

# **Picking up the Slack: Bureaucratic Rulemaking in Times of Legislative Inaction**

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## **Abstract:**

Bureaucratic rulemaking is a crucial, though often overlooked, aspect of American policymaking. We argue bureaucratic policymaking is particularly significant when legislatures are unable or unwilling to pass legislation. To test this hypothesis, we leverage an original dataset containing all rules proposed by bureaucratic agencies in three U.S. states over a ten-year period. We combine this with information about divided government and legislative session calendars in each state to identify periods of gridlock or recess during which legislatures are less likely to produce legislation. We utilize this data to investigate whether bureaucratic rulemaking activity increases during periods of legislative inaction. Our results are supportive of this hypothesis—during periods of divided government or a split legislature, state bureaucracies issue significantly more proposed rules. Moreover, we find state bureaucracies are most productive during periods of legislative recess. These results underscore the importance of bureaucratic policymaking as a key feature of governance and improve our understanding of the balance of power between branches of state governments.

**Keywords:** bureaucracy, rulemaking, state politics, divided government

## **Introduction**

Agency rulemaking is an essential function of American governance at both the federal and state levels. Bureaucratic rules influence citizens' lives in myriad ways, setting policies from professional licensing requirements to environmental standards to health and safety regulations. In fact, by some estimates, as much as 90 percent of what Americans consider "law" is established through bureaucratic, rather than legislative, means (Warren 2004). From a normative perspective, this makes bureaucracies particularly important to study given that they are made up of unelected officials who are not directly accountable to the public. Nevertheless, most political science research into lawmaking continues to focus on the legislative branch. This is a troubling oversight, as bureaucracies are policymaking institutions in their own right. In this paper, we add to recent efforts to understand bureaucracies as policy makers (Boushey and McGrath 2017; Potter 2019) by arguing that bureaucratic rulemaking is particularly significant when legislatures are inactive, leaving bureaucracies to "pick up the slack."

We test this hypothesis by examining the pace of rulemaking activity during periods when legislatures are less likely to pass legislation, either due to divided government and the resulting gridlock or due to legislative recess. To do so, we combine an original dataset of all proposed rules issued by three U.S. states over a ten-year period with measures of divided government and legislative recess. Together, we utilize this data to investigate whether bureaucratic rulemaking increases during periods of legislative inactivity to compensate for the absence of legislative policymaking. Our findings support this claim, showing bureaucratic agencies issue significantly more rules when the legislature is less likely to produce new statutes. This finding is consistent across periods of divided government and periods of legislative recess,

suggesting that bureaucracies are responsive to the absence of new legislation emanating from the state capitols.

The remainder of the article proceeds in the following segments. We first review the process of bureaucratic rulemaking and the discretion agencies have in issuing proposed regulations, with particular focus on the timing of a rule proposal. We then consider how this discretion is used in the absence of legislative oversight during the periods of inactivity outlined above, hypothesizing that bureaucracies will issue more proposed regulations during these times. In the latter half of the paper, we describe our empirical approach, followed by a detailed review of the findings. We close with a discussion of the implications of these results, both theoretically and normatively.

## **Bureaucratic Rulemaking**

Bureaucratic agencies are among the most prolific policymaking institutions in the American system of government. Despite the constitutional assignment of lawmaking authority to legislatures, administrative rules produced by the bureaucracy define the vast majority of laws binding the American public, with some estimates suggesting they account for as much as 90% (Warren 2004). These rules carry equal force to legislative statutes and frequently have tangible impacts on the lives of residents. Accordingly, bureaucratic rulemaking is a crucial (if often overlooked) element of governance.

The path to reaching this level of impact, however, is long and fraught with obstacles for the agency to overcome. Many of these obstacles are put in place by Section 553 of the Administrative Procedures Act of 1946, which outlines the general process agencies must follow

when issuing a new regulation<sup>1</sup>. This process begins with the publication of a proposed rule in the *Federal Register*, which is followed by a public comment period lasting a minimum of 30 days (Potter 2019; West 2004). This period allows any interested or affected party the opportunity to present their perspective to the agency, whether in support of or in opposition to the agency's proposed action. What makes this element of the process particularly significant is that bureaucracies are required by law to review and respond to the feedback received during the public comment period. In the documentation of the agency's final rule (also published in the *Federal Register*), bureaucrats must discuss the comments received along with whether the agency changed the rule in response. If the agency chose not to adjust the rule, they are expected to provide the rationale supporting their decision. Thus, the regulatory process is designed to ensure the public has an opportunity to participate in bureaucratic rulemaking and potentially influence the rules that will impact their lives (Balla 2015; Grady and Simon 2002).

