Going it Alone: The Adverse Effects of Executive Term Limits on Bargaining

It is widely accepted that executive term limits provide a check on executive power. This analysis challenges this assumption by arguing that executive term limits pose an obstacle to inter-branch bargaining because they both limit tenure potential and force an executive from office when she is most prone to bargain. While previous research has assumed that an executive's tenure potential remains constant throughout her time in office, this analysis argues that the tenure potential of a term-limited executive varies with time left in office. The perfect correlation between time served (experience) and maximum remaining time in office (tenure potential) among U.S. presidents precludes empirical analysis about the effects of tenure potential and experience. Accordingly, this research turns to the American states, and finds strong empirical support for the theory.

Keywords: executives; unilateral action; executive orders; tenure potential; term limits; experience; bargaining

Numerous scholars—both Americanists (Cooper 2002; Corley 2006; Genovese 2011; Howell 2003; Mayer 2009; Pious 2009) and comparativists (Linz & Valenzuela 1994; Samuels & Shugart 2010; Stepan & Skatch 1993)—have argued that highly autonomous executives are a threat to democracy. This widely held belief is predicated upon the fact that extensive executive power will lead to a breakdown in the balance of powers between the executive and the legislature (Genovese 2011; Pious 2009; Corley 2006; Cooper 2002; Howell 2003; Mayer 2009). Though this assumption is normatively charged, it is empirically unsubstantiated, making executive power an important topic for research. Specifically, it is currently unclear how executive formal power influences a chief executive's willingness to bargain with the legislature.

In the U.S., executive term limits have been a way to put yet another check on executive power. Although presidential term limits were not established formally until 1947, gubernatorial term limits have existed since the American Revolution in large part because of the colonists' aversion to the governors appointed by the British crown (Beyle 2006; Ferguson 2012). However, there is very little scholarship on executive term limits and none with regard to their effects on unilateral action. This paper challenges the assumption that term limits constrain executive power and create normatively desirable democratic outcomes. It does this by examining the effects of executive term limits on inter-branch bargaining, demonstrated by the use of unilateral action. While recent research suggests that there may be instances where unilateral action can benefit the legislature (Crew & Cockerham 2017; Dickenson & Gubb 2016), the majority of American literature on the topic puts forth the strategic model arguing that unilateral action is used as a tool to circumvent the legislature (Corley 2006; Genovese 2011; Howell 2003; Krause & Melusky 2012; Mayer 1999; Pious 2009; Savage 2007). Specifically, Krause & Melusky (2012) argue that executives exercising unilateral powers can "myopically

pursue policies that are consistent with their short- term electoral incentives in an unfettered manner".

In addition, there are numerous examples of unilateral action as an alternative to bargaining across states. In 2013 the Republican governor of Ohio, John Kasich, used an executive order to expand Medicaid and blatantly circumvent the Republican legislature who refused to accept federal healthcare money. In June 2016 the governor of New Jersey, Chris Christie, froze millions of state dollars through an executive order "in response to the Legislature's inability to responsibly budget for the State's existing health care costs or force the enactment of common sense, reasonable health benefit reforms" (Office of the Governor State of New Jersey, 2016).

Political scientists have directed much attention to assessing the factors determining the effectiveness of political executives in achieving their policy objectives. However many studies of executive influence assume that an executive must engage with the legislature to influence policy (Barrilleaux & Berkman 2003; Dometrius & Wright 2009; Ferguson 2003; Ferguson & Barth 2002; Kousser & Phillips 2012; Neustadt 1960; Rosenthal 1990). These studies overlook the fact that executives can choose to circumvent the legislative process altogether through unilateral action—often by issuing an executive order.

Although new research on unilateral action at the state level is beginning to emerge (Harder 2014; Ferguson & Shor 2014; Sellers 2016), most extant research on unilateral executive action focuses on the president (Bailey & Rottinghaus 2013; Bolton & Thrower 2016; Howell 2003; Krause & Cohen 1997; Mayer 1999). Howell and Mayer (2005) argue that incentives to exercise unilateral action should intensify in the final stages of a presidential administration because it is then that Congress is least likely to do the president's bidding due to his diminished

level of influence. However this line of reasoning assumes that all executives face the same institutional constraints at the end of their second term, which may be true at the presidential level. Yet there is much more variation in the character of term limit laws among American governors than among presidents, making states a better laboratory for research. Accordingly, this analysis demonstrates how executive term limits pose an obstacle to the executive's willingness to bargain with the legislature. In what follows, this claim is justified by two theoretical arguments—(1) an explanation of how changing the executive's level of tenure potential affects her willingness to work with the legislature; and (2) an argument that the executive chooses to bargain more as she moves later in his service in office.

The theory is based on the assumption that as an executive's expected success from bargaining with the legislature declines, she has greater incentive to take unilateral action. One of the primary mechanisms through which term limits affect the executive's propensity to bargain is through their effect on the executive's *tenure potential*: her potential to remain in office. Presidential scholars have little reason to theorize about the impact of tenure potential since all U.S. presidents serving after Harry Truman have been limited to two four-year terms in office, ensuring that there is no variation across presidents in the potential to remain in office. In contrast, this aspect of an executive's formal power has been examined in numerous studies of American governors (e.g., Beyle 1968; Clarke 1998; Mueller 1985; Richardson, Konisky, & Milyo 2012; Sharkansky 1968).

The most widely used measure of a governor's tenure potential was developed by Schlesinger (1965) and later refined by Beyle (1990) [see also Dilger, Krause & Moffett (1995) and Dometrius (1979)]. The so-called "Beyle index" of a governor's tenure potential is a five-point scale that takes into account the length of a governor's term, and any limits on the number

of terms she can serve. The value of this index varies across states, but by definition, it is constant throughout a governor's term in office. The choice to measure tenure potential in a way that makes it temporally constant is at odds with any reasonable conception of a governor's tenure potential in a context in which most governors are term-limited. In a "term-limited world," it seems evident that a governor's potential to remain in office declines as she gets closer to the date he is forced from office by the term limit. To remedy this weakness in extant measurement, this analysis defines a political executive's tenure potential at any point in time as the amount of time she would remain in office if she were to win reelection each time she is eligible to run. Then this research advances the proposition that an executive's propensity to act unilaterally increases as her tenure potential declines, and she becomes less concerned about maintaining a cooperative relationship with the legislature. This proposition is tested using data from the American states for the five-year period from 2010-2014, and finds strong empirical support.

