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## Policymaking by the Executive: Examining the Fate of Presidential Agenda Items



Jason S. Byers<sup>a</sup>, Jamie L. Carson<sup>a</sup>, and Ryan D. Williamson<sup>b</sup>

<sup>a</sup>Department of Political Science, University of Georgia, Athens, Georgia; <sup>b</sup>Department of Political Science, Auburn University, Auburn, Alabama

### ABSTRACT

Politicians routinely campaign on a large platform of new policies and policy changes they hope to pursue once in office. Presidents, however, are unique in their ability to accomplish this given the multiple avenues by which they can enact policy change. Using each presidential agenda between 1964 and 2010, we evaluate the circumstances under which a president's policy goal is realized via an executive order or a law passed by Congress. Previous studies have only considered these avenues independently, but when we consider them in concert with one another, new patterns emerge. Our results indicate that a president's proposal is most commonly addressed in tandem with Congress through the traditional legislative process. However, the level of polarization, presidential approval, the composition of government, and the type of issue being addressed increase the probability of a proposal being addressed unilaterally via executive order rather than by passing a law.

Shortly after his inauguration in January 2017, President Donald J. Trump made it abundantly clear that he wanted Congress to repeal and replace the Affordable Care Act (i.e., Obamacare). The House initially took up the bill in March, but only succeeded in narrowly passing a version of it by a 217 to 213 vote on May 4, 2017. At the end of May, President Trump expressed frustration that the Senate had yet to take up the healthcare bill passed previously by the House. Although numerous attempts were made to bring it to the floor for consideration, they repeatedly failed. On July 28, 2017, the Senate sought to repeal portions of the Affordable Care Act, but it failed when Republican Senators Susan Collins (ME), Lisa Murkowski (AK), and John McCain (AZ) along with all 48 Democrats voted against it.<sup>1</sup> Frustrated with the Senate's inability to change this policy, the president opted to sign executive order 13813 in October aimed at taking action on the Affordable Care Act on his own.<sup>2</sup>

**CONTACT** Jason S. Byers  [byersjs@uga.edu](mailto:byersjs@uga.edu)  Department of Political Science, University of Georgia, Athens, Georgia, USA.

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Though merely anecdotal, this example leads us to ask the following questions: what factors lead to a president's legislative proposal being acted on versus receiving no action? And of those that receive action, what factors lead to the proposal becoming an executive order instead of a law?<sup>3</sup> The U.S. Constitution does not explicitly grant the president the right to create policy via unilateral executive behavior. The express lawmaking authority is given to Congress, which is tasked with creating and enacting legislation for the nation as a whole. Nevertheless, ambiguity within the Constitution has resulted in the growth of presidential power over time (Lewis and Strine 1996; Mayer 2001; Neustadt 1990). Therefore, presidents will often use their unilateral powers to generate policies when Congress is unable, or unwilling, to act on a specific policy objective (Howell 2003). Previous literature has discussed the factors that influence unilateral action as an alternative to legislation as well as the president's role in passing legislation through Congress.<sup>4</sup> However, these actions do not occur independently nor do they occur in a vacuum. As such, we seek to enhance our understanding of the role presidents play in shaping policy by considering all presidential legislative proposals and examining under which circumstances they are likely to become laws, executive orders, or simply go unaddressed.<sup>5</sup>

Although the Constitution is ambiguous at times with respect to presidential authority, one thing is relatively clear—the Constitution mandates that the president give a State of the Union address to Congress every year informing them of measures the president deems “necessary and expedient,” thereby presenting their legislative agenda to members of both chambers of Congress. We take advantage of this agenda-setting mechanism to address our central research question. In particular, we have assembled a dataset of all State of the Union Addresses from 1964 to 2010 and presidential legislative requests to Congress from 1964 to 2010. We maintain that a proposal's outcome will be primarily dependent on the existing institutional factors of the time such as divided government, presidential approval ratings, and polarization.

The organization of the article is as follows. In the next section, we discuss the factors that influence a president's ability to pursue policy initiatives via the traditional legislative route. We then explore the principle unilateral option available to presidents—an executive order. From there, we discuss our data and present empirical models that analyze this dynamic relationship between 1964 and 2010. In the final section of the article, we present the broader implications of our findings and discuss directions for future research on separation of powers between Congress and the president.

## **A framework for presidential policymaking**

A unique way that presidents can increase the salience of their legislative agenda items is through actively presenting them to the people. Kernell

(1997) describes this method as “going public.” Presidents have numerous opportunities to “go public,” mainly through public addresses, such as the State of the Union Address (Canes-Wrone and Shotts 2004; Druckman and Holmes 2004). When presidents mention policy in their public addresses, those policies tend to become more important to the people (Canes-Wrone 2001; Cohen 1995), which leads to more constituent pressure on Congress. Therefore, public addresses provide presidents with a means of detailing their priorities as well as their policy preferences. These speeches increase the salience of those issues among constituents, which in turn places pressure on the president and members of Congress to address them. Similarly, presidents are able to accumulate power by setting the policy agenda for the foreseeable future (Light 1999). By providing the policy direction, presidents are able to strategically shift policy toward their own personal preferences and provide leadership in this policy area (Warber 2006).

All politicians at least ostensibly seek office in order to influence public policy. This is evident in how candidates for office campaign on specific issues or assemble a platform on which they run. Presidents are unique in their ability to accomplish this as they have multiple avenues by which they can influence policy once in office (Light 1999; Warber 2006). As Cohen (2010, 18) states, “Presidents have at their disposal two primary avenues for enacting policies: 1) an administrative approach, which relies on issuing unilateral directives like executive orders and 2) a legislative approach, which requires congressional passage of legislation.”<sup>6</sup> Presidents must consider a wide range of factors when pursuing policy change either through Congress via a law or unilaterally (Light 1999; Peterson 1990; Warber 2006).

Public perceptions of policy change created by presidents actively working with Congress and presidents acting unilaterally differ dramatically (Reeves et al. 2017; Reeves and Rogowski 2016, 2018). The extant literature has demonstrated that the public prefers policy change to occur through the creation of laws via cooperation between the president and Congress. The public views policy changes created by unilateral action to be less legitimate and generally disapproves of presidential actions to change policy because they circumvent Congress (Christenson and Kriner 2015; Reeves and Rogowski 2015). Therefore, presidents should first seek to cooperate with Congress in order to have their legislative goals realized. In doing so, the president will not disrupt public perceptions and is still able to pursue policy change.

In addition, laws created by Congress are more stable over time because they require congressional action and cannot be easily changed when a new administration gains control of the presidency. In contrast, executive orders can more easily be modified by new administrations (Thrower

2017). Therefore, presidents should first want to try to create policy change by working with Congress. If this process does not end with a shift in policy, then presidents have the ability to use their unilateral powers. We recognize that legislation enacted by Congress creates a more enduring and stable outcome compared to policies initiated by executive orders because the latter rests on authority that has been conferred or made available to the executive via statute and/or constitutional provisions. In other words, unilateral authority is often only pursued if a legitimate basis exists to claim such authority.<sup>7</sup>

From an administrative perspective, presidential proposals face similar costs whether they are pursued through Congress or unilaterally. Presidential proposals that go through the legislature face multiple points of resistance. First, a member of Congress must formally introduce the proposal in the legislative body. From there, the legislation must make its way through the committee system before it is voted on by the chamber. It must then follow the same arduous process through the other chamber. Throughout the legislative process, there are multiple points where the proposal could fail, which would ultimately end the president's legislative goals. However, if the legislation successfully makes its way through the legislative process, there is no guarantee that the resulting legislation resembles the original proposal from the president. Multiple costs are associated with presidential proposals that go through the traditional policy-making process.

Similarly, presidential proposals that are pursued through unilateral means, such as an executive order, face administrative costs from the bureaucracy. Presidential unilateral action does not always start with the presidents themselves. In certain situations, unilateral directives originate within an agency and are then presented to the president. Indeed, Rudalevige (2015, 360) finds that a "strong plurality of orders originate in the bureaucracy." Furthermore, executive orders require the highest levels of presidential involvement based on their substantive nature (Mayer 2001). Therefore, executive orders originate with the both president and the White House. Once an executive order is created and signed, it is up to the executive to ensure that the agencies involved accurately implement the new policies (Howell 2003; Mayer 1999). The administrative costs associated with an executive order are mainly concerned with the agencies' implementation of the policy (i.e., failing to implement the policy or bureaucratic drift). There exists the possibility that the agency responsible for the implementation of the policy refuses to adhere to the executive order. Similarly, the agency could implement the executive order, but do so in a manner that does not align with the president's original intention (Mayer 1999). As it pertains to the president's legislative proposals, legislation pursued through Congress and unilaterally both present administrative costs.