The democratic ideals of public participation and bureaucratic accountability have led states to maintain much of this process for rules issued by their own agencies. Through legislation based on the APA, nearly all states produce a publication similar to the *Federal Register* in which agencies are expected to publish proposed and final rules for public review. Most of these publications also solicit comments from members of the public or other interested parties in a way that mirrors the federal process. These constraints are arguably even more important at the state level, where citizen legislatures often rely upon bureaucracies to fill in the details of important legislation (Boushey and McGrath 2017).

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<sup>1</sup> Throughout the paper, we use the terms “regulation” and “rule” interchangeably to refer to the binding administrative actions of agencies that have gone through this process.

Despite this trend, there is little study of state regulations in the academic literature. We believe this is a particularly unfortunate oversight given the practical and theoretical importance of this venue. Altogether, state agencies issue thousands of new regulations each year, demonstrating their role as important policymakers in their own right. Furthermore, these rules are put forth in a variety of institutional contexts, which provides a great deal of leverage for analysis. This pairing makes states an ideal venue in which to study regulation, as scholars can observe the effects of various institutional contexts. For this reason, we have chosen to utilize state (rather than federal) rules for the analyses to follow in the hopes of gaining a better understanding of regulatory decisions made by bureaucrats.

### **Regulation Timing**

In making regulatory decisions, bureaucrats have a substantial amount of discretion. Though the authority to issue regulations is ultimately delegated by legislatures and executives, bureaucrats have long been known to issue rules beyond those mandated by Congress (Dodd and Schott 1986; West and Raso 2013). This fact has led to normative concerns about the appropriateness of unelected bureaucrats making such impactful decisions, spawning an entire literature related to political control of the bureaucracy (see, for example, Hammond and Knott 1996; McCubbins 1985; Weingast and Moran 1983; and Whitford 2005, among others). Much of this literature is concerned with the possibility of moral hazard, in which bureaucratic agents are unfaithful to the intentions of their political overseers and instead pursue their own objectives (Gailmard 2009; Miller 2005). Bureaucratic discretion is not always viewed through such a negative lens, however, as some scholars have noted it can produce higher quality policies (Carpenter 2001; Huber and Shipan 2002).

Such discretion applies to all manner of bureaucratic activity, with rulemaking being no exception. Grady and Simon (2002) use this as the base assumption of their analysis of political constraints on state rulemaking. They argue that not only do agencies have discretion in issuing regulations, but this is precisely what legislatures and executives are reacting to in devising the control mechanisms that have fascinated political scientists for decades. Balla (2015) further explores the use of discretion in rulemaking by concentrating on specific aspects of the process at the federal level—the duration of public comment periods and the timeliness of circulating comments received. In finding that neither of these elements is procedurally neutral, Balla shows bureaucratic discretion is an important consideration within the context of rulemaking.

In keeping with Balla's finding, scholars have shown that bureaucrats employ their discretion strategically in the rulemaking process, most often to maximize their policy goals (Potter 2019; Potter and Shipan 2019). According to this scholarship, bureaucratic agents determine whether and when to issue a regulation based on the relative costs and benefits of doing so. This calculation includes factors such as the degree of support an agency receives from its political principals, the stance of relevant interest groups, and the capacity of the agency itself (Potter 2017, 2019; Potter and Shipan 2019). In addition to their own policy preferences, bureaucrats also pay attention to the ideological stances of political principals. Acs (2016) found bureaucracies strategically issue rules when they align with the ideology of the current president and majority in Congress, with an even greater tendency toward alignment for rules deemed economically or substantively significant. Similarly, Gersen and O'Connell (2009) suggest agencies aim to time proposed and final rule announcements to periods when legislators are less able to monitor their activity. Finally, agencies appear to keep a watchful eye on court

proceedings relevant to their policy area, choosing to delay rulemakings when courts are more attentive to their activities (Potter 2017, 2019).

Bureaucrats must also contend with the direct efforts of their political principals to constrain the effects of bureaucratic and coalitional drift. Legislators in particular have the capability to limit or mandate bureaucratic activity through their directives to an agency (McCubbins, Noll, and Weingast 1987, 1989). One of the most common strategies of this type is the creation of a regulatory deadline, which requires an agency to issue a proposed or final rule by the specified date. Though often missed by the agency in question, such deadlines do have a significant impact on the speed with which bureaucratic rules are issued (Gersen and O’Connell 2008; MacDonald and McGrath 2019). Agencies are also attentive to the preferences of presidential administrations, frequently issuing fewer rules in the year following a new president’s inauguration—thus giving the new president time to establish a regulatory agenda—and more rules during an administration’s final year—which enables a president’s final push to create lasting policy change (O’Connell 2008).

