivers includes more than one policy area at a time; this approach has made it difficult to generalize about the use of waivers as policy tools. Rather, it has led to policy-specific analysis of waivers.²³ However, the goal here is not to explain how presidents use waivers in one policy area, but to examine how the institutional constraints that shape presidential policymaking motivate his use of this tool across policy areas. For this reason, omitting education waivers in favor of a conditional model is not necessarily a worthwhile tradeoff, since this would lead to less variation on key variables and, overall, less generalizable results.

While the potential issue of selection bias remains, two characteristics of this analysis help to minimize this problem. First, the rate of waiver approvals is in fact quite high.

²³For example, based on his analysis of Medicaid and education waivers using separate models and producing separate estimates for each policy area, Shelly (2013) concludes that "this study offers support for the findings of authors such as Derthick (2001) that intergovernmental politics varies across policy areas" (463). He goes on to suggest that "one should allow for the possibility that the federal government may simply grant more flexibility in education policy than in Medicaid. For most of U.S. history until the fifties, the federal government was largely uninvolved in public education...the federal government may recognize it needs states and local cooperation, while state and local officials may understand their relatively strong bargaining positions" (463-4).

In the case of Section 1115 waivers, of the submitted waivers in my dataset, 77 percent of welfare waivers were approved, and 90 percent of Medicaid waivers were approved. Overall, the approval rate for Section 1115 waivers in my data is 82.8 percent.²⁴ Similarly, Gormley (2006) describes the high approval rates of education waivers:

In general, the Department of Education has responded favorably to waiver requests. Both the Clinton administration and the George W. Bush administration approved most of the education waiver requests they received. When considering waivers, the Department of Education has usually said yes unless the waiver was unnecessary or unauthorized by federal law (Gormley 2006, 53).

To elaborate on this point, Table 3.2 below is a reproduction of Table 3 from Gormley (2006), which depicts the rate of waiver approvals from 1995 through 2004.²⁵ Referencing these high rates of approval, Shelly (2013) highlights "the likelihood that waivers that are requested are usually granted" (458). From 1995 through 2004, the average approval rate by the Department of Education was 72 percent. While slightly lower than the average approval rate for Section 1115 waivers, this is nonetheless quite a high average approval rate. Further, Gormley's data end before the Obama administration took over the ESEA waiver process in 2009. Anecdotally, it seems that the Obama administration approved waiver applications at a high rate. For example, 43 of 45 states that have submitted waiver applications under the ESEA Flexibility program have been awarded waivers, according to the Department of Education.²⁶

²⁴This calculation only includes waivers for which I could identify the applicant and the year of submission, approval, or both. U.S. territories and Washington, D.C. were excluded because they do not have governors, consistent with the analysis throughout this dissertation. When the calculation includes all reported waivers, including those for which I could not identify a year of submission or approval, the approval rates are as follows: 71 percent for welfare, 84 percent for Medicaid, and an average of 76.5 percent across all Section 1115 waivers. This rate is quite similar to the average approval rate for K-12 waivers that Gormley (2006) finds from 1995 through 2004, which is 72 percent.

²⁵Notes for Table 3 in Gormley (2006): "Source: Susan Winingar, education program specialist, Office of Elementary and Secondary Education, Department of Education, March 2005. Note: These waivers were issued under the authority of Goals 2000 (1994), the School-to-Work Opportunities Act (1994), and the Elementary and Secondary Education Act, as reauthorized in 1994. Local education agencies and states can request a waiver in one year and have it granted in the next year. Thus the ratio of waivers granted to waivers requested in any calendar year captures the number of waivers requested in that calendar year and the disposition of those waivers in that calendar year or a subsequent year" (532).

²⁶The high rates of waiver approvals frequently referenced in the literature further reduce concerns that

| <i>Calendar Year</i> | <i>Waivers requested</i> | <i>Waivers granted</i> | <i>% granted</i> |
|----------------------|--------------------------|------------------------|------------------|
| 1995 | 118 | 105 | 89.0 |
| 1996 | 71 | 49 | 69.0 |
| 1997 | 97 | 86 | 88.7 |
| 1998 | 122 | 113 | 92.6 |
| 1999 | 174 | 122 | 70.0 |
| 2000 | 99 | 53 | 53.5 |
| 2001 | 99 | 85 | 85.9 |
| 2002 | 51 | 29 | 56.9 |
| 2003 | 16 | 11 | 68.8 |
| 2004 | 35 | 16 | 45.7 |

Table 3.2: Waivers requested and granted by the Department of Education in response to states and local education agencies, as seen in Gormley (2006), Table 3, page 532.

These high rates of approval suggest that, as many scholars have noted, most waivers that are submitted are ultimately approved. The important implications are, first, that the approval stage of the process is not characterized by an intense weeding out of applicants and, second, that states with approved waivers look similar to states that submitted waivers.

Next, I explain the second characteristic of the analysis that helps account for potential selection bias. In subsequent models of waiver approvals I include the state-level factor that predicts waiver submission: the Squire index of professionalism. Including this observable characteristic that determines self-selection into the applicant pool helps reduce the potential for omitted variable bias.²⁷ This solution has a weakness: the analysis of waiver submissions is based on welfare and Medicaid waivers, but not on education waivers. To the extent that states submitted education waiver applications based on different factors, this analysis will not account for those factors. However, there is not a compelling reason to expect that different state-level factors explain education waiver submissions in contrast to Medicaid or welfare waiver submissions, particularly given my argument that waivers are valuable tools under certain institutional constraints rather

there are dramatic differences between those who submit waiver applications and those whose waivers are approved (Thompson and Burke 2007; Shelly 2013; Lieberman and Shaw 2000).

²⁷Please see the Appendix for an explanation of this logic.

than policy-specific conditions. For these reasons, the unconditional model of waiver approvals allows for reliable analysis of the theoretical propositions. Nonetheless, as a robustness check below I also include conditional specifications of approved welfare and Medicaid waivers.

3.3.4 Summary of the Data

I have described a dataset that includes submitted waivers in welfare and Medicaid from 1984 through 2012, and further, approved waivers in welfare, Medicaid, and education over the same years. While this dataset is far from perfect, it improves on the three primary weaknesses that characterize existing datasets of waivers. First, I incorporate multiple policy areas. Doing so allows us to test propositions about the president's use of waivers without restricting our analysis or interpretation to one policy area. As a result, we have a better understanding of the president's use of this tool, which is the central goal of this dissertation. Second, the data here cover nearly thirty years in total.²⁸ The data here on submitted and approved waivers covers a longer time period than existing work, which is critically important to allow for sufficient variation across the variables of interest, particularly those related to the institutional environment that constrains (and incentivizes) presidential policymaking behavior. Third, this dataset includes not only approved waivers, but submitted waivers. Including submitted waivers allows me to assess propositions about the conditions under which governors submit waivers, an inquiry that is missing from the literature.

This original dataset allows for two types of tests. First, it allows us to explicitly interrogate the common assumption in the existing work on waivers that presidents do not pursue waivers under certain institutional conditions, but rather, that they simply approve more waivers for governors in their party. The data here provide for a fair and generalizable assessment of whether there is any merit to this existing framework. Sec-

²⁸As explained above, waivers in each policy area were available for a subset of the full time period from 1984 through 2012.

ond, and most importantly, I use this dataset to conduct the tests at the heart of this dissertation. Specifically, in Chapters 5 and 6 I use these data to assess the theoretical propositions that I develop in the next chapter about the conditions under which governors submit and presidents approve waivers.

3.4 Modeling the Common Assumption

The final section in this chapter assesses the common assumption about the president's role in the waiver process at the submission and approval stages. I begin with the submission stage.

3.4.1 Submitted Waivers

While existing work does not specifically address the submission stage of the process, I extend the logic of the common assumption that governors in the president's party receive more waiver approvals to this stage. Specifically, I assess whether governor-president alignment is an important factor in explaining which governors submit waiver applications. Weak evidence in support of this argument would suggest that we need a theory of presidential policymaking through waivers that incorporates the president's institutional environment.

Primary Dependent and Explanatory Variables

The dependent variable here is the number of submitted waivers, per state-year-policy. The central explanatory variable is *Alignment*, which equals one if the governor is in the president's party and zero if the governor is not. The expectation, based on the common assumption, is that this variable will be positive, indicating that governors in the president's party submit more waivers in anticipation that the president simply grants more waiver requests for governors in his party.

State Factors

Existing models that seek to explain waivers include a number of internal state factors, and with good reason. Indeed, consistent with the laboratories of democracy narrative, waivers provide opportunities for experimentation that should at least in part reflect the politics and priorities specific to individual states (Weissert 2008). I include relevant state factors to examine how the state environment influences this stage of the waiver process.

First, we might expect that a state's governmental capacity influences whether a state has the resources required to create a viable application. This is no small hurdle – for example, in the case of welfare, the Office of Management and Budget's commitment to cost neutrality required states to create programs that would not incur additional costs, a potentially complex endeavor (Gueron and Rolston 2013). I include the Squire index of legislative professionalism as a proxy for a state's capacity to commit the necessary resources to draft an application (Squire 1992, 2007, 2012). The Squire index accounts for length of the legislative session, legislator compensation, and legislator staff. While waiver applications are not created by the legislature, I assume here that lower (higher) levels of legislative capacity correspond with lower (higher) levels of bureaucratic capacity (Huber and Shipan 2002).²⁹

Second, the political ideology of the state's citizenry may impact whether or not a governor decides to submit a waiver. While existing work on waivers has failed to find evidence that citizen ideology helps explain which waivers are approved (Lieberman and Shaw 2000; Shelly 2012), no analysis of how this factor impacts submission has been conducted. Furthermore, state citizen ideology has been found to be a relevant predictor of other policymaking outcomes (Erikson et al. 1993). It is reasonable to predict, therefore, that a state's ideological leaning would influence a governor's decision to submit a waiver. I measure citizen ideology using Berry et al.'s measure based on ADA/COPE

²⁹The Squire index has been associated with many types of policymaking activities, "both within and outside the legislature," and has been found to be valid and reliable over time and in comparison with alternative measurements (Squire 2007, 211).

scores (2010).³⁰

Third, we may expect that a state's financial resources influence whether or not a governor seeks a waiver, particularly since waivers were frequently used to cut down the costs of welfare and Medicaid programs. Governors of states with a lower per capita income, and thus a smaller tax base, may have been more inclined to apply for waivers that would have allowed them to implement cost-cutting strategies. I include a measure of state per capita income (in 1000s) to assess whether poorer states submitted more applications.³¹

National Factors

There are two important national factors that may also influence how many waivers governors submit. First, I include a measure of the change in the national Gross Domestic Product (GDP). If the country's finances are strained, states may expect less funding from the federal government. Because the waivers I analyze here are in the areas of welfare and Medicaid, programs that are partially funded through federal dollars, governors may also feel the crunch if the national GDP decreases.³² In this case, waivers that allow for program experimentation (and cost saving) may become even more attractive.

Second, I include James Stimson's measure of policy mood, measured with *Annual Mood* (1999). Waivers are repeatedly discussed by presidents as policymaking tools that

³⁰It may be the case that more conservative states were eager to support waivers that cut down on spending on social programs. For example, the push for managed care in the 1990s that sought to make Medicaid more cost effective may have appealed primarily to conservative audiences.

³¹Further, there are a number of additional state-level variables that one might argue influence how many waivers governors submit each year. I include a number of these variables in additional specifications reported in the Appendix. Specifically, I include a dummy variable for state divided government that equals one if the majority of state legislators are from the opposing party of the governor and zero otherwise, a dummy variable that equals one if a governor's state has a term limit rule, a variable that measures how many years are left in a governor's term, a variable that equals one if it is an election year for a governor and zero otherwise, and Berry et al.'s measure of state institutional ideology alternately based on NOMINATE rather than on ADA/COPE scores (2010). Please see Table 3.5 in the Appendix for these specifications. Substantively, including these additional variables does not result in a different conclusion: it still appears that *Alignment* is significant at the $\alpha = 0.10$ level in some models but not others, as discussed below.

³²Indeed, Shaw and Lieberman (2000) find that the primary predictors of welfare waiver approvals are related to the national AFDC caseload, suggesting that governors submit more waivers as the national caseload increases and, thus, as the federal budget grows more strained under this increase.

allow their administrations to take action and, often, to implement reform where otherwise none might be possible. Recall, for example, Clinton’s rhetoric of implementing reform by authorizing action at the state level. Further, waivers are explicitly designed to foster innovation through experimental programs. During years when the public is more in favor of activist government, I expect that governors and presidents alike may be more eager (and may find it politically more beneficial) to implement new programs via waivers.

3.4.2 Submitted Waivers: Assessing the Common Assumption

The model based on the common assumption in existing work is below. In addition to the variables just described, I include dummy variables for each administration observed in the data: Reagan, George H.W. Bush, Clinton, and George W. Bush, with Obama as the omitted category. These dummy variables help decrease omitted variable bias by accounting for unobserved factors specific to each president that may have influenced this process, such as a president’s own relationships with governors and more broadly, his willingness to work with states on important policy questions. The presidential dummy variables are in Z_t President. Similarly, this model includes a policy dummy variable for whether a waiver was submitted in welfare; a value of zero for this variable corresponds with Medicaid observations. The dependent variable is a count of the number of waiver applications submitted in state $i = 1...50$, policy $j =$ welfare or Medicaid, year $t = 1984...2012$.

$$\begin{aligned} \text{Waivers Submitted}_{ijt} = & \beta_0 + \beta_1 \text{Alignment} + \beta_2 \text{Squire} + \beta_3 \text{Citizen Ideology} \\ & + \beta_4 \text{Income} + \beta_5 \text{GDP Change} + \beta_6 \text{Mood} \\ & + \beta_7 \text{Welfare} + Z_t \text{President} + \varepsilon_{ijt} \end{aligned} \quad (3.1)$$

Table 3.3 shows the results from two different specifications. In the first column, the Baseline model includes president fixed effects. While the president fixed effects are jointly significant in the Baseline model, suggesting that including them helps account for

unobserved variation, it could be the case that including these fixed effects obscures our estimate of *Alignment*.³³ Consequently the model in the second column omits these fixed effects. A negative binomial specification is used in both models, given the abundance of zeros and evidence of overdispersion.³⁴

In both models in Table 3.3, the direction of *Alignment* is positive. In the Baseline model, however, *Alignment* fails to reach standard levels of statistical significance.³⁵ In contrast, in the No President Fixed Effects model, *Alignment* is significant at the $\alpha = 0.10$ level.³⁶ Table 3.5 in the Appendix echoes this pattern; *Alignment* is inconsistently significant only at the lenient $\alpha = 0.10$ level. Overall, these results suggest that there is only weak and inconsistent evidence that governors submit more waivers when they are in the president's party.

If the existing framework correctly models the president's role in the waiver process, governors should anticipate that the president will approve more waivers for those in his party. As a result, governors in the president's party should submit more waivers in expectation of receiving approval from the president's administration. However, we do not see convincing evidence that governors behave in a manner consistent with this framework. These weak results suggest that we need to move beyond a framework in which the president's role in this process is either defined by or limited to partisan alignment between each governor and the president. I propose such a theory in Chapter 4 and assess the implications for the submission stage in Chapter 5.

It is worth noting here that the Squire index plays an important role in explaining how many waivers governors submit. As expected, states with higher legislative professionalism scores, and by proxy, higher policymaking capacities, submit more waivers. Perhaps those governors who can rely on a competent bureaucracy to create the often-complicated

³³ χ^2 test statistic = 80.00, p-value 0.000.

³⁴For example, a likelihood ratio test of $\alpha = 0$ of the Baseline model in Table 3.3 below gives a test statistic of 12.10 with a p-value of 0.000, such that we can safely reject the null that $\alpha = 0$.

³⁵The p-value for *Alignment* is 0.156.

³⁶P-value = 0.079. Note: the 95% confidence interval includes 0 [-0.03, 0.48].

Table 3.3: Assessing the Common Assumption, Submitted Waivers

| | Baseline | No President Fixed Effects |
|--------------------------|--------------------|----------------------------|
| Alignment | 0.18 (0.13) | 0.23 (0.13) |
| <i>National Controls</i> | | |
| % GDP Change | -0.02 (0.05) | -0.12*** (0.03) |
| Annual Mood | -0.05 (0.03) | -0.16*** (0.02) |
| <i>State Controls</i> | | |
| Squire | 2.70*** (0.48) | 2.23*** (0.49) |
| Citizen Ideology | 0.00 (0.00) | 0.00 (0.00) |
| Income (1000s) | -0.03 (0.02) | 0.00 (0.01) |
| Welfare | 1.00*** (0.17) | 0.83*** (0.19) |
| Reagan | -2.15*** (0.64) | – |
| GHWB | -0.68 (0.50) | – |
| Clinton | 0.31 (0.39) | – |
| GWB | -0.45 (0.35) | – |
| Constant | 1.28 (1.99) | 7.99*** (1.41) |
| N | 1700 | 1700 |
| Log Likelihood | -730.52 | -769.80 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

waiver applications are best situated to submit applications.

3.4.3 Assessing the Common Assumption: Approved Waivers

Finally, I assess the assumption in the existing literature that governors in the president's party receive more waiver approvals than those in the opposing party. The dependent variable here is the number of waivers approved per state-year-policy. As described above, this dataset allows for more variation across policy areas and over time than existing work, providing for a more thorough assessment of the common assumption than existing work. It is important to keep in mind that this existing model does not consider the president's institutional incentives to approve waivers. Null results regarding the role of *Alignment* in predicting waiver approvals would suggest that we need a new model that specifically considers the president's incentives to use waivers.

The baseline model of approved waivers, below, echoes the previous model of submitted waivers.³⁷ The unconditional model includes state fixed effects to account for any unobserved, state-specific characteristics that influence which states are granted waivers. I also add a dummy variable for education and welfare waivers.³⁸

$$\begin{aligned} \text{Waivers Approved}_{ijt} = & \beta_0 + \beta_1 \text{Alignment} + \beta_2 \text{Squire} + \beta_3 \text{Income} \\ & + \beta_4 \text{GDP Change} + \beta_5 \text{Mood} + \beta_6 \text{Welfare} + \beta_7 \text{Education} \\ & + Z_t \text{President} + W_i \text{State} + \varepsilon_{ijt} \end{aligned} \quad (3.2)$$

In the analysis here, I also specify a conditional model.³⁹ I estimate the unconditional

³⁷As I discuss in the Appendix, I include *Squire*, given its role in predicting state submissions, to help account for self-selection into the pool of applicants based on state capacity. I omit *Citizen Ideology*, since the results from the submission models suggest that this factor did not play a role in state submissions. Given the slow pace at which the ideology of a state changes, the state fixed effects should absorb any role this factor plays, reducing concerns over omitted variable bias. Please see Table 3.7 in the Appendix for models that include *Citizen Ideology*; the results are similar to those discussed below.

³⁸Medicaid is the omitted dummy variable for policy area.

³⁹The conditional model omits state fixed effects to preserve degrees of freedom, given the smaller sample. Please see the Appendix for results that include state fixed effects for the conditional model – *Alignment* does not approach conventional levels of statistical significance in this model. I also include the log of submitted waivers in this model, since I have this information, rather than using *Squire* as a proxy for the log of submissions. This decision is based on the logic regarding omitted variable bias discussed in the Appendix.

model using a zero-inflated negative binomial specification, while the conditional model is assessed using a Poisson specification.⁴⁰ Table 3.4 shows the results from both the unconditional and the conditional model.

Across both models in Table 3.4, *Alignment* fails to achieve statistical significance at the $\alpha = 0.10$ level. Note, for example, the coefficient of 0.04 and the robust standard error of 0.09 in the unconditional model. Indeed, the p-value for *Alignment* is 0.62 and 0.35 in the unconditional and conditional models, respectively. While the estimates of waiver submissions provided weak and inconsistent evidence that *Alignment* predicted submissions, these results provide even less evidence that *Alignment* predicts waiver approvals. In fact, there is essentially no evidence here to support the proposition that partisan alignment between the president and an individual governor explains waiver approvals.

The common assumption that *Alignment* explains waiver approvals is not based on an argument about the president's institutional incentives to use waivers as a policymaking tool. Indeed, the existing framework of waiver approvals in large- n work does not fully consider why the president would want to grant states flexibility from federal laws. We need a theory that goes beyond the simple assumption embodied in the *Alignment* term to explain when it is in the president's interest to approve waivers, particularly given the lack of predictive value this term achieves when assessed here with data that cover multiple administrations and policy areas.⁴¹

⁴⁰The Vuong test-statistic in the unconditional model is 3.34, with a p-value of 0.0004, indicating that multiple processes generate the zeros in the data. I include the policy dummy variables in the inflation model, since the process that might generate zeros are policy-specific. For example, we may observe zeros if states are invited to apply for waivers in a specific policy area but decline to do so, or on the other hand, when the administration has explicitly discouraged applications in a specific policy area. Please see the Appendix for an ordinary least squares estimation of the conditional model. A poisson specification is used for the conditional model here given the skew in the data towards zero. A likelihood ratio test of $\alpha = 0$ produces a test statistic of 0.00 with a p-value of 1.000, indicating that a negative binomial model is not necessary for the conditional model given the lack of over dispersion.

⁴¹It is worth noting that *Education*, the dummy variable for waivers granted in education, is positive and significant in the unconditional model. This is not surprising, given the large number of approved education waivers in the data compared to the number of approved Medicaid and welfare waivers. The statistical significance of this dummy variable is an argument in favor of the state-year-policy structure used here to account for differences across policy areas.

Table 3.4: Assessing the Common Assumption, Approved Waivers

| | Unconditional | Conditional |
|--------------------------|--------------------|-------------------|
| Alignment | 0.04 (0.09) | 0.12 (0.13) |
| <i>National Controls</i> | | |
| Annual Mood | 0.04 (0.02) | 0.01 (0.04) |
| % GDP Change | 0.01 (0.02) | -0.07 (0.04) |
| <i>State Controls</i> | | |
| Squire | -1.11 (1.62) | – |
| Natural Log Submissions | – | 0.80*** (0.12) |
| Education | 1.39*** (0.27) | – |
| Welfare | -0.03 (0.27) | 0.32 (0.22) |
| Reagan | -3.03*** (0.33) | 0.49 (0.37) |
| GHWB | -2.52*** (0.27) | 0.11 (0.33) |
| Clinton | -1.19*** (0.14) | -0.28 (0.38) |
| GWB | -2.64*** (0.16) | 0.27 (0.29) |
| Constant | -1.98 (1.52) | -1.09 (2.64) |
| State Fixed Effects | Yes | No |
| N | 2600 | 238 |
| Log Likelihood | -1937.52 | -229.54 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Finally, in the conditional model, *Natural Log Submissions* is positive and significant with a coefficient of 0.80 and a robust standard error of 0.12. The significance and magnitude of this variable suggests that submitting a waiver is a strong predictor of approval. This result helps reduce concerns regarding selection bias in the unconditional model here and in subsequent chapters.⁴²

3.5 Conclusion

This chapter served three purposes. First, I discussed the common assumption in large- n work on waivers that presidents approve more waivers for governors in their party, although solid evidence in support of this assumption remains elusive. Next, I introduced an original dataset of submitted and approved waivers designed to address limitations in existing data. This dataset contains 1) submitted waivers in welfare and Medicaid from 1984 through 2012 and 2) approved waivers in welfare, Medicaid, and K-12 education over the same time period. As discussed at length in this chapter, with these data we are better equipped to assess theoretical propositions about how the president's institutional environment shapes his use of waivers.

Finally, using these data, I tested the common assumption in the large- n literature on waivers that presidents play a reactive role in the waiver process, simply granting more waiver requests for governors in their party. Existing work often does not consider the submission stage of the process, although it is reasonable to extend the logic of existing work to expect that governors in the president's party will submit more waiver applications. But here, the results provide only weak and inconsistent evidence that *Alignment* helps explain waiver submissions. Further, *Alignment* does not appear to predict the number of approved waivers. Based on this framework, one might conclude that the president does not play an important role in the waiver process, nor does he pursue

⁴²However, as discussed above and in the Appendix, it remains important to include the state factor that predicts submission, *Squire*, in subsequent unconditional models to help minimize omitted variable bias due to the potential selection effect.

waivers to meet his own policy goals.

I argue that this framework, however, does not adequately account for the president's strategic use of waivers. Several scholars have suggested that the president uses waivers in pursuit of specific policy goals (Thompson 2012; Thompson and Burke 2007; Hacker 2004; Teles 1996; Gais and Fossett 2005). The evidence in Chapter 2 strongly suggests that presidents pursue and grant waivers strategically. Despite these null results in terms of the common assumption, then, we should not conclude that the president plays a negligible role in the waiver process. Rather, these null results stem from the omission in the existing large- n work of the president's strategic interest in using waivers. The central implication here is that we need to develop a new theoretical framework that considers the president's institutional incentives to use waivers. To this end, the next chapter proposes a theory of presidential policymaking through waivers that I assess in subsequent chapters.

3.6 Appendix

Here, I discuss the logic behind including *Squire* in the model of approved waivers to help account for self-selection into the sample. First, *Squire* is the only state-level variable that predicts $\log(S)$, where S is the number of submissions per state-year. One approach to help account for self-selection is to include $\log(S)$ in the model of approved waivers, $\log(A)$. That is:

$$\log(A) = \alpha \log(S) + XB + u.$$

However, we do not know the number of submitted waivers in the case of education. As a result, we cannot include $\log(S)$ in the model of approved waivers that includes all policy areas. The solution here is to approximate $\log(S)$. Consider that $\log(S) = ZA^* + V$, where Z contains the state-level variables that predict $\log(S)$. By substitution, we can estimate $\log(A)$ as follows:

$$\begin{aligned} \log(A) &= \alpha \log(S) + XB + u \\ &= (ZA^* + V)\alpha + XB + u \\ &= ZA + XB + u + V\alpha \end{aligned} \tag{3.3}$$

Based on the analysis in this chapter, the only state-level variable that predicts submissions is *Squire*. Thus, including $Z = \textit{Squire}$ in the model of approved waivers, $\log(A)$, helps account for self-selection into the sample.

Table 3.5: Alternate Models, Submitted Waivers

| | All Terms | Inst. NOMINATE |
|-------------------------|-------------------|--------------------|
| Alignment | 0.26 (0.16) | 0.21 (0.14) |
| % GDP Change | -0.13* (0.06) | -0.01 (0.05) |
| Annual Mood | -0.06 (0.03) | -0.06 (0.03) |
| Squire | 1.46* (0.72) | 1.39 (0.73) |
| Citizen Ideology | 0.01 (0.01) | 0.01 (0.01) |
| Income (1000s) | -0.06* (0.02) | -0.03 (0.02) |
| State Pop. (1000s) | 0.00* (0.00) | 0.00* (0.00) |
| Gov. Election | 0.03 (0.23) | |
| Yrs. Left in Term | -0.04 (0.09) | |
| Term Limit Exists | -0.34* (0.17) | |
| State Div Gov | -0.24 (0.23) | |
| Inst. Ideology ADA/COPE | -0.00 (0.00) | |
| Inst. Ideology NOMINATE | - | -0.00 (0.00) |
| Welfare | 0.92*** (0.17) | 1.01*** (0.17) |
| Reagan | -1.52* (0.62) | -2.16*** (0.63) |
| GHWB | -0.16 (0.48) | -0.72 (0.50) |
| Clinton | 0.94* (0.37) | 0.26 (0.39) |
| GWB | 0.00 (.) | -0.52 (0.35) |
| Constant | 2.53 (2.17) | 1.41 (1.98) |
| N | 1300 | 1700 |
| Log Likelihood | -615.27 | -727.55 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 3.6: Proposition 2: Omitting Approved ARRA and Hurricane Waivers

| | No ARRA | No Hurricane |
|----------------------|--------------------|--------------------|
| Distance | -3.41 (4.24) | -3.44 (4.33) |
| Percent Governors | -8.46 (5.84) | -8.21 (5.96) |
| Distance x Governors | 10.66 (7.58) | 9.90 (7.76) |
| Alignment | 0.08 (0.08) | 0.08 (0.08) |
| Pres. Approval | -0.03*** (0.01) | -0.03*** (0.01) |
| Annual Mood | 0.09** (0.03) | 0.10** (0.03) |
| % GDP Change | 0.00 (0.02) | -0.08** (0.02) |
| Squire | -1.53 (1.52) | -1.31 (1.61) |
| Education | 1.31*** (0.27) | 1.24*** (0.28) |
| Welfare | 0.03 (0.33) | -0.05 (0.35) |
| Reagan | -3.59*** (0.48) | -3.36*** (0.49) |
| GHWB | -3.31*** (0.35) | -3.23*** (0.36) |
| Clinton | -1.34*** (0.19) | -1.29*** (0.19) |
| GWB | -3.98*** (0.28) | -3.99*** (0.28) |
| Constant | -0.03 (2.67) | -0.27 (2.67) |
| N | 2600 | 2600 |
| Log Likelihood | -1855.18 | -1870.06 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

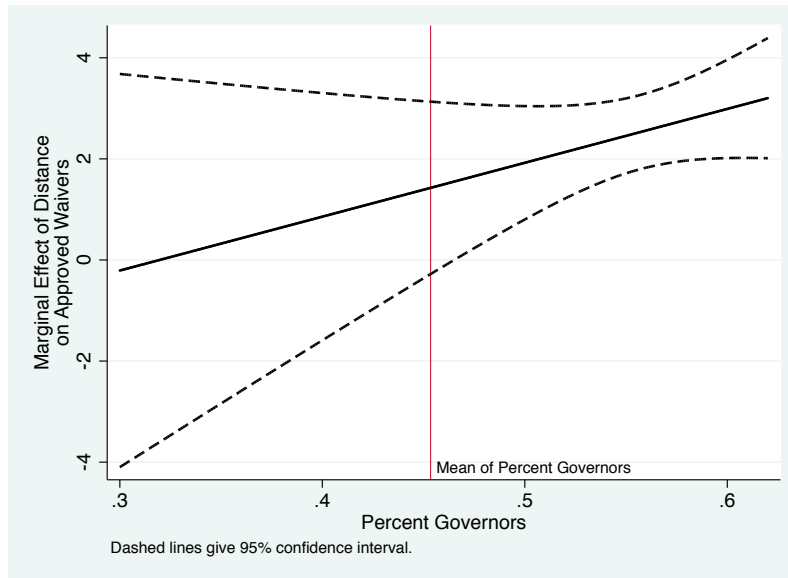


Figure 3.4: Proposition 2: No ARRA

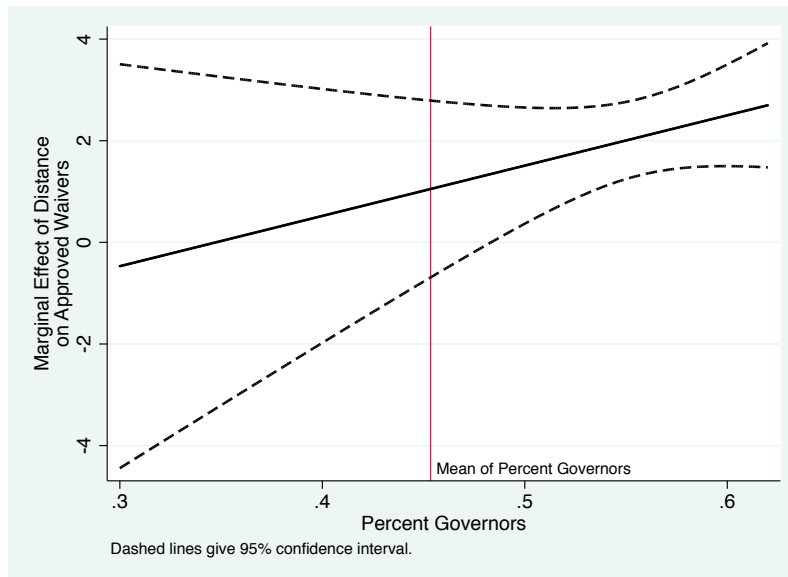


Figure 3.5: Proposition 2: No Hurricane

Table 3.7: Alternate Models, Approved Waivers

| | Citizen Ideology Unconditional | OLS Conditional | No President FE Conditional | State FE Conditional |
|-------------------------|-----------------------------------|--------------------|--------------------------------|-------------------------|
| Alignment | 0.19 (0.13) | 0.08 (0.09) | 0.15 (0.14) | -0.14 (0.14) |
| Squire | 2.53*** (0.45) | | | |
| Citizen Ideology | 0.00 (0.00) | | | |
| % GDP Change | -0.03 (0.05) | -0.05 (0.03) | -0.05 (0.03) | -0.09* (0.04) |
| Annual Mood | -0.05 (0.03) | 0.01 (0.03) | 0.06*** (0.02) | 0.02 (0.04) |
| Welfare | 1.05*** (0.16) | 0.15 (0.11) | 0.31* (0.16) | 0.36 (0.22) |
| Reagan | -1.47** (0.52) | 0.54* (0.25) | | 0.27 (0.35) |
| GHWB | -0.13 (0.41) | 0.18 (0.22) | | -0.26 (0.32) |
| Clinton | 0.75* (0.35) | -0.10 (0.22) | | -0.32 (0.33) |
| GWB | -0.26 (0.35) | 0.19 (0.22) | | 0.14 (0.27) |
| Natural Log Submissions | | 0.71*** (0.18) | 0.80*** (0.13) | 0.61*** (0.17) |
| Constant | 0.28 (1.99) | 0.10 (1.66) | -4.45*** (1.20) | -1.73 (2.65) |
| N | 1700.00 | 238.00 | 238.00 | 238.00 |
| Log-Likelihood | -731.52 | -240.97 | -231.99 | -204.99 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

CHAPTER IV

A Theory of Presidential Policymaking through Waivers

Presidents have approved hundreds of waivers in welfare, Medicaid, and education, as Chapter 2 discussed. Yet we lack a theory that explains this kind of presidential policymaking at the subnational level. Here, I take a step toward addressing this gap by introducing a theory of presidential policymaking through waivers. In particular, I discuss waivers as an alternative to revising existing law through legislative changes.

This chapter proceeds in four sections. First, I review the literature on presidential power and policymaking. In particular, I focus on how the president's institutional constraints shape his policymaking choices. While this work provides the foundation for the theory that I develop in subsequent sections, I identify a gap in the current understanding of presidential policymaking: existing work does not generally consider when and how the president might pursue *subnational* strategies. Second, I discuss Gais and Fossett's (2005) concept of executive federalism as a promising starting point for understanding the incentives that motivate presidents to pursue subnational policymaking strategies. Third, building on this work, I develop a theory of presidential policymaking through waivers. I argue that presidents are motivated to approve waivers when they are ideologically far from Congress, contingent on the share of governors in their party. Finally, from this theory, I propose a set of empirical implications that I assess in subsequent chapters.

4.1 Theoretical Foundations: Presidential Power and Policymaking

Here, I discuss the nature of presidential power, focusing on how the president's institutional environment shapes his decisions about which policymaking tools provide the best avenues for pursuing his goals. To begin, Richard Neustadt's doctrine defining presidential power as the power to persuade (1960) shaped the study of the presidency for decades. Yet scholars have begun to challenge this perspective in recent years. The challenge does not stem from disagreement over whether the president has an incentive to bargain with Congress given his lack of formal authority. Rather, as Howell notes, a consensus has emerged that the formal powers available to the president are "not enough" for him to meet the American public's expectations (2013, 8).