An executive's tenure potential is just one of two means through which term limits influence an executive's incentive to act unilaterally. Her experience in office is a second important factor, since greater experience should enhance her expected success from bargaining, and thus reduce her incentive to take unilateral action. However, estimating the effects of *tenure potential* and *experience in office* on an executive's propensity to take unilateral action is a challenge. Greater time served should give an executive more experience in bargaining with the legislature and thus less of a need to take unilateral action; but at the same time, greater time served (when combined with a term limit) should bring her closer to being forced out of office and make her less concerned with alienating the legislature by taking unilateral action. These competing effects are difficult to parse out empirically because the U.S. president and most

governors are limited to no more than two consecutive four-year terms in office, and for these executives, experience (number of years served) is perfectly inversely related with tenure potential (maximum number of years remaining in office). However, by expanding attention to include, as well, governors with no term limit—each of whom have greater tenure potential than any term-limited governor—this empirical challenge can be overcome. Taken together the results for both tenure potential and executive experience indicate that that eliminating executive term limits would actually encourage the executive to engage in more legislative bargaining.

Unilateral Action and Executive Institutions

In the past 25 years, there has been a surge in the literature on unilateral action at the presidential level. From this we have learned that partisan factors influence the use of unilateral action. Howell (2003) argues that specific political circumstances in the *legislature* – fragmentation and divided control – stimulate the president to take action on his own. While, Mayer (1999, p. 445) finds that "the frequency of executive orders varies with substantial changes in the political environment of the *president*." Other scholarship at the presidential level debates about the reasons unilateral action is used (Gomez & Shull 1995; Krause & Cohen 1997; Shull 1997). However, the literature on unilateral action at the state level has lagged far behind that at the presidential level. Recently state scholarship has emerged and has examined the use of unilateral action for particular policy areas, specifically LBGT protections (Sellers 2016), while other research in this area continues to focus on partisan factors affecting the use of executive orders (Harder 2014). There remains untapped potential at the state level especially considering the opportunities the states provide to examine the effects of institutions on the use of unilateral action.

Literature at the presidential level comes to different conclusions regarding the effect of time in office on the use of unilateral action. Some scholars argue that chief executives are more likely to use unilateral action at the beginning of their terms, especially when there is a party shift (Howell 2003), while others argue that we will see increased unilateral action at both the beginning and the end an executive's service in office (Mayer 1999) and other research argues that executives issue more unilateral action at the end of their time in office (Howell and Mayer 2005). However, due to the fact that all of these analyses have been conducted at the presidential level, none of this research is able to explain why we see variance in the executive's propensity to use unilateral action at the end their service. For example, in 2010 the governor of Colorado, facing a term limit, issued 31 executive orders during his last year in office while the governor of Iowa, facing no term limit, only issued 7 executive orders during his last year. I argue that the differences in amounts of unilateral action we see at the end of service in office are due to institutional constraints, such as the term limit, that incentivize particular executives to engage in less bargaining. Scholars acknowledge the fact that executive influence begins to decline the moment that reelection prospects foreclose (Howell and Mayer 2005; Light 1991). For example, Jones (1994) finds that of 21 landmark pieces of legislation initiated by the president issued between 1947 and 1990, only three were launched by a second term executive. This line of reasoning implies that completely eliminating reelection prospects (i.e., through a term limit) would incentivize executives to look for other means to influence policy besides the legislature, such as unilateral action.

Although some executive orders may be issued in conjunction with legislation (Dickenson and Gubb 2016), this does not diminish the potential for unfettered executive power that unilateral action affords. Executives have the potential to completely circumvent the

bargaining process with executive orders and whether or not all executive orders are used for this purpose doesn't take away from the fact that they can be used for this purpose and that there are certain institutional incentives that make this behavior more likely. Howell and Mayer (2005) claim that executives "can (and regularly do) act alone, setting public policy without having to rally Congress's attention, nor even its support." This potential makes it especially important to understand what incentivizes executives to use unilateral action and this analysis brings the field one step closer by examining the link between term limits and the use of unilateral action.

At the state level, scholars have taken advantage of the unique opportunities to examine the effect of legislative term limits on various outcomes. Some scholars find that legislative term limits effectively limit power and decrease the time legislators devote to securing pork (Carey, Niemi & Powell 2009), while others find legislative term limits have a negative impact on professionalism (Kousser 2005). Nicholson-Crotty and Miller (2011) find that bureaucratic influence in the legislative process increases when term limits force turnover in the legislature. Despite our conclusions regarding legislative term limits, there is very little scholarship on the effects of executive term limits. This is an especially pressing question given the substantial potential for influence that unilateral action provides and the significant variance in executive institutions across states that may affect their use.

Theory

As suggested above, term limits pose an obstacle to executive bargaining through two processes—(1) term limits constrain the executive's tenure potential making him less concerned with maintaining a working relationship with the legislature; and (2) term limits constrain the executive's ability to gain experience negotiating with the legislature, thereby making bargaining more costly. My theory centers on the impact of these two mechanisms on the executive's

incentive to bargain with the legislature, which will shed light on the impact of term limits more broadly.

The dependent variable is the propensity of a political executive to act unilaterally rather than bargain with the legislature over policy. It is reasonable to assume that in a hypothetical case in which an executive is assured of complete bargaining success—resulting in legislation conforming exactly to her policy preferences—the executive would always prefer bargaining with the legislature to unilateral action. This is because bargaining success would cement the executive's preferred policy in law, while unilateral action would yield a policy change that can be unilaterally undone by the next executive.[1] However, a more realistic assumption is that bargaining with the legislature requires an executive to move away from her ideal point to some degree, whereas unilateral action does not, leaving the executive with a choice between (i) accepting a policy that she views as less than ideal, but which is more likely to survive beyond her term in office, and (ii) implementing a policy closer to her ideal point, but with a greater risk that this policy will be overturned when she leaves office. Given this tradeoff, my theory assumes that as an executive's expected success from bargaining with the legislature over policy declines, she has less incentive to bargain and greater incentive to act unilaterally. This core assumption allows me to derive several propositions about factors influencing the propensity of an executive to act unilaterally.