### **Absence of Oversight**

Taking all of this into account, we argue that bureaucrats are most likely to issue proposed rules when political principals (particularly legislatures) are less able to conduct extensive oversight. This situation gives bureaucrats more freedom to use their discretion with less fear of their actions being immediately overturned, thereby giving them a first-mover advantage. Such an advantage is much more likely to produce a lasting policy that aligns with bureaucratic preferences, as an established status quo is difficult to overturn. In particular, we focus on limited oversight capacity resulting from two factors: divided government and legislative recess.

In the case of divided government, several studies have demonstrated its impact on legislative outputs (Binder 1999; Coleman 1999; Howell et al. 2000). In accordance with their findings that divided government reduces the productivity of legislatures, we believe bureaucracies take advantage of the situation to propose regulations to fill in the gaps. A few studies have attempted to test a similar theory, though results have not produced a clear consensus. In assessing rules issued by the federal bureaucracy between 1983 and 2005, Yackee and Yackee (2009) find agencies issue 11% fewer notices of proposed rulemaking under divided government. At the state level, however, Boushey and McGrath (2020) find the exact opposite, suggesting agencies issue 4% more rules under divided government and 7% more proposed rules under a split legislature when compared to unified government. Based on the clear consensus in the legislative productivity literature, we are inclined to agree with the latter argument in which bureaucrats essentially pick up the slack left by inactive legislatures. This leads to our first hypothesis:

**H1:** State bureaucracies will issue more proposed regulations under divided government than under unified government.

The second context in which we believe bureaucratic rulemaking will thrive is during periods of legislative recess, when legislators are not present in the capital at all and thus leave nearly complete autonomy in the hands of bureaucrats. Even fewer scholars have taken up this question, with only Gersen and O’Connell’s (2009) law review considering the impact legislative recess may have on bureaucratic policymaking. The authors find some evidence in favor of their hypothesis, but stop short of making direct claims on their results and instead emphasize the need for additional work on the topic. We hope to pick up where Gersen and O’Connell (2009) left off by conducting a full analysis of the impact of legislative recess on bureaucratic rulemaking



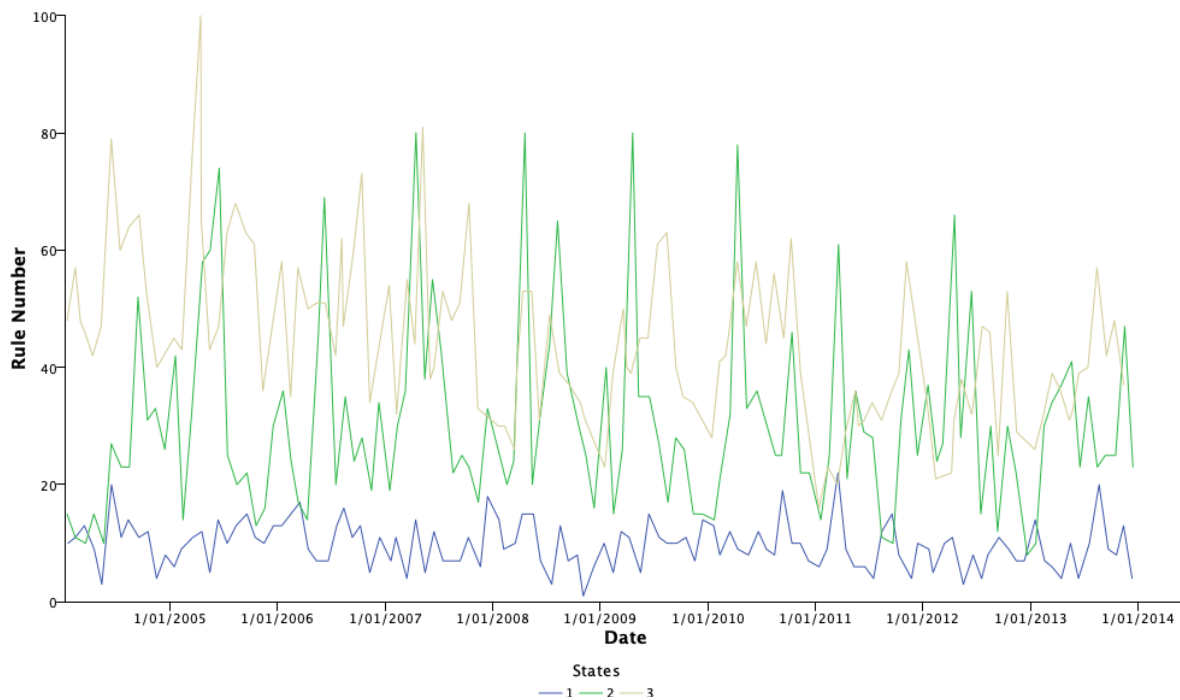
activity. We expect our findings to corroborate their early results, wherein bureaucracies issue a greater number of proposed rules during periods of legislative recess.

**H2:** State bureaucracies will issue more proposed regulations during periods of legislative recess than during the legislative session.