### ***Presidential proposals and laws***

Presidents receive pressure from both institutional factors and voters to create policy change via laws with Congress, but not every proposal will receive attention from Congress. What circumstances should influence whether a president will have success moving this legislation through Congress? Historically, presidents relied on their ability to persuade members of Congress in pursuit of their own policy agenda (see, e.g., Beckmann 2010; Edwards 2009; Neustadt 1990). However, the power of persuasion is not absolute nor is it static as a variety of factors have been shown to give the president varying degrees of influence. This, in turn, produces variable levels of success in witnessing legislation that is passed through Congress.

We do not make the argument that a president must choose to change policy only with Congress or through unilateral means. The president is the head of the executive bureaucracy and therefore has the means to create policy changes through administrative means, a process which has been increasingly utilized since President Truman (Kagan 2001; Rudalevige 2009). Both the president, and executive agencies have the power to create and change public policy. In contrast to how legislative proposals become public law, the president and the bureaucracy are somewhat insulated and are able to shift policy without input from the legislative branch.<sup>8</sup> In a similar vein to unilateral actions, policy shifts that are created through administrative means are vulnerable to changes from future administrations, Congress, and the courts. Similarly, presidents must account for bureaucratic drift and principal-agent issues when considering their administrative agenda. Conversely, legislative proposals that become public law have a much larger and durable effect as they are more difficult to overturn (i.e., the Affordable Care Act). Therefore, the president's administrative agenda, although important and influential, will not face the same scrutiny that the president's legislative agenda will face, based on the nature of the legislative process and the relationship between the executive and legislative branches. We focus on the relationship that exists between the executive and legislative branches to better understand how both branches are able to navigate the legislative process, in which the president has had an increasing role over time. Ultimately, we are interested in the relationship between the executive branch and Congress, not the relationship between the president and the bureaucracy.

A number of studies have shown that Congress considers current levels of presidential approval when passing legislation (Brady and Volden 1998; Cohen et al. 2000; Edwards 1980, 1989). Early studies were able to find correlations between approval ratings and success in Congress (see, e.g., Edwards 1980; Ostrom and Simon 1985). However, later research depicts the relationship between approval ratings and legislative success as more

conditional (Canes-Wrone and De Marchi 2002; Edwards 1989). Supporting a piece of legislation championed by an unpopular president could ultimately result in negative consequences for members of Congress. If presidents propose legislation to Congress that is salient with the mass electorate and has higher levels of approval, however, then members stand to gain from supporting the president.<sup>9</sup>

On a similar note, the honeymoon period of a president's initial time in office has been shown to increase the likelihood of legislative success (Beckmann and Godfrey 2007; Brace and Hinckley 1991; Farnsworth and Lichter 2011; McCarty 1997). Presidents lose their favorability with the public and with Congress the longer that they are in office (McCarty 1997), which is why they often push for significant legislative accomplishments early in their term. Members of Congress are uniquely aware of the public's sentiments after a presidential election, especially because they share a common constituency with the president and are more likely to capitulate to a president's agenda.<sup>10</sup> Therefore, a president should receive more cooperation from members of Congress for their legislative agenda items earlier in his term.

We should also expect the president to have varying levels of success depending on the policy in question (Ragsdale 2014). One area where the president is more likely to succeed in Congress is in foreign policy. The amount of knowledge the president possesses in matters of foreign policy, compared to members of Congress, is usually much greater (Canes-Wrone, Howell, and Lewis 2008; Wildavsky 1966). This information asymmetry in foreign policy leads Congress to be relatively deferential to the president's proposals, therefore often negating their need to act unilaterally in order to achieve the president policy goals (Marshall and Pacelle 2005).<sup>11</sup> Furthermore, members of Congress often have little incentive to get involved in foreign policy as there is little or no direct electoral return for them (Mayhew 1974).<sup>12</sup>

A president's ability to pursue policies with Congress is also affected by institutional features such as unified government, polarization, filibuster or veto pivots, and the partisan composition of the chambers (Bond and Fleisher 1990; Howell 2005; Krehbiel 1998; Mayhew 2011). Much of the previous work on presidential success in Congress has focused on the distinction between unified versus divided government and has found that presidents are more likely to shift policy when there is unified government, which makes intuitive sense (Barrett and Eshbaugh-Soha 2007; Bond and Fleisher 1990; Mayhew 2011). If the same party controls the presidency and both chambers of Congress, then it is reasonable to assume that a majority of the legislation that is proposed by the president will at least make it onto the legislative agenda. It also follows that during times of



divided government, the president would have a harder time getting legislation passed through Congress as a result of more divergent policy preferences, which therefore impedes their ability to form the necessary coalition needed to move the status quo (Mayhew 2005; Ragusa 2010).<sup>13</sup> The effect of divided government is likely to be exacerbated with greater polarization as well. As the parties' ideologies diverge, fewer opportunities exist for bipartisan compromise on issues, therefore potentially hampering the president's ability to move policy.

Beyond simple majority status, the actual size of the president's party within Congress also matters. Prior research demonstrates that the size of the coalition that the president has within Congress affects the likelihood that policy change is enacted (Bond and Fleisher 1990; Deering and Maltzman 1999). A bare majority is insufficient unless there is no diversity among members' ideologies, and even substantial majorities may not suffice if one faction holds substantially different policy preferences from the rest of the party (such as the Southern Democrats during the 1950s and 1960s). Therefore, simple majority status is not sufficient for understanding policy changes. Instead, one must consider the size of the president's coalition and its ideological homogeneity as well (Rohde 1991). Increasing the size of the coalition the president has in Congress should result in an easier path in passing legislation.<sup>14</sup> This should be especially true during times of distinctly different ideological preferences between the majority and minority parties.

A variety of factors could influence the success of a president's legislative proposal in Congress. Based on the president's proclivity to have legislative proposals realized through law, the previous factors will influence the success or failure of a president's ability to have proposals make it through Congress. Although presidents may not witness a specific proposal become law, this does not mean their initiatives will necessarily remain unrealized. Allowing an issue to remain at its status quo is indeed an option; however, the president may also decide (or be forced) to move policy unilaterally.<sup>15</sup> There are a multitude of reasons that a legislative proposal would receive no action by Congress or the president. At times it is unclear why no action is initially taken in Congress, because it is difficult to ascertain a legislator's motivations in not pursuing a particular course of action. In addition, the use of the Hastert Rule in the House and the filibuster in the Senate could result in no action taken on specific policy proposals. Gridlock is an issue that must be addressed before legislation moves out of either chamber, which would stall progress and result in no action taken by the legislative body. Unpopular presidents usually struggle to have their legislative proposals acted on by Congress (Canes-Wrone and De Marchi 2002); based on the fact that the public does not support the president,



Congress will decide not to act. When dealing with legislative proposals, there are two specific endings—either the status quo is changed (i.e., Congress or the president creates a policy shift) or the status quo remains the same and the proposal receives no action.

### *The use of executive orders*

Article II of the Constitution states, “The executive Power shall be vested in a President of the United States of America.” Although the Framers clearly articulated many of the president’s formal powers, they left some ambiguity as to the full extent of executive powers that the president possesses. This ambiguity has led many presidents and scholars to defend the president’s use of executive orders. An executive order is a rule or order issued by the president to the offices within the executive branch that affect policy. Executive orders have the full force of law behind them, but they must be administered and upheld by the agencies with policy jurisdiction (Howell 2003; Kennedy 2015). Although presidents are primarily responsible for issuing executive orders, they do not necessarily originate with the president (Rudalevige 2009, 2015). The entire bureaucracy of the executive branch has the capability to instigate the executive order process.<sup>16</sup>

Howell (2003, 2005) maintains that presidents will utilize their unilateral powers when members of Congress either will not act on policy or when Congress will enact policy that is more extreme compared to the president’s own policy preferences. Therefore, we should find that presidents are more likely to issue executive orders when the president and Congress are ideologically distant, to ensure that the president is able to head off potential policy changes against their own preferences.