Term Limits and Executive Bargaining

The executive's level of formal power is likely to influence her expected success from bargaining with the legislature. Of particular interest is the effect of tenure potential, which like

[1] Although executive orders are viewed by the courts as a part of the law and they are rarely overturned at the federal level (Howell 2003), 25% of the executive orders included in this analysis are used to rescind or amend prior orders, making them less enduring than legislation.

experience, varies with an executive's time served. A political executive's *tenure potential* is defined as the amount of time she would remain in office if she were to win reelection any time she is eligible to compete.[2] Several features of this definition are noteworthy. First, any executive who is term-limited has finite tenure potential that declines in value as he approaches the limit on his time in office. Note that tenure potential is defined so that any chance of running for a future term after being term-limited out of office (a possibility for 10 states' governors) does not increase an executive's tenure potential. This definitional choice is justified because a politician's potential to return to office after sitting out one or more terms is so difficult for her to assess that she is likely to discount that possibility when judging her prospects for long tenure in office. Second, any executive who is not term limited—and thus is always eligible to run for reelection—has unlimited tenure potential.[3] An implication of these two features is that *any* executive facing no term limit has greater tenure potential than *every* term-limited executive, regardless of the length of that executive's term.

A lengthy tenure potential encourages a political executive to develop a long-term bargaining relationship with other political actors (Dometrius 1979; Sharkansky 1968).

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[2] An alternative definition of tenure potential would be an executive's *expectation* about the amount of time she will remain in office assuming she runs for reelection any time she is eligible to compete—which would depend on the executive's perceived probability of winning her reelection races. However, looking ahead to the paper's empirical analysis—which will be based on governors—the two definitions of tenure potential are, in practice, nearly equivalent since incumbent governors can reasonably assume that they are very likely to be reelected if they run. For my period of analysis— 2010-2014—87.5% of the 24 incumbent governors running for reelection won (McDowell 2013).

[3] This implies that the length of an executive's term has no impact on his tenure potential. I concede that an executive with a shorter term—who needs to win reelection more often to stay in office—is likely to perceive a somewhat lesser potential for long tenure in office. However, the high probability that an incumbent executive in the U.S. who is running for reelection will win should make the impact of his term length on his prospect for long tenure quite small. Again looking ahead to my empirical analysis based on governors, only two states' governors serve unlimited *two*-year terms; the 12 remaining governors not subject to a term limit each serve a *four*-year term. The lack of substantial variation in the length of gubernatorial terms indicates that assuming that all governors who are not term-limited have the same tenure potential is reasonable.

Specifically, Dometrius (1979) argues that long tenure enables a governor to promise future rewards or punishments, which can be used to influence the actions of other political actors. Long tenure potential extends the executive's time horizon, thereby allowing her to foresee the possibility of being in office long enough to make her motivated to work with legislators. This desire to work with legislators means that she will be more likely to bargain with the legislature, and less likely to take unilateral action—potentially damaging future relations with legislators. However as the clock grows shorter, reputation is less important and thus executives have reduced incentive to bargain. This leads to my second proposition.

> *Tenure Potential Proposition: The greater a political executive's tenure potential, the lower her propensity to act unilaterally rather than bargain with the legislature over policy.*

As political executives gain experience in office, they tend to acquire more allies in the legislature (Ferguson 2003). In addition, executives are likely to become more skillful at negotiation as they acquire experience working with the legislature (Ferguson 2003; Light 1991; Neustadt 1960). The better connections with legislators and negotiating skill achieved by an executive through additional experience make it more likely that the executive will be successful in achieving her desired policy outcomes should she choose to bargain. This prompts my first proposition.

> *Executive Experience Proposition: The more experience a political executive has in office, the lower his propensity to act unilaterally rather than bargain with the legislature over policy.*

Challenges to Testing the Theory

Plausible indicators can be constructed for both the dependent variable and each independent variable in the propositions introduced in the previous section. This analysis argues below that an executive's propensity to act unilaterally rather than bargain with the legislature over policy can be measured by the number of significant executive orders she issues in a year. The tenure potential of an executive who is term-limited (e.g., the U.S. president or most governors) can be measured by the number of years left before she is forced out of office by the term limit. Her executive experience can be measured by the number of years she has served. Finally, there are widely accepted indicators of legislative professionalism, veto power and budget power.

However, practical constraints make it difficult to estimate the effects of tenure potential and experience on an executive's propensity to issue executive orders. Indeed, it is impossible to do this by observing presidents since for these executives, the number of years left in office before being forced out by the term limit (i.e., tenure potential) is perfectly correlated with the number of years already served (i.e., executive experience).[4] To estimate the effects of tenure potential and experience by observing executives who are term-limited, the length of the limit must vary across executives, thereby avoiding a perfect linear relationship between years served and number of years remaining in office.

Shifting attention to the U.S. states that impose gubernatorial term limits helps only a little, since nearly all states with term limits constrain their governors to two successive four-year terms. The only exception is Virginia, which allows only one four-year term. Thus, a shift to the state-level would avoid the completely insurmountable problem of a perfect linear relationship

[4] Specifically, $YL = 8 - YS$, where YL denotes years left in office, and YS denotes years served.

between years served and years remaining in office, but would likely confront the severe multicollinearity associated with a near-perfect relationship between the two variables.

However, this analysis can take advantage of the fact that there are 14 states with no gubernatorial term limit to design strong empirical tests of the Tenure Potential and Executive Experience Propositions. The data comes from each U.S. state in each year between 2010 and 2014. Figure 1 displays the states with their respective term limit laws.

[Insert Figure 1 Here]

Measuring the Dependent Variable

The goal is to observe a governor's propensity to act unilaterally rather than bargain with the legislature over policy. Although unilateral action covers a broad range of activities, executive orders constitute the largest and most consequential subset. Executive orders are defined as mandates from the governor to executive branch departments and agencies that have the force of law but do not require legislation. Thus, this analysis measures a governor's propensity to act unilaterally rather than bargain with the legislature over policy with the number of significant executive orders issued by a governor in a year, a variable to be denoted *Executive Orders*.

