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Strategic subdelegation

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Abstract

Appointed leaders of administrative agencies routinely record subdelegations of governmental authority to civil servants. That appointees willingly cede authority in this way presents a puzzle, at least at first glance: Why do these appointees assign their power to civil servants insulated by merit protection laws, that is, to employees over whom they have limited control? This article develops and tests a theory to explain this behavior. Using original data on appointee-to-civil servant delegations and a measure of the ideological distance between these two groups of actors, we show that appointees are more willing to vest power in civil servants when the two groups are more closely aligned. They are particularly likely to do so in the last months of a presidential administration, prior to a transition to a new set of appointees from a different party. Essentially, appointees strategically devolve authority to ideologically similar civil servants to entrench their views in the face of oppositional future presidential administrations. Further, judicial doctrine and interest-group politics can make existing subdelegations difficult to reverse. This stickiness adds to the strategic value of subdelegations as a means of projecting preferences into future administrations. These findings raise important implications for administrative law and governance. One conventional wisdom on intra-agency dynamics considers appointees and civil servants as rivals. Relatedly, studies of personnel practices focus on strategies to empower appointees and sideline civil servants. This article, by contrast, shows how appointees and civil servants can act as strategic partners under certain conditions. At a time when leading political figures propose fundamental changes to the civil service, our findings call for a more nuanced understanding of the dynamics between political appointees and civil servants.

INTRODUCTION

In the classic account of bureaucracy, Congress vests agency heads with vast decision-making authority. Given the scope of the administrative state, the story

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goes, civil servants do much, but—per the text of Congress’s initial delegations—appointees retain final decision-making authority. That conventional narrative, however, is misleading. The Code of Federal Regulations is replete with assignments of authority by statutory delegates such as cabinet secretaries and bureau heads to lower-level appointees, civil servants, and even private groups. Indeed, there are nearly 1600 recorded subdelegations of consequential powers from appointees to civil servants during the past 40 years (Feinstein & Nou, 2023).

Consider, for instance, that Food & Drug Administration (FDA) civil servants approve new drug applications—including for COVID-19 vaccines—based on powers originally subdelegated from the Secretary of Health & Human Services to the FDA Commissioner (21 C.F.R. § 5.10).¹ The Commissioner then subsequently subdelegated these authorities even further to career officials holding 33 distinct positions within the FDA (21 C.F.R. § 5.103). Similarly, over 170 national forest supervisors are authorized to identify land “not suited for timber production” (U.S. Forest Service, 2022). Congress provided this authority in the National Forest Management Act of 1986, which directs the Secretary of Agriculture to make these decisions (16 U.S.C. § 1602). The Secretary subdelegated the authority to the Chief of the Forest Service (7 C.F.R. § 2.60), who later assigned it to the national forest supervisors, all of whom are career civil servants (U.S. Forest Service, 2022). This authority has been used to great effect. For instance, the supervisor of Alaska’s 17 million-acre Tongass National Forest used it in 2016 to protect old-growth timber and hamper logging in America’s largest national forest (81 Fed. Reg. 88657).

As a final example, the associate administrator of the National Highway Traffic Safety Administration—a civil servant—has granted exemptions from theft-prevention regulations to 13 vehicle lines (85 Fed. Reg. 48759; 85 Fed. Reg. 27798; 78 Fed. Reg. 21189), withdrew proposed rules or terminated ongoing rulemakings concerning a host of auto components (77 Fed. Reg. 71163; 76 Fed. Reg. 11415; 73 Fed. Reg. 42309; 69 Fed. Reg. 67068), and delayed the effective date for new, more rigorous safety regulations for other components (73 Fed. Reg. 50730; 71 Fed. Reg. 74823; 69 Fed. Reg. 11815). The associate administrator undertook these actions pursuant to a 1985 subdelegation authorizing that official “to exercise the powers and perform the duties of the Administrator” regarding, *inter alia*, motor vehicle safety, fuel-economy, and theft-prevention standards (49 C.F.R. § 501.8).²

¹For an example of a COVID vaccine approved under subdelegated authority, see FDA, Emergency Use Authorization for an Unapproved Product Review Memorandum, Janssen COVID-19 Vaccine, <https://www.fda.gov/media/146338/download>.

