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## All The President's Men? Politicization and Executive Control over the Rulemaking Process

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# All The President's Men?

Politicization and Executive Control over the Rulemaking Process

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Senior Honors Thesis

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**Abstract:** In the age of the administrative state, the battle over who controls the federal bureaucracy and the rulemaking process decides much of the direction of American public policy. The president has emerged from this milieu as the strongest political actor in the administrative state because of their ability to leverage political appointees and the centralized EOP to protect their agenda from entrepreneurial bureaucrats and a rivalrous Congress. Yet, little is known about the effectiveness of political appointees as a tool of presidential control outside of case studies of individual agencies in the large federal bureaucracy. Using data from the Office of Information and Regulatory Affairs (OIRA) to create new, generalizable variables of presidential control, I run logistic and OLS regressions to test whether political appointees are able to effectively promote the president's agenda. I find that political appointees do increase the president's control over the rulemaking process as well as a relationship between centralization and politicization as substitutes. These findings have significant implications for how we understand democratic accountability and the continued competence of the bureaucracy.

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In November, 2019, Secretary of Education Betsy DeVos announced a new set of rules that will reshape how Title IX adjudicates cases of sexual misconduct on college campuses. Under the finalized rules, sexual misconduct will now be defined as “unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it denies a person access to the school’s education program or activity,” a stark departure from the Obama-era guidelines that defined harassment as “unwelcome conduct of a sexual nature” (Green 2018a). Moreover, the new rules will allow the survivor to be cross-examined and permit schools to choose whether to continue to use a “preponderance of evidence” standard or switch to a “clear and convincing” policy (Meckler 2019; Green 2018a). The impetus for this large swing in policy did not come from the career civil servants within the Department, but from the political appointees of the President and his party which described the previous rules a “distortion of Title IX” that “contravenes our country’s legal traditions and must be halted” (Republican Party Platform 2016; North 2019). These rules seem to be an active choice by Secretary DeVos and the President to use the Department of Education to prioritize the rights of students accused of sexual assault and make it more difficult for survivors to bring cases.

These changes will leave thousands of cases of sexual harassment and assault either unreported or uninvestigated every year. A Department of Education analysis when the rules were first proposed found that that sexual harassment investigations would fall by 39 percent in colleges and universities and by 50 percent in elementary and secondary school districts (Green 2018b).<sup>1</sup> This decrease is not because of spontaneously fewer incidents, rather the new definition of sexual misconduct will prevent formal investigations of previous cases which were previously

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<sup>1</sup> While the analysis was conducted upon an earlier draft of the rules which removed even more protections for survivors of sexual assault, the final rules issued are largely the same as that draft. (North, 2019; Meckler, 2019; New York Times, 2019).

classified as such. The potential to be cross-examined will only further increase the personal cost of filing a complaint and the new standard of evidence will make convictions far harder to attain. These technical changes to definitions and standards will change the lives of Americans across the country, yet they did not come from a traditional political actor.

This new set of rules governing sexual assault was not written in a bill passed by Congress, a judicial ruling from a Supreme Court justice, or an executive order from the president, but rather by civil servant in a public sector agency. Agencies and bureaus—terms that I will use interchangeably in the piece—make up an expansive network of nondemocratic organizations that oversee and administer the statutes that Congress writes and the president signs into law. This is the American bureaucracy and the unelected civil servants within are our bureaucrats. Congress rarely writes a law specific enough to be applied as written and so they delegate authority to agencies to design rules and regulations—synonymous terms in this context—which fill in the details needed to apply those statutes. The 1946 Administrative Procedure Act (APA) defines a rule as any “agency statement of general or particular applicability and future effect designed to...interpret, or prescribe law or policy” [U.S.C §551(4)(1994)]. In 2015, there were about 30 new rules issued for every piece of legislation passed by Congress, and Warren (2010) estimates that rules make up over 90% of the legal code that governs American life (Crews 2016b, Yackee, 2019). Rules are essential to fill in the gaps and ambiguities in legislation, but they also present political opportunities to nontraditional political actors like bureaucrats, as well as elected officials to change the meaning of bills that have already been signed into law.

Despite the common narrative of a Congressional driven policy process, the president’s battle with bureaucrats to control the rulemaking process has taken over the policy process. To

do so a constitutionally-weak presidency has strengthened its existing powers and created new ones in an attempt to control the bureaucracy, capitalizing upon the potential political power that comes with controlling the rules and regulations that dictate the how laws interact with society. The president has been able to use the bureaucratic discretion built into laws to move their institutional conflict with Congress to an arena where she has the upper hand. The president has done so by taking advantage of the uncertainties within laws that have created space in which Congress, the president, and bureaucrats have strategically maneuvered to dictate rules and regulations.

Title IX's vague standards of evidence and definitions of discrimination have created an arena in which traditional political actors and career civil servants have battled for control over the Office of Civil Rights (OCR) within the Department of Education to protect their own priorities in the implementation of the law. Congress passed Title IX in 1972 on a voice vote with little controversy just a few months after they had passed the Equal Rights Amendment (ERA). The central mandate of Title IX asserts that no person, on the basis of sex, shall be denied access to, the benefits of, or be discriminated under any education program or activity funded in part by federal money. While it was modeled on Title VI of the Civil Rights Act of 1964, regulators and policymakers quickly discovered that gender discrimination in education could not be solved simply by replacing "race" with "sex" in a new statute. As a result, exceptions for certain types of schools and separate living conditions were carved into the law, creating ambiguity that never existed for race over what constituted discrimination (Melnick 2018 ). Furthermore, Congress expressly stated that Title IX did not call for affirmative action, yet still allowed statistical evidence of different rates of participation to be used as evidence of



discrimination (Tani 2016). Without clear standards of what discrimination was or how to prove it in the law itself, whatever actor could control OCR would define the reach of Title IX.

In line with the traditional narrative of Congressional management of the bureaucracy, Congress built mechanisms of control into the legislation itself and used additional legislation to translate its preferences into formal rules. Most prominently, Congress passed the 1987 Gove City Bill, which clarified that entire school districts or colleges would lose federal funding if a program within was found in violation of Title IX after a Supreme Court decision ruled that only funding to the specific transgressing program within either could be cut. If Congress did not want to pass a bill dedicated to amending Title IX, it could also make active changes to Title IX through riders on appropriations bills. Additionally, Congress placed two procedural safe guards in Title IX to protect their interests: mandatory presidential approval and a congressional veto. Congress checked presidential influence by requiring that all regulations be individually approved and signed by the president, ensuring that the president had to take political responsibility for any rule issued by OCR. In theory, a president who has to actively attach their name and reputation to a rule will be less likely to advance extreme positions outside the scope of the law for fear of political backlash. Moreover, that president is likely to act as a check on entrepreneurial bureaucrats whose own agenda may not align with those of the president. The congressional veto is a more straightforward mechanism of control over policy; it allows Congress to veto any new regulation with votes from both chambers without presidential agreement. These kinds of structural controls built into a law's basic framework in addition to its legislative powers are two of several ways Congress tries to supervise the rules making process (Shapiro 2007).

However, Congressional control over Title IX quickly began to crumble as their various methods proved to be either ineffective or unconstitutional. It began when the Supreme Court ruled the Congressional veto provision unconstitutional, leaving Congress with only its traditional legislative powers to actively control enforcement. While members continued to attach riders on omnibus education or appropriations bills, no rider has ever actually passed and Congress has lacked the consensus or will to pass new legislation changing Title IX since the Grove City Bill in 1987 (Melnick 2018). Unable to overcome political inertia or build a consensus, the majority of Congress' influence on Title IX would prove to be in the original writing of the bill as the president and bureaucrats have driven the subsequent changes to enforcement, seemingly unconstrained by the presidential approval procedure.

With Congress unable or unwilling to clarify the definition of discrimination or the proper standards of enforcement, the president and the career civil servants within OCR stepped into the void left by Congress and began to implement their own priorities. In fact, the most significant periods of growth in Title IX regulations have come when presidents have lost their congressional majorities and faced stagnation in their legislative agenda (1994-2000 and 2010-2016). In each case, this regulatory growth advanced the political goals of the president and set back those of the congressional majority (Republican Party Platform 2016 and Melnick 2018). As a result, over the past fifty years, Title IX has shifted shapes and reach—expanding and then contracting across college athletics, sexual harassment, and transgender right—responding as it met advocates or resistance in the White House or OCR itself, but rarely in Congress.

In this new political arena the president has been the decisive figure, but civil servants have impeded the full implementation of some presidential priorities. Early in OCR's history, the civil servants within worked to implement the policy priorities of the bureau and its employees

rather than those of the president. Political appointees repeatedly struggled to implement the president's agenda; as President Ford's Health, Education, and Welfare Secretary, David Mathews, described OCR to his successor, "that place is a law unto itself. You will find OCR takes major actions without informing you. It even attacks you in the press, attacks the Secretary" (Melnick 2018). That same successor would later complain that OCR lacked any loyalty to or identification with the political leadership of the department. Few of the around 550 employees of OCR are political appointees and the regional and field offices are entirely made up of civil servants. While the general institutional culture of OCR has favored Democratic administration's priorities, presidents of both parties have struggled to control its bureaucrats and civil servants have historically tried to establish and maintain a level autonomy to implement their own preferences over those of the president (Melnick 2018).

To overcome this bureaucratic resistance, presidents have primarily pushed their priorities through OCR with the political appointees that lead the bureau. The process of embedding loyal presidential appointees deep into the fabric of an agency is called politicization. These presidential appointees became powerful driving forces of OCR action after the OCR was moved to the smaller Department of Education and its administrator became the appointed Assistant Secretary for Civil Rights. Since this 1980 reorganization, OCR has largely been in lock-step with the Secretary of Education as well as the White House staff—especially under the Obama administration (Johnson and Taylor 2017). Some Republican administrations have had less success controlling lower-level officials, but that is largely due to their strategy of relaxing regulatory oversight to deregulate rather than formally rewriting the rules. For the most part, the Assistant Secretaries have been able to control the policy guidelines that OCR promulgates as well the bureau's general enforcement strategy (Melnick 2018). The appointees, however, are

limited by the accumulated precedents set previously by OCR as well as the complaint processing routine that defines OCR's institutional culture (Melnick 2018). So while the presidential appointees have the authority to enact presidential preferences, they are constrained by the history and culture of the institution they are inserted into.

In response to these limitations, presidents can also try to centralize the authority and duties of OCR or other federal agencies within the Executive Office of the President (EOP) or the White House staff to ensure that their agenda is advanced. While no president has yet to directly move the role of the OCR into the White House, they have used another form of centralized authority to oversee any rules published: regulatory review through the Office of Information and Regulatory Affairs (OIRA). OIRA review gives the president an opportunity to propose changes or outright reject individual rules produced by agencies. Regulatory review is a more direct form of executive control, but also requires greater political resources than appointing a subordinate and being able to trust that they will produce favorable results. Just like in any office, competent aides are more efficient than micromanagement.

Given these two avenues for executive control, presidents are likely to choose whichever one is more effective at a lower cost. On one hand, centralized functions cost more political capital, but ensure greater control over the policy outputs (Rudalivege 2002). Politicization, on the other hand, is relatively low cost because of its constitutional and historical foundation, but it cannot guarantee results because political appointees may face bureaucratic resistance like in the OCR. Politicization can also hurt the performance of the agency because of the appointee's lack of experience and expertise. If politicization is an effective means by which the president can control the bureaucracy, then the president can save political capital and resources by relying on

it rather than further centralizing those roles. If not, those appointments will damage the agency performance to produce only patronage opportunities for the president.

Yet, while there may be theoretical trade-offs between centralization and politicization, scholars have neglected the intersection of these two methods of presidential control. This blind spot blurs lines of political accountability and further enables the president to take over an institutional policymaking space which is said to prize neutral expertise. It is impossible to understand how President Trump or any president is able to impose their agenda upon a law or an agency that may not align by only looking at a single mechanism of control. Better understanding how presidents influence the federal rulemaking process allows observers to hold the president accountable for rules and regulations they may not seem superficially responsible for.

This thesis will investigate this relationship. Using data from the Office of Personnel Management (OPM) and OIRA, I quantitatively model the relationship between agency politicization and policy outputs. To measure politicization, I work off of the seminal work of Lewis (2008), extending its measures through 2015. The central innovation of this paper, however, is the use of OIRA decision data as a measure of presidential control over the rules making process, cutting across the dual literatures of centralization and politicization. While OIRA is widely understood to be a presidential institution designed to modify regulations, it has never been used before to test the effectiveness of politicization (West, 2005; Shapiro, 2005; Wiseman, 2009; Yackee, 2019). Because OIRA review operates on the level of the individual regulation, it allows me to study whether policy aligns with presidential preferences using a single, generalizable variable and without having to make subjective judgements. Moreover, using rules as the unit of analysis allows me to directly measure politicization's effects on policy

outputs instead of relying on proxy variables. This model's ability to objectively measure political control across the federal bureaucracy is a significant methodological advancement beyond the case studies that previously dominated this field.

Ultimately, I find that agencies with higher levels of politicization promulgate rules that are less likely to be substantively reviewed by OIRA, signaling the rule is in line with presidential priorities. Additionally, I find no evidence that the further increasing the level of political appointees has diminishing marginal returns for presidential control until the very highest levels of politicization, suggesting that presidents are incentivized to politicize agencies even when political appointees are hurting agency performance. These findings confirm that political appointees meaningfully impact executive control over agencies' policy outputs—agencies are more likely to write rules that align with presidential preferences if there is a higher concentration of political appointees in their top ranks. Second, it adds empirical evidence to the claim that centralization and politicization act as substitutes. In sum, these findings bridge a crucial gap in the literature on presidential control while tying together a wide set of studies on the effectiveness of politicization with the first generalizable variable to measure congruence between agency outputs and presidential preferences.

# Literature Review

## Building the Arena

The common narrative of American government places the legislative process at the center of policy formation, but obscures how administrative politics shape how public policy touches the everyday lives of citizens. American history is often told as a one-way road of institutional creation. One where social movements spark congressional action, creating some new program or agency to address the problem at hand and subsequently handing the new program off to the bureaucracy to be faithfully executed. This focus, however, limits the story of American political development to a story about the abstract creation of institutions rather than how Americans experience being governed (Carpenter 2001). One can only understand American society's relationship with the government by studying the actual administration of policy.

The legislative process may set the parameters of possible public policy, but no statute can to be applied as written and its text does not necessarily dictate how it is applied. Policy formation does not cease with the last letter of the president's signature, but rather continues through an understudied secondary political arena: the rulemaking process. There political actors compete to insert and protect their priorities in the rules and regulations that implement laws—a process called administrative politics. And while expected actors like Congress and the president garner much of the attention, the action of bureaucrats and the expanding role of the American bureaucracy have shaped the political development of the American government as those democratic branches have reacted to contain and control the decisive rulemaking process.

## **Awakening a New Rival**

The transition to a merit system for majority of the federal workforce and a new emphasis on neutral competence created space for bureaucrats to establish their autonomy, creating the new arena of administrative politics. Before the modern merit system, patronage dominated the American bureaucracy. From the Jackson Administration until 1883, political parties used positions within federal agencies as spoils to distribute to their supporters. All civil servants paid a portion of their wages to political parties for fear of termination. Eventually, widespread corruption, incompetence, and the assassination of President Garfield by a man who could not secure a patronage position led to the Pendleton Reform Act of 1883, creating a new class of protected federal employees who would be selected on their merit and protected from corrupting political pressure (Lewis 2008). Before this reform, political parties held the federal bureaucracy by their paychecks and so there was no need for complicated institutions of political control. Without any serious protection for federal employees there was no real opportunity for bureaucratic autonomy.

At the turn of the 20<sup>th</sup> Century, a push by Progressives for “neutral competence” in the federal bureaucracy would eventually establish agencies and bureaucrats as semi-autonomous political actors. This sentiment is most famously found in Woodrow Wilson’s (1887) call to bifurcate the political system. On one side there would be politicians who established a collective purpose and, on the other, an apolitical administrative state charged to carry out that purpose. These new Progressive leaders like Theodore Roosevelt, Robert La Follete, and Woodrow Wilson pushed to professionalize the federal bureaucracy in response to the lack of competence and capacity that plagued our administrative state before the advent of the merit system. This effort would create institutions that were able to leverage their expertise to build relationships



with interests groups and political actors and carve out discretion over parts of policy (Carpenter 2000). Agencies would use that discretion to not just faithfully execute policy handed to them by Congress, but also to innovate themselves and create programs that served previously unrealized interests of those elected officials (Carpenter 2000). When they accomplished those goals and politicians began to see it in their own interest to defer to the bureaucracy and agencies were able to insulate their decisions from political pressure, agencies achieved bureaucratic autonomy.

Since those reforms, agencies have routinely acted strategically to preserve their reputations and use their relationships with other political actors to preserve that discretion. When the Federal Drug Administration (FDA) approves riskier drugs, it frequently consults its advisory committees made up of outside experts to spread out the political risk to a broader group of stakeholders and preserve the reputation in case of an unforeseen drug malfunction (Moffitt 2010). These consultations not only protect the FDA's reputation, but also strengthens the network of people who are invested in preserving the autonomy of the FDA to preserve their own influence in the process. This type of strategic action can also be found in the Occupational Safety and Health Administration (OSHA) where high-level civil servants may decide what industries to focus enforcement on, but mid-tier managers insist on neutral and consistent application of agency standards to maintain the agency's status as a fair arbiter of workplace safety (Huber 2007; Witko 2013). While these are not cases of agencies writing regulations, the instances form patterns of agencies acting politically to preserve their autonomy. Since the Progressives entrenched neutral competence into the federal bureaucracy, the professionalization and development of a long-term institutional cultures like those in the FDA and OSHA have turned bureaucrats within them into a new set of political actors.

Bureaucrats have leveraged these instances of innovation and autonomous action to drive central parts of the development of the American welfare and regulatory state. For example, the postal inspector at the turn of the 20<sup>th</sup> century, Anthony Comstock, leveraged the reputation of the Postal Service to create anti-pornography and anti-lottery rules, promoting a particular set of puritan values across the entire mail delivery service (Carpenter 2001). On a larger scale, the early bureaucratic leaders of Social Security helped a limited statute become the preeminent income protection program of the American government (Cates, 1983). These actions have not abated recently, as the FDA, for example, took a strong stance on calorie labeling on menus in 2010 because it matched the public health priorities among the career civil servants in the FDA, despite vocal opposition from industry groups and politicians and with only tepid support from the White House (Potter, 2019). A vague mandate in the Affordable Care Act (ACA) combined with insulation from political pressure gave FDA bureaucrats an opportunity to promote their own priorities for public health and change the dining experience of the entire country. These seem like minor aspects of American life, but those types of changes accumulate over time and so has the impact of bureaucratic action. It has been over a century since Progressivism broke politicians absolute control of bureaucracies and unelected bureaucrats have used this newfound independence to guide existing programs and create new ones to match their own personal values.

### **The Political Response**

In response to bureaucratic action, elected officials have used the publics' almost inherent distrust of the bureaucracy to justify expanding their own power to control the bureaucracy. The bureaucracy has long been a target of political ire, from both elected officials and regular citizens on either side of the aisle (Kaufman 1981). The fear of an "out of control" administrative state in

the 1930s and 40s—and to this day—allowed Congress and the President to rapidly expand their own capacity in response to the threat of a new and growing undemocratic branch of government (Rourke 1992). Consequently, the growth of a powerful presidency “is in no small measure a product of a widely perceived need to prevent the emergence of an imperial bureaucracy” (Rourke 1987). Bureaucratic autonomy has altered the dynamics and institutions of our government not only through action, but also by acting as almost a political boogeyman. That fear, however, is not illegitimate, federal agencies and bureaucrats acting as political actors does create serious issues of accountability and a lack of democratic responsiveness, spurring politicians to protect their ability to fulfill the wishes of their constituents.

The presidential and Congressional reaction to the expansion of bureaucratic autonomy was not solely to protect democratic values, but also taking advantage of an opportunity to expand their own reach and to gain an advantage over the other. A newly competent bureaucracy, if tamed, offered a second chance to influence policy that had already been passed and signed into law (Moe 1985). For, even in the age of patronage, the president did not functionally control the bureaucracy, rather a coalition of local party bosses doled out patronage jobs and demanded the loyalty of civil servants (Kaufman 1956). A responsive bureaucracy offered a new chance to change the meanings of laws that had already escaped the breadth of their traditional powers. If Congress or the president could effectively control bureaucratic outcomes, they would gain a major weapon in the ongoing institutional battle against the other. Beginning in earnest under the Franklin Roosevelt Administration, presidents leveraged a distrust of an expanding bureaucracy to shift the locus of political power in the United States into the newly institutionalized presidency (Rourke 1987; Milkis 2002; Krause and Cohen 2000). But, along with this newfound capacity, came greater expectations to accomplish campaign

promises and increase national prosperity than the president could feasibly achieve with what underdeveloped mechanisms of control they had, let alone just their limited Constitutional powers.

### **The Expectation Gap**

FDR was the first modern president to tie control of the bureaucracy into the foundation of his political philosophy. While FDR is not commonly thought of as an ideological president, careful examination of his legislative and speaking record show a president who fundamentally shifted the orientation of political power by using bureaucratic control as a central tool (Milkis 2002). Before he could make use of the bureaucracy, however, FDR had to justify its growth to the American people. Among many other things, the New Deal's guarantee of basic material welfare to all citizens was an act of intergenerational political theory synthesis—squaring the foundational American promise of personal freedom with an age of industrial capitalism and economic inequality. FDR sought to secure individual liberty through that promise rather than the arguably outdated system of property and contract rights designed by the Founders. New Dealers used that logic to justify to a hostile American public the expansion of the national bureaucracy and the centralization of its power into hands of the president (Milkis 2002). But to capitalize on this new opportunity, FDR had to actually capture the bureaucracy and in doing so he transform the American presidency.

The Executive Reorganization Act of 1939 created the Executive Office of the President (EOP), established the White House Office (WHO), and transferred of the Bureau of the Budget (BOB) into the new EOP and marks the consolidation of the administrative presidency (Berman 2015; Pffiner 1994; Wyszomirski 1991). While institutions like BOB were already understood to be tools of the president before, the reorganization was not just administrative juggling, but a

reimagination of the president's role within the bureaucracy. This act was part of what Milkis (2002) coined as Roosevelt's "Third New Deal", a plan to redesign institutions of government to conform to his new brand of liberalism and to place the president at the head of the administrative state. Before this expansion, previous presidents lacked sufficient resources to exert control over the presidency—for example, in 1922, the president only had 31 relatively low-level staffers at his disposal (Hart 1995, 23). The massive expansion of the administrative power of the president in 1939 changed what was possible for the president to achieve and resulted in a qualitative change in the culture and purpose of the presidency. And while it would take the next several decades for the presidency we have today to emerge, that was the year it was born.

