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Research Statement

My research focuses broadly on inter-branch conflict in United States lawmaking and policy regulation across the post-war period. My dissertation and related projects seek to explain the ways in which separation-of-powers conflicts shape and influence policymaking through the branches over time. I work to evaluate the partisan and statutory design conditions that expand agency latitude in policymaking, and the complex ways in which Congress, courts, and agencies interact to shape the regulatory outcomes that we observe. My research, both my dissertation and beyond, center around questions of lawmaking and institutional conflict across – as well as within – the branches. I evaluate these puzzles through a mix of large-scale quantitative analysis and qualitative case studies of statutory implementation over time.

Dissertation (Book Project): When Do Agencies Have Agency? Bureaucratic Noncompliance and Dynamic Lawmaking in United States Statutory Law, 1973-2010.

My dissertation raised three core questions: To what extent, and under what conditions do administrative agencies have expanded policymaking latitude relative to that predicted by the dominant delegation models? How do Congress and courts respond to these implementation decisions? Finally, what are the long-term consequences with respect to policy volatility and the scope of the administrative state in regulating these sectors? Building on political economy models of delegation, the project addresses the little-explored subject of noncompliance from 1973 to 2010 in the Environmental Protection Agency and the Department of Interior.

While a rich literature has evaluated systematically the conditions conducive to passage of legislation (e.g., Brady & Volden 2006; Krehbiel 1998), as well as the nature of voting patterns on those laws, the study of statutes to date has neglected their dynamic dimension. This dynamic component is a critical dimension of how law, policy, and the American state develop over time, capturing better the realities of the increasingly complex, amendment-based nature of modern statutes, as well as the ongoing nature of inter-branch interactions in shaping policy outcomes.

I argue that the conditions of expanded polarization, fragmented legislative oversight, and increased judicial deference to agency interpretations in the aftermath of *Chevron v. NRDC* (1984), fundamentally reshape agencies' ability to be active policymakers and pull the policy location toward their preferences rather than complying with legislative dictates. I refer to this behavior as *bureaucratic noncompliance*. Amid conditions of polarization and gridlock, the transaction costs associated with lawmaking increase, thus hampering Congress's ability to be an effective overseer of bureaucratic behavior in a political setting largely dominated by conditions of divided government. Moreover, the post-*Chevron* world of increased judicial deference – as well as adjustments to standing doctrine and thus the ability to influence policymaking through litigation – has fundamentally reshaped the balance of power between courts and agencies, in turn influencing the policy outcomes that we observe. While extant delegation literature largely assumes compliance with legislative dictates, this project evaluates the conditions under which that bureaucratic control breaks

down, providing novel measures of *bureaucratic noncompliance*, or agency actions that deviate from legislative dictates in ways that provoke responses from Congress and/or the courts.

Discussing bureaucratic noncompliance begs the question, noncompliance *with what*? Looking within a narrow window of time can make quite plain the principal-agent accountability set-up with respect to new legislation, such that the Congress in power is the Congress that provided for that delegated discretion. However, agencies are often tasked with implementing laws passed several Congresses prior, by Congresses that may have a markedly different ideological distribution than that currently in power, and without necessarily further updating the statute. That is, while the Congress currently empowered to punish the agency may have preferences that cohere with the delegating Congress, it is hardly a given, nor is it a given that a contemporary Congress will be committed to upholding a legislative bargain from several Congresses previous. This potentially marked disconnect in legislative preferences can have the effect of yielding an important – and little-discussed – tension between the ideals of ex ante constraints set forth by the delegating Congress, and the ex post realities of policymaking in a highly volatile partisan environment characterized by changing political conditions over time. There is the further question of to what bargain the *judiciary* will expect adherence in evaluating bureaucratic compliance in implementation.