The ability (or inability) of Congress to enact policy change, for instance, may influence a president’s use of unilateral actions (Brady and Volden 1998; Cameron 2000; Deering and Maltzman 1999; Krehbiel 1998). This gridlock occurs when the status quo of some policy is situated in the policy dimension so that no political actor (median floor voter in House, filibuster pivot, or veto pivot) can create legislation that would ultimately be passed by both chambers and signed into law by the president (Howell 2003, 2005; Krehbiel 1998).

In those situations when Congress is unable or unwilling to act on a specific legislative proposal, most likely because legislators in either chamber do not see the electoral value in adopting such a proposal (Mayhew 1974; Volden and Wiseman 2014), this could serve as a signal that presidents may not want to “go it alone.” Absent widespread public support for a specific unilateral initiative, the president may not feel it is worth the expenditure of political capital once Congress decides not to act. Alternatively, a

president's public standing could change during the period that Congress was initially considering the proposal (which can often take months), resulting in presidents' reevaluating their options to act unilaterally via an executive order. Furthermore, presidents may reconsider issuing an executive order during the course of its formulation if they believe it may be overturned by the Courts or even Congress, which ultimately could make them look weak (on this point, see Howell 2003). Presidents must utilize their own discretion as it pertains to the formation of executive orders (Bolton and Thrower 2016; Dodds 2013).<sup>17</sup>

As previously stated, unified government does not preclude the existence of ideological heterogeneity within Congress. As such, it should be noted that gridlock can occur during periods of either divided or unified government; and they should therefore not be viewed synonymously (Krehbiel 1998). Nevertheless, Howell finds that during periods of unified government, executive orders are more common (Howell 2003, 2005). The rationale behind this is straightforward—presidents face less resistance when issuing executive orders during unified government. Also, during these times of shared party control of the executive and legislative branches, it is in the best interest of the party to allow the president greater leeway as all of its members (at least ostensibly) can benefit electorally from such successes.

As discussed earlier, the public may also play a role in a president's decision-making process. Reeves and Rogowski (2016) show that voters view presidents who use unilateral power to achieve legislative success more negatively than those that work with Congress. This is unsurprising given the conclusions of Christenson and Kriner (2015, 2017b), which demonstrate that the public and media are more likely to perceive unilateral action negatively. Conversely, prior literature also suggests that the public is often uninformed and that opinion is guided principally by partisan cues (McCarty, Poole, and Rosenthal 2016; Zaller 1992). Furthermore, as Christenson and Kriner (2017a, 1) conclude, "Americans do not instinctively reject unilateral action as a threat to our system of checks and balances, but instead evaluate unilateral action in terms of whether it accords or conflicts with their partisan and policy preference priors." As such, public opinion can impact a president's decision-making calculus, but it is also likely that opinion will be trumped by partisan considerations instead.

Finally, it is important to note that presidents may not be able to realize the same policy gains through executive orders as they can through the traditional legislative process. Therefore, this tradeoff may make executive orders less desirable at times. Nonetheless, as outlined earlier in this section, there are still instances in which presidents may want to see policy moved, even if only incrementally. We argue that some of the factors

involved in this calculation may be idiosyncratic to individual administrations, but most of the variation pertaining to this tradeoff will be captured by the same variables described previously.

### **Hypotheses**

Given the preceding discussion, we argue that each of these factors will influence whether a presidential proposal is realized through the traditional legislative process or through a presidential executive order. A president's ultimate goal is to have legislative proposals realized. Therefore, we hypothesize the following relationships with respect to presidential legislative agenda items:

*H<sub>1</sub>: Presidential proposals will be more likely to become law, instead of an executive order, when conditions are most favorable for legislative success (i.e., unified government, during times of lower levels of polarization, during the first year of a president's term, or when presidential approval is high).*

*H<sub>2</sub>: Presidential proposals will be more likely to become an executive order, instead of law, when conditions are less favorable for legislative success (i.e., during times of higher levels of polarization, lower levels of presidential approval, or after a president's first year in office).*

In addition to laws and executive orders, it is also possible that an agenda item receives no action. We anticipate that when conditions are unfavorable to both options, an item is likely to be neglected. Specifically, increased polarization and gridlock will slow down the process to the point of inaction at times. In addition, the president and Congress have a finite amount of time, which means there is simply not enough time to address some issues. This should be especially true as the number of requests made by the president increases.

### **Data and measurement**

We have presented a framework for presidential policy making which indicates that political conditions influence how the executive branch might realize policy change—either by working with Congress or unilaterally through executive orders. As mentioned previously, executive orders and legislation have different origins and execution, but their results are largely similar—if not identical. Both represent a shift away from the status quo and toward the president's policy preferences. We see presidents using both avenues as a way to satisfy policy changes outlined in their agenda. Previous work has described the conditions under which a president's policy is enacted through Congress, and others have described the conditions for when presidents shift policies unilaterally.<sup>18</sup> Therefore, we seek to build

on this line of work and enhance our knowledge of the role of the president in the legislative arena by considering these two options in conjunction with one another.

Although our discussion thus far has centered on two important aspects of presidential policy making, there are tradeoffs between a president issuing an executive order rather than working with Congress to craft policy change. Executive orders have been used to shift policy from one administration to the next, to allow the president to quickly respond to emergencies, to influence the executive bureaucracy, and as a tool that allows the president to overcome congressional stalemate (Cooper 2014; Howell 2003, 2005). However, executive orders are narrower in their policy scope and can more easily be overturned. Legislation that has been passed by Congress is better equipped to endure longer stretches of time, based on the requirements to pass legislation to overturn previous law (Arnold 1990; Cox and McCubbins 2005; Ragusa 2010). Also, legislation passed by Congress has the full effect of the law and is readily enforced directly on the public. Therefore, it may benefit presidents to work with Congress to ensure that their policy initiatives are realized.

Our objective is to determine which conditions are more likely to produce policy change through an executive order *relative to* a law and vice versa, as well as when the status quo on policy will not be moved at all. To analyze this question, we gathered data relating to presidential policy proposals from Johnson's last term (1964) through Obama's first term (2010) resulting in 729 proposals by the executive.<sup>19</sup> Each of these contains a description of the initial request by the president and then proceeds with the formal name of the legislation if Congress later passed it. The data were collected initially by Eshbaugh-Soha (2005, 2010), and were later updated by Madonna, Monogan, and Vining (2016).

For a presidential proposal to make the list, it had to first appear in a State of the Union Address as well as some other subsequent speech.<sup>20</sup> It could be argued that based on the political climate and nature of politics, presidents do not bring forth certain policy issues within the annual State of the Union Address knowing that attempting to do so would not be a prudent use of their finite political capital. Furthermore, they may simply not need to openly address Congress about their policy preferences if they intend on pursuing policy change through unilateral action.<sup>21</sup> We believe that we are able to alleviate these concerns based on the nature of the proposals. The proposals that are used must first be mentioned in the State of the Union Address and then be mentioned elsewhere publicly. Based on the public nature of these proposals, this provides a stricter test of our expectations and allows us to ensure that these were important policy proposals of the president and not something tangential to the broader agenda.

**Table 1.** Multinomial probit regression estimates of presidential proposals, 1964–2010.

	Multinomial Probit	
	Public Law	Executive Order
Divided Government	–0.445 (0.157)	–0.403 (0.199)
Important	0.360 (0.100)	–0.026 (0.183)
Number of Requests	0.050 (0.011)	–0.001 (0.017)
Polarization	–7.061 (1.577)	1.053 (0.238)
Presidential Approval	0.030 (0.007)	0.024 (0.014)
Honeymoon	0.212 (0.190)	0.192 (0.211)
Defense	–0.900 (0.987)	0.008 (0.402)
Social/Civil Rights	–1.140 (0.858)	–0.234 (0.447)
Government/Economic	–0.821 (0.942)	–0.450 (0.701)
Natural/Environment	–0.837 (0.903)	0.966 (0.463)
Other	–1.491 (1.173)	0.239 (0.615)
Intercept	3.013 (1.565)	–2.470 (0.646)
Log-Likelihood	–562.595	
AIC	1141.191	
N	729	

Bold coefficients indicate  $p < 0.05$ . Coefficients reported with standard errors in parenthesis.