Roosevelt's transformation of the presidency extended beyond institution building as he set such high standards of accomplishment and leadership that later presidents would have to expand the presidency to live up his example (Lowi 1985). Roosevelt's use of media and rhetoric, development of legislative programs, use of independent powers, and the creation and use of the presidential staff reshaped the public's expectations of the presidency and its responsibilities (Dickinson 1996). FDR's comprehensive first 100 Days agenda set a precedent that has loomed over every administration since, as presidents are almost required to rollout an annual legislative agenda (Simon 2010; Miroff 2006). Roosevelt's administration was transformative not simply because of his choice to take on the legislative initiative, but also because rather than attempting to claw that role back, Congress and other political elites institutionalized it in the Employment Act of 1946 and the National Security Act of 1947 (Sundquist 1981, 61-126).

After Roosevelt seized the role of initiator for the presidency, the public began to expect the president to produce results. The American public assumed that the president would be able to provide economic prosperity, peace and security, and domestic policy initiatives—to satisfy public expectations, the president now had to deliver on specific policy demands (Seligman and Baer 1969). Leading the debate over policy was no longer enough, the president also had to be able to secure their agenda's enactment and implementation (Ostrom and Simon, 1985; and Edwards 1983). Failure to meet those expectations painted the administration as a failure regardless of whether the president had the legal or constitutional authority, or enough political capital to succeed (Lowi 1985; Raichur and Waterman 1993; Waterman et. al 1999). The American people began to think that the President could accomplish anything (Neustandt 1980 [1960]).

The Constitution, however, created a weak presidency, one that could not live up to the expectations of the mid-20<sup>th</sup> century. Early presidents were arbiters, not initiators; when people looked for national leadership, they first turned to Congress (Waterman et al. 2014). Elites and the public agreed upon the limited role of the presidency in directing public affairs and weak presidents outnumbered the strong in the 19<sup>th</sup> century. In line with their secondary role in the political system, presidential staffs did not even reach double digits until the 20<sup>th</sup> century and even then the staff was more clerical than policy focused (Moe 1985; Rudalevige 2002). Early presidents lacked the political capital and the institutional capacity, outside of the Lincoln administration, to put together comprehensive personal policy platforms, let alone ensure their implementation. And while the institution of the presidency Roosevelt created was able to accomplish far more than any previous president, presidents initially still struggled to control the bureaucracy (Moe 1985; Nathan, 1983). Presidents have all strained to push their policy

proposals through the federal bureaucracy, a frustration verbalized when Kennedy famously said to a caller, “I agree with you, but I don’t know if the government will” (Nathan, 1983). The question of how to satisfy these grand expectations without significant constitutional power has driven presidents to look towards the bureaucracy as a way to close the gap.

With high expectations and little sympathy for their lack of constitutional power, the President’s electoral future and historical legacy depended on their ability to satisfy broad national interests and deliver goods to their own coalition (Moe 1985, Neustandt 1980 [1960]). Given that they could not control the legislative process, the president only had one feasible way to satisfy those demands: to seek control over the bureaucracy. The president became the only elected official who was directly invested in how the bureaucracy as a whole was organized and whether she had the capacity to manage it effectively (Moe 1989). Subsequent presidents had varying approaches to govern the administrative state, but all would use their ability to appoint managers to federal agencies, a process known as politicization, and each tried to draw authority into the institutions within the fledgling EOP such as OMB, the White House Staff, or eventually OIRA, a strategy known as centralization.

This gap between the expectations of the president and his capacity spurred a new generation of advocates of neutral competence, but ones who recognized the presidential need to control the bureaucracy. The advocates did not call for bureaucrats to work towards a utilitarian public interest, rather that they advise and cooperate fully with the partisan appointees who directed agencies (Heclo, 1975). In this idealized world of neutral competence, the bureaucracy would faithfully fulfill the demands of the political branches of government and there would be no need for mechanisms of control. This rebranding balanced neutral competence with democratic responsiveness and framed the fundamental tradeoffs in administrative politics.

The new theory understood that allowing politics to subsume administration would destroy the expertise and legitimacy of our bureaucracy, but divorcing public administration from democratic institutions to improve its technocratic competence came at the cost of its responsiveness and thus its legitimacy. This rebranding of neutral competence understood that newfound bureaucratic autonomy was a direct challenge to our democratic values (Kaufman 1956). It maintained that political appointees and careerists have distinct roles in the implementation of policy, but acknowledged this tension between competence and responsiveness. While Heclo's (1975) theory never came to be because of bureaucratic resistance and competition with Congress, it has shaped the development of the institutional presidency for the past forty years.

### **The President's Toolbox**

The framework created in 1939 has come to be known as the institutional presidency and now includes advisory committees like the Council of Economic Advisors as well as the network of political appointees that the president places in federal agencies (Moe 1985; Burke 2000). In the following decades, presidents would invest in the EOP—expanding its capacity, adaptability and complexity. Some of these investments have taken the form of new administrative units within the EOP—from five in 1939 to 15 in 1992—many of which survive through multiple administrations (Ragsdale and Thies 1997). Expansion also took the form of a greater capacity to identify, vet, and place loyal and qualified appointees to federal agencies (Lewis 2011; Kumar 2009). With these new capabilities, the institutional presidency would take on new slates of comprehensive policy responsibilities like civil rights, crime, and healthcare in the 60s and the War on Drugs in the 70s (Ragsdale and Theis 1997). This infrastructure of control was used to



bypass and compensate for the institutional weaknesses of the presidency and took the form two primary tools of control: centralization and politicization.

### The Wrench

Politicization is the oldest tool of bureaucratic control available to the president, but the role played by political appointees over the past forty years would be unrecognizable to the Founding Fathers or even Woodrow Wilson. Today, political appointees stretch not just across, but also deep into the federal bureaucracy, occupying positions ranging from the Secretary of Education to an Advisor for Strategic Partnerships and Diversity Engagement. Political appointees are a tempting mechanism for presidents seeking to control the federal bureaucracy because they are relatively easy to appoint and offer the chance to insert the president's authority directly into a potentially hostile federal agency. Since the Eisenhower Administration, presidents have formalized and institutionalized the appointment process to try to fully take advantage of the potential of politicization.

During this time, appointments have shifted from a tool of national political parties, used to distribute patronage to supporters, to a crucial mechanism for the president, one that exerts influence over much of the policy produced by the bureaucracy (Weko 1995). As presidents became increasingly independent from their political parties, they began to use politicization to build their own political apparatuses, ones that could potentially meet the rising expectations of the president as the generalized leader of the country, but ones resting upon the uncertain effectiveness of political appointees.

While Eisenhower was the first to formalize the appointment process, a president-centered appointments process truly began with the Kennedy and Johnson administration. Using centralized capacity in the White House Office, Kennedy and Johnson coordinated and organized

the recruitment and placement of appointees. Neither president, however, focused on appointments as an explicit means of political control. Johnson certainly demanded loyalty from his appointees, but both presidents prioritized expertise, experience and other qualities of competence. This development came as political parties lost control of presidential primaries and thus their claim to the patronage spoils of winning the White House allowing Kennedy and Johnson to select their own appointees.

Nixon, however, moved to make political appointments a key feature of presidential control, a radical break from the focus on professionalization under previous administrations. Facing an unfriendly Democratic Congress, the bureaucracy was Nixon's primary avenue to influence policy. Since he was unable to create new agencies like Johnson, Nixon was left with politicization. Using the centralized institutions within the EOP created by Kennedy and Johnson like the Office for Management and Budget (OMB) and the Presidential Personnel Office (PPO), Nixon and his advisors George Shultz and John Ehrlichman moved loyal and ideologically committed appointees into key positions throughout the bureaucracy (Nathan 1983). Eventually, the rest of the political system rejected Nixon's ambitious attempt to assert control as an illegitimate action of an imperial president, but process of politicization had already begun in earnest.

The Watergate scandal placed Congress and the American public on high alert against the encroaching power of the president and so Ford and Carter did not explicitly use politicization as a means of political control. But, the White House and EOP still continued to work as a centralized and politicized high-capacity hub for presidential leadership in the bureaucracy, placing appointees in positions of power and formulating policy.

After a rejection of the weak Carter presidency in the 1980 election, Reagan came in with a mandate for decisive presidential action (Moe 1985). Reagan believed that the bureaucracy had a structural liberal bias and that bureaucrats were liberal actors who would try to undermine his conservative agenda. He set about using task forces to better understand federal agencies so he could efficiently allocate resources to control them. Reagan's transition team spent months interviewing potential appointees and their primary, if not sole requirement, was that they were ideologically committed and deeply loyal to Reagan (Lewis 2008). They did not seek to fill just the top positions, but worked to penetrate loyalists deep into the bureaucracy. Not only did they fill vacant positions, Reagan removed career civil servants from posts and replaced them with appointees as well as eliminated entire bureaucratic units filled by civil servants. The transition team even ran orientations for all of the appointees themselves to prevent them from assimilating into the culture of their new workplaces. The Reagan presidency set a new precedent for the use of politicization and every subsequent president has followed his example.

Today, all presidents use formal institutions to select loyal candidates from among the thousands who apply and distribute them strategically throughout the bureaucracy to try and control policy. Truman was the first president to have a specific aid to select appointments, Kennedy had three in his administration, Nixon had just under 30, and today there are more than a 100 during the transition period (Lewis 2011). This process begins before the administration even takes office as Reagan's perhaps ironically named personnel recruiter, Pendleton James, said "Presidential personnel cannot wait for the election because the presidential personnel has to be functional on the first day, the first minute of the first hour" (Kumar et. al. 2000, 3). Usually working from within the PPO, staffers can sort through thousands of job applications to fill

important policy positions and respond to patronage requests (Patterson and Pfiffner 2001).

Since the Reagan administration, the PPO, run by a close aide to the president, has been responsible for choosing all presidential appointments, even lower level appointments that had been traditionally reserved for Cabinet Secretaries (Patterson and Pfiffner 2001). As a result, the president has almost total control over the almost 7,000 political appointees available to the president (Lewis 2008).

Politicization is often discussed as a conservative tool to constrain a liberal bureaucracy, especially because of Reagan's prominent role in the history of politicization. This narrative has two major flaws: Republican depoliticization and an apolitical need for control. First, Republican presidents such as George H.W. Bush have also been responsible for efforts to depoliticize the bureaucracy (Lewis 2008). Second, presidents of both parties struggle to control the bureaucracy even with its liberal lean. While Republican presidents can face considerable resistance from a bureaucracy that was mostly built by Democratic presidents who institutionalized their own preferences into the missions and procedures of those agencies, liberal presidents also struggle to control agencies who seek to go beyond what the president sees as politically feasible. President Obama, for example, struggled to control the EPA throughout his administration because they pursued more progressive climate change policy than he thought prudent at that moment (Haeder and Yackee 2018). This means that though the bureaucracy, on average, may ideologically advantage Democratic presidents, politicization is a bipartisan strategy for presidents surrounded by an unfriendly bureaucracy.

Some may logically assume that presidents will increasingly use this general strategy to gain continuously better control over the bureaucracy; however, presidents have not and cannot increase politicization on a political whim. In fact, the president does not have the authority to

create many types of appointed positions without congressional approval. While presidents can allocate certain types of appointments to high-priority agencies, powerful positions like Assistant Secretaries are specific to each agency (Lewis 2008). Moreover, empirical research has demonstrated that the number of appointees is not always increasing, in fact, it even declined between 1984-92 and has largely stayed steady since peaking under Carter (Paul Light 1999). As a result, politicization should be thought of as a constrained resource of control for the president, who must use positions strategically to advance their agenda.

In sum, presidents of both parties over the past six decades have radically reshaped the role of political appointees and the selection process to create a tool that can be placed atop an agency and used to twist the direction of an agency towards the president's priorities. Politicization, however, is not a perfect means of control so presidents have often turned to other methods of political such as centralization.

### The Hammer

When presidents are not able to achieve their goals, they often seek to centralize certain functions of the broader executive branch into their staff within the Executive Office of the President (EOP) and the White House Office (WHO). Centralization removes authority from federal agencies over policy design, implementation, and oversight and places it within the EOP or WHO. This growing presidential staff would come to form a "counterbureaucracy" that the president could rely on for loyalty and responsiveness to the president's priorities (Nathan 1983, 34; Moe 1985). Presidents used this "counterbureaucracy" to seize the policy initiative from career civil servants in federal agencies. Rather than waiting to approve or edit proposals from cabinet departments, presidents, especially after the Kennedy and Johnson administrations,

formed task forces within the EOP to design their signature policy proposals, effectively cutting bureaucrats out of the process (Rudalevige 2002; Pressman and Wildavsky 1984). Centralization, however, extends far beyond drafting new legislation.

In the context of this paper, the most important form of centralization is the institutionalization of regulatory review in OIRA. It is also the largest advance in presidential power over the bureaucracy in decades because it allows the president, through a unit in the EOP, to review and edit individual federal regulations to ensure that they are in line with his agenda—a process called regulatory review (West 2005). While it began as a partisan tool of conservative presidents, regulatory review soon became a foundational element of the institutional presidency.

Republican presidents, trapped in what they saw as a liberal bureaucracy, were tired of agencies promulgating rules and regulations that were antithetical to their beliefs. So after piecemeal efforts to institute regulatory review during the Nixon and Ford administrations, Reagan institutionalized regulatory review by granting authority to a young and permanent institution: OIRA. Under Executive Order 12291, all agencies had to submit Final Rules and notices of proposed rulemaking (NPRMs) to OIRA for review before any publication (Yackee 2019). This was a revolutionary presidential weapon in the battle with Congress over the bureaucracy—one that allowed the president to monitor and hammer their preferences into individual regulations (West and Cooper 1988). By the letter of the law, OIRA ran cost-benefit analysis and OMB only allowed agencies to publish rules that were in the green. But, in reality, OIRA review served to ensure that rules were in line with presidential priorities. While OIRA lacked the official authority to change or reject rules, its proximity to the president made agencies heed its decisions (West 2005).

Congress put together a token resistance to this power grab by the president, but ultimately failed to reverse it. Critics framed OIRA as a black box in which wealthy businesses could influence rules away from public view (Eads and Fix 1984; Tolchin and Tolchin 1984). Environmental groups protested vehemently against a new institution that threatened decades of successful statutory and regulatory lobbying. Good governance advocates argued that regulatory review allowed agencies to bypass the procedural rules and norms that demanded public evidence and arguments to justify rules. In response, Congress threatened to defund OIRA and allowed its authorization to lapse, but OIRA was continuously funded and soon reauthorized under the condition that its administrator would be confirmed by the Senate and its deliberation made more transparent (West 2004). With these minor concessions in hand, Reagan and subsequent presidents have continued to use regulatory review to influence policy despite attempts by Congress and interests groups to undermine the process (Moe and Lewis, 2018).

President Clinton repealed executive order 12291 in 1993, but immediately replaced it with EO 12866, which created a similar scheme, but one that was more favorable to his pro-regulation stances and required agencies to submit any rule that was deemed “economically significant” for review (Croley 2003). A rule was considered economically significant if it met any of stated standards: it would have a sizable impact on the economy (more than \$100 million per year); create any contradictions or inconsistencies with the current law or regulation; or ran counter to the president’s regulatory mission (Wiseman, 2009). Under the new regime, the president could choose to review essentially any rule from any agency. Agencies continued to submit rules to OIRA for review twice before a rule took effect, once before the notice of proposed rulemaking in the Federal Register and then again after the agency adopts a final rule. By the Clinton Administration, OIRA was fully entrenched in the rule making process. The year

after regulatory review power was vested in OIRA, only 10% of rules published in the Federal Register were changed after OIRA review, by 2001 almost 70% were changed or entirely withdrawn by the agency (Wiseman, 2009). OIRA review, moreover, was not only suggesting changes within the bounds of Congressional discretion, but also those that lead to rules that deviate from Congressional intent (O'Connor, 1988; Heizerling, 2006). OIRA review quickly became ubiquitous for new federal regulations and that ability to not just make small changes to policy, but move it in whole new directions greatly expanded presidential power.

Crucially, OIRA, as with most centralized agencies, does not have an institutional culture hostile to the president like many independent federal agencies. OIRA can be understood as a tool of the president, as an extension of his priorities, because of the institutional structure and a few decades of evidence. Just like other centralized organizations mentioned above, OIRA's proximity to the president and its placement within OMB keeps it responsive to the president (Rudalevige 2002; Yackee 2019; Wiseman 2009, West 2005). And while there is a relatively strong and stable culture within OIRA that is skeptical of government regulation and in favor of rigorous analysis of regulation, the institution depends upon the president for its political authority (West, 2005; Rudalevige 2009). Dependency breeds loyalty and so OIRA still follows the directives and agenda of liberal presidents. Careerists within OIRA during the Clinton Administration, while initially reticent, accepted the new administrators vision for the organization and actively worked to help enable the new agenda (West, 2005; Yackee 2019). Even if this were not true, the structure of OIRA lends almost complete control over the agency to the president.

The administrator of OIRA, a political appointee and a close ally of the president, is a choke point in the organization, ensuring all decisions are in line with the president's agenda.



The administrator must approve any decision to return rules to an agency and she, or her deputy, also serve as the negotiator with agencies over any changes (West, 2005). This means that there is always a presidential eye on the regulatory gatekeeper. Presidential priorities are pervasive in OIRA and trickle down through formal directives, informal communications, and tacit understandings to influence the day-to-day decisions of careerists (West, 2005; Bolton et. al. 2014). The careerists are also politically minded and understand that their future depends upon their compliance and good politics beats out objective analysis if they happen to be in conflict in a review (Shapiro, 2004). The presidential agenda has become the culture of OIRA and bureaucratic resistance is negligible.

The president has developed two broad and strong methods to control administrative outcomes, politicization and centralization give him theoretical control over much of the rule making in federal agencies. Especially put together, they seem to give the president an unbreakable advantage in the arena of administrative politics. Yet, presidents still face considerable resistance in bureaucratic policy making from political actors who have the institutional power to at least challenge presidential domination.

## **Impediments to Presidential Control**

While the Constitution vests “executive power” in the presidency, the president faces two actors who can potentially block his agenda. The first is the bureaucracy itself. We have already established that bureaucrats and agencies have acted as political actors since the beginning of the 20<sup>th</sup> century. Their independence creates a principal-agent problem for the president as he tries to control career bureaucrats actions. This problem is further complicated by a Congress which often does not share the same incentives as the president, but also has constitutional authority

over the bureaucracy and the president's tools to control it. Presidents must operate within this existing set of impediments because they lack the political capital or time to overhaul these institutions to create a responsive system (Moe 1985).

## **The Principal-Agent Problem and Home Field Advantage**

### The Classic Problem

To better understand elected officials struggle to control a semi-autonomous bureaucracy, political scientists borrowed the concept of a principal-agent problem from economists. The classic economics version of the problem is used to explain how an employer (principal) can navigate having an employee (agent) with different preferences (a conflict of interests). The principal must give the agent some amount of discretion because she is unable to write a contract that could cover how the agent should act in every scenario, but the agent could then use this discretion to pursue their own preferences rather than the principals'. The problem is created when discretion must be granted despite the conflict of interest and asymmetric information between the two parties consisting of an adverse selection problem—i.e. the principals inability to know their subordinates true preferences or abilities—and moral hazard—the impossibility of monitoring the agent's behavior at all times (Brehm and Gates, 1997). As a result, the principal and agent struggle to work together efficiently, which can create agency costs that prevent optimal outcomes.

In our case, the president (principal) must give the bureaucrats (agents) some level of discretion because career civil servants occupy positions of power and have the necessary subject-area expertise to write new rules that could advance the president's agenda. Because civil servants rise through a merit system and are not appointed by the president, the president cannot know their particular preferences (the adverse selection problem), nor can the president always

know how the bureaucrat may be pursuing those preferences throughout the rulemaking process (the moral hazard). The informational asymmetry and potential conflict of interest makes it difficult for the president to choose the right mixture of responsiveness and competence, producing suboptimal outcomes. For example, the president may over-politicize an agency to ensure compliance, stripping away the necessary expertise to write coherent regulations. In this situation, the president may also simply choose not to delegate authority to an agency because he does not trust the resulting policy will be in his interest, eliminating the existence of a possibly beneficial rule. These conditions of uncertainty undermine the president's ability to get the policy he wants from the bureaucracy and for the bureaucracy to produce needed rules. The principal-agent problem only made worse for the president—and thus even less efficient for all—by the numerous ways bureaucrats have discovered to influence policy and protect their own interests over those of the president.

Decades of institutional knowledge, subject-area expertise, and agency insulation provide bureaucrats within agencies the means and the opportunity to advance their own interests and subvert those of political overseers. In the almost seventy-five years since the APA was passed, career civil servants have had the chance to learn the nuances of each procedure and discover loopholes to exploit. This allows bureaucrats the opportunity to take advantage of favorable political conditions to increase the volume of their rulemaking and advance their own institutional interests (Boushey and McGrath 2015). Most iterations of the principal-agent model focus only on the informational asymmetry in the context of the values of bureaucrats or up-to-date information on agency actions, but ignore that bureaucrats are also the ones to implement the procedures meant to control them and can leverage that procedural knowledge to protect their autonomy.

## When Reality is Worse Than Theory

To describe this phenomena, Potter (2019) coined the term “procedural politicking” which she defines as “using procedures in strategic ways so as to insulate policies that are at risk of political interventions and ensure that bureaucrat-preferred policies endure” (6). Bureaucrats use three primary tools to do so: authorship, the participation valve, and the timing (Potter, 2019). Each of these tools take advantage of career civil servants’ superior institutional knowledge as well as position as the first mover, whose actions the political actors must react to.

First, how a regulation is written influences how it is received by other political actors; the proper framing of a new rule can make an unpopular policy proposal sound reasonable. For example, filling a proposed rule with scientific citations may give a half-baked rule credibility. Technical framing of problems and jargon is especially useful to prevent political principals from engaging deeply with the actual policy outcomes the rules promote. If an appointee, member of Congress, or judge, all of whom lack the expertise of a career civil servant, is uncertain about the policy outcomes of a proposed rule, they are less able to effectively alter the rule and ensure that it is in line with their priorities.

Second, bureaucrats can also vary how they seek external input on their proposed rules, both from the public and interest groups as well as political principals. APA guidelines are vague, so agencies have many opportunities to shape how they choose to allow a rule to be engaged with, be it the length and/or timing of a comment period, whether they announce their plan to publish a rule, or even create a committee of stakeholders who can negotiate the content of the rule (Potter 2019). Finally, bureaucrats can decide when to expose the rule to criticism and political influence. By doing so, bureaucrats can choose the political environment into which their rule is born into and increase its likelihood of survival.

In sum, when the president tries to move policy through federal agencies, he faces a set of political actors who have far more specific knowledge and can leverage their position to protect their own interests in new regulations. Those obstacles are compounded by the informational asymmetry that prevents the president from knowing bureaucrat's preferences and how they pursue those preferences through procedural politicking.