Counting the total number of executive orders issued by a governor does not suffice to measure the dependent variable because some executive orders are not policy-relevant (e.g., lowering flags to half-staff to honor someone's passing). To distinguish executive orders that are significant from those that are not, the first step was to obtain the text of all executive orders

issued by governors from nearly all states during the 5 year period from 2010-2014.[5] By examining the text of each order, these orders were divided into 15 functional categories originally created by Ferguson & Bowling (2008), and listed in Table 1.[6] All executive orders from six of these categories—those in bold in the table—are assumed to be significant. Similarly, executive orders in five of the categories—those in standard font at the end of the list in Table 1—are assumed to be not significant.

This leaves two categories (indicated with an asterisk in the table) that are ambiguous in the sense that they may contain both orders that are significant, and orders that are not.[7] Given the difficulty of determining the status of individual orders in these two categories, the empirical analysis is conducted twice. In the main analysis reported in the article, each executive order in the two asterisked categories in Table 1 is treated as significant. In analysis reported in Appendix A, each order in the two categories is assumed not to be significant. As described in this appendix, the results of the alternative analysis are robust, allowing similar conclusions about the effects of tenure potential, executive experience, and legislative professionalism on the use of executive orders.

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[5] To gather this information, I visited state websites. When the on-line data were incomplete, I tried calling state offices. Data for a few state-years proved to be unavailable and are excluded from my analysis: Montana and North Dakota in 2010, Hawaii in 2011, 2012 and 2013, Mississippi in 2011, Kentucky in 2011, and Arkansas in 2014. Nebraska is also omitted from the analysis since there is not divided government.

[6] Ragsdale (2009), Warber (2006), and Fine & Warber (2012) develop alternative categorizations of orders based on their content. I use Ferguson and Bowling's categories because their categories are the most comprehensive and, unlike Ragsdale's and Warber's categories, are applied at the state level. Other recent state research also uses Ferguson and Bowling's categories to classify executive orders (Harder 2014).

[7] I treat the creation of a state commission differently than the creation of a council, board or task force because a state commission is a fairly visible entity that is likely to be (i) in place for a longer period of time and (ii) charged with an issue of statewide concern; while a council, board or task force is likely to be shorter-term and focused on narrower issues.

[Insert Table 1 Here]

Figure 2 displays the distribution across state-years for the number of significant executive orders issued (for the main analysis). It is evident that there is substantial variation across state-years in the number of such orders. However, the distribution is dominated by observations with a relatively small numbers of orders: in 49% of state-years, there are four or fewer orders; and in 21%, two or fewer.

[Insert Figure 2 Here]

Testable Hypotheses

By considering both term-limited governors and governors without a term limit, hypotheses can be generated that permit tests of both of the propositions. Among governors who are term-limited, empirical analysis designed to test the Tenure Potential and Executive Experience Propositions is complicated by the fact that the number of years a governor has served reflects both her experience in office (with number of years served positively related to experience) and tenure potential (with years served negatively related to tenure potential). However, since tenure potential is the same (i.e., unlimited) for all governors who face no term limit, by restricting consideration to this subset of governors, this analysis can hold tenure potential constant and conceive of the number of years a governor has served as measuring experience, but not reflecting tenure potential at all. The Executive Experience Proposition predicts that as a governor accrues experience as an executive, her propensity to act unilaterally will decline. Thus, this proposition implies the following testable hypothesis:

Gubernatorial Experience Hypothesis: Among governors with no term limit (all of whom have identical—unlimited—tenure potential), the greater the number of years a governor has been in office, the lower the number of significant executive orders she issues.[8]

The Tenure Potential Proposition can be subjected to an empirical test by recognizing that, by definition, a governor with no term limit has unlimited tenure potential. This implies that at any fixed value for years served, a governor who is term-limited has lower tenure potential than a governor without a term limit. Since the Tenure Potential Proposition predicts that executives will be less likely to act unilaterally when they have greater tenure potential, this proposition implies the following testable hypothesis:

Tenure Potential Hypothesis: At any fixed number of years served, a governor who is term-limited should issue a greater number of significant executive orders than a governor who is not term-limited.

Measuring the Independent Variables

Term Limited is a dichotomous variable that equals 1 for each of the 36 states whose governor faces a term limit, and 0 otherwise. *Term limited* is operationalized as a dichotomous variable because maximum number of years remaining is perfectly correlated with *Years Served*. In addition, it is not entirely obvious how the executive's maximum years remaining in states where there are no term limits would be operationalized. However, by assuming that all term limited governors have more tenure potential than non-term limited governors, measures can be constructed for both tenure potential and experience as an executive. *Years Served* denotes the number of consecutive years a governor has served in office, and ranges from 1 to 13 in the sample.

[8] Throughout this paper, I use the term "proposition" to refer to a theoretical assertion, and the term "hypothesis" to refer to a testable prediction derived from a proposition.

Control Variables

In addition to indicators measuring the independent variable in my hypotheses, the model includes several other variables that might be expected to influence the number of significant executive orders issued by a governor in a year.

Two other formal powers—the strength of which vary across political executives in the U.S.—should influence an executive's expected success in bargaining with the legislature. The veto is a powerful bargaining tool for an executive (Cameron 2000; 2009; Kernell 2006). The stronger an executive's veto power, the easier it is for him to gain policy concessions from legislators that bring legislation closer to his preferred position. Similarly, given the great importance of passing a budget each session to fund government, an executive with a strong formal role in the budget process is in a better position to achieve her policy goals via bargaining than an executive with less power over the budget (Barrilleaux & Berkman 2003; Dometrius & Wright 2009; Kousser & Phillips 2012). By improving an executive's bargaining position, either a stronger veto power or greater budget power increases her inclination to bargain with the legislature relative to acting unilaterally. For this reason the model includes the variables *Veto Power* and *Budget Power.* Each of *Veto Power* and *Budget Power*[9] denotes the Beyle Index for measuring the corresponding formal power of the governor.[10]

Beyle (1990) identifies two other aspects of the formal power of a governor: the degree of centralization of the executive branch, and the governor's appointment power. It is not evident why these specific aspects of a governor's formal power should have a strong influence on her expected success from bargaining with the legislature over policy, and hence, propensity to act

[9] Although Krupnikov & Shipan (2012) caution against using Beyle's budget measure longitudinally since many states underwent vast institutional change between 1988 and 1994 my data set is well after this development.
[10] Values for the Beyle Index are presented by Gray, Hanson & Kousser (2012).

unilaterally. However, much research finds that governors with greater formal power are more likely to achieve their goals (Barrilleaux & Berkman 2003; Ferguson 2003; Morehouse & Jewell 2004). Therefore, to minimize the risk of a bias-inducing specification error of exclusion, the model includes Beyle's measures of executive branch centralization (*Executive Centralization*) and appointment power (*Appointment Power*).