For our analysis, we utilize a multinomial probit to test our expectations.<sup>22</sup> For our multinomial probit in Table 1, the dependent variable has three possible outcomes—the proposal received no action, the proposal became an executive order, or the proposal became law.<sup>23</sup>

For our multinomial probit, we clustered standard errors on presidents given that each appears numerous times in the dataset. Out of the 729 presidential proposals that comprise our dataset, 47% eventually became law. To determine whether the president issued an executive order, we read the descriptions of the legislative proposals, and then searched through that president’s executive orders to discern if a specific order was issued related to the president’s proposal.<sup>24</sup> We looked broadly at the issue areas of both the original proposal and the executive order to ensure that the scope of the issue area remained generally unchanged. We used data provided by Peters and Woolley (2016) at *The American Presidency Project* to assist us in our search of executive orders. Of the policy proposals that did not become law, 30% of the remaining policy proposals were achieved via executive orders.

Furthermore, we include a number of controls in each of our models. These include divided government, legislative significance, the issue area of the proposal, the total legislative requests, average polarization of the House and Senate, presidential approval, and the first year of a president’s term to

account for a honeymoon period. *Divided Government* indicates periods where different parties control the presidency and Congress. This variable is coded 0 if the same party controls the presidency, House of Representatives, and Senate, and 1 otherwise. Consistent with previous studies, we also estimate a model using the size of the president's coalition within each chamber (Deering and Maltzman 1999) and observing the difference between the president's NOMINATE score and the median member of each chamber (see models A2–A5 in the Appendix).<sup>25</sup> *Important* indicates the legislative significance of the proposal. This variable is coded as 1 for “significant” legislation and 0 for legislation that has been designated as “routine.” In this instance, the coding scheme for this variable was borrowed from Eshbaugh-Soha (2005, 2010) and Madonna, Monogan, and Vining (2016).<sup>26</sup>

We also control for the issue area in which the proposal was made. We utilize the coding scheme from Ragsdale (2014), who coded the issue areas of all presidential executive orders during the modern era.<sup>27</sup> However, we also expanded this measure to include all proposals, not just executive orders. Furthermore, we combined similar issue areas to produce six distinct categories for our analysis: Foreign Affairs, Defense, Social Welfare/Civil Rights, Government/Economic Management, Natural Resources/Environment, and other.<sup>28</sup> The literature concerning the “two presidencies” is vast and concerns itself with the notion that presidents typically have more legislative influence in certain areas, namely foreign policy (Light 1981). Although our categories are parsimonious, some potential exists for overlap in our coding or the misrepresentation of a single piece of legislation or executive order. These are complex issues that have the potential to cover many different areas, which would result in a policy hybrid. Despite this, and staying consistent with the prior literature, we still believe this well-established scheme provides us with the best possible measure.

The *Number of Requests* variable indicates the total requests that the president made to Congress in the State of the Union. The most requests in a single address were 34 by President Bush in 1989. In contrast, President Reagan only made four requests in his 1988 address. When presidents issue more legislative requests, Congress has a greater number of proposals to act on and subsequently produces some passable legislation. Therefore, we expect that greater numbers of requests by presidents in their State of the Union Addresses increases the probability that those requests are acted upon by Congress. Alternatively, more requests indicate a large presidential legislative agenda, which could signal an increase in the probability of unilateral action (Bolton and Thrower 2016).

*Polarization* represents the average level of polarization across the two chambers of Congress. To obtain this measure, we took the difference between the party means in each chamber and averaged them together. For

instance, the mean NOMINATE score for each party—in each chamber—was averaged together in order to determine the level of polarization for each Congress. This measure allows us to demonstrate how the average level of polarization affects the president's behavior as it pertains to their legislative proposals. In general, the higher the difference between the party means, the more polarization exists in that chamber.<sup>29</sup>

*Presidential Approval* represents the level of approval enjoyed by the president at the time of the proposal.<sup>30</sup> We expect higher presidential approval to have a positive influence on the probability of a president's proposal going through Congress. We believe that the relationship will be similar for unilateral action as well. *Honeymoon* indicates the first year in a president's term. Presidents are known to experience “honeymoon” periods at the start of their terms. However, the public and Congress can grow weary of the actions of presidents as their time in office extends (Brace and Hinckley 1991; Farnsworth and Lichter 2011). We argue that in the first year of a president's tenure, Congress will greet the president with legislative success, whereas the later years will be more dominated with unilateral success.

## Results

Table 1 presents the results of the first of our four empirical models.<sup>31</sup> The multinomial probit model represents all 729 legislative proposals by presidents from 1964–2010. In the multinomial probit model, our expectations are largely confirmed. The probability of a legislative proposal becoming law or an executive order, compared to no action on the proposal, is dependent on divided government, significance of the legislation, number of legislative requests, congressional polarization, and presidential approval. Divided government is statistically significant and in the expected direction for proposals that are realized via law or as executive orders. This indicates that a president's legislative proposal is less likely to become a law under divided governmental control, *ceteris paribus*.

With respect to the substantive effect, a proposal has approximately a 36% probability of being enacted into law under divided government compared to a 46% probability of being enacted during unified government. Also, proposals are less likely to become executive orders under divided government. Substantively, the probability that a proposal becomes an executive order is 17%, compared to just 13% under divided government. These results are consistent with Howell's work, which demonstrates that presidents are more likely to issue executive orders under unified government (Howell 2003).

If the proposal is considered “important” legislation, then the probability of that proposal successfully following the legislative route increases. If a



proposal is merely routine, the probability that it becomes law approaches 37%, whereas the probability of an important proposal approaches 50%. For the *Number of Requests*, the sign is positive and significant. This indicates that, all else equal, increasing the number of proposals also increased the probability of a proposal eventually becoming law. At the lowest number of legislative requests in our data (4), the probability of one of these proposals becoming law is approximately 21%. However, the probability that a given proposal becomes law is approximately 65% for the highest number of requests (34). This relationship is depicted in [Figure 1](#).

Furthermore, as party polarization increases, the probability of a proposal successfully becoming a law decreases whereas the probability of a proposal being realized via executive order increases. As shown in [Figure 2](#), at the lowest levels of polarization in our data, there is approximately a 5% probability that a president's proposal will become an executive order. Meanwhile, there is an almost 75% chance a proposal successfully completes the legislative route. This is likely a function of Congress and the president being much more willing and able to make the necessary compromises to ensure legislation is passed. Alternatively, at the highest levels of observed polarization, the probability that a proposal becomes an executive order approaches 40% compared to just 3% for laws. These findings are intuitive, based on the fact that as gridlock increases under higher levels of polarization, this in turn could lead presidents to resort to alternative means of enacting policy change such as issuing an executive order.

*Presidential Approval* is both positive and significant, again offering support for our expectations. As presidential approval increases, the probability of the president successfully working with Congress to produce legislation increases. Both members of Congress and the president alter their decision-making process in order to factor in the public's perception. This finding appears to support the extant literature that suggests that presidential approval affects the decision-making process of members of Congress.

[Figure 3](#) demonstrates that at the lowest level of presidential approval, the probability that a proposal will eventually become law is around 27%, but when approval is at its highest, the probability of a proposal becoming law more than doubles to almost 60%. Interestingly, "no action" is the most likely outcome when presidential approval is at its lowest. Laws and executive orders are similarly probable when approval is below 50%. This is consistent with Howell's findings, which demonstrate that when presidents cannot lose much more favorability, they issue more executive orders in an attempt to gain support among the public (Howell 2003). However, once presidents have a net positive approval rating, they are significantly more likely to see one of their proposals passed via the legislative route. We believe this is because presidents have more capital to negotiate with Congress and that their policy views are more popular among the public.<sup>32</sup>

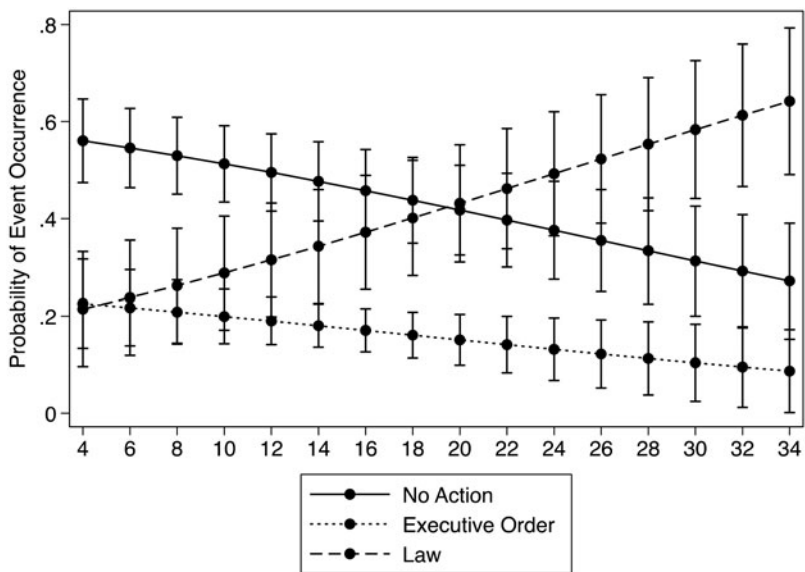


Figure 1. Probability of event for the number of requests.