In our case, presidential power is further challenged by congressional claims to authority over the bureaucracy, creating a multiple principals-agent problem. Competition between the multiple principals exacerbates the problems associated with principal-agent relationships. First, as the president and Congress fight to have their priorities written into new rules, agencies are able to use that rivalry to paralyze oversight and monitoring mechanisms (Krause 1999). Second, divided authority begets divided responsibility so that neither the president, nor Congress feel fully responsible for the policy outcomes produced by the agency and thus are less willing to bear the high costs of oversight and monitoring (Krause, 1999). Third, if the principals reach a compromise, the agent will still advocate for their own likely diverging interest, undermining the incentive for the principals to compromise (McCubbins, Noll, and Weingast, 1987). In sum, the addition of extra-principals makes it increasingly unlikely that the principal and agent will find a stable outcome.

Congress and the President face a pressing dilemma: they must be able to control bureaucratic policy outcomes to be able to provide the benefits necessary to be reelected, yet they face considerable resistance from bureaucrats and agency structures. Each institution have harnessed their Constitutional authority to develop tools to preserve their preferences in the bureaucratic process. The struggle for control over the bureaucracy, however, does not pit the administrators against the coordinated and cooperative power of Congress and the presidency;

there is enormous conflict between the executive and legislative branches over control of the bureaucracy. Bureaucratic control is a valuable political resource that each seeks to use to advance their own interests and secure their reelection or historical legacy. Power, by definition, is zero-sum. The greater control one branch has over the bureaucracy reduces the others', incentivizing each principal to undermine the influence of the other in pursuit of their own control. As a result, each branch has tried to outmuscle the other, using oversight mechanisms to try to ensure their own priorities are represented in rules and regulations. If Congress is successfully able to solve the principal-agent problem, it significantly reduces the president's ability to control the bureaucracy.

### **The Cross Town Rivals**

To solve the principal-agent problem, Congress has increased its ability to monitor agency behavior through the expansion of oversight committees, subject-area specific committees, and constituency services. These committees provide policy expertise to Congress and allow Congress to keep an eye on bureaucratic activity, hypothetically reducing the informational asymmetry between the principal and agent (McCubbins et al. 1987; Aberbach 1990). However, constituency services may be the best detection system members of Congress have to identify agencies drifting from the interests of a Congressperson; angry constituents will make themselves known quickly when their interests are threatened (McCubbins and Shwartz 1984; Weingast 1984). Ultimately, the cost—both in terms of time and resources that could be used to provide benefits to constituents— of monitoring agency behavior outweigh the benefits of the imperfect success rate (McCubbins et al. 1987). Given the limits of Congressional monitoring, Congress must be able to sanction bureaucrats and agencies to have any real control over their actions.

Congress has a wide array of potential sanctions to choose from, but their high political cost limit their actual use. In theory, Congress can remove civil servants from office, impeach political appointees, cut funding to rebellious programs, launch investigations, and reorganize agencies to reallocate political authority to cooperative agencies. But in reality, criminal charges can only be brought against civil servants who willfully violated the letter of the law; passing new legislation requires a high level of cooperation and threatens the legislative status quo; and investigations or cutting funding can both reduce service delivery to members of Congress' constituents as well as draw attention to the members inability to control an agency (Moe 1987; McCubbins et al. 1987). As result, sanctioning the bureaucracy can be more costly for Congress than allowing them promulgate unfriendly regulations because of the divided responsibility with the president.

Even with these tools available, Congress' collective action problem cripples its ability to control the bureaucracy, especially when faced with a unilateral actor like the president. While Congress is often described as a unitary actor by scholars of bureaucratic administration, the 535 members that make up Congress are constitutionally autonomous actors, each with their own constituencies, electoral timelines, and incentive (Moe and Lewis, 2018). Few members of Congress will turn down a new infrastructure project or saving a military base in their district to preserve the balance of power between branches. Their first priority is to satisfy the demands of their constituents or relevant interests groups, not to present a unified front against presidential encroachment.

Some might argue that party leadership provides the strong, unifying force required to protect Congressional power, but partisan incentives undercut that aligning of interests. Party leaders do have vested interests in sustaining the power of Congress as an institution and could

use tools like committee positions and campaign funding to corral members to unify against the president. And while electoral incentives push members of Congress outside of the presidents' party to limit the presidents' power, their colleagues across the aisle have the same incentives to empower the president (Moe and Lewis 2018, Kernell 1977). These diverging incentives in Congress undo a theoretical consensus on not just the degree to which they should protect their role in controlling the bureaucracy, but also whether they should protect it at all.

Dissonant incentives among members raises the costs of congressional action, which makes the institutions vulnerable to presidential encroachment. Legislation needs massive coalitions to make it through the many veto points it passes through when it travels through the relevant subcommittee, committee, and floor vote in each chamber and then finally through the reconciliation process. These coalitions must satisfy the demands of hundreds of political entrepreneurs with different constituencies, vulnerabilities, and priorities—commitments to one can just as quickly endanger the support of others (Moe and Howell, 1999). Such a fractious body engaged in a process with so many opportunity to sabotage stands little chance against a unitary actor like the president.

In this contest for control, the common narrative paints Congress as the president's primary rival to control bureaucratic outcomes, but Congress' structural disadvantages cripple its ability to compete with the president and bureaucrats themselves. Despite the extensive ex ante controls and ex post sanctions, Congress' collection action problem, partisan divides, and the high costs of sanctions greatly reduce its ability to actual guide bureaucratic policy outcomes. In the end, Congress' best tools to influence agency behavior are not modern innovations, but powers granted by the Constitution: drafting the legislation that bureaucrats must apply and its role in the appointment process.



## **The Hammer or the Wrench**

Just like Congressional sanctions, centralization and politicization are powerful tools of bureaucratic control that are limited by their inherent costs. Each provide the president opportunities to advance his own agenda over the objection of federal agencies, but does so by handing responsibility to more loyal, but less competent staffers. This tradeoff between expertise and loyalty forms a framework through which to study presidential control. A rational president will choose the route that offers the greatest amount of congruence between his agenda and a policy, at the lowest cost to the quality of the policy. This tradeoff underlies the strengths and weaknesses of centralization and politicizations discussed below.

### **Hitting the Screw on the Head**

Loyalty is not an issue in centralized institutions because proximity to and political dependence on the president have deeply imbedded the president's priorities into the EOP and WHO and negate the principal-agent problem. Aides and staffers within the EOP and WHO depend upon the president for not just their position, but also their political relevancy (Rudalevige 2002). They are unlike political appointees who also serves at the pleasure of the president, but whose position within a federal agency lends them some authority independent of how the president directs them. In contrast, centralized institutions are designed to ensure that those within are only relevant if the president delegates a task or chooses to approve their proposal (Wyszomirski 1982). Along with a structural dependence on the president, these aides and staffers often share a literal structure with president, a physical intimacy that breeds loyalty and trust (Rudalevige 2002). In the EOP or WHO, the president faces no risk of an appointee assimilating into a hostile agency. Over the past fifty plus years, presidents have guaranteed

compliance from centralized institutions by cutting them off from any source political legitimacy or authority besides that of the president.

Along with loyalty, the political timeline of White House aides align better with the president's short-term focus than bureaucrats'. Presidents essentially only have the first year of their term to craft policy before the midterm elections and then the next presidential campaign. If presidents want to leave a tangible policy legacy, they need to act quickly and the time it takes to formulate a policy proposal will limit any action they wish to take. In contrast, without any electoral pressure, bureaucrats have long-term interests in effective policy, whether it comes under the current administration or the next (Potter 2019). Compare this political insulation to staffers within centralized agencies who often lose their jobs if the president loses an election. Centralized proposals, consequently, do not have to wait for a political appointee to corral cautious career civil servants, nor take the time to move through agencies' formal rule writing procedure. Within the EOP and WHO, aides' loyalty and shared interests with the president have incentivized presidents to invest in the EOP and expand its capacity without fear of empowering rivals.

Given the clear benefits of centralization, it makes sense that traditional narrative surrounding it is of an inexorable march towards greater and greater levels of centralization. The EOP's size and policy crafting capacity have expanded rapidly since 1939 and it now has an expanded ability to direct policy design. For example, President Clinton's attempted signature overhaul of the healthcare system was entirely formulated within the White House. A Clinton aide, Ira Magaziner, controlled the President's Task Force on Health Care Reform with an iron fist, not even allowing departments to run technical analysis of the plan. In comparison, when President Eisenhower wanted to expand Social Security, his proposal was born and designed in

the Department of Health, Education, and Welfare (HEW) and was approved by the entire Cabinet before it was eventually put to Congress and passed. In each case, presidential leadership was central to the new policy, but different actors devised and attempted to implement the policies. And while this is only a single example, it is one of many instances of how the president has increased their role in the actual formulation of policy through centralized institutions. Surely, this can only come from an ever increasing centralized capacity for policy design.

Centralization, however, is a high-cost tool of presidential control, one that consumes political capital, can produce inferior policy, and risks the stability of the EOP and the WHO (Rudalevige 2002). Because centralization is both high-cost and high-reward, the president must decide for any given policy whether it is more efficient for him to produce the policy (centralize) or buy it (use agencies). Centralization offers control and expediency, but the policy is made by staffers without the expertise or experience of career civil servants within federal agencies and so centralization may not be appropriate for complex policy issues. Additionally, these policies lack the legitimacy that the traditional rulemaking process provides because they are seen as impositions of presidential opinion. As a result, policies produced through centralization are more likely to be rejected by Congress than those produced within federal agencies (Rudalevige 2002). Finally, presidential micro-management via centralization can destabilize the institutional culture of the very offices entrusted to carry it out (Lamb and Twombly 2001). Given these drawbacks, presidents will only centralize when the benefits outweigh these sometimes considerable costs. Centralization is an imperfect method of political control and its weaknesses and high-costs force the president to also rely on politicization to better control the federal bureaucracy.

## **The Wrench:**

Today, presidents have more than double the political appointees that were available to Roosevelt in 1939 (Lewis 2011). The positions have shifted from regional related appointments like those in Post Offices to policy making positions in Washington DC as presidents have tried to capture key management positions and control policy “choke” points in federal agencies such as budget offices, and offices of the general counsel (Weko 1995; Heclo 1977). Presidents have come to understand, however, that these increases are only useful if they can control the appointees who fill them. As a result, presidents have invested in institutions that have formalized the selection process to ensure loyal candidates are chosen (Kumar 2009; Moe 1985; Edwards 2001). Even with these formal systems and perhaps in-part because of them, the president still lacks total control over their political appointees. First, Congressional approval for high-level (and thus high-value) appointees means that the president likely cannot appoint their ideal candidate and must compromise with Senate leadership (Warren 2012; Bertelli and Grose 2009, Snyder and Weingast 2000). Second, as appointees assimilate into the culture of agencies, their loyalties to president may fade. Finally, presidents do not have an unlimited supply of willing and loyal followers with the necessary experience to take on policymaking positions, which pushes people less suited for management into the federal government. This lack of competency among appointees can undermine their ability to control the bureaucracy and execute the agenda of the president.

As the president’s institutional rival for control over the bureaucracy, the Senate can use their considerable authority over the highest level of political appointees to prevent the president from appointing her favorite candidate. Appointees to Senate confirmed positions must first pass through committee hearing and floor votes where parliamentary procedures such as the use of

executive sessions allow a single Senator to considerably delay or even kill a nomination if the delay occurs close to the end of a session of Congress (McCarty and Razaghian 1999). The Senate does not often use this power— only 7 percent of nominations fail even in Senates controlled by the opposition (McCarty and Razaghian 1999). However, many scholars point to this absence of action as evidence of presidents anticipating the preferences and potential resistance of the Senate majority and tailoring their nominations to avoid conflict (Snyder and Weingast 1994, Chang 2001, Moraski and Shipan 1999). It is difficult to empirically study this kind of second-level strategy and so many of those studies use spatial models to analyze political appointees on independent regulatory commissions, the Supreme Court and the Federal Reserve—agencies that are not representative of much of the federal bureaucracy. Appointees within these agencies influence policy by voting and so only influence policy outcomes if they move the position of the median voter on whichever body they serve. In comparison, political appointees to the wider bureaucracy influence policy by corralling career civil servants and make use of the resources of an agency to produce regulation that supports the presidential agenda.

While those studies may not represent definitive proof of the Senate’s influence over presidential appointees, patterns in “holds” provides empirical evidence that the Senate is more than just a rubber stamp. As interbranch competition over the bureaucracy has increased, senators have increasingly used procedural levers to delay the presidents nominees by placing “holds” (Oleszek 2008). The pattern of “holds” suggest that the Senate is acting to protect its own control over the bureaucracy. It extends the nomination processes for appointees to agencies that are already highly politicized or are supervised by high-conflict congressional committees while expediting the wait for nominations to less politicized or more insulated agencies, where the president will have or desires less control (Dull, Roberts, and Keeney 2012).

Generally, a president's ability to quickly secure Senate confirmation for a nominee depends upon how much political capital they have. For example, nominations are confirmed quickly if they come early in a president's first term or from a popular president (Dull, Roberts, and Keeney 2012). The Senate's responsiveness to the relative political power of a president in combination with the pattern of holds show that the Senate acts strategically to protect its interests. Those patterns support theories like those in Warren (2012) and Snyder and Weingast (2000) that argue that the president preempts Senate challenges to her appointees by only putting forth candidates that are more likely to be accepted and thus a candidate that is less likely to effectively advocate for the presidential agenda.

Even once a nominee is confirmed, the president risks losing their influence over the them if that appointee assimilates into the culture of the agency. Even ardent loyalists may begin to waver after they become part of an agency culture and they begin to develop empathy for the mission of the careerists or are convinced of its efficacy by those career experts (Wilson 1989, Fenno 1959, Bertelli and Grose 2011). Presidents can try to prevent this agency capture by frequently reassigning appointees, but doing so prevents appointees from ever learning enough about the culture, mission, and subject area of an agency to effectively lead it (Ban and Ingraham 1990). Once political appointees are placed, moreover, they are vulnerable to political pressure from Congress and from their careerist subordinates that they may succumb to in an effort to maintain control over the agency (Warren 2012). Presidents have recognized this danger and responded by prioritizing loyalty over competence when selecting appointees.

The president faces a shortage of candidates who are both qualified for policy making positions and loyal to the president and their priorities. Beginning in earnest under the Reagan Administration, loyalty became the most important quality an appointee could have (Lewis 2008;

Edwards 2001; Moe 1985; Cohen 1998). This is a rational choice for a president who must control a bureaucracy bent on pursuing its own policies (Heclo 1977; Wood and Waterman 1994). As the president tries to match the public's perhaps unreachable expectations, they cannot waste resources trying to corral a rogue political appointee, especially when they had the chance to appoint someone who will be faithful to the presidential agenda. As Reagan aide Lyn Nofziger succinctly summed it up, "As far as I'm concerned, anyone who supported Reagan is competent" (Lewis 2008, 27). As a result, most presidential appointees come from backgrounds in law, legislatures, lobbying, or campaigns and do not have the expected public management skills of someone expected to run an organization as complicated as a federal agency (Cohen 1998). As presidents prioritized loyalty, they abandoned professional standards and either assumed or hoped that those loyal appointees will still be able to achieve policy goals.

However, appointees without strong backgrounds in public management or similar experience are often unable to drive federal agencies to comply with presidential preferences. Studies of political appointee's ability to change agency behavior have found that loyalty to the president has no effect on their ability to make change; whereas, previous experience in public management, a charismatic personality, and the appointees ability to design a plan to achieve their goals are decisive qualities (Light 1987; Edwards 2001). Appointees with those qualifications are better able to make career civil servants responsive to their needs and take advantage of the resources available to move the presidential agenda forward (Light 1987). Despite this, presidents often choose young, inexperienced former campaign workers or those with powerful familial connections because those candidates guarantee loyalty (Moynihan and Roberts 2010). As a result, presidents face a catch-22 trade-off between competency and loyalty

where sacrificing either qualities reduces their ability to control the bureaucracy via politicization.

Finally, political appointees' lack of competency can have a detrimental effect on the performance of agencies, damaging the president's reputation and ability to control an agency. Among many cases of inexperienced political appointees, the story of Michael Brown who was appointed by President Bush to head the Federal Emergency Management Agency (FEMA) stands out. Brown and the rest of the senior Bush appointees to FEMA were drawn from Republican political campaigns and had no experience in emergency management (Moynihan and Roberts 2010). Unsurprisingly, their management of Hurricane Katrina was disastrous. According to career civil servants, the appointees inability to understand the culture and demands of FEMA was a driving force behind the agencies' dismal response to the disaster (Moynihan and Roberts 2010). While anecdotes of foolish and incompetent political appointees paint important pictures and are common throughout the literature, Lewis (2008) is the only systematic, empirical analysis of politicizations' effects on agency performance.

Lewis (2008) finds that politicized federal programs received significantly lower scores on the Program Assessment Rating Tool (PART) and the Federal Human Capital Survey (FHCS), measures that capture the efficiency, planning, and morale of federal agencies. His findings are among the first to show the deleterious effect of politicization across broad sections of the federal bureaucracy across multiple years. Federal programs that are politicized design, plan, and manage federal programs less effectively than those that are not politicized (Lewis 2008). Additionally, political appointees are, on the whole, not as respected as career civil servants in similar positions of power (Lewis 2008). Presidents, however, are sensitive to politicization's potential effects on agency performance and are less likely to politicize agencies



with higher proportions of technical employees like NASA (Lewis, 2008). These political appointees' poor management of federal programs undermine their ability to bring the president's program to fruition while also endangering the president's reputation to the general public. Politicization is not a free method of political control; politicizing agencies can actually weaken presidential control over the bureaucracy and threatens their political goals.

Politicization offers presidents an opportunity to embed their preferences within agencies and place loyal leaders at the helm of the very federal agencies that may seek to resist the presidential agenda. It has become the most widely used tool of bureaucratic control since the Reagan administration and nearly all federal agencies and bureaus of import report, at least indirectly, to a political appointee. Appointees have become an integral part of our federal bureaucracy, despite generally being less competent than career civil servants. That sacrifice of expertise is often justified as a means to ensure democratic control over the bureaucracy, but there are significant doubts that political appointees are actually able to deliver that control.

#### Politicization and Agency Responsiveness

Previous attempts to measure the political responsiveness of federal agencies have largely focused on case studies of individual agencies. Previous studies have generally followed the model set by Wood and Waterman's (1991) study of whether president's mechanism of bureaucratic control were effective across seven different agencies and departments. Their findings showed that political appointees are the most important instrument of political control confirms and forms a basis for this study. However, Wood and Waterman, Moe's study of the Federal Trade Commission, the Labor Relations Board, and the Securities and Exchange Commission (1982) and Stewart and Cromartie's (1982) work on the Federal Trade Commission all used dummy variables which flipped at the beginning of an administration and fail to explain

how the president is able to exert influence across agencies, some of which are not directly under his control (Wood and Waterman, 1993). To better measure this, one could collect a set of case studies and try to measure a consistently coded variable, a model called process tracing. This can work, but is not efficient and is vulnerable to the large variation in bureaucratic action across different agencies and changes across time within similar agencies (Rudalevige, 2009). Additionally, inconsistency and subjectivity in coding of the variable can undermine the accuracy of a study.

More recently, scholars have used the distribution of goods and services by agencies to operationalize presidential influence over agency action. Berry, Burden, and Howell (2010) and Bertelli and Grose (2009) find that districts represented by the same party as the president are more likely to receive grants from federal agencies, but they use a dichotomous variable that does not capture the nuance of politicization within an agency. Hubak's (2010) findings support those claims using the same data from Lewis (2008) that is used in this paper. He finds that politicization increases federal funding to swing states and districts sharing a partisan identification as the president. Using federal grant distribution provides a variable of interest that is common and objective across the federal bureaucracy and represents a major step in measuring the effectiveness of politicization.

While certainly important, funding fails to capture the political struggle over the rules and regulations that dictate the actual impact and reach of our laws. For example, previous work using funding as a dependent variable would miss the potential effects of politicization on OCR's treatment of Title IX because federal funding has never once been revoked. Moreover, in our current age of extreme polarization, presidents could rely more on virtue signaling to their constituents rather than pushing pork to individual states and districts. A new rule fulfilling a

campaign promise provides a good to a far larger proportion of a president's constituency at a lower dollar cost than a medical center in a single district. While there has not been significant empirical research into the potential effects of polarization on pork politics, Sideman (2019) suggests that changes among the preferences' of party members over government spending could reduce the electoral incentive for Republicans to pursue pork and undermining its use as a variable to measure political control.

Directing federal funding also requires less policy expertise and less institutional backing than writing and publishing regulations and so could overstate the impact of political appointees as a measurement for political control. Appointees can depend upon their statutory authority to direct discretionary federal funding priorities. Whereas, testing political appointees ability to influence the content of rules in potentially hostile agencies targets the weakest points in their authority as political interlopers without subject area knowledge. The long and detailed rulemaking process provides career civil servants far more opportunities to subvert presidential priorities and to insert their own and thus gives a better estimate of the real influence of political appointees

The cumulative work laid out argues that politicization and centralization are central aspects of presidential control of the bureaucracy, but there is little generalizable, empirical evidence that politicization is an effective tool, nor about how the two processes interact. This leads me to propose several potential hypotheses.

# Methods

## Hypothesis:

**H1: Effectiveness Hypothesis:** Increased politicization of an agency should lead to a reduced likelihood that rules are changed by OIRA.

The literature of case studies and quantitative work with federal funding indicate that I should find the expected negative relationship between politicization and *OIRA Change*. The previous studies discussed have shown that political appointees have been effective means of presidential control over bureaucratic outcomes in those particular cases. A positive finding would confirm that political appointees do effectively translate the president's priorities into new rules. Moreover, in confirming these more particular studies, a positive finding would support my use of OIRA review as a measure of political control. A negative finding would cut against much of the existing literature and require a rethinking of how presidents can try to realize their agenda.

**H2: The Duration Hypothesis:** OIRA will review rules promulgated by more politicized agencies for fewer days.

If rules produced by more politicized agencies are more similar to presidential preferences, then OIRA will need to spend less time reviewing and suggesting changes so I expect to find a negative relationship between politicization and the duration of OIRA review. The further a rule is from the president's views, the longer it should take for OIRA to review it. Additionally, OIRA should want to move rules that are in line with the presidential agenda more quickly through review so they can be published and take effect. A positive finding would

provide greater nuance and confirmation of political appointees ability to produce rules that are reflect the presidential agenda. While complexity can also effect this result, one can assume that rules in line with the presidential agenda are no more likely to be complex than those that are not and so complexity should be randomly distributed.

**H3: The Performance Hypothesis:** Increasing politicization in agencies with already high levels of politicization will impair agency performance to the extent that OIRA is more likely to review those agency's rules with changes.