The departure from Neustadt's thesis is best understood as an argument for an expanded conception of presidential power. In his discussion of unilateral action, Richard Waterman explains this argument through two fundamental questions that revisit Neustadt's thesis: "can presidents lead by persuasion alone? If not, what else can presidents do to facilitate leadership?" (2009, 477). Waterman highlights a recurrent theme in recent literature on the presidency. Specifically, despite their lack of formal authority, presidents have a number of tools at their disposal that allow them to pursue their policy goals outside of the legislative arena, and in light of this, we should not equate their powers of persuasion vis-à-vis Congress with presidential power. In pursuing these questions, Neustadt's central insight remains instructive: the president must find a way to expand upon the limited powers delegated to him by the Constitution.

As Howell (2013) explains, the president has both the incentive and the license to do so. Given the foundational nature of this argument for understanding presidential policymaking, I expand on both of these points in turn. First, the president's incentive to expand his powers stems from a simple imperative – namely, we expect "everything" from the president (2013, 1). Howell elaborates:

In every policy domain, presidents must not only demonstrate involvement, they must act - and they must do so for all to see, visibly, forthrightly, and expediently. Deliberation must not substitute for action. Presidents are free to think and talk, but they absolutely must do (6).

The solution to meeting these expectations is for presidents to "guard and expand their base of power" (12).

Second, Howell traces the president's license for expanding power not to the formal authorities granted to him in Article II of the Constitution, but to the profound "silences" in this Article (65). Howell asks: "What does it mean, for instance, to vest the president with the 'executive power' and then to require the president to 'take care' that the laws of the United States are 'duly and faithfully executed?'" (63). The vague nature of the president's obligations provides the license with which presidents have expanded their powers.

This understanding of the president's motivation and means to pursue power characterizes recent scholarship on presidential policymaking. Recognizing that presidential power does not only operate through bargaining with members of Congress, scholars have ventured far beyond the formal confines of the Constitution to identify policymaking tools developed over the course of the modern presidency. Generally, scholars place these strategies in the broad categories of unilateral action (Howell 2005) and administrative authority (Moe 1985). The former category includes, perhaps most prominently, executive orders (Howell 2003; Mayer 2001), in addition to a smattering of options that Howell (2014, 1) succinctly summarizes: "signing statements (Jackman 2014; Kelley et al. 2013), executive agreements (Martin 2000), memoranda (Woolley 2014), procurement provisions (Gitterman 2013), and distributive outlays (Berry et al. 2010a; Kriner and Reeves 2015; Hudak 2014)." In terms of administrative authority, Moe (1985) identifies how presidents strategically centralize and politicize the dizzying maze of federal government institutions; oversight of the rule-making process (Thrower et al. 2014) and appointment power (Lewis 2003) exemplify these approaches, respectively.

Two characteristics define this recent work on presidential policymaking. First, in a departure from Neustadt's argument that presidents' primary policymaking strategy involves bargaining with Congress, this scholarship begins from the premise that the president in fact often works around Congress. This approach is certainly justified. In an era of increasing party polarization in Congress (McCarty et al. 2006), this scholarship in many ways reflects a new (or at least current) reality as presidents attempt to govern in the face of congressional obstructionism and divisive partisan bickering.

Second, this work tends to focus on national-level strategies; subnational strategies are conspicuously absent from the extra-legislative policymaking tools listed above. Indeed, Hacker (2004) warns that subnational policy revision has flown under the radar for too long, allowing national policymakers to exploit various strategies of incremental change that will ultimately lead to retrenchment of the American welfare state.¹ Hacker specifically highlights waivers as vehicles of "subterranean change" used by the executive branch as an alternative to revising programs through legislation (252). However, this strategy and others like it remain almost wholly unexplored in the literature on presidential policymaking.

Howell (2014) underscores this point in his exploration of President Obama's Race to the Top initiative: "though designed and implemented within the executive branch, Race to the Top does not fit easily within the broader arsenal of unilateral powers commonly attributed to the president" (7). The Race to the Top case is illustrative. While presidents pursue various state-level strategies, the literature on the president's extra-legislative policymaking options does not yet provide a framework for explaining such tools that circumvent Congress and, in exchange, require state-by-state cooperation and implementation. In fact, Howell's investigation of President Obama's inventive Race to the Top initiative is, to my knowledge, the only full-scale empirical examination of a pres-

¹Thompson and Burke (2007) argue that this fear is misplaced in the context of Medicaid waivers; they find that Section 1115 waivers have largely been used to expand, rather than circumscribe, access. In this project, I remain agnostic as to whether changes made through waivers expand or constrict the welfare state overall.

ident pursuing state-level policy change. While a large body of scholarship focuses on the president's national-level alternatives to legislation, very little systematic exploration of the president's subnational, extra-legislative policymaking strategies exists.

4.2 Executive Federalism: A Starting Point

The literature on unilateral action focuses on national-level strategies that allow the president to act without cooperating with other branches (or levels) of government. Building on this work, to explain when presidents use a subnational policymaking strategy, and waivers in particular, we need to reconsider the president's incentives to cooperate. In this section, I introduce Gais and Fossett's concept of executive federalism and discuss how this concept provides a starting point for a theory of presidential policymaking through waivers.

Gais and Fossett (2005) explain executive federalism as follows: "In the last two decades...the executive branch has used a growing range of administrative tools to negotiate directly with states over specific policies or to alter the context of state policy making without specific congressional approval (487)." This definition speaks directly to the two-fold appeal of waivers. First, *presidents can approve waivers without congressional consent*. This characteristic is quite valuable. Consider, for example, the limited policymaking options the president may have if the status quo for a particular policy is located in the "gridlock interval" (Krehbiel 2010). In this case, alternative policymaking options, such as waivers, that allow the president to act without relying on the legislative process may be particularly attractive. As the discussion of waiver authority in Chapter 2 suggested, Congress has delegated broad discretion to presidents and their administrations over the waiver process. As a result, the president can exercise this authority without approval or consent from Congress.

Second, rather than ceding control over policy to states through delegation, presidents negotiate with states over alterations in existing policy via waivers. Presidents and their

administrations often refer to waivers as opportunities for states to gain "flexibility" from existing law. Despite this rhetoric, the qualitative evidence in Chapter 2 seems to suggest that administrations do not simply grant states broad flexibility via waivers. Rather, the administration negotiates with individual governors to identify a policy change that not only satisfies the governor but, importantly, helps the president advance his own domestic agenda. Consistent with Gais and Fossett's definition of executive federalism, presidents use waivers to pursue their own policy goals at the subnational level.

Further, Gais and Fossett explain the strengths inherent in the office of the presidency that make executive federalism feasible:

[T]he executive branch can apply its powers to the states in ways that Congress cannot...It can adapt quickly to state policy developments, act on selected states, and build on state reactions to federal initiatives - thereby using state changes and variations to discourage developments it opposes and to facilitate those it supports...The executive can also act in a concerted manner across several programs or even policy areas...by using key federal appointments to bring new goals to bear on many decisions affecting the states (507).

They also note that exercising authority through waivers and other types of executive federalism is facilitated by the fact that these tools "do not require legions of federal staff" (507). In particular, evaluating waiver applications does not require a large team: "[w]aivers require a few policy and legal experts, as well as some research methodologists to review evaluation plans" (507).

Gais and Fossett (2005), overall, introduce and make a strong case for the plausibility of executive federalism. Crucially, they emphasize the possibility that the president, under certain conditions, finds it in his interest to pursue his goals by working with state actors rather than going it alone. However, this does not amount to a theory of waivers, nor is it a theory of executive federalism. Indeed, the latter would be impossibly broad and ultimately not very useful. For example, we do not have a single theory of unilateral action. Instead, scholars have proposed specific theories that explain the motivations and constraints that accompany various strategies within this broader category. What

we need in this case is a similarly focused theory that explains when presidents have an institutional incentive to pursue a waiver strategy.²

4.3 A Theory of Presidential Policymaking through Waivers

In this section, I propose a theory of presidential policymaking through waivers. Specifically, I address a question that the existing literature does not adequately answer, despite the institutional incentives for the president to pursue this strategy: when is it in the president's interest to grant states flexibility from federal law via waivers? This question is substantively and theoretically important as well as empirically tractable.

4.3.1 Defining the "Waiver Strategy"

Chapter 2 suggests that presidents use waivers strategically in service of their domestic agendas; the theory that follows is informed by this central observation. Drawing on this evidence, I describe the president's use of waivers as a "waiver strategy." This phrase does not refer to negotiations between the administration and governors over individual waiver applications. Rather, the term waiver strategy refers to the president's decision to pursue his policy goals by authorizing state-level revisions to existing legislation through waivers.

The appeal of this strategy is simple yet powerful: the president's waiver authority in the policy areas discussed here is not formally constrained by Congress, and as such, a

²Given the president's incentives to pursue subnational policymaking strategies, as articulated by Gais and Fossett, what explains the lack of theoretical and empirical work in this area within scholarship on the presidency? In "The Politicized Presidency," Moe (1985) articulated and even defended the institutional incentives for presidents to centralize their authority: "[w]hatever his particular policy objectives, whatever his personality and style, the modern president is driven by these formidable expectations to seek control over the structures and processes of government" (239). Moe grounds an understanding of the president's behavior in his institutional structure and concludes from this analysis that presidents face powerful incentives to centralize control. He is not alone in reaching this conclusion; this theme is woven throughout scholarship on the presidency (Neustadt 1960; Skowronek 2008; Howell 2013). This focus may explain the lack of attention paid to strategies that require cooperation with the nation's governors, which at first may appear to involve too much decentralization as to be in the president's interest. However, as the qualitative evidence discussed in Chapter 2 suggests and as I discuss below, presidents in fact retain a high degree of control over the waiver process.

waiver strategy does not require congressional consent. However, a waiver strategy is not unconstrained. Since the president's ultimate goal is to shift national policy towards his ideal point through state-by-state changes, a waiver strategy is not viable if only one or two states are likely to participate. A successful waiver strategy hinges on cooperation from enough governors such that the president can shift policy in his preferred direction on a *national* scale.

I argue that two factors operate in conjunction with one another to explain when the president uses a waiver strategy. First, the president is motivated to use this strategy when he is ideologically far from Congress. While this condition is necessary for the president's use of a waiver strategy, it is not sufficient. This type of strategy is only viable if a second condition is met: specifically, if enough governors are willing to cooperate with this strategy. Ultimately, I argue that the president is motivated to pursue waivers when he is ideologically far from Congress *contingent on* the share of governors in his party.

4.3.2 Waivers as an Alternative to Legislation

I begin with the first condition: the harder it is for the president to move his preferred legislation through Congress and sign a new law, the stronger the incentive to grant states flexibility from federal law via waivers. While Article II may grant the president vague yet potentially expansive authority, his role in the legislative process is carefully detailed and leaves little room for interpretation (Howell 2013, 63). Indeed, the constraints on the president's role in the legislative process are designed to limit his ability to create or change laws. Krehbiel's pivotal politics model, for example, illustrates the institutional hurdles the president faces in shifting the legislative status quo (2010). In his framework based on a unidimensional ideological space, the president must consider the location of the filibuster pivot (i.e., the senator required to overcome a filibuster) and the median member of the House when calculating the feasibility of shifting the policy in his favor

via legislation.

Indeed, the president's ability to achieve his policy goals by signing a new law is constrained by the ideological composition of Congress. Given the requirement that both chambers of Congress vote in favor of a bill before it reaches the president's desk, when the president is ideologically far from the filibuster pivot in the Senate or the median member of the House, the chances of a compromise that allows the president to implement his preferred policies in lieu of existing legislation are low. The greater the distance between the president and Congress, whether the president is farthest from the Senate filibuster pivot or the median member of the House, the more difficult it becomes not only for the president to shift policy toward his ideal point but also for Congress and the president to reach agreement at all. As the president moves farther from Congress, his prospects for a legislative victory dim and the appeal of revising existing policies via an alternative route increases.

In this case, approving waivers that authorize governors to implement changes to the relevant federal law may become a particularly attractive strategy. Approving waivers allows presidents to begin implementing their own policy goals without wrestling with Congress. Particularly when the president has ideological preferences that diverge from one or both chambers of Congress, this strategy may be attractive as it allows him to make progress on his domestic agenda without investing heavily in a battle with Congress that may have high costs but low potential payoffs. Indeed, if the president is able to approve a substantial number of waivers while simultaneously pushing for legislative reform, he may increase the pressure on Congress to work with him despite ideological differences. And even if his legislative strategy ultimately fails, the president can point to waivers as evidence of progress while simultaneously blaming Congress for obstructing legislative change.³

³This argument draws on observations from Chapter 2; the cases discussed there, such as Clinton's use of welfare waivers and Obama's use of NCLB waivers, suggest that presidents use a waiver strategy particularly when they have a difficult relationship with Congress.

4.3.3 Potential Objections

There are several potential objections to my argument that presidents are motivated to pursue waivers when they are far from Congress. The first and perhaps most obvious potential objection is that as the president moves farther from Congress, members of Congress will simply prevent the president from using waivers. This logic is similar to Howell's discussion of executive orders (2003) – precisely when this tool would be advantageous for the president, Congress has an incentive to override the president's use of this tool. Yet in practice, Congress retains very little control over the waiver process. Neither of the authorizing statutes described in Chapter 2 specify a formal mechanism of congressional oversight. Even the Administrative Procedures Act (APA) leaves Congress without a direct avenue to reign in secretarial waiver authority – under the APA, the only mechanism for overturning a Secretary's decision about a waiver is through the judicial system. And in this case, Skinner and Feder (2012) describe how the courts generally defer to secretarial discretion in approving waivers.

Members of Congress can hold hearings and request reports from the Government Accountability Office (GAO) to investigate an administration's waiver practices, but evidence suggests administrations can choose whether or not to revise their waiver processes in response to these proceedings (Thompson 2012). For example, GAO published two reports, in 2002 and 2007, admonishing the Bush administration for a lack of transparency in approving and reporting Section 11115 Medicaid waivers. However, the Bush administration was not forced to change any of its procedures as a result of these reports (158).

A second potential objection is that while members of Congress themselves cannot prevent the president from exercising waiver authority, their agents in the bureaucracy can effectively restrict the president's use of waivers. However, waiver authority is delegated to Cabinet secretaries, political appointees who are selected based in large part on shared policy preferences with the president (Lewis 2003). And unlike rules and regulations, the waiver process is exempt from a formal oversight process. As a result, the

waiver process can be insulated from countervailing forces within the bureaucracy more easily than traditional tools. Presidents and their administrations can also revise the structure of the waiver review process to centralize decision-making within the White House. President Reagan's creation of the Interagency Low Income Opportunity Advisory Board under the advisement of Charles Hobbs, described in Chapter 2, exemplifies this advantage.

A third and final potential objection is that a number of other available strategies that allow the president to take a more direct approach to implementing his agenda may be preferable to waivers, rendering a waiver strategy moot – after all, committing to a waiver strategy entails entering into negotiations with as many as fifty individual governors. While this theory does not attempt to assess when the president will pursue waivers as a specific alternative to one of these options, it is useful to illustrate why some of the president's other extra-legislative policymaking strategies are not always available, particularly when the president is ideologically distant from Congress.

Foremost among these strategies are those that fall in the category of unilateral action. However, in the case of executive orders, perhaps the most prominent type of unilateral powers, if the president is far from Congress, issuing an executive order may in fact be a risky proposition. As discussed above, Howell (2003) finds that when the majority party is strong in Congress or when the president faces divided government, the president cannot enjoy the first mover advantage without fear of retribution from Congress.⁴

Given this constraint, perhaps the president could pursue his agenda through the

⁴Further, waivers are valuable to the president in policy areas in which each state is largely responsible for developing its own policies in order to implement federal law, as in the case of welfare, Medicaid, and education. The president's use of an executive order in this type of policy area would likely be perceived as overstepping the bounds of executive authority, undermining the legitimacy of the president's attempt at reform. Further, given the extensive variation that characterizes state-level welfare, Medicaid, and education policies, an executive order would impose a "one size fits all" approach on a diverse set of policies. In addition to political pushback for intruding into states' policymaking territory, then, issuing an executive order would in practice be an ineffective approach to policy change. Finally, granting an executive order to change an existing law would likely be seen as an illegitimate use of power. In the circumstances when waivers are useful, then, the president may be unable to use executive orders without exceeding the bounds of executive authority.

rulemaking process. But the president's ability to exercise this type of administrative authority is also limited by Congress. Thrower et al. (2014) find that when the Administrator position is vacant in the Office of Information and Regulatory Affairs (OIRA), OIRA does not have the capacity to fast-track for approval the president's prioritized rules. And since the OIRA Administrator is a Senate-confirmed position, the president needs cooperation from Congress to overcome this hurdle. If the president seeks an avenue to revise existing laws that circumvents congressional constraints, executive orders and oversight of rule-making might not be viable options for the same reasons that the president needs an alternative route in the first place.

4.3.4 Costs of a Waiver Strategy

Thus far, this discussion has illustrated why presidents have an incentive to grant flexibility from federal laws when they are ideologically far from Congress. But however attractive a waiver strategy may be as an alternative to a showdown with Congress, several costs accompany this strategy. Specifically, I discuss the policy, opportunity, and reputation costs of a waiver strategy.

First, a waiver strategy entails policy costs. Since waiver applications are initially designed by states, and approved waivers are ultimately implemented at the state level, the president grants some control over the nature of policy change to states in exchange for the ability to circumvent the legislative process. States may submit waiver applications with a variety of different policy proposals; indeed, waiver authority was originally written to facilitate state innovation. While the administration enjoys review authority over these applications, the policies approved through waivers may not be perfectly consistent with one another or with the president's agenda. Although the president may be able to shift policy towards his ideal point through negotiations with governors, he may need to make compromises during negotiations with individual governors in order to reach agreement on individual waivers, and in turn these compromises may result in more

moderate policy gains compared to a unilateral strategy. Further, by offering states the opportunity to propose new programs that may deviate from federal law, the president may receive waiver applications that contradict his own policy goals. In this case, the president may face a difficult decision between denying waiver applications and facing political backlash, or on the other hand, approving waivers to avoid this criticism and in doing so authorizing policy changes that undermine his own agenda.⁵

Second, the president may incur an opportunity cost while waiting for governors to participate in his waiver strategy. It is important to keep in mind that a waiver strategy is *not* a type of unilateral action. Rather, participation from a large share of governors is necessary for this strategy to succeed. Compared to other tools like executive orders, then, the president has less control over the timeline of a waiver strategy. While the president may invite states to apply for waivers, he must wait for states to submit applications, negotiate with his administration, and if approved, begin implementing the relevant reforms. In the meantime, another branch of government may take action before the president has a chance to review and approve a substantial number of waivers that align with his goals. If few states respond to a president's invitation for waivers, or if states respond slowly, in the meantime Congress may pass a new piece of legislation that diverges from the president's own goals. In this case, the president may face a constricted set of options for policy reform. Or, a court may rule on a contested component of the existing law, which could also restrict the president's ability to shift policy in his preferred direction.⁶ Ultimately, pursuing waivers as a means of national-scale reform rather than

⁵Policy drift is also a risk here. Governors may agree to implement certain policies through waivers but in practice may deviate from the original agreement. However, this problem is not unique to waivers but, rather, is endemic to public administration. Further, to combat drift, the president's administration can include oversight mechanisms such as evaluation and reporting requirements in the terms of a waiver to increase transparency of policy implementation. For example, the Obama administration makes it clear in letters of approval to Chief State School Officers that the administration retains the authority to revoke ESEA Flexibility waivers if states fail to meet the terms of compliance set out by the Department of Education.

⁶While a new rule or regulation may also be promulgated, the chances of a rule or regulation that contradicts the president's goals being approved in these three policy areas is low, given that the secretaries of the relevant agencies are reliable agents of the president, as discussed.

using another tool at the president's disposal may pose a high opportunity cost.

Third, the president also risks a reputation cost when using a waiver strategy. On the one hand, if a waiver strategy is successful, whereby a large share of the nation's governors implement the president's preferred policies through waivers, the president may indeed be able to claim credit for reform. But at the same time, he must share credit with governors while recognizing that he was unsuccessful in persuading Congress to work with him. As Howell (2013) reminds us, presidents are expected to act decisively on important issues. In granting waivers, the president may become vulnerable to the critique that he shifted his responsibilities to governors rather than taking direct action himself. While some presidents may successfully shape the narrative in their favor, as president Clinton did in his use of welfare waivers, others may not prove so adept.

On the other hand, if a waiver strategy is *not* successful, the president may face another type of reputation cost. The evidence discussed in Chapter 2 suggests that presidents frequently introduce their waiver strategies publicly and personally invite governors to apply. Each waiver strategy considered here is clearly and closely identified with the president's administration. If the president publicly invites governors to apply for waivers as a means of national-scale reform but only a few governors submit applications, the president runs the risk of looking like a weak leader. Further, an unenthusiastic response from states may in fact undermine the president's agenda. Consider, for example, President George W. Bush's request for Section 1115 waivers to turn Medicaid into a block grant program discussed in Chapter 2. As Thompson (2012) describes, only a few states appeared interested in taking the President up on his offer. This type of lukewarm response may undermine a president's case for adopting the relevant policy change. If a substantial share of governors appear uninterested in applying for waivers the president invites, this failure could both call into question the president's leadership and weaken the president's ability to implement the relevant reform.

4.3.5 The Critical Hurdle: Governor Participation

The president can minimize these potential costs *and* implement his preferred reforms on a national scale if enough governors are willing to cooperate with the president's waiver strategy. The evidence in Chapter 2 suggests that presidents approve waivers in pursuit of their *own* national policy goals, despite the rhetoric of providing states with flexibility and opportunities to innovate that presidents often use to describe waivers. While a waiver strategy requires state-by-state change, the president's ultimate objective with this strategy is to reform policy on a national scale. If the president can rely on a large share of governors to submit waiver applications and subsequently implement policy changes aligned with the president's objectives, this strategy can allow the president to stimulate national-scale policy shifts toward his ideal point *while* working around Congress. But if the administration does not expect cooperation from enough governors, a waiver strategy will not be a feasible option.⁷ Consequently, I argue that if the president is ideologically far from Congress, the viability of a waiver strategy will depend on the share of governors he expects to cooperate by implementing policy changes via waivers that align with the president's goals.

Pursuing a waiver strategy that fails to garner the necessary cooperation from governors would be costly and would be a blunder from a policymaking standpoint. First, as examples from Chapter 2 suggest, engaging in the waiver process requires the administration to spend scarce time, resources, and perhaps even political capital on soliciting, reviewing, and approving these applications. While approving one or two waivers might result in isolated victories for the president, it would not result in widespread policy change. Just as with any other strategy, investing in this course of action only makes sense if the administration expects a sufficiently large payoff; otherwise, this effort would

⁷Consider, for example, if only two or three states applied for the ESEA Flexibility waivers that Obama offered from NCLB. If that was the case, the policies mandated by NCLB would have largely remained in place. But with 43 states operating under ESEA Flexibility waivers, the Obama administration in fact replaced central parts of NCLB with policies that were outlined in Obama's legislative Blueprint for Reform that Congress failed to act on for nearly five years.

amount to a waste of resources. If the president only anticipates that a small share of governors will be interested in applying for waivers, his goals for national reform may be better served by relying on another of the many policymaking tools at his disposal.

Second, if the president offers states flexibility but hardly any governors are willing to implement the kind of reforms the president would approve, this lack of enthusiasm may undermine the president's own policy goals. This outcome may be particularly damaging if the president is involved in ongoing negotiations with Congress over related legislative reforms. On the other hand, if governors respond positively to the president's waiver invitation, the president can leverage this support while bargaining with Congress. For example, as discussed in Chapter 2, Clinton frequently claimed to have granted more welfare waivers than the previous two administrations combined while simultaneously criticizing the Republican-led Congress for failing to successfully pass welfare reform legislation. Similarly, in 2011 President Obama framed his ESEA Flexibility waiver strategy as his administration's answer to Congress' inability to reform the roundly unpopular No Child Left Behind Act of 2001 (NCLB). Obama's Department of Education ultimately approved waivers under this program for 43 states and D.C.⁸ In both of these cases, if only a few states had cooperated with the administration's waiver strategy, members of Congress opposed to the president's agenda may have highlighted lack of state interest in the president's waiver initiative as evidence that the president's reform agenda should be abandoned or dramatically altered.

When the president is ideologically far from Congress and is interested in a waiver strategy as an avenue of extra-legislative policy change, he needs to be able to rely on many allies at the state level to effectively use this strategy. Consequently the president needs to consider the subnational political landscape when deciding whether to pursue a waiver strategy. Simply stated, I argue that a waiver strategy becomes increasingly fea-

⁸In the fall of 2015, when Congress was finally in the process of revising NCLB, Secretary of Education Arne Duncan commented that his biggest regret in his tenure as Secretary was not using waivers from NCLB sooner, implying that the administration's use of this tool was one of their most powerful reform strategies in the face of an uncooperative, Republican-dominated Congress (Klein 2015).

sible as a means of implementing national-scale policy reform as the share of governors in the president's party grows. The more governors in the president's party, the more allies the president can rely on to comply with his request for waiver applications. In addition, with a large share of governors in his party, the possibility that a majority of governors would respond to the president's invitation for waivers with policy proposals that undermine or contradict the president's agenda decreases.

There are two reasons why governors in the president's party are his most reliable allies. First, governors in his party are more likely to be ideologically similar to the president. As evidence in Chapter 2 suggests, presidents and their administrations exercise broad discretion over the waiver process, and in many cases they are only willing to approve waivers that conform to, or at least do not conflict with, their policy preferences. Governors in the president's party are more likely to share the president's policy goals and thus stand the most to gain from the flexibility his administration offers. Second, governors in the president's party will also benefit the most if the president's waiver strategy is successful and well-received by the public. If the president can point to his work with governors as evidence of reform and progress, this may in turn increase the value of the party brand, helping governors in the president's party in subsequent elections. Further, governors in the president's party may earn direct aid from the party in future campaigns if they cooperated with the president's waiver strategy by submitting an application and then implementing a waiver. These reciprocal benefits reflect the "sympathy" that characterizes the relationship between co-partisans at different levels of government (Bednar 2009, 114).

If governors in his own party are his most likely allies, then when the president is far from Congress, he is more likely to see waivers as a viable strategy as the share of governors in his party increases. The more governors in his party, the more likely he is to receive a positive response from a critical mass of governors – and this is the key to a successful waiver strategy. This is not to say that governors must coordinate and

intentionally act together in order for a waiver strategy to work for the president. What matters here is how many governors the president can count on, regardless of whether the governors act as individual chief executives or as a group. As a result, the most important constraint on the president's ability to use waivers to pursue his goals is not whether an individual governor is in his party, but *how many governors overall* are in his party.

This discussion leads to the central implication of my theory. The president's decision to approve waivers does not hinge independently on his distance from Congress or on the number of likely allies at the state level. Rather, the president is motivated to approve waivers when he is ideologically far from Congress, contingent on the share of governors in his party. Recall that the goal of a waiver strategy is to shift policy in the president's preferred direction through authorizing state-level changes to federal law. This policy shift does not require one hundred percent participation from governors, but it cannot be achieved if only a handful of governors decide to participate. Given my assumption that governors in his party are his most likely allies, the share of governors in the president's party becomes the primary constraint that determines whether a waiver strategy is viable. In other words, the president is incentivized to pursue a waiver strategy when he is ideologically far from Congress *contingent on* the share of governors in his party.⁹

4.4 Central Propositions

In this section, I offer several propositions that allow me to assess the implications of this theory. I discuss these propositions in sequence, beginning with the application phase of the waiver process and then moving to the approval stage.

⁹It is worth considering the implications for situations when the president is *not* far from Congress. The president, in this case, is much less motivated to authorize deviations from federal law. The easier it becomes to work with Congress, the less incentive the president has to pursue an extra-legislative revision strategy via waivers. When the president is ideologically close to Congress, even with a large share of governors in his party, it is most likely in his interest to work directly with Congress rather than to grant states flexibility via waivers, and the number of waivers may decrease in this scenario.

4.4.1 Predicting Governors' Application Behavior

Like the president, governors are strategic actors who invest their time and resources carefully. Submitting an application when the president has not expressed interest or willingness to review or approve these applications would waste valuable resources. Indeed, creating a waiver application is not a costless endeavor. Waiver applications are not simply rubber stamped upon receipt by the administration.¹⁰ As the evidence in Chapter 2 suggests, sometimes lengthy, even contentious, negotiations between the administration and individual governors, particularly governors from the opposing party, characterize the approval process. Investing in creating a waiver application when the president's administration is not in fact open to approving these applications squanders time and resources, and potentially valuable political capital as well.

Given the finite nature of a governor's resources, it is in her interest to submit an application if she expects that the president has an incentive to approve waiver applications. And as I have argued, the president has an incentive to approve waivers when he is ideologically far from Congress, contingent on the share of governors in his party. In turn, governors' application behavior should be fundamentally shaped by these conditions. Proposition 1 captures this expectation that governors submit waivers strategically, based on their expectations of the president's institutional incentives to approve waivers:

Proposition 1: Governors submit more waiver applications as the ideological distance between Congress and the president increases, contingent on the share of governors in the president's party.

From the president's perspective, this is a crucial stage in the waiver process. If governors submit applications based on their perception of the president's behavior, the president is likely to find that his invitation for waiver applications is greeted with enough submissions for this strategy to be viable. Indeed, it is worth reiterating here that waivers

¹⁰For example, Gueron and Rolston (2013) detail how Section 1115 welfare waiver applications were assessed based in large part on the rigor of a state's evaluation mechanism to assess the efficacy of demonstration programs.

are distinct from other extra-legislative policymaking strategies in the president's arsenal. The president cannot mandate that states adopt policy changes through waivers. Rather, governors must first submit waiver applications. If it is the case that governors submit waiver applications when it is in the president's interest to approve them, we have important evidence that the waiver process is fundamentally shaped by the president's incentives. This analysis, then, takes an important first step towards investigating the theory of presidential policymaking through waivers discussed above.

4.4.2 Predicting Waiver Approvals

Ultimately, we are interested in when the president grants waivers – only by approving waiver requests can the president capitalize on a waiver strategy. The proposition below is based on the core interaction that I have argued motivates the president's use of a waiver strategy:

Proposition 2: The number of waivers approved each state-year increases as the ideological distance between Congress and the president increases, contingent on the share of governors in the president's party.

In the empirical analysis in subsequent chapters, we are primarily interested in the marginal effect of the president's ideological distance from Congress contingent on the share of governors in his party. I expect that the number of waivers approved will increase when the president moves further from Congress *as* the percent of governors in the president's party increases. I focus on the marginal effect of distance given my argument that the president's inability to move his preferred legislation through Congress is the necessary condition that initially motivates the president to consider a waiver strategy. The share of governors in the president's party is primarily relevant as a constraint on the president's ability to use this strategy when he seeks a policymaking option that provides an alternative to the legislative process.

Notably, I do not anticipate that governors in the president's party are more likely

to receive waiver approvals. This may seem counterintuitive, but the argument here is not that presidents are inherently against granting waivers to governors in the opposing party. Rather, presidents are more motivated to pursue this strategy when they are confident that they will receive a widespread, positive response to their invitation – and I argue that the more governors in their party, the more confidence they will have in this strategy. However, this does not mean that presidents will only grant waivers submitted by governors in their party. On the contrary, if governors from the opposing party are willing to work with the administration, this can be an advantage for the president. Since waiver proposals submitted by governors of the opposing party must still be vetted by the president’s administration, the president can retain control over the policy outcomes of the waiver process while pointing to a record of bipartisanship reform. Consequently when the president invites waivers, there might be a "rising tide lifts all boats" effect; that is, governors from the opposing party may benefit from this opportunity.

4.4.3 Waivers as Legislative Revisions

In the final proposition, I incorporate an additional observation about the conditions under which presidents use waivers. The evidence reviewed in Chapter 2 suggests that the president often uses a waiver strategy during his concurrent efforts to revise an existing law that either contradicts his own goals, has fallen out of the public’s good graces, or both. For example, both Clinton’s use of welfare waivers during his first term and Obama’s use of waivers from the No Child Left Behind Act illustrate this tactic. It seems, then, that waivers are particularly useful to the president when he is dissatisfied with an existing federal law and in fact hopes to revise it.

Consequently, I suggest that yet another condition informs the president’s decision to use a waiver strategy. In particular, when the president is far from Congress, he may be motivated to pursue a waiver strategy not only if there is a sufficient share of governors in his party, but also if he is dissatisfied with current law. In this case, the president is

motivated to use waivers to undermine existing legislation while simultaneously authorizing policy changes that promote his goals. With enough cooperation from governors, granting waivers allows the president to make a persuasive case that the current law is not working and that governors are no longer content (or willing) to implement it as written. This discussion suggests that whether or not the president is satisfied with existing law may also condition how his relationship with Congress impacts his decision to pursue waivers. The final proposition explores this possibility.

Proposition 3: The president approves more waivers as the ideological distance between Congress and the president increases, contingent on the president's satisfaction with existing law and on the share of governors in his party.

When the president is dissatisfied with a current law, he has few (if any) incentives to defend or strengthen this existing law, and in turn, he may have strong incentives to revise this law via waivers. As a result, I expect that when the president is far from Congress, he approves more waivers as the share of governors in his party increases and when he is dissatisfied with an existing law in the relevant policy area.

It is worth noting here that my expectations for the president's use of a waiver strategy when the president is dissatisfied with a law are clearer than my expectations when the president is *satisfied* with current law. When the president is satisfied with a law, the evidence in Chapter 2 is mixed in terms of whether presidents find waivers useful. On the one hand, we cannot assume that the president will find waivers unnecessary. Both Clinton's and Obama's uses of Section 1115 Medicaid waivers following passage of the Balanced Budget Act of 1997 and of the Affordable Care Act of 2010, respectively, indicate that presidents may want to use waivers to facilitate implementation of laws that enact important aspects of their domestic agendas. On the other hand, presidents may want to implement laws that enact their agenda as written rather than authorizing states to deviate from these laws. For example, after signing the No Child Left Behind Act of 2001, President George W. Bush's administration made it clear that they were not open to

offering states flexibility via waivers. In all, while I expect that presidents who are dissatisfied with current law may be particularly likely to pursue waivers, whether presidents who are satisfied with current law will be interested in doing so is less clear.

4.5 Conclusion

My core claim is that the president is incentivized to use a waiver strategy when he is ideologically far from Congress *as* the share of governors in his party increases. In addition, I expect that governors submit more waiver applications under these conditions, anticipating approval when the president is incentivized to grant states flexibility. Further, I suggest that the president's decision to approve waivers is also influenced by his dissatisfaction with existing law. Overall, this theory contributes to our understanding of presidential power by incorporating both the horizontal and vertical relationships that shape the president's use of a waiver strategy.

This theory draws heavily from scholarship on unilateral action and presidential power. By approaching waivers from the president's perspective, I depart from existing work on this policy tool that primarily focuses on waivers as instruments of state innovation (Lieberman and Shaw 2000; Shelly 2013). However, this theory accounts for the central role that state policymakers, and governors in particular, play in this process. Indeed, whether or not enough governors are willing to participate in the president's waiver strategy forms the primary constraint on the president's use of this strategy. This theory, then, is consistent with expectations about intergovernmental cooperation in the federalism literature.