Thus, we have an important – though thus far, little-unexplored – wrinkle in American policy implementation, which is that while the United States Congress as an institution is stable, it does not serve the status as a stable principal in the sense of its ideological composition, which changes every two years (to varying degrees). Such problems of instability in principal-agent relationships were called attention to by Huber and Lupia (2001), who address cabinet ministers that are unstable such that the delegating principal does not ultimately perform the monitoring functions over the agent. Amid these information problems, the resulting instability has the effect of transferring power to bureaucrats (Id at 26) and furthermore, even without principal-agent information challenges, the uncertainty about turnover creates even greater difficulties in bureaucratic control. This is, I argue, not unlike the United States case given the presence of midterm elections every two years, some of which result in little ideological change, others of which do not affect partisan control but do affect supermajoritarian institutions (e.g., the filibuster), and others of which result in radical swings in preferences. As such, it is important that we turn our attention to "*delegation as it is practiced*" as opposed to "*delegation as it is portrayed* in many formal models" (Id at 18, emphasis in original text), and the challenges of democratic accountability that arise in this setting. The dissertation thus brings to light a number of important challenges of implementation arising not simply from *bureaucratic drift*, which is the focal point of much delegation analyses, but also the *coalition drift* that shapes future regulatory outcomes.

The dissertation evaluates in the context of the Environmental Protection Agency and the Department of Interior the conditions under which Congress proves unable to effectively induce compliance in these agencies to which it delegates. Because there is extensive unobserved strategic behavior, measuring noncompliance is quite challenging and no systematic measures existed prior to this study. I address it indirectly by evaluating congressional and judicial interventions into bureaucratic policymaking – interventions that I do not expect to observe if there is perfect compliance. These measures I used are several hundred DC Circuit lawsuit losses on substantive grounds, as well as several thousand bill introductions by members of the president's party that sought to strip regulatory authority from the agency. Utilizing time series cross-section statistical analyis covering the 19 Congresses in the study and the 26 statutes implemented in whole or in part by the EPA, and separately the 24 statutes implemented in whole or in part by the Department of Interior, I find strong support for the key hypotheses. I additionally provide qualitative examples these

processes, thus helping to better illuminate these separation of powers dynamics. These qualitative cases are statutes whose implementation is shared by the Environmental Protection Agency and the Department of Interior. Thus, I can to the greatest ability hold constant the policy content and evaluate the different ways that the agencies carry out their delegated authority given the political constraints that these agencies face.

To convert the dissertation into a book, I am extending the analysis to include also the Internal Revenue Service. The inclusion of this agency will enable me to have not only a case that is in a different policy domain from environmental regulation, but will allow me to compare across Lowi's categories of policy – regulatory (EPA), distributive (Interior), and redistributive (IRS). I have conducted FOIA requests for records of enforcement actions, which I hope will provide a more direct metric of agency enforcement actions than congressional and judicial responses to agency behavior. Lastly, I am currently preparing to administer an email survey to several hundred bureaucrats within each of these three agencies, on the subject of statutory implementation and the influence that other institutional actors play in shaping their decisions. I am also expanding on the qualitative aspects of the project to better flesh out the stories behind these agency actions and congressional and judicial interventions into perceived misbehavior. By including this additional information, the project will provide a more comprehensive analysis of the ways in which agencies can – and do – capitalize on political configurations that expand their latitude in policymaking. The data, rich and extensive as they are, also provide a number of opportunities for extensions of this analysis, in particular evaluating the conditions under which local/particularistic interests trump national party line allegiances in this environmental context. A portion of the project evaluating congressional responses to alleged noncompliance has received an invitation to revise and resubmit to the *Journal of Politics*, and I plan to complete the manuscript in advance of the 2017 Annual Meeting of the American Political Science Association.

Second Book Project: Inter-Agency Learning in Post-War US Regulatory Policymaking

A number of legal and political science scholars have acknowledged the fragmented nature of the American administrative state, with James Q. Wilson referring to American policy implementation as a "barroom brawl" with "many participants" and "no referee" (1989: 297-301). Despite the assumption of this complex implementation structure – with a number of administrative actors and agencies involved in a statute's enforcement, and an increasing amount of overlapping jurisdiction, with multiple agencies tasked with the same enforcement responsibilities over the same policy provisions (e.g., joint rulemaking) – scholars had not formulated a measure of this administrative fragmentation, which is needed to answer such questions as the factors explaining fragmentation's patterns and persistence over time. Farhang & Yaver (2016) provide the first such measure, and find that divided government and electoral uncertainty are powerfully associated with congressional decisions to fragment authority across multiple actors and agencies and to create overlapping jurisdiction among those actors, with the goal of guarding policy against bureaucratic drift from the executive branch and against coalition drift from future congressional coalitions. They find that these fragmented policymaking designs have been particularly common since the late 1960s with the onset of prevalent divided government. But while this study provides new insights into the *causes* of such legal designs, we do not yet know the *consequences* of these congressional choices with respect to the policies we ultimately observe.