There is a significant literature that argues that there are performance costs that accompany, and can even outweigh, the increased control provided by politicization (Lewis 2008; Huber and McCarty 2004). Political appointees lack the necessary experience in public management, subject-area expertise, and incentives to develop and maintain long-term plans or a professional culture (Lewis 2008; Cohen 1998; Hecl 1977; Suleiman 2003). In this case, too many political appointees can impede agencies ability to produce well-drafted regulations not just because they lack the technical ability to write laws, but also because they do not have the experience building the coalition needed to create rules. Perhaps they do not know what special interest groups to reach out to or what congressional staff they must please to ensure that regulation will not be challenged. Moreover, inexperienced leadership can destroy the professional culture necessary to create well-written regulations (Cohen 1998). Much of this literature calls to find a balance between appointees and career civil servants to take advantage of the dynamism and new ideas of the appointees as well as the experience and expertise of the career appointees (Aberbach et al 1981, Bok 2003, Krause et al 2006).

If these scholars are correct, then increasing politicization in already heavily politicized agencies will increase the likelihood that OIRA will make changes to a rule. Regardless of their particular policy positions, all presidents should prefer well-written regulations and highly politicized agencies are shown to manage projects less efficiently and develop less comprehensive plans for future action both of which could produce rules in greater need of correction. The need for correction in this case would not come from a lack of congruence between the rule and the president's agenda, but rather from shoddy drafting. By testing for performance-effects, I recognize that not all politicization is equal. While some levels of politicization may reduce the need for centralized clearance, there is a possibility that higher levels actually increase it.

### **Testing the Hypothesis:**

#### Dependent Variable: OIRA Review

The central innovation of this paper is the use of OIRA decision data as a measure of congruence between published rules and the president's preferences. As a division within OMB, OIRA depends upon the president for political relevancy, which has engrained the prioritization of the presidential agenda into its institutional culture. As a result, OIRA works to align rules with the president's preferences (West, 2005; Shapiro, 2005; Wiseman, 2009; West, 2006; Golden, 2000; Gailmard and Patty, 2013; Yackee, 2019). Because OIRA review operates on the level of the individual regulation, it allows me to study the actual policy that agencies produce using a single, generalizable variable. Using rules as the unit of analysis allows me to directly measure politicization's effects on policy outputs instead of relying on proxy variables or subjective analysis of the content of rules.

All data on OIRA decisions is available to the public on their website, which details every rule reviewed by OIRA from 1981 until the present (available at <https://www.reginfo.gov/public/do/XMLReportList>). OIRA provides each rule's RIN, the office of the agency which promulgated it, date received and date completed, resulting decision, if the rule was economically significant or major, and the stage in which the rule was reviewed. Use of the direct administrative records is the standard source in previous academic work studying the function of OIRA (Balla, Deets, and Maltzman, 2011; Croley, 2003; Haeder and Yackee, 2018).

To create a variable that captures whether a rule matches presidential preferences, I first selected all economically significant rules. While this might seem to eliminate whole sections of relevant rules, the standards for economic significance are malleable and political so that any rule important to the president is likely to be marked as economically significant. OIRA can categorize a rule as significant if it meets any of the following standards: it would have a sizable impact on the economy (more than \$100 million per year); create any contradictions or inconsistencies with the current law or regulation; or ran counter to the president's regulatory mission (Wiseman, 2009). Put together, these conditions give the president the option to mark essentially any rule as economically significant and so for the sake of measuring deviation from the presidential agenda, I use rules that were deemed important by the president. This is also a standard choice in previous work studying OIRA.

OIRA returns rules marked with one of eight classifications: "consistent with change," "consistent without change," "withdrawn," "returned for reconsideration," "judicial or statutory review," "suspended review," "emergency," or "Improperly submitted." I first drop any rule marked as "judicial or statutory review," "suspended review," "emergency," or "improperly submitted" because they not represent any substantive change or approval by OIRA, but rather

describe unrelated circumstances. Put together, the dropped categories represent less than 2 percent of the data set. OIRA returns a rule as “consistent with change” when they have made textual change to the submitted rule and “consistent without change” when they have made none. 93.5 percent of all rules are either consistent with change (68.5 percent) or consistent without change (25 percent). OIRA may also signal to agencies to withdraw (4.1 percent of the dataset) a rule or mark it as “returned for reconsideration” (0.51 percent) if that the rule is too far from presidential preference. Strong presidential control of the rules making process should produce rules which do not require changes if they are reviewed. To measure that, I constructed a dichotomous variable called *OIRA Change* that marked all rules that OIRA returns as “consistent with change,” “withdrawn,” or “returned for reconsideration” as a 1. Rules returned as “consistent without change” are left as 0.

While “withdrawn” and “returned for reconsideration” represent more severe cases of OIRA change to a rule, they represent such a small fraction of the rules in the data set that creating a continuous variable has methodological concerns. Acknowledging the opportunity for a more nuanced measure of changes made by OIRA, I constructed a continuous, ordinal variable, called *OIRA Severity* that categorized “withdrawn” as a 3, “returned for reconsideration” as a 2, “consistent with change” as a 1, and “consistent without change” as a 0 and used it as my dependent variable in my main model. The results showed a strong, statistically significant negative relationship between politicization and changes made by OIRA. This confirmed my results using a dichotomous variable so I continued to use the dichotomous variable to avoid issues of small sample size on the parts of *OIRA Severity* that differentiate it from *OIRA Change*.

Additionally, I test presidential control using the variable *Duration* which measures the number of days between the date OIRA receives a regulation to review and the date they publish



their decision. This is a simple numerical variable derived from the dates in the OIRA records. *Duration* is a less direct measurement of presidential control, but provides added nuance to my analysis as it is a continuous variable.

*OIRA Change* fails to capture the extent of the suggested change by OIRA so minor edits have the same effect as major rewrites. This is a weakness of the variable, but OIRA does not have any record of the significance of the change and so any change will flip the dichotomous variable. There is no public data that captures the extent of change made by OIRA and the data can only be collected through archival research at OIRA (Haeder and Yackee 2018). To compensate for this, I ran my model with *Duration* as a confounding variable, assuming that more significant changes to a rule will require a longer review period than minor edits. This did not affect the results of the test at all, strengthening my results even without a measure for extent of change. Even if I cannot capture the degree of changes by OIRA for a given rule, I am likely underestimating the effects of politicization by weighing minor edits—which likely happen more frequently—equally to major edits and thus holding appointees to a high, but clearly attainable standard. Even with that distortion, I still found a strong, independent effect for politicization.

#### Independent Variable: Politicization

My measures for politicization are based on David Lewis' *The Politics of Presidential Appointments* (2008), the most comprehensive quantitative attempt to measure politicization. There are two main sources used to measure politicization: the Plum Book and the Office of Personnel Management's Central Personnel Data File (CPDF). Published by Congress since 1960, the Plum Book contains every federal policymaking and confidential position subject to appointment, providing a broad and comprehensive index of appointments that covers all of the

OIRA data. The book, however, is only published every four years, which limits its utility analyzing the vast majority of rules that are reviewed in non-election years as well as in measuring the variation of politicization within each administrations. In contrast, OPM has annual statistics of appointed positions dating back to 1988 that cuts across not just the department level, but also the bureau. This allows me to examine the variation not just between the Departments of the Interior and the Treasury, but also between the Bureau of Land management and the Internal Revenue Service, for example. Additionally, the CPDF data includes more detailed statistics on the personnel makeup of agencies, including a management categorization that is crucial to measuring politicization.

For the years from 1998 and 2005, I was able to use Lewis' (2008) dataset published on his public website. To extend the dataset through 2015, I used data sent to me by Professor Lewis from his 2019 working paper *Partisan Procurement: Contracting with the United States Federal Government* with Carl Dahlström and Mihály Fazekas. In this second dataset, Lewis was not able to get precise data from OPM on Senate confirmed appointees and had to rely on the federal employee pay scale. Under this alternate method, he counts the number of employees on the executive pay scale because the EX pay is usually reserved for Senate confirmed positions. This method likely undercounts Senate confirmed positions, but when I combined the two datasets, the overlapping years (2000-2005) had essentially analogous figures for those Senate confirmed positions.

Using the CPDF limits our study to post-1988 and removes the pioneering use of OIRA by the Reagan administration, but our time frame still covers variation across four administrations with even partisan distribution. OPM has not yet posted personnel data for years post-2015 so the final year of the Obama administration and the first three years of the Trump

administration will not be included in this study. While it would be ideal to include those years, the data is simply not available at the moment. This still left us with more than 3000 economically significant rules reviewed by OIRA in this time frame.

The other major disadvantage of the CPDF data was that the system used to code agencies does not match the one used by OIRA. 74.6 percent (2019 of 3042) of the agencies which promulgated regulations in the OIRA system had an identical match in the CPDF. Of the remaining quarter, I was able to find politicization data for 569 of those 824 regulations (69%) in the Plum Book. As mentioned above, the Plum Book is only published every four years so to match politicization data to regulations reviewed between publications I used data from the following publication. For example, if a regulation was reviewed in 2014, I used politicization data from the 2016 Plum Book. While neither the preceding or following Plum Book offers a perfect record of the politicization in the intermediate time, the following at least describes appointees of that particular administration. Considering that different presidents allocate appointees differently based on their own priorities, the 2016 Plum Book records from the Obama administration are more likely to describe politicization in 2014 than in 2018.

Of those 824 regulations without a direct match in the CPDF, the EPA issued 432. There was no direct match with the CPDF because OIRA had broken down the EPA by division (e.g. the Office of Water), rather than keeping it whole like Lewis CPDF data. Because of the EPA's history of adversarial relationships with presidents of both parties, demonstrated by the fact that it produced more than 12% of the rules in the case study, it was important to include them in the primary test. In this case, the EPA is a relatively small agency (compared to a cabinet agency) with a homogenous institutional culture and so I classified those regulations under the Lewis'

EPA data as a single entity. I ran the regression with and without the EPA and it produced similar coefficients and both were statistically significant.

The CPDF provides data on the number of political appointees and career civil servants broken down by varying level of authority. The jobs available to political appointees in descending order of authority are presidential nomination and senate confirmation (PAS), the Senior Executive Service (SES), and Schedule C. A model of the federal bureaucratic hierarchy can be found in Figure 1. PAS positions include the most visible and well-known political appointees and are explicitly authorized by the Constitution. Officially, the president can fill more than 1,100 PAS position, but only about 900 of those are policymaking positions. Another 200+ are U.S. attorneys, marshals, or ambassadors, limiting the president to only 540 key PAS positions in cabinet departments and major independent agencies in 2015. These include Secretaries, deputy secretaries, and a select group of under or assistant secretaries, inspectors general, and chief financial officer.

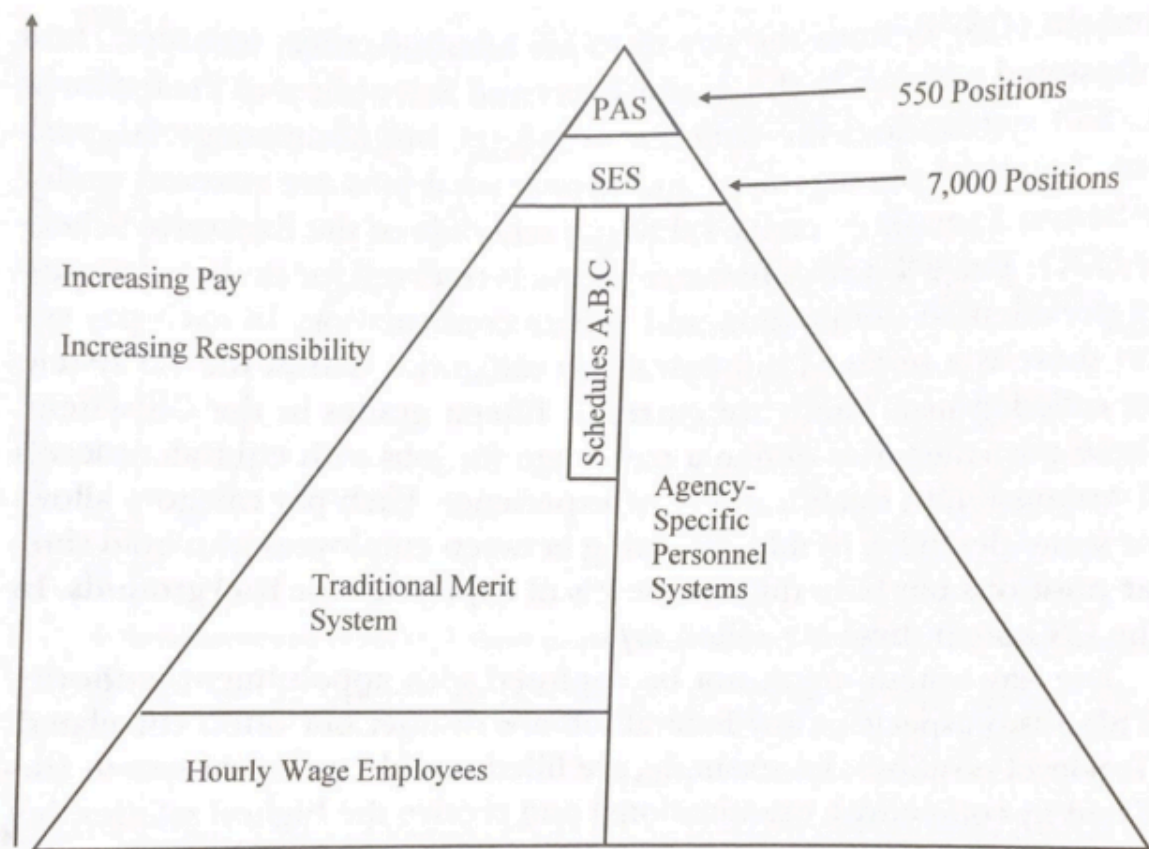


Figure 1: Federal Civilian Personnel System Appointment Authorities (Lewis 2008)

SES positions lie between PAS jobs and the competitive civil service. Created in the Civil Service Reform Act of 1978, the SES is made up of 7,000 political appointees and career civil servants who OPM allocates across agencies based on their own estimates and agency requests (Lewis 2008). SES positions include positions such as Deputy Assistant Secretaries, Chiefs of Staff, and Deputy General Counsels. This system was designed to give presidents the ability to change how they allocate human resources and to prioritize certain areas of policy that may be important to their agenda across the federal bureaucracy and so it is procedurally easy for the president to move career and noncareer SES officers between positions.

Schedule C positions are the final policy-determining positions that presidents can fill. Originally created by President Eisenhower, Schedule C positions are often special or confidential assistants to Senate confirmed appointees, legislative liaisons, and directors of communications or press. Each individual Schedule C job is specifically created by a president and disappears whenever the appointee vacates it. In 2015, there were 1,688 total Schedule C positions in cabinet departments and major independent agencies.

Simply using the number of political appointments in an agency as a measure for politicization fails to capture the structural differences among agencies. These include the agencies' size—the Center for Medicare and Medicaid has far more appointees than the Farm Service Agency, but relative to its total size, the Farm Service Agency has more appointees than the Center for Medicare and Medicaid. Moreover, some agencies and departments have relatively hierarchal or flat structures that either amplify or diminish the influence of political appointees. An appointee atop a highly hierarchical agency where they are one of only a few top-level managers will have greater influence on policy than an appointee in an agency with many relatively equal managers. This diversity creates varying levels of insulation from presidential influence across agencies and any measure of politicization must take into account the design and insulation of the agency being studied (Lewis 2003).

Given those complicating factors, the primary test in this paper will use data from the OPM's CPDF to construct two measures of politicization. In each case the numerator of the ratio is the same: the total number of Senate confirmed, noncareer SES, and Schedule C appointees. This is simply all of the president's policy relevant appointees. But, choosing who are the career civil servants who have a hand in deciding policy is more difficult as it depends upon the

structure of a particular agency and the role of particular bureaucrats in drafting rules. So I will measure politicization with two different denominators.

The first matches Lewis' (2008) measure of politicization and uses a generous classification of "managers" from OPM records that classify managers on a two to eight scale where a 2 means:

Position requires the exercise of supervisory or managerial responsibilities that meet, at least, the minimum requirements for application of the General Schedule Supervisory Guide or similar standards of minimum supervisory responsibility specified by position classification standards or other directives of the applicable pay schedule or system (OPM 2006 The Guide to Personnel Data Standards)

Following Lewis, I also define manager in the most generous way—counting any person with supervisory responsibility—from team leaders to executives. This denominator assumes that bureaucrats further down the chain of command still have a substantive influence on new regulations. This will be especially true in agencies with a relatively flat authority structure, but could also be true across all agencies as these career civil servant managers are likely the ones directing the research used to write rules or could even be responsible for drafting the actual text of a new rule. While high-level appointees and bureaucrats, like those in the SES, get much of the public attention and credit for designing policies, lower-ranking career civil servants likely also have significant influence on the content of a rule. A generous count of managers, however, could understate the level of politicization and then exaggerate the actual effect of political appointees on policy. Additionally, managers is a flexible definition that is defined

differently in varying departments and so the variable can fluctuate across the bureaucracy. I call this variable *Lewis Politicization*.

To avoid that potential distortion, I constructed another variable called *SES Politicization* that uses the total number of SES, Senate confirmed, and Schedule C positions in the agency as a denominator. This measure provides a better image of how politicized the upper crust of an agency or bureau is. The SES includes only the highest level bureaucrats, all above the General Schedule and below Level III of the Executive Schedule. The president can appoint up to 10% of the total SES, though no more 25% in any single agency—a far higher proportion than total number of managers.

This measure of politicization better captures both hierarchal agencies or the condition where the highest-ranking bureaucrats and appointees have greater control over the rules their agencies produces. This is particularly relevant to my study as I am interested in how political appointees influence the content of new pieces of regulatory law, not whether they manage to enforce existing laws in line with presidential priorities. It is rational to assume that directional policy choices occur at the executive level of agencies rather than among small-time project managers. In that case, those executive level civil servants will decide whether new regulations follow presidential priorities and *SES Politicization* will better capture agency politicization. These two measures of politicization describe different stories of policy formulation, but produce similar results in the regression analysis and have a correlation of .561.

### **Confounding Explanations and Controls**

To examine this relationship, I constructed five confounding variables. The likelihood of OIRA substantively changing a rule and the level of extant politicization are both affected by



variables that fit into two categories: presidential influence over Congress and a potential ideology gap between the president and an agency. A popular president will have more influence over Congress to approve their appointments as well as to produce legislation that more closely matches their preferences. I first measure that political capital directly with *Presidential Approval*, which is taken from Gallup's Presidential Approval Rating and matched to the day OIRA receives any given regulation to review. This was straightforward for the Obama Administration because Gallup provided data on a daily basis with few exceptions. From 1988-2008, however, Gallup measured the approval rating twice a month and so I assigned the value for *Presidential Approval* by the next possible date after the regulation was received. I used the subsequent date because it must capture the political capital of the president at the time of the review and it is unlikely that the mundane and obscure choice to review a rule will significantly affect a macro-level variable such as presidential approval rating.

Additionally, I controlled for the *Point in the Administration*, a simple ordinal value of the number of years a president has been in office. The length of a president's administration has a dual effect on politization; presidents are likely to have fewer political appointees and thus rely on OIRA more in the beginning and end of their administration as they have either not had the opportunity to appoint any or the appointees leave as the administration comes to a close. Additionally, presidential influence over Congress generally goes down as time passes after their first election so the president may be more likely to use OIRA to review legislation that is less likely to be driven by the presidential agenda.

A Senate controlled by the president's party is less likely to hold up a president's appointees and a friendly, unified Congress will write more favorable legislation to the president's agenda. To account for this, I created the dichotomous variables *Unified Senate* and

*Unified All*, which flip to one if the president's party controls just the Senate or the Senate and the House of Representatives, respectively.

*Previous presidential attention* is an ordinal variable that adds up the number of times the rule was formally reviewed by OIRA as multiple reviews captures the intensity of presidential interest in any specific regulation (Haeder and Yackee 2018). If a president chooses to review a rule multiple times, it likely a particular area of interest. In that case, the president would likely assign more political appointees to an agency responsible for a policy area of particular interest as well as review the individual related rules promulgated.

Presidents are more likely to use tools of political control such as politicization and OIRA review on agencies that do not share their preferences or are unresponsiveness to the President. Both President Bushes and Bill Clinton increased the number and penetration of appointees in liberal and conservative agencies respectively (Lewis, 2008). While there is a consensus that presidents use OIRA to check opposite-ideology agencies, new empirical evidence suggests that OIRA is more likely used to check extreme liberal agencies than extreme conservative ones (Haeder and Yackee, 2018). So, in addition to controlling for an ideological divergence or match between the president and an agency, I also control for extreme liberal agencies.

There are general conceptions of the ideological bias of various agencies based on their founding mission or regulatory history. For example, one can reasonably assume that the institutional bias within the Environmental Protection Agency likely favors the Democratic Party and the Department of Commerce favors the Republican Party. But, unlike for the president or members of Congress, there are no roll call votes for political scientists to use to place agencies on the political spectrum. To measure agency ideology, previous studies have used Clinton-Lewis scores, which are based on the expertise of 23 Washington observers and academics

focused on bureaucratic politics. Clinton and Lewis sent out a questionnaire asking those experts to rate 82 departments and agencies following these directions:

Please see below a list of United States government agencies that were in existence between 1988 and 2005. I am interested to know which of these agencies have policy views due to law, practice, culture, or tradition that can be characterized as liberal or conservative. Please place a check mark (✓) in one of the boxes next to each agency—“slant Liberal, Neither Consistently, slant Conservative, Don’t know.”