## Research Design

### *Data and Measures*

To test our theoretical hypotheses, we leverage an original hand-collected dataset containing all rules proposed by all bureaucratic agencies in three U.S. states from 2004 to 2013. We chose to collect proposed rules rather than final rule publications as they are often a first step in the regulatory process. Bureaucratic agencies are generally free to choose the timing of a proposed rule, whereas a final rule is dependent on prior actions. As a result, we believe

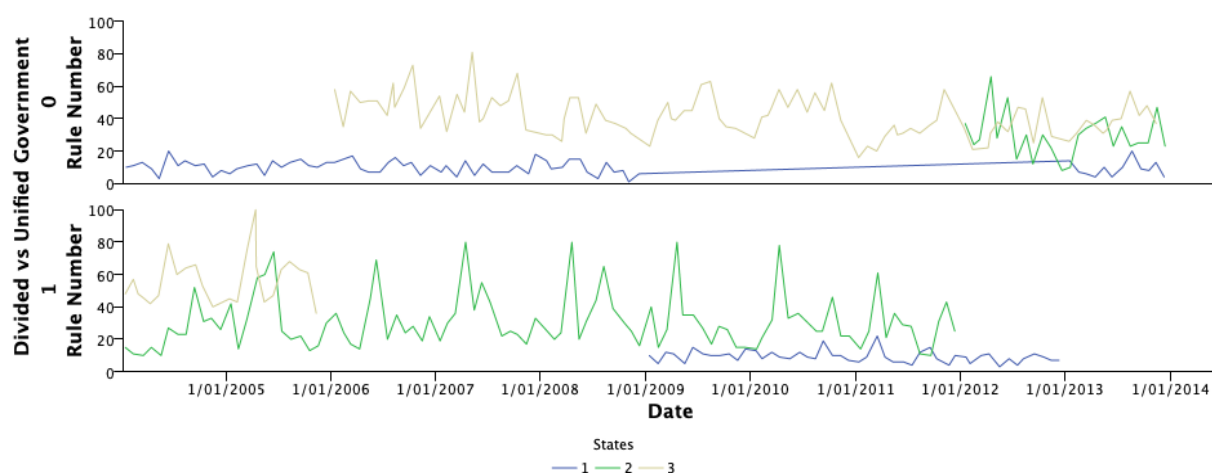


**Figure 1.** Number of Proposed Rules per Month, by State (2004-2013)

Note: The blue line represents Alaska (state 1); the green line represents Mississippi (state 2), and the yellow line represents Washington (state 3).

proposed rules are better able to capture an agency’s use of discretion based on its own policy agenda rather than influences from external actors or interests. Figure 1 shows a summary of the monthly count of proposed rules in each state throughout the analytic period. Each of the three states in our sample—Alaska, Mississippi, and Washington—maintained a relatively consistent trend of rulemaking from year to year throughout the study period.

We merge in data on divided government and legislative session calendars in each state to identify periods of gridlock or recess during which we predict bureaucratic agencies will pick up the legislative slack. Our measures of divided government were obtained from Klarner’s State Partisan Balance dataset through 2011, with the most recent two years drawn from the National Conference of State Legislatures website (Klarner 2013; National Conference of State Legislatures 2022). These sources were used to create measures of both divided government, in which the governor’s office and at least one chamber of the state legislature are controlled by different parties, and split legislature, in which the two chambers of a state’s legislature are controlled by different parties. Though similar, we felt it important to account for both scenarios