The relationship between Congress and administrative agencies in the United States is typically modeled as that between a single principal (the legislature) and a single executive agency (the agent). However, given the great extent to which agencies are now structured as interacting together

to implement public policy, there are ample reasons to reconsider the ways in which we evaluate these inter-branch relationships and the factors shaping the policy outcomes that we ultimately observe. With an average of nearly four administrative actors implementing a single statute and as many as 14 (Farhang & Yaver 2016), agencies have ample opportunities to learn from one another the preferences of their shared political principals (Congress, courts, and the interest groups that lobby them). We can expect, for example, that when the Environmental Protection Agency and the Department of Interior share authority over different aspects of the Safe Drinking Water Act and the EPA is criticized for lax enforcement, the Department of Interior would likely be attuned to the regulatory responses not just to its own actions, *but also to the EPA's actions*, in turn carrying out more vigorous implementation so as to avoid litigation or public scrutiny.

Thus, the project raises the following core questions: To what extent, and under what conditions, do agencies learn *from one another* about the political constraints in which they operate? Relatedly, under what conditions will agencies invest in learning about other agencies' interactions with shared political principals? And finally, to what extent do constraints on agencies' regulatory capacity have effects that spill over and reshape other agencies' actions? It evaluates the statutory configurations of implementing agencies that are most conducive to this inter-agency learning taking place, and the conditions under which agencies will invest in learning about the regulatory behavior of other actors and the responses of other key actors (Congress, courts, and interest groups). The project argues that in evaluating oversight of a single agency, the extant literature significantly overlooks the complexities inherent in these separation-of-powers relationships in policymaking. That is, a funding cut to one agency by Congress, or litigation directed at one agency through courts, may have broader impacts than we currently appreciate in the extant literature. It brings to light the factors shaping the effectiveness of bureaucratic control in a fragmented enforcement setting, an in doing so evaluates the important relationship between representation and administration. I define learning here as the *adaptation of regulatory strategy based on information gathered from observing other administrative agencies, resulting from the acquisition of information that agency would not have obtained through direct interactions with the other institutions.*

The project includes a signaling model that considers when agencies will invest in learning about the other agencies operating in its policy space (or similar policy space), and when the agency will adapt its regulatory behavior given that updating of information. I evaluate this formally in a case in which two agencies are regulating in different laws that are in the same policy domain (for example, air versus public lands). Here, we have a legislative principal L (Congress) to two agencies that can be designated A_1 and A_2, each of which can be either regulatory (r) or deregulatory (d). If A_1 and A_2 are of the same type, A_2 can learn from A_1 with probability q; if they are of different types, A_2 can learn with probability $(1-q)$. First, Nature chooses L's type τ (τ_l or τ_h), and only L knows this type. L passes a regulatory law and in doing so, delegates to A_1, which observes its range of latitude but with some measure of uncertainty. A_1 then chooses its level of compliance c with its discretionary limits ($0 \leq c_1 \leq 1$). Observing A_1's policy choice, L chooses whether or not to punish the behavior. If observing punishment of A_1, it is informative that A_1 did not comply, but the absence of punishment does not necessarily imply compliance by A_1 (that is, if L is of type τ_l, it may choose not to punish). In choosing whether or not to punish, L reveals to A_1 its type τ. A_2 observes with some probability q or $(1-q)$ what L's type is, and then chooses its level of compliance with the law that it is implementing ($0 \leq c_2 \leq 1$).

To empirically evaluate these dynamics, I have identified each agency engaged in major regulatory actions (rulemaking, hearings, administrative sanctions, and/or lawsuits) in the post-war significant legislation from 1973 to 2012 (Mayhew 2005), and whether the actors are carrying out