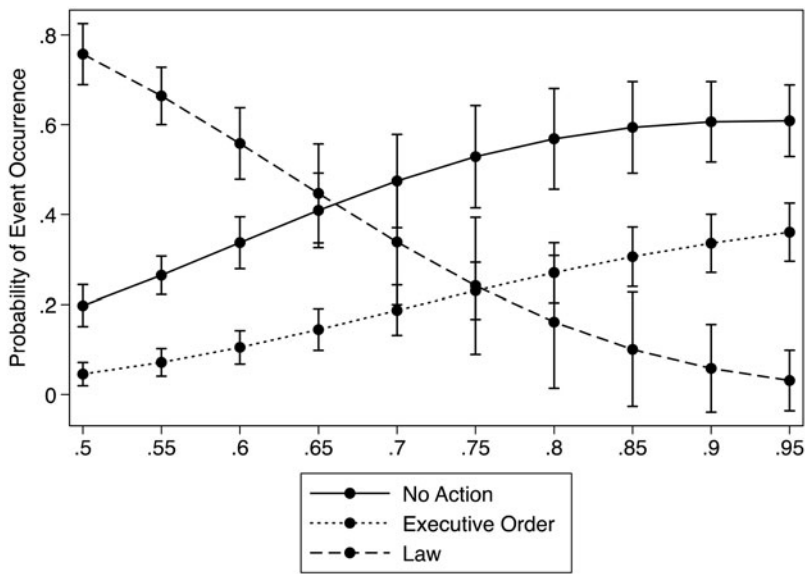
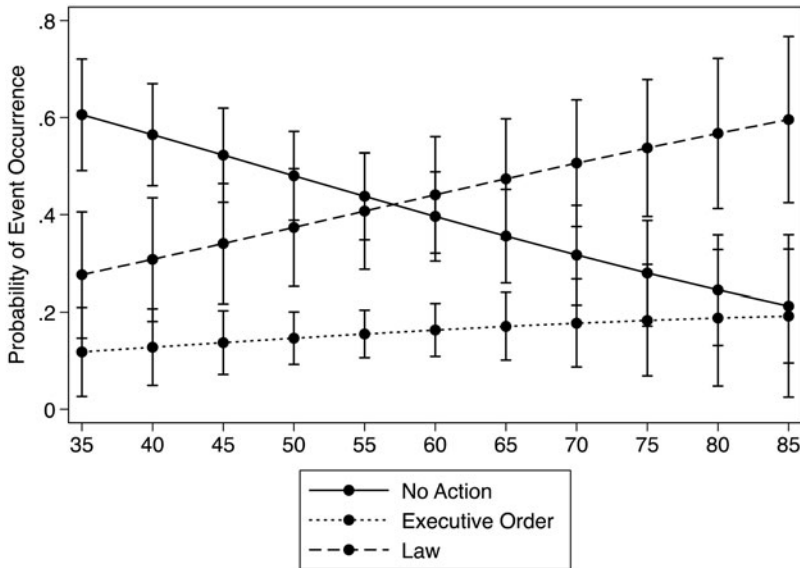


Figure 2. Probability of event for polarization.

Conversely, *Honeymoon* is not a significant predictor of whether a legislative proposal becomes a law or an executive order. This runs counter to popular conceptions of the modern presidency. Though many political observers place increased emphasis on the earliest months of a president's tenure, as Neustadt (2001) demonstrates, new presidents and their staff often lack the institutional knowledge to take full advantage of the opportunities presented by the first few



**Figure 3.** Probability of event for presidential approval.

months in office. Even among those who are more knowledgeable (such as former vice presidents or newly reelected presidents), achieving meaningful legislative victories takes time—more time than a typical “honeymoon” phase may last. Therefore, it is less surprising to observe no effect from this variable.

Our empirical results demonstrate that a clear difference exists in the circumstances that produce laws and executive orders from presidential proposals. We have shown through a unique dataset that the more appropriate way to analyze this type of data and research question is in the proposal stage, when all three outcomes (“No Action,” “Law,” or “Executive Order”) are possible, versus through the “either/or” scenario once the events have occurred. Based on our findings, we believe that future research should carefully analyze the relationship between the president and Congress from the proposal stage to gain a better understanding of how presidents decide to pursue their policy agenda in light of existing institutional and political constraints.

## Conclusion

Pursuing a largely unilateral strategy might make it difficult for a president to endear oneself with Congress. As such, it is often a good idea to engage policy via the legislative route since more actors will have a stake in the process and will be less likely to feel slighted. We realize that legislation created and passed through Congress is the optimal goal of any president, based primarily on the hurdles to overturn law. Nevertheless, our expectations suggest that presidents are willing to use executive orders as a way to

ensure policy change if the legislative route is less advantageous. Recent presidents, such as George W. Bush and Barack Obama, have witnessed this firsthand as they dealt with Congresses controlled by the opposite party. The former issued an executive order in 2008 that directed federal agencies to ignore budget earmarks that legislators did not vote on but were included in legislation that ultimately passed. In addition, President Obama was willing to engage in unilateral action to establish DACA considering Congress's unwillingness to tackle the politically difficult issue directly.

Based on the argument and findings we report in this article, a better way to conceptualize this relationship is by examining situations, such as proposals at the State of the Union, where presidents still have both options available to them. This gives researchers the opportunity to determine the specific circumstances that lead individual presidents to engage in policy-making behavior. Based on this premise, we find that presidential legislative proposals are more likely to be subjected to the legislative means of achieving policy goals when presidential approval is higher, partisan polarization is significantly lower, and the issue being discussed is substantively "important." However, we find that policy is more likely to be enacted through executive orders when polarization is higher, control of the government is divided between parties, and certain salient policy issues are being debated.

These results address an important void in the literature on the president's legislative agenda in addition to providing an avenue for future research on separation of powers. In this article, we have examined the relationship between specific proposals made by the president and the issuance of executive orders from Presidents Johnson through Obama. Despite potential data constraints, future work should endeavor to explore this relationship in earlier timeframes as well. Furthermore, differentiating between specific items on the president's legislative agenda and their administrative agenda could yield additional insights. In relation, executive orders are not the only unilateral tools at the president's disposal. Investigating the role of executive agreements and proclamations in this process may also bear intellectual fruit. Last, evaluating the substantive details of proposals relative to which ones become law versus ones created unilaterally could provide a more nuanced understanding of this ongoing relationship.

Another potential avenue for future research would be to investigate when a president accepts a certain amount of legislative compromise and allows a bill to become a law versus trying to move policy through issuing an executive order. In the former situation, presidents expend significantly less political capital and are able to see their preferences at least somewhat met. In the latter situation, the outcome more closely aligns with their policy preferences, but potentially risks their image and relationship with Congress in the process. Such a proposal is also more likely to be overturned by a

subsequent president. Understanding the answers to these and related questions is of increasing importance given the rising levels of polarization and gridlock in Washington that are unlikely to change in the near term.