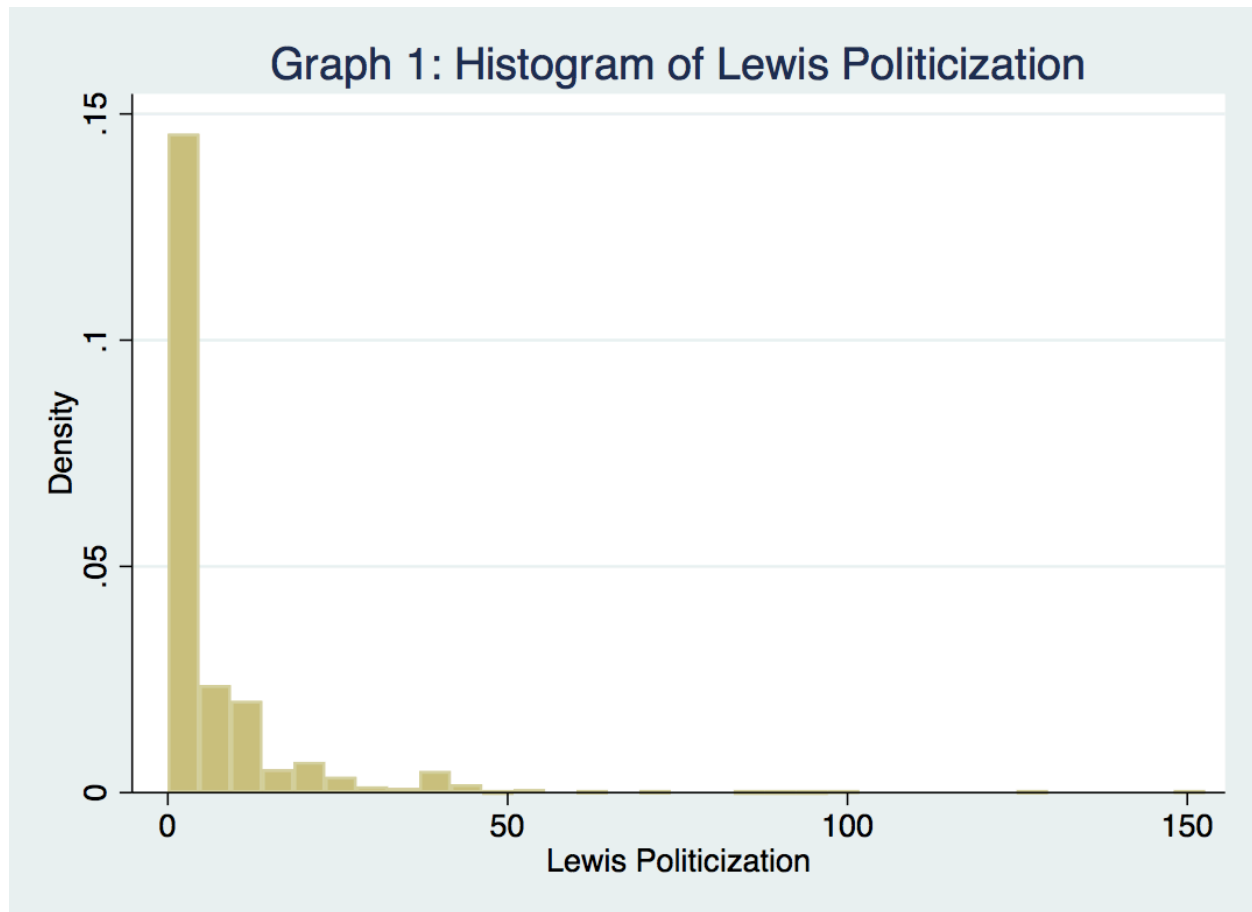
Clinton and Lewis then used the expert survey response to derive estimates of which agencies lean ideologically liberal or conservative—controlling for expertise of the respondent and some thresholds for what constitutes liberal or conservative. Clinton and Lewis then created dichotomous liberal and conservative variables that flip if an agencies’ Clinton-Lewis variable is statistically distinguishable from the average agency rating. I took those variables and created two more dichotomous variables: *Ideological Dissonance* and *Ideological Match*. I marked *Ideological Dissonance* as a 1 if a Democratic president reviewed a rule promulgated by a conservative agency or if a Republican president reviewed a rule issued by a liberal agency. *Ideological Match* was marked as a 1 if a conservative agency’s rule was reviewed by a Republican president or a liberal agency’s by a Democrat.

Altogether, in addition to these eight confounding variables, I constructed two variables to measure politicization within agencies and three variables to measure changes made by OIRA during review. I will proceed to use these variables to test my three main hypothesis using logistic and OLS regressions.

# Results

In the following section, I present the results of the multiple models I constructed to falsify the three hypotheses presented earlier: effectiveness, duration, and performance/diminishing marginal returns. For each hypothesis, I first present and discuss the results of the modeled estimates for my measure of politicization, *SES Politicization*. For each hypothesis, I then run the same tests, but use an alternative measure, called *Lewis Politicization*, derived from Lewis (2008). I also run supplementary tests for each hypothesis that use redefine variables or data sets to further test the relationship that I am investigating, in addition to replicating the tests with measure from Lewis (2008).

*Lewis Politicization* measures the politicization of the whole agency, rather than the politicization just among the top level civil servants. Using this measure in addition to *SES Politicization* ensures that this model captures the potential influence of mid-tier managers. As discussed in the methods section, this measure could also overemphasizes parts of the bureaucracy that are less relevant to the formulation of new regulations and more so relevant to the enforcement of preexisting rules. As a result, agencies tend to have lower levels of politicization using Lewis' (2008) measure with distribution shown in Graph 1 vs. the distribution of *SES Politicization* shown in Graph 2. Incorporating both measures into each of my models protects my tests from biasing against either part of the bureaucracy. I also use *Lewis Politicization* to provide a reference point for my own measure as it is a widely used and published method of measuring politicization (Lewis 2008; Gersen and Berry 2010; Hubak 2010).



## H1: Effectiveness Hypothesis

### SES Politicization Model

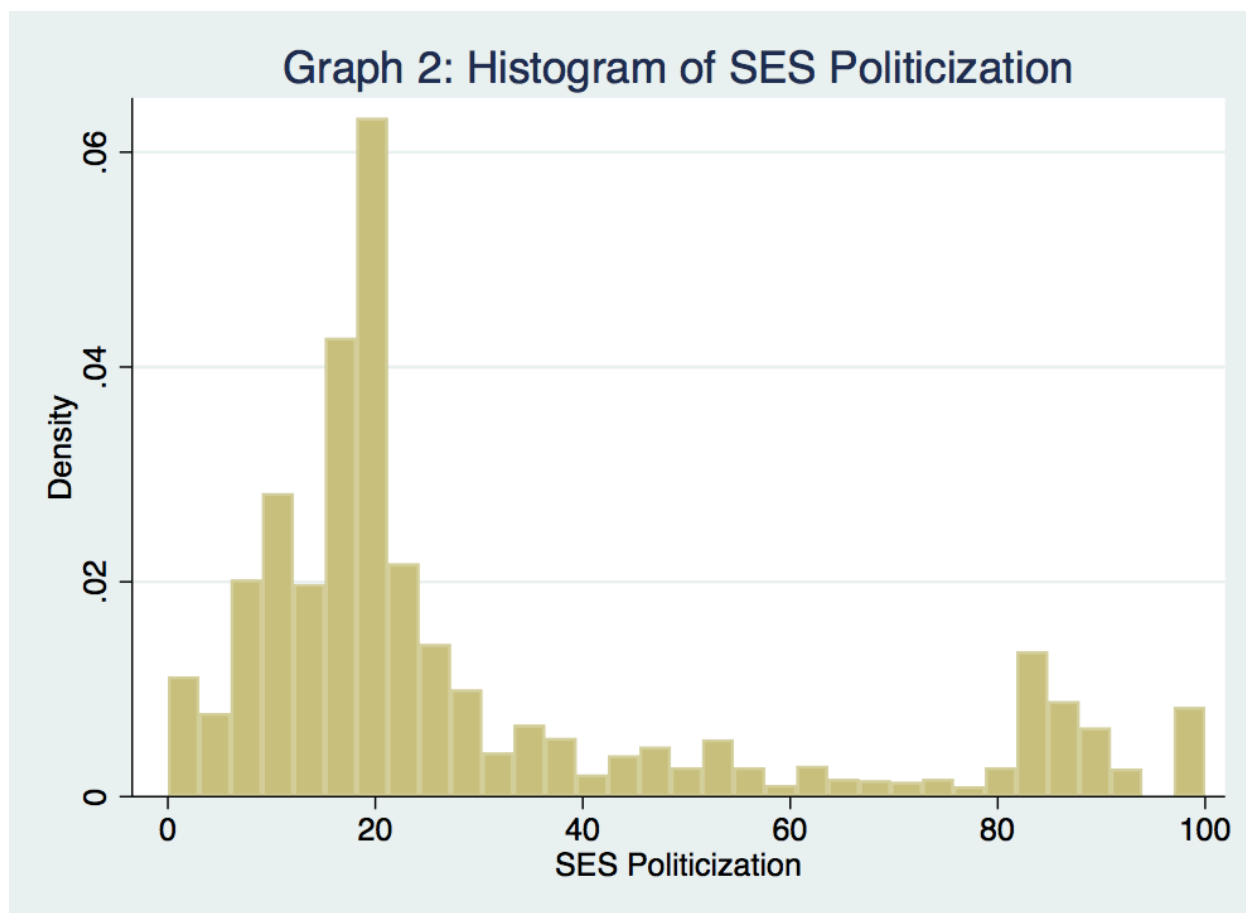
**Table 1: Marginal Effects and Regression Coefficients, Logistic Model with SES Politicization**

<b>Variable</b>	<b><u>Model With Controls</u> Marginal Effects with Standard Errors</b>	<b><u>Model With Controls</u> <math>\beta</math> Coefficient with Standard Errors</b>
SES Politicization	-.003 (.0003)	-0.012(.002)***
Presidential Attention	-0.012 (.005)	-0.0678 (.030)
Unified Senate	0.145 (.037)***	1.243 (.246)***
Unified Government	-0.094 (.039)	-0.892 (.253)
Presidential Approval	0.002 (.001)	0.019 (.005)
Point in Administration	0.013 (.004)**	0.124 (.025)**
Ideological Dissonance	-0.157 (.025)***	0.894 (.164)***
Ideological Similarity	-0.145 (.026)***	-.740 (.169)***
Liberal	0.198 (.021)***	1.378 (.145)***
Constant	0.760 (.008)***	0.269 (0.300)

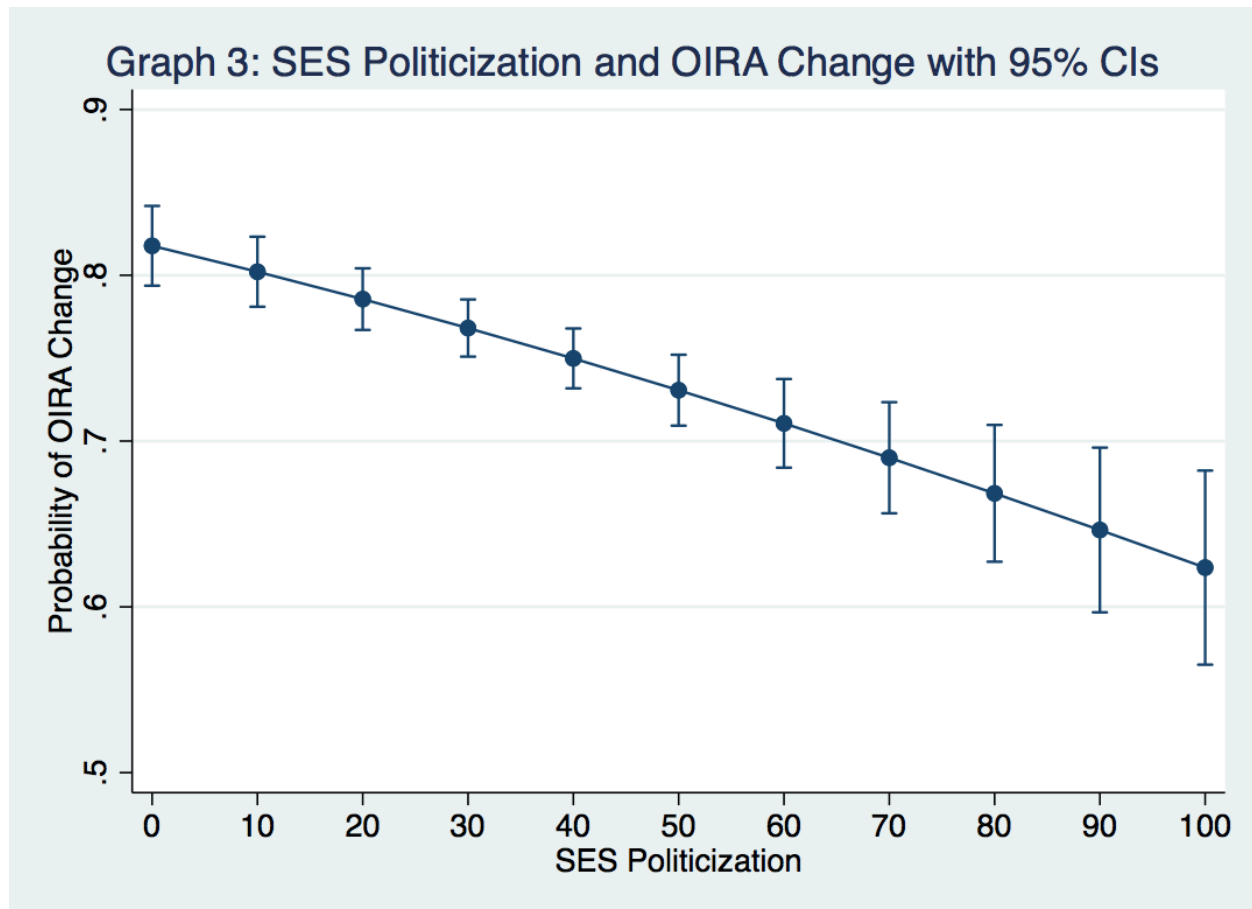
*Note: \*\*\*  $p < .000$ , \*\*  $p < .01$ , \*  $p < .05$ ;  $n=2181$*

To test the Effectiveness Hypothesis, I first ran a logistic regression using the 2,197-rule data set with the dichotomous *OIRA Change* as the dependent variable and *SES Politicization* as the independent variable. I expect to see a negative relationship where OIRA is less likely to make changes to rules promulgated by highly politicized agencies. The coefficient of the modeled relationship should be negative, statistically significant, and substantively large.

Table 1 contains the coefficients and standard deviations for my dependent and control variables from this test. It also contains the estimated marginal effects in order to assess the magnitude of the relationship. I find support for the Effectiveness hypothesis as among all agencies, on average, as politicization of an agency increases by one point, the probability of OIRA overturning the agency's decision by .3 percentage points, after controlling for all of the other variables in the model. The 95 confidence interval for the marginal effect, (-0.0041, -0.002), did not cross zero, and the results do not change at either boundary. These marginal effects persist despite controlling for important factors such as ideological similarity between the president and the agencies producing the rules or Congress who writes the statute.



On its face, this may seem like a small change in *OIRA Review*, but politicization rarely increases by only a single point. There are relatively few civil servants, both career and appointee, at the SES level—the agencies with rules under review in this data set have an mean of 93 total SES positions, but also a standard deviation of 103. The distribution of *SES Politicization* is in Graph 1. As a result, *SES Politicization* has a standard deviation of about 26 percent implying that an average change in politicization will cause a significant change in the likelihood of a substantial OIRA review.



These results demonstrate that politicization is an effective means of presidential control over the content of rules promulgated by federal agencies and confirm the Effectiveness Hypothesis. Rules submitted by agencies in which political appointees make up less than 40 percent of the upper-level (SES and above) bureaucracy rules have a greater than 75 percent chance of being substantially reviewed. This trend is visualized in Graph 3. The dichotomous nature of the dependent variable *OIRA Change* allows me to construct predicted probabilities from the logistic regression, meaning that a point on the graph represents the likelihood that OIRA make substantive changes to a rule promulgated at that level of politicization. Agencies without any political appointees are more likely to have regulations changed by review than those exclusively staffed by political appointees. Fewer agencies have this high level politicization and so the confidence intervals are wider due to the smaller sample size, but even



their upper bounds tell the same story. For example, the confidence intervals at 10 percent *SES Politicization* (0.782, 0.824) do not overlap with those at 40 percent (0.733, 0.769), which do not cross the confidence intervals at 70 percent (0.658, 0.724). The predicated probabilities are listed in Table 2. Functionally, this means there is a meaningful difference in the likelihood of OIRA changing a rule as politicization varies across a single standard deviation.

**Table 2: Likelihood of OIRA Change at 10 percent Margins of Politicization**

Variable	<u>Model With Controls</u>
	Likelihood of OIRA Review with Standard Errors
Politicization	-0.023 (.004)***
0%	0.818 (.012)
10%	0.803 (.107)
20%	0.786 (.0127)
30%	.769(.019)
40%	0.751 (.005)
60%	0.732 (.026)
70%	0.712 (.054)
80%	0.691 (.062)
90%	0.670(.068)
100%	0.625 (.073)

#### Lewis Politicization

To strengthen these results, I ran the same test on *OIRA Change* using Lewis' (2008) measure of politicization with “managers” as the denominator. The full results appear in Table 3. Using *Lewis Politicization*, this test predicts that politicization will have a larger effect on the likelihood of OIRA changing a rule than the previous measures of politicization. On average, across all agencies, for every unit increase in politicization, the likelihood of OIRA making a substantive change goes down by .4 percentage points after controlling for all other variables in the model. The beta-coefficients and derived marginal effects for this test can be found in Table 3. This result matches our theoretical expectation as *Lewis Politicization*'s large denominator will produce lower levels of politicization than *SES Politization* and thus a larger effect when

*OIRA Change* is regressed on it. This story produced a similar, albeit stronger, relationship between politicization and substantive OIRA review as *SES Politicization*, strengthening the results from the first test.

**Table 3: Marginal Effects and Regression Coefficients, Logistic Model with Lewis Politicization**

Variable	<u>Model Without Controls</u> Marginal Effects with Standard Errors	<u>Model With Controls</u> $\beta$ Coefficient with Standard Errors
Lewis Politicization	-.004 (.001))	-0.023 (.004)***
Presidential Attention	-0.009 (.005)	-0.063 (.030)
Unified Senate	0.207 (.038)***	1.349 (.250)***
Unified Government	-0.155 (.039)	-1.009 (.257)
Presidential Approval	0.002 (.001)	0.016 (.005)
Point in Administration	0.017 (.004)**	0.112 (.026)**
Ideological Dissonance	-0.137 (.025)***	-0.898 (.172)***
Ideological Similarity	-0.128 (.026)***	-0.834 (.172)***
Liberal	-0.128 (.021)***	1.542 (.147)***
Constant	1.448 (.062)***	-.243 (0.294)

Note: \*\*\*  $p < .000$ , \*\*  $p < .01$ , \*  $p < .05$ ;  $n=2181$

### Additional Tests

To account for the limitations of using a dichotomous variable and to bolster these results, I ran an Ordinary Least Square (OLS) regression that regressed *OIRA Severity* on *SES Politicization* and *Lewis Politicization*. I constructed *OIRA Severity* by treating rules that OIRA returned as “withdrawn” and “returned for reconsideration” as additional, more severe decisions that reflected rules even further from the presidential agenda than “consistent with changes.” This is generally true and may better capture how congruent a given rule is with the president’s preferences. *OIRA Severity* creates a 4-point continuous measure of OIRA action that places those results in descending order of congruence to the presidential agenda beginning with “consistent without changes,” then “consistent with change,” then “returned for reconsideration,” and finally “withdrawn.” The percent of each cases within the OIRA Change

are in Table 4. The relative paucity of “withdrawn” and “returned for reconsideration” cases is why I fold them into a dichotomous in the general model.

**Table 4: Descriptive Statistics for OIRA Severity**

<b>Variable</b>	<b>Percentage of Cases within OIRA Change (%)</b>	<b>Cumulative Percentage of Cases</b>
OIRA Change	.	.
Withdrawn (3)	22.9	22.9
Returned for Reconsideration (2)	71.66	94.56
Consistent with Change (1)	.51	95.08
Consistent without Change (0)	4.92	100

*Note:* \*\*\*  $p < .000$ , \*\*  $p < .01$ , \*  $p < .05$

### SES Politicization

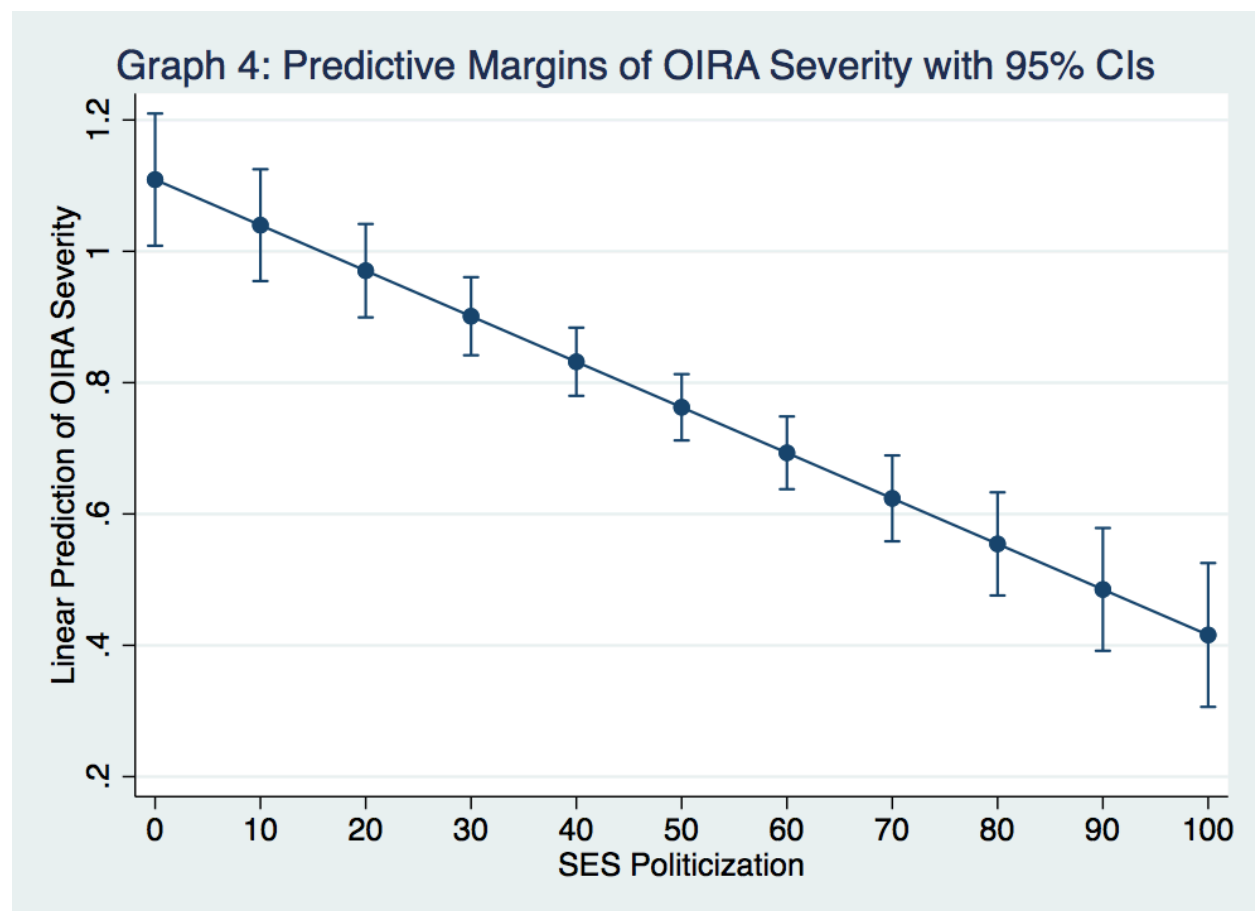
**Table 5: Regression Coefficients, OLS Model with and without “Controls” For OIRA Severity**

<b>Variable</b>	<b>Model Without Controls (SES) Coefficient with Standard Errors</b>	<b>Model With Controls (SES) β Coefficient with Standard Errors</b>	<b>Model with Controls (Lewis) β Coefficient with Standard Errors</b>
Politicization	-0.006 (.000)***	-0.006 (.001)***	-0.006 (.001)***
Presidential Attention	.	-0.004 (.005)	-0.001 (.008)
Unified Senate	.	-0.049 (.454)	0.021 (.045)
Unified Government	.	0.015 (.045)	-0.054 (.046)
Presidential Approval	.	0.004 (0.001)***	0.005 (.001)***
Point in Administration	.	-0.021 (.007)**	-0.018 (.007)
Ideological Dissonance	.	-0.177 (.027)***	-0.176 (.042)***
Ideological Similarity	.	-0.166 (.041)***	0.170 (.042)***
Liberal	.	0.232 (.035)***	0.291 (.037)***
Constant	0.997 (.017)	0.830 (.075)	0.665 (.072)

*Note:* \*\*\*  $p < .000$ , \*\*  $p < .01$ , \*  $p < .05$ ,  $n=2181$

To test this new variable, I ran an OLS regression with the same set of controls on *SES Politicization* and *Lewis Politicization*. If politicization produces rules that more in line with president’s priorities, then increasing an agencies politicization will have a negative relationship with *OIRA Severity*. I find the expected negative relationship. The coefficients are in Table 5. On average, a one point increase in politicization leads to a half a point on the spectrum of OIRA action, meaning, on average, OIRA’s actions are less severe as an agency’s politicization goes up. This change is statistically significant. This relationship is best captured in Graph 4.