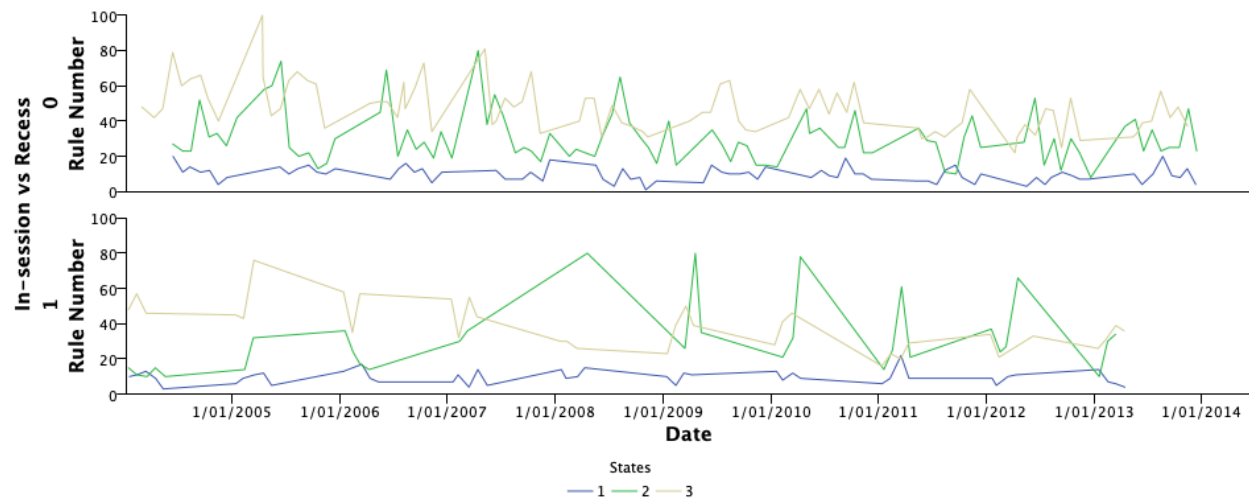


**Figure 2.** Number of Proposed Rules in Each State per Month, by Government Control (2004-2013)

Notes: The top panel shows the number of rules issued each month under unified government, while the bottom panel shows rules proposed under divided government. The blue line represents Alaska (state 1); the green line represents Mississippi (state 2), and the yellow line represents Washington (state 3).

to examine the various environments in which bureaucracies may be expected to engage in higher rulemaking activity. Figure 2 demonstrates the monthly number of rules issued in each state during periods of unified (top panel) and divided (bottom panel) government. Each state in our sample experienced divided government for at least two of the ten years we assess, as shown in the bottom panel of the graphic<sup>2</sup>.

The legislative session calendar information was collected manually from each state legislature’s website. When the necessary information was unavailable online, we contacted a relevant staff member to ensure the accuracy of our session dates. Based on the starting and ending dates of each year’s legislative session, we created two variables: in session, which is a binary measure of whether a legislature was in session in a given month (defined as 20% or more of the month in session); and month relative to session, which captures the length of time since the end of the legislative session each year (with in-session months coded as zero). Figure 3 demonstrates the number of rules per month in each state, divided into panels based on whether



**Figure 3.** Number of Proposed Rules in Each State per Month, by Legislative Recess (2004-2013)

Notes: The top panel shows the number of rules issued each month under unified government, while the bottom panel shows rules proposed under divided government. The blue line represents Alaska (state 1); the green line represents Mississippi (state 2), and the yellow line represents Washington (state 3).

<sup>2</sup> A similar graphic showing periods of split legislative control is available in the appendix as Figure A1.

the legislature was in session or recess. The top panel shows the number of rules published per month while the legislature was in recess, while the bottom panel shows the number of rules published per month during the legislative session in each state. The figure demonstrates that a majority of bureaucratic rules were proposed during periods of recess, with many fewer rules issued during the legislative session.

In addition to these independent variables, we include three control variables common in the state politics literature. The first is citizen ideology, which measures the general political views of a state's citizens (Berry et al. 1998, 2010). The measure is calculated for each state in all years of the dataset, with higher values indicating a more liberal electorate. We also control for a state's GDP and population each year to ensure our results are not driven by differences in state economies or population sizes. We obtained the GDP measure from the Bureau of Economic Analysis for each year in our sample, using chained 2012 dollars measured in millions. The population data is drawn from the American Community Survey conducted each year by the U.S. Census Bureau.

**Table 1.** Descriptive Statistics

<b>Variable</b>	<b>N</b>	<b>Mean</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>
Number of Rules	360	28.37778	19.12506	1	100
Divided Government	360	0.466667	0.499582	0	1
Split Legislature	360	0.2	0.400557	0	1
In session	360	0.302778	0.460099	0	1
Month relative to session	360	3.944444	3.253834	0	12
Citizen Ideology	360	51.0585	9.769646	31.16568	68.77253
State Population	360	3411895	2437442	659286	6963985
State GDP	360	174784	142956.9	43752.3	411468.9

For our analysis, we collapse the original rule level dataset to the state by month level, resulting in 120 observations for each state. Each resulting observation reflects the independent

and dependent variables for one state in one year and month of our analytical time period. In Table 1, we describe each of the variables of interest.

### *Empirical Approach*

To test Hypothesis 1, we implement a standard OLS regression with heteroskedastic robust standard errors where we model changes in the number of rules proposed as a function of two of our independent variables of interest: divided government and split legislature. We summarize the regression approach for our analysis of the first two independent variables in Equation 1 below:

$$Y_{it} = \alpha + \beta IV_{it} + \lambda_t + \beta X_{it} + \epsilon_{it} \quad (1)$$

In this model, the number of published rules ( $Y_{it}$ ) in each state  $i$  and month  $t$  are a function of a constant ( $\alpha$ ), a month fixed effect ( $\lambda_t$ ), a set of state level controls ( $X_{it}$ ), a heteroskedastic robust standard error term ( $\epsilon_{it}$ ), and an indicator for the independent variable of interest (divided government or split legislature) ( $IV_{it}$ ). The parameter of interest ( $\beta$ ) reveals the association between periods of divided government or split legislatures and the number of rules bureaucratic agencies published. Our state level controls reduce the potential for omitted variable bias by accounting for citizen ideology, the size of the state population, and the state GDP to proxy for economic conditions (Erikson, Wright, and McIver 1993; Klass 1979; Sharkansky and Hofferbert 1969). Moreover, we incorporate fixed effects for month to account for idiosyncratic variation in the timing of rules across months<sup>3</sup>—this means that we are comparing the number of rules within a single month across the ten-year period during periods of divided government or split legislature and periods where there is not divided government and the legislature is not split.