Bednar (2009), for example, explains that national and state actors alike share incentives to cooperate with one another.¹¹ She argues that experimentation both in policy

¹¹Bednar is primarily concerned with explaining how a federal structure allows for system maintenance rather than explaining the incentives that underlie specific policymaking strategies and choices; nonetheless, my theory about the president's incentives to grant waivers to governors parallels her argument that "adaptability" is not only possible but is incentivized in a federal system given the institutional constraints on national actors.

implementation and in the distribution of authority provides political actors new opportunities to pursue their goals through compromise: "The federation can be a forum for linking issues where one group accepts a compromise on one dimension to attain goals in another dimension, making possible cooperation that was not otherwise feasible" (55).

Here, cooperation should not be mistaken for coercion of state and local governments by the national government. Bednar points to the party system in the United States as a political safeguard that helps to incentivize this kind of intergovernmental cooperation. In her words, "a sympathy develops between the levels of the party system" (114) in which actors at the state level see it in their own interest to work with actors in their party at the national level. Paralleling this argument, Manna (2006) explains the incentives for intergovernmental cooperation; when policy entrepreneurs lack the license or capacity to act at one level of government, they mobilize this resource at another level in a process that he describes as "borrowing strength" (19).

In short, then, this theory is broadly consistent with perspectives on policymaking in the federalism literature, although the theoretical framework here is based primarily in the presidency literature. This choice is deliberate. While my theory incorporates governors' motivations, as it must, the primary aim is to explain a type of presidential policymaking that has important policy consequences but has thus far remained unscrutinized. To that end, this theory is fundamentally informed by the president's goals and incentives.

The subsequent chapters assess the propositions discussed above and, in doing so, explore my core argument about the incentives (and constraints) that shape a president's waiver strategy. This analysis will contribute to our understanding of the president's use of a waiver strategy and, more broadly, will allow us to evaluate how horizontal and vertical constraints shape presidential policymaking at the subnational level.

CHAPTER V

The Politics of Waiver Submissions

On February 2, 1993, less than one month into his first term, President Clinton addressed the National Governors Association (NGA) and laid out his administration's plan to reform welfare. As Clinton reminded his audience, "No one likes the welfare system as it currently exists, least of all the people who are on it." This issue, of course, had formed a cornerstone of his presidential campaign; delivering on this high-profile agenda item was a top priority for the new administration. But in this speech, President Clinton, perhaps surprisingly, did not lay out a legislative plan to revise Reagan's Family Support Act of 1988 or the Aid to Families with Dependent Children program. Instead, he invited the nation's governors to experiment with innovative approaches to welfare reform via Section 1115 waivers. Appealing to his former colleagues to submit waiver applications, he reassured them that "[my] view is that we ought to give you more elbow room to experiment."

From the earliest days in his presidency through the end of his first term, Clinton appealed to governors to cooperate with this strategy.¹ The implication is paramount: while administrations may use waivers to their advantage, this process fundamentally relies on state participation. If states do not cooperate by submitting waiver applications, a waiver

¹Of the forty-four times that President Clinton publicly spoke about welfare waivers between 1993 and 1996, half of these speeches were in front of audiences of state or local organizations, or national organizations of state and local groups, while twelve of these instances (26 percent of the total) occurred when the President addressed the National Governors Association.

strategy will be ineffective in helping the president pursue his policy goals through authorizing revisions to existing laws.

Despite the intergovernmental cooperation at the heart of the waiver process, existing work on waivers does not adequately incorporate the president's incentives in explaining when states submit waiver applications. While scholars who study waivers suggest that states may submit waivers in response to pressure from the federal government or in reaction to national trends (Arsneault 2000; Lieberman and Shaw 2000; Shelly 2012, 2013; Gormley 2006; Thompson and Burke 2007; Weissert 2008), the mechanism remains unspecified and the president's role, specifically, is only briefly considered. Thus far, the president's institutional incentives to use this tool have not been accounted for. As Chapter 2 suggested, presidents have an active interest in using waivers, and their decision to exercise their discretionary approval authority dictates whether or not waivers are available to states. It is troubling, then, that serious consideration of the president's role in existing work is conspicuously absent; considerations of the president's motivations and incentives, when included, are cursory.²

Assessing a model based on existing work, Chapter 3 provided only weak and inconsistent evidence that states submit waiver applications based on shared partisanship with the president. This analysis illustrated that we lack a model of state waiver submissions that adequately captures the president's incentives to use this strategy and governors' anticipatory responses. In this chapter, I explore a model of waiver submissions informed by the theory in Chapter 4 that incorporates the president's role in this process. I then use an original dataset of submitted waivers, described in Chapter 3, to assess Proposition 1. Specifically, I assess whether governors submit more waiver applications when the president has an institutional incentive to approve these waiver requests. In this framework, the principal constraint on whether governors submit waivers is their expectation of the president's response. Governors are strategic actors: when they anticipate that the

²Thompson (2012) and Gais and Fossett (2005) are notable exceptions.

president is motivated to approve waivers, this is precisely when it is worth the time and resources to compile and submit an application.

It is worth underscoring here why this analysis is central to investigating my core argument about the conditions under which presidents use a waiver strategy to implement their preferred policies at the subnational level. If I find no evidence in support of Proposition 1, one could argue that governors submit waivers based on their own political motivations rather than in anticipation of the president's desire to approve state flexibility as a means to implementing his preferred changes. These null results would undermine the argument at the heart of my theory. That is, it would appear as though governors submit waiver applications based primarily on their own political needs, and the president simply approves those applications that happen to align with his policy goals. In this scenario, individual governors, not the president, initiate and shape the direction of policy change. This process is subtly yet fundamentally different from the one that I propose. I expect that presidents work to stimulate waiver submissions from governors precisely when presidents hope to use a waiver strategy to implement national-scale changes that align with their policy goals via granting waivers to a substantial share of the nation's governors. Given this expectation, we should see that governors submit applications under the conditions that motivate the president to implement such a waiver strategy. With these stakes for the core argument in mind, this chapter explores Proposition 1 in depth.

5.1 Proposition 1

Understanding the president's use of waivers is at the heart of this dissertation, yet this enterprise requires careful consideration of governors' participation. Indeed, if governors do not submit waiver applications when the president hopes to approve waivers as a means of policy change, the president's waiver strategy will fail. My expectations about when governors submit waiver applications are informed by my theory of the president's own motives to approve waivers. As outlined in Chapter 4, Proposition 1 argues that

governors are strategic actors who should submit waiver applications when the president wants to approve waivers as part of a strategy to implement national-scale reform. This proposition reflects a governor's cost-benefit analysis.

I begin with the potential costs associated with submitting applications. Since waivers offer states the option to implement program changes, states must design specific alternative program delivery methods in lieu of existing policies. In other words, states cannot simply ask for general flexibility. In the case of welfare, for example, states crafted complex proposals that often included multiple, ambitious programs (Gueron and Rolston 2013; Lieberman and Shaw 2000). Doing so required not only fluency in the state's current welfare program, but also devoting sufficient time and expertise to designing new programs that the Department of Health and Human Services would recognize as potentially valuable methods to incentivize individuals to transition from welfare to work. Governor Tommy Thompson's (R-WI) 1987 welfare waiver proposal illustrates the potential breadth of these applications; his proposal included five separate "planned actions" that ranged from expanding work requirements to requiring teenage parents and high-school aged dependents to attend school (Gueron and Rolston 2013, 222).³ In addition, alternative programs proposed via waivers must often meet the goals of the original legislation *without* increasing costs, adding further complexity to the task of designing a viable application.⁴ In terms of Section 1115 waivers, states were further required to include a rigorous evaluation component beginning in Reagan's second term. As a result, crafting a successful waiver application also required sufficient attention to and application

³The full list of proposals in this waiver follows, according to Gueron and Rolston (2013, 223): "1) expand AFDC work requirements to parents with children under the age of six; 2) expand earnings disregards so that AFDC phased out with increased earnings more gradually than the fourth months that the thirty one and one third rule required; 3) extend the length of time former recipients who had left AFDC for work could receive Medicaid; 4) require teen parents and thirteen- to eighteen-year old dependent children to attend school as a condition of AFDC eligibility (dubbed Learnfare); 5) pay a lower benefit to new arrivals to Wisconsin (dubbed Two-Tier)."

⁴This budget neutrality requirement was first developed by the Office of Management and Budget during the Reagan administration and was applied to Section 1115 waiver applications (Gueron and Rolston 2013).

of research methods such as randomized control trials.⁵ On top of these administrative concerns, the governor and his administration must consider the reactions of relevant political constituencies to the waiver proposal and, if the proposal is approved, to the new program. In all, designing waiver applications demands ample time, expertise, and resources. Undertaking this task when the president is not interested in approving waiver applications could in many cases be a costly mistake.

Devoting time, money, and personnel to this endeavor when the president is not willing to grant states flexibility via waivers would not only waste valuable resources, but could reflect poorly on the governor's judgment and ability to successfully implement reforms. Governors who submit applications only to be rejected may suffer a loss in political capital; just as failure to move their preferred legislation through the state legislature may translate into a defeat, a failed waiver application may similarly reflect poorly on the governor's ability to deliver on promises of reform. In all, then, it is not in the governor's interest to submit waiver applications when the administration has no interest in approving changes to federal law via this avenue.

On the other hand, when presidents want to grant states the opportunity to implement new programs via waivers, governors have an opportunity to advance their own careers. Waivers provide valuable opportunities for reform, not only for presidents, but for governors. During the 1990s, for example, waivers gave governors the opportunity to take action on welfare reform as Aid to Families with Dependent Children became increasingly unpopular. And while governors need approval from the president's administration to implement reforms via waivers, the statutory requirements governing the relevant waiver authorities do not require governors to submit waiver proposals to the state legislature. Much as the president may have an interest in avoiding a conflict with Congress, governors may perceive the chance to change policy without going through the state legislative process as particularly valuable. Further, governors are the state ac-

⁵For a thorough description of the evaluation of welfare waivers and the evolution of evaluation requirements, see Gueron and Rolston (2013).

tors publicly associated with waivers; a victory here offers governors an opportunity to claim credit for reforming social programs. When the president is motivated to approve waivers, governors have an opportunity not only to advance their agendas but to build their own image.

Ultimately, I expect that governors submit more waiver applications when the president is motivated to approve them. As discussed in Chapter 4, the president has an incentive to pursue this extra-legislative policymaking strategy when he is ideologically far from Congress, provided that he can count on cooperation from enough governors.⁶

Proposition 1 expresses this argument:

Proposition 1: Governors submit more waiver applications as the distance between Congress and the president increases, contingent on the share of governors in the president's party.

5.1.1 Data

To investigate these propositions, I use the original dataset of submitted Section 1115 waivers in welfare and Medicaid from 1984 to 2012, as described in Chapter 3. The dependent variable is a count of the number of waivers submitted in state $i = 1...50$, policy $j = \text{welfare or Medicaid}$, and year $t = 1984...2012$. Table 5.1 reviews the spread of this dependent variable in all policy areas and includes a breakdown of this variable by policy.

| Policy | Years | Mean | Std. Dev. | Min. | Max. | N |
|-----------------------------|-----------|-------|-----------|------|------|------|
| <i>Welfare and Medicaid</i> | 1984-2012 | 0.174 | 0.509 | 0 | 8 | 1700 |
| Welfare | 1984-1996 | 0.265 | 0.667 | 0 | 8 | 650 |
| Medicaid | 1992-2012 | 0.118 | 0.370 | 0 | 4 | 1050 |

Table 5.1: Submitted Waivers, Dependent Variable Summary Statistics

⁶Under these conditions, governors (of both parties) can be confident that the resources spent on waiver applications are not wasted. Rather, if the president is motivated to approve waivers to shift policy closer to his own ideal point given his institutional constraints, submitting a waiver application under these conditions is a reasonable strategy for governors who want to achieve some measure of policy change.

5.1.2 Model

Here, I propose a model of waiver submissions based on Proposition 1.⁷ To assess Proposition 1, I include three variables. First, I include the term *Distance* to measure the president's ideological distance from Congress. I construct this measure using Poole and Rosenthal's Common Space DW-NOMINATE scores, which are comparable across chambers and over time. For each year, this variable equals either the absolute value of the distance between the president and the House median or the president and the filibuster pivot in the Senate, whichever of these distances is larger.⁸ So for example, if the distance between the president and the House median is 0.3 and the distance between the president and the 60th senator is 0.6, then *Distance* is equal to 0.6. Second, I include the term *Percent Governors*, which equals the percentage of governors who are in the president's party each year.⁹ This variable is primarily important to the extent that it modifies *Distance*.

In terms of the theory, we are primarily interested in the marginal effect of *Distance*, assessed at different values of *Percent Governors*, on the outcome (the number of waivers submitted per state-year-policy). To calculate this marginal effect, I include *Distance x Governors*, which interacts *Distance* and *Percent Governors*. The goal here is to explore whether governors submit more waivers when they anticipate the president is motivated to approve them, which I expect occurs when the president is far from Congress as the share of governors in his party increases.

Based on the results in Chapter 3, I include the Squire index of legislative profes-

⁷There was little evidence in Chapter 3 that *Citizen Ideology* or *State Per Capita Income* influenced waiver submissions. For the sake of parsimony, I omit those two variables from this model. The results are substantively very similar when they are included; please see Appendix Table 5.6 for a model that includes both these terms.

⁸I use the larger distance because this represents the most consequential constraint on the president's ability to move a law through Congress. If the president is closer to the House median than the Senate filibuster pivot, the Senate filibuster pivot is the primary constraint, and vice versa. I construct the filibuster pivot based on Krehbiel's model in *Pivotal Politics*; see pages 24 and 106.

⁹For example, if in a given year thirty out of the fifty total governors are Democrats and the president is also a Democrat, *Percent Governors* equals $30/50 = .60$ for that year. Governors from minor parties are not included in the percentage of governors in the president's party; there are very few cases of this.

sionalism to measure state capacity. My expectation is that states with higher scores on this index will submit more waiver applications. And in addition to the national control variables explained in Chapter 3, I add a variable that measures the president’s average annual approval rating. This term is substantively important; governors may perceive presidents as more willing to grant states flexibility as the president’s approval ratings decline. With lower approval, the president may have less political capital to pursue his goals via Congress.¹⁰ Granting waivers may in this case be an attractive option, as it allows the president to pursue his goals but does not require the political capital that may be necessary to spur legislative action. In this case, governors may see a window of opportunity to submit waiver applications if they anticipate the president is more likely to approve them as his approval ratings (and political capital) decline.¹¹

Finally, as in Chapter 3, I include dummy variables for each administration observed in the data: Reagan, George H.W. Bush, Clinton, and George W. Bush, with Obama as the omitted category. I include these president fixed effects to account for unobserved factors specific to each president that may have influenced this process, including a president’s relationships with individual governors and his willingness to work with governors to implement his policy agenda. The presidential dummy variables are in Z_t President. The model also includes a policy dummy variable for whether a waiver was submitted in welfare; a value of zero for this variable corresponds with Medicaid observations. The full model is below.

$$\begin{aligned} \text{Waivers Submitted}_{ijt} = & \beta_0 + \beta_1 \text{Distance} + \beta_2 \text{Percent Governors} + \beta_3 \text{Distance} \times \text{Governors} \\ & + \beta_4 \text{GDP Change} + \beta_5 \text{Mood} + \beta_6 \text{Approval} + \beta_7 \text{Squire} \\ & + \beta_8 \text{Welfare} + Z_t \text{President} + \varepsilon_{ijt} \end{aligned} \quad (5.1)$$

¹⁰Unilateral action may also be an unappealing strategy, as exercising these types of tools may be perceived as abuse of authority, as mentioned in Chapter 4.

¹¹Indeed, evidence suggests that public opinion, including presidential approval, can be an important factor in presidents’ decisions about policy strategies (Canes-Wrone and Shotts 2004).

5.2 Analysis of Proposition 1

I use a negative binomial specification based on the abundance of zeros in the data and evidence of over-dispersion.¹² Table 5.2 below reports the results for two specifications: the first omits *Alignment*, providing a straightforward test of Proposition 1. Given the weak results in Chapter 3 that *Alignment* may influence submissions, the second model includes *Alignment* to assess whether we find any evidence in support of the assumption in existing work that governor-president partisan alignment plays an important role here.¹³

5.2.1 Distance from Congress

In column 1 of Table 5.2, the No Alignment specification includes the *Distance*, *Percent Governors*, and *Distance x Governors* terms.¹⁴ Each of these terms is statistically significant at the 0.05 level.¹⁵ The regression results in the Alignment specification in column 2 are very similar, while *Alignment* does not reach conventional levels of statistical significance.¹⁶ It appears that the terms related to Proposition 1 offer more explanatory power

¹²For example, a test of $\alpha = 0$ gives a test statistic of 10.13 with a p-value of 0.001 in the No Alignment model in Table 5.2 below.

¹³Please see Table 5.5 in the Appendix for the president fixed effects. None of the president dummies are significant across models.

¹⁴Please see Table 5.6 in the Appendix for a specification that uses *Divided Government* rather than *Distance* to measure the president's ability to move his legislation through Congress, where *Divided Government* equals one if at least one chamber of Congress is not in the president's party. The expectation is that the marginal effect of *Divided Government* should increase contingent on the share of governors in the president's party. That is, governors should anticipate that a president will be motivated to use a waiver strategy when the president faces divided government, provided that the president has enough state allies. Under these conditions, governors should submit more waivers. The marginal effect of *Divided Government* increases as *Percent Governors* increases, as expected, but this relationship does not achieve conventional levels of statistical significance; please see Figure 5.5 in the Appendix. The terms *Divided Government*, *Percent Governors*, and *Divided Government x Percent* are jointly significant, however (χ^2 statistic = 7.78, p-value = 0.05). Substantively, we should not conclude from this specification that the president's relationship with Congress does not influence waiver submissions. Indeed, the drawback of using *Divided Government* is the limited variation this measure allows for and the lack of nuance compared to *Distance*. Below, I rely on *Distance* to assess Proposition 1.

¹⁵At first glance, the coefficients on *Distance* and *Percent Governors* are in the opposite direction as expected, since each coefficient is negative. However, interpretation of these results must account for the interaction term, *Distance x Governors*.

¹⁶P-value = 0.33.

Table 5.2: Assessing Proposition 1

| | No Alignment | Alignment |
|--------------------------|--------------------|--------------------|
| Distance | -17.17* (7.54) | -17.18* (7.52) |
| Percent Governors | -20.44* (9.36) | -20.57* (9.34) |
| Distance x Governors | 34.18** (12.66) | 34.19** (12.64) |
| Alignment | – | 0.13 (0.13) |
| <i>National Controls</i> | | |
| % GDP Change | -0.14* (0.06) | -0.14* (0.06) |
| Annual Mood | -0.06 (0.04) | -0.06 (0.04) |
| Pres. Approval | -0.04*** (0.01) | -0.04*** (0.01) |
| <i>State Control</i> | | |
| Squire | 2.53*** (0.40) | 2.59*** (0.41) |
| Welfare | 0.79*** (0.16) | 0.80*** (0.16) |
| Constant | 14.16*** (4.16) | 14.15*** (4.16) |
| President Fixed Effects | Yes | Yes |
| N | 1700 | 1700 |
| Log Likelihood | -712.11 | -711.62 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

than *Alignment*. To interpret the substantive implications of Proposition 1, I focus on the No Alignment model.

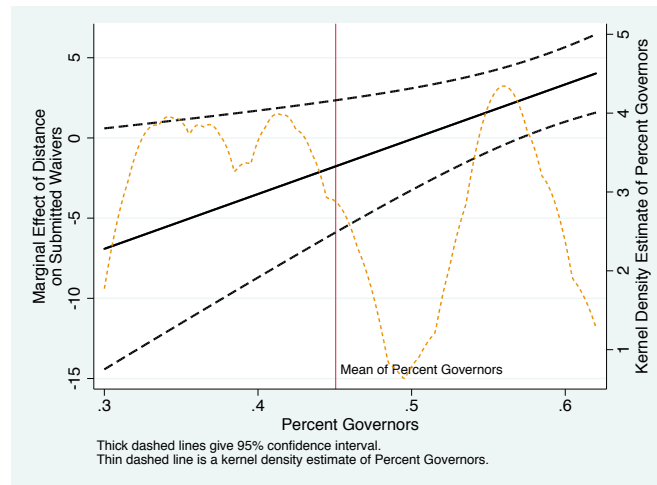


Figure 5.1: Marginal Effect of *Distance* on Submissions, "No Alignment" Specification

Figure 5.1 shows the marginal effect plot of *Distance* on the number of waivers submitted per state-year-policy, where the marginal effect of *Distance* is assessed across the range of *Percent Governors*.¹⁷ The positive slope on the line plotting the marginal effect of *Distance* shows that, consistent with expectations, the marginal effect of *Distance* increases as the share of governors in the president's party increases. In other words, governors submit more waiver applications under the conditions when the president is motivated to approve these waivers: as he moves further from Congress *contingent on* an increasing share of allies at the state level who the president expects will implement his preferred changes through waivers.

Consider, for example, that the marginal effect of *Distance* when only 30 percent of governors are in the president's party is -6.92.¹⁸ Given the discussion in Chapter 4 of the potential costs the president weighs when considering a waiver strategy, he may not be interested in pursuing this type of strategy even when he is far from Congress if few

¹⁷I relied on the "Grinter" package in Stata (Boehmke 2008) to create this marginal effect plot. In this chapter, Chapter 6, and the related Appendices, subsequent marginal effects plots that appear in this format were also created using the Grinter package.

¹⁸Standard error = 3.83, p-value 0.071.

governors are in his party. In turn, it appears that governors submit fewer waivers when the president is far from Congress but a low percentage of governors are in his party. This outcome may reflect strategic behavior on the part of governors. If a governor anticipates that the president is not interested in pursuing a waiver strategy as an alternative to legislation, devoting the resources necessary to create and submit a waiver application would not be in a governor's interest.

In contrast, when the president has 57.5 percent or more of governors in his party, the marginal effect of *Distance* is positive and significant at the $\alpha = 0.05$ level.¹⁹ When the president is far from Congress and *can* rely on a large share of governors to implement his preferred policy changes, we see that governors submit more waiver applications. In this situation, governors may anticipate that the president will pursue a waiver strategy in lieu of legislative change; here, submitting an application may be well worth the time

¹⁹Across the range of *Percent Governors* from 57.5 to the maximum observed value of 62 percent, we can be most confident that the marginal effect of *Distance* is significantly different from zero and is positive and increasing, since this marginal effect is significant at the $\alpha = 0.05$ level in this range. There may be some concern that the marginal effect of *Distance* is not substantively meaningful, given the small range in which the marginal effect of *Distance* is positive, increasing with *Percent Governors*, and statistically significant at the $\alpha = 0.05$ level. However, the kernel density plot that overlays the marginal effects plot in Figure 5.1 suggests that a non-trivial share of observations in the data occur at or above *Percent Governors* = 57.5 percent. To provide another sense of the distribution of the data, the share of governors in the president's party is equal to or greater than 56 percent for 26.5 percent of observations in this sample. For 14.7 percent of observations in this sample, *Percent Governors* is greater than or equal to 58 percent. Further, a one-tail test of the null hypothesis that the marginal effect of *Distance* is greater than zero may be appropriate here, since we expect this marginal effect to be positive. This one-tail test suggests the marginal effect of *Distance* is positive and significant at the $\alpha = 0.10$ level when the share of governors in the president's party is just above 55 percent (55.1 percent, p-value 0.0945). This level is slightly lower than that suggested by the two-tail test, and from the kernel density plot overlaying Figure 5.1, we see that a substantial share of observations in the data occur at or above this level. Alternatively, calculating a 90 percent confidence interval for a two-tail test, the marginal effect of *Distance* is positive and significant when 56.2 percent of governors are in the president's party – recall that the share of governors in the president's party is 56 percent or higher for over a quarter of observations in this sample. Across these different tests, the marginal effect of *Distance* is significant, positive and increasing with the share of governors in the president's party over a small but substantively meaningful range of *Percent Governors*, given the distribution of the data.

Further, for a summary of the frequency at which we observe values of *Percent Governors*, please see Table 5.9 in the Appendix. In addition, please see Table 5.10 in the Appendix for a list of the values of *Percent Governors* by year. As this table shows, higher values of *Percent Governors* are not confined to one administration or to presidents of one party, although President George W. Bush enjoyed the highest share of governors in his party most consistently throughout his two administrations compared to the other presidents in the data. In all, the distribution of *Percent Governors* in the data suggests that observing a positive, increasing, and statistically significant marginal effect of *Distance* when *Percent Governors* is equal to or greater than 57.5 percent is substantively meaningful for the data at hand, even though the maximum value of this variable observed in the data is 62 percent.

and resources if a governor expects that the president will approve their proposed policy change.

The increase in the marginal effect of *Distance* as *Percent Governors* increases to the maximum observed value is clear. When 57.5 percent of governors are in the president's party, the marginal effect of *Distance* equals 2.5.²⁰ When *Percent Governors* increases to 62 percent, the marginal effect of *Distance* increases to 4.02.²¹ These results suggest that governors perceive the president is increasingly willing (and eager) to approve waivers when he anticipates difficulty working with Congress to implement his preferred reforms *as* he can rely on cooperation from an increasing percentage of allies. Overall, this evidence provides initial support for Proposition 1: governors submit more waivers to the president when he is far from Congress, contingent on the share of governors in his party.²²

Importantly, these results do in fact indicate that governors submit waiver applications in response to the particular set of conditions under which I expect the president to approve waivers: when he is far from Congress, contingent on an increasing share of *Percent Governors*. These results are what we would expect to find given the theory developed in Chapter 4. Specifically, governors should submit more applications precisely when the president invites and encourages them to do so as part of his waiver strategy. Indeed, this analysis suggests that governors devote the time and resources to submitting applications based on their expectations about when the president is motivated to approve waivers.

Revisiting *Alignment*, Briefly

In Chapter 3, we saw weak and inconsistent evidence that *Alignment* predicted waiver submissions; this term met weak levels of statistical significance in some but not all models assessed there. However, this weak result is not robust to inclusion of the variables

²⁰Standard error 1.19, p-value 0.036.

²¹Standard error 1.24, p-value 0.001.

²²Although we may expect that internal state conditions influence the waiver submission behavior of governors, this is not the case. Please see Appendix Table 5.6.

that assess Proposition 1. In the Alignment specification in Table 5.2, *Alignment* has a coefficient of 0.13 but does not approach standard levels of statistical significance.²³

It seems that governors do not simply submit waivers based on the perceived benefits of being in the president's party. Rather, these results suggest that governors are more sophisticated strategic actors. They devote the resources to submitting waiver applications when their chances of approval are high, based on an understanding of the president's own desire to approve waivers given his institutional environment.²⁴

Assessing the Role of Percent Governors in the President's Party

According to the theory developed in Chapter 4, the initial factor that motivates presidents to consider a waiver strategy is their inability to move their preferred legislation through Congress. Absent this condition, we might expect presidents to pursue traditional policymaking routes, like the legislative process, that allow them to shift national policy via one action rather than through piecemeal change at the state level. The share of governors in the president's party, then, is primarily relevant to the extent that it constrains the president from using waivers when he seeks an alternative to legislation. However, including the interaction term *Distance x Governors* in the model of submitted waivers also implies that the marginal effect of *Governors*, moderated by *Distance*, influences the number of waivers submitted (Kam and Franzese 2007).

While this relationship is not central to my theory, I explore several interesting possibilities here. We might expect that as the share of governors in the president's party increases, governors submit more waivers as the president moves farther from Congress.

²³Standard error = 0.13, p-value = 0.33. Further, a likelihood ratio test comparing the specifications in columns 1 and 2 does not indicate that including *Alignment* improves the fit of the model (test statistic = 0.99, p-value = 0.32).

²⁴It is important to note that this strategy does *not* preclude the president from approving waivers submitted by governors in the opposing party. Indeed, there are many examples of presidents working with governors in the opposing party – Governor Tommy Thompson (R-WI) and his enthusiastic use of welfare waivers under Clinton is a prominent case of this cooperation (Teles 1996). If the president's goal is to shift national policy in his preferred direction, the more negotiating partners at the state level, the better. Given this incentive, the president's willingness to work with governors in the opposing party is not surprising.

Similar to the argument above, this expectation is based on an assumption that governors submit applications when they expect that the president is motivated to approve waivers. On the other hand, we may expect that the marginal effect of *Percent Governors* will be zero when the president is close to Congress. In this scenario, the president may prefer to implement his policy goals through legislation rather than through waivers, rendering the impact of *Percent Governors* moot. Exploring the marginal effect of *Percent Governors* across the range of *Distance* provides an opportunity to assess these implications and to better understand how the interaction between the national and state-level policymaking environments impacts the waiver process.

As with *Distance*, we are interested in the marginal effect of *Percent Governors* rather than the coefficient on this term. Figure 5.2 below illustrates the marginal effect of *Percent Governors* assessed across the range of *Distance* in the No Alignment model.

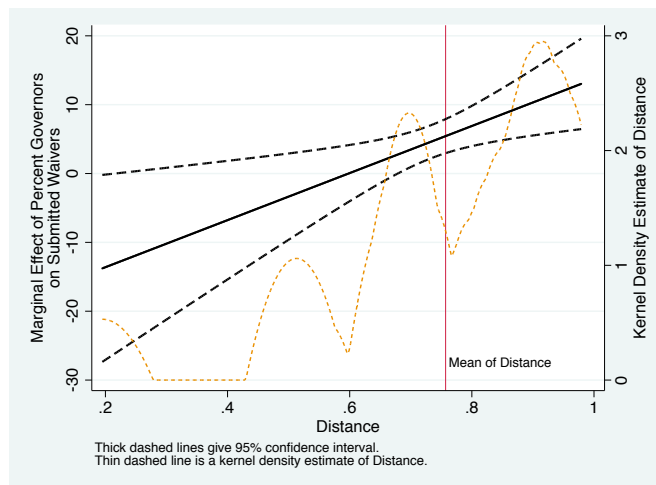


Figure 5.2: Marginal Effect of *Percent Governors*, "No Alignment" Specification

From Figure 5.2, we can make two important observations. First, the marginal effect of *Percent Governors* on the number of waivers submitted is positive and increasing with *Distance*. For example, at the lowest observed value of *Distance*, 0.195, the marginal effect of *Percent Governors* is -13.78.²⁵ When *Distance* increases to 0.685, the marginal effect of

²⁵Standard error 6.92, p-value 0.047.

Percent Governors increases to 2.97.²⁶ This increase suggests that governors submit more waivers when the share of governors in the president's party increases *as* the president moves away, ideologically, from Congress. One interpretation, consistent with my theory, is that under these conditions, governors submit more waivers in anticipation of an easy path to approval, given the president's numerous allies at the state level and his expected difficulty in achieving his goals through legislation.²⁷

Second, when the president is closer to Congress, it appears that the marginal effect of *Percent Governors* is not in fact zero, as we might expect. When *Distance* is small, it may be more feasible for the president to achieve his goals by working with Congress; further, implementing his preferred changes via legislation may offer a more direct and potentially more durable policy shift compared to a waiver strategy. In this case, we would not necessarily expect *Percent Governors* to influence governors' waiver strategies, since the president may not be interested in granting waivers. But this is not quite what we observe here. Across the small range of *Distance* from 0.195, the observed minimum, to 0.205, the marginal effect of *Percent Governors* is increasing but is negative and significant at the $\alpha = 0.05$ level.²⁸

Rather than playing a neutral role, it appears that when the president is very close to Congress, there is an inverse relationship between the share of governors in his party and the number of waivers submitted. That is, the more governors in his party, the fewer waivers submitted when the president is ideologically close to Congress. It may be the case that when the president enjoys substantial support from the nation's governors and is close to Congress, he prefers a legislative strategy. With a large share of governors in his party, the president can expect that if he signs a new law, the majority of governors will

²⁶Standard error 1.36, p-value 0.03.

²⁷Estimates of the marginal effect of *Percent Governors* become less precise closer to *Distance* = 1. For example, the 95 percent confidence interval when *Distance* = .979 is [6.46, 19.58]. However, this marginal effect is nonetheless positive and significant at the $\alpha = 0.05$ level.

²⁸The marginal effect of *Percent Governors* is significant at the $\alpha = 0.10$ level through the point when *Distance* equals 0.365. However, the estimates across this range are quite imprecise, as Figure 5.2 illustrates, and the 95 percent confidence intervals across this range include zero. For example, the 95 percent confidence interval when *Distance* equals 0.345 is [-18.57, 1.27], with a p-value of 0.088.

be willing to implement it without substantial pushback or criticism. In turn, governors in the president's party themselves may prefer that the president signs legislation that moves the status quo in their favor, rather than relying on waivers which are less durable and may be revoked by subsequent administrations.

5.3 A Simpler Explanation?

At this point, it is worth asking whether a simpler explanation accounts for patterns of waiver submissions. That is, could it be the case that governors simply submit waiver applications when the president is trying to work with Congress to revise a law? This alternative explanation suggests that governors sense an opportunity to win approval of policy changes when national actors are in the process of revising an existing law, and as a result, governors submit more waiver applications during legislative negotiations.

According to this argument, governors still behave strategically, submitting applications when they expect that the president will approve them. But, their expectations for approval are simply based on whether revisions to existing laws are being debated, which governors may interpret as a sign that the president is unhappy with current law and is willing to approve state requests for flexibility. The implication here is important – if this is the case, it may be that governors pursue waivers as policymaking opportunities with little consideration for the president's own institutional incentives to use a waiver strategy, casting doubt on the degree to which presidents use waivers in pursuit of their own policy goals. Indeed, if the marginal effect of *Distance* is no longer relevant once we consider whether the president is working to revise an existing law, this may suggest that the waiver process is driven more by opportunistic governors than by strategic presidents.

To assess this possibility, I include the variable *Pre Law*, which equals one if a waiver was submitted before or during a year in which a new law was signed and zero if it was submitted in a year after the president signed a new law.²⁹ The assumption here

²⁹It is possible that the appropriate specification includes an additional interaction term between *Pre*

is that during negotiations with Congress over revising a law (when *Pre Law* = 1), the president was dissatisfied with current law. Based on the qualitative evidence discussed in Chapter 2, this assumption is reasonable; in these data, presidents were unsatisfied with the existing laws in welfare and Medicaid that they inherited, and this dissatisfaction was no secret during debates over legislative reform.³⁰

I estimate two models in Table 5.3 below. Both models add the variable *Pre Law* to the model of Proposition 1.³¹ As before, the first specification does not include *Alignment* while the second specification adds this term. The goal here is to estimate whether the theoretical prediction expressed in Proposition 1 is borne out empirically or, on the other hand, whether a simpler explanation based on *Pre Law* suffices to explain when governors submit waiver applications.

5.3.1 Marginal Effect of Distance from Congress

First, in Table 5.3 we see that in both models, *Pre Law* is positive and significant, with a coefficient of 1.23 and a robust standard error of 0.34. A likelihood ratio test comparing the No Alignment specifications with and without *Pre Law* indicates that this variable significantly improves the fit of the model.³² At this point, it seems reasonable to reject the null hypothesis that the effect of *Pre Law* on waiver submissions equals zero.

In the No Alignment model, we see that *Distance*, *Percent Governors*, and *Distance* \times *Governors* are no longer individually significant when *Pre Law* is included, although

Law and *Distance*, as suggested by Proposition 3 in Chapter 4. This chained interaction model would imply that the marginal effect of *Distance* is moderated by the share of governors in the president's party and, in addition, by whether or not the president has signed a law. Conceptually, this would imply that whether a president has signed a law modifies *Distance*. However, a likelihood ratio test of a model with this pairwise interaction is not significantly different from the model in Table 5.2, Column 1, indicating that including this interaction term does not improve the fit of the model of waiver submissions (χ^2 test statistic = 0.01, p-value = 0.93). Indeed, given the lack of variation in *Pre Law* in these data, this model may not provide the best test of this possibility.