²The subdelegation also reserved some substantial powers to the administrator: to issue, amend, or revoke final rules concerning, most notably, safety and fuel-economy standards. *Id.* (citing 49 C.F.R. § 501.7 [providing these exemptions for the issuance, amendment or revocation of rules under, most notably, 49 U.S.C. chs. 301 (safety) and 329 (fuel economy)]). Other powers, most notably concerning theft-prevention standards, were subdelegated without reservation. *See* 49 CFR § 501.7 (not mentioning theft-prevention or 49 U.S.C. ch. 331 among the administrator’s reservations of authority). The version of 49 C.F.R. § 501.7 in effect at the time of the 1985 subdelegation contained a substantial similar list of reservations of authority, *see* 49 C.F.R. ch. V (Oct. 1, 1985 ed.), <https://babel.hathitrust.org/cgi/pt?id=mdp.39015023113296&view=1up&seq=41&skin=2021>.

The propensity of political appointees to delegate decisional authority to civil servants is puzzling at first glance. To be sure, reliance on agents is inevitable in large organizations, where generalist leaders must rely on advice from expert subordinates. That these subordinates may have different preferences or dispositions than their ostensible leaders is a well-studied problem in principal-agent relationships (see, e.g., McCubbins et al., 1987). The twist in administrative agencies, however, is that appointees have limited ability to remove recalcitrant civil servants, and thus few tools to ensure their loyalty (Johnson & Libecap, 1994). Indeed, empirical studies confirm that the preferences of career civil servants within an agency often diverge from those of political appointees (Clinton et al., 2012; Feinstein & Wood, 2022).

Why then do appointees willingly cede power—including the power to set policy and make final decisions—to civil servants over whom they have limited control? If the purpose is to benefit from civil servants' subject-matter expertise, then why not use civil servants as advisers rather than decision-makers? Alternatively, if the goal is to preserve high-level appointees' limited time in the face of myriad demands on it, then why not delegate to lower-level appointees instead?

These questions are even more perplexing amidst key political leaders' antipathy toward the civil service and its governing legal framework. At the beginning of the Trump administration, presidential adviser Stephen Bannon called for the “deconstruction of the administrative state” (Rucker & Costa, 2017). Toward the end of his term, President Trump issued an executive order to create Schedule F—a measure designed to weaken civil service protections—but made limited progress implementing it (Exec. Or. 13957, October 21, 2020). Yet annual appointee-to-civil servants subdelegations were higher in the first two years of the Trump administration than in any year during the Obama administration. Notwithstanding the Trump administration's rhetoric toward the civil service, administration officials accelerated the devolution of power to them.

This article presents a theory to explain the circumstances under which politically appointed agency leaders are more likely to convey authority to insulated civil servants. In brief, we posit that appointees strategically subdelegate power to likeminded civil servants because they prefer to empower career officials with broadly similar views rather than future appointees with, at some future point, likely oppositional views. We hypothesize that greater ideological congruence between an agency's politically appointed leadership and its civil-service workforce will be associated with greater subdelegations to civil servants. Given the sticky nature of subdelegations, we further hypothesize that appointees will subdelegate more frequently toward the end of presidential administrations before partisan transitions, when the prospect of future appointees with differing preferences taking the reins is most acute.

We test these hypotheses with two self-collected datasets: one containing all appointee-to-civil servant subdelegations published in the Federal Register from 1979 through 2019; the other a measure of ideological distance between agency

heads and civil servants for most of this period, based on Adam Bonica's (2014) campaign donation-based ideal point estimates. To preview our results, all three hypotheses find support.

The article proceeds in six parts. The Background section describes the law and practice of appointee-to-civil servant subdelegations. It situates the phenomenon in a legal framework that promotes civil-servant independence and an emerging scholarly literature on intra-agency dynamics. Next, the Theoretical Framework section presents our theory: essentially, that appointees subdelegate powers to entrench their preferences. The Research Design and Analysis sections describe the research design and report the results. Finally, the Discussion section discusses implications of this research, its limitations, and potential directions for future work.

BACKGROUND

This section describes the mechanics of appointee-to-civil servant subdelegations, explains the legal framework that governs these two groups' relations, and provides an overview of scholarship on appointee-civil servant dynamics.

Subdelegations in practice

Congress's delegation of policymaking authority to administrative agencies is well-known. These delegations typically identify a politically appointed agency head like the Secretary of Transportation, or a multi-member body, like the Securities & Exchange Commission, as the recipient of that delegated power (Nou, 2017). Less understood, however, is the common practice of these appointees re-delegating these powers (but see Feinstein & Nou, 2023; Nou, 2017; Magill, 2009). While some of these subdelegated powers exit the agency—to other executive-branch agencies, states and localities, or nongovernmental organizations—most subdelegations remain within the agency. Among those intra-agency subdelegations that are recorded in the Federal Register over the last three decades, approximately 59% are assigned to civil servants, with the rest going to lower-level appointees (Feinstein & Nou, 2023). These appointee-to-civil servant subdelegations often transfer the ability to make discretionary decisions without a mechanism for reviewing them. As such, these conveyances differ from those that merely assign authority to write reports, gather information, or make recommendations. Instead, the subdelegations that are the focus of this article are grants of the power to make what are, often in practice, final decisions.