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<sup>3</sup> We also ran a version of the analysis where we include month and year fixed effects, and the results were essentially identical from a theoretical standpoint.

Together, these control variables and fixed effects help us to isolate the role of divided government and split legislatures on our outcome of interest.

We take a slightly different approach to modeling the influence of session timing, utilizing an event history analysis that provides more nuanced information than a simple dichotomous measurement of whether the legislature is in or out of session. For the event history models, the only differences from Equation 1 are that the  $IV_{it}$  is a variable we constructed that captures which month it is relative to the legislative session in each state, with the months when session is occurring coded as zero, and rather than month fixed effects we incorporate year fixed effects. This allows us to estimate a separate coefficient for the number of rules in each month following the end of the legislative session. In these event history models, we include fixed effects for year and each of the state level controls in the other two statistical models to isolate the influence of timing on bureaucratic productivity.

## **Findings and Discussion**

In Table 2, we present the findings for the models examining the influence of divided government and split legislature on the number of rules proposed by state bureaucratic agencies<sup>4</sup>. We find support for Hypothesis 1 across both independent variables of interest. In periods of divided government, state bureaucratic agencies publish an average of 3.9 additional rules per month compared to periods when the executive and legislative branch are controlled by the same party. This result represents a significant magnitude, both in comparison to our other estimated coefficients and in terms of percent change in our dependent variable, as the average number of

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<sup>4</sup> Results from additional models conducted as robustness checks are available in the appendix as Table A1.

rules per month across the three states is 28.4. Accordingly, 3.9 additional rules per month accounts for a 13.7 percent increase in the number of proposed rules.

When narrowing our results to instances of a split legislature, we find even stronger evidence in support of Hypothesis 1. Under these conditions, state bureaucratic agencies publish approximately 5.2 more rules per month compared to periods in which there is unified control of the state legislature by either party. When scaled based on the average number of rules per month in the full sample (28.4), this represents an increase of 18.3 percent in the number of proposed rules per month.

**Table 2.** OLS Regression Results

	(1) Number of Rules	(2) Number of Rules
Divided Government	3.903** (1.513)	
Split Legislature		5.257*** (1.731)
State Population	1.31e-05*** (1.46e-06)	1.50e-05*** (1.36e-06)
Citizen Ideology	0.219** (0.0933)	0.172* (0.0950)
State GDP	-0.000132*** (2.69e-05)	-0.000166*** (2.45e-05)
Constant	-10.66** (5.367)	-8.122 (5.344)
Month Fixed Effects	X	X
Observations	360	360
R-squared	0.620	0.623

Robust standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

These findings demonstrate that periods of divided government substantially increase the role of bureaucratic agencies in policymaking. When conditions arise that limit legislative productivity, state agencies step in to fill the gap in public policy by issuing more proposed rules than they otherwise might. This argument is further supported by the results focusing specifically

on split legislatures, as this environment likely produces an even greater amount of conflict within the more political branches of government. Such conflict creates an opening in which bureaucratic agencies can propose their own preferences or initiatives without fear of immediate oversight, leading to profound impacts on state policy.

With regard to Hypothesis 2, our findings do not produce quite as clear of a narrative, though there is some support for the expected relationship. In Figure 4, we present the results from the event-history analysis in which we tested the influence of legislative session calendars on bureaucratic rulemaking<sup>5</sup>. The figure shows the point estimate and confidence intervals for each month following the close of a legislative session<sup>6</sup>. We find that state bureaucratic agencies publish significantly more proposed rules in the first, second, and fourth month following the end of the state legislative session. On the other hand, in the months leading up to the next legislative session—in particular the eighth month post-session—bureaucratic agencies publish fewer proposed rules. These results are robust to alternative specifications including state fixed effects in addition to year fixed effects only.

Though not as strong as the relationship observed with divided government, legislative session calendars do appear to have an impact on the number of proposed rules issued by state bureaucratic agencies in a given month. This is especially the case in the period immediately following a state legislative session, when agencies seem to engage in a flurry of regulatory activity. Though the first months post-session could ostensibly be viewed as the result of legislative delegation, this argument is much less tenable for the significant result found four

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<sup>5</sup> The full results of this model are presented in table form in the appendix. See Table A2.