## Notes

1. See Austin Ramzy, “McCain’s Vote Provides Dramatic Moment in 7-Year Battle Over Obamacare,” July 28, 2017, *New York Times*, <https://www.nytimes.com/2017/07/28/us/politics/john-mccain-vote-trump-obamacare.html>.
2. See Peter Sullivan, “Trump Eases ObamaCare Rules with Executive Order,” October 12, 2017, *The Hill*, <https://thehill.com/policy/healthcare/355123-trump-eases-obamacare-rules-with-executive-order>
3. For purposes of this article, we consider any piece of legislation that was passed by Congress and signed by the president to be a law. Any agenda item that was not designated a law or executive order is considered as having received no action.
4. Determining and debating what constitutes a presidential unilateral action has created a relatively robust literature for students of the American executive. Scholars have identified a variety of powers as potential avenues by which the president can create policy without the express consent of Congress. These include administrative strategies of dealing with the bureaucracy (Kennedy 2015; Rudalevige 2009, 2015), signing statements (Cooper 2014; Ostrander and Sievert 2013a, 2013b), executive proclamations (Cooper 2014; Dodds 2013; Rottinghaus and Maier 2007), executive memorandums (Lowande 2014), national security directives and recess appointments (Cooper 2014; Black et al. 2007), disaster declarations (Reeves 2011; Young 2013), and executive orders (Christenson and Kriner 2017a; Fine and Warber 2012; Howell 2003; Mayer 2001; Moe and Howell 1999; Rudalevige 2012, 2015).
5. We do not think that presidential executive orders are meant to supplant law. We understand and agree that if presented with the option of having their policies implemented either through Congress or an executive order, most presidents would choose Congress given the negative stigma sometimes attached to unilateral actions and the relative ease by which they can be undone by Congress or future presidents.
6. This is not meant to insinuate that there are only two ways for presidents to shift public policy toward their own preferences. The president has many means to potentially shift public policy, be it through Congress, executive orders, executive memorandums, or executive proclamations. We are also mindful that this short list of presidential tools is not exhaustive. For our purposes, however, we are focusing solely on executive orders to bring some cohesion to the literature that focuses on executive orders and public policy. In addition, prior research has shown that presidents utilize executive orders in order to shift policy toward the majority within Congress (See Law 2012).
7. The judiciary provides an important check on this authority by intervening from time to time when the president overreaches via executive order as we have seen most recently with Presidents Obama and Trump with respect to immigration.
8. We are not arguing that the legislative branch does not have important oversight responsibilities over the president and the bureaucracy, but both are insulated with respect to how they are able to operate.
9. The rationale for why presidential approval ratings affect legislative success is similar to the theories about why “going public” has the same effect. Because the national electorate votes for presidents and members of Congress are voted for by subsets of

the same electorate, it follows that if the president achieves a certain level of mass approval, legislators will vote accordingly (Mayhew 1974).

10. We do not try to argue that every member of Congress will be beholden to the president after an election. We recognize that some will have the same pressures from their constituents, but research has shown some evidence of the honeymoon period across time (Beckmann and Godfrey 2007; Farnsworth and Lichter 2011).
11. We would argue this benefits presidents in terms of their long-term policy objectives because laws created by Congress can more easily withstand shifting political alignments and allegiances.
12. It is important to note that Christensen and Kriner (2017b) present a more nuanced interpretation by showing that Congress can diminish support for some of the president's actions—including in the foreign policy realm—by raising constitutionally-based objections.
13. For an alternative perspective on legislative effectiveness, see Mayhew (2005).
14. We do not intend to argue that all coalitions in Congress present the same advantages throughout time. For instance, Democratic majorities in the 1960s were split with Southern Democrats aligning themselves with Republicans. With increasing polarization, coalition sizes in the 1990s and 2000s should produce coalitions that are much more aligned with the president. We utilize the size of the coalitions to present an alternative approach to the effects of divided government, which is included in the appendix.
15. We recognize that the failure of Congress to act occasionally has unintended consequences with regard to policy ending up closer to the president's preferred position. On this point, see especially Law (2012) who argues that most executive orders move preferences closer to both the president and Congress.
16. We make no claims that the president is the only entity in which executive orders originate, but we must assume that the executive branch's bureaucracy share similar goals on policy objectives.
17. To date, there has been little work that systematically examines why presidents might fail to advance a unilateral initiative given inaction on the part of Congress, most likely because studying non-events can pose a significant challenge empirically. Nevertheless, we believe it is important to control for this potential outcome in our empirical model since it does occur on a fairly regular basis. We would encourage other scholars to investigate this in future research.
18. Most recently, Belco and Rottinghaus (2014) explain when certain conditions are more likely to elicit unilateral action from the president. In addition, Belco and Rottinghaus (2017) explain when presidents use executive orders and proclamations related to topics within and outside the legislative arena.
19. This time frame was chosen using the data available. However, we feel it provides enough variability in the composition of government and other relevant conditions to produce generalizable results.
20. We followed the direction of Eshbaugh-Soha (2005) when determining which proposals entered the president's agenda. The proposal had to be mentioned twice publicly (in the State of the Union and somewhere else) to make the agenda. If a proposal had multiple parts, then it was disaggregated and each part was treated as an agenda item. This was done because certain aspects of a presidential proposal might be introduced in legislation while other parts would not.
21. A recent example of this would be President Trump's decision in April 2017 to sign an executive order dismantling many of the environmental protections set up during the Obama administration. See Brady Dennis and Juliet Eilperin, "Trump Signs Order

at the EPA to Dismantle Environmental Protections,” *Washington Post*, March 28, 2017, [https://www.washingtonpost.com/national/health-science/trump-signs-order-at-the-epa-to-dismantle-environmental-protections/2017/03/28/3ec30240-13e2-11e7-ada0-1489b735b3a3\\_story.html?utm\\_term=.49d7871c7037](https://www.washingtonpost.com/national/health-science/trump-signs-order-at-the-epa-to-dismantle-environmental-protections/2017/03/28/3ec30240-13e2-11e7-ada0-1489b735b3a3_story.html?utm_term=.49d7871c7037)

22. Please see the appendix for additional models calculated based on different subsets of the data. We utilize multiple models for a variety of reasons. First, estimating a multinomial model requires assuming the independence of irrelevant alternatives in the dependent variable. This means that each outcome must have the same probability of being selected regardless of the presence or absence of some other outcome. In this case, a multinomial model would only be appropriate if the president’s probability of choosing between signing a bill into law or not signing a bill into law (for whatever reason) was not conditioned on their ability to issue an executive order. As it is reasonable to assume that presidents would rather move policy on their own than see policy unchanged, the IIA assumption is not one we feel comfortable making. Furthermore, the multinomial model would only be appropriate if the president’s probability of issuing an executive order or letting policy remain the same was not affected by their ability to sign a bill into law. Given that executive orders cannot supersede law and require more political capital than signing a bill into law, it is fair to assume that presidents would prefer moving policy through legislative means rather than unilaterally. However, IIA is not an issue when estimating a multinomial probit model, and we therefore include it in our estimates.

In addition, we include all proposals in the first model and code all proposals that become law as 1 and all proposals that do not become law as 0 in a given year. Then, of the proposals that do not become law, we estimate a second binary logistic regression where proposals that became executive orders were coded as 1 and proposals that did not were coded as 0. This allows us to test our hypothesis in a methodologically sound and relatively intuitive way, as well as provides us with added robustness. We also estimate a single logit predicting whether a proposal became an executive order or a law. Although this excludes the possibility of examining a proposal that does not receive any action, it does allow us to evaluate the differences between pieces of legislation that ultimately become public law or an executive order.

Finally, some may argue a selection model is more appropriate to the specific question at hand. However, a selection model does not conform to the theoretical or methodological requirements necessary for us to justify its use here. A selection model accounts for the correlation between potential outcomes. For example, when modeling how a member of Congress feels about a bill, one must first estimate whether she voted or abstained before modeling whether she voted yea or nay. In this case, not offering support comes in the form of abstaining or voting nay, thus necessitating the need for a selection model. To create an analogous model in this article, we would need to know whether a proposal was acted on before and then modeling whether that proposal became a law or an executive order. Without having the entire population of proposals (data that do not exist and whose collection would fall well beyond the scope of this project), such a model cannot be easily estimated.

23. Any agenda item that was not designated a law or an executive order is considered as having received no action for the purposes of our work.