Kousser & Phillips (2012) show that governors are more likely to experience bargaining success when the legislature is part-time than when it is full-time, since full-time legislators can afford to be more patient when bargaining with the executive. Whether a legislature is full-time is one aspect of its level of professionalism (Squire 2007; Maestas 2009). Another characteristic of a professionalized legislature is a high level of staff support. When legislators have more staff support, they have a higher capacity to gather information and formulate policy, placing them at a bargaining advantage vis-à-vis the executive. Thus, as a legislature becomes more professionalized, it should become more adept at bargaining with the executive over policy, thereby decreasing the executive's utility from bargaining and increasing his incentive to act unilaterally. *Legislative Professionalism* denotes the Squire (2007) index of legislative professionalism, which is constructed from measures of legislative staff, legislator salary and session length.

In addition to intuitional structure of the legislature, the partisan composition of the legislature is also likely to affect the governor's incentive act unilaterally. Scholars have come to differing conclusions regarding the effect of unified government on the use of unilateral action (i.e., Deering & Maltzman 1999; Howell 2003). The strategic model of unilateral action argues that divided government increases the executive's incentive to take unilateral action (Mayer 1999). While others argue that executives will actually issue more unilateral action under unified

government as a supplement to legislative action (Krause & Cohen 1997). Although the direction of this effect is debated, this variable is added as a control because the partisan composition of the legislature is likely to affect the governor's incentive to act unilaterally (*Unified*).

A state's authorization for gubernatorial unilateral action may be explicit (either constitutional or statutory), or implied. Governors whose power is explicitly authorized may be more likely to issue an executive order because the legal basis for their action is more firmly established. Thus, the model includes the variable *Explicit Authorization*, which equals 1 if a governor's authorization to use unilateral action is explicit, and 0 otherwise.

Scholars have hypothesized that the political party of the executive has an effect on his decision to use unilateral action. In particular, Democrats—who tend to have a "more active view of executive power" than Republicans—should be more likely to issue executive orders (Mayer 1999). Therefore, the political party of the governor is added as a control with a binary variable, *Democrat* that takes the value 1 if the governor is a Democrat, and 0 otherwise.

Given the systematic ideological differences between the two major parties, at the beginning of his time in office, a governor who is of a different party than his predecessor should be more likely to issue executive orders than a governor of the same party as the previous occupant. To account for this possibility, the model includes the variable *Opposite Party*, which equals 1 if a governor is in her first term in office and is from a different party than her predecessor, and 0 otherwise. Table 2 summarizes how the independent variables in the model are measured; the variables of theoretical interest are in italics.

[Insert Table 2 Here]

An Event Count Model

The unit of analysis is the state-year during the 2010-2014 period. The period for analysis is limited to these recent five years because it is difficult to obtain the text of executive orders from prior years. Since most governors serve four-term terms (and no state's term is longer than four years), it is important to observe at least four consecutive years, thereby insuring that each year within the typical four-year cycle for an administration is included. The data are unavailable consistently before 2010 due to nonrandom reporting by some state agencies, and the imposition of fees or unwillingness for other states to provide executive order data before this time. Since the dependent variable is a number of orders issued in a year, the model must be an event count model. The analysis is conducted with negative binomial regression—rather than Poisson regression—because of evidence of overdispersion (i.e., that the variance of the dependent variable exceeds its mean).[11]

Since the sample contains multiple observations for each state, robust standard errors with the state as the cluster variable are reported.[12] To properly specify my hypotheses, the model includes an interaction term, *Term Limit*Years Served*, among the independent variables. Without this term, the effects of *Term Limit* and *Years Served* would be modeled as additive, thereby assuming that the effect of *Years Served* on the number of significant executive orders (*Executive Orders*) is the same among governors who are term-limited as among governors who are not. This would not be a reasonable a priori assumption since among governors who are term-limited, *Years Served* reflects both executive experience and tenure potential, but among

[11] A test for overdispersion (Cameron & Trivedi 2013) strongly rejects the null hypothesis of equidispersion ($p < 0.001$).

[12] I also explored the possibility of a global time-trend in my data. The results of a Dickey-Fuller test reject the null of a unit root at the 0.01 level, meaning that my dependent variable is stationary. This test indicates that my dependent variable shows no global time trend that might confound the analyses.

governors who are not term-limited, and thus have unlimited tenure potential, *Years Served* reflects just experience as an executive. Thus, it is possible that *Years Served* may have an effect on *Executive Orders* that is different among term-limited governors than among governors not subject to a limit on service. Including the product *Term Limit*Years Served* in the model allows the estimated effect of *Years Served* to be different for the two groups of governors.

Empirical Results

Table 3 presents coefficient estimates for the event count model.

[Insert Table 3 Here]

However—following the advice of King, Tomz & Wittenberg (2000)—to test the hypotheses, these coefficients are used to generate more meaningful quantities of interest: the estimated effect of an independent variable on the number of significant executive orders issued in a year when other independent variables are held at central values.[13] When an independent variable is approximately continuous (e.g., *Years Served*), its marginal effect on the number of significant executive orders issued in a year is sometimes reported. In other instances, a first difference showing the change in the number of executive orders associated with a change in the independent variable from its 25th percentile to its 75th percentile is reported.[14]

The Gubernatorial Experience Hypothesis predicts that among governors facing no term limit, a governor issues fewer executive orders as the number of years he has served rises.

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[13] By a central value, I refer to the mode (for any binary variable) or the mean (for any other type of variable). To keep interpretations of quantities of interest compact, I will often leave implicit the clause, "when other independent variables are held at central values."

[14] All quantities of interest computed from the coefficients in Table 3 are calculated using the 'negbinom' procedure in Zelig (Imai, King, & Lau, 2015).