<sup>6</sup> The tenth month post-session is presented in the graphic as a “pre-session” month for clarity, as this month typically falls at the beginning of the next calendar year.





**Figure 4.** Model Results from Event History Analysis on the Impacts of Legislative Session Calendars on Bureaucratic Rulemaking. OLS regression estimates presented with 95% confidence intervals and heteroskedastic robust standard errors. Model controlled for state covariates and included year fixed effects.

months later. Instead, we believe this shows bureaucratic agencies choose to wait to issue proposed rules until they are confident the legislature is no longer watching, as many citizen legislators have returned to other forms of employment by this time and are much less likely to engage in bureaucratic oversight. Similarly, the opposite effect appears to be true in the period immediately before a legislative session. Upon reaching the eight month mark, bureaucrats and legislators alike are anticipating the upcoming session, meaning there is a greater likelihood of bureaucratic oversight as legislators begin returning to the capitol. As a result, agencies may wind down their regulatory activity until the following year's recess.

## Implications and Conclusions

Over the past several decades, bureaucratic agencies have been increasingly important policymakers at the state level. This trend has previously been tied to decreasing legislative

professionalization, leaving bureaucracies with greater policy influence (Boushey and McGrath 2017). Our findings here build on this argument, showing that the absence of legislative expertise and oversight during periods of gridlock and recess give bureaucracies similar flexibility in rulemaking. Specifically, when the legislature is inhibited by these circumstances, bureaucracies step into the gap and provide regulations to guide state policy. These findings are statistically and substantively significant across both contexts, with a particularly substantial increase in proposed rules in times of divided government or a split legislature. There are also clear calendar effects, as regulatory activity fluctuates with respect to the timing of the legislative session, including a significant uptick in proposed rules following a close of session.

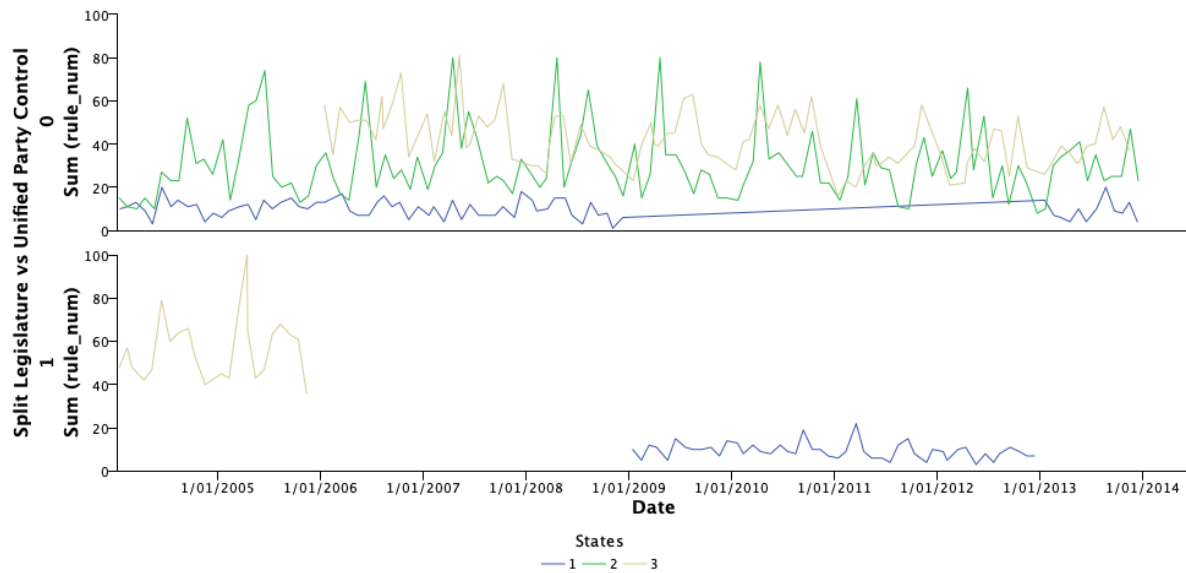
As a result, our findings contribute to academic literatures related to state politics and bureaucratic politics more generally. From the state politics viewpoint, our findings help to deepen our understanding of the relationship between branches of government. Rather than seeing the bureaucracy as merely an agent of political overseers, our findings demonstrate scholars should consider the bureaucracy to be an equally important policymaking institution. Indeed, there appear to be situations in which the bureaucracy has an even greater impact on the lives of residents than the legislature. These situations will likely only increase into the future, as recent political trends like partisan polarization and decreasing legislative professionalism in statehouses suggest an increase in the frequency of divided government and recess periods. To the extent this is the case, the traditional notion of bureaucracy is simply inadequate as a description of state politics. As such, our findings have identified a need for additional research in the state politics field to fully incorporate the bureaucracy into our understanding of state political dynamics.