24. To code the executive orders, we follow Eshbaugh-Soha (2005, 2010) and searched for any executive order that contained information relating to the original policy proposal. If any part of the executive order related back to the president's legislative proposal, that executive order satisfied the requirement of achieving the president's policy goal.
25. We also estimate our models using the percent of the coalition size of the president's party in each chamber. The results are substantively the same as when we use the simple dichotomy for divided government. Both variables (divided government and coalition size) have substantial correlation; therefore, having both variables in the same model seemed redundant. For more information on this, see the Appendix.
26. Eshbaugh-Soha (2005, 2010) originally coded presidential proposals into four different categories: minor, incremental, major, and meteoric. Madonna et al. (2016) collapsed the four categories into two, leaving only important and routine. For Madonna et al.'s (2016) purposes and our own, minor and incremental proposals are considered routine, whereas major and meteoric proposals are considered important. An example of an "important" proposal would be President Reagan's 1985 legislative proposal for tax reform. A "routine" proposal would be similar to that of President Clinton's proposal for an increase to NSF funding in 2000.
27. We borrow our categorization from Ragsdale (2014). We utilize Ragsdale's coding scheme and condense them in order to have a more parsimonious model. In addition, we coded all the proposals based on the coding and categories provided by the Comparative Agendas Project. The Comparative Agendas Project provides more nuanced categories than those found in Ragsdale (2014), which allows us to better specify the issue areas of the legislative proposals. Similar to the way we condensed the Ragsdale categories, we applied the same process to the Comparative Agendas Project issue areas. The categories that we utilized produced the same results for the issue areas created by the Comparative Agendas Project as those from Ragsdale (2014). Therefore, we are confident in the condensed categories that we utilize from Ragsdale (2014).
28. The foreign affairs category includes issues such as foreign trade, diplomacy, and foreign aid. The defense, social welfare, and civil rights category include issues relating to defense and everything related to health care (i.e., Social Security and Medicaid). Government and economic management also contain all issues relating to education. The natural resources and environment category contains all agriculture related issues. Last, the other category includes issues relating to ceremonial/cultural, federalism, and personnel/agency requests.
29. Data on congressional polarization comes from [www.voteview.com](http://www.voteview.com). We have used these data to create the average amount of polarization for a given Congress. Higher levels of polarization indicate that the parties are further apart from one another (Poole and Rosenthal 1997). This tends to lead to more legislative gridlock, which in our case, could signal greater opportunities for presidents to use their unilateral powers.
30. The presidential approval data was obtained from Gallup and indicates the percent of respondents approving of the job the president is doing during the month in which Congress was considering the proposal.
31. See Table A6 in the appendix for an examination of the model with an interaction term between divided government and polarization.
32. Table A1 in the Appendix contains estimates using coalition size instead of a divided government indicator. The results are substantively similar and do not alter our conclusions.

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## Appendix

**Table A1** presents two executive order models and a law model. Our executive order versus law model (column 1) is coded 1 if a proposal became an executive order and 0 if a proposal became law. The law model (column 2) is coded 1 if a proposal became law and 0 if the proposal received no action or became an executive order. Last, the second executive order versus no action model (column 3) is the same as the first unilateral model with the exception that proposals that eventually became law are excluded from this analysis. The dependent variable is therefore coded as 1 for executive orders and 0 for proposals that received no action. **Table A1** presents the results from our logistic regression models that test the differences in the relationship between executive orders and public laws as well as provide robustness checks for the results in the **Table 1**.

In the executive order model (column 1), the number of legislative requests, polarization, and the issue areas of defense, social and civil rights, and natural resources and the environment affect the issuance of an executive order. A few key differences emerge from the results on **Table 1**. Divided government does not appear to directly affect the probability of a legislative proposal being enacted via executive order. Recall that this model only observes presidential legislative proposals that became executive orders or laws.

Therefore, although these results serve as a robustness measure, they are not capturing the full range of outcomes that are presented in **Table 1**. Similarly, when observing only proposals that became either an executive order or law, the number of requests is statistically significant and negative, suggesting that an increase in the number of requests decreases the probability of an executive order. These results further the discussion from

**Table A1.** Logistic regression estimates of presidential proposals for 1964–2010.

	Executive Order: Law	Law	Executive Order: No Action
Divided Government	–0.135 (0.404)	– <b>0.421</b> ( <b>0.182</b> )	– <b>0.536</b> ( <b>0.230</b> )
Important	–0.530 (0.342)	<b>0.451</b> ( <b>0.098</b> )	–0.032 (0.218)
Number of Request	– <b>0.080</b> ( <b>0.036</b> )	<b>0.066</b> ( <b>0.016</b> )	–0.001 (0.022)
Polarization	<b>12.262</b> ( <b>2.511</b> )	– <b>9.359</b> ( <b>2.259</b> )	<b>1.739</b> ( <b>0.477</b> )
Presidential Approval	–0.001 (0.018)	<b>0.031</b> ( <b>0.009</b> )	0.029 (0.022)
Honeymoon	–0.169 (0.486)	0.215 (0.270)	0.284 (0.273)
Defense	<b>1.245</b> ( <b>0.629</b> )	–1.243 (1.283)	–0.012 (0.424)
Social/Civil Rights	<b>1.548</b> ( <b>0.612</b> )	–1.451 (1.063)	–0.378 (0.538)
Government/Economic	0.698 (0.538)	–0.959 (1.139)	–0.631 (0.941)
Natural/Environment	<b>2.801</b> ( <b>0.856</b> )	–1.652 (1.143)	<b>1.281</b> ( <b>0.562</b> )
Other	2.362 (1.701)	–2.119 (1.563)	0.374 (0.847)
Intercept	– <b>8.547</b> ( <b>1.615</b> )	<b>4.049</b> ( <b>1.983</b> )	– <b>3.370</b> ( <b>0.994</b> )
Log-Likelihood	–148.982	–352.538	–211.477
AIC	313.965	721.077	438.954
N	457	729	389

Bold coefficients indicate  $p < 0.05$ . Coefficients reported with standard errors in parenthesis.



**Table A2.** Multinomial probit regression estimates of presidential proposals with coalition size, 1964–2010.

	Multinomial Probit			
	Law	Executive Order	Law	Executive Order
% House Coalition	0.001 (0.016)	0.011 (0.032)	0.087 (0.216)	0.123 (0.147)
% Senate Coalition	0.022 (0.018)	−0.014 (0.033)	0.010 (0.289)	−0.248 (0.173)
Important	<b>0.349</b> ( <b>0.102</b> )	−0.057 (0.178)	<b>0.355</b> ( <b>0.101</b> )	−0.057 (0.178)
Number of Request	<b>0.049</b> ( <b>0.010</b> )	−0.005 (0.015)	<b>0.049</b> ( <b>0.013</b> )	0.004 (0.015)
Polarization	− <b>6.921</b> ( <b>1.552</b> )	<b>1.165</b> ( <b>0.259</b> )	−0.249 (8.999)	− <b>9.985</b> ( <b>3.241</b> )
Presidential Approval	<b>0.030</b> ( <b>0.008</b> )	0.022 (0.015)	<b>0.031</b> ( <b>0.010</b> )	0.025 (0.017)
Honeymoon	0.205 (0.165)	0.236 (0.249)	0.207 (0.177)	0.149 (0.238)
% House X Polarization	–	–	−0.151 (0.367)	−0.192 (0.249)
% Senate X Polarization	–	–	0.019 (0.511)	0.405 (0.302)
Defense	−0.809 (0.983)	0.200 (0.363)	−0.695 (0.893)	0.069 (0.362)
Social/Civil Rights	−1.049 (0.867)	−0.089 (0.447)	−0.988 (0.827)	−0.162 (0.433)
Government/Economic	−0.745 (0.960)	−0.301 (0.714)	−0.678 (0.920)	−0.395 (0.695)
Natural/Environment	−0.713 (0.912)	<b>1.080</b> ( <b>0.464</b> )	−0.628 (0.873)	<b>0.987</b> ( <b>0.450</b> )
Other	−1.463 (1.177)	0.427 (0.675)	−1.416 (1.110)	0.298 (0.669)
Intercept	1.381 (1.806)	− <b>2.643</b> ( <b>0.934</b> )	−2.455 (4.340)	3.650 (1.864)
Log-Likelihood	−562.846		−560.157	
AIC	1141.692		1136.315	
N	729		729	

Bold coefficients indicate  $p < 0.05$ . Coefficients reported with standard errors in parenthesis.

**Table 1**, which noted that an increase in proposal requests led to an increase in the likelihood of a law. We also observe predictable differences across issue areas. Specifically, proposals pertaining to defense, civil rights, and environmental issues are more likely to be enacted via executive orders. These issue areas contain substantive matters where the president has historically been delegated more authority by Congress.

In the law model (column 2), our expectations are largely met. The probability that a president utilizes the legislative route is dependent on the type of legislation, the number of requests, congressional polarization, and presidential approval. These variables are statistically significant and in the expected direction, which offers additional support for the findings in **Table 1**.

In the second executive order model (column 3), the probability that a president issues an executive order, compared to “no action” on the proposal, is largely dependent on divided government, the level of partisan polarization, and whether the issue areas pertain to Government and Economic Management. Overall, polarization appears to greatly affect the probability that a president will issue an executive order regardless of how the dependent variable is measured. Similarly, certain issue areas also increase the probability of unilateral action by the president.