³⁰This is not to say that presidents were completely satisfied with new laws they signed in these policy areas – only that governors sense a clearer window of opportunity for using waivers prior to the president signing new legislation.

³¹Please see the Appendix, Table 5.7, for a full report of the president fixed effects. The only consistently significant president dummy variable is for George W. Bush.

³² χ^2 test statistic = 13.00, p-value = 0.0003.

Table 5.3: Assessing Proposition 1 with Pre Law

| | No Alignment | Alignment |
|--------------------------|--------------------|--------------------|
| Distance | -4.60 (8.26) | -4.63 (8.23) |
| Percent Governors | -7.84 (10.03) | -7.99 (9.99) |
| Distance x Governors | 15.80 (13.67) | 15.85 (13.63) |
| Pre Law | 1.23*** (0.34) | 1.23*** (0.34) |
| Alignment | - | 0.13 (0.13) |
| <i>National Controls</i> | | |
| Pres. Approval | -0.04*** (0.01) | -0.04*** (0.01) |
| Annual Mood | -0.02 (0.05) | -0.02 (0.05) |
| % GDP Change | -0.09 (0.06) | -0.09 (0.06) |
| <i>State Control</i> | | |
| Squire | 2.55*** (0.41) | 2.60*** (0.42) |
| Welfare | 0.76*** (0.16) | 0.76*** (0.16) |
| Constant | 2.64 (5.02) | 2.65 (5.02) |
| President Fixed Effects | Yes | Yes |
| N | 1700 | 1700 |
| Log Likelihood | -705.62 | -705.14 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

these terms are jointly significant.³³ Since our primary interest is in the marginal effect of *Distance*, I turn to the marginal effects plot in Figure 5.3 to assess the relevant results. Figure 5.3 indicates that, as before, the marginal effect of *Distance* increases as the share of governors in the president's party increases. When fewer than 51 percent of governors are in the president's party, the marginal effect of *Distance* is not significantly different from zero at the $\alpha = 0.05$ level. This null finding suggests that when a small share of governors are in the president's party, regardless of his distance from Congress, governors may anticipate that the president is not interested in a waiver strategy given the lack of a sufficient share of state allies. However, when 51 percent of governors or more are in the president's party, the marginal effect of *Distance* is positive and significant at the $\alpha = 0.05$ level. In the range when the marginal effect of *Distance* is significantly different from zero, this marginal effect increases as *Percent Governors* increases. Consider, for example, that when 51 percent of governors are in the president's party, the marginal effect of *Distance* is 3.46.³⁴ When 60 percent of governors are in the president's party, the marginal effect of *Distance* increases to 4.9.³⁵

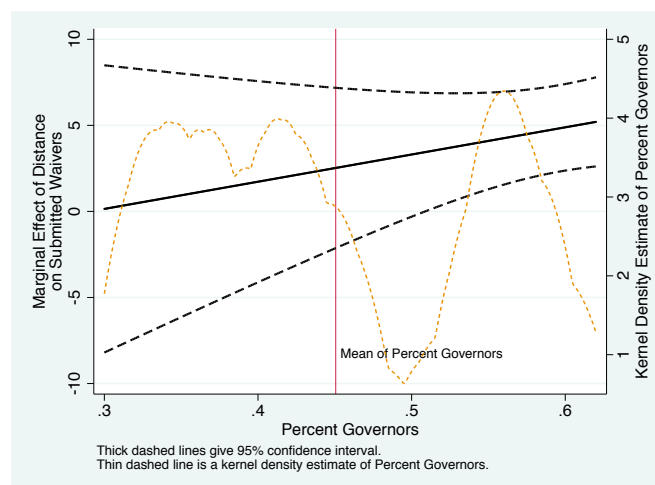


Figure 5.3: Marginal Effect of *Distance* with Pre Law, "No Alignment" Specification

These results suggest that governors do not simply submit waiver applications when

³³ χ^2 test statistic = 15.95, p-value = 0.001.

³⁴Standard error 1.75, p-value 0.047.

³⁵Standard error 1.28, p-value 0.000.

they sense that the president is dissatisfied with existing law and may be open to state-level revisions. Rather, even when *Pre Law* is included, we see that governors submit waiver applications precisely when the president has a strategic incentive to authorize changes to federal law – when he is far from Congress *provided that* he can rely on enough governors in his party to cooperate with his strategy.³⁶ These results bolster the initial analysis of Proposition 1 that suggests governors’ waiver submission behavior reflects the president’s strategic use of this policy tool. At the same time, this evidence casts doubt on the argument that presidents play a passive role in approving waiver applications that opportunistic governors submit during the president’s negotiations with Congress over legislative reform.

Consistent with the results in Table 5.2, *Alignment* fails to reach conventional levels of statistical significance when *Pre Law* is included. Indeed, in Table 5.3 the robust standard error and coefficient both equal 0.13. In comparison, whether *Pre Law* is included or not, and whether *Alignment* is included or not, the marginal effect of *Distance* plays an important role in explaining the number of waivers submitted. Specifically, as long as a critical mass of governors are in the president’s party, governors submit more waivers as the president moves ideologically farther from Congress.

5.3.2 Marginal Effect of Percent Governors

As before, while the central theoretical expectation is that *Percent Governors* matters to the extent that it modifies *Distance*, these *Pre Law* specifications provide another opportunity to explore whether the marginal effect of *Percent Governors* is relevant in explaining patterns of waiver submission. Figure 5.4 indicates a slightly attenuated role of *Percent Governors* compared to the prior specification that omitted *Pre Law*. Nonetheless, similar to the original model of Proposition 1 that omits *Pre Law*, as the president moves farther

³⁶In fact, the magnitude of the marginal effect of *Distance* appears larger in the upper range of *Percent Governors* when *Pre Law* is included compared to the original model of Proposition 1 that does not include *Pre Law*. When 60 percent of governors are in the president’s party, the marginal effect of *Distance* is 4.9 here compared to a marginal effect of 3.3 in the comparable specification that omits *Pre Law*.

from Congress, we see a positive and increasing marginal effect of *Percent Governors*.³⁷ Again, these results are consistent with the broader theory that governors submit waivers when they expect that the president has a strategic incentive to approve them. Here, we see governors submit more waivers when there is a larger share of governors in the president's party and as the president moves further from Congress.

However, in contrast to the previous model, the marginal effect of *Percent Governors* when the president is close to Congress is neither significant nor precise.³⁸ This suggests that as the president moves closer to Congress, the marginal effect of *Percent Governors* plays less of a role in predicting waiver submissions. Given the improved fit of these specifications compared to those that excluded *Pre Law* in Table 5.2, when the president is close to Congress, the share of governors in his party may be moot in predicting submissions. A simple explanation is available here: presidents may prefer legislation in this case, making waivers a less attractive strategy to the president regardless of the share of governors he could rely on to cooperate. In turn, governors might consider submitting an application a waste of valuable resources.

³⁷We can be most confident that the marginal effect of *Percent Governors* is significantly different from zero when *Distance* is above 0.68. Above this point, the marginal effect of *Percent Governors* is significant at the $\alpha = 0.05$ level.

³⁸The marginal effect of *Percent Governors* is not significant at the $\alpha = 0.10$ level when *Distance* is between 0.20 and 0.67.

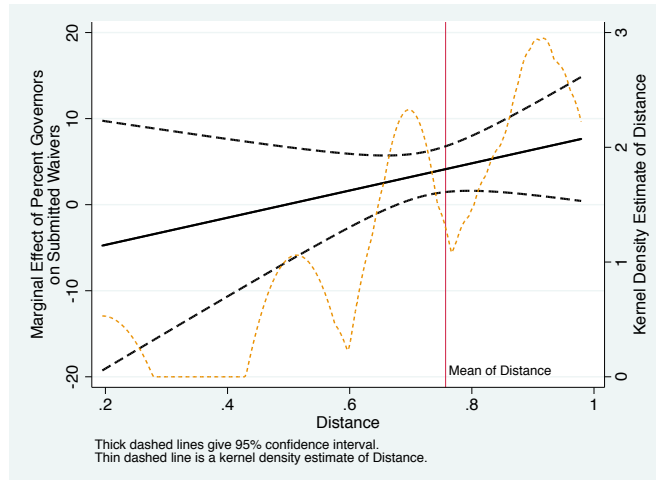


Figure 5.4: Marginal Effect of *Percent Governors with Pre Law*, "No Alignment" Specification

5.4 Additional Implications

There are two additional results worth emphasizing. First, consistent with results in Chapter 3, states with more professional legislatures (higher scores on the Squire index of professionalism) submit more waivers than those with less professional legislatures. For example, in the No Alignment specification in Table 5.3, this coefficient is 2.55 with a robust standard error of 0.41. It appears that states with more professional legislatures, which are also likely to have more professional bureaucracies, are better equipped to submit waiver applications.

Finally, *Presidential Approval* consistently has a negative and statistically significant effect in the specifications in Table 5.2 and 5.3, as expected. This suggests that governors submit more waiver applications when the president's approval ratings decline. A plausible interpretation is that when the president has low political capital and thus less capability of pursuing his goals through Congress, he is more likely to invite governors to apply for waivers as a means of extra-legislative policymaking. These results suggest that governors respond positively to such an invitation.

5.5 Conclusion

This chapter takes a crucial first step towards investigating my core claim developed in Chapter 4 that presidents seek (and ultimately, approve) waivers when they are far from Congress, contingent on the share of governors in their party. Given that governors themselves are strategic actors who should only spend the scarce time and resources on submitting applications when the president is motivated to approve them, we should observe governors submitting applications precisely when presidents seek them. In this chapter, then, I assessed whether governors submit waiver applications when I expect that presidents have an incentive to stimulate submissions. As such, the analysis here is a critical component of assessing the theoretical framework.

Consistent with Proposition 1, this analysis suggests that governors do in fact submit waiver applications when we might expect that presidents are motivated to use a waiver strategy. That is, governors submit more waiver applications when the president is ideologically far from Congress *as* the share of governors in the president's party increases.

Chapter 2 suggests that presidents implement waiver strategies when they seek national-scale policy change but are unable to achieve this goal through legislation. The theory discussed in Chapter 4 subsequently argues that presidents should rely on this strategy and should seek to stimulate waiver submissions *when* they anticipate that enough governors will participate in this strategy. By examining governors' behavior in this chapter, we find evidence in support of this theory. These results suggest that governors see waiver applications as a worthwhile investment of time and resources, and as a viable opportunity for policy change, when they anticipate that presidents are motivated to use this strategy given their distance from Congress *contingent on* the share of governors the president can rely on to implement his preferred changes via waivers. At the very least, this analysis suggests that the conditions we expect to inform a president's waiver strategy are, as anticipated, the conditions that governors weigh when deciding whether to devote the resources to submitting waiver applications.

In contrast, the results in Chapter 3 provided only weak evidence that *Alignment* plays a role in predicting the number of waiver submissions. After accounting for the president's institutional incentives to approve waivers, the results in this chapter provide no support that *Alignment* explains waiver submissions.³⁹ The model of Proposition 1, which accounts for the president's institutional environment, seems to provide a more convincing framework of the waiver submission process than the model suggested in existing work.

In addition, the results from analysis of Proposition 1 are robust to the inclusion of *Pre Law*. This suggests that the waiver process is not simply a reflection of governors acting opportunistically and presidents, in turn, acquiescing to these requests amid efforts to revise existing laws. If this was the case, we might expect that governors submit more waivers when they notice that presidents are dissatisfied with existing law, regardless of whether the president is incentivized to pursue a waiver strategy. However, while we observe that governors submit more waivers when presidents are actively working to revise their predecessor's laws, we also find that even when *Pre Law* is included, governors submit more waiver applications when the president is far from Congress as the share of governors in his party increases. These results suggest that governors submit applications based on a careful consideration of the president's own motivation to use this strategy.

Indeed, the analysis here helps to resolve, or perhaps encourages us to move past, debates over whether these tools are best understood as "bottom-up" or "top-down" measures. Depending on who you ask, the answer varies as to which category is most appropriate. For example, an independent evaluator who assessed welfare waiver demonstration projects emphasizes that states often pushed for the opportunity to innovate via

³⁹It is possible that this null result for *Alignment* is specific to the time periods and policy areas included here. While this is worth exploring in future work that includes additional policy areas, there are two reasons to be confident in the results here. First, as discussed, this dataset includes more policy areas and years than existing work, allowing for more variation on important variables (Lieberman and Shaw 2000; Shelly 2013). Second, I include dummy variables that control for each presidential administration and policy area; these control variables should help account for the politics specific to these administrations and policy areas.

waivers.⁴⁰ This perspective underscores the bottom-up approach and highlights the important role that states played in the waiver process. But on the other hand, scholars such as Hacker (2004) point to waivers as "subterranean" tools used by administrations to change the nature of the social welfare state, urging us to take a top-down perspective.

In comparison, the analysis in this chapter suggests that definitively describing waivers as top-down or bottom-up perhaps oversimplifies this process. Indeed, evidence here suggests that governors submit waiver applications precisely when they expect that the president is motivated to pursue national-scale policy change through authorizing reforms at the state level. Ultimately, governors apply for waivers when doing so is in their interest, but the conditions under which this is the case are shaped by the president's own incentives. This strategic behavior on the part of governors and presidents alike blurs the distinction between a bottom-up or top-down process.

This chapter assessed a central implication of my theory. If presidents do indeed use a waiver strategy based on the likelihood of achieving a legislative victory *contingent on* the share of governors presidents expect to cooperate with this strategy, presidents should work to stimulate waiver submissions from governors under precisely these conditions. In turn, governors should submit waiver applications when the president is far from Congress, contingent on the share of governors in his party. The results in this chapter suggest that these are in fact the conditions that motivate governors to submit applications. While this analysis of waiver submissions is crucial to investigating my theory, the question that assesses the core of the theory remains: when do presidents approve waivers? The next chapter takes up this inquiry.

⁴⁰Interview with the author, December 14, 2015.

5.6 Appendix

Table 5.4: Summary Statistics

| Variable | Mean | Std. Dev. | Min. | Max. |
|--|----------|-----------|--------|-----------|
| DV: Submitted waivers | 0.174 | 0.509 | 0 | 8 |
| Pre Law | 0.618 | 0.486 | 0 | 1 |
| Distance ⁴¹ | 0.757 | 0.201 | 0.195 | 0.979 |
| Percent Governors | 0.451 | 0.098 | 0.3 | 0.62 |
| Distance x Percent Governors | 0.337 | 0.116 | 0.105 | 0.568 |
| Alignment ⁴² | 0.451 | 0.498 | 0 | 1 |
| Squire ⁴³ | 0.191 | 0.125 | 0.027 | 0.659 |
| Citizen Ideology ⁴⁴ | 49.723 | 15.009 | 8.449 | 95.972 |
| Institutional Ideology, ADA/COPE ⁴⁵ | 50.552 | 26.056 | 0 | 99.167 |
| State Per Capita Income (1000s) ⁴⁶ | 26.273 | 9.512 | 9.460 | 60.223 |
| State Pop. 1000 ⁴⁷ | 5430.806 | 5995.803 | 13.804 | 37999.879 |
| Governor Party ⁴⁸ | 0.503 | 0.496 | 0 | 1 |
| Mood ⁴⁹ | 62.06 | 3.371 | 56.342 | 66.727 |
| % GDP Change ⁵⁰ | 5.359 | 2.088 | -2 | 11.1 |
| Presidential Approval ⁵¹ | 53.177 | 10.325 | 30.03 | 72.89 |
| Reagan | 0.147 | 0.354 | 0 | 1 |
| George H.W. Bush | 0.147 | 0.354 | 0 | 1 |
| Clinton | 0.353 | 0.478 | 0 | 1 |
| George W. Bush | 0.235 | 0.424 | 0 | 1 |
| Obama | 0.118 | 0.322 | 0 | 1 |
| Welfare | 0.382 | 0.486 | 0 | 1 |
| Medicaid | 0.618 | 0.486 | 0 | 1 |
| N | 1700 | | | |

⁴¹Poole and Rosenthal (2015)

⁴²Klarner (2014); Council of State Governments (2013)

⁴³Squire (2012)

⁴⁴Berry et al. (2010b)

⁴⁵Berry et al. (2010b)

⁴⁶Klarner 2014; Bureau of Economic Analysis

⁴⁷Klarner 2014; Bureau of Economic Analysis

⁴⁸Klarner (2014); Council of State Governments (2013)

⁴⁹Stimson (1999)

⁵⁰Bureau of Economic Analysis

⁵¹Gallup (2015)

Table 5.5: Assessing Proposition 1: Fixed Effects Reported

| | No Alignment | Alignment |
|--------------------------|--------------------|--------------------|
| Distance | -17.17* (7.54) | -17.18* (7.52) |
| Percent Governors | -20.44* (9.36) | -20.57* (9.34) |
| Distance x Governors | 34.18** (12.66) | 34.19** (12.64) |
| Alignment | – | 0.13 (0.13) |
| <i>National Controls</i> | | |
| % GDP Change | -0.14* (0.06) | -0.14* (0.06) |
| Annual Mood | -0.06 (0.04) | -0.06 (0.04) |
| Pres. Approval | -0.04*** (0.01) | -0.04*** (0.01) |
| <i>State Control</i> | | |
| Squire | 2.53*** (0.40) | 2.59*** (0.41) |
| Welfare | 0.79*** (0.16) | 0.80*** (0.16) |
| Reagan | 0.32 (0.94) | 0.32 (0.94) |
| GHWB | 1.08 (0.68) | 1.08 (0.68) |
| Clinton | 1.26** (0.48) | 1.26** (0.48) |
| GWB | -0.73 (0.79) | -0.73 (0.79) |
| Constant | 14.16*** (4.16) | 14.15*** (4.16) |
| N | 1700 | 1700 |
| Log Likelihood | -712.11 | -711.62 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 5.6: Alternative Specifications: Proposition 1

| | Ideology and Income | Divided Government |
|-------------------------------|---------------------|--------------------|
| Distance | -17.04* (7.53) | – |
| Percent Governors | -20.44* (9.38) | -2.96 (7.03) |
| Distance x Governors | 34.00** (12.67) | – |
| Divided Government | – | -3.15 (4.56) |
| Divided Government x Distance | – | 5.65 (8.47) |
| <i>National Controls</i> | | |
| Pres. Approval | -0.04*** (0.01) | -0.03*** (0.01) |
| % GDP Change | -0.14* (0.06) | -0.08 (0.06) |
| Annual Mood | -0.06 (0.05) | -0.10 (0.05) |
| <i>State Controls</i> | | |
| Squire | 2.58*** (0.46) | 2.51*** (0.40) |
| Citizen Ideology | 0.00 (0.00) | – |
| Income (1000s) | -0.01 (0.02) | – |
| Welfare | 0.79** (0.16) | 0.85*** (0.17) |
| Reagan | 0.07 (1.00) | -0.41 (0.65) |
| GHWB | 0.87 (0.77) | 0.79 (0.53) |
| Clinton | 1.11* (0.52) | 1.09* (0.53) |
| GWB | -0.80 (0.77) | -0.13 (0.42) |
| Constant | 14.24*** (4.17) | 7.11* (2.86) |
| N | 1700.00 | 1700.00 |
| Log Likelihood | -712.04 | -718.09 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

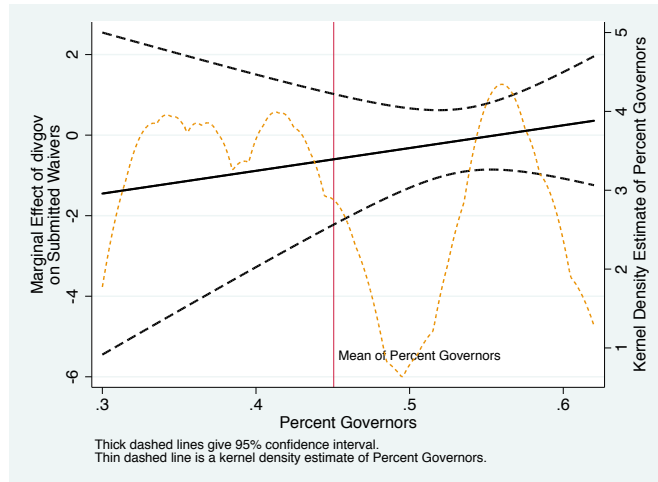


Figure 5.5: Proposition 1 Alternative Specification, Marginal Effect of *Divided Government*

Table 5.7: Assessing the Role of Pre Law

| | No Alignment | Alignment |
|----------------------|--------------------|--------------------|
| Distance | -4.60 (8.26) | -4.63 (8.23) |
| Percent Governors | -7.84 (10.03) | -7.99 (9.99) |
| Distance x Governors | 15.80 (13.67) | 15.85 (13.63) |
| Pre Law | 1.23*** (0.34) | 1.23*** (0.34) |
| Alignment | - | 0.13 (0.13) |
| Pres. Approval | -0.04*** (0.01) | -0.04*** (0.01) |
| Annual Mood | -0.02 (0.05) | -0.02 (0.05) |
| % GDP Change | -0.09 (0.06) | -0.09 (0.06) |
| Squire | 2.55*** (0.41) | 2.60*** (0.42) |
| Welfare | 0.76*** (0.16) | 0.76*** (0.16) |
| Reagan | -2.26 (1.16) | -2.26 (1.16) |
| GHWB | -0.05 (0.75) | -0.05 (0.74) |
| Clinton | 0.18 (0.58) | 0.19 (0.58) |
| GWB | -2.57** (0.94) | -2.56** (0.94) |
| Constant | 2.64 (5.02) | 2.65 (5.02) |
| N | 1700.00 | 1700.00 |
| Log Likelihood | -705.62 | -705.14 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

| <i>Policy</i> | <i>Years</i> | <i>Governing law</i> | <i>Year passed</i> |
|---------------|--------------|--|--------------------|
| Welfare | 1984-1988 | Social Security Act Amendments | 1962 |
| | 1989-1996 | Family Support Act | 1988 |
| | 1996-present | Personal Responsibility and Work Opportunity Act | 1996 |
| Medicaid | 1998-2005 | Balanced Budget Act | 1997 |
| | 2006-2010 | Deficit Reduction Act | 2005 |
| | 2011-2012 | Patient Protection and Affordable Care Act | 2010 |

Table 5.8: Year of Law Passage

Table 5.9: Frequency of *Percent Governors*

| <i>Percent Governors</i> | Frequency | Percent | Cumulative |
|--------------------------|-----------|---------|------------|
| 30 | 50 | 2.94 | 2.94 |
| 32 | 100 | 5.88 | 8.82 |
| 34 | 250 | 14.71 | 23.53 |
| 36 | 50 | 2.94 | 26.47 |
| 38 | 100 | 5.88 | 32.35 |
| 40 | 200 | 11.76 | 44.12 |
| 42 | 50 | 2.94 | 47.06 |
| 44 | 200 | 11.76 | 58.82 |
| 46 | 50 | 2.94 | 61.76 |
| 48 | 50 | 2.94 | 64.71 |
| 54 | 150 | 8.82 | 73.53 |
| 56 | 200 | 11.76 | 85.29 |
| 58 | 150 | 8.82 | 94.12 |
| 62 | 100 | 5.88 | 100.00 |
| Total | 1700 | 100.00 | |

Table 5.10: Percent Governors, by Year

| Year | Percent Governors | President |
|------|-------------------|------------------|
| 1984 | 30 | Reagan |
| 1985 | 32 | Reagan |
| 1986 | 32 | Reagan |
| 1987 | 48 | Reagan |
| 1988 | 46 | Reagan |
| 1989 | 44 | George H.W. Bush |
| 1990 | 42 | George H.W. Bush |
| 1991 | 40 | George H.W. Bush |
| 1992 | 40 | George H.W. Bush |
| 1993 | 62 | Clinton |
| 1994 | 58 | Clinton |
| 1995 | 38 | Clinton |
| 1996 | 34 | Clinton |
| 1997 | 34 | Clinton |
| 1998 | 34 | Clinton |
| 1999 | 34 | Clinton |
| 2000 | 36 | Clinton |
| 2001 | 58 | George W. Bush |
| 2002 | 54 | George W. Bush |
| 2003 | 54 | George W. Bush |
| 2004 | 56 | George W. Bush |
| 2005 | 56 | George W. Bush |
| 2006 | 56 | George W. Bush |
| 2007 | 44 | George W. Bush |
| 2008 | 44 | George W. Bush |
| 2009 | 56 | Obama |
| 2010 | 54 | Obama |
| 2011 | 40 | Obama |
| 2012 | 44 | Obama |

CHAPTER VI

The Politics of Waiver Approvals

In the fall of 2011, President Obama's legislative proposal to revise the No Child Left Behind Act of 2001 (NCLB) was languishing in Congress. The administration initially introduced its Blueprint for Reform in March 2010, and after failing to make progress in Congress for a year and a half, the Obama administration adopted a new tactic. On September 23, 2011, President Obama invited states to apply for waivers from the unpopular NCLB through its ESEA Flexibility initiative. As discussed in Chapter 1, in his remarks introducing the initiative President Obama stated plainly his decision to pursue waivers in the absence of congressional action to "fix" what many viewed as a broken law: "Congress hasn't been able to do it. So I will."

While Obama emphasized his duty to act given congressional inaction, some observers charged the President with abusing executive authority. Writing for the New York Times, Sam Dillon warned that the administration's use of waivers represented the "most sweeping use of executive authority to rewrite federal education law since Washington expanded its involvement in education in the 1960s" (2011). Nearly a year later, Motoko Rich echoed Dillon's warning, suggesting in the Times that "the Obama administration has maneuvered around Congress, using the waivers to advance its own education agenda" (2012).

The Obama administration has articulated its use of waivers in lieu of congressional

action, and journalists have identified this strategy as a sly use of executive authority, perhaps even abuse. Yet the literature on the presidency has yet to seriously examine the possibility that presidents use waivers strategically. The time is ripe to investigate this strategy in earnest. In this chapter, I take up the question at the heart of this dissertation: when do presidents approve waivers?

Chapter 4 laid out a theory of presidential policymaking through waivers and a set of propositions that move beyond existing work and account for the president's institutional incentives to grant states flexibility from federal law. The results in Chapter 5 provide initial support for this theory, indicating that governors submit waivers precisely when it is in the president's interest to approve state-level policy change. In this chapter, I examine whether the president approves more waivers when his hopes of a legislative victory are dim, provided that he has enough allies at the state level to rely on this strategy. First, I briefly review the data on approved waivers introduced in Chapter 3. Next, I use this dataset to assess Propositions 2 and 3. I then extend the analysis to investigate whether waivers are predicted by conditions that explain law durability. Finally, I summarize these results and discuss the implications.

6.1 Data

As described in Chapter 3, the data on approved waivers includes observations in welfare, Medicaid, and K-12 education from 1984 through 2012. The main benefit of the data on approved waivers is the variation over time and across policy areas, which allows for substantial variation on the dependent and explanatory variables and for generalizable tests of Propositions 2 and 3. The majority of models assessed in this chapter examine approved waivers, unconditional on submission.

As discussed in Chapter 3, three characteristics of this analysis help reduce concerns about potential selection bias in these unconditional models. First, the high rate of waiver approvals across policy areas suggests that states who submit applications are similar to

those who win approval of their applications. Second, I include the state-level variable that predicts state submissions, *Squire*, to help reduce potential selection bias. Third, I include a conditional specification using a sub-sample of the dataset as a robustness check on the unconditional models analyzed here.¹

6.2 Assessing Proposition 2

Here, I briefly revisit the logic underlying Proposition 2 outlined in Chapter 4. This proposition captures my central argument that presidents see waivers as an alternative to a legislative revision strategy. One of the president's primary goals is implementing his policy preferences on a national scale. When the president anticipates that working with Congress will be an uphill battle, he may begin searching for alternative ways to revise existing policy. If the president is interested in pursuing a waiver strategy as such an alternative, he must also consider the state-level policymaking environment.

Specifically, he must consider how many governors are likely to submit waiver applications and ultimately to implement revisions in line with the president's agenda via waivers approved by the administration. Recall from Chapter 4 the potential costs the president faces when he opts for a waiver strategy. First, by offering states flexibility, the president risks incurring a policy cost, particularly if many governors have divergent policy preferences from the president. Second, if enough states do not submit waiver applications or if states are slow to respond to the president's request, the president may have wasted a narrow window of opportunity to act and may indeed be pre-empted by another branch of government. Third, by soliciting waiver applications, the president risks a reputation cost especially if governors do not respond positively. Consequently it is in the president's interest to pursue a waiver strategy as an alternative to legislation *depending on* how many governors he can rely on to cooperate. As discussed in Chapter 4, with a large share of governors in his party, the president can confidently minimize these

¹Please see Chapter 3 for a thorough discussion of the data.

potential costs. Proposition 2 expresses this core theoretical claim:

Proposition 2: The number of waivers approved each state-year increases as the ideological distance between Congress and the president increases, contingent on the share of governors in the president’s party.

6.2.1 Model

The dependent variable is a count of the number of waivers approved in state $i = 1...50$, policy $j =$ welfare, Medicaid, or education, and year $t = 1984...2012$. Table 6.1 shows the spread and summary statistics for this dependent variable.²

Table 6.1: Approved Waivers, Dependent Variable Summary Statistics

| Policy | Years | Mean | Std. Dev. | Min. | Max. | N |
|---|-----------|------|-----------|------|------|------|
| <i>Welfare, Medicaid, and Education</i> | 1984-2012 | 0.67 | 2.16 | 0 | 39 | 2600 |
| Welfare | 1984-1996 | 0.20 | 0.49 | 0 | 3 | 650 |
| Medicaid | 1992-2012 | 0.11 | 0.37 | 0 | 4 | 1050 |
| Education | 1995-2012 | 1.66 | 3.42 | 0 | 39 | 900 |

The model of Proposition 2 parallels the model of Proposition 1 introduced in the previous chapter, although here of course the dependent variable is a count of approved rather than submitted waivers per state-year-policy. The variables central to assessing Proposition 2 are as follows: *Distance*, *Percent Governors*, and *Distance x Governors*. For a discussion of how these terms are measured, please see Chapter 5. The substantive analysis will primarily focus on the marginal effect of *Distance*, assessed across the range of values of *Percent Governors*.³

²I should note that the maximum value, 39, is a result of many districts within the state of Pennsylvania applying for and receiving waivers from the Improving America’s Schools Act in 1995. Results are not sensitive to this observation.

³As in the previous chapter, I also examine whether the president grants waivers when the share of governors in his party increases, contingent on his distance from Congress. From a theoretical standpoint, one might argue that the share of governors in the president’s party will not exert an effect on the number of waivers approved when the president’s distance from Congress equals zero. In this case, there would be an argument for omitting *Percent Governors* from the model below (Kam and Franzese 2007). However, as is illustrated below, it is not the case that *Percent Governors* equals zero when *Distance* equals zero. Omitting *Percent Governors* from the model, then, would introduce bias into our model and specifically to our estimation of *Distance x Governors*. For this reason, I keep *Percent Governors* in the model.

As in the model of Proposition 1, I include three national-level control variables: *Approval*, *GDP Change*, and *Annual Mood*.⁴ I review the logic for including each here. First, as the president's approval ratings decrease (and thus as his political capital declines), he may rely increasingly on extra-legislative policymaking strategies rather than working with Congress. In this atmosphere, he may be more eager to approve waivers. I include a measure of presidential approval that is an average of the president's annual approval ratings, and I expect this coefficient to be negative. Second, as the national GDP shrinks, the administration may be more inclined to cut spending. Since waivers are often used to experiment with cost-saving program designs, the administration may be motivated to approve more waivers when the GDP declines; *GDP Change* measures the annual percent change in GDP, and I expect this coefficient to be negative. Finally, as in the previous chapter, I include Stimson's measure of policy mood for the following two reasons (1999). Presidents often publicly discuss waivers as tools that allow them to take action when Congress cannot (or will not) act, as the opening anecdote of this chapter illustrates. Waivers, then, may be a more popular type of tool when the public mood favors a more activist government. In addition, waivers explicitly authorize experimentation. The president and his administration may be more willing to use this tool when the national mood is more liberal, suggesting that the public is more open to innovation. As a result, I expect *Annual Mood* to be positive.

As discussed in Chapter 3, including any state-level variables that predict waiver submissions helps to reduce potential selection bias. As we saw in Chapter 5, *Squire* was the state-level variable that played an important role in predicting state waiver submissions. I include this variable here in the Unconditional models; the Conditional model includes

⁴In addition to the variables described here, one may suspect that several additional national and state factors may influence the number of waivers approved, including whether it's a presidential election year, state population, state per capita income, and state citizen ideology. I include these variables and report the results in Table 6.10 in the Appendix. The results are substantively similar in all three specifications. The primary difference, discussed below, is that the marginal effect of *Distance* reaches statistical significance in the Conditional model when several of these additional control variables are included.

the log of submissions instead.⁵ I also include president fixed effects to account for unobservable variation attributable to each specific president and his administration.⁶ Finally, in the Unconditional models below I include state fixed effects to account for unobservable factors specific to each state that may be related to waiver approvals.⁷

$$\begin{aligned} \text{Waivers Approved}_{ijt} = & \beta_0 + \beta_1 \text{Distance} + \beta_2 \text{Percent Governors} + \beta_3 \text{Distance} \times \text{Governors} \\ & + \beta_4 \text{Approval} + \beta_5 \text{GDP Change} + \beta_6 \text{Mood} + \beta_7 \text{Squire} \\ & + Z_t \text{President} + W_i \text{State} + U_j \text{Policy} + \varepsilon_{ijt} \end{aligned} \quad (6.1)$$

6.2.2 Estimating Proposition 2

Table 6.2 includes three specifications.⁸ Column 1 includes approved waivers in all three policy areas and is unconditional on submission, column 2 includes only observations on Section 1115 welfare and Medicaid waivers and is unconditional on submission, and finally, column 3 includes only observations on Section 1115 welfare and Medicaid waivers and is *conditional* on submission. The All Policies – Unconditional model in Column 1 allows for the most variation on the relevant variables and is more generalizable

⁵The logic here is that including the log of submissions on the right-hand side helps account for selection bias. But in the Unconditional models, which include observations on all policy areas, this information is not available for education observations. In these models, I use *Squire* instead, which is the state-level predictor of the log of submissions. In the Conditional model, which only includes observations in welfare and Medicaid, I can simply include the log of submissions, since this information is available for all observations. Please see the Appendix to Chapter 3 for a more thorough discussion of how including state-level variables that predict waiver submissions helps to account for selection bias.

⁶Doing so is relevant here because each president comes to office with a different interpretation of the role of states in policymaking. Further, each president enters office with his own set of relationships with members of Congress, governors, and the national governors' associations. As a result, each president may have a different approach to working with governors and may have different levels of success in executing strategies that require participation from governors. In addition, each president's personal style may impact not only his eagerness to use waivers but his approach to doing so; while this factor may be important in predicting the outcome of interest, it is difficult to measure.

⁷In the models discussed here, I omit *Alignment* based on the null results in Chapter 3 that suggest it does not predict approvals. Further, the null results in Chapter 5 suggest that it does not predict waiver submissions. Including *Alignment* does not substantively impact the results with regard to any of the models or specifications discussed in this chapter. Please see the Appendix for specifications that include *Alignment* for each model discussed below.