Agencies with 0 percent politicization have a predicted *OIRA Severity* score of 1.11, just above a 1 which signifies “consistent with changes.” In comparison, a rule from an entirely politicized agency is predicted to be a .41 out of the possible 4 where a 4 signifies the rule was withdrawn. These results are in line with my general model and help confirm the Effectiveness Hypothesis. To Further strengthen these results, I ran the model again using *Lewis Politicization* as the dependent variable. The coefficients are in Table 5. I find the same expected negative relationship and the results confirm all the findings mentioned above.



## H2: Duration Hypothesis

### SES Politicization

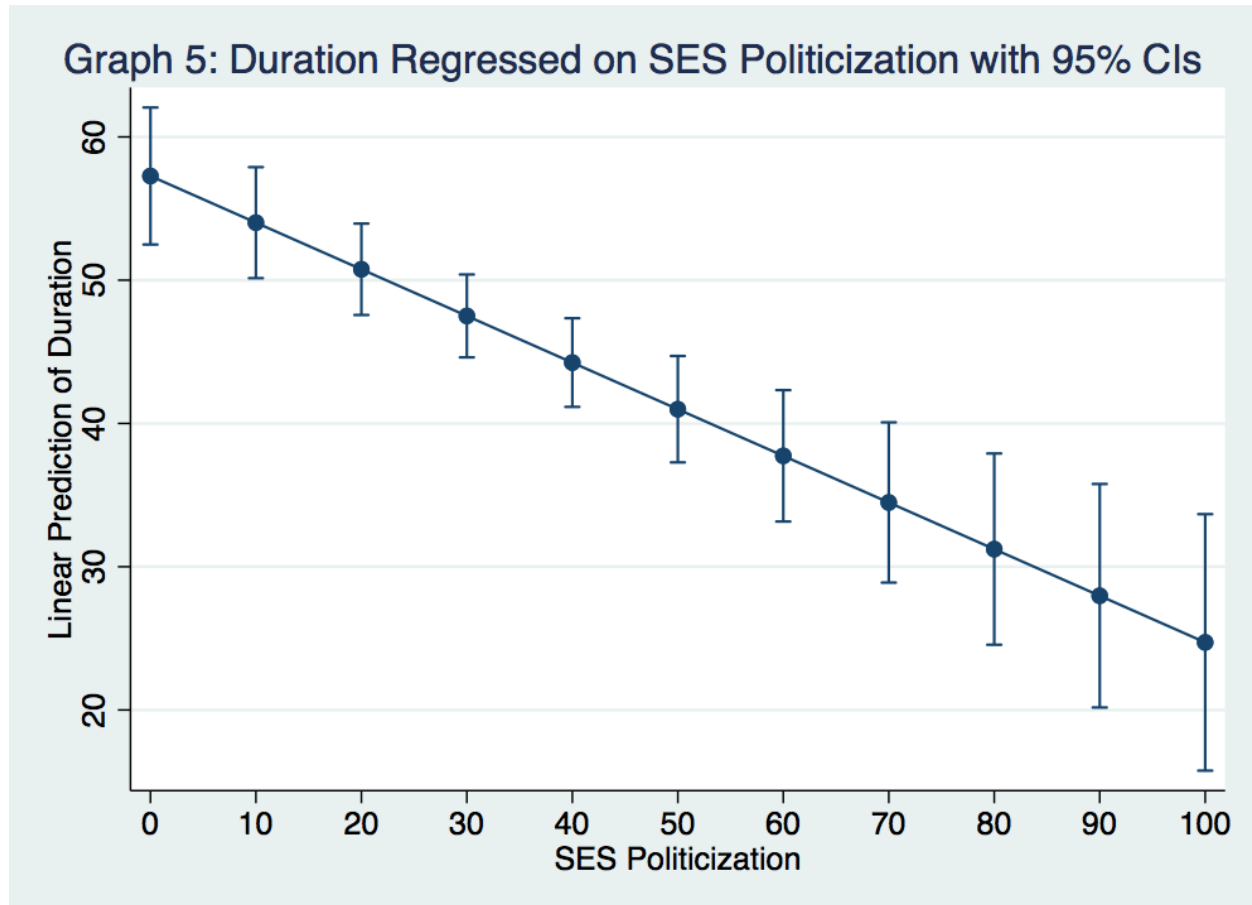
**Table 6: Regression Coefficients, Logistics Model with and without “Controls” For Duration**

<b>Variable</b>	<b><u>Model Without Controls</u></b> <b>Coefficient with Standard Errors</b>	<b><u>Model With Controls</u></b> <b>β Coefficient with Standard Errors</b>
SES Politicization	-0.283 (.055)***	-0.325 (.063)***
Presidential Attention	.	-0.256 (.937)
Unified Senate	.	23.369 (5.006)
Unified Government	.	-36.658 (5.066)
Presidential Approval	.	0.043 (0.135)
Point in Administration	.	-0.069 (.724)
Ideological Dissonance	.	-14.122 (4.686)
Ideological Similarity	.	-21.406 (4.669)
Liberal	.	10.720 (4.054)
Constant	56.409 (2.236)	61.678 (8.235)

*Note:* \*\*\*  $p < .000$ , \*\*  $p < .01$ , \*  $p < .05$ ,  $n=2181$

Using the same dataset, I ran an OLS regression with the continuous variable *Duration* and both measures of politicization used to test the Effectiveness Hypothesis. *Duration* counts the number of days between when a rule is submitted to OIRA and when OIRA publishes a decision. I expect to find a negative relationship between an agencies’ politicization and the number of days OIRA takes to review a given regulation. Table 6 contains the coefficients and standard deviations for *Duration*, my dependent variable, and all of the same controls. I find the expected negative relationship between politicization and *Duration*—a percentage increase in politicization leads to a reduction of about one-third of a day in review time. Graph 5 captures the linear prediction of *Duration* at varying levels of politicization. The predicted duration of OIRA review for agencies without any political appointees is just over 55 days and for agencies where political appointees make up 20 percent or less of the SES, the predicted duration of review is more than 50 days. In comparison, rules from agencies with politicization at or above

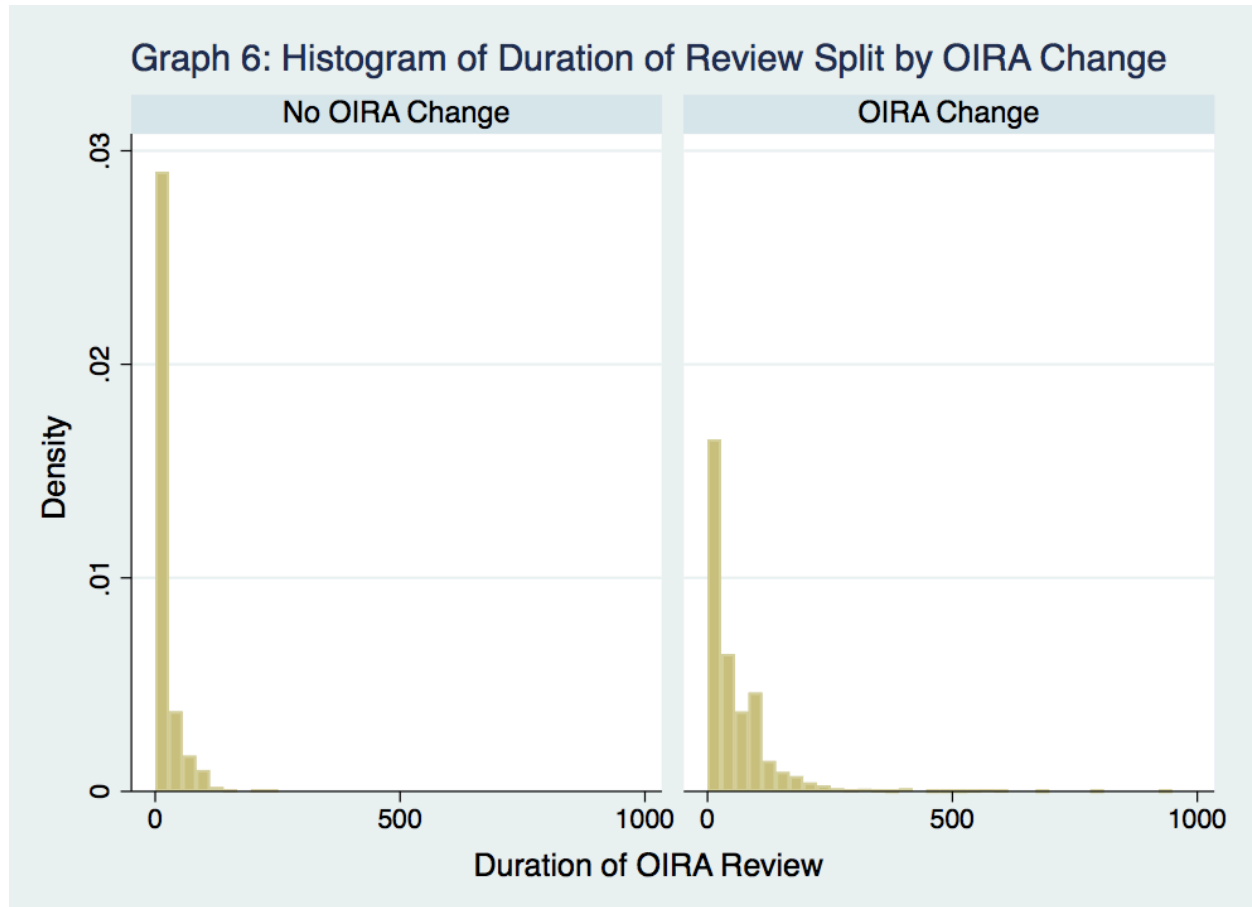
60 percent are predicted to be reviewed for just over 30 days, with OIRA only taking 13 days for agencies entirely made up of political appointees. The confidence intervals for the values at 20 percent and 80 do not overlap so these differences are statistically significant. These results suggest that highly politicized agencies are able to produce rules that require less review than those from less politicized agencies.



### Additional Tests

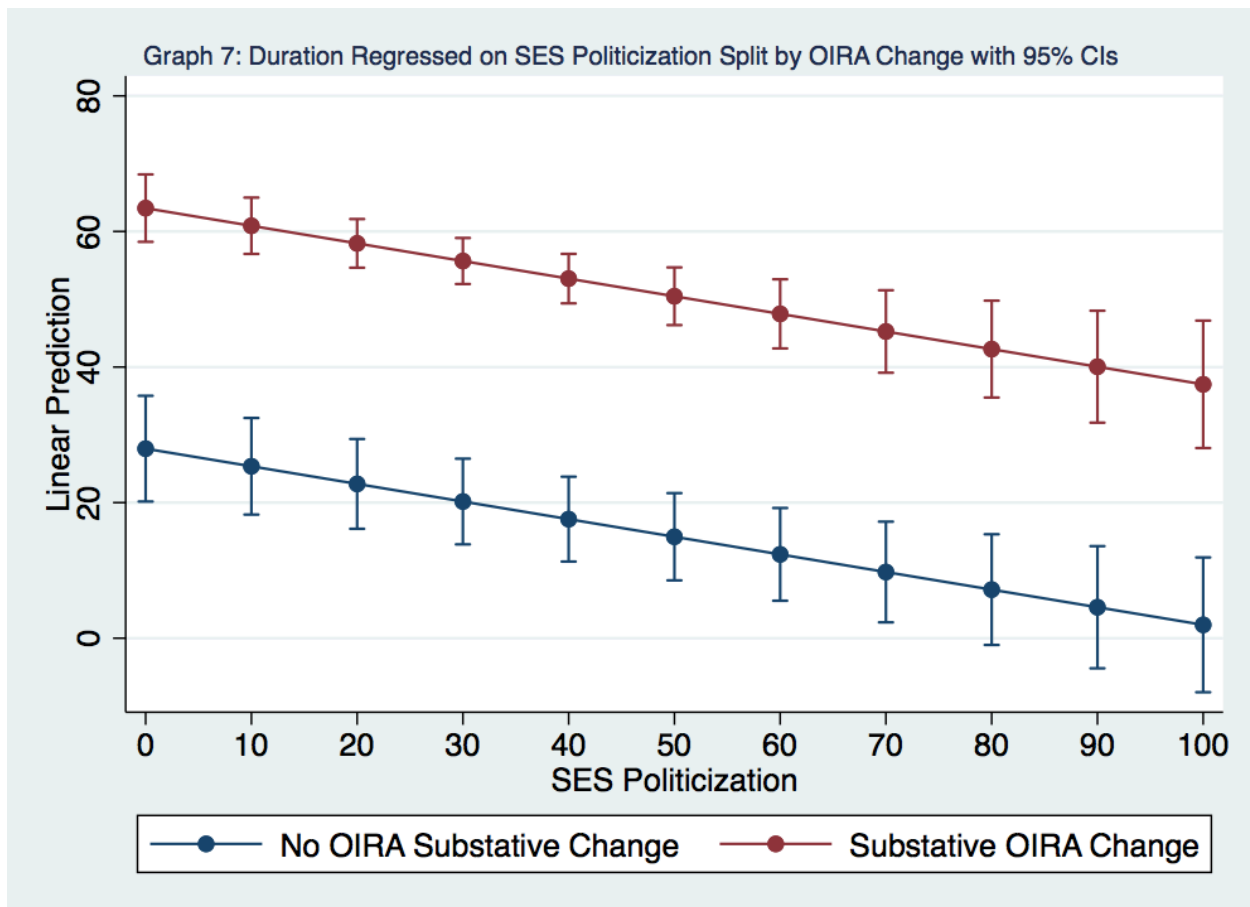
It is logical to assume, however, that making substantive changes to rules will require more time than rules that are reviewed without changes regardless of an agency's level of politicization. In that case, those results could be driven by OIRA's decision, not by politicization. Graph 6 visualizes this theory, where 58 percent of rules which OIRA did not

offer substantive change to were reviewed for 10 or fewer days compared to only 24 percent of rules which OIRA edits. Moreover, about 28 percent of rules without OIRA changes were reviewed for 1 or fewer days—the largest grouping across the entire data set. This along with our results from the first hypothesis suggest that *OIRA Change* needs to be incorporated into our *Duration* model.



It is logical to assume that OIRA will take longer to review rules that it chooses to make changes to because it adds a whole additional process to the review. For rules which OIRA made no changes to, *Duration* represents the amount of time it takes OIRA to decide that a rule is in line with the presidential contrast. In contrast, for rules OIRA does make changes to, *Duration* captures that same time plus the amount of time to actually rewrite the rule. Two rules—one edited, one unchanged—both decided in 10 days represent two different phenomena

To test this initially, I added *OIRA Change* as a control variable to the regression on *SES Politicization*. There still was a strong statistically significant relationship, but the coefficient of *SES Politicization* dropped to a little over a quarter of a day (-0.258). Graph 7 demonstrate that *Duration* is likely two cases separated by whether OIRA made substantive changes to them during the review. The graph shows that a rule that OIRA did not make changes to from an agency without any political appointees is predicted to be reviewed for less time than a rule with changes from an agency with 70 percent politicization. It should be noted that politicization still helps predict the duration of a review by OIRA regardless of what decision they may make—further strengthening the results from the first sections. These findings supports the assumption that rules with and without substantive changes may represent qualitatively different cases of politicizations effects on the rulemaking process.





To disentangle that relationship, I separated rules OIRA had made changes to and those they had not and ran an interactive OLS regression model using the same control variables. The data set of rules that OIRA did not offer edits to did not produce statistically significant results (p-value of .445) likely because of the small size (n=521). But, the regression run on the rules OIRA changed confirmed the Duration hypothesis. All of the coefficients and standard deviations of the test are below in Table 7. Politicization's coefficient of -0.350 days is statistically significant and the graph showing the linear prediction of *Duration* at 10 percent margins of politicization is largely unchanged. This test produced almost identical results as the initial test with increases in politicization resulting in a reduction in review time by about one third of a day.

**Table 7: Regression Coefficients, Logistics Model with and without “Controls” For Duration**

<b>Variable</b>	<b><u>Model Without Controls</u> Coefficient with Standard Errors</b>	<b><u>Model With Controls</u> β Coefficient with Standard Errors</b>
SES Politicization	-0.280 (.078)***	-0.350 (.085)***
Presidential Attention	.	3.041 (1.898)
Unified Senate	.	20.267 (6.066)***
Unified Government	.	-38.508 (6.012)***
Presidential Approval	.	-0.023 (0.168)
Point in Administration	.	-0.151 (.977)
Ideological Dissonance	.	-10.260 (6.246)
Ideological Similarity	.	-19.377 (6.047)
Liberal	.	0.650 (5.400)
Constant	56.409 (2.236)	73.923 (11.046)

*Note:* \*\*\*  $p < .000$ , \*\*  $p < .01$ , \*  $p < .05$ ,  $n=1,625$

I then ran a secondary test with an interactive model to test the null hypothesis  $H_0$ :  $B_{\text{Change}} = B_{\text{No Change}}$  where  $B_{\text{Change}}$  is the regression coefficient for rules that OIRA made changes to and  $B_{\text{No Change}}$  is the regression coefficient for rules that OIRA did not make changes to. To test this, I created a dummy variable called *Null Test* that was the product of *OIRA Change* and *Duration* and put them both into the regression analysis. In short, by including this additional

term in the regression model, I can determine whether the two coefficients are statistically distinguishable from one another. The coefficients of this test are in Table 8. The t-value of *Null Test* was -24.08, making it not only statistically significant, but substantively large. Politicization matters regardless of whether OIRA makes or does not make a change.

**Table 8: Regression Coefficients, Logistics Model to Test Null Hypothesis**

Variable	<u>Model With Controls</u> β Coefficient with Standard Errors
SES Politicization	-0.012 (.0122)
OIRA Change	-16.753 (.695)***
Null Test	1.000 (0.003)***
Constant	73.923 (11.046)

*Note:* \*\*\*  $p < .000$ , \*\*  $p < .01$ , \*  $p < .05$

### Lewis Politicization

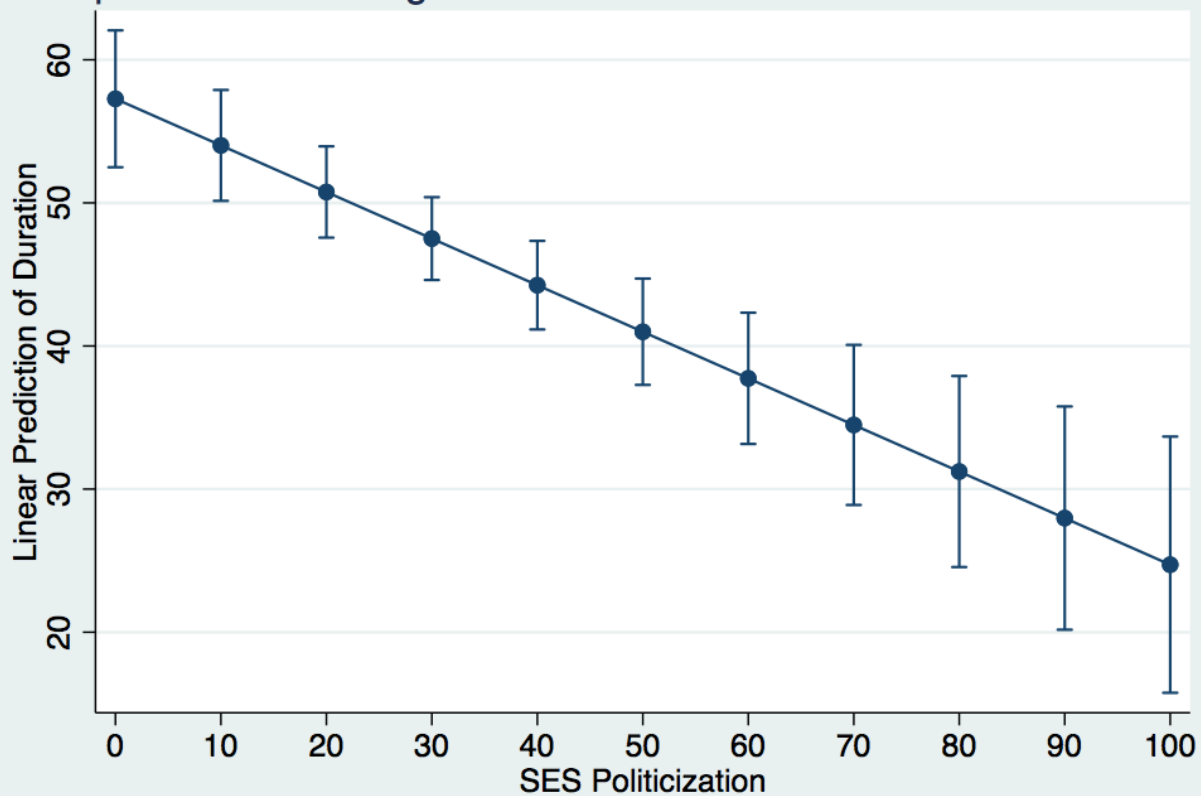
For the initial test on the entire dataset, I find a similar coefficient (-0.399) using *Lewis Politicization* as the independent variable. The results can be found in Table 9. The primary difference between these results are the predicted *Durations* at varying levels of politicization shown in Graph 8. While the slope is essentially the same, the predicted values using *Lewis Politicization* are about three to five days shorter than those using *SES Politicization*. This is likely due to the higher concentration of agencies on the low end of the *Lewis Politicization* distribution, but this difference does not change the story told by either regression.