the same or different tasks within the law. Thus, I can also determine whether they interact with high or low frequency (that is, agencies sharing responsibility over multiple laws may be more likely to learn from one another than will agencies sharing responsibility over one law). I also know the policy similarities among these implementing agencies (e.g., that is, whether they are both, for example, environmental agencies), and their ideological composition according to the Clinton & Lewis (2008) scores. These factors should importantly shape an agency's propensity to observe signals between the other agency and other key institutions (e.g., Congress, courts, shared interest group interactions), with more similar agencies more likely to learn from one another than in cases with greater policy or ideological discrepancy. Utilizing these various characteristics – number of laws with shared policy space, number of laws with same tasks in that policy space, whether the agencies are in the same policy domain, and ideological distance – allows me to assign a similarity score among the agencies over time. I am doing so for the universe of significant legislation since 1947, with additional more cursory analyses evaluating all agencies based on word searches of the Statutes at Large, which reveal marked variation in the extent to which Congress discusses agencies in conjunction with one another, as well as variation in the extent to which Congress imposes on an agency consultation requirements and interagency working groups (both of which create opportunities for inter-agency interaction and in turn learning).

I then will develop a novel measure of agency learning, comprising agency citations to other agencies' rules and enforcement actions and to what extent these citations occur in the context of substantive differences between proposed and final rules as well as administrative orders. In cursory analysis across legislation, I have identified the universe of Court of Appeals litigation directed at agencies and examined the relationship between agency proximity (based on the frequency of pairings based on word searches in statutes) and future provocation of lawsuits due to risk aversion through observations of other agencies. While I am refining this to include the *outcome* as opposed to just the *volume* of litigation, I nevertheless expect that interagency citations will serve as a better proxy for not mere awareness of another agency's rulemaking activity, but also the incorporation of that information into the final rule. Further, while there are limitations on the extent to which agencies may change rules during notice and comment periods, I believe that this will be all the more relevant to those cases in which citations were added during that phase of the rulemaking proceeding, because if the agency makes considerable policy changes within the rulemaking or enforcement processes, it may be updating given this learning dynamic on which I focus. This project involves original data collection from the Statutes at Large, the Federal Register from 1973 to 2012, and the appellate litigation pertaining to these statutes and agencies.

The implications of this project, currently preliminary but to be developed into a book manuscript, are vast and unexplored, shedding important new light on the downstream effects of bureaucratic control on policymaking in an increasingly complex and fragmented regulatory state. Much political science literature has emphasized strategic choices of legislative design and delegation (e.g., McNollgast 1987, 1989; Epstein & O'Halloran 1999; Huber & Shipan 2002; Farhang 2010), but little systematic effort has gone toward understanding the *consequences* of these decisions and evaluating potential disconnects between *de jure* and *de facto* policies. This project brings to light the challenges of bureaucratic control in a fragmented political environment, and the potentially lasting impacts of statutory design and constraints on administrative agencies.

Other Ongoing Research Projects

A theme in my dissertation and related projects is the importance of calling attention to disconnects between *de facto* and *de jure* policy amid institutional conflict. In keeping with this, I am

collaborating with Douglas Spencer, utilizing multi-level regression and post-stratification (MRP) to derive estimates of state-level public opinion on a number of policies and estimate responsiveness in the vigor of state-level bureaucratic implementation once legislation has already been passed. Here, we work to evaluate the following core question: To what extent, and under what conditions, is state-level policy *implementation* responsive to public opinion? A growing body of literature has sought to evaluate the extent to which we observe democratic responsiveness in policy *adoption* by evaluating congressional roll call votes on policy adoptions given the trajectories of public opinion in states and districts (*e.g.* Lax & Phillips 2012). We work to provide an important extension to this line of work, evaluating instead the vigor with which those adopted policies are, in fact, enforced. While some scholars have observed that public policies, once adopted, are rarely repealed, we note that there is wide variation in the implementation and enforcement of these policies in practice. Consistent with Patashnik (2008), we argue that we must follow all the way through the study of institutional development in policymaking so as to capture downstream structural developments in the implemented policies because "the game doesn't end when the laws are adopted" (Patashnik 2008: 10). For example, while a number of states nominally allow for the death penalty, not all utilize it. Relatedly, while all states nominally allow abortion to some degree, some states had broad access while others have a single provider in the entire state. Given the differences between laws that remain on the books over time and laws that are carried into effect in recent years, we evaluate the extent to which policy implementation responds to public opinion.