⁸Please see Table 6.9 in the Appendix for all policy and president fixed effects results.

over time and across policy areas. As such, I discuss these results first; below, I refer to this All Policies – Unconditional model simply as the All Policies model.

I estimate the All Policies model with a zero inflated negative binomial specification for two reasons.⁹ First, the data are characterized by overdispersion due to an abundance of zeros. Second, two different processes generate the zeros: the dependent variable might equal zero if waivers are made available by the administration but a state is not awarded a waiver, or if an administration chooses not to solicit or approve waivers in that particular policy area even when the administration has the option to exercise waiver authority. Because the probability of being in one of these regimes depends on the policy area, the inflation model includes the policy dummy variables.

To assess Proposition 2, we are primarily interested in the marginal effect of *Distance* on the number of approved waivers, assessed at different values of *Percent Governors*.¹⁰ According to my theory, the president initially considers a waiver strategy if he needs an extra-legislative policymaking option; his distance from Congress, then, is the primary motivation to pursue such a strategy, although he must simultaneously consider whether he can use this strategy effectively given the share of governors in his party.

The results in Table 6.2 suggest that *Distance*, *Percent Governors*, and the relevant interaction term, *Percent x Distance*, are all statistically significant at least at the $\alpha = 0.10$ level in the All Policies model, but this information tells us little about the marginal effect

⁹A Vuong test indicates that a zero-inflated model is appropriate, with a test-statistic of 3.91, p-value 0.0000.

¹⁰Please see Table 6.8 in the Appendix for a model that uses *Divided Government* rather than *Distance* to measure the president's ability to move his preferred legislation through Congress. In this model, the coefficient on the interaction term, *Distance x Governors*, is negative. Nonetheless, the results are broadly consistent with the results discussed below. In particular, the marginal effect of *Divided Government* is only statistically significant at the $\alpha = 0.10$ level or lower when the share of governors in the president's party is between 51 and 55 percent, illustrated in Figure 6.12 in the Appendix. In this interval, the marginal effect of *Divided Government* is positive. While this marginal effect decreases very slightly across this range, the estimates of this marginal effect are not significantly different from one another. Despite the negative slope on the interaction term, then, the slope is effectively flat in the interval when the marginal effect of *Distance* is significant. The substantive implications are that under divided government, with roughly half the nation's governors in his party, the president approves more waivers. Moving forward, I rely on *Distance* rather than *Divided Government* throughout the discussion below, since *Distance* allows for a more fine-grained assessment of the president's ideological relationship with Congress and, consequently, on his ability to achieve passage of his preferred legislative revisions.

Table 6.2: Assessing Proposition 2

| | All Policies Unconditional | Section 1115 Unconditional | Section 1115 Conditional |
|---------------------------|-------------------------------|-------------------------------|-----------------------------|
| Distance | -7.27 (4.27) | -31.22*** (7.30) | -13.69* (6.24) |
| Percent Governors | -13.11* (5.87) | -40.32*** (9.03) | -18.10* (7.88) |
| Distance x Governors | 16.85* (7.65) | 58.10*** (12.30) | 22.75* (10.63) |
| National Controls | | | |
| Pres. Approval | -0.03*** (0.01) | -0.04*** (0.01) | -0.00 (0.01) |
| Annual Mood | 0.13*** (0.03) | 0.07 (0.04) | 0.10 (0.05) |
| % GDP Change | -0.08** (0.02) | -0.19** (0.06) | -0.09 (0.05) |
| State Control | | | |
| Squire | -1.53 (1.57) | 0.66 (2.67) | – |
| Submissions (Natural Log) | – | – | 0.75*** (0.11) |
| Constant | 0.86 (2.66) | 15.13*** (4.55) | 3.68 (4.90) |
| State Fixed Effects | Yes | Yes | No |
| President Fixed Effects | Yes | Yes | Yes |
| Policy Fixed Effects | Yes | Yes | Yes |
| N | 2600 | 1700 | 238 |
| Log Likelihood | -1903.15 | -622.72 | -228.15 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

of *Distance*. I turn to Figure 6.1 below, which illustrates this marginal effect. The solid black line in this figure indicates the marginal effect of *Distance*, while the dashed lines indicate the upper and lower bounds of the 95 percent confidence interval for the point estimates.

Marginal Effect of Distance

Figure 6.1 suggests that the marginal effect of *Distance* is contingent on the share of governors in the president's party. Consistent with expectations, as the share of governors in the president's party increases, the marginal effect of *Distance* increases, illustrated by the positive slope on the line plotting the marginal effect of *Distance* across the range of *Percent Governors*. Specifically, consider the increase in the marginal effect of *Distance* when 30 percent of governors are in the president's party compared to 50 percent. The marginal effect of *Distance* is -2.21 when 30 percent of governors are in the president's party, the lowest observed value of *Percent Governors* in this sample.¹¹ However, because the marginal effect of *Distance* falls below conventional levels of statistical significance at this point, we cannot with confidence infer that the marginal effect is significantly different from zero when 30 percent of governors are in the president's party.

In contrast, when 50 percent of governors are in the president's party, the marginal effect of *Distance* is 1.16 and is significant at the $\alpha = 0.05$ level.¹² The marginal effect of *Distance* on the number of waivers approved increases from a value statistically indistinguishable from zero to 1.16 as the share of governors in the president's party increases from 30 to 50 percent. Indeed, when 50 percent of governors or more are in the president's party, the marginal effect of *Distance* is significant at the $\alpha = 0.05$ level and continues to increase as the share of governors in the president's party increases.¹³ For example,

¹¹Standard error 1.99, p-value 0.267.

¹²Standard error 0.57, p-value 0.044.

¹³We can be most confident in the estimates of the marginal effect of *Distance* when 50 percent of governors or more are in the president's party because, as mentioned in the text, across this range the marginal effect of *Distance* is significant at the $\alpha = 0.05$ level.

when the share of governors in the president’s party increases from 50 to 60 percent, the marginal effect of *Distance* more than doubles, increasing from 1.16 to 2.84.

These results support the core theoretical claim expressed in Proposition 2: as the president moves further from Congress, he grants more waivers *as* the share of governors in his party increases. When the president seeks an alternative to legislation, it appears that a waiver strategy may be an increasingly attractive option as the president can rely on a greater share of governors in his own party to implement his preferred policy changes via waivers.¹⁴

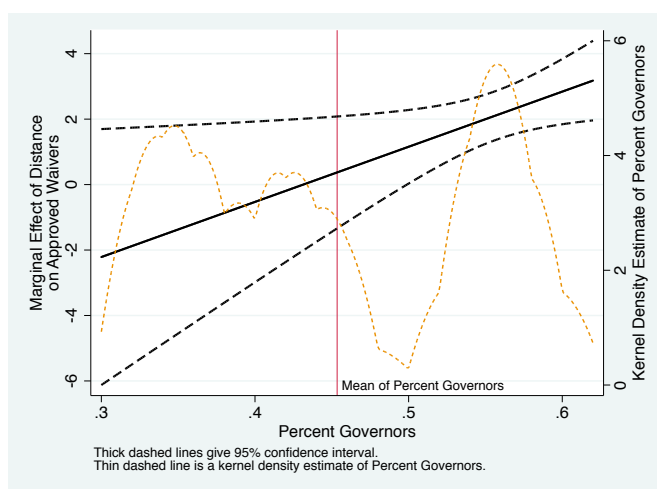


Figure 6.1: Marginal Effect of *Distance*, All Policies – Unconditional

I now turn to the two specifications that include only observations for Section 1115 welfare and Medicaid waivers. First, given the large number of education waivers in the All Policies model, it is useful to investigate whether we observe a similar marginal effect of *Distance* when we omit the education observations. To do so, I examine the marginal effect of *Distance* in the Medicaid and Welfare – Unconditional model, estimated with a

¹⁴Please see Table 6.8 for a model that omits waivers granted under the Obama administration’s ESEA Flexibility program. Since the Obama administration required states to meet requirements not included in ESEA as a condition for receiving a waiver, as described in Chapter 3, we might expect that the factors motivating this kind of waiver strategy differ from the conditions discussed thus far. I discuss the implications of this possibility further in Chapter 7. At this point, as a robustness check I omit from the model of Proposition 2 the years in which waivers were granted under the ESEA Flexibility program, 2011 and 2012. As Figure 6.11 in the Appendix shows, we still see that the marginal effect of *Distance* increases as the share of governors in the president’s party increases. This value is statistically significant when the share of governors in the president’s party meets or exceeds 45 percent.

Poisson specification (column 2 in Table 6.2).¹⁵ The regression results reported in column 2 suggest that *Distance*, *Percent Governors*, and *Distance x Governors* are significant, but again, these coefficients contain limited information. Figure 6.2 plots the marginal effect of *Distance* assessed across the range of *Percent Governors*.

Similar to what we observe in Figure 6.1, in Figure 6.2 we see that the marginal effect of *Distance* increases as the share of governors in the president's party increases. When only 30 percent of governors are in the president's party, the marginal effect of *Distance* is -13.79 and is significant at the $\alpha = 0.05$ level.¹⁶ These results suggest that when the president is far from Congress and as such needs an alternative policymaking strategy, he approves fewer waivers when only a small share of governors is in his party. This result is consistent with expectations, given the discussion in Chapter 4 of the potential policy, opportunity, and reputation costs of a waiver strategy that the president must consider. With few governors in the president's party, the president cannot count on sufficient state-level cooperation with this strategy and, in turn, cannot confidently minimize the potential costs of a waiver strategy. In this circumstance, although the president may be ideologically far from Congress, we should not expect him to pursue a waiver strategy.

On the other hand, as the share of governors in the president's party increases, the marginal effect of *Distance* should also increase. As before, these results suggest that this is the case. The marginal effect of *Distance* indeed increases as the share of governors in the president's party grows. As discussed above, the marginal effect of *Distance* is -13.79 when only 30 percent of governors are in the president's party. When 58 percent of governors or more are in the president's party, however, the marginal effect of *Distance* is positive and significant at the $\alpha = 0.05$ level. Further, the marginal effect of *Distance* increases from 2.48 when 58 percent of governors are in the president's party to 4.81 when 62 percent of governors are in the president's party.¹⁷ Even across this small increase

¹⁵I do not use a negative binomial specification, since we cannot reject the null hypothesis that $\alpha = 0$ (a likelihood ratio test gives a χ^2 test statistic = 0.02, p-value 0.451).

¹⁶Standard error 3.72, p-value 0.000.

¹⁷When *Percent Governors* = 58, the marginal effect of *Distance* has a standard error of 1.26 and a p-value

in *Percent Governors*, the marginal effect of *Distance* nearly doubles. These results echo those discussed above from the All Policies model, suggesting that the marginal effect of *Distance* is not simply driven by the education observations included in the All Policies model.

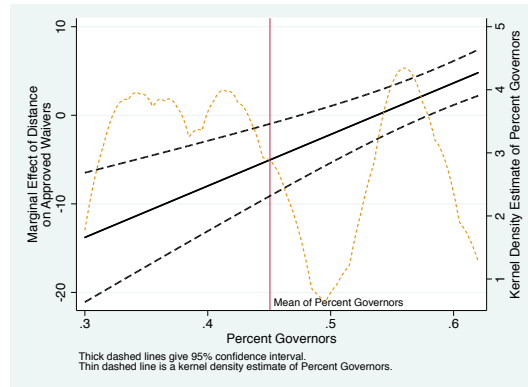


Figure 6.2: Marginal Effect of *Distance*, Unconditional – Section 1115

Next, I turn to the the Medicaid and Welfare – Conditional model (column 3, Table 6.2).¹⁸ This specification only includes observations of approved waivers from state-years in which waivers were submitted. These results, then, are conditional on submission and as such reduce concerns about selection bias. Figure 6.3 illustrates the marginal effect of *Distance* for this specification. Consistent with expectations and with the previous results, the positive slope on the line plotting the marginal effect of *Distance* indicates that as the president moves further from Congress, he approves more waivers as the share of governors in his party increases. While this marginal effect is only statistically significant at the $\alpha = 0.05$ level across the lower range of *Percent Governors*, we see the familiar pattern that the marginal effect of *Distance* increases as the share of governors in the president's party grows.¹⁹

of 0.048. When *Percent Governors* = 62, the marginal effect of *Distance* has a standard error of 1.33 and a p-value of 0.000.

¹⁸Please see Table 6.12 in the Appendix for alternative specifications that include state fixed effects, omit *Alignment*, and use an OLS specification. The results are very similar to those discussed here.

¹⁹When additional variables are included to control for presidential election years, state citizen ideology, and state per capita income, the marginal effect of *Distance* is positive and significant at the $\alpha = 0.10$ level when at least 61 percent of governors are in the president's party. Please see column 3 in Table 6.12 in the Appendix.

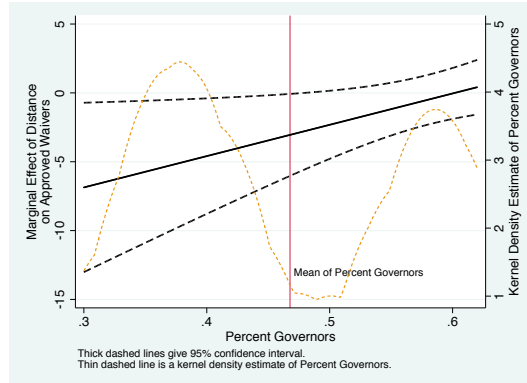


Figure 6.3: Marginal Effect of *Distance*, Conditional – Section 1115

For example, when 30 percent of governors are in the president’s party, the marginal effect of *Distance* is -6.87.²⁰ When the share of governors in the president’s party increases to 48 percent, the marginal effect of *Distance* increases to -2.77.²¹ Overall, in this conditional specification we see additional evidence that the marginal effect of *Distance* is contingent on the share of governors in the president’s party, and in particular, that the marginal effect of *Distance* on the number of waivers approved increases *as* the share of governors in the president’s party grows.

Marginal Effect of *Percent Governors*

According to the theory developed in Chapter 4, the president initially contemplates a waiver strategy if moving his preferred policies through Congress is difficult. As a result, the central substantive analysis focuses on the marginal effect of *Distance*, and we are primarily interested in how *Percent Governors* modifies *Distance* rather than in the marginal effect of *Percent Governors*. In fact, we might expect the coefficient on *Percent Governors*, β_2 , to be zero when *Distance* = 0. That is, in the hypothetical situation when the president is perfectly aligned with Congress, we might expect him to pursue legislative reform rather than waivers regardless of the share of governors in his party. If so, there would

²⁰Standard error 3.12, p-value 0.028.

²¹Standard error 1.41, p-value 0.049.

be an argument for omitting *Percent Governors* from the model (Kam and Franzese 2007, 100). However, this is not the case.²²

Although not central to the theory here, it is worth asking whether the marginal effect of *Percent Governors* is broadly consistent with the theory developed in Chapter 4. Below, I assess the marginal effect of *Percent Governors* across the range of *Distance* for the All Policies – Unconditional and the Welfare and Medicaid – Conditional models in Figures 6.4 and 6.5, respectively. Both marginal effects plots show a similar pattern.

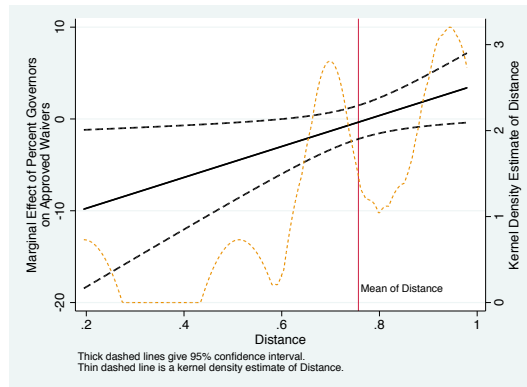


Figure 6.4: Marginal Effect of *Percent Governors*, Unconditional – All Policies

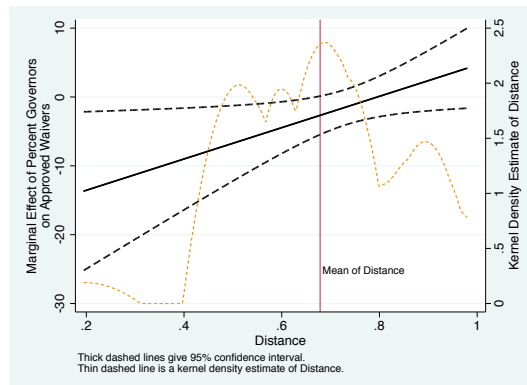


Figure 6.5: Marginal Effect of *Percent Governors*, Conditional – Section 1115

The wide confidence intervals for the marginal effect of *Percent Governors* over most of the range of *Distance* indicate a substantial degree of imprecision in these estimates.

²²Based on the All Policies – Unconditional model above, if the distance between the president and Congress was zero, the marginal effect of *Percent Governors* would be -13.11 with a robust standard error of 5.87 and a p-value of 0.026. Since we cannot accept the null that $\beta_2 = 0$, omitting this term from the model would introduce omitted variable bias into the estimate of *Distance* \times *Percent*.

Nonetheless, Figure 6.4 illustrates that in the All Policies model the marginal effect of *Percent Governors* is non-zero and statistically significant at the $\alpha = 0.05$ level when *Distance* is between 0.2 through 0.6. In this range, the positive slope on the marginal effect of *Percent Governors* suggests that the president approves more waivers when there is a larger share of governors in his party *as* the president moves further from Congress. This result makes sense, given that the further the president is from Congress, the more interest he has in pursuing his policy goals via an alternative route.

It is also interesting to note the negative marginal effect of *Percent Governors* given small values of *Distance*. This result implies that even when a large share of governors is in his party, if working with Congress is not particularly difficult, the president grants fewer waivers. It may be the case that when the president enjoys extensive support at the state level and he is ideologically close to Congress, he discourages states from revising the law via waivers and instead opts for a legislative revision strategy. With many governors in his party, the president may anticipate little backlash from such a strategy. Indeed, in this scenario governors in the president's party may prefer that the president implements reforms via legislation. Once the president is out of office, for example, governors may not be able to rely on receipt of waivers to implement changes, since this tool is only available at the president's discretion. But if the president signs a new law that advances the governors' own goals, they can be more confident in the longevity of this policy shift instituted through legislation. While additional qualitative analysis will be important to help identify the precise mechanism here, it seems consistent with the overall theory that presidents grant fewer waivers when they find it relatively easy to achieve their goals via legislative reform and when they anticipate support in doing so from the majority of governors.

6.2.3 Discussion of Proposition 2

Howell explains that "[n]o matter their ideological commitments or partisan affiliations, regardless of their personal backgrounds or philosophies of governing, all presidents nearly all of the time seek to guard and expand their base of power" (2013, 12). While the president's reliance on governors to implement a waiver strategy evident in the analysis of Proposition 2 may initially strike one as a dilution of presidential power, the evidence overall suggests that the president's use of waivers fits into this framework of presidential power.

The qualitative evidence in Chapter 2 suggests that presidents pursue waivers with specific goals in mind and that their administration retains substantial control over this process. Further, analysis of Proposition 1 in the previous chapter suggests that governors submit applications based on their anticipation of the president's incentives to approve waivers; rather than trying to wrest power from the president, governors appear to act as willing participants in the president's waiver strategy. Finally, this analysis of Proposition 2 suggests that presidents exercise waiver authority to create a policymaking opportunity where otherwise one might not exist – that is, when they are ideologically far from Congress – *contingent on* the extent of cooperation they expect from the nation's governors. Thus far, it appears that presidents' shrewd exercise of waiver authority capitalizes on the division of power across levels of government and provides them with an additional avenue through which to implement their policy goals.

6.3 Assessing Proposition 3

The evidence in Chapter 2 suggests that waivers are particularly valuable to the president when he is not satisfied with existing law. Indeed, in the cases discussed in Chapter 2 it often seemed that presidents approved waivers in concert with a legislative strategy to revise laws they inherited (and disliked). By approving revisions to existing law through

authorizing waivers, the president can undermine the legislative status quo as he wrestles with Congress over legislative changes. Drawing on this qualitative evidence, Proposition 3, introduced in Chapter 4, states that the marginal effect of *Distance* on waiver approvals is conditional not only on the share of governors in the president's party, but also on his satisfaction with existing law:

Proposition 3: The president approves more waivers as the ideological distance between Congress and the president increases, contingent on the president's satisfaction with existing law and on the share of governors in his party.

Specifically, I expect that a waiver strategy is most attractive to the president when he is far from Congress, contingent on the share of governors in his party *and* on whether he is dissatisfied with existing law. To assess Proposition 3, I use the variable *Pre Law*, introduced in Chapter 5, as a proxy for the president's satisfaction with the current law. Recall that *Pre Law* equals one if a waiver was approved before (or during) a year in which the president signs a new law in the relevant policy area. The assumption is that before signing a new law, the president is dissatisfied with existing law, based on evidence in Chapter 2 which suggests that in welfare, Medicaid, and education, presidents were deeply unhappy with the legislative status quo that they inherited. Before signing new laws, then, it is reasonable to argue that these presidents were dissatisfied with the existing law. As such, in the analysis below, *Pre Law* = 1 indicates that the president is dissatisfied with current law.

On the other hand, *Pre Law* equals zero if a waiver was approved during a year subsequent to the president signing a new law in the relevant policy area. When *Pre Law* equals zero, the assumption is that the president at the very least weakly prefers the new law he signed to the old law he inherited. Admittedly, this assumption is stronger than the assumption that presidents would prefer to revise their predecessor's law, and the implications for the president's use of waivers are less clear, since the degree to which presidents are satisfied with laws they sign varies. The president may be extremely satis-

fied with a law he signs and, as a result, may want to implement that law as written rather than granting waivers, as the Bush administration did following passage of the No Child Left Behind Act of 2001. However, a president may sign a law that includes important parts of his agenda but omits others, leaving him looking for additional opportunities to revise the law. Or, the Supreme Court may interpret a law in a way that strikes down key components of the law as originally written – the Supreme Court’s response to President Obama’s Affordable Care Act readily comes to mind here. In this case, the president may be less satisfied with a law and may want to offer waivers to incentivize implementation of the law, as the Obama administration is currently doing.

With this in mind, below I primarily focus on the results in the condition when the president is dissatisfied with existing law (*Pre Law* = 1). We have the clearest theoretical expectations here: specifically, the marginal effect of *Distance* should be positive and increasing as the share of governors is in the president’s party increases *when* the president is dissatisfied with existing law. In Chapter 7, I discuss alternative measurement strategies that may allow for a more fine-grained analysis of how the president’s satisfaction with a law impacts his waiver strategy.²³

²³Please see Table 6.14 in the Appendix for a specification in which I measure the president’s satisfaction with a law using a different variable, *Unsatisfied*, which equals one if the president has not yet signed a new law, similar to the *Pre Law* coding, but also equals one if there is evidence that the president is not completely satisfied with a new law he signs. For this dataset, this means *Unsatisfied* equals one for two additional cases compared to the original *Pre Law* coding. First, *Unsatisfied* = 1 for education observations from 1995 through 2000, given the Clinton administration’s inability to achieve several central goals through their 1994 reauthorization of IASA (Lawmakers Renew and Revamp 1965 Education Act). Second, *Unsatisfied* = 1 for Medicaid observations from 2006 through 2008, given President Bush’s failure to transition Medicaid to a block grant program through the Deficit Reduction Act of 2005 which he signed.

As Figure 6.14 shows, the results are very similar to those discussed below in the *Pre Law* = 1 condition. For example, when *Unsatisfied* = 1, we see that the marginal effect of *Distance* is positive and increasing as the share of governors in the president’s party increases. This marginal effect is statistically significant at the $\alpha = 0.05$ level when at least 51 percent of governors are in the president’s party; we can be most confident that the marginal effect of *Distance* is significantly different from zero across this range of *Percent Governors*. These results imply that when the president is unsatisfied with a law, he grants more waivers when he is far from Congress, contingent on the share of governors in his party. In the case when the president is satisfied with existing law (*Unsatisfied* = 0), we see a similar relationship. The marginal effect of *Distance* is positive and significant at the $\alpha = 0.05$ level when *Percent Governors* is at or above 38 percent. As in the case when the president is unsatisfied with existing law, the marginal effect increases as the share of governors in the president’s party increases. This result is different from the results discussed in the text in the analysis of Proposition 3. In that analysis, when the president is satisfied with existing law (when *Pre Law* equals zero), the marginal effect of *Distance* is not significant across the range of *Percent Governors*,

6.3.1 Measuring *Pre Law*

Here, I explain in more depth the measure of *Pre Law*. As discussed, this variable equals one if a waiver was approved before or during a year in which Congress passed and the president signed a new law in the relevant policy area. I code the year in which the president signed a law as one because the president may very well want to approve waivers during the year in which the relevant legislative battle occurs. *Pre Law* equals zero if a waiver was approved in subsequent years. Table 6.3 below lists the relevant laws passed by Congress and signed by the president in these data.

| <i>Policy</i> | <i>Governing law</i> | <i>Year enacted</i> |
|---------------|--|---------------------|
| Welfare | Family Support Act ²⁴ | 1988 |
| | Personal Responsibility and Work Opportunity Act | 1996 |
| Medicaid | Balanced Budget Act | 1997 |
| | Deficit Reduction Act | 2005 |
| | Patient Protection and Affordable Care Act | 2010 |
| Education | Improving America's Schools Act (IASA) ²⁵ | 1994 |
| | No Child Left Behind Act (NCLB) ²⁶ | 2001 |

Table 6.3: Year of Law Passage

6.3.2 Modeling Proposition 3

Proposition 3 calls for what Kam and Franzese (2007) refer to as a chained interaction model. Here, I include an interaction term between *Distance* and *Pre Law*. The implication such that we cannot reject the null hypothesis that the marginal effect of *Distance* is zero.

In all, these results from the *Unsatisfied* coding do not provide convincing evidence that the president uses waivers differently whether he is dissatisfied or satisfied with existing law. The core consideration still appears to be his distance from Congress, contingent on the share of governors in his party. However, it may be the case that neither this alternative coding of *Dissatisfied* nor the coding of *Pre Law* discussed in the text adequately captures the president's dissatisfaction with the relevant existing law in each year. It would be hasty to conclude from this analysis that the president's dissatisfaction with existing law does not play an important role in his waiver strategy. As a next step, Chapter 7 discusses alternative approaches to measuring the president's dissatisfaction with current law.

²⁴President George H.W. Bush did not pursue welfare reform during his administration. I code *Pre Law Passage* as 0 for the duration of his presidency for welfare waivers, since his welfare agenda continued that of his predecessor, President Reagan, who signed the Family Support Act in 1988.

²⁵Clinton also signed the Goals 2000 Act in 1994. Since IASA was the centerpiece of his legislation agenda, as it reauthorized ESEA, I base the coding on passage of IASA.

²⁶Technically, President George W. Bush did not sign this law until January 8, 2002. However, I code 2002 as a year after passage and signing, since this is the case for all intents and purposes.

is that the marginal effect of *Distance* depends simultaneously on the share of governors in the president's party and on whether the president is dissatisfied with existing law. I assess this model in Table 6.4 below.²⁷

$$\begin{aligned} \text{Waivers Approved}_{ijt} = & \beta_0 + \beta_1 \text{Distance} + \beta_2 \text{Percent Governors} + \beta_3 \text{Distance} \times \text{Governors} \\ & + \beta_4 \text{PreLaw} + \beta_5 \text{Distance} \times \text{Pre Law} + \beta_6 \text{Approval} \\ & + \beta_7 \text{GDP Change} + \beta_8 \text{Mood} + \beta_9 \text{Squire} \\ & + Z_t \text{President} + W_i \text{State} + U_j \text{Policy} + \varepsilon_{ijt} \end{aligned} \quad (6.2)$$

6.3.3 Analysis of Proposition 3

I assess Proposition 3 using approved waivers in Medicaid, welfare, and education, unconditional on submission; this is the same sample used in the All Policies – Unconditional model of Proposition 2 above. As before, I specify zero-inflated negative binomial models to accommodate the over-dispersion of zeros in the data and the evidence that more than one process generates these zeros.²⁸

Simple Extension: Comparison to Chapter 5

As in Chapter 5, it is useful to begin with a robustness check that tests whether an alternative explanation for the president's use of waivers prevails: do presidents sim-

²⁷It could be the case that the most appropriate specification is what Kam and Franzese refer to as a "fully interactive" model (2007, 41). In this case, we would not only expect *Pre Law* to modify *Distance*, but also *Percent Governors*. The full model specification and the related estimate are in the Appendix; please see Equation 4 and Table 6.16, respectively. Substantively, this specification implies that the share of governors in the president's party would differently impact the number of waivers approved before and after the president has signed a law, and vice versa. From a theoretical standpoint, there is not a clear rationale that motivates this specification. Further, in the three-way interaction specification, which allows *Percent Governors* to vary based on the value of *Pre Law* and adds a triple interaction term, *Distance x PreLaw x Percent*, the model appears over-fit. As the results in Table 6.16 in the Appendix show, the coefficients associated with the relevant terms are alarmingly large. Further, Figures 6.16 and 6.17 in the Appendix reveal very wide 95 percent confidence intervals associated with point estimates for the marginal effect of *Distance*. These results suggest that this model, fit with these data, produces estimates that are imprecise and are characterized by a high degree of uncertainty. Given the lack of theoretical motivation behind this model and the imprecision of the estimated results, I focus on the two models in Table 6.4 to assess how the president's legislative success influences his waiver strategy.

²⁸In Proposition 3, the Vuong test statistic equals 4.79, p-value 0.000.

ply approve more waivers before they sign a new law, perhaps in response to governors seeking an opportunity to implement their preferred policy changes when they sense the status quo has fallen out of favor? Or, do we still see evidence consistent with my theory that presidents approach waivers strategically and in concert with their legislative agenda, approving them when they are far from Congress, contingent on the share of governors in their party?

To compare these two explanations of this process, I begin with a simple extension that adds *Pre Law* to the Proposition 2 model – the results are reported in the "Simple Extension" column in Table 6.4 below. As before, including *Pre Law* does not dramatically change the central results for *Distance*, *Percent Governors* and *Distance x Governors*, which remain significant well below the $\alpha = 0.05$ level. Figure 6.6 shows that the marginal effect of *Distance* is very similar compared to the All Policies – Unconditional model of Proposition 2 above, and in particular, that the marginal effect of *Distance* increases as the share of governors in the president's party increases. For example, when only 30 percent of governors are in the president's party, the marginal effect of *Distance* is -3.93.²⁹ However, when the share of governors in the president's party increases to 52 percent, the marginal effect of *Distance* increases to 1.05.³⁰ Above this value of *Percent Governors*, the marginal effect of *Distance* continues to increase and is significant at the $\alpha = 0.05$ level.³¹ It appears that the results from Proposition 2 are robust to inclusion of *Pre Law* in the Simple Extension model.

²⁹Standard error 1.93, p-value 0.042.

³⁰Standard error 0.43, p-value 0.014.

³¹The magnitude of these results are similar to the results from the All Policies – Unconditional model of Proposition 2. For example, the marginal effect of *Distance* when 55 percent of governors are in the president's party is 1.73 here compared to 2.00 in the comparable model of Proposition 2.

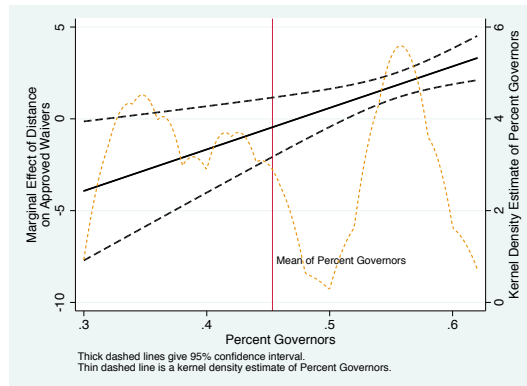


Figure 6.6: Simple Extension of Proposition 2 with *Pre Law*

Marginal Effect of *Distance* in Proposition 3

I now assess Proposition 3 to explore whether the president’s dissatisfaction with existing law influences the marginal effect of *Distance*; results are reported in column 2, Table 6.4.³² Recall that this model includes an additional interaction term, *PreLaw* \times *Distance*, such that the marginal effect of *Distance* varies with *Percent Governors* and with *Pre Law*. From the coefficients reported in Table 6.4, it is difficult to discern the marginal effect of *Distance*. Instead, I discuss this marginal effect in terms of Figures 6.7 and 6.8.

To begin, Figure 6.7 illustrates the marginal effect of *Distance* on the number of approved waivers across the range of *Percent Governors* when *Pre Law* equals one – that is, when the president is dissatisfied with current law. From Figure 6.7, it appears that the marginal effect of *Distance* under this condition increases as the share of governors in the president’s party increases. Consistent with expectations, when the president is dissatisfied with existing law, we see that he approves more waivers when he is further from Congress *as* the share of governors in his party increases. This now-familiar pattern is worth discussing in detail, given its centrality to the theory developed in Chapter 4.

At the lowest observed value of *Percent Governors*, 30 percent, the marginal effect of

³²Please see Table 6.13 in the Appendix for the reported results of the president and policy fixed effects. In addition, please see Table 6.15 for models that include *Alignment*. The results discussed here are robust to these specifications.

Table 6.4: Assessing Proposition 3

| | Simple Extension <i>Single Interaction</i> | Proposition 3 <i>Chained Interaction</i> |
|--------------------------|---|---|
| Distance | -10.71* (4.17) | -10.76* (4.19) |
| Percent Governors | -19.83*** (5.64) | -19.27*** (5.64) |
| Distance x Governors | 22.62** (7.51) | 21.75** (7.59) |
| Pre Law Passage | 1.59*** (0.16) | 1.20 (1.06) |
| Distance x Prelaw | | 0.52 (1.45) |
| National Controls | | |
| Pres. Approval | -0.04*** (0.01) | -0.04*** (0.01) |
| Annual Mood | 0.22*** (0.03) | 0.22*** (0.03) |
| % GDP Change | -0.05* (0.03) | -0.05* (0.03) |
| State Control | | |
| Squire | -1.52 (1.63) | -1.53 (1.63) |
| Constant | -3.60 (2.62) | -3.71 (2.61) |
| President Fixed Effects | Yes | Yes |
| State Fixed Effects | Yes | Yes |
| Policy Fixed Effects | Yes | Yes |
| N | 2600 | 2600 |
| Log Likelihood | -1869.14 | -1869.06 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Distance on approved waivers is -3.72.³³ When the share of governors in the president’s party increases to 52 percent, however, the marginal effect of *Distance* increases to 1.06.³⁴ Indeed, when 52 percent or more of governors are in the president’s party, the marginal effect of *Distance* is positive and significant at the $\alpha = 0.05$ level. When the share of governors in the president’s party increases from 52 to 62 percent, the maximum observed value in this sample, the marginal effect of *Distance* increases from 1.06 to 3.24.³⁵ When the president is dissatisfied with existing law, then, he approves more waivers as his ability to achieve his goals through legislation weakens *provided that* he can rely on enough of the nation’s governors to implement his preferred changes.