This article focuses on subdelegations that are published in the Federal Register for reasons later discussed, but subdelegations also appear in less formal

sources. The Environmental Protection Agency (EPA), for instance, publishes subdelegations in staff manuals on an internal server (see, e.g., EPA, 1994).³ Other agencies have announced them in meeting minutes (see, e.g., Frankl v. HTH Corp., 2011). Still other subdelegations could be conveyed as verbal requests that a subordinate “make a decision” on a matter on which Congress authorized a high-ranking official to act. Relatedly, subdelegations are typically made with few procedural constraints and limited need to consult extra-agency actors. Subdelegations that are published in the Federal Register, for example, typically include a disclaimer that the rule “relates to internal agency management” and is therefore exempt from notice-and-comment requirements under the Administrative Procedure Act, as well as review by the Office of Information & Regulatory Affairs (OIRA) within the White House’s Office of Management & Budget.⁴

The subject matter of subdelegations is broad and diverse, as the earlier examples from the Food & Drug Administration, Forest Service, and National Highway Traffic Safety Administration suggest.⁵ Other illustrative examples include:

1. The members of the Surface Transportation Board (STB) subdelegated to various civil servant-led offices within the STB the authority to grant waivers of certain substantive requirements of permit applications to operate solid waste rail transfer facilities (74 Fed. Reg. 4714-01 [January 27, 2009]).
2. The commissioners of the Federal Deposit Insurance Corporation (FDIC) assigned to the FDIC’s Board of Review the power to issue capital maintenance directives to FDIC member banks and assess monetary penalties against banks that violate these directives (50 Fed. Reg. 11653-01 [March 25, 1985]).
3. The Secretary of Agriculture devolved the power to regulate the care of horses being transported to slaughter to a deputy administrator of the Animal & Plant Health Inspection Service (61 Fed. Reg. 68541-01). At the time of that delegation, approximately 109,000 horses were slaughtered annually in the United States (GAO, 2011).
4. The commissioners of the Securities & Exchange Commission authorized the director of the Commission’s Division of Enforcement to accept or reject offers to compromise debts arising out of actions to enforce

³In the past, the EPA has published a complete set of its delegations to the web. See EPA Office of Human Resources, *Transmittal Notices for Delegations of Authority* (on-file with the authors).

⁴The APA’s rulemaking provisions do not apply to “rules of agency organization, procedure, or practice” (5 U.S.C. § 553(b)(A)). Similarly, executive orders concerning OIRA cost–benefit analysis exempt “rules that are limited to agency organization, management, or personnel matters” (Exec. Order No. 12866 [September 30, 1993]; see also Exec. Order No. 12291 [February 17, 1981] [similar]; Exec. Order No. 13563 [January 18, 2011] [reaffirming this exemption]). Subdelegations that are conveyed in less formal venues than the Federal Register presumably require no greater amount of procedure or outside consultation.

⁵For additional examples of subdelegations, see Feinstein and Nou (2023) and Nou (2017).

securities laws, including the complete waiver of those debts (75 Fed. Reg. 54464-01 [September 8, 2010]).

5. The commissioners of the Federal Communications Commission sub-delegated to the Commission's Media Bureau the authority to grant applications to operate new educational television facilities, where there are more applicants than available facilities (61 Fed. Reg. 10688-02 [March 15, 1996]).

This article's appendix contains additional information concerning the content of these subdelegations, including the agencies that subdelegate most frequently, the identities of the most frequent senders and recipients of these authorities, and common themes in their subject matter.

The law of the civil service

The insulation of civil servants has been a fundamental concern of U.S. civil-service law since the foundational Pendleton Act of 1883. The nature and degree of insulation, however, has varied across time. Currently, the law divides that workforce into three board categories: the competitive service (5 U.S.C. § 2102 (a)(1)), excepted service (*id.* at § 2103), and senior executive service (SES) (*id.* at § 3131(2)). The Civil Service Reform Act of 1978, the nation's primary law on the civil service's structure, protects civil servants in all three categories from "arbitrary action, personal favoritism, or coercion for partisan political purposes" (*id.* at § 2301(b)(8)(A)), as well as from "discrimination ... on the basis of ... political affiliation" (*id.* at § 2302(b)(1)(E)).