**Table 9: Regression Coefficients, Logistics Model with and without “Controls” For Duration**

Variable	<u>Model Without Controls</u> Coefficient with Standard Errors	<u>Model With Controls</u> $\beta$ Coefficient with Standard Errors
SES Politicization	-0.279 (.123)***	-0.399 (.128)*
Presidential Attention	.	0.009 (.948)
Unified Senate	.	20.723 (5.105)***
Unified Government	.	-38.576 (5.168)***
Presidential Approval	.	0.004 (0.136)*
Point in Administration	.	-0.409 (.759)
Ideological Dissonance	.	-10.886 (4.703)
Ideological Similarity	.	-19.721 (4.741)***
Liberal	.	13.198 (4.111)**
Constant	50.518 (2.236)	56.405 (8.109)

Note: \*\*\*  $p < .000$ , \*\*  $p < .01$ , \*  $p < .05$ ,  $n=2181$

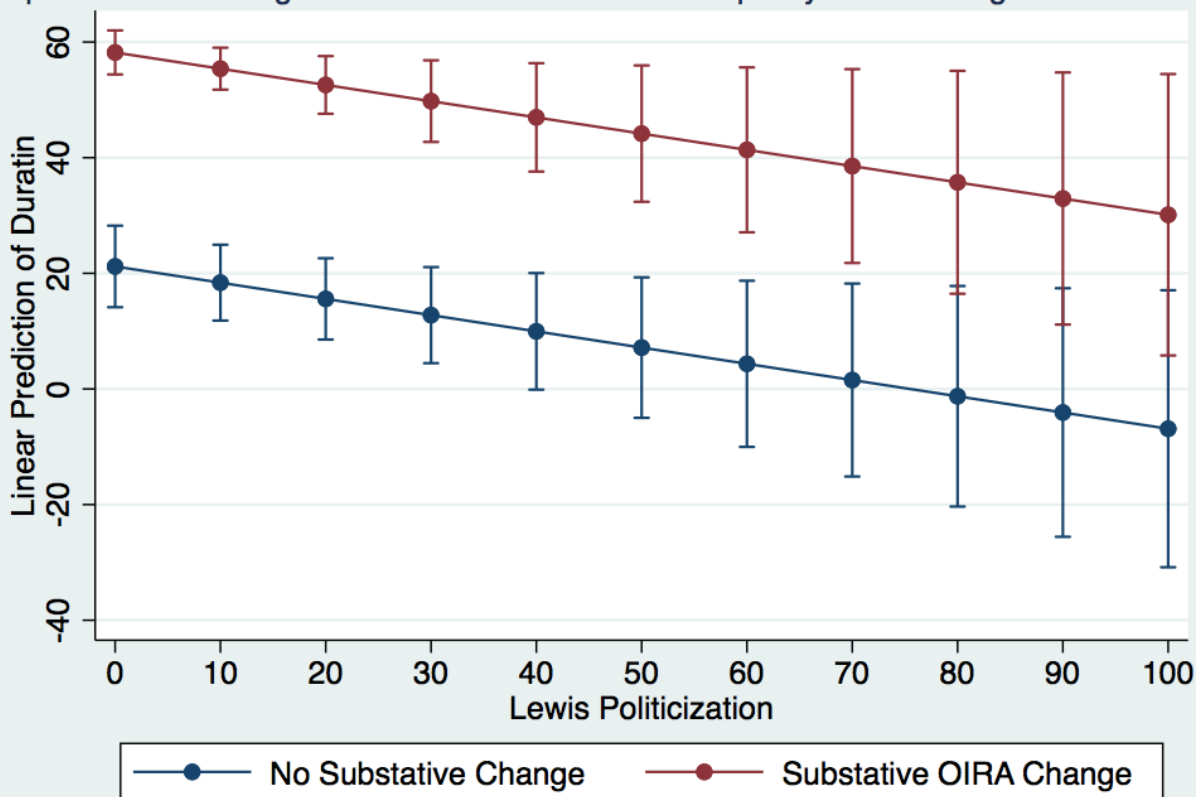
**Graph 8: Duration Regressed on SES Politicization with 95% CIs**



### Additional Tests

Following the same logic as in the *SES Politicization* case, I then introduced *OIRA Change* into the model. I first controlled for *OIRA Change* in the model that regressed *Duration* on *Lewis Politicization* and found a similar -0.281 coefficient (p-value .032) as when *SES Politicization* was used though the values at higher levels of politicization are smaller due to fewer cases. I then split the results using *OIRA Change* as shown in Graph 9. I found similar results in this test, though there was a less clear distinction between rules which had been changed by OIRA and those that had not. Additionally, the linear prediction of *Duration* dropped into the negative at the very highest levels of politicization, which is not possible, but also can indicate how short an expected review would be for a rule promulgated by a highly politicized agency that is not changed by OIRA.

Graph 9: Duration Regressed on Lewis Politicization Split by OIRA Change with 95% CIs



Again, to disentangle the effects of *OIRA Change* from the effects of politicization, I separated the data set by the dichotomous variable *OIRA Change*. The coefficient for rules not changed by OIRA was not statistically significant (p-value of 0.757). For rules that OIRA had made changes to, the coefficient went back up to over a third of a day. The full results of this test are in Table 10. This secondary test strengthens the results from the first and also confirms the Duration Hypothesis.

**Table 10: Regression Coefficients, OLS Model with and without “Controls” For Duration**

Variable	Model Without Controls	Model With Controls
	Coefficient with Standard Errors	$\beta$ Coefficient with Standard Errors
SES Politicization	-0.211 (.163)***	-0.351 (.168)*
Presidential Attention	.	4.029 (1.914)
Unified Senate	.	20.471 (6.179)***
Unified Government	.	-41.019 (6.229)***
Presidential Approval	.	-0.0586 (.171)*
Point in Administration	.	-0.753 (1.000)
Ideological Dissonance	.	-6.493 (6.273)
Ideological Similarity	.	-16.982 (6.154)***
Liberal	.	2.458 (5.519)**
Constant	58.306 (2.140)	56.405 (8.109)

Note: \*\*\*  $p < .000$ , \*\*  $p < .01$ , \*  $p < .05$ ;  $n=1625$

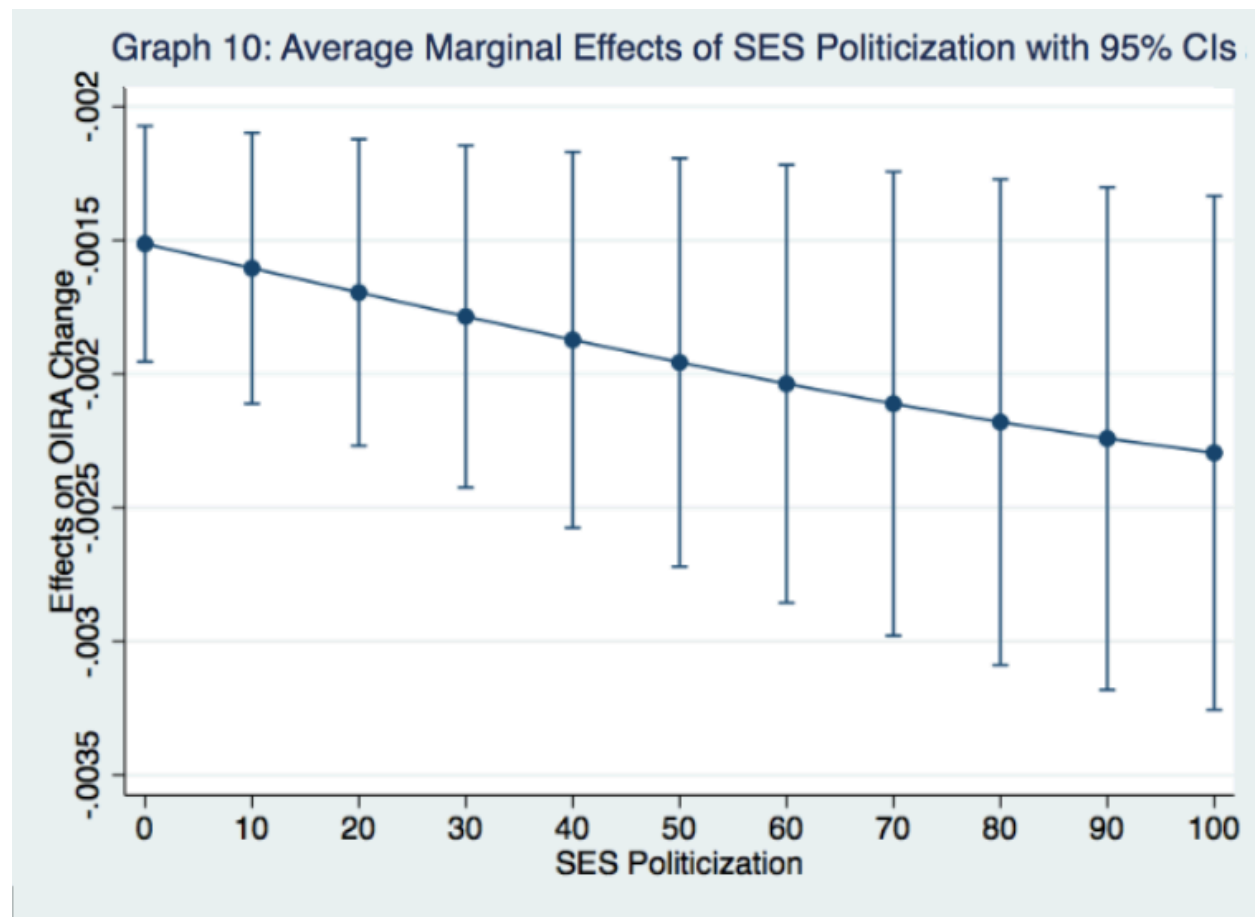
As before, I then ran a secondary test with an interactive model to test the null hypothesis  $H_0$ :  $B_{\text{Change}} = B_{\text{No Change}}$  where  $B_{\text{Change}}$  is the regression coefficient for rules that OIRA made changes to and  $B_{\text{No Change}}$  is the regression coefficient for rules that OIRA did not make changes to. To test this, I again added the dummy variable *Null Test* to the regression analysis, which allows me to determine whether the two coefficients are statistically distinguishable from one another. The results of the test are in Table 11. The t-value of *Null Test* was -256.91, making it not only statistically significant, but substantively large. Politicization matters regardless of whether OIRA makes or does not make a change.

**Table : Regression Coefficients, OLS Model to Test Null Hypothesis**

Variable	<u>Model Without Controls</u>	<u>Model With Controls</u>
	Coefficient with Standard Errors	$\beta$ Coefficient with Standard Errors
SES Politicization	-0.280 (.078)***	-0.0315 (.023)
OIRA Change	.	-17.290 (.702)***
Null Test	.	1.000 (0.003)
Constant	56.409 (2.236)	73.923 (11.046)

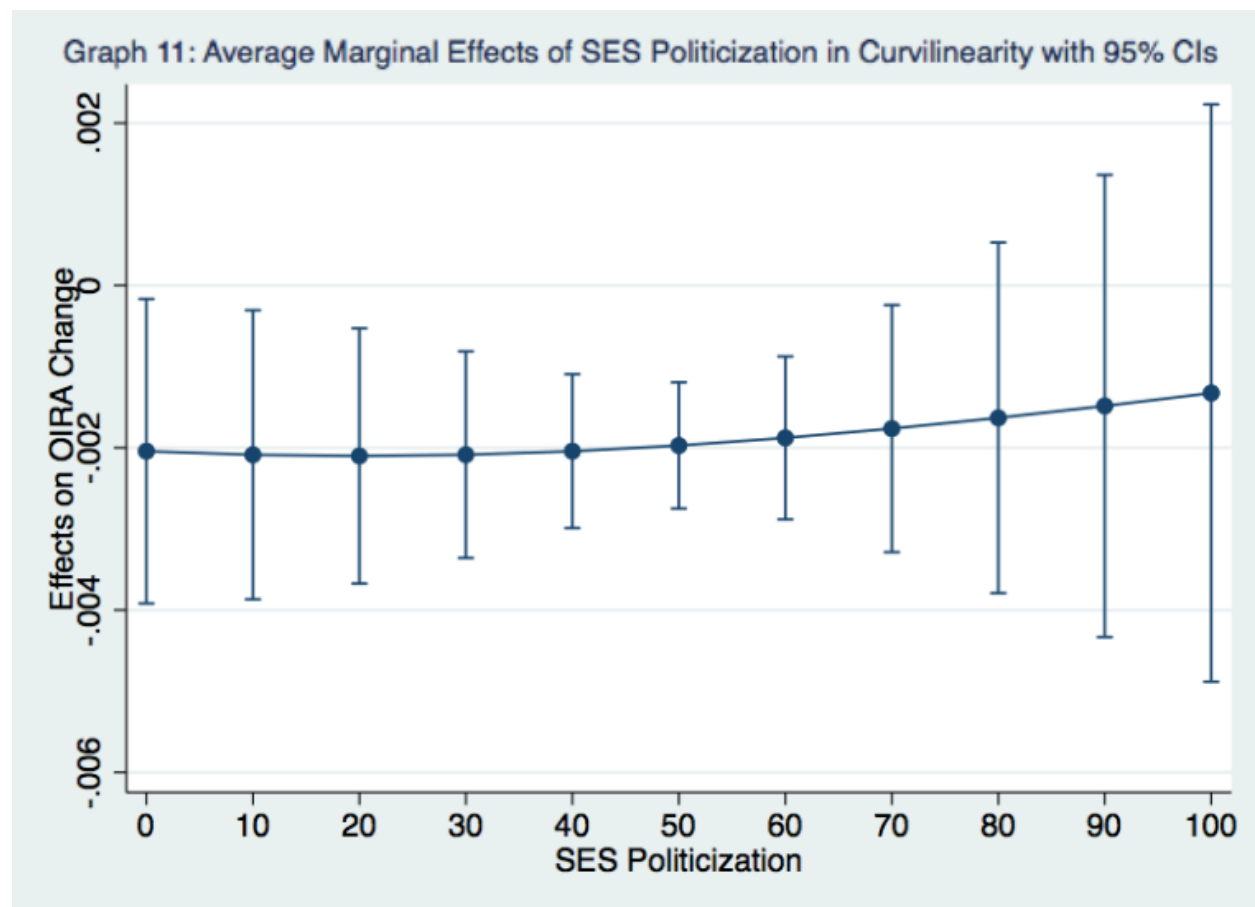
### H3: The Performance Hypothesis

#### SES Politicization



The results from my first test on the Effectiveness Hypothesis, seem to indicate that increasing levels of politicization, even around 100 percent politicization, continue to reduce the likelihood of OIRA making substantive changes to a rule. To further test the effects of increasing

levels of politicization have on the OIRA action, I took the first derivative of the estimated relationship between politicization and OIRA's action, and calculated it at intervals of 10 percent. A positive finding for this hypothesis would find that in the most politicized agencies, there would be a positive relationship between additional politicization and the change in likelihood that the OIRA would offer substantive changes to a rule. The size of that relationship would be substantively larger for highly politicized agencies than for less politicized agencies. The results can be found in Graph 10. Overlapping confidence intervals mean that I cannot infer a trend from this test. However, all of the coefficients are negative, statistically significant, and with even the upper-bounds of their confidence intervals are below zero. Even at the highest level of politicization, an additional increase in politicization still reduced the likelihood of *OIRA Change*, a negative result for the Performance Hypothesis.



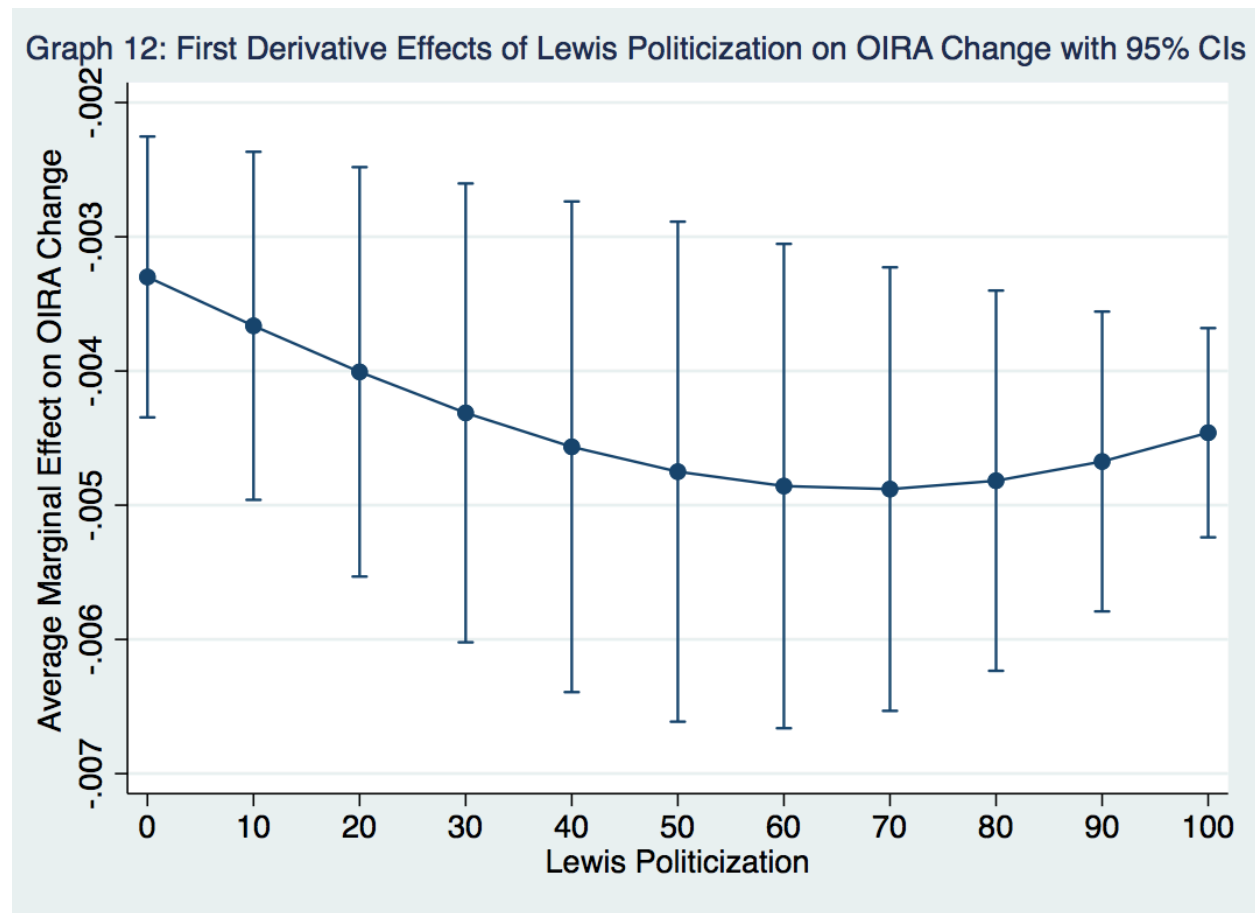
To further investigate the effects of politicization on heavily-politicized agencies, I imposed an assumption of curvilinearity in my model to account for the possibility that politicization is more consequential at different values of itself. It is logical that the existing level of politicization will affect any subsequent politicization. I do not use this condition in the previous tests because it is only relevant at the extremes—where there are few cases in the dataset. Curvilinearity is unnecessary in the early models because existing levels of politicization are far more likely to affect future levels in agencies that are already 80 percent political appointees compared to an agency that is only 20 percent. The results are shown in Graph 11. While the upper limits of the confidence intervals in the most politicized agencies do cross 0, none of the coefficients for agencies above 70% *SES Politicization* are statistically significant. The only statistically significant margins in the regression were between 20 and 60 percent, which only vary by .003 with interlocking confidence intervals, and are not relevant to this hypothesis. Overall, there is no support for the performance hypothesis using *SES Politicization*.

#### Lewis Politicization

I then ran the same tests using *Lewis Politicization* as my independent variable to test whether politicization beyond the SES degraded agency performance. Just as before, a positive relationship between increased politicization in highly politicized agencies would be a positive finding for this hypothesis. Beginning by taking the first derivative of the logistic model, I find little evidence that increasing politicization at already high levels of politicization increased the likelihood of OIRA making substantive evidence. The graphical results are in Graph 12. Wide confidence intervals make it difficult to draw any definite trends, but the confidence intervals narrow at the highest levels and the coefficients flatten and potentially even begin to curve up. While this does not definitely confirm the Performance hypothesis, it suggests that further tests

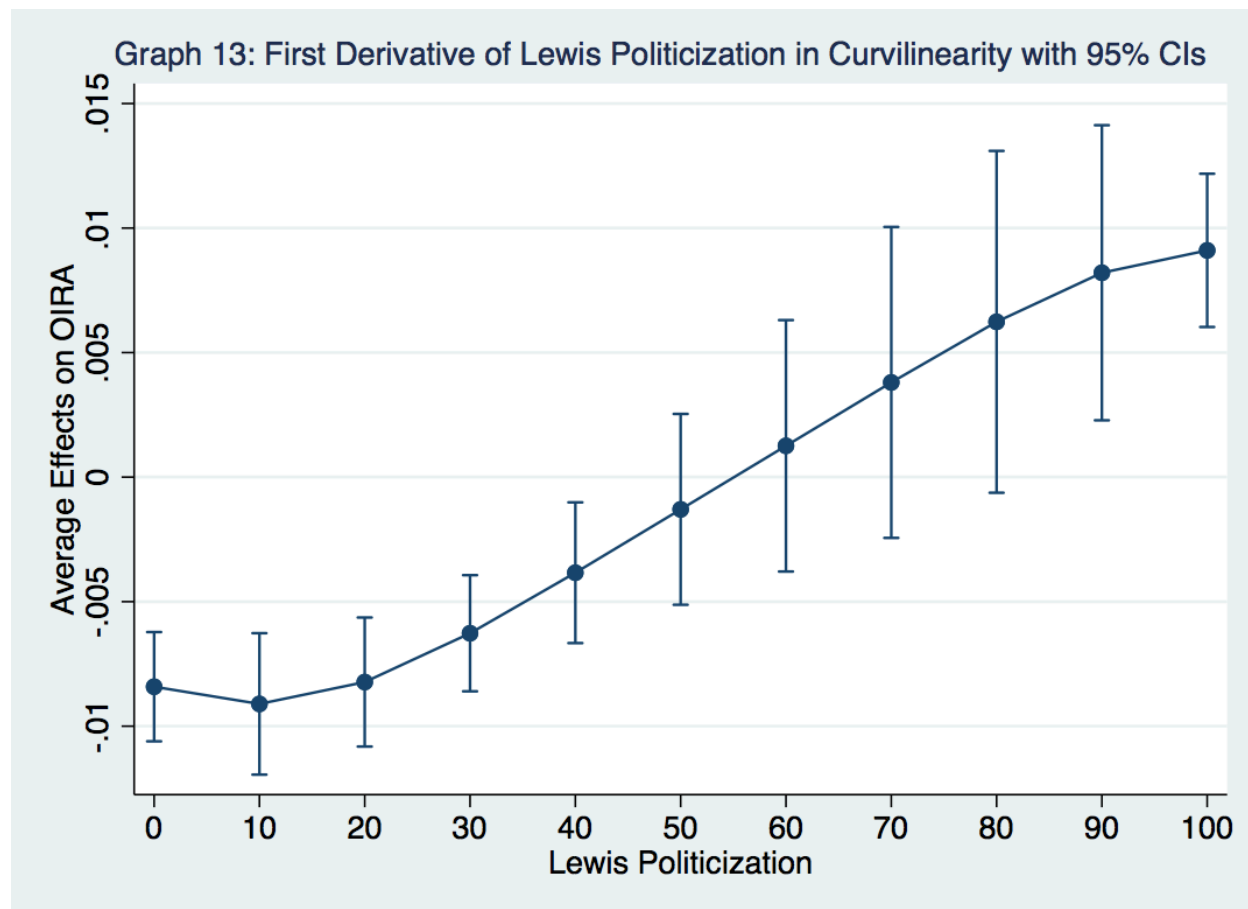


could find the predicted relationship. It should be noted that none of the coefficients or even confidence intervals cross zero so any theoretical performance effect would only be flattening the curve of politicization's increasing effectiveness.