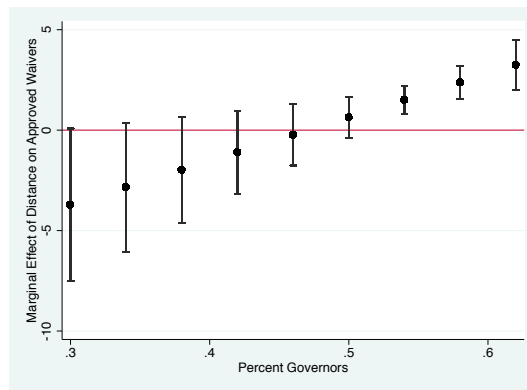


Figure 6.7: Proposition 3, *Pre Law=1*

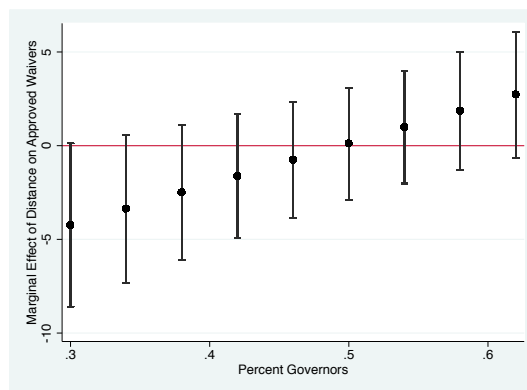


Figure 6.8: Proposition 3, *Pre Law=0*

³³Standard error 1.94, p-value 0.055.

³⁴Standard error 0.42, p-value 0.012.

³⁵Standard error 0.63, p-value 0.000.

As Figure 6.8 shows, when *Pre Law* equals zero we still see the positive slope of the marginal effect of *Distance*. However, the marginal effect of *Distance* is not statistically significant across the range of *Percent Governors*. From these results, we cannot confidently infer that the marginal effect of *Distance* is significantly different from zero when the president is satisfied with current law. It may be the case that after the president has signed a law (indicating that he is at least weakly satisfied with the new law compared to the previous law), he may not have a strong interest in authorizing flexibility via waivers, regardless of his distance from Congress and the share of governors in his party.

However, given the discussion above, this assumption that presidents are satisfied with new laws they sign may be too strong. Indeed, using whether or not a president has signed a new law may be too blunt a measure to assess whether the president is satisfied with the law, or whether he remains satisfied with that law in subsequent years.³⁶ A more sensitive measure of presidential satisfaction with the current law will be an important step towards investigating how presidents use waivers when they are satisfied with existing law. I discuss such possibilities in Chapter 7.

6.3.4 Discussion of Proposition 3

This analysis suggests that the president's incentive to authorize departures from existing law may be influenced by his legislative agenda and, in particular, by a desire to revise existing law. Specifically, we see that the president approves more waivers when he is far from Congress, contingent on the president's share of allies at the state level *and* when he is dissatisfied with current law. While granting waivers may at first glance seem to undermine the president's efforts to exercise and consolidate power, they are perhaps best understood as a supplement to the president's legislative strategy. When the

³⁶For example, the results under the condition when the president is satisfied with existing law are inconsistent across the measure of *Pre Law* used in the text and the alternative measure of *Unsatisfied*, discussed in a footnote above, used in Table 6.14 and illustrated in Figure 6.15 in the Appendix. The marginal effect of *Distance* is not significantly different from zero in the specification using *Pre Law*, but this marginal effect is significant at the $\alpha = 0.05$ level when 38 percent or more of the nation's governors are in the president's party using the measure *Unsatisfied*.

president is dissatisfied with current law, a waiver strategy that is contingent on sufficient governor participation can provide the president with a subnational opportunity to pursue his preferred outcomes despite the horizontal institutional constraints that, by design, frustrate this very goal.

6.4 Extension: Waivers in the Context of Legislative Durability

From this analysis, we have gained insight into why presidents value waivers as policymaking tools. By approving state-level changes via waivers, however incrementally, presidents can authorize revisions to existing laws. We might expect, then, that conditions that predict other types of revisions to laws also predict waiver approvals. Here, I draw on the law durability literature to assess whether this is the case. If the conditions associated with more traditional types of revisions also predict waiver approvals, this evidence will corroborate the argument that presidents approve waivers as part of a broader strategy of legislative change.

6.4.1 Predicting Law Durability

Maltzman and Shipan (2008) argue that conditions in years subsequent to law enactment may influence how vulnerable laws are to revision via amendments. Specifically, they expect (and find) that fewer amendments are passed as bicameral agreement between the House and Senate decreases. Following the same logic, I expect that this situation is precisely when waivers might be useful. Large inter-chamber differences may make legislative revision via amendments improbable or difficult, as Maltzman and Shipan find. In this case, waivers may provide the president with an opportunity to revise a law if the House and Senate are unlikely to agree on amendments. To assess this proposition, I add the variable *Chamber Differences* to the model of Proposition 3.³⁷ I expect the

³⁷Following Maltzman and Shipan (2008), I use Binder's (2003) measure of bicameral differences to measure this variable. Larger values indicate more disagreement between chambers.

coefficient to be positive.

Further, Berry et al. (2010a) find that as a law's enacting majority in Congress weakens (loses seats), "programs are particularly imperiled," measured by reductions in funding (15). Specifically, they make the case that "partisan turnover increases the odds of spending cuts, program mutation, and program death" (14). Extending this logic to waivers is straightforward. When the enacting coalition weakens in subsequent Congresses, a law may become more vulnerable to revision via waivers, just as it becomes more vulnerable to funding cuts and other changes. With fewer proponents of the law in Congress, the president may be able to authorize changes via waivers without risking pushback from members of Congress. While the president may also see an opening to revise a law via the legislative process, waivers can be a useful supplement to such a strategy. Following Berry et al. (2010a), I measure changes in coalition strength over time by calculating the percent change in seat share held by the majority party from the enacting Congress to the current Congress, averaging across chambers. I expect the coefficient on *Coalition Change* to be negative.³⁸

6.4.2 Assessing Waivers in the Context of Law Durability

To assess whether these conditions predict waivers in the expected manner, I add *Chamber Differences* and *Coalition Change* to the model of Proposition 3. As before, I include observations for all three policy areas, unconditional on submission. Table 6.5 below shows the regression results for two models. The first, labeled "Basic Durability,"

³⁸I do not include an evaluation of how enacting conditions might influence whether more waivers are granted from a particular law. From a theoretical standpoint, there is a logical case to be made that, just as laws are more likely to be amended if they are passed under divided government or with large inter-chamber differences, laws passed under these conditions are more susceptible to revision via waivers Maltzman and Shipan (2008). However, in these data, we only observe a total of 8 enacting laws. That is, each of the waivers approved in this dataset revises one of eight laws in the three policy areas considered here. In comparison, in their analysis, Maltzman and Shipan include 262 laws. While it is worth asking whether laws enacted in more divisive environments may be more vulnerable to revision via waivers, the data here do not allow for sufficient variation to test these propositions. In contrast, the propositions discussed here about current conditions focus on conditions that change over time. Even though we are still limited by the small number of laws in the sample, by investigating conditions that change each year, we gain a bit more variation that makes it more feasible to assess these propositions.

simply adds *Chamber Differences* and *Coalition Change* to the model of Proposition 3. Second, following Berry et al. (2010a), the model "Coalition Gains and Losses" includes a spline knot at zero in *Coalition Change* to separately assess the impact of seat share gains for the original coalition and, on the other hand, seat share losses.³⁹

First, I revisit the marginal effect of *Distance*. The regression results for *Distance*, *Percent Governors*, and *Distance x Governors* are quite similar across these two models. I focus here on the Basic Durability model. As the results in Table 6.5 suggest, the marginal effect of *Distance* is similar to that observed in the prior model of Proposition 3. When the president is dissatisfied with existing law (*Pre Law* equals one), illustrated in Figure 6.9, the marginal effect of *Distance* increases as the share of governors in the president's party increases. When only 30 percent of governors are in the president's party, the marginal effect of *Distance* is -7.77.⁴⁰ However, as the share of governors in the president's party increases to 57 percent, the marginal effect of *Distance* increases to 1.02.⁴¹ Indeed, when 57 percent of governors or more are in the president's party, the marginal effect of *Distance* is positive and significant at the $\alpha = 0.05$ level and continues to increase as *Percent Governors* grows to its maximum observed value (62 percent). The core relationship observed in the analysis of Proposition 3 is also seen here: when he is dissatisfied with current law, the president grants more waivers as he moves further from Congress contingent on the share of governors in his party.

When *Pre Law* equals zero in the Basic Durability model, we observe a positive slope on the marginal effect of *Distance*, as Figure 6.10 shows. In contrast to the results under this condition in the model of Proposition 3, the marginal effect of *Distance* is significant

³⁹Please see Table 6.17 in the Appendix for reported policy and president fixed effects. In addition, please see Table 6.18 and Figure 6.18 in the Appendix for the regression results and marginal effects plot of *Distance* from a specification of the Simple Extension model that includes these law durability terms. As in the Basic Durability model here, the results are robust to inclusion of the law durability terms. Also please see Table 6.18 in the Appendix for a model that includes a variable that measures the age of the law. It is possible that "older" laws are more resistant to revision, as coalitions and stakeholders have coalesced around them. Berry et al. (2010a), for example, include this measure in their model of program durability. The results are very similar to those discussed here.

⁴⁰Standard error 2.17, p-value 0.000.

⁴¹Standard error 0.47, p-value 0.028.

Table 6.5: Assessing Durability

| | Basic Durability | Coalition Gains and Losses |
|----------------------------|---------------------|----------------------------|
| Distance | -19.63*** (4.61) | -18.73*** (4.75) |
| Percent Governors | -31.11*** (6.34) | -30.66*** (6.43) |
| Pre Law Passage | 0.05 (1.01) | 0.15 (1.03) |
| Distance x Governors | 32.56*** (8.06) | 32.10*** (8.10) |
| Distance x Prelaw | 2.10 (1.35) | 2.11 (1.35) |
| <i>Durability Measures</i> | | |
| Chamber Diff Current Yr | 16.31*** (4.12) | 16.61*** (3.86) |
| Coalition Change | -4.11** (1.47) | - |
| Coalition Losses | - | 6.35 (15.57) |
| Coalition Gains | - | -4.78* (2.10) |
| <i>National Controls</i> | | |
| Pres. Approval | -0.05*** (0.01) | -0.05*** (0.01) |
| Annual Mood | 0.19*** (0.04) | 0.19*** (0.03) |
| % GDP Change | -0.14*** (0.03) | -0.14*** (0.03) |
| <i>State Control</i> | | |
| Squire | -1.38 (1.65) | -1.38 (1.25) |
| Constant | 5.41 (3.38) | 4.95 (3.30) |
| Policy Fixed Effects | Yes | Yes |
| State Fixed Effects | Yes | Yes |
| President Fixed Effects | Yes | Yes |
| N | 2600 | 2600 |
| Log Likelihood | -1857.78 | -1857.55 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

at the $\alpha = 0.05$ level from the minimum observed value of *Percent Governors* through the point when 50 percent of governors are in the president's party. These results from the Basic Durability model suggest that perhaps the president's distance from Congress, contingent on the share of governors in his party, does in fact influence the number of waivers approved when the president is satisfied with current law. However, I hesitate to draw conclusions from these results, which are inconsistent with what we observe in the analysis of Proposition 3.⁴² Given the additional three variables compared to the model of Proposition 3, the Basic Durability model may be over-fit. As a result, we cannot be confident that the marginal effect of *Distance* is significantly different from zero when presidents are satisfied with existing law.

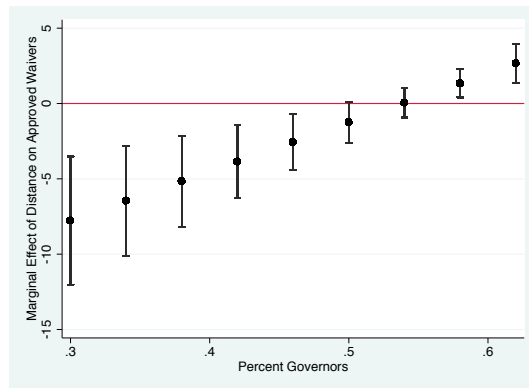


Figure 6.9: Basic Durability, *Pre Law*=1

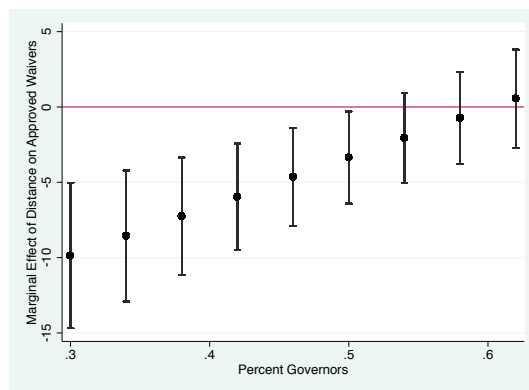


Figure 6.10: Basic Durability, *Pre Law*=0

⁴²Recall that in the analysis of Proposition 3, the marginal effect of *Distance* is not significant across the range of *Percent Governors* when *Pre Law* equals zero.

I now assess the results in terms of the law durability variables. Consistent with expectations, in both models we see a positive, statistically significant coefficient on *Chamber Differences*. Specifically, this coefficient is 16.31 in the Chained Interaction model and 16.61 in the Coalition Gains and Losses model.⁴³ Maltzman and Shipan (2008) find that major laws are less likely to be amended in Congress as disagreements between the House and Senate increase (262); here, we see that that as *Chamber Differences* increases, the president approves more waivers. These results imply that with large chamber differences, when Congress is less likely to approve amendments to existing legislation, the president approves more waivers. Of course, this does not constitute definitive evidence about the mechanism underlying the president's waiver strategy. But these results suggest, yet again, that the president's waiver strategy is related to his ability (or lack thereof) to shift existing policy via legislative revisions.

In addition, and as expected, in the Chained Interaction model the coefficient on *Coalition Change* is negative and significant, indicating that when the congressional coalition that originally enacted a law loses seat share in Congress, the president approves more waivers. These results are consistent with what Berry et al. (2010a) find in their analysis of program durability: as a congressional coalition weakens, laws become more vulnerable to revision. Here, we see a parallel phenomenon, where waivers are the method of revision rather than the reductions in program funding that Berry et al. (2010a) examine.

The Coalition Gains and Losses model also suggests that revision through waivers is related to the strength of the original enacting coalition in subsequent years. Here, *Coalition Gains* is negative (-4.78) and significant. This result indicates that when the enacting coalition gains seats in Congress, the president approves fewer waivers from that

⁴³Following Maltzman and Shipan (2008), I add an interaction between *Chamber Differences* and $\ln(\text{time})$ to the Simple Extension model, where time equals the number of years since law passage, to account for a non-proportional effect. Please see Table 6.18 for these regression results and Figure 6.19 in the Appendix for the marginal effects plot of *Chamber Differences*. Similar to the results reported here, the marginal effect of *Chamber Differences* is positive across the range of values of $\ln(\text{time})$. However, this marginal effect decreases and drops below conventional levels of significance as $\ln(\text{time})$ increases. I use the Simple Extension model as the baseline for the alternative specifications in the Appendix to avoid straining the available variation in the data as I incorporate this series of additional variables.

law. It may be the case that laws with strong coalitions in Congress are less vulnerable to revision via waivers, as the president may anticipate pushback from coalition members in authorizing subnational changes without congressional consent.

These results for *Chamber Differences* and *Coalition Change* indicate that the president approves more waivers when bicameral differences make amendments unlikely and when laws become vulnerable as enacting coalitions weaken, respectively. While not definitive, these results are consistent with the argument that presidents use waivers as tools of legislative revision.

6.5 Additional Implications

Here, I reflect briefly on several additional implications from the analysis in this chapter. First, across every unconditional model specified here, *Presidential Approval* is negative and statistically significant, consistent with expectations. Presidents with lower average annual approval ratings appear to grant more waivers. It may be the case that presidents with lower approval ratings have low political capital, weakening their ability to bargain with (and extract compromises from) Congress. Waivers may provide the president with a viable alternative for revising policy in this case. Indeed, Manna's framework suggests that we are more likely to see intergovernmental policymaking precisely when one actor has low "license" to act, such as a president with low approval ratings, and as a result attempts to "borrow strength" from actors at other levels of government, such as governors (2006).

Second, the coefficient on *Annual Mood* is positive and significant across all models specified here that include all policy areas. As expected, when the national policy mood is more in favor of government activism, the president approves more waivers. This relationship is not surprising, given that presidents often describe waivers as tools that allow them to enact reforms when other policymaking options appear foreclosed. Further, and consistent with expectations, it seems that when the policy mood is more liberal,

presidents are more willing to approve waivers that, by design, instigate innovation and experimentation.

Finally, as reported in the Appendix, across the models of Propositions 2 and 3 estimated here, *Alignment* fails to achieve statistical significance at conventional levels.⁴⁴ It appears that the common assumption in existing large-*n* work that presidents grant more waivers to governors in their party cannot adequately explain the president's role in this process. Further, results specific to Propositions 2 and 3 are robust to inclusion of this term. In all, this analysis suggests that the president's waiver strategy is fundamentally informed by the institutional constraints he faces.

6.6 Conclusion

This chapter opened with reactions from journalists who expressed alarm at the Obama administration's use of waivers to revise the No Child Left Behind Act of 2001 (NCLB). The attention paid to these waivers was perhaps justified – by the end of 2015, 43 states and D.C. were implementing substantial changes to NCLB via waivers encouraged and authorized under the administration's ESEA Flexibility initiative. While policymakers and members of the media alike recognize the president's ability to use waivers strategically, to this point we lack a theory and systematic investigation of the conditions under which presidents approve waivers.

There are a number of reasons that may explain why waivers have thus far not been examined as a valuable type of presidential policymaking tool. Policy gains through waivers are, by their nature, piecemeal. While an administration may authorize state-level changes through waivers, cooperation from a large share of governors is required to achieve anything approaching a national policy shift. Waivers are also not necessarily as permanent as legislation. For example, it appears that the passage of the Every Student Succeeds Act in December 2015 may release states from the conditions of their ESEA

⁴⁴Please see Tables 6.10, 6.12, and 6.15 in the Appendix.

Flexibility waivers.⁴⁵

Nonetheless, waivers offer presidents a viable policymaking alternative to the legislative process. The evidence in Chapter 2 suggested that presidents do in fact take advantage of the broad discretion granted to them under the waiver authorities discussed in this project. Further, the results in this chapter offer a systematic analysis of my core argument that presidents approve more waivers when they are far from Congress, contingent on the share of governors in their party. The analysis in this chapter primarily focuses on the marginal effect of *Distance* because, from the president’s perspective, a waiver strategy is initially attractive when he is ideologically far from Congress. As we have seen, this condition is not sufficient to justify a waiver strategy. Rather, when the president seeks an extra-legislative policymaking avenue, he pursues a waiver strategy if he can count on cooperation from enough governors in his party. That is, when the president’s reform efforts are frustrated by Congress, as the share of governors willing to implement state-level changes authorized by the president’s administration increases, a waiver strategy becomes a viable option for the president to shift policy in his preferred direction on a national scale and, in doing so, to claim credit for reform. To illustrate this conclusion, Table 6.6 summarizes the central results from this chapter.

| | <i>Distance</i> M.E. <i>Percent Governors = .30</i> | <i>Distance</i> M.E. <i>Percent Governors = .62</i> |
|---------------------------------------|--|--|
| Proposition 2 | -2.21 | 3.18*** |
| Proposition 3 | | |
| Simple Extension | -3.93* | 3.31*** |
| Chained Interaction, <i>Pre Law=1</i> | -3.72 | 3.24*** |
| Basic Durability | | |
| Chained Interaction, <i>Pre Law=1</i> | -7.77*** | 2.33*** |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 6.6: Summary of Findings, Marginal Effect of *Distance*

⁴⁵See, for example, the American Federation of Teachers’ discussion of the new law (2016).

For the unconditional models estimated using all three policy areas, Table 6.6 lists the marginal effect of *Distance* across the minimum and maximum observed values of *Percent Governors*. An important pattern is evident here. As the share of governors in the president's party increases from 30 to 62 percent, the marginal effect of *Distance* increases in each model. The marginal effect of *Distance* is negative (or, in the case of Proposition 2, not significantly different from zero) when only 30 percent of governors are in the president's party, but when 62 percent of governors are in the president's party, across all models in Table 6.6 the marginal effect of *Distance* on the number of approved waivers is positive and significant.⁴⁶

These results imply that the president's ability to successfully use a waiver strategy is dependent on the share of governors in his party. Even when the president is far from Congress, he approves fewer waivers when a small share of governors is in his party. Given the potential policy, opportunity, and reputation costs of a waiver strategy discussed in Chapter 4, these results are consistent with expectations. Without enough state-level allies, this strategy is not a wise alternative to legislation. On the other hand, when the president is far from Congress, he approves more waivers *when* a large share of governors is in his party. Again, this result is consistent with the theory developed in Chapter 4. When the president is ideologically distant from Congress and has little hope of achieving his policy goals through legislation, a waiver strategy appears to be a viable alternative when the president can rely on a large share of allies at the state level to implement reforms that, as a whole, advance his agenda on a national scale. This core relationship is not identical across each specification discussed in this chapter, but fundamentally, we see a similar story unfolding across each set of results.

While understanding the politics of waivers is important in its own right, this work makes a broader contribution. Grounded in a theory of presidential policymaking, this

⁴⁶Although the marginal effect of *Distance* is not significant at the $\alpha = 0.05$ level when 30 percent of governors are in the president's party under the condition *Pre Law* = 1 in the Proposition 3 Chained Reaction specification, this marginal effect is significant at the lenient $\alpha = 0.10$ level.

analysis provides an initial picture of when it is in the president's interest to authorize state-level deviations from federal law. This work takes a crucial step towards investigating how horizontal and vertical constraints shape presidential policymaking. In doing so, the analysis here contributes to the endeavor of identifying when and how presidents use subnational policymaking tools in pursuit of their own goals. As Hacker (2004) warned over a decade ago, this evidence suggests that the broad contours of presidential power outlined in the existing literature may be unduly narrow if we fail to recognize the president's ability to shift policy in his favor through subnational strategies.

Appendix

Table 6.7: Summary Statistics

| Variable | Mean | Std. Dev. | Min. | Max. |
|--|----------|-----------|--------|-----------|
| DV: Approved waivers | 0.669 | 2.162 | 0 | 39 |
| Pre Law Passage | 0.5 | 0.5 | 0 | 1 |
| Distance ⁴⁷ | 0.757 | 0.212 | 0.195 | 0.979 |
| Percent Governors | 0.453 | 0.096 | 0.3 | 0.62 |
| Distance x Perent Governors | 0.341 | 0.128 | 0.105 | 0.568 |
| Distance x Pre Law | 0.344 | 0.39 | 0 | 0.979 |
| Alignment ⁴⁸ | 0.453 | 0.498 | 0 | 1 |
| Squire ⁴⁹ | 0.189 | 0.123 | 0.027 | 0.659 |
| Citizen Ideology ⁵⁰ | 49.948 | 15.207 | 8.449 | 95.972 |
| Institutional Ideology, ADA/COPE ⁵¹ | 49.665 | 26.965 | 0 | 99.167 |
| Governor Party ⁵² | 0.48 | 0.495 | 0 | 1 |
| Mood ⁵³ | 62.168 | 3.379 | 56.342 | 66.727 |
| % GDP Change ⁵⁴ | 5.077 | 2.124 | -2 | 11.1 |
| Presidential Approval ⁵⁵ | 52.896 | 10.632 | 30.03 | 72.89 |
| President Election Year | 0.269 | 0.444 | 0 | 1 |
| State Per Capita Income (1000s) ⁵⁶ | 28.561 | 9.522 | 9.460 | 60.223 |
| State Population (1000s) ⁵⁷ | 5555.883 | 6139.318 | 13.804 | 37999.879 |
| Average Coalition Change ⁵⁸ | 0.043 | 0.049 | -0.03 | 0.133 |
| Chamber Differences Current Year ⁵⁹ | 0.084 | 0.021 | 0.038 | 0.113 |
| Reagan | 0.096 | 0.295 | 0 | 1 |
| George HW Bush | 0.096 | 0.295 | 0 | 1 |
| Clinton | 0.346 | 0.476 | 0 | 1 |
| George W. Bush | 0.308 | 0.462 | 0 | 1 |
| Obama | 0.154 | 0.361 | 0 | 1 |
| Education | 0.346 | 0.476 | 0 | 1 |
| Welfare | 0.25 | 0.433 | 0 | 1 |
| Medicaid | 0.404 | 0.491 | 0 | 1 |
| N | 2600 | | | |

⁴⁷Poole and Rosenthal (2015)

⁴⁸Klarner (2014); Council of State Governments (2013)

⁴⁹Squire (2012)

⁵⁰Berry et al. (2010b)

⁵¹Berry et al. (2010b)

⁵²Klarner (2014); Council of State Governments (2013)

⁵³Stimson (1999)

⁵⁴Bureau of Economic Analysis

⁵⁵Gallup (2015)

⁵⁶Klarner 2014; Bureau of Economic Analysis

⁵⁷Klarner 2014; Bureau of Economic Analysis

⁵⁸GovTrack (2016)

⁵⁹Binder (2003)

Table 6.8: Alternate Proposition 2 Specifications: No ESEA Flexibility and Divided Gov.

| | No Flex | Divided Government |
|------------------------------|--------------------|--------------------|
| Distance | -1.07 (5.54) | |
| Percent Governors | -8.30 (6.50) | 1.17 (6.22) |
| Distance x Governors | 11.65 (8.10) | |
| Divided Government | | 1.88 (3.98) |
| Divided Government x Percent | | -2.70 (7.42) |
| Pres. Approval | -0.04*** (0.01) | -0.02*** (0.01) |
| Annual Mood | 0.11*** (0.03) | 0.09** (0.03) |
| % GDP Change | -0.08** (0.03) | -0.00 (0.02) |
| Squire | -2.40 (1.73) | -1.77 (1.65) |
| Education | 0.69* (0.27) | 1.26*** (0.29) |
| Welfare | -0.18 (0.23) | -0.03 (0.39) |
| Reagan | -5.97*** (1.50) | -3.35*** (0.44) |
| GHWB | -5.72*** (1.32) | -3.05*** (0.36) |
| Clinton | -3.04*** (0.89) | -1.31*** (0.31) |
| GWB | -6.79*** (1.55) | -2.89*** (0.18) |
| Constant | -0.15 (3.00) | -4.60 (2.91) |
| N | 2400.00 | 2600.00 |
| Log Likelihood | -1620.63 | -1915.67 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

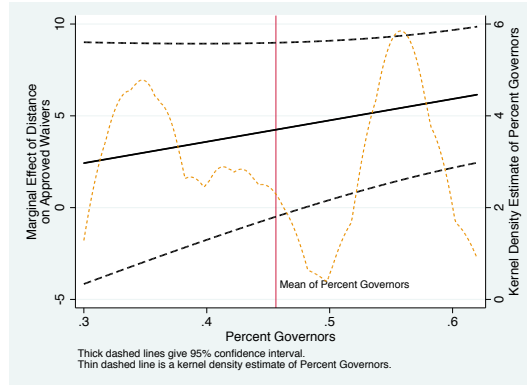


Figure 6.11: Proposition 2: No ESEA Flexibility

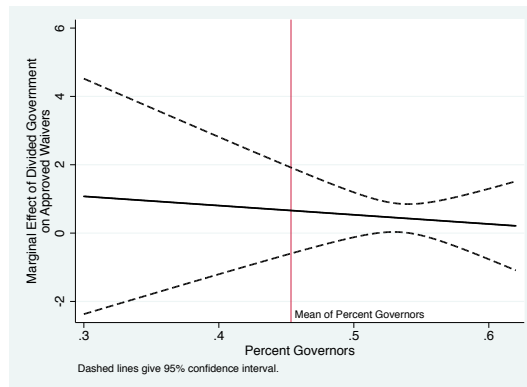


Figure 6.12: Proposition 2: Divided Government

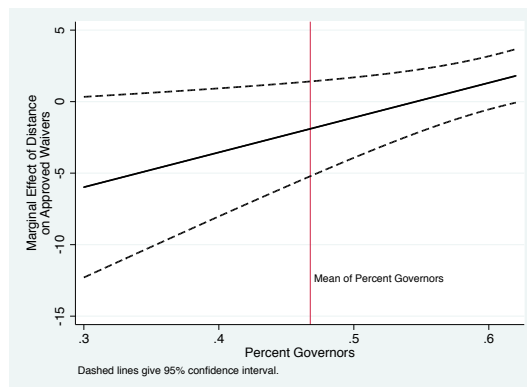


Figure 6.13: Proposition 2: Alternative Conditional Model

Table 6.9: Assessing Proposition 2: All Policy and President Fixed Effects Reported

| | All Policies <i>Unconditional</i> | Medicaid and Welfare <i>Unconditional</i> | Medicaid and Welfare <i>Conditional</i> |
|---------------------------|--------------------------------------|--|--|
| Distance | -7.27 (4.27) | -31.22*** (7.30) | -13.69* (6.24) |
| Percent Governors | -13.11* (5.87) | -40.32*** (9.03) | -18.10* (7.88) |
| Distance x Governors | 16.85* (7.65) | 58.10*** (12.30) | 22.75* (10.63) |
| Pres. Approval | -0.03*** (0.01) | -0.04*** (0.01) | -0.00 (0.01) |
| Annual Mood | 0.13*** (0.03) | 0.07 (0.04) | 0.10 (0.05) |
| % GDP Change | -0.08** (0.02) | -0.19** (0.06) | -0.09 (0.05) |
| Squire | -1.53 (1.57) | 0.66 (2.67) | - |
| Submissions (Natural Log) | - | - | 0.75*** (0.11) |
| Education | 1.33*** (0.27) | | |
| Welfare | -0.01 (0.35) | 0.88*** (0.19) | 0.29 (0.22) |
| Reagan | -3.04*** (0.47) | 1.81 (0.96) | 1.62* (0.74) |
| GHWB | -3.08*** (0.36) | 1.47* (0.73) | 0.78 (0.63) |
| Clinton | -1.09*** (0.19) | 1.95*** (0.53) | 0.43 (0.47) |
| GWB | -3.84*** (0.28) | 0.48 (0.80) | 0.94 (0.65) |
| Constant | 0.86 (2.66) | 15.13*** (4.55) | 3.68 (4.90) |
| State Fixed Effects | Yes | Yes | No |
| N | 2600.00 | 1700.00 | 238.00 |
| Log Likelihood | -1903.15 | -622.72 | -228.15 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 6.10: Alternate Proposition 2 Specifications: Alignment and Additional Controls

| | Alignment All Policies | Additional Controls All Policies | Additional Controls Medicaid and Welfare |
|----------------------|---------------------------|-------------------------------------|---|
| Distance | -7.30 (4.29) | -8.09 (4.26) | -29.48*** (7.46) |
| Percent Governors | -13.25* (5.90) | -16.61** (6.02) | -40.29*** (9.36) |
| Distance x Governors | 16.94* (7.67) | 19.44* (7.71) | 55.79*** (12.42) |
| Pres. Approval | -0.03*** (0.01) | -0.04*** (0.01) | -0.04*** (0.01) |
| Alignment | 0.10 (0.08) | 0.10 (0.08) | 0.28 (0.14) |
| Annual Mood | 0.13*** (0.03) | 0.16*** (0.04) | 0.11* (0.05) |
| % GDP Change | -0.08** (0.02) | -0.07* (0.03) | -0.18** (0.06) |
| Election | | -0.23 (0.12) | 0.24 (0.16) |
| Squire | -1.50 (1.61) | -1.95 (1.64) | 1.04 (2.63) |
| Citizen Ideology | - | 0.01 (0.01) | 0.01 (0.02) |
| Income (1000s) | - | -0.05** (0.02) | -0.11* (0.05) |
| State Pop. (1000s) | - | -0.00** (0.00) | -0.00 (0.00) |
| Education | 1.32*** (0.27) | 1.28*** (0.26) | - |
| Welfare | -0.01 (0.35) | -0.02 (0.34) | 0.81*** (0.18) |
| Reagan | -3.04*** (0.47) | -5.12*** (0.74) | -1.51 (1.31) |
| GHWB | -3.08*** (0.36) | -4.95*** (0.66) | -1.50 (1.14) |
| Clinton | -1.09*** (0.19) | -2.35*** (0.42) | 0.04 (0.75) |
| GWB | -3.85*** (0.28) | -4.72*** (0.37) | -0.51 (0.80) |
| Constant | 0.93 (2.69) | 2.88 (2.82) | 16.45*** (4.85) |
| N | 2600.00 | 2600.00 | 1700.00 |
| Log Likelihood | -1902.39 | -1893.33 | -615.81 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 6.11: Alternate Proposition 2 Specifications, Unconditional Model

| | GW Bush | Alternate Pres. Dummies | No State FE | No PA 1995 ED |
|----------------------|---------------------|----------------------------|--------------------|--------------------|
| Distance | -22.86*** (3.99) | -8.02 (4.59) | -8.71 (5.02) | -6.23 (4.14) |
| Percent Governors | -31.12*** (5.79) | -13.83* (6.23) | -14.51* (6.75) | -12.03* (5.69) |
| Distance x Governors | 43.57*** (7.46) | 18.34* (8.28) | 19.48* (9.15) | 14.72* (7.42) |
| Pres. Approval | -0.05*** (0.01) | -0.03*** (0.01) | -0.03*** (0.01) | -0.03*** (0.01) |
| Annual Mood | 0.08** (0.03) | 0.12** (0.04) | 0.11** (0.04) | 0.14*** (0.03) |
| % GDP Change | -0.18*** (0.02) | -0.09** (0.03) | -0.10** (0.04) | -0.06** (0.02) |
| Squire | -0.77 (1.44) | -1.53 (1.57) | 2.24*** (0.36) | -1.27 (1.40) |
| Education | 1.69*** (0.29) | 1.31*** (0.27) | 1.65*** (0.37) | 1.29*** (0.27) |
| Welfare | -0.52 (0.29) | -0.00 (0.34) | 0.01 (0.28) | -0.02 (0.25) |
| Reagan | - | -2.96*** (0.49) | -2.59*** (0.63) | -3.26*** (0.44) |
| GHWB | - | -2.98*** (0.37) | -2.54*** (0.54) | -3.27*** (0.32) |
| Clinton | - | - | -0.70* (0.28) | -1.17*** (0.19) |
| GWB | -2.60*** | - | -3.60*** | -3.84*** |
| GWB1 | - | -3.84*** (0.32) | - | - |
| GWB2 | - | -3.78*** (0.33) | - | - |
| Clinton1 | - | -1.13*** (0.21) | - | - |
| Clinton2 | - | -1.01*** (0.25) | - | - |
| Constant | 14.22*** (2.33) | 2.16 (3.41) | 1.67 (3.59) | -0.73 (2.30) |
| N | 2600.00 | 2600.00 | 2600.00 | 2599.00 |
| Log Likelihood | -1943.12 | -1902.99 | -1972.21 | -1892.05 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 6.12: Proposition 2, Conditional Model Alternative Specifications

| | With Align | State FE | Additional Controls | OLS |
|---------------------------|-------------------|-------------------|---------------------|--------------------|
| Distance | -14.81* (6.37) | -13.69* (6.24) | -13.28* (6.12) | -9.85* (4.40) |
| Percent Governors | -19.65* (8.05) | -18.10* (7.88) | -20.16** (7.76) | -12.71* (5.54) |
| Distance x Governors | 24.83* (10.86) | 22.75* (10.63) | 24.32* (9.96) | 16.45* (7.55) |
| Submissions (Natural Log) | 0.76*** (0.11) | 0.75*** (0.11) | 0.69*** (0.15) | 0.68*** (0.17) |
| Alignment | 0.17 (0.14) | – | – | – |
| Pres. Approval | -0.00 (0.01) | -0.00 (0.01) | -0.01 (0.01) | 0.00 (0.01) |
| Annual Mood | 0.11* (0.05) | 0.10 (0.05) | 0.14** (0.05) | 0.07* (0.03) |
| % GDP Change | -0.09 (0.05) | -0.09 (0.05) | -0.07 (0.05) | -0.06 (0.04) |
| Welfare | 0.30 (0.22) | 0.29 (0.22) | 0.29 (0.23) | 0.14 (0.11) |
| Reagan | 1.64* (0.74) | 1.62* (0.74) | -0.37 (1.13) | 0.00 (.) |
| GHWB | 0.78 (0.63) | 0.78 (0.63) | -1.07 (0.97) | -0.68*** (0.20) |
| Clinton | 0.47 (0.46) | 0.43 (0.47) | -0.65 (0.65) | -0.97** (0.30) |
| GWB | 0.91 (0.65) | 0.94 (0.65) | -0.19 (0.80) | -0.71* (0.34) |
| Obama | – | – | – | -1.32** (0.45) |
| Election | – | – | -0.30 (0.16) | – |
| Squire | – | – | 1.41*** (0.41) | – |
| Citizen Ideology | – | – | 0.00 (0.01) | – |
| Income (1000s) | – | – | -0.05* (0.02) | – |
| Constant | 4.17 (5.03) | 3.68 (4.90) | 4.16 (4.79) | 5.09 (3.18) |
| N | 238.00 | 238.00 | 238.00 | 238.00 |
| Log Likelihood | -227.63 | -228.15 | -223.46 | -238.98 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 6.13: Assessing Proposition 3: Fixed Effects Reported

| | Simple Extension | Proposition 3 |
|----------------------|---------------------|---------------------|
| Distance | -10.71* (4.17) | -10.76* (4.19) |
| Percent Governors | -19.83*** (5.64) | -19.27*** (5.64) |
| Distance x Governors | 22.62** (7.51) | 21.75** (7.59) |
| Pre Law Passage | 1.59*** (0.16) | 1.20 (1.06) |
| Distance x Prelaw | – | 0.52 (1.45) |
| Pres. Approval | -0.04*** (0.01) | -0.04*** (0.01) |
| Annual Mood | 0.22*** (0.03) | 0.22*** (0.03) |
| % GDP Change | -0.05* (0.03) | -0.05* (0.03) |
| Squire | -1.52 (1.63) | -1.53 (1.63) |
| Education | 2.43*** (0.27) | 2.44*** (0.27) |
| Welfare | -0.12 (0.30) | -0.10 (0.29) |
| Reagan | -1.89*** (0.46) | -1.93*** (0.47) |
| GHWB | -0.72* (0.37) | -0.71 (0.37) |
| Clinton | 0.39 (0.23) | 0.38 (0.23) |
| GWB | -2.57*** (0.27) | -2.50*** (0.37) |
| Constant | -3.60 (2.62) | -3.71 (2.61) |
| State Fixed Effects | Yes | Yes |
| N | 2600 | 2600 |
| Log Likelihood | -1869.14 | -1869.06 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 6.14: Assessing Proposition 3: Alternative Pre Law Measurement

| | Simple Extension | Proposition 3 |
|------------------------|--------------------|--------------------|
| Distance | -8.13 (4.20) | -4.20 (4.29) |
| Percent Governors | -14.93** (5.73) | -18.28** (5.58) |
| Distance x Percent | 18.47* (7.54) | 22.77** (7.45) |
| Unsatisfied | 1.25*** (0.16) | 6.51*** (1.21) |
| Distance x Unsatisfied | - | -6.25*** (1.41) |
| Pres. Approval | -0.04*** (0.01) | -0.03*** (0.01) |
| Annual Mood | 0.18*** (0.03) | 0.18*** (0.03) |
| % GDP Change | -0.07** (0.03) | -0.06* (0.03) |
| Squire | -1.77 (1.55) | -1.67 (1.56) |
| Education | 1.56*** (0.26) | 1.21*** (0.27) |
| Welfare | 0.23 (0.33) | -0.02 (0.32) |
| Reagan | -3.10*** (0.46) | -3.21*** (0.45) |
| GHWB | -2.04*** (0.35) | -2.20*** (0.36) |
| Clinton | -0.97*** (0.19) | -1.08*** (0.19) |
| GWB | -3.07*** (0.28) | -3.64*** (0.31) |
| Constant | -2.35 (2.69) | -6.00* (2.74) |
| N | 2600.00 | 2600.00 |
| Log Likelihood | -1880.00 | -1873.85 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