This conception of bureaucracy as a significant policymaking body likely applies to bureaucracy at the federal level as well, though future research would need to be conducted to confirm this relationship. Nonetheless, the notion of bureaucracy picking up the slack from legislative inactivity is an important perspective to account for in the bureaucratic politics literature seeking to ascertain the role of the bureaucracy. Given that Congress has been less productive in recent years than in the past and is increasingly gridlocked due to partisan polarization (Grant and Kelly 2008; Theriault 2008), it stands to reason that bureaucracy is becoming a more important player at the federal level as well. Despite this, the existing literature has not fully explored bureaucratic efforts to maintain public policy in the absence of legislative activity. What little scholarship does exist on these questions has produced somewhat mixed results (Boushey and McGrath 2020; Gersen and O’Connell 2009; Yackee and Yackee 2009), indicating there is substantial work to be done in sorting out the extent to which regulations are timed to coincide with legislative inactivity.

Our results also have important implications from a normative perspective. As is often pointed out, bureaucratic officials are unelected, leading some to be concerned about maintaining democratic accountability (Hammond and Knott 1996; McCubbins, Noll, and Weingast 1987; Whitford 2005). On the other hand, bureaucrats may be considered as subject experts who ensure public policy is as functional as possible (Andersen and Moynihan 2016; Gailmard and Patty 2007) or as “citizen agents” who try to ensure positive outcomes for residents in need of public services (Maynard-Moody and Musheno 2000). Our findings have substantial implications for both of these viewpoints, as we have empirically demonstrated that bureaucracies have a larger role in public policymaking than often assumed. Whether this is seen as a positive or negative development, it signifies the importance of a complete understanding of bureaucratic activity

through rulemaking. It is our hope that future scholarship will continue to seek clarity to inform these normative conversations.

## Appendix



**Figure A1.** Number of Proposed Rules in Each State per Month, by Legislative Control (2004-2013)

Notes: The top panel shows the number of rules issued each month under unified legislative control, while the bottom panel shows rules proposed under split legislative control. The blue line represents Alaska (state 1); the green line represents Mississippi (state 2), and the yellow line represents Washington (state 3).

**Table A1.** OLS Regression Results, with Robustness Check

	(1) Number of Rules	(2) Number of Rules	(2) Number of Rules	(2) Number of Rules
Divided Government	3.903** (1.513)	2.876* (1.565)		
Split Legislature			5.257*** (1.731)	5.101** (2.157)
State Population	1.31e-05*** (1.46e-06)	1.58e-05*** (1.59e-06)	1.50e-05*** (1.36e-06)	1.66e-05*** (1.42e-06)
Citizen Ideology	0.219** (0.0933)	0.529*** (0.126)	0.172* (0.0950)	0.375** (0.154)
State GDP	0.000132*** (2.69e-05)	-0.000185*** (3.02e-05)	-0.000166*** (2.45e-05)	-0.000196*** (2.71e-05)
Constant	-10.66** (5.367)	-24.14*** (6.247)	-8.122 (5.344)	-17.71** (7.041)
Month Fixed Effects	X	X	X	X
Year Fixed Effects		X		X
Observations	360	360	360	360
R-squared	0.620	0.668	0.623	0.670

Standard errors in parentheses

\*\*\* p&lt;0.01, \*\* p&lt;0.05, \* p&lt;0.1

**Table A2.** Event-History Regression Results

	(1) Number of Rules	(2) Number of Rules
Pre-session month	-5.099 (4.128)	-5.159 (4.749)
1 month post session	7.452** (3.307)	7.306** (2.924)
2 months post session	4.385* (2.363)	4.240* (2.354)
3 months post session	4.019 (2.915)	3.873 (2.670)
4 months post session	5.519** (2.345)	5.373** (2.409)
5 months post session	1.219 (2.276)	1.073 (2.050)
6 months post session	1.552 (2.298)	1.406 (1.979)
7 months post session	0.685 (2.483)	0.540 (2.479)
8 months post session	-5.641*** (2.143)	-5.577** (2.312)
9 months post session	1.996 (4.396)	-0.545 (2.886)
State Population	1.48e-05*** (1.41e-06)	
Citizen Ideology	0.246*** (0.0833)	
State GDP	-0.000166*** (2.60e-05)	
Constant	-7.310 (4.491)	26.86 (18.87)
Year Fixed Effects	X	X
State Fixed Effects		X
Observations	360	360
R-squared	0.594	0.658

Standard errors in parentheses

\*\*\* p&lt;0.01, \*\* p&lt;0.05, \* p&lt;0.1

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