For the same reasons stated above, I then imposed curvilinearity on the model using *Lewis Politicization*. The results can be found in Graph 13. At low levels of politicization, increasing levels of politicization produce decreasing likelihoods that the OIRA makes substantive changes to a rule. These results are statistically significant with a p-value of 0.000 up to 50 percent politicization. The coefficients between 50 percent politicization and 70 percent are not statistically significant, but are also not relevant to this test of the effects of politicization in highly politicized agencies. Agencies with 80-90 have a p-value of .075, which is not statistically

significant by usual standards, but given the relatively small-n of highly politicized agencies as classified by *Lewis Politicization*, it is not inappropriate to draw some inferences from that margin. The positive coefficients from 90 percent to 100 percent are statistically significant indicating that increasing politicization has a positive marginal effect on the likelihood of a substantive OIRA review. These results support the Performance hypothesis.



Even given the earlier negative results using *SES Politicization*, this result is not necessarily surprising, nor contradictory. *SES Politicization* only captures the ratio of political appointees within the top level of an agency. This is a useful measurement because those top appoints may be responsible for the bulk of policy making in an agency, but they are also the positions that are most likely to be politicized by a top-down tool of control like politicization. As a result, a portion of cases classified as high-levels of politicization by *SES Politicization* are

considered moderate cases of politicization under *Lewis Politicization*. By capturing politicization's potential penetration into the lower levels of an agency, cases of extremely high politicization as categorized by *Lewis Politicization* are rarer and constitute a massive shift in agency personnel. In those cases, politicization is removing much of the expertise and institutional knowledge of an agency, which may be left intact in cases of high SES politicization.

## Discussion

### **H1: Effectiveness Hypothesis:**

#### The Results

The Effectiveness Hypothesis tested whether agencies with a larger percentage or proportion of political appointees publish new regulations that are more consistent with presidential priorities than agencies with fewer. Using a logistic and OLS model of politicization, I regressed a dichotomous and a continuous measure of the extent of OIRA review on two different measures of politicization. I find across all measures and models that, on average, adding political appointees to agencies increases the likelihood that the rules will not be reviewed by OIRA, which I interpret as greater presidential control over the bureaucracy. Politicization is an independent contributor to the likelihood of OIRA making substantive changes to a rule even when controlling for important explanations such as the ideology of an agency and unified control of government. This finding is in line with a strong literature of case studies and analysis of federal spending and procurement (Moe 1982; Wood and Waterman 1991, 1994; Stewart and Cromartie 1982; Berry et. al. 2010; Bertelli and Grose 2009; Hubak

2010). This finding, however, is the first to use a variable that captures the policy content of individual rules and still be generalizable across federal executive agencies. Previous studies were restricted to studying the particularities of individual agencies or the disbursement of federal funding. These findings move beyond the particularities of specific agencies and moments in time and can tell us that politicization allows presidents to influence how rules and regulations are written.

### A Watchdog Theory

To better understand how politicization extends presidential control, I return to the principal-agent problem where the president faces three forms of asymmetric information that weaken his control of the bureaucracy: ignorance of whether bureaucrats' personal values contradict with the president's (adverse selection); a lack of awareness of agency and bureaucratic activity and whether it is working against the presidential agenda (moral hazard); and a deficit of expertise (Potter 2019). Given that politicization improves presidential control, it likely does so by solving one of these problems.

First, politicization is unlikely to narrow the president's expertise deficit because a key weakness of political appointees is their lack of subject-area specific knowledge. Second, presidents may not know the ideological leanings of any particular bureaucrats, but they do know the general ideological bias of the agency or bureau the bureaucrats work for. While that cannot fully solve the adverse selection problem by itself, those bureaucrats are as constrained as political appointees by the institutional culture of the agency and so better information about any particular bureaucrat's preferences is probably unnecessary. Additionally, I control for the ideology of an agency in the model, at least minimizing the adverse selection problem. This leaves the moral hazard informational asymmetry.

Political appointees could solve the moral hazard aspect of the principal-agent problem by acting as a form of presidential surveillance or as an enforcement mechanism. In this theory, political appointees extend presidential control by acting either as a proxy or an informant who keeps tabs on the day-to-day activity of career bureaucrats. In the role of a proxy, political appointees can use their position in the agency to change a particular policy inconsistent with the presidential agenda. If the political appointee cannot effectively change those policy because the decision-making process is too insulated from political pressure or they lack the public management skills to force change, they will act as a watchdog. In that role as a watchdog, the appointee will report any policy inconsistent with the presidential agenda to someone with the political power to change it.

Ultimately, I argue that the second scenario is more likely and suggest a watchdog theory of politicization. Political appointees below the Cabinet level who are chosen for loyalty rather than their competence likely lack the expertise or experience to consistently be able to understand and outmaneuver career civil servants who are experts in the procedures of rulemaking and the topic of the rule itself. Instead, these appointees may turn to high-level officials like Secretaries or Assistant Secretaries to use the power of their office to change the rule or they could report it to the president's staff in the EOP or WHO. This is a tempting explanation because it further connects presidential mechanisms of control

If the watchdog theory is true, then I would expect that persistent increases of an agency's level of politicization will produce rules that are increasingly less likely to be changed by OIRA. In this situation, the more loyal pairs of eyes observing the policy making process increases the likelihood that rules are spotted and corrected to fit the president's agenda before they are sent to OIRA. This theory matches my results testing for the Performance Hypothesis

which showed increasing levels of politicization continuously decreased the likelihood of a substantive OIRA review until the very highest levels of politicization. While my results provide some empirical evidence to solve this puzzle, future research should further investigate how political appointees enforce the presidential agenda in the rulemaking process.

### Politicization and Centralization as Substitutes

These results are also the first empirical work to tie together the president's two primary tools of control, centralization and politicization, and the findings suggest that they work as substitutes. While the traditional narrative claims the president has progressively increased the scope of both centralization and politicization—effectively claiming they are complements—reality shows a varied use of both across time. Scholars with more expertise in the field have assumed that the president has a “bounded budget”—i.e. they can only pursue so many managerial ends at once—which would suggest that centralization and politicization are substitutes rather than complementary strategies (Nathan 1983; Rudalevige, 2009). Theoretically, this makes sense—centralizing functions requires political resources and once a function is centralized, a rational president would not waste some of the limited number of political appointees available to them on that same agency. Similarly, a heavily politicized agency should produce rules in line with the presidential agenda—and my findings support this claim—and so a president is unlikely to use additional resources to centralize their role. Though this relationship is not a consensus (Moe and Wilson 1994). This theory depends on the assumption that politicization actually works, that the president trusts his appointees to move agency's outputs towards his particular positions.

The Effectiveness Hypothesis provides the appropriate evidence to test this theory. At first glance this OIRA dataset does not seem to be ideal to study this relationship as all the rules

included have already been put through an centralized function, but OIRA does not have unlimited resources to review rules (Bolton et. al 2014). Institutional factors such as available resources and the staff's size and competence limit OIRA's ability to review rules quickly. Because OIRA technically only has 90 days to review any regulation, those limitations do not just extend the duration of review, but also make choosing to make a substantive review of a rule a constrained choice. Given this environment, OIRA review should be thought of as an ongoing act of centralization in which each rule that they choose to make a change to can be considered an instance of centralization. Even if this were not the case, larger acts of centralization are relatively rare and singular compared to politicization so it would be difficult to build a large-n empirical study outside of this framework.

The negative relationship between both measures of politicization and all three variables measuring the extent of OIRA action support the substitute theory. This relationship reveals the president's extensive set of tools of bureaucratic control as a connected, unified system. While this may be a logical conclusion of the president as a rational actor, too often scholars analyze the president's varying methods of control in isolation. By doing so, we lose the nuance of presidential decision making. Viewing these mechanisms in isolation, we could understand that the president may choose to not further politicize an agency because of concerns for performance as in Lewis (2008). But, by recognizing the relationship between the tools of control, we can now argue that perhaps he does not politicize to preserve political capital to then centralize those same duties. Moreover, with this more complete understanding, presidential plans to centralize are not just contingent on the political arena and managerial concerns as in Rudalevige (2002), but also the potential opportunity cost of lost politicization.

This provides a wholistic view of the systems of presidential control—understanding that the various methods of control are a system, interacting with each and dependent upon each other. This helps us understand the presidency as institution, rather than a single person. Understanding the system of the presidency helps explain how President Trump was able to fundamentally change how the federal government governs sexual assault on college campus *and* how President Obama extended that same statute to protect transgender students.

## **H2: Duration Hypothesis:**

The Duration Hypothesis tested whether rules published by more politicized agencies undergo shorter OIRA reviews. My findings support this claim. Replicating the previous findings with a continuous variable adds empirical nuance to the model of political control and allows me to study political control with a more fine grain dependent variable. While the dichotomous variable *OIRA Change* provides a strong picture of whether a rule matches presidential preferences, it likely underestimates how many rules are actually in line with those priorities because it cannot differentiate between a minor and major changes in a given rule. That sensitivity holds political appointees to perhaps too high of a standard. In contrast, studying *Duration* gives us insight to the extent of the changes done by OIRA by controlling for *Previous Presidential Attention* and assuming that rules further from the presidential agenda will take OIRA longer to review. OIRA is known to prioritize rules that are particularly important to the president, but controlling for *Previous Presidential Attention* accounts for that favoritism. Furthermore, running separate regression for the rules OIRA made changes to and those they did not, demonstrated the independent effect of politicization on *Duration*,



Politicization has an statistically significant negative effect on the duration of review, signaling that agencies with more political appointees produce rules that are more in line with presidential preferences. While this test was meant to strengthen the results of my tests using the *OIRA Change* and *OIRA Severity*, it also supports the Performance Hypothesis. If rules produced from highly politicized are poorly drafted because a lack of expertise, then they should take longer to fix under review. Duration, however, continued to fall across all levels of politicization.

### **H3: Performance Hypothesis:**

So far, I have established that the president can gain more control over the content of rules produced by federal agencies by increasing the proportion of political appointees to career civil servants within that agency. The Performance Hypothesis tests whether adding political appointees faces diminishing marginal returns—i.e. will adding additional political appointees to already heavily politicized agencies increase the likelihood of OIRA making substantive changes. I find support for the Performance Hypothesis, but only in the very highest cases of politicization. On average, across all agencies, there is no statistically significant evidence of diminishing marginal returns even when the SES is fully politicized. If, however, political appointees make up more than 88 percent of all managers within an average agency, additional political appointees increase the likelihood of OIRA making substantive changes to a rule the agency promulgates.

Logically, this shift in results at the highest levels of politicization will not come from a decrease in presidential control that leads to an inability to follow the presidential agenda, but rather because the agency has lost a critical mass of institutional knowledge, subject-area expertise, or professionalism needed to produce acceptable regulations. This finding and logic is

in line with the bulk of the literature discussing potential performance costs of high-levels of politicization in agencies (Lewis 2008; Cohen 1998; Heclo 1977; Suleiman 2003; Krause et. al. 2006). This finding is novel because the dependent variable measures whether political appointees continue to produce rules in-line with presidential preferences rather than measuring the management, planning, or efficiency of the agency.

These measures ask different questions. The measures found in the literature asks if political appointees run public agencies well. Given many of those measures use polls of career civil servants, those authors essentially ask if political appointees are good bosses. In contrast, my variable tests at what point are additional political appointees not useful to the person who places them in agencies. The president ultimately cares about making sure that rules are congruent with the his agenda. My measure uses a higher standard of disfunction, but also better captures when and why presidents may stop politicizing agencies. I find that at particularly high levels of politicization, political appointees are not just unproductive, but counterproductive.

These findings also challenge the current literature because rules do not start to shift from the presidential priorities, on average, until the highest-levels of politicization in our dataset. As mentioned before, an entirely politicized SES did not lead to less presidential control, nor when political appointees make up large majorities of the number of managers in an average agency. It is surprising that scholar's concerns about appointee's lack of expertise or public management experience do not manifest in those cases. Even if these agencies with objectively high levels of politicization are receiving worse ratings or reviews by employees in internal measures like Program Assessment Rating Tool (PART) and Federal Human Capital Survey (FHCS) as found in Lewis (2008), they still produce rules that are more in line with the president's agenda. This has major implications for presidential management of the federal bureaucracy.

These results suggest that the president is strongly incentivized to pursue higher levels of politicization than what would optimize those measures of agency performance. While OIRA changing a rule is not the only measure of performance or political cost to the president, it the most basic and perhaps the most essential. Presidents can be hurt by stories of poor agency management and the inability to retain or recruit top career talent will hurt the state's ability to administrate. But, when the president prioritizes loyalty over expertise in their selection of appointees, they demonstrate, over and over again, that they prefer less capable obedience to principled competence. It is a choice they have already made and continue to make. As a result, federal agencies' ability to recruit and retain the most qualified candidates for career position will suffer. Long-term degradation of the federal bureaucracy may reach a point that it threatens agencies' abilities to respond capably to new challenges. The only thing institutionally preventing this outcome is Congress' willingness to refuse presidential demands for additional positions for political appointees, a resolution that it has not shown historically.

While the political incentivizes point to increased politicization of federal agencies, trends in the background of political appointees may preserve agency performance. As presidents have invested greater resources in politicization, they have recognized the value in choosing appointees who have previous experience in government. Consequently, a system of "in-and-outers" has developed where presidents routinely choose people who have repeatedly moved between the government and the private sector for crucial policy posts (Mackenzie 1987). Additionally, recent second-term presidents have made a habit of promoting from within to build a bench of loyalists with experience to later become elected officials or higher ranking agency officials (Lewis 2008). Appointees in both cases have far more public management experience

and subject-area expertise than the typical appointee, which mitigates potential damages that they may have done and protects the capacity of the federal bureaucracy.

### **Other Findings:**

These results also add to a growing literature on agency capture of presidential appointees. Some scholars theorize political appointee's loyalty to the president and his ideological program waver once they actually join an agency (Wilson 1989; Fenno 1959; Bertelli and Grose 2009, 2011; Ban and Ingraham 1990; Pfiffner 1987). According to these scholars the appointees "switch sides" because of a variety of factors: exposure to political pressure from Congress or career bureaucrats; a sense of empathy or connection with their subordinates; or to gain better control of hostile bureaucrats. In this case, presidents may choose for loyalty among their appointees, but political appointees' assimilation into the culture of an agency prevents them from meaningfully increasing the likelihood rules produced by that agency match the president's priorities. If this theory of appointee capture is correct, then adding appointees to an agency, especially in low-politicization agencies, will not decrease the likelihood of a substantive OIRA review.

My results reject the appointee capture theory across all models and all variables. The marginal appointee at low levels of politicizations reduce the likelihood of substantive OIRA review. The findings for the Performance Hypothesis are particularly relevant here—Graph 13 shows that these first appointees have the strongest marginal effect on the likelihood of OIRA review. These results fit with the strong trend started by Reagan of prioritizing loyalty above any other qualifications (Lewis 2008; Weko 1995; Lewis 2011; Pfiffner 1996; Edwards 2001; Moe 1985). Additionally, looking only at the lowest level of politicization provides the most generous test of the agency capture theory as these are the agencies where political appointees have few, if

any, allies and are most vulnerable to pressure from below. These results suggest that presidents' investments in the PPO to find the most loyal candidates has paid off.

## **Limitations**

The major limitations of this study are the lack of measures to control for the complexity of rules and to gauge the extent of the changes OIRA makes. The complexity of a rule could influence these results because political appointees are less likely to be able to understand and influence a technically complex rule and OIRA could be more likely to review a complex rule to give themselves more time to understand their content. While this phenomena could influence our results, the variable *Duration* can function as a proxy for complexity because the OIRA staff, without subject-area specific knowledge just like the appointee, will take more time to review these longer, more technical rules. When I controlled for *Duration* in my Effectiveness model, however, the coefficient was unchanged. Additionally, complexity is difficult to operationalize; previous work in the field has used the word count of the rule's abstract or the total word count of the final rule to measure complexity. Those are both feasible measures, but long rules can be written plainly just as dense technical details in a shorter rule could overwhelm a political appointee. Future research should try to incorporate multiple measures of rule complexity to account for the multifaceted nature of the variable.

Additional research should also try to capture the extent of changes OIRA makes during review. My dichotomous variable *OIRA Change* cannot differentiate between OIRA suggesting major changes or changing a few lines as both are listed as "consistent with change."

Unfortunately, there is no public data containing this information. Haeder and Yackee (2018) use text analysis software commonly used to check for plagiarism to measure how different the final

text of a rule is from the draft submitted to OIRA. This method would capture whether OIRA only changed a few lines of text—signifying the rule was almost in line with presidential preferences—or whether the rule significantly diverged from the presidential agenda and OIRA had to rewrite significant portions. Unfortunately, this data requires archival research at OIRA to find the draft rules and Haeder and Yackee’s data is not yet public. Despite this shortcoming, I created the continuous *OIRA Severity* to try to capture the extent of disagreement between OIRA and an agency and the results from that test confirmed my overall findings.

Additionally, future research should examine whether the president adjusts politicization in response to a history of OIRA review. By setting up a lag variable, researchers could study whether the president more heavily politicizes agencies which had produced rules that were changed more by OIRA than expected at the agencies previous levels of politicization. This research would add to the empirical work that supports the president as a rational actor. Additionally, it would investigate whether repeated OIRA changes damages the reputation of the agency, prompting greater political oversight of that agency and testing a key argument of Carpenter (2002).

## Conclusion

This research set out to examine how presidential appointees operate within the federal bureaucracy—to better understand whether appointees effectively translate presidential priorities into concrete policy; how presidents may efficiently use appointees; and whether politicization has diminishing marginal returns. Using empirical methods, I examined the relationship between political appointees and the use of substantive OIRA review and found that politicization

projects an independent influence on how agencies write new regulations. I found that politicization increases the likelihood that an agency publishes rules in line with the presidential agenda and that there are no diminishing marginal returns on presidential control, until the very highest levels of politicization.

These findings are part of a rich literature on presidential control of the bureaucracy, yet they are still the first to test whether politicization is an effective means of control over the rulemaking process using a set of variables common across all rule-producing federal agencies. In doing so, these findings link a series of case studies previously disconnected by time and varying types of agencies (Wood and Waterman 1991; Moe 1982; Stewart and Cromartie 1982; Ringquist 1995; Scholz and Wood 1998). They also add a new angle to the literature that demonstrates political appointees' influence over the disbursement of federal funding and contracts (Berry et al. 2010; Bertelli and Grose 2009; Hubak 2010). By tying together these disparate methods and foci, my results provide a more definite picture of how presidential appointees work across the federal bureaucracy without having to generalize from specific agency cultures or functions.

There were limitations to this study stemming from the scope and availability of data. In providing a broad understanding of how politicization works across federal agencies, I inherently lost some of the nuances of particular agencies such as specific structure, culture, and the political environment surrounding each agency that previous studies in this field were able to capture. While the common narrative describes federal agencies as monolithic, few, if any, agencies across the American bureaucracy are identical, nor are all political appointees the same (Lewis 2003, 2008).

But, in many respects, too fine-grained analysis of individual agencies can also obscure reality. Each agency may have a unique relationship with political appointees and presidential control, but, in each situation, appointees all face the same basic dilemma: can they produce outputs that are in line with the preferences of the president, despite potential institutional impediments. This is true regardless of where the ideology of an agency may lie on the political spectrum relative to the president or whether the agency has 700 employees or 10,000. The fact that political appointees, on average and across agencies, are able to affect policy outcomes is a powerful finding because it describes that common experience. Future studies that incorporate the nuance of particular agencies or compile a measure for the extent of OIRA's changes on a given rule could build upon my findings. That research would provide a richer picture of the how politicization interacts with agency structure to influence policy outcomes and could inform presidents of most effective distribution of political appointees.

My results also provide insight on the trade-off between competent administration and democratic responsiveness that has defined much of the history of political control over the bureaucracy. Political actors have to choose between guaranteeing that federal agencies' actions rigidly serves their political priorities or allowing career bureaucrats use their expertise and insulation from the demands of the political moment to design what they see as the best possible rule. All but the most ardent technocrats acknowledges that there needs to be some level of democratic control over the rulemaking process beyond the legislation which authorizes it. Just as everyone besides the most committed populist would concede that apolitical professionalism fulfills a necessary role in administrative government. Yet, bureaucrats have shown countless times that they are political actors who will act strategically to pursue their own interests, effectively killing Heclo's (1975) dream of responsive, neutral competence. If responsive



neutral competence is not attainable, there must be some form of coercive political control over the bureaucracy, but a form of control that strikes a balance between providing democratic guidance and protecting apolitical expertise.

As discussed in the literature review, other potential avenues to ensure bureaucratic responsiveness and accountability lack the balance or effectiveness of politicization, in theory. Congress is rarely able to act as a unified actor to exert control over the bureaucracy and if it manages to, its tools to control the bureaucracy are too unwieldy (Moe 1987; McCubbins et al. 1987; Moe and Lewis 2018; Kernell 1977). The president can centralize to take control over policy design, but loses most, if not all of the advantages of the expertise and insulation of career civil servants. Politicization is often framed as a compromise solution, which, at its best, provides political supervision while also preserving the expertise and experience of career civil servants and the integrity of federal agencies. At its worse, however, politicization fails to advance presidential interests and destroys the ability of powerful and crucial institutions to fulfill their roles and respond to problems because of the ineffective and incompetent amateurs in charge.

Despite the loss of expertise, centralization at least essentially guarantees democratic input in the rulemaking process; whereas, politicization risks worse performance without any gain in democratic influence. If political appointments cannot advance the president's interests within the bureaucracy, then they are just patronage opportunities that undermine good governance and have little argument to exist. Politicization at its best can only exist if it actually provides the president with greater political control over the bureaucracy.

My results demonstrating that politicization increases presidential control provide empirical evidence that politicization is not just a viable tool of executive control, but possibly

the best method to balance neutral competency and democratic responsiveness. Barring an improbable turn away from governing through rules and regulations, this finding will shed light on why certain presidential priorities may succeed in the bureaucracy and others fail.

Additionally, these findings will provide some understanding to why presidents may continue to politicize agencies to the point where performance worsens. But ultimately, my findings provide general, empirical evidence that politicization can be an effective solution for the central conundrum of bureaucratic management.

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