**Table A3.** Logistic regression estimates of presidential proposals with coalition size, 1964–2010.

	Executive Order: Law		Law	Executive Order: No Action		
% House Coalition	0.025 (0.044)	0.131 (0.334)	−0.0004 (0.014)	0.117 (0.279)	0.013 (0.041)	0.236 (0.200)
% Senate Coalition	−0.066 (0.042)	−0.445 (0.425)	0.031 (0.017)	0.086 (0.392)	−0.017 (0.045)	−0.443 (0.235)
Important	−0.605 (0.330)	−0.610 (0.319)	<b>0.457</b> (0.101)	<b>0.417</b> (0.099)	−0.077 (0.214)	−0.077 (0.214)
Number of Request	− <b>0.083</b> (0.032)	− <b>0.076</b> (0.034)	<b>0.066</b> (0.014)	<b>0.064</b> (0.019)	−0.008 (0.020)	0.008 (0.018)
Polarization	<b>11.958</b> (2.367)	−12.695 (10.131)	− <b>9.257</b> (2.240)	6.422 (12.709)	<b>1.969</b> (0.383)	− <b>16.108</b> (4.324)
Presidential Approval	−0.005 (0.020)	−0.004 (0.019)	<b>0.032</b> (0.010)	<b>0.033</b> (0.011)	0.027 (0.023)	0.034 (0.029)
Honeymoon	−0.031 (0.576)	−0.133 (0.564)	0.196 (0.260)	0.243 (0.272)	0.337 (0.306)	0.167 (0.292)
% House X Polarization	—	−0.178 (0.602)	—	−0.209 (0.479)	—	−0.379 (0.345)
% Senate X Polarization	—	−0.659 (0.760)	—	−0.098 (0.697)	—	0.725 (0.425)
Defense	<b>1.460</b> (0.645)	<b>1.275</b> (0.611)	−1.215 (1.293)	−0.971 (1.160)	0.247 (0.377)	0.020 (0.338)
Social/Civil Rights	<b>1.606</b> (0.664)	<b>1.699</b> (0.555)	−1.409 (1.097)	−1.250 (1.047)	−0.174 (0.548)	−0.342 (0.547)
Government/Economic	0.749 (0.630)	0.859 (0.528)	−0.941 (1.180)	−0.763 (1.138)	−0.348 (0.960)	−0.597 (0.972)
Natural/Environment	<b>2.683</b> (0.807)	<b>2.688</b> (0.713)	−1.558 (1.165)	−1.360 (1.123)	<b>1.436</b> (0.565)	<b>1.275</b> (0.569)
Other	2.490 (1.788)	2.551 (1.797)	−2.179 (1.615)	−2.021 (1.533)	0.652 (0.999)	0.392 (1.046)
Intercept	− <b>6.044</b> (1.783)	7.718 (4.994)	2.078 (2.247)	−6.959 (6.116)	− <b>3.629</b> (1.174)	<b>6.539</b> (1.624)
Log-Likelihood	−146.775	−145.036	−503.656	−349.074	−213.634	−211.4879
AIC	309.550	306.073	717.420	714.149	443.265	438.975
N	457	457	729	729	389	389

Bold coefficients indicate  $p < 0.05$ . Coefficients reported with standard errors in parenthesis.

**Table A4.** Multinomial probit regression estimates of presidential proposals with nominate differences between presidents and chamber medians, 1964–2010.

	Multinomial Probit	
	Public Law	Executive Order
House Difference	−0.777 (0.909)	−0.779 (0.564)
Senate Difference	0.337 (0.980)	0.776 (0.562)
Important	<b>0.375</b> (0.107)	−0.018 (0.181)
Number of Request	<b>0.043</b> (0.011)	−0.005 (0.016)
Polarization	− <b>7.258</b> (1.036)	<b>0.861</b> (0.289)
Presidential Approval	<b>0.022</b> (0.007)	0.011 (0.016)
Honeymoon	<b>0.556</b> (0.238)	<b>0.646</b> (0.233)
Defense	−0.949 (1.007)	0.052 (0.328)
Social/Civil Rights	−1.176 (0.845)	−0.199 (0.476)

(continued)

**Table A4.** Continued.

	Multinomial Probit	
	Public Law	Executive Order
Government/Economic	−0.841 (0.941)	−0.409 (0.753)
Natural/Environment	−0.922 (0.879)	<b>0.964</b> <b>(0.486)</b>
Other	−1.451 (1.194)	0.311 (0.667)
Intercept	<b>3.478</b> <b>(1.327)</b>	−1.951 <b>(0.712)</b>
Log-Likelihood	−557.192	
AIC	1130.383	
N	729	

Bold coefficients indicate  $p < 0.05$ . Coefficients reported with standard errors in parenthesis.

**Table A5.** Logistic regression estimates of presidential proposals with nominate differences between presidents and chamber medians, 1964–2010.

	Executive Order: Law	Law	Executive Order: No Action
House Difference	−1.697 (1.911)	−0.858 (1.079)	−0.721 (0.616)
Senate Difference	2.500 (1.909)	0.318 (1.162)	0.711 (0.522)
Important	−0.555 (0.330)	<b>0.484</b> <b>(0.108)</b>	−0.055 (0.219)
Number of Request	−0.074 (0.024)	<b>0.058</b> <b>(0.015)</b>	−0.005 (0.022)
Polarization	<b>11.259</b> <b>(1.819)</b>	−9.633 <b>(1.644)</b>	<b>1.728</b> <b>(0.466)</b>
Presidential Approval	−0.009 (0.020)	<b>0.026</b> <b>(0.008)</b>	0.013 (0.027)
Honeymoon	0.360 (0.458)	0.420 (0.336)	<b>0.770</b> <b>(0.351)</b>
Defense	<b>1.575</b> <b>(0.556)</b>	−1.327 (1.360)	0.095 (0.319)
Social/Civil Rights	<b>1.476</b> <b>(0.482)</b>	−1.503 (1.089)	−0.277 (0.567)
Government/Economic	0.597 (0.418)	−0.996 (1.172)	−0.488 (0.989)
Natural/Environment	<b>2.746</b> <b>(0.627)</b>	−1.744 (1.181)	<b>1.321</b> <b>(0.565)</b>
Other	2.251 (1.497)	−2.057 (1.645)	0.562 (0.924)
Intercept	−7.974 <b>(0.931)</b>	<b>4.515</b> <b>(1.631)</b>	−2.942 <b>(1.050)</b>
Log-Likelihood	−144.429	−348.022	−211.961
AIC	304.859	712.044	439.922
N	457	729	389

Bold coefficients indicate  $p < 0.05$ . Coefficients reported with standard errors in parenthesis.

One major takeaway from the results in Table A1 suggests that presidential legislative initiatives need to be analyzed from the proposal stage. Only examining a subset of action on presidential proposals (i.e., only observing executive orders against laws or executive orders against no action) does not provide full details of how these outcomes occur.

**Table A6.** Multinomial probit regression estimates of presidential proposals, 1964–2010.

	Multinomial Probit	
	Public Law	Executive Order
Divided Government	–2.197 <b>(0.667)</b>	0.102 (0.906)
Important	0.372 <b>(0.104)</b>	–0.026 (0.181)
Number of Requests	0.047 <b>(0.011)</b>	–0.001 (0.017)
Polarization	–8.675 <b>(1.767)</b>	1.341 <b>(0.547)</b>
Presidential Approval	0.029 <b>(0.007)</b>	0.023 (0.014)
Honeymoon	0.254 (0.179)	0.182 (0.197)
Defense	–0.696 (0.946)	–0.022 (0.403)
Social/Civil Rights	–1.005 (0.828)	–0.245 (0.426)
Government/Economic	–0.665 (0.912)	–0.478 (0.681)
Natural/Environment	–0.682 (0.884)	0.940 <b>(0.446)</b>
Other	–1.322 (1.151)	0.196 (0.599)
Divided X Polarization	2.923 <b>(0.960)</b>	–0.689 (1.001)
Intercept	3.909 <b>(1.579)</b>	–2.645 <b>(0.615)</b>
Log-Likelihood	–559.644	
AIC	1135.288	
N	729	

Bold coefficients indicate  $p < 0.05$ . Coefficients reported with standard errors in parenthesis.