Figure 3 displays the estimated marginal effect of the number of years a governor with no term limit has served on the number of significant executive orders at each value of *Years Served* between 1 and 13. Among non-term-limited governors, the marginal effect of *Years Served* on the number of significant executive orders is negative and statistically significant at the 0.05 level at every level of *Years Served*.

[Insert Figure 3 Here]

To better assess the magnitude of the estimated effect of *Years Served*, for governors with no term limit, the predicted difference in the number of executive orders associated with a change from the 25th percentile for *Years Served* (2 years) to the 75th percentile (5 years)—when each other independent variable is at its central value—is 1.15. This first difference is statistically significant—with a 95% confidence interval that ranges from 0.05 to 2.39. Given that about 1/5 of state-years in the sample are ones in which two or fewer significant executive orders are issued (see Figure 2), a first difference of about 1 order is clearly substantively significant. These findings support the Executive Experience Proposition, which predicts that as a political executive's experience in office increases, his propensity to act unilaterally declines.

The Tenure Potential Hypothesis is also supported—that at any fixed number of years served, term-limited governors will issue a larger number of significant executive orders than governors with no term limit. To test this hypothesis, a first difference is computed—the predicted number of significant executive orders issued when a governor is term limited minus the predicted number when a governor is not term-limited—at each possible number of *Years Served* (when each other independent variable is fixed at its central value). Figure 4 portrays

these first differences along with 95% confidence intervals. The figure shows that at any fixed level for *Years Served*, term-limited governors issue a greater number of significant executive orders than governors facing no term limits. The first difference is statistically significant at the 0.05 level (two-tailed test) when *Years Served* equals 2, 3, 4, 5, or 6 and is significant at the 0.10 level when *Years Served* equals 1,or 7. The point estimate of the first difference is approximately 2.0 at each value of *Years Served*, indicating that the effect of a term limit is substantively significant as well. Thus, the empirical results are strongly consistent with the Tenure Potential Proposition, which suggests that as a political executive's tenure potential rises, her propensity to act unilaterally declines.

[Insert Figure 4 Here]

There are several control variables that have a statistically significant effect on the number of significant executive orders issued in a year—legislative professionalism and the type of authorization for a governor's use of unilateral action.[15] A shift in legislative professionalism from the 25th percentile (59) to the 75th percentile (77) yields an increase of 2.55 in the expected number of significant executive orders in a year. This first difference is statistically significant at the 0.05 level (with a 95% CI ranging from 1.33 to 3.78), and suggests that legislative professionalism has a very strong effect on an executive's reliance on unilateral action. A

[15] Note that for each binary control variable (*Opposite Party*, *Explicit Authorization*, and *Democrat*), the first difference examined is a move from one of the variable's values to the other, while for the ordinal control variables (*Executive Centralization* and *Appointment Power),* the first difference used is a change from the 25th to 75th percentile.

governor with explicit authorization issues 2.73 more executive orders in a year than a governor who must rely on implied authorization [95% CI: 0.78, 4.39].[16]

The Effect of Years Served Among Term-Limited Governors

For governors who are term-limited, the theory suggests than an additional year in office simultaneously (i) gives them greater experience (which should make them less inclined to issue executive orders), and (ii) reduces their tenure potential (which should make them more prone to issue executive orders). The relative strengths of these effects should determine whether among term-limited governors, the effect of *Years Served* on the number of significant executive orders issued is positive or negative. Although there is no hypothesis about the direction of this effect, the event count model allows the estimation of its direction and magnitude.

Figure 5 displays the estimated relationship between *Years Served* and the number of executive orders issued among term-limited governors. The slope of the plotted curve is negative throughout. As *Years Served* increases from its 25th percentile (2 years) to its 75th percentile (5 years), the predicted number of significant executive orders declines by 1.83 (a value statistically significant at the 0.05 level, with a 95% confidence interval ranging from 0.55 to 3.01). This suggests that for governors facing a term limit, the impact of the greater experience derived from an additional year of service on the propensity to act unilaterally outweighs the impact of the decline in tenure potential derived from the same additional year of service. It appears that a

[16] A Democratic governor issues 0.63 fewer executive orders than a Republican [95% CI: -3.03, 1.87]. A first-year governor whose predecessor is of the opposite party issues 0.94 fewer orders than other governors [95% CI: -2.63, 0.72]. An increase in budget power from the 25th percentile (2) to the 75th percentile (5) prompts an decrease of 0.50 orders [95% CI: -2.25, 1.09]. A shift in the level of executive centralization from the 25th percentile (2) to the 75th percentile (4) yields a decrease of 1.36 orders [95% CI: -3.38, 0.54]. An increase in appointment power from the 25th percentile (2.5) to the 75th percentile (3.5) prompts a decrease of 0.16 executive orders [95% CI: -2.02, 1.75]. The governor issues 0.09 fewer executive orders under unified government than under divided [95% CI: -1.95, 1.40]. An increase in veto power from the 25th percentile (2.25) to the 75th percentile (3.5) prompts a decrease of 0.38 executive orders [95% CI: -0.85, 0.10]. A governor under unified government issues 1.12 fewer executive orders than under divided government [95% CI: -2.90, 0.57].

governor's gain in bargaining skills is large enough to overshadow the increase in his willingness to antagonize legislators resulting from being closer to being term-limited out of office, and make the governor less likely to take unilateral action as his time remaining in office shrinks.

[Insert Figure 5]

Conclusion

This paper contributes to our understanding of the effects of executive term limits on bargaining in separation of powers systems. When the executive has high tenure potential, and thus can foresee a long future with the legislature, she will be less inclined to use unilateral action and more likely to bargain. In addition, executives take less unilateral action as they gain more experience bargaining through continued service in office. The results show that executive term limits promote unilateral executive action and are an impediment to executive bargaining because they restrict the executive's tenure potential and force her out of office when she is most willing and able to bargain with the legislature.

Many scholars conceptualize an executive's tenure potential as a formal power that remains constant throughout her time in office. However, this conceptualization is not accurate. This analysis presents an explicit conceptual definition for "tenure potential" that accounts for the fact that it is a temporal variable that changes as a term-limited executive's maximum years remaining in office changes. At the national level, scholars cannot estimate the effects of both time served and tenure potential because all presidents are subject to the same term limit laws, and therefore for presidents, time served and maximum time remaining in office are perfectly correlated. Since U.S. governors without term limits have more tenure potential than those with

term limits regardless of the length of the term, this analysis is able to estimate the separate effects of executive experience and tenure potential on inter-branch bargaining.