The competitive service is the largest of the three categories, comprising more than half of the federal government's civilian employees (Shimabukuro & Staman, 2019). Applicants gain entry into the competitive service based on their performance on an "practical" examination that "fairly test[s] the relative capacity and fitness of the applications for the appointment sought" (5 U.S.C. § 3304 (a)(1)). When an agency seeks to hire for a competitive service position, in most cases it must select employees from a list of eligible individuals, where eligibility is determined by performance on the relevant exam (*id.* at § 3313).

To discipline or fire a civil servant in a competitive-service position, the agency must follow detailed procedures designed to ensure that the punishment is not being sought for political reasons (Shimabukuro & Staman, 2019). Attempts to fire or otherwise seriously discipline a competitive-service employee can be appealed to the Merit Systems Protection Board, a quasi-judicial agency that adjudicates adverse personnel actions (5 U.S.C. § 7513 (d)). The Board's members are appointed for 7-year terms and cannot be removed by the President except for cause (*id.* at § 1212). These features provide another level of insulation between competitive-service members and political appointees.

The second category, the excepted service, includes nearly half of civil servants, including many lawyers, policy analysts, scientists, and engineers (Shimabukuro & Staman, 2019). Most excepted-service employees are in technical or professional positions that are not “of a confidential or policy-determining character” (5 C.F.R. § 6.2). Given the specialized nature of these positions, their selection via competitive examination is not practicable (*id.* at § 213.102(b)).⁶ Nonetheless, appointments to excepted-service positions must be based on objective, neutrally applied criteria (5 U.S.C. § 3320). Likewise, most excepted-service employees possess similar process and appeal rights as the competitive service should their agency attempt to discipline or fire them (*id.* at § 7513(d)).⁷

The third category, the SES, is a corps of high-level managers and policymakers (5 U.S.C. § 3131(2); Carey, 2012). The nearly 8000 SES officials across government engage closely with political appointees in formulating policy and managing the federal government’s 2.1 million other employees (Carey, 2012). The vast majority of SES members are career employees.⁸ Political appointees exercise greater control—albeit still with some important limitations—over SES members than over civil servants in the other categories (Lewis, 2011). Concerning hiring, appointees determine which career employee with SES status will fill each SES position in their agency, after receiving recommendations from an in-house employee review board (Selin & Lewis, 2018). Once an appointee has named a particular candidate with SES status to fill an SES position, an independent peer-review board comprised of SES employees from other agencies reviews that candidate’s qualifications (*id.*).⁹

Constitutional law also supports this division between political actors and civil servants. The Supreme Court has held the First Amendment’s free speech and free association rights prohibit managers from considering “party affiliation or support” when making hiring, promotion, and other decisions involving “low-level public employees” (*Rutan v. Republican Party of Illinois*, 1990).

⁶Schedule C employees, who hold confidential or policy-determining positions, also are included in the excepted service (*id.*; 85 Fed. Reg. 13282 [March 6, 2020]). These personnel are political appointees (5 C.F.R. § 6.2). Because they are not civil servants, delegations to them are excluded from our data collection. This article does not analyze them.

⁷The major difference here is that same excepted-service employees must meet a continuous-service requirement, often of 1 year, before they can avail themselves of these rights concerning adverse employment actions (*id.* at § 7511(a)(1)(B)).

⁸Specifically, in 2021 the SES included 7412 career appointees, 464 non-career appointees, and 94 limited-term appointees (Office of Personnel Management, 2021).

⁹Appointees also hold somewhat greater discretion to discipline SES members. Specifically, they can remove an employee from the SES—meaning, they may transfer the employee to the competitive service, not remove her from government entirely—for poor performance, with only an informal hearing before the Merit Systems Protection Board as recourse in most circumstances (Office of Personnel Management, 2021). If the appointee wants to transfer an SES member to the competitive service for other reasons, or remove that individual from government service entirely, the civil servant is entitled to the full panoply of procedural and appeal rights (5 C.F.R. §§ 752.604, 752.605, 752.601(a)).

Similarly, politically motivated dismissals of civil servants violate those civil servants' First Amendment rights (*Elrod v. Burns*, 1976). Importantly, however, these holdings only apply to civil servants in non-policymaking roles (*id.*; *Rutan v. Republican Party of Illinois*, 1990; *Branti v. Finkel*, 1980).