Our analysis focuses on a number of policies: capital punishment, bias-motivated violence, abortion, election protection, and healthcare. Thirty-two states—among them some liberal and others conservative—allow for capital punishment, yet the extent to which the death penalty is pursued varies widely among, for example, California, Texas, and Ohio. Forty-five states and the District of Columbia criminalize certain types of bias-motivated violence or intimidation, but there is variation in the reach of these provisions and the strictness with which they are enforced. Moreover, the vast majority of states have some constraints on abortions, with some having a single provider in a single county (*e.g.* Missouri), others prohibiting abortion after a certain point in the pregnancy, and others having longer waiting periods. This variation can produce important disconnects between de jure and de facto laws in the states. In this paper we ask: When public opinion goes strongly against the death penalty, do we observe declines in its usage in the criminal justice system? When public opinion goes strongly favors gay rights, do we observe more vigorous enforcement of hate crimes laws that protect gays? When pro-life sentiment in the states becomes more prevalent, do we observe more difficulty in obtaining access to abortions? To answer these questions, we analyze dozens of public opinion polls from the Roper Center archive on the death penalty, hate crimes, abortion, support for healthcare spending by the government, and concern about voting fraud, looking over the universe of polls that are consistently worded over time, and estimate state-level support for these issues using multilevel regression and poststratification. We then collect data on the vigor of implementation, which we define as executions relative to homicide rates (proxy for opportunities to employ capital punishment), hate crimes convictions relative to charges of discrimination (allegations of potential hate crimes to prosecute), the share of counties without abortion providers over time, the per capita healthcare spending over time, and the strength of election institutions over time. We currently are focusing on abortion policy, and find a powerful and significant effect of pro-life views and reductions in abortion access. This project has important implications with respect to democratic responsiveness, and will allow us to understand the extent to which we observe meaningful differences between de facto and de jure policy, and the institutional and public opinion factors that drive these disconnects.

I currently am expanding on the portion of this project emphasizing abortion policy to examine the public health consequences of state responsiveness to pro-life sentiment. While there is a normative desirability of political responsiveness to public opinion, there is the (sometimes dueling) goal of protecting the public interest, in this case public health. While centers such as Planned Parenthood do perform abortions, they also provide preventive healthcare services such as cancer screenings, STD testing, and family planning services. Using cancer mortality data provided by the Centers for Disease Control and Prevention, and abortion provider data provided by the Guttmacher Institute, I evaluate the extent to which responsiveness to pro-life sentiment, proxied by reductions in abortion provider access, and the mortality of commonly screened gynecologic cancers (cervical and breast), and find that using one, two, and three-year lags, there is a modest but significant increase in mortality rates in the aftermath of reductions in access to these services. This raises important questions as to the proper role of the government when it goes against certain public health priorities, and calls attention to the importance of political scientists to address the nature of post-adoption policy processes. While apart from contributing to a health blog, my extant work has not emphasized health policy, it is a growing interest on which I hope to expand further in my research, in particular identifying the policy and economic interventions best able to target health disparities.

My joint work with Sean Farhang, published at the *American Journal of Political Science*, explains the patterns driving congressional fragmentation of the administrative state as a mechanism to create a sticky status quo amid divided government and electoral uncertainty. While the fragmented character of the American administrative state had been considered somewhat of a common assumption, little empirical work allowed for the measurement of this phenomenon of fragmentation, let alone the measurement of its patterns and persistence over time. We derived such a novel measure, hand-coding each significant domestic regulatory law identified by David Mayhew from 1947 to 2008, and identified each administrative actor and each administrative agency tasked with implementing a core regulatory function (rulemaking, administrative adjudication, lawsuits, or administrative sanctions) and each instance in which Congress simultaneously delegated the same authority to multiple actors with respect to the same tasks ("overlapping jurisdiction"). We find that in these laws there are on average four administrative actors – often coming from three or more separate agencies – tasked with implementing a given statute, and that the congressional decision to fragment across these different actors and entities is powerfully associated with concerns about drift from the executive branch or from future legislative coalitions.

I currently am expanding on this research to evaluate the extent to which fragmentation impacts litigation. That is, when multiple actors are tasked with carrying a law into effect, and there is a breakdown in enforcement or compliance, to whom do plaintiffs and courts turn for blame? When multiple actors are implementing rules and the rules conflict, to whom should a court defer as the expert implementer, and who takes the fall when one is aggrieved? For this, I am evaluating the appellate cases aimed at each of the 218 domestic regulatory statutes coded by Farhang & Yaver (2016) and examining the most common plaintiffs, defendants, and case outcomes.