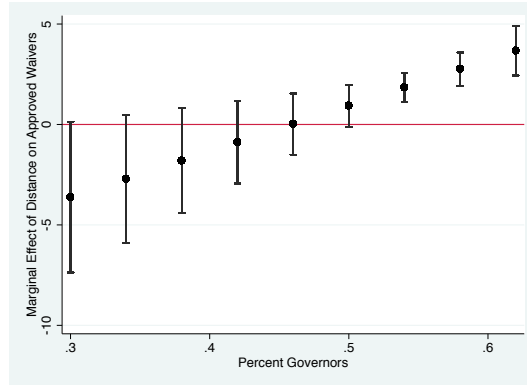


Figure 6.14: Unsatisfied = 1, Proposition 3, Alternative *Pre Law* Coding

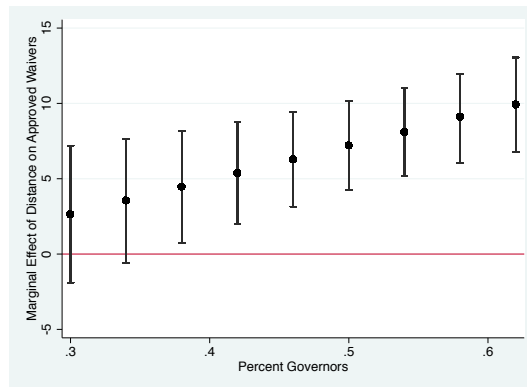


Figure 6.15: Unsatisfied = 0, Proposition 3, Alternative *Pre Law* Coding

$$\begin{aligned}
 \text{Waivers Approved}_{ijt} = & \beta_0 + \beta_1 \text{Distance} + \beta_2 \text{Percent Governors} + \beta_3 \text{Distance} \times \text{Governors} \\
 & + \beta_4 \text{Approval} + \beta_5 \text{GDP Change} + \beta_6 \text{Mood} \\
 & + \beta_7 \text{PreLaw} + \beta_8 \text{Distance} \times \text{Pre Law} \\
 & + \beta_9 \text{Governors} \times \text{Pre Law} + \beta_{10} \text{Distance} \times \text{Pre Law} \times \text{Percent} \\
 & + \beta_{11} \text{Squire} + Z_t \text{President} + W_j \text{State} + U_j \text{Policy} + \varepsilon_{ijt} \quad (6.3)
 \end{aligned}$$

Table 6.15: Proposition 3, With Alignment

| | Simple Extension | Proposition 3 |
|----------------------|---------------------|---------------------|
| Distance | -10.75** (4.17) | -10.80** (4.19) |
| Percent Governors | -20.01*** (5.64) | -19.50*** (5.63) |
| Distance x Governors | 22.73** (7.51) | 21.93** (7.58) |
| Pre Law Passage | 1.59*** (0.16) | 1.24 (1.05) |
| Distance x Prelaw | – | 0.47 (1.44) |
| Pres. Approval | -0.04*** (0.01) | -0.04*** (0.01) |
| Alignment | 0.11 (0.08) | 0.11 (0.08) |
| Annual Mood | 0.22*** (0.03) | 0.22*** (0.03) |
| % GDP Change | -0.06* (0.03) | -0.05* (0.03) |
| Squire | -1.46 (1.68) | -1.47 (1.68) |
| Education | 2.41*** (0.27) | 2.43*** (0.26) |
| Welfare | -0.13 (0.30) | -0.11 (0.29) |
| Reagan | -1.90*** (0.47) | -1.94*** (0.47) |
| GHWB | -0.72* (0.37) | -0.71 (0.37) |
| Clinton | 0.39 (0.23) | 0.38 (0.23) |
| GWB | -2.57*** (0.27) | -2.51*** (0.37) |
| Constant | -3.53 (2.63) | -3.63 (2.62) |
| N | 2600.00 | 2600.00 |
| Log Likelihood | -1868.19 | -1868.12 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 6.16: Alternative Specification: Proposition 3

| | Fully Interactive Model |
|-----------------------------|-------------------------|
| Prelaw x Distance x Percent | -2.38 (26.32) |
| Prelaw x Percent | 6.04 (22.56) |
| Distance | -16.24 (9.32) |
| Percent Governors | -33.73 (20.46) |
| Pre Law Passage | 0.66 (9.56) |
| Distance x Percent | 37.56 (22.83) |
| Distance x Prelaw | -1.18 (11.68) |
| Pres. Approval | -0.04*** (0.01) |
| Annual Mood | 0.22*** (0.04) |
| % GDP Change | -0.07** (0.03) |
| Squire | -1.55 (1.63) |
| Education | 2.34*** (0.29) |
| Welfare | -0.06 (0.29) |
| Reagan | -1.62** (0.55) |
| GHWB | -0.80* (0.39) |
| Clinton | 0.35 (0.28) |
| GWB | -2.67*** (0.38) |
| Constant | 1.78 (8.55) |
| N | 2600.00 |
| Log Likelihood | -1867.93 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

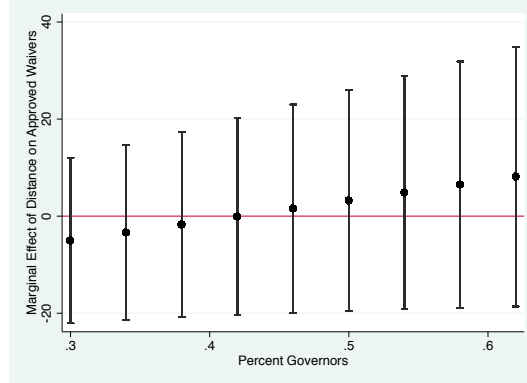


Figure 6.16: Triple Interaction, Prelaw=1

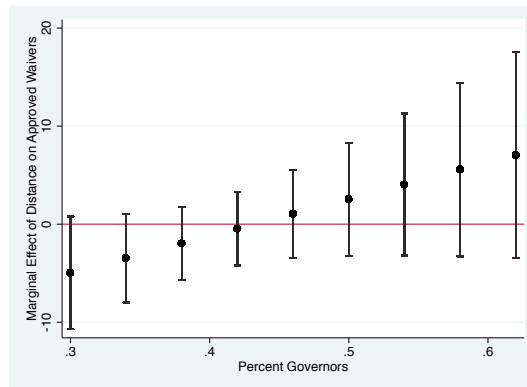


Figure 6.17: Triple Interaction, Prelaw=0

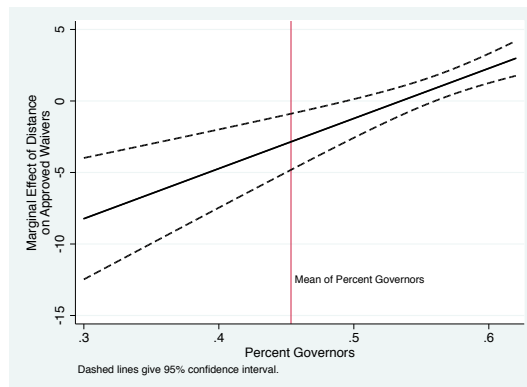


Figure 6.18: Simple Extension with Durability Measures

Table 6.17: Durability Models with Fixed Effects Reported

| | Chained Interaction | Coalition Gains and Losses |
|-------------------------|---------------------|----------------------------|
| Distance | -19.63*** (4.61) | -18.73*** (4.75) |
| Percent Governors | -31.11*** (6.34) | -30.66*** (6.43) |
| Pre Law Passage | 0.05 (1.01) | 0.15 (1.03) |
| Distance x Governors | 32.56*** (8.06) | 32.10*** (8.10) |
| Distance x Prelaw | 2.10 (1.35) | 2.11 (1.35) |
| Chamber Diff Current Yr | 16.31*** (4.12) | 16.61*** (3.86) |
| Coalition Change | -4.11** (1.47) | - |
| Coalition Losses | - | 6.35 (15.57) |
| Coalition Gains | - | -4.78* (2.10) |
| Pres. Approval | -0.05*** (0.01) | -0.05*** (0.01) |
| Annual Mood | 0.19*** (0.04) | 0.19*** (0.03) |
| % GDP Change | -0.14*** (0.03) | -0.14*** (0.03) |
| Squire | -1.38 (1.65) | -1.38 (1.25) |
| Education | 2.41*** (0.26) | 2.48*** (0.28) |
| Welfare | -0.07 (0.29) | -0.07 (0.29) |
| Reagan | -0.30 (0.61) | -0.65 (0.79) |
| GHWB | 0.16 (0.41) | 0.02 (0.51) |
| Clinton | 0.96*** (0.28) | 0.81* (0.38) |
| GWB | -0.64 (0.52) | -1.04 (0.79) |
| Constant | 5.41 (3.38) | 4.95 (3.30) |
| State Fixed Effects | Yes | Yes |
| N | 2600 | 2600 |
| Log Likelihood | -1857.78 | -1857.55 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 6.18: Alternative Durability Specifications, Proposition 3

| | Simple Extension | ln(t) Interaction | Law Age |
|-------------------------|---------------------|---------------------|---------------------|
| Distance | -18.74*** (4.53) | -17.91*** (4.57) | -18.87*** (4.53) |
| Percent Governors | -32.33*** (6.33) | -32.98*** (6.41) | -34.06*** (6.52) |
| Pre Law Passage | 1.62*** (0.17) | 2.34*** (0.37) | 2.14*** (0.44) |
| Distance x Governors | 35.03*** (7.97) | 33.38*** (8.01) | 35.40*** (7.92) |
| Chamber Differences | 15.07*** (4.06) | 23.25** (7.42) | 14.46*** (3.73) |
| Coalition Change | -3.71** (1.40) | -3.39 (1.85) | -4.00* (1.83) |
| Natural Log of Law Age | - | 0.06 (0.38) | - |
| ln(time) x Chamber Diff | - | -5.38 (4.71) | - |
| Law Age | - | - | -0.07 (0.06) |
| Pres. Approval | -0.04*** (0.01) | -0.05*** (0.01) | -0.05*** (0.01) |
| Annual Mood | 0.18*** (0.04) | 0.24*** (0.05) | 0.23*** (0.05) |
| % GDP Change | -0.14*** (0.03) | -0.10** (0.04) | -0.12** (0.04) |
| Squire | -1.35 (1.66) | -1.39 (1.25) | -1.35 (1.25) |
| Education | 2.37*** (0.26) | 2.73*** (0.30) | 2.63*** (0.32) |
| Welfare | -0.17 (0.29) | 0.01 (0.29) | -0.01 (0.30) |
| Reagan | -0.27 (0.61) | -0.21 (0.61) | 0.70 (0.94) |
| GHWB | 0.06 (0.41) | -0.06 (0.47) | -0.15 (0.49) |
| Clinton | 0.95*** (0.29) | 0.99** (0.32) | 0.89** (0.32) |
| GWB | -1.07* (0.44) | -1.04* (0.46) | -1.18* (0.47) |
| Constant | 5.01 (3.34) | 0.68 (3.68) | 3.17 (3.46) |
| N | 2600.00 | 2600.00 | 2600.00 |
| Log Likelihood | -1858.99 | -1856.21 | -1858.09 |

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

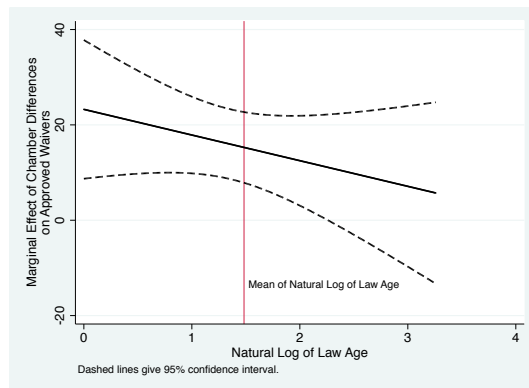


Figure 6.19: Marginal Effect of Chamber Differences

CHAPTER VII

Conclusion

When asked what his "biggest mistake" was in his nearly seven-year tenure as Secretary of Education from 2009 through 2016, Secretary Arne Duncan answered:

One huge mistake was we spent a year and a half[,] two years trying to finish No Child Left Behind in 2009 and '10 and '11. We spent hundreds and hundreds of hours. And we knew the law was hurting children and hurting teachers. And we would have been crucified by Congress, saying we bypassed them if we hadn't spent that time, and so we thought we were doing the right thing. So at the end of the day, that was a big mistake. We failed....We let schools, we let kids suffer for another year. So, in hindsight, we should have done waivers earlier (Klein 2015).

Here, Duncan describes the Obama administration's failed attempt to work with Congress (hundreds and hundreds of hours) to reform K-12 education, in contrast to the administration's successful waiver strategy that dramatically revised implementation of the No Child Left Behind Act. Indeed, it is remarkable that of all the decisions Duncan made as one of the longest-serving Secretaries of Education, he identifies the decision not to pursue a waiver strategy "earlier" as his biggest mistake. This observation underscores the powerful policymaking opportunities available to presidents through a waiver strategy. Despite presidents' uses of waivers in welfare, Medicaid, and K-12 education, to this point we lack a thorough understanding of when and how presidents pursue this strategy. This dissertation has addressed these questions.

Specifically, I have argued that presidents use waivers strategically based on con-

straints imposed both by Congress and by the nation's governors. In this chapter, I begin by summarizing the central argument and findings about the conditions under which presidents exercise waiver authority. I then discuss the contributions this analysis makes and, further, discuss the implications for our understanding of presidential power. Finally, I propose several extensions of this work that continue to investigate how and when presidents use waivers.

7.1 Summary

In Chapter 1, I argue that the president pursues a waiver strategy under specific conditions structured by his institutional environment. To ground the subsequent analysis in a concrete understanding of waivers as policy tools, I offer a simple definition of waivers: exemptions from federal law granted by the relevant secretary. I then explain the types of waivers that I focus on in this project: welfare, Medicaid, and K-12 education waivers submitted and approved from 1984 through 2012. In addition, I summarize the types of policies implemented through these waivers.

With this groundwork in place, I preview the central argument that this project develops: presidents are motivated to use a waiver strategy when they are ideologically far from Congress, contingent on the share of governors in their party. This argument has the potential to make an important contribution to our understanding of presidential power. In particular, to explain the conditions under which presidents are motivated to use a waiver strategy, I consider vertical constraints imposed by the nation's governors *in addition to* the horizontal constraint imposed by Congress that the literature typically focuses on.

Next, Chapters 2 and 3 set the stage for the theory that I subsequently develop. In Chapter 2, I explore the nature of waiver authority across the policy areas considered here. I begin by identifying a critical similarity across the two statutes that govern wel-

fare, Medicaid, and K-12 education waivers.¹ Specifically, both statutes grant the relevant secretary broad discretion in inviting, reviewing, and approving waivers. The nature of waiver authority, then, is consequential in two ways. First, as the evidence discussed throughout the remainder of the chapter suggests, presidents can and have used waivers to effectively revise existing federal law at the subnational level *without* consent or binding oversight from Congress. Second, while presidents retain a surprising degree of authority over this strategy, including when and how to use it, waivers do *not* constitute unilateral action. Rather, governors must initially submit waiver applications. From here, they must be willing and able to engage in the review process and, if approved by the secretary, implement program changes via waivers. For presidents to use waiver authority to pursue national-scale shifts in existing federal policy, they must be able to rely on a critical mass of governors to cooperate with this strategy.

The remainder of Chapter 2 is devoted to assessing relevant qualitative evidence about how and when presidents use waivers. The evidence in Chapter 2 overwhelmingly suggests that presidents and their administrations approach waivers as valuable policymaking tools. Further, this qualitative analysis provides important insight into the conditions under which presidents grant waivers, laying the groundwork for subsequent development of a theory of presidential policymaking through waivers.

In Chapter 3, I introduce an original dataset of submitted and approved waivers in welfare, Medicaid, and K-12 education from 1984 through 2012. The data introduced here improve on existing large-*n* analyses of waivers in three important ways. First, the data include observations from three comparable yet different policy areas, allowing for more generalizable results than previous work that focuses on one policy area at a time. Second, the observations here cover a longer time span than existing work, providing for valuable variation on factors relevant to the president's institutional environment. Third,

¹As discussed, Section 1115(a) of the Social Security Act Amendments of 1962 governs welfare and Medicaid waivers. Section 9401 in the ESEA (initially Section 14401 in the 1994 reauthorization of EASA) governs K-12 waivers.

existing work on waivers does not consider the submission stage of this process.

Existing models of waivers consign the president to a reactive role and assume that he simply approves more waivers for governors in his party. In the latter half of Chapter 3, I directly address this potential counter-narrative to my argument. Specifically, I assess the validity of the existing framework using the dataset described above, which provides a fair test of the common assumption about the president's role. I find weak and inconsistent evidence that governors in the president's party submit more waivers, and I find no evidence that presidents approve more waivers for governors in their party. At this point, we have sufficient reason to suspect that existing models of waivers fail to capture the dynamic that motivates presidents to implement a waiver strategy.

Chapter 4 then develops a theory of presidential policymaking through waivers. I argue that presidents are initially motivated to pursue a waiver strategy when they anticipate difficulty moving their preferred legislation through Congress. However, this condition is not sufficient to spur the president to pursue a waiver strategy. Given that cooperation from governors is necessary for the president to implement widespread policy changes through a waiver strategy, the president must be able to rely on enough governors who are willing to participate in the waiver process. In particular, I argue that governors in the president's party are the president's most reliable allies. Ultimately, I argue that presidents use a waiver strategy when they are ideologically far from Congress, contingent on the share of governors in their party. Based on this theory, I suggest three propositions that I examine in Chapters 5 and 6.

In Chapter 5, I examine Proposition 1, which states that governors submit more waiver applications when they anticipate that presidents are motivated to approve these applications. The logic behind Proposition 1 is as follows: according to my theory, the president is motivated to pursue a waiver strategy when he is far from Congress provided that he can rely on enough state allies to implement his preferred policy reforms. Under these conditions, he should invite and encourage governors to submit waiver applica-

tions, and in turn, governors should respond by submitting applications. When the president is motivated to approve waivers, developing and submitting a waiver application is a worthwhile investment for governors. In my analysis of Proposition 1, I find evidence that, indeed, governors submit more waiver applications when the president is far from Congress *as* the share of governors in the president's party increases.

While this evidence is consistent with theoretical expectations, it leaves open the question of when presidents approve waivers. Chapter 6 investigates this question through empirical tests of Propositions 2 and 3. Proposition 2 offers the central test of my theory of presidential policymaking through waivers. Here, I find compelling evidence, consistent with expectations, that the president approves more waivers when he is ideologically far from Congress *contingent on* the share of governors in his party. Further, in the analysis of Proposition 3, I find that the marginal effect of *Distance* is also contingent on whether the president is dissatisfied with existing law. This analysis is consistent with qualitative evidence in Chapter 2 which suggests that presidents implement a waiver strategy when they inherit laws with which they disagree. Here, we find further evidence consistent with the central argument: when presidents are dissatisfied with current law, they approve more waivers when they are far from Congress *when* enough governors are in their party, making it feasible for the president to authorize national-scale reform via waivers. In all, this analysis provides support for the central argument that the president implements a waiver strategy in response to horizontal *and* vertical constraints in his institutional environment.

7.2 Contributions

This dissertation makes three contributions; I describe each in turn here. First, the theory of presidential policymaking through waivers that I develop provides a framework for more theoretical and empirical work on the president's use of subnational policymaking strategies. The concept of executive federalism, introduced by Gais and Fossett

(2005), has for too long substituted for theory about this type of presidential authority. By identifying the incentives that motivate the president to pursue a waiver strategy, as well as the constraints that shape his use of this strategy, I create a starting point for subsequent work that examines how the president uses different types of waivers, as well as other types of subnational policymaking tools.

Second, this theory (and the evidence in support of it) is more broadly relevant for our understanding of presidential power. As discussed in Chapter 1, scholarship typically focuses on national-level strategies that presidents use to implement their goals. As a result, existing work primarily considers the horizontal constraints placed on the president through the system of checks and balances. One relationship in particular plays a prominent role in these analyses – that is, of course, the constraint that Congress places on the president’s ability to act. In this dissertation, I adapt this approach and add a vertical dimension that is often not considered consequential in explaining presidential policymaking. Here, I am referring to the constraint that the nation’s governors place on the president’s ability to pursue his policy goals at the subnational level. In other words, this analysis provides a framework for understanding how presidents exercise power given the constraints imposed by the separation of powers and, simultaneously, the federal system’s division of authority across different levels of government. While generally omitted from discussions of presidential power, the theory and evidence here suggest that intergovernmental relationships may indeed shape the contours of executive authority, particularly when the president seeks subnational alternatives from a legislative strategy.

The other side of the coin is equally interesting to examine. That is, this theory suggests that presidents do, under certain conditions, see governors as valuable allies as presidents seek to implement their policy preferences. And when enough governors are willing to cooperate, it may in fact be the case that these intergovernmental relationships open up new avenues through which the president exercises authority. It appears from

this analysis that this is indeed the case with waivers. As I discuss below, many questions remain about when and how the president uses this strategy, but at this point, the theory and the empirical evidence suggest that we may be missing important ways in which presidents exercise their authority if we fail to recognize the possibilities that subnational policymaking opens up for the president.

Third, the original dataset introduced in this dissertation will be potentially useful beyond this project as we continue to explore presidents' policymaking alternatives, and in particular, how the president's use of waivers fits in with other strategies. For example, we may want to examine whether presidents use waivers instead of (or in tandem with) other extra-legislative strategies, such as executive orders and memos. This dataset of submitted and approved waivers will at the least be a helpful starting point for this type of analysis. The variation in this dataset over time and across policy areas will allow us to continue to develop and test generalizable theories of presidential policymaking.

In addition, given the initial evidence in Chapter 6 that some conditions that predict law durability also predict waiver approvals, we should perhaps think further about how the president's use of waivers impacts law durability. This type of analysis may require us to consider waivers in relation to different legislative revisions, such as amendments and funding reductions. For example, perhaps under certain conditions presidents use waivers rather than trying to pursue amendments to existing law. Or, perhaps presidents reduce funding by encouraging states to adopt particular types of program changes via waivers; this potential use of waivers echoes Hacker's narrative of retrenchment via subterranean policy change (2004). Whether we observe these potential substitution effects remains an open question; the original dataset introduced here will be helpful in exploring these possibilities.

7.3 Additional Implications

This work has three additional implications for our understanding of legislative revision, state-level policy diffusion, and the evolution of presidential power. I address each in turn.

7.3.1 Legislative Revision

First, we have seen that waivers are particularly valuable tools that presidents use to revise existing laws. If it is the case that presidents can implement their preferred policy changes without revising legislation, as the qualitative and quantitative work here suggests, then presidents may in fact delay legislative revision of a law. Consider the case of welfare reform under Clinton: by inviting states to apply for waivers and claiming credit for welfare reform, President Clinton was able to, at least in part, deliver on his campaign promise of reforming welfare without actually signing a new law.

Indeed, presidents may prefer to use waivers, at least temporarily, rather than sign a law that only marginally satisfies their preferences. This may provide something of a safety valve, allowing them to defer the difficult business of re-negotiating a law until they anticipate an easier or more friendly policymaking environment. In the case of Obama's ESEA Flexibility initiative, for example, waivers allowed states to avoid falling out of compliance with NCLB's unattainable requirement that all students be proficient in math and reading by 2014. At the same time, this strategy perhaps allowed the Obama administration to delay committing substantial resources to ESEA reauthorization until a more opportune moment presented itself.

However, this tactic is not without costs. If a law is unpopular and, more importantly, has failed to deliver on its policy promises, should the president address it whether or not doing so is politically convenient for him? From a normative standpoint, it is important to ask whether waiver authority allows presidents to sidestep the responsibility to work with Congress when a law is clearly not working, as was the case with NCLB.

As mentioned above, from an empirical standpoint, we should also consider whether a president's use of waivers interacts with (or perhaps substitutes for) other types of legislative revision. If an administration is pursuing a waiver strategy, for example, we might ask whether the likelihood of congressional amendments or program funding changes. On the one hand, the president's use of waivers might weaken an existing law and make imminent large-scale revision more likely. At the same time, however, use of waivers may signal the president has opted for this strategy as a temporary solution in lieu of a legislative re-write and may allow members of Congress to similarly shift their attention to other issues.

7.3.2 State-Level Policy Diffusion

Next, the president's use of waivers may have an important implication for the nature of state-level policy diffusion. Some have observed that state-level policies implemented via waivers can reflect the priorities of the federal government (Arsneault 2000; Thompson 2012). The analysis here suggests the specific conditions under which this might be the case and, further, suggests that in the case of waivers at least, we should be particularly attentive to how the president's priorities shape state innovation and policymaking. The analysis in Chapter 5 suggests that governors submit waivers under the conditions when presidents are willing to approve waivers. An implication here (and supported in Chapter 6) is that the waivers approved by the administration, in turn, facilitate implementation of the president's agenda.

Not only the timing but also the nature of policy innovations implemented through waivers, then, seem highly influenced by the administration's agenda and priorities. The analysis here suggests that in the case of waivers, we should ask how the president's priorities shape innovation across the subnational environment. In particular, we may expect more uniformity in policy innovation than we would otherwise anticipate.

7.3.3 Executive Authority

Here, I reflect on a broader question about executive authority. Specifically, should the president's use of waivers add to our fears about runaway presidential power, unconstrained by the institutions meant to check the president's authority? Although the president can grant waivers without congressional consent, and the courts have, on the whole, granted the administration broad latitude in exercising this authority, I argue that two factors ultimately prevent the president's use of waivers from dramatically expanding executive authority.

First, despite the inability of Congress to prevent the president from exercising waiver authority, the statutes discussed here that grant secretaries the ability to approve waivers are not, in fact, blank checks. As has been discussed at length, the nation's governors place a meaningful constraint on the president's use of this policymaking strategy. The case of President George W. Bush's failed attempt to incentivize states to transform Medicaid into a block grant program through waivers illustrates that presidents cannot simply mandate policy changes through waivers (Thompson 2012). Rather, enough states must be willing to engage in this process for presidents to implement widespread policy change using this strategy.

More often than not, it appears that presidents use this strategy when governors are eager and willing to adopt the changes that presidents are willing to approve. In the case of welfare reform under the Clinton administration, for example, governors were not simply passive recipients of the president's overtures to submit applications for waiver approvals. Rather, many governors were eager to reform their state welfare delivery programs under the Aid to Families with Dependent Children entitlement program.² The Clinton administration's use of waivers built on a mutual interest at the state and national level in experimenting with alternative programs that incentivized welfare recipients to transition from welfare to work. While some may criticize waivers as undemocratic tools

²Interview with the author, December 14, 2015.

that are not vetted and approved by Congress, each one is in fact negotiated over and implemented by elected leaders at the state level.³

Second, although Congress does not enjoy formal oversight over the waiver process, just as in any other area of presidential policymaking, the threat that Congress may revise a law to restrict the president's authority remains. Of course, one may argue that this constraint is not meaningful, given the potential for presidents to approve waivers in short order compared to the length of time it could potentially take Congress to pass new legislation that limits the president's waiver authority. However, there are in fact examples of Congress revising the president's waiver authority to directly address complaints about the manner in which presidents exercised this authority. I discuss two of these cases here.

The first example focuses on the backlash that President George W. Bush faced from his use of Section 1115 Medicaid waivers, as described at length by Thompson (2012). During his first term, the Bush administration approved waivers to "redirect CHIP (Children's Health Insurance Program) funds to insure childless adults" (155). A report from the Government Accountability Office "advised Congress that these waivers violated the CHIP statute," yet Bush's Secretary of Health and Human Services, former governor Tommy Thompson, refused to stop this practice when pressured to do so by senators Charles Grassley (R-IA) and Max Baucus (D-MT) (155). However, the senators ultimately prevailed: "In the face of executive branch recalcitrance, Grassley and Baucus inserted provisions in the Deficit Reduction Act of 2005 that prohibited the Bush administration from approving any new demonstrations that reallocated CHIP funds to childless adults" (155). This example illustrates that, although members of Congress have had little success intervening in the president's decisions about when to use waivers and which to approve,

³A potential objection here is that, in the case of Obama's NCLB waivers, states were facing the potential of falling out of compliance with the law if they were not excused from its provisions. In this case, one could argue that waivers were mandatory. However, if enough states balked at the administration's ESEA Flexibility program, it is doubtful that the Department of Education would have held all states responsible for meeting the impossible requirement that all children be proficient in math and reading by 2014.

Congress may revise or restrict waiver authority in subsequent legislation.

The next example illustrates a similar case when Congress addressed perceived executive over-reach in the case of education. In December 2015, Congress finally revised the No Child Left Behind Act of 2001, which was due for reauthorization in 2007. Specifically, Congress passed and President Obama signed the Every Student Succeeds Act (ESSA), a reauthorization of the Elementary and Secondary Education Act. After push-back that the Obama administration abused waiver authority by requiring states to meet conditions not mandated by current law in order to receive waivers, the new law, ESSA, prohibits the Secretary of Education from attaching such conditions to waivers in the future (Ujifusa 2015). While Congress did not eliminate the Secretary of Education's waiver authority, they did define this authority narrowly such that future Secretaries will not be able to so transparently include the administration's preferred policy changes as a condition of approval. In all, both of these cases suggest that although the president and his administration enjoy broad discretion over waivers, and in particular in deciding when and how to use waivers and which to approve, Congress is not left without avenues for constraining this authority.

It seems, overall, that the argument that waivers provide presidents with unfettered vehicles of policy reform is overstated. While it is the case that secretaries enjoy a great deal of discretion over how to use waiver authority, and that consequently the president and his administration enjoy substantial control over this process, the role that governors play places a meaningful constraint on executive authority in the exercise of this tool. Further, while Congress may not be able to directly exercise oversight of a president's waiver process or act quickly to curb a president's use of waivers, Congress ultimately has the ability to constrict this authority.

7.4 Future Research

In this final section, I identify three promising areas of future work that extend the analysis in this dissertation. First, I propose ways to develop more precise measures of how satisfied a president is with a law, which would allow us to better assess how this condition impacts a president's waiver strategy through quantitative analysis. Second, I recommend extending the theory to assess the conditions under which presidents offer waivers that require states to adopt new policies not mandated by existing law. Third, I discuss the value of extending the theory developed here to incorporate the impact of public opinion on the president's use of waivers.

7.4.1 Measuring "Satisfaction"

In Proposition 3, I suggest that whether a president is satisfied with the current law impacts his incentives to authorize revisions to this law via waivers. The expectation here is that the president approves more waivers when he is far from Congress, provided that a sufficient share of governors is in his party *and* the president is dissatisfied with existing law. In Chapter 6, I find evidence that when the president is dissatisfied with a law, he grants more waivers conditional on the share of governors in his party.⁴ The theoretical expectations and the results under the condition when the president is dissatisfied with current law are relatively clear.