Scholarship on appointee–civil servant dynamics

Social science and legal scholarship emphasizes a division between political actors and civil servants as well (Wilson, 1887). The concept of a *politics-administration dichotomy*, which dates from Woodrow Wilson's day, holds that these two actors occupy demarcated spheres (Stillman, 1973). "Although politics sets the task for administration," Wilson asserted, "it should not be suffered to manipulate its offices" (Wilson, 1887). Max Weber, Frank Goodnow, and other scholars in the public-administration canon echo this conceptualization of politics and administration as separate spheres (Overeem, 2005).

Further, a growing body of contemporary legal scholarship views appointees and civil servants as occupying distinct and often oppositional spheres (Bernstein & Rodríguez, 2023). Much of this scholarship sees administrative agencies as a house divided (Feinstein & Wood, 2022; Katyal, 2006; Metzger, 2010; Michaels, 2015). According to Elizabeth Magill and Adrian Vermeule, "the conflicts between political appointees and ... members of the professional civil service are legion" (Magill & Vermeule, 2011). So too, it seems, are the scholars describing appointees and civil servants as clearly demarcated and rivalrous subgroups within agencies (see, e.g., Noll, 2022, Freeman & Jacobs, 2021, Shah, 2019, Potter, 2019, Thrower, 2018, Ingber, 2018, Farber & O'Connell, 2017, Metzger, 2017, Michaels, 2017, Michaels, 2016).

The assertion that agency organization is akin to an "internal" separation-of-powers system is particularly prominent (Katyal, 2006). According to Jon Michaels, power in administrative agencies is "divided and shared among three sets of rivals: the politically appointed agency leaders who set the administrative agendas, the politically insulated career civil servants who handle most of the agency's day-to-day responsibility, and the broader public legally authorized to contribute to the development and implementation of administrative policies" (Michaels, 2016). By checking each other's power, on this account, these competing actors bring the Constitution's tripartite structure into the administrative state.

In advancing a similar theory, Gillian Metzger contends that civil-service protections, by insulating civil servants from political appointees, promote an intra-agency checking function. By contrast, the placement of political appointees deeper into agencies' organizational charts upsets the balance among intra-agency powers and degrades civil servants' ability to serve a checking function in this internal separation-of-powers system (Metzger, 2010).

It is difficult to square the claim that agencies are divided into distinct and competing institutional actors that check each other with the nearly 1600 sub-delegations of discretionary governmental authority from appointees to civil servants that are recorded in the Federal Register during the past four decades. Why would appointees formally cede their hard-earned authority? And why, in so doing, would they willfully empower their intra-institutional rivals in the civil service? The next section develops a theory to explain this behavior.

THEORETICAL FRAMEWORK

A large and nuanced literature explores the conditions under which principals delegate power to agents as a general matter (Alonso & Matouschek, 2008). In the government context, these theories are typically developed and tested with reference to legislatures as the principal. Most prominently, Huber and Shipan (2002), Volden (2002), and Epstein and O'Halloran (1999) examine delegations from Congress to the administrative state, and Battaglini et al. (2018), Krehbiel (1991), and Gilligan and Krehbiel (1987) probe delegations from Congress to its committees.

This section presents several theoretical accounts that could be marshaled to explain why governmental actors delegate authority to subordinates. Others could also explain when such delegations occur, such as the *ally principle*, which holds that principals are more likely to delegate power as agents' preferences converge with their own (Moe, 2012). The section concludes by positing that one account—that principals delegate to entrench their preferences against those of their successors—holds particular appeal in the context of intra-agency sub-delegations from appointees to civil servants.

Accounts of delegation

Scholars of delegation offer several theories for why a political principal would devolve power to an agent. In brief, delegations (1) empower specialized agents with superior information to produce reasonable policies; (2) foster more efficient decision-making; (3) allow principals to pass the buck on difficult decisions; (4) enable credible inter-temporal commitments; and (5) allow for the entrenchment of policy preferences. This subpart discusses each of these theories in turn.

1. *Expertise*. Delegation from generalists to specialists enables the principal to benefit from the agent's informational advantage (Alesina & Tabellini, 2007;

Bendor & Meirowitz, 2004; Krehbiel, 1991).¹⁰ In the government context, high-quality information is arguably the bureaucracy's *raison d'être* (Landis, 1938). Epstein and O'Halloran (1999) provide empirical support for this contention, demonstrating that delegation from Congress to agencies is more common concerning complex policy areas.