Research on legislative term limits is mixed in terms of their normative implications. Despite the work on legislative term limits, there has been very little research on the implications of executive term limits and none with regard to their effects on unilateral action. The early research that has been done on this topic has recognized the obstacles term limits impose on an executive's ability to govern effectively (e.g., Besley & Case 1993; Sabato 1983; Light 1991). For example, Light argues that the beginning of an executive's first term is characterized by inexperience and disorganization, while the beginning of the second term is marked by greater skill and organization. The research presented here suggests that eliminating executive term limits would prompt higher levels of inter-branch bargaining.

Clearly, granting greater formal power to a political executive gives her greater autonomy from the legislature. Many political scientists—Comparativists and Americanists—have expressed qualms about the implications of highly autonomous executives for democracy (e.g., Linz & Valenzuela 1994; Samuels & Shugart 2010; Pious 2009). Yet, I find that executive term limits actually prompt the executive to be less prone to take unilateral action and more prone to bargain with the legislature. These results have significant normative implications for our federal government. It suggests that if we are concerned about presidential use of unilateral action, (and news stories referring to Obama's use of unilateral action an "ambitious, aggressive executive power play" would suggest that we are (Simon 2014)) then we should eliminate term limits in order to provide the chief executive more incentives to maintain a working relationship with the legislature throughout their time in office. Increased executive power has also been linked to

other important democratic outcomes; Wiesehomeier & Benoit (2009) have shown that executives with more formal power are likely to take a policy position closer to the median voter.

Table 1: Functional Categories for Executive Orders

Implementation of a federal mandate
Establishment of programs within agencies
Allocation or transfer of state funds
Reorganization of state agencies or departments
Procedural directives for programs or agencies
Creation of a state commission
* Creation of councils, boards or task forces
* Rescinding or amending prior orders
Disaster relief or procedures
Lowering flags to half staff
Appointments to state and local positions
Pardons
Extending or reaffirming prior order

Note: The categories were developed by Ferguson and Bowling (2008). All executive orders in categories in bold print are assumed to be significant. Orders in categories in standard text and not prefaced with an asterisk are assumed to be insignificant; such orders are excluded from my empirical analysis. Categories marked with an asterisk are ambiguous in that they may contain orders that are significant and orders that are not.

Table 2: Independent Variables and Descriptive Statistics

Independent Variable	Operationalization	Min	Median	Max	Source
Term Limit	Binary variable taking the value of 1 when the governor is subject to a term limit and 0 otherwise	0	1	1	Book of the States
Years Served	The year in the governor's consecutive service in office	1	2	13	State websites
Veto Power	Indicator taking into account whether a state has an item veto, and the percentage of legislators needed to override a veto	0	2.5	5	Beyle Index
Budget Power	The extent to which the governor has control of the budget; lesser values indicate that the governor shares more power with the legislature	1	4	5	Beyle Index
Legislative Professionalism	Index composed of legislative staff, legislator salary, and session length	37	68	85	Squire Index
Opposite Party	Binary variable taking the value 1 when governor is of opposite party as his predecessor and in his first year in office, and 0 otherwise	0	0	1	State websites
Explicit Authorization	Binary variable taking the value 1 when governor is explicitly authorized to take unilateral action, and 0 otherwise	0	1	1	Book of the States
Democrat	Binary variable taking the value 1 when governor is a Democrat, and 0 otherwise	0	1	1	Book of the States
Executive Centralization	The number of separately elected executive branch officials	1	3	5	Beyle Index
Appointment Power	Governor's appointment power in 6 major functional areas (i.e., corrections, health, etc.)	1.5	3	5	Beyle Index
Unified	Binary variable taking the value 1 when the governor and both chambers are governed by the same party.	0	1	1	The Book of States

Note: For each Beyle Index, see Ferguson (2012) for a detailed description of the measure. The Squire index is taken from Hamm & Moncrief (2012).

Table 3: Coefficient Estimates for Event Count Model Predicting the Number of Significant Executive Orders Issued by a Governor

Variable	Coefficient (standard error)
Term Limit	0.418* (0.219)
Years Served	-0.069** (0.034)
Term Limit*Years Served	-0.017 (0.045)
Control Variables	
Budget Power	-0.032 (0.038)
Veto Power	-0.100** (0.042)
Legislative Professionalism	0.322*** (0.079)
Appointment Power	0.076 (0.072)
Executive Centralization	-0.040 (0.046)
Explicit Authorization	0.448*** (0.162)
Democrat	0.105 (0.105)
Opposite Party	-0.122 (0.111)
Unified	-0.114 (0.114)
Intercept	1.287 (0.386)
	n = 237

*** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$

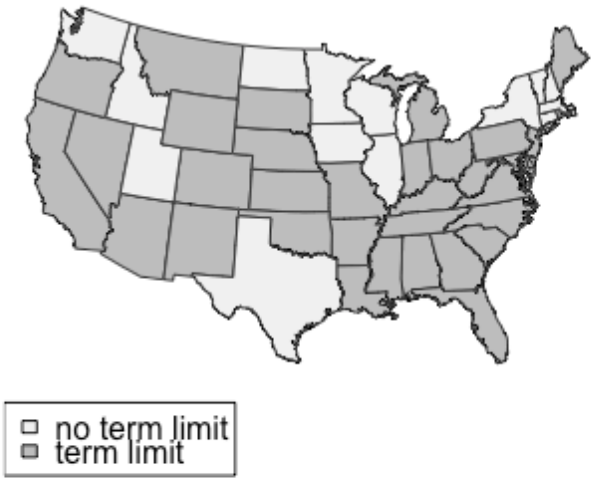


Figure 1: Term Limit Laws Across States

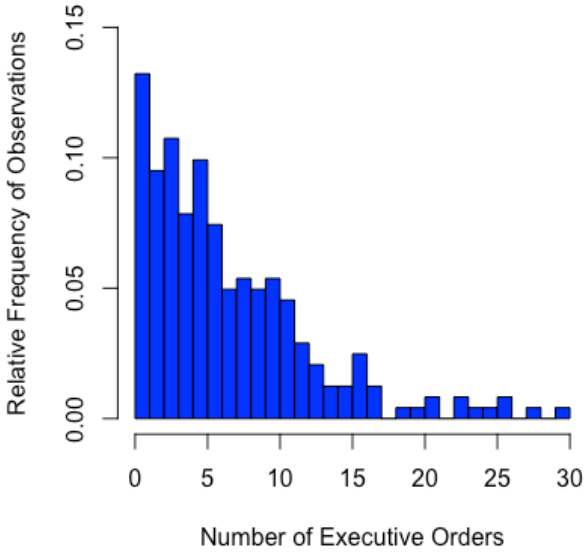
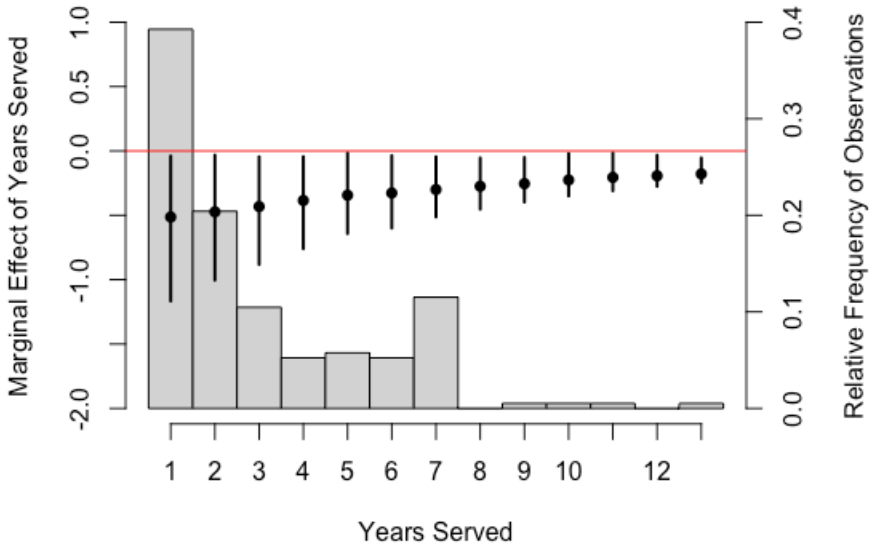
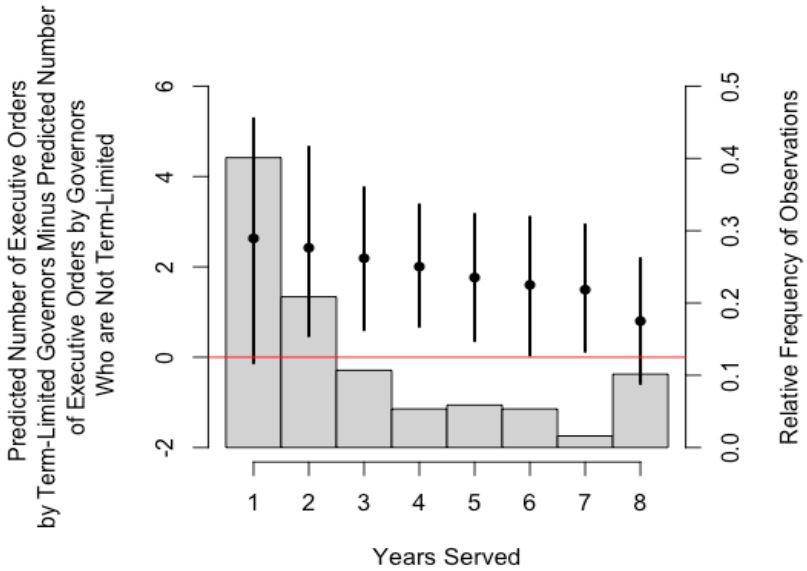


Figure 2: Relative Frequency of Significant Executive Orders (Among State-Years, 2010-2014)



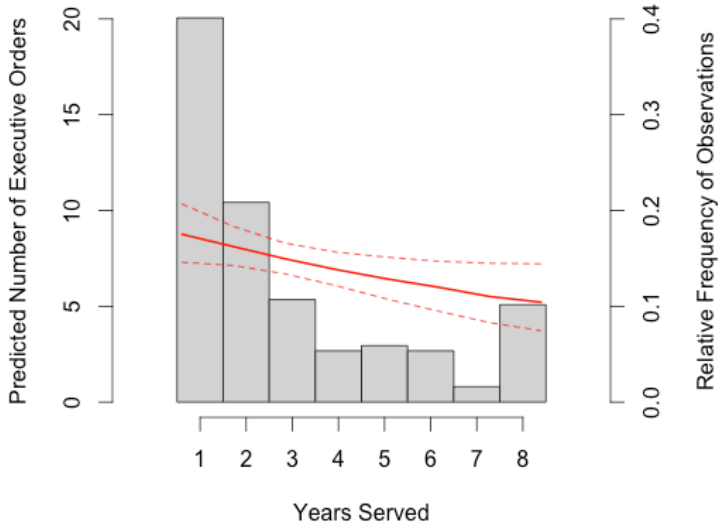
Note: Plotted points are accompanied by a vertical line depicting a 95% confidence interval. The histogram shows the distribution of the variable *Years Served*. I compute approximate marginal effects by calculating how the predicted number of executive orders changes when increasing *Years Served* by 0.01, and then multiplying the result by 100.

Figure 3: Testing the Gubernatorial Experience Hypothesis: The Marginal Effect of *Years Served* on the Number of Significant Executive Orders in a Year Among Governors with No Term Limit



Note: Plotted points are accompanied by a vertical line depicting a 95% confidence interval. The histogram shows the distribution of the variable *Years Served* in the subsample of cases for which *Years Served* is less than or equal to 8.

Figure 4: Testing the Tenure Potential Hypothesis: The Estimated Effect of a Term Limit on the Number of Significant Executive Orders in a Year



Note: Plotted points are accompanied by dotted horizontal lines depicting a 95% confidence interval. The histogram shows the distribution of the variable *Years Served* in the subsample of cases for which *Years Served* is less than or equal to 8.

Figure 5: The Estimated Effect of *Years Served* on the Number of Significant Executive Orders Among Term-Limited Governors

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