However, expectations about whether and how presidents are motivated to use waivers when they are satisfied with existing law are less clear. On the one hand, we cannot assume that signing a new law means the president is completely satisfied with the policies implemented by this law, nor that he will remain satisfied with this law over time. On the other hand, in some cases the president may indeed be satisfied with the law as written and may not want to grant states flexibility via waivers.⁵ Further, while the measure *Pre*

⁴The assumption here is that presidents who have not signed a new law are dissatisfied with the existing law they inherited. Evidence in Chapter 2 provides support for this assumption.

⁵Chapter 6 discusses examples of both situations.

Law used in the analysis of Proposition 3 is arguably an accurate measure of dissatisfaction, this is less convincingly the case as a measure of satisfaction. Indeed, the results for the "satisfied" condition are sensitive to different coding methods.⁶

We need to extend the theory to both develop a better understanding of how presidents use waivers when they are satisfied with existing law and to clarify the role of *Distance* and *Percent Governors* under this condition. We also need a more precise measure of the president's satisfaction with existing law that does not depend on whether the president signed the existing law. A reasonable starting point for creating a more sophisticated measure of the president's satisfaction with existing law may be assessing the vote share in Congress on the relevant law. One measure, for example, might equal the share of the president's party in Congress that voted for the law. For example, if the current president is a Democrat, and the Democrats in a previous congressional session unanimously voted in favor of a law, we might argue that the current Democratic president is relatively satisfied with that law as written. However, this measurement ignores the possibility that perhaps the Democrats only occupied a small share of the seats in Congress when the law was originally passed – in this case, there is reason to suspect that the current Democratic president would in fact prefer to make a number of revisions. Considering this, a measure of presidential satisfaction with existing law should take into account both the share of the current president's party in each chamber that voted for the law as well as the seat share of that party in each chamber of Congress. Ultimately, creating a more sophisticated measure of presidential satisfaction that does not rely on whether or not a president has signed a new law will allow for further empirical

⁶As I describe in a footnote in Chapter 6, I re-code *Pre Law* to reflect that Presidents Clinton and Bush were not fully satisfied with laws they signed, the Improving America's Schools Act of 1994 and the Deficit Reduction Act of 2005, respectively. With this new coding, the results for the "dissatisfied" condition (comparable to the condition when *Pre Law* = 1, discussed at length in Chapter 6) did not change meaningfully. But, I found that the marginal effect of *Distance* in the "satisfied" condition was positive and statistically significant, whereas with the original coding, this marginal effect was not significant in the "satisfied" condition (*Pre Law* = 0). Overall, the results using the alternative coding suggest that the dynamic between *Distance* and *Percent Governors* informs a president's use of waivers when he is dissatisfied *and* when he is satisfied with existing law, although *Percent Governors* forms the strongest constraint on this strategy when the president is dissatisfied with existing law.

examination of how the president's satisfaction with current law influences his use of a waiver strategy.

7.4.2 Governor Cooperation with Different Types of Waivers

In this project, I do not distinguish between different types of waivers that presidents offer governors. I take this approach because the president's waiver authority across these policy areas and time periods is very consistent on a critically important dimension: the relevant secretary, and in turn the administration, enjoys a broad degree of discretion over this policy tool. As a result, these waivers are highly comparable in terms of the president's ability to seek and approve them and the constraints he faces in doing so. For the purposes of assessing the theory here, then, I treat the different waivers submitted and approved as observations within one category of policymaking tool.

However, it may be the case that a particular type of waiver is different from the others considered here, and as such should be treated differently, both in terms of extending the theory and the empirical analysis. Specifically, as I have discussed, the waivers that the Obama administration offered under the ESEA Flexibility program were conditional on states implementing policy changes that were *not* part of existing law.⁷ It may be the case that this strategy is particularly valuable when a sizable subset of governors does not completely share the president's preferences, but is nonetheless open to adopting the president's policies as a condition of receiving a waiver given their dissatisfaction with the current law.

Consider, for example, Republican governors in whose states NCLB is unpopular. These governors may not otherwise be potential allies in the president's efforts to revise NCLB, but given the political (and practical) reasons to seek relief from burdensome

⁷In Chapter 6, I describe in a footnote that the central results from Proposition 2 are robust to a specification that ends in 2010, thereby omitting these conditional waivers from the analysis. Specifically, the marginal effect of *Distance* is contingent on *Percent Governors*, where the marginal effect of *Distance* increases as the president moves farther from Congress contingent on the share of governors in the president's party.

provisions of NCLB, they may be willing to entertain the possibility of implementing the president's new policies in exchange for substantial flexibility from the existing law via a conditional waiver. In this scenario, we should still expect that the president will use more waivers when he is far from Congress, conditional on the share of governors willing to cooperate with him. But the difference here is that whether or not governors are willing to cooperate with the president's waiver strategy may require a more fine-grained measure than partisanship. It may be the case that the president predicts who his likely allies are based on the share of governors who are dissatisfied with the current law and are at least amenable to implementing the alternative the president offers through waivers.

This logic suggests a theoretical and empirical extension of the project to more closely examine the factors that motivate presidents to pursue conditional waivers. In terms of the theory, the core relationship may be slightly different such that *Distance* is modified by the share of governors likely to cooperate with this strategy, where this share is not determined by the number of governors in the president's party. Whether or not a governor is likely to cooperate may hinge on each governor's satisfaction with existing law. While partisanship may play a role here, it may not be the case that it precisely captures this concept. Empirically, then, the measurement of *Percent Governors* would be updated to reflect that the share of governors the president considers as potential allies is not determined by partisanship but, instead, by the combination of a governor's dissatisfaction with current law and willingness to implement the president's required reforms attached to waivers.

7.4.3 Public Opinion and the President's Waiver Strategy

Finally, it will be worthwhile to extend the theory to incorporate the role that public opinion plays in the president's use of waivers. Evidence in Chapter 6 suggests that presidents approve more waivers when their average annual approval ratings drop, and further, that presidents approve more waivers as the national mood becomes more lib-

eral. Both of these results are in line with expectations. As discussed in Chapter 6, I expect that presidents turn to waivers when their approval ratings dip in order to make progress on their agenda despite lower levels of political capital that may hamper their negotiations with Congress. In addition, since presidents frequently discuss waivers as tools that they use to authorize implementation of new programs and, in addition, to spur state-level innovation, I expect that presidents are more eager to use this tool when the public is more supportive of government action. Consistent results in support of these expectations suggest that public opinion, measured along these two dimensions, matters for explaining the president's use of waivers.

In addition, the president's dissatisfaction with current law influences his decision to use a waiver strategy, as discussed. Evidence in Chapter 2 suggests that presidents frequently use waivers to revise laws that do not satisfy their policy goals and, further, that have become unpopular with Americans. Consider, for example, how Presidents Reagan and Clinton implemented waiver strategies to revise welfare, and further, how President Obama used a waiver strategy to revise NCLB. Given presidents' incentives not only to implement their policy goals but also to win re-election and to leave a strong legacy, the degree to which the public is dissatisfied with a current law may indeed inform the president's own position on the importance of reform.⁸ Further, evidence suggests that presidents' policymaking behavior responds to public opinion on particular issues (Canes-Wrone and Shotts 2004). In all, an extension of the theory developed here should account for how the president's popularity, the national mood, and public support (or lack thereof) for specific laws influences his waiver strategy.

Particularly in this modern era characterized by extreme and increasing partisan polarization, as described by McCarty et al. (2006), it may be the case that when public opinion turns against a particular policy or law *and* the public wants to see government action to address perceived problems, waivers provide presidents with a particularly valuable

⁸Of course, public opinion does not exist in a vacuum but, rather, is informed by elite discourse and by parties' positions on issues (Carmines and Stimson 1989; Zaller 1992; Jackson and Kollman 2011).

strategy. As long as presidents can count on enough governors to cooperate with their waiver strategy, they can deliver on promises of reform much faster than when they are mired in an ongoing battle with Congress, particularly if the president's approval rating is low. Consider, for example, the Clinton administration's promise to review welfare waiver applications within thirty days of receipt during the administration's embattled campaign with Congress over welfare reform. One of the next steps in building on the work here, then, is incorporating public pressure for reform and for government action into the framework that explains the conditions under which presidents use waivers.

7.5 Final Thoughts

In this dissertation, my goal was to explore the conditions under which presidents use waivers. This inquiry is important for two reasons. First, presidents can and do use waivers in pursuit of their own policy goals, yet we lack a theory and systematic analysis of how and when they do so. Second, and more broadly, scholarship that examines how the president's institutional environment shapes his exercise of authority focuses almost exclusively on the horizontal constraints imposed by actors at the national level, particularly Congress. While this is warranted in many cases, primarily focusing on the president's horizontal relationships misses an important component of the institutional environment that shapes presidential policymaking at the subnational level. Here, I propose and assess a theory that recognizes the horizontal *and* vertical relationships that shape the president's exercise of power through a waiver strategy.

A number of extensions, discussed above, will be helpful in further clarifying our understanding of when and how presidents use waivers. At the very least, however, this project proposes a theory, supported by analysis, that provides an initial framework for investigating the president's incentives to pursue a waiver strategy. This theory and analysis suggest that the president can indeed bypass the horizontal constraint imposed by Congress through the use of a waiver strategy, although in doing so the president faces

a vertical constraint from the nation's governors. From the analysis of presidential policymaking at the subnational level in this dissertation, we gain additional insight into the paradox of presidential power in the modern era. The president enjoys broad authority, but the system of checks and balances often frustrates the president's efforts to exercise this authority. A waiver strategy provides the president with a policymaking avenue where otherwise one might not be available given the horizontal constraint imposed by Congress. In turn, the federal system's distribution of authority between levels of government forms a vertical constraint on the president's exercise of power.

BIBLIOGRAPHY

BIBLIOGRAPHY

- American Federation of Teachers. Every Student Succeeds Act: Frequently Asked Questions, 2016. URL <http://www.aft.org/position/every-student-succeeds-act>.
- Shelly Arsneault. Welfare policy innovation and diffusion: Section 1115 waivers and the federal system. *State and Local Government Review*, 32(1):49–60, 2000.
- Samuel R. Bagenstos. Federalism by waiver after the health care case. In *The Health Care Case: The Supreme Court's Decision and Its Implications*, eds. Gillian Metzger, Trevor Morrison, and Nathaniel Persily. Oxford University Press, 2013.
- Evelyn P. Baumrucker. Medicaid and SCHIP Section 1115 Research and Demonstration Waivers. CRS Report for Congress, September 2008.
- Jenna Bednar. *The Robust Federation: Principles of Design*. Cambridge University Press, 2009.
- Christopher R. Berry, Barry C. Burden, and William G. Howell. After enactment: The lives and deaths of federal programs. *American Journal of Political Science*, 54(1):1–17, 2010a. doi: 10.1111/j.1540-5907.2009.00414.x. URL <http://dx.doi.org/10.1111/j.1540-5907.2009.00414.x>.
- William D Berry, Richard C Fording, Evan J Ringquist, Russell L Hanson, and Carl E Klarner. Measuring citizen and government ideology in the us states: a re-appraisal. *State Politics & Policy Quarterly*, 10(2):117–135, 2010b.
- Sarah Binder. *Stalemate: Causes and Consequences of Legislative Gridlock*. Brookings Institution Press, 2003.
- Frederick J. Boehmke. GRINTER: A STATA utility to graph interaction effects after regression models, version 1.5. STATA package, 2008.
- Lindsey Burke. ESEA reauthorization blueprint: Another federal overreach. The Daily Signal, the multimedia news outlet of the Heritage Foundation, March 2010.
- Brandice Canes-Wrone and Kenneth Shotts. The conditional nature of presidential responsiveness to public opinion. *American Journal of Political Science*, 48(4):394–415, 2004.
- Edward G Carmines and James A Stimson. *Issue evolution: Race and the transformation of American politics*. Princeton University Press, 1989.

- Center for Medicare and Medicaid Services. Section 1115 demonstrations. Accessed 5 April 2015, 2015. URL <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/1115/section-1115-demonstrations.html>.
- Bill Clinton. Remarks to the National Governors' Association. Public Papers of the Presidents, 29 Weekly Comp. Pres. Doc. 125, February 1993a.
- Bill Clinton. Remarks Following a Meeting with the Nation's Governors. Public Papers of the Presidents. 29 Weekly Comp. Pres. Doc. 117, February 1993b.
- Bill Clinton. Remarks and a question-and-answer session with the National Governors' Association in Boston, Massachusetts. Public Papers of the Presidents. 30 Weekly Comp. Pres. Doc. 1511, July 1994.
- Bill Clinton. Interview with Tom Brokaw of NBC Nightly News. Public Papers of the Presidents, 31 Weekly Comp. Pres. Doc. 117, January 1995a.
- Bill Clinton. Remarks to the American Council on Education in San Francisco, California. Public Papers of the Presidents, February 1995b.
- Bill Clinton. Satellite remarks and a question-and-answer session with the National Conference of State Legislatures. Public Papers of the Presidents, 31 Weekly Comp. Pres. Doc. 1272, July 1995c.
- Clinton Digital Library. Domestic Policy Council, Michael Cohen, and Subject Files, Flexibility Materials [2]. Accessed January 13, 2016, 1994a. URL <http://clinton.presidentiallibraries.us/items/show/17045>.
- Clinton Digital Library. Domestic Policy Council, Michael Cohen, and Subject Files, Flexibility Materials to Governors and Chiefs. Accessed 13 January 2016, 1994b. URL <http://clinton.presidentiallibraries.us/items/show/17051>.
- Clinton Digital Library. Domestic Policy Council, Chris Jennings, and Subject Files, Medicaid Waivers [3]. Accessed 12 January 2016, 1995a. URL <http://clinton.presidentiallibraries.us/items/show/17207>.
- Clinton Digital Library. Domestic Policy Council, Chris Jennings, and Subject Files, Medicaid Waivers [4]. Accessed 12 January 2016, March 1995b. URL <http://clinton.presidentiallibraries.us/items/show/17210>.
- Clinton Digital Library. Domestic Policy Council, Bruce Reed, and Welfare Reform Series, "HHS Welfare Waivers Briefing Book for NGA, 2/2/96 [1]. Accessed 19 May 2016, February 1996. URL <http://clinton.presidentiallibraries.us/items/show/32201>.
- Congressional Quarterly Almanac. Health-Care Debate Takes Off. In CQ Almanac 1993, 49th ed., 335-44. Washington, DC: Congressional Quarterly, 1993. URL <http://library.cqpress.com.proxy.lib.umich.edu/cqalmanac/cqa193-1105848>.

- Congressional Quarterly Almanac. Clinton's health care plan laid to rest. In CQ Almanac 1994, 50th ed., 319-55. Washington, DC: Congressional Quarterly, 1995. URL <http://library.cqpress.com/cqalmanac/cqa194-1103561>.
- Congressional Quarterly Almanac. Presidential veto message: 'Profound differences' cited in veto of budget plan. In CQ Almanac 1995, 51st ed., D-37-D-38. Washington, DC: Congressional Quarterly, 1996. URL <http://library.cqpress.com/cqalmanac/cqa195-842-25031-1101316>.
- Congressional Quarterly Almanac. Big Medicare, Medicaid changes enacted in budget bills. In CQ Almanac 1997, 53rd ed., 6-3-6-12. Washington, DC: Congressional Quarterly, 1998. URL <http://library.cqpress.com/cqalmanac/cqa197-0000181134>.
- Congressional Quarterly Almanac. Landmark education bill signed. In CQ Almanac 2001, 57th ed., 8-3-8-8. Washington, DC, 2002. URL <http://library.cqpress.com.proxy.lib.umich.edu/cqalmanac/cqa101-106-6389-328734>.
- Congressional Quarterly Almanac. Congress stymied on education law. CQ Almanac 2011, 67th edition, ed. Jan Austin. Published by CQ-Roll Call Group, 2012.
- Timothy J Conlan. *From new federalism to devolution: Twenty-five years of intergovernmental reform*. Brookings Institution Press, 2010.
- Council of State Governments. *Book of the States, 2011-2013*. Council of State Governments, 2013.
- Department of Health and Human Services. Health care financing research and demonstration cooperative agreements and grants for fiscal years 1994 through 1996. Public Notice in the Federal Register. Vol. 59, No. 9, January 1994a.
- Department of Health and Human Services. Medicaid program; demonstration proposals pursuant to section 1115(a) of the Social Security Act; policies and procedures. Federal Register Notice, Vol. 59, No. 186, September 1994b.
- Martha Derthick and Andy Rotherham. Obama's NCLB waivers: Are they necessary or illegal? *Education Next*, 12(2), Spring 2012.
- Sam Dillon. Overriding a key education law. *The New York Times*, August 8 2011.
- Domestic Policy Council (US). Low Income Opportunity Working Group and Interagency Low Income Opportunity Advisory Board. Up from dependency: a new national public assistance strategy: report to the president, 1986.
- Arne Duncan. Letters from the Education Secretary or Deputy Secretary. U.S. Department of Education, September 23 2011.
- Arne Duncan. No Child Left Behind: Early lessons from state flexibility waivers. Testimony of Secretary of Education Arne Duncan to the U.S. Senate Committee on Health, Education, Labor, and Pensions, February 7 2013.

- Robert S Erikson, Gerald C Wright, and John P McIver. *Statehouse democracy: Public opinion and policy in the American states*. Cambridge University Press, 1993.
- Michael E. Fishman and Daniel H. Weinberg. The role of evaluation in state welfare reform and waiver demonstrations. In *Evaluating Welfare and Training Programs*, eds. Charles F. Manski and Irwin Garfinkel. Harvard University Press, 1992.
- Jamie Fuller. Common Core might be the most important issue in the 2016 Republican presidential race. Here's what you need to know about it. *The Washington Post*, July 2014.
- Thomas Gais and James Fossett. Federalism and the executive branch. In *The Executive Branch*, eds. Joel D. Aberbach and Mark A. Peterson. Oxford University Press, 2005.
- Gallup. Presidential approval (Series available via the Roper Center). Accessed 23 March 2015, 2015. URL http://www.ropercenter.uconn.edu/CFIDE/roper/presidential/webroot/presidential_rating.cfm.
- Gallup Organization. Attitudes toward the public schools survey. The Roper Center for Public Opinion Research, University of Connecticut, iPOLL Databank, June 9 - June 26 2005.
- Daniel P Gitterman. The american presidency and the power of the purchaser. *Presidential Studies Quarterly*, 43(2):225–251, 2013.
- William T. Gormley. Money and mandates: The politics of intergovernmental conflict. *Publius: The Journal of Federalism*, 36(4):523–540, 2006.
- Government Accountability Office. Waivers related to the Temporary Assistance for Needy Families block grant. Report GAO-12-1028R, September 19 2012.
- GovTrack. Govtrack.us, 2016. URL <https://www.govtrack.us/>.
- govtrack.us. H.R. 6 (103rd): Improving America's Schools Act of 1994. Accessed 19 May 2016, 1994.
- govtrack.us. H.R. 1 (107th): No Child Left Behind Act of 2001. Accessed 19 May 2016, 2001. URL <https://www.govtrack.us/congress/votes/107-2001/s371>.
- govtrack.us. H.R. 1720 (100th): Family Support Act of 1988, 2016. URL <https://www.govtrack.us/congress/bills/100/hr1720>.
- David Greenberg and Michael Wiseman. What Did the OBRA Demonstrations Do? In *Evaluating Welfare and Training Programs*, eds. Charles F. Manski and Irwin Garfinkel. Harvard University Press, 1992.
- Judith M. Gueron and Howard Rolston. *Fighting for reliable evidence*. Russell Sage Foundation, 2013.

- Jacob S. Hacker. Privatizing risk without privatizing the welfare state: The hidden politics of social policy retrenchment in the United States. *American Political Science Review*, 98 (02):243–260, 2004.
- Heritage Foundation. How the White House spurs welfare reform, May 1989.
- House Education and the Workforce Committee. Kline, Alexander call for GAO study on Education Department’s waiver requirements. Press Release, 2014. URL <http://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=390732>.
- William G. Howell. *Power without Persuasion: The Politics of Direct Presidential Action*. Princeton University Press, 2003.
- William G. Howell. Unilateral powers: A brief overview. *Presidential Studies Quarterly*, 35(3):417–439, 2005.
- William G. Howell. *Thinking about the Presidency: The Primacy of Power*. Princeton University Press, 2013.
- William G. Howell. Presidential prescriptions for state policy: Obama’s race to the top initiative. Previous versions of this paper were presented at the University of Chicago, the University of Michigan, and the University of Washington at St. Louis., September 2014.
- John D Huber and Charles R Shipan. *Deliberate discretion?: The institutional foundations of bureaucratic autonomy*. Cambridge University Press, 2002.
- John Hudak. *Presidential pork: White house influence over the distribution of federal grants*. Brookings Institution Press, 2014.
- Shelly K. Irving. Public assistance receipt: 2000 to 2012. U.S. Census Bureau: American Community Survey Briefs, 2014.
- Saul Jackman. Policy and power: How the president uses governing tools to bargain with Congress. Vanderbilt University mimeo, 2014.
- John E Jackson and Ken Kollman. Connecting micro-and macropartisanship. *Political Analysis*, page mpr030, 2011.
- Kaiser Commission on Medicaid and the Uninsured. Medicaid: A primer, 2013.
- Cindy D. Kam and Robert J. Franzese Jr. *Modeling and Interpreting Interactive Hypotheses in Regression Analysis*. University of Michigan Press, 2007.
- Christopher S Kelley, Bryan W Marshall, and Deanna J Watts. Assessing the rhetorical side of presidential signing statements. *Presidential Studies Quarterly*, 43(2):274–298, 2013.
- Carl Klarner. Klarner politics, 2014. URL <http://www.indstate.edu/polisci/klarnerpolitics.htm>. Accessed October 2014.

- Alyson Klein. Host of lawmakers offer bills to revise NCLB. Education week, August 2007. URL <http://www.edweek.org/ew/articles/2007/09/05/02nclb.h27.html>.
- Alyson Klein. ESEA renewal blueprint faces legislative hurdles. Education Week, March 2010. URL <http://www.edweek.org/ew/articles/2010/03/26/27esea-overview.h29.html>.
- Alyson Klein. Q and A: Arne Duncan's big mistake? 'I should have done waivers earlier'. Education Week, September 17 2015. URL http://blogs.edweek.org/edweek/campaign-k-12/2015/09/q_and_a_us_secretary_of_educat.html.
- Alyson Klein. Under ESSA, states, districts to share more power. Education Week, January 2016. URL <http://www.edweek.org/ew/articles/2016/01/06/under-essa-states-districts-to-share-more.html>.
- Keith Krehbiel. *Pivotal politics: A theory of US lawmaking*. University of Chicago Press, 2010.
- Douglas L Kriner and Andrew Reeves. *The Particularistic President: Executive Branch Politics and Political Inequality*. Cambridge University Press, 2015.
- Robert Laszewski. Ohio Governor John Kasich's Medicaid expansion: Successful governance is very hard work. Forbes, October 2015. URL <http://www.forbes.com/sites/robertlaszewski2/>.
- David E. Lewis. *Presidents and the politics of agency design: Political insulation in the United States government bureaucracy, 1946-1997*. Stanford University Press, 2003.
- Robert C. Lieberman and Greg M. Shaw. Looking inward, looking outward: The politics of state welfare innovation under devolution. *Political Research Quarterly*, 53(2), 2000.
- Tom Loveless. The peculiar politics of No Child Left Behind. Brown Center on Education Policy. The Brookings Institution, August 2006.
- Forrest Maltzman and Charles R. Shipan. Change, continuity, and the evolution of the law. *American Journal of Political Science*, 52(2):252–267, 2008. doi: 10.1111/j.1540-5907.2008.00311.x. URL <http://dx.doi.org/10.1111/j.1540-5907.2008.00311.x>.
- Paul Manna. *School's in: Federalism and the national education agenda*. Georgetown University Press, 2006.
- Charles F. Manski and Irwin Garfinkel, editors. *Evaluating Welfare and Training Programs*. Harvard University Press, 1992.
- Lisa L Martin. *Democratic commitments: Legislatures and international cooperation*. Princeton University Press, 2000.
- Kenneth R. Mayer. *With the Stroke of a Pen: Executive Orders and Presidential Power*. Princeton University Press, 2001.

- Kenneth R. Mayer. Going alone: The presidential power of unilateral action. In *The Oxford Handbook of the American Presidency*, eds. George C. Edwards III and William G. Howell, 2009.
- David R Mayhew. *Divided we govern*. Yale University Press, 1991.
- David R Mayhew. *Divided we govern: Party control, lawmaking and investigations, 1946-2002*. Yale University Press, 2005.
- Cynthia McCabe. NEA President: Reauthorization 'Blueprint' disappointing. National Education Association, March 2010. URL <http://www.nea.org/home/38526.htm>.
- Nolan McCarty, Keith T Poole, and Howard Rosenthal. *Polarized America: The dance of ideology and unequal riches*, volume 5. Mit Press, 2006.
- Patrick J. McGuinn. *No Child Left Behind and the Transformation of Federal Education Policy, 1965-2005*. University Press of Kansas, 2006.
- Terry M. Moe. The politicized presidency. In *The New Direction in American Politics*, eds. John E. Chubb and Paul E. Peterson. Brookings Institution Press, 1985.
- MaryBeth Musumeci and Robin Rudowitz. Issue brief: The ACA and Medicaid expansion waivers. The Kaiser Commission on Medicaid and the Uninsured, November 2015.
- National Center for Education Statistics. National center for education statistics: Fast facts. U.S. Department of Education, 2015.
- National Education Association. Our positions and actions. Accessed 18 May 2016, 2015. URL <http://www.nea.org/home/56614.htm>.
- National Governors Association. Governors' power and authority, 2015. URL <http://www.nga.org/cms/home/management-resources/governors-powers-and-authority.html#qualifications>.
- Richard E. Neustadt. *Presidential Power*. MacMillan Publishing Company, 1960.
- Office of Elementary and Secondary Education. Waivers: Increased flexibility in exchange for increased accountability. U.S. Department of Education, September 1997. URL <http://www2.ed.gov/offices/OESE/archives/flexibility/Waivers/intro.html>.
- Office of Indian Education. Indian education - formula grants to local education agencies. U.S. Department of Education, April 2014. URL <http://www2.ed.gov/programs/indianformula/index.html>.
- Lynn Olson. Undo school programs, Heritage urges. In Education Week, December 1994.
- Rod Paige. Key policy letters signed by the Education Secretary or Deputy Secretary, February 7 2002a. URL <http://www2.ed.gov/policy/elsec/guid/secletter/020207.html>.

- Rod Paige. Key policy letters signed by the Education Secretary or Deputy Secretary, February 15 2002b.
- Rod Paige. Key policy letters signed by the Education Secretary or Deputy Secretary, April 27 2004.
- Phi Delta Kappa. Attitudes toward the public schools survey. The Roper Center for Public Opinion Research, University of Connecticut, iPOLL Databank, June 14 - July 3 2008.
- Phi Delta Kappa. Attitudes toward the public schools survey. The Roper Center for Public Opinion Research, University of Connecticut, iPOLL Databank, June 2 - June 24 2009.
- Keith Poole and Howard Rosenthal. NOMINATE and related data. Updated 11 September 2015., 2015. URL www.voteview.com.
- Public Education Network, Education Week. Demanding quality education in tough economic times survey. The Roper Center for Public Opinion Research, iPOLL Databank, University of Connecticut, January 22 - January 28 2003.
- Ronald Reagan. Address before a joint session of Congress on the State of the Union. Online by The American Presidency Project, eds. Gerhard Peters and John T. Woolley , February 4 1986. URL <http://www.presidency.ucsb.edu/ws/?pid=36646>.
- Ronald Reagan. The State of the Union. Public Papers of the Presidents, 23 Weekly Comp. Pres. Doc. 59, January 1987.
- Ronald Reagan. The State of the Union. Public Papers of the Presidents, 24 Weekly Comp. Pres. Doc. 91, January 1988.
- Motoko Rich. 'No Child' law whittled down by White House. The New York Times, July 2012.
- Howard Rosenthal and Keith Poole. Description of NOMINATE data, July 2004. URL <http://voteview.com/page2a.html>.
- Bryan Shelly. Rebels and their causes: State resistance to No Child Left Behind. *Publius: The Journal of Federalism*, 38(3):444–468, 2008.
- Bryan Shelly. Flexible response: Executive federalism and the No Child Left Behind Act of 2001. *Education Policy*, 26(1), 2012.
- Bryan Shelly. The bigger they are: Cross-state variation in federal education and Medicaid waivers, 1991-2008. *Publius: The Journal of Federalism*, 43(3):452–473, 2013.
- Rebecca R. Skinner and Jody Feder. Educational accountability and secretarial waiver authority under Section 9401 of the Elementary and Secondary Education Act. Congressional Research Service Report for Congress, June 2012.
- Stephen Skowronek. *Presidential leadership in political time: reprise and reappraisal*. Cambridge Univ Press, 2008.

- David G Smith. *Entitlement politics: Medicare and Medicaid, 1995-2001*. Transaction Publishers, 2002.
- Margaret Spellings. Key policy letters signed by the Education Secretary or Deputy Secretary, November 21 2005.
- Margaret Spellings. Key policy letters signed by the Education Secretary or Deputy Secretary, February 21 2006.
- Peverill Squire. Legislative professionalization and membership diversity in state legislatures. *Legislative Studies Quarterly*, pages 69–79, 1992.
- Peverill Squire. Measuring state legislative professionalism: The Squire index revisited. *State Politics and Policy Quarterly*, 7(2):211–227, 2007.
- Peverill Squire. *The Evolution of American Legislatures: Colonies, Territories and States, 1619-2009*. University of Michigan Press, 2012.
- James A. Stimson. *Public Opinion in America: Moods, Cycles and Swings, 2nd ed (Updated version)*. Westview Press, 1999. URL <http://kelizabethcoggins.com/mood-policy-agendas/>.
- Kathleen S. Swendiman. Authority of the Secretary of HHS to approve certain TANF demonstration programs pursuant to Section 1115 of the Social Security Act. Memorandum to Honorable Sander M. Levin from the Congressional Research Service, September 2012.
- Steven Teles. *Whose Welfare? AFDC and Elite Politics*. University Press of Kansas, 1996.
- The White House. Remarks by the President on No Child Left Behind Flexibility. <https://www.whitehouse.gov/the-press-office/2011/09/23/remarks-president-no-child-left-behind-flexibility>, September 2011.
- Frank J. Thompson. *Medicaid Politics: Federalism, Policy Durability, and Health Reform*. Georgetown University Press, 2012.
- Frank J. Thompson and Courtney Burke. Executive federalism and Medicaid demonstration waivers: Implications for policy and democratic process. *Journal of Health Politics*, 32(6), 2007.
- Frank J. Thompson and Courtney Burke. Federalism by waiver: Medicaid and the transformation of long-term care. *Publius: The Journal of Federalism*, 39(1), 2008.
- Sharece Thrower, Alex Bolton, and Rachel A. Potter. Presidential oversight and regulatory delay: How politics and organizational capacity influence OIRA rule review. An earlier version of this paper was presented at the 2014 Midwest Political Science Association Conference, Chicago, IL; April 3-April 6. This paper was presented at the Conference on Presidential Power in the United States, Department of Political Science, University of Michigan, May 2014.

Andrew Ujifusa. Duncan's legacy undercut as ESEA rewrite advances. Education Week, December 3 2015. URL <http://www.edweek.org/ew/articles/2015/12/03/duncans-legacy-undercut-as-esea-rewrite-advances.html>.

United States Congress. Public Law 87-543. Government Printing Office, July 1962.

United States Department of Commerce, Bureau of Economic Analysis. U.S. economic accounts. Accessed October 2014, 2014. URL <http://www.bea.gov/national/index.htm#gdp>.

United States Department of Education. Obama administration plans NCLB 'flexibility' package tied to reform if Congress does not act soon on reauthorization, June 13 2011. URL <http://www.ed.gov/news/press-releases>.

United States Department of Education. ESEA Flexibility. Guidance document, updated, June 7 2012.

United States Department of Education. ESEA flexibility page, 2016. URL <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>. Last modified 12 May 2016. Accessed 23 May 2016.

United States Senate. Party division in the Senate, 1789-present. Accessed November 2014, 2015. URL http://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm.

U.S. Department of Education. Waivers Granted Under the Authority of the Elementary and Secondary Act and the Goals 2000: Educate America Act. Public Notice in the Federal Register, Vol. 60, No. 165, August 1995.

U.S. Department of Education. Notice of Waivers Granted by the U.S. Secretary of Education Under the Authority of the Elementary and Secondary Education Act and the Goals 2000: Educate America Act. Public Notice in the Federal Register, Vol. 61, No. 57, March 1996.

U.S. Department of Education. NCLB overview: Executive summary, January 2001.

U.S. Department of Education. The U.S. Department of Education's report to Congress on waivers granted under Section 9401 of the Elementary and Secondary Education Act during calendar year 2009, December 2010a.

U.S. Department of Education. Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act of 1965, as Amended. Public Notice in the Federal Register, Vol. 75, No. 179, September 2010b.

U.S. Department of Education. ESEA reauthorization: A blueprint for reform, May 26 2011. URL <http://www2.ed.gov/policy/elsec/leg/blueprint/index.html>.

U.S. Department of Education. ESEA flexibility frequently asked questions, August 3 2012.

- U.S. Department of Education. Improving basic programs operated by Local Educational Agencies (Title I, Part A), October 5 2015. URL <http://www2.ed.gov/programs/titleiparta/index.html>.
- U.S. Department of Health and Human Services. Aid to Families With Dependent Children Program: Demonstration projects under Section 1115(a) of the Social Security Act. Public Notice in the Federal Register, Vol. 60, No. 158, August 1995.
- U.S. Department of Health and Human Services. HHS fact sheet: State welfare demonstrations. Administration for Children and Families, January 1996.
- U.S. Department of Health and Human Services. Setting the baseline: A report on state welfare waivers. Office of the Assistant Secretary for Planning and Evaluation, June 1997. URL <https://aspe.hhs.gov/legacy-page/state-welfare-waivers-overview-152151>.
- Richard Waterman. Assessing the unilateral presidency. In *The Oxford Handbook of the American Presidency*, eds. George C. Edwards III and William G. Howell, 2009.
- R. Kent Weaver. *Ending Welfare as We Know It*. Brookings Institution Press, 2000.
- Carol S. Weissert. Medicaid waivers: License to shape the future of fiscal federalism. Paper presented at the 2008 Annual Meeting of the Midwest Political Science Association April 3-6, 2008, Chicago, IL, 2008.
- Carol S. Weissert and Daniel Scheller. Learning from the states? Federalism and national health policy. *Public Administration Review*, 68:S162–174, 2008.
- Gene Wilhoit and Scott Palmer. Alignment of CCSSO's accountability principles and USED's ESEA flexibility package: Supporting state leadership through NCLB waivers. Council of Chief State School Officers. Next-Generation Accountability Systems and Waiver Strategy Meeting, September 2011.
- Michael Wiseman. Welfare reform in the states: The Bush legacy. *Institute for Research on Poverty Discussion Papers*, 1993a.
- Michael Wiseman. The new state welfare initiatives. *Institute for Research on Poverty and the Robert M. La Follette Institution of Public Affairs*, 1993b.
- Michael Wiseman. Welfare reform in the United States: A background paper. *Housing policy debate*, 7(4):595–648, 1996.
- John T. Woolley. Beyond executive orders: New data on presidential unilateral action. University of California at Santa Barbara mimeo, 2014.
- John Zaller. *The nature and origins of mass opinion*. Cambridge University Press, 1992.