Vesting decision-making authority with an agent also encourages that agent to develop *new* expertise (Aghion & Tirole, 1997; Bubb & Warren, 2014; Carpenter, 2016; Gailmard & Patty, 2013; Stephenson, 2011). Only when the agent knows that its knowledge will be utilized—which a delegation essentially binds the principal to do—will it optimally invest in acquiring that knowledge in the first instance (Stephenson, 2019). After all, if an agent is unsure whether the information she acquires will be put to use, that agent has fewer incentives to invest in costly information acquisition (Krehbiel, 1991).

Relatedly, delegated authority can help attract high-quality employees to work for agencies. Essentially, the ability to exercise policymaking discretion functions as a form of compensation. If motivated job applicants value the ability to make decisions more than unmotivated ones do, then delegation can act as a workforce screening mechanism to attract more expert and well-informed employees (Gailmard & Patty, 2007; Stephenson, 2019).

2. *Efficiency*. Where the communicative costs associated with lower-level employees briefing higher-level ones and elevating issues to their desks are substantial, delegating decisional authority down the organizational chart can yield efficient gains (Bagley & Revesz, 2006). Such delegations also enable principals to prioritize, reducing their resources expended on decisions that they deem less salient and thus devoting greater attention to their remaining responsibilities (Pfiffner, 1987).¹¹
3. *Blame avoidance*. Delegation enables officials to shirk responsibility for decisions. Similar to the previous account, this view also considers principals' self-interested reasons for assigning power to another institution. This account is more cynical, with lawmakers passing off difficult decisions to bureaucrats, whom they can later blame for the negative consequences of those decisions (Fiorina, 1977; Rao, 2015).
4. *Credible reasoning*. Delegations can empower entities that the public believes are equipped to produce reasonable policies (Stiglitz, 2018, 2022). Whereas agencies must adhere to a set of administrative procedures that promote

¹⁰This expertise-centered rationale for delegation also is articulated in contexts outside of political institutions (e.g., Acemoglu et al., 2007; Jensen & Meckling, 1992).

¹¹This efficiency rationale also relates to the idea that capacity constraints motivate delegations, viz. when agent has greater capacity to make decisions than the principal, delegation is more likely (Huber & McCarty, 2004). Note that efficiency and capacity are distinct concepts from expertise. For instance, a corrupt basketball referee could possess high expertise but low capacity. Similarly, a poorly managed science lab could possess high expertise but act inefficiently in conveying its expertise to others. In other respects, efficiency and expertise overlap. Namely, because transmitting technical information from an expert to a generalist incurs high transaction costs; delegating decision-making authority to the expert would generate efficiency gains (Nou, 2017).

deliberation, rationality, and transparency in their decisions, legislators are not subject to similar guardrails. The presence of these procedural requirements means that when Congress delegates to agencies, it empowers entities that arguably are better situated than itself to generate policies that the public perceives as reasonable. Thus, according to Stiglitz (2022), delegating to agencies that can engage in credible reasoning “partially alleviates problems of trust that legislators face ... thereby enhancing members’ electoral fortunes.”

5. *Policy entrenchment.* Delegation enables officials to tie themselves and their successors to the mast (de Figueiredo, 2002). In one version of this account, politically accountable officials recognize that their own responsiveness to short-term political considerations pushes them to make decisions that are not in the public’s long-term best interest. They therefore devolve authority over these decisions to politically insulated agents (Elster, 1979; Ferejohn & Sager, 2003). This rationale is perhaps best known as justification for empowering independent judges and central bankers (Bendor et al., 2001; North & Weingast, 1989). A more strategically-minded version of this account emphasizes that a current official’s delegation to an agent disempowers *future* officials. In deciding whether to divest herself of power, an official weighs the costs of potential “policy drift” by an untethered agent with differing preferences against the costs of potential drift by a future official with differing preferences (Horn & Shepsle, 1989; Moe, 2012). Where the latter expected cost is higher, the principal delegates to entrench its favored policies.

The ally principle

The aforementioned accounts all seek to explain *why* principals delegate to agents. Most of these accounts, however, do not directly address *when* such delegations will occur. For instance, the claim that specialist agents possess greater expertise regarding their relatively narrow portfolios than do their more generalist principals is often true. Principals, however, are selective in their delegations to specialist agents; not every power that a principal possesses is assigned and re-assigned until it reaches the bottom of the org chart. Thus, the expertise account cannot explain the specific circumstances under which principals delegate authority, forego doing so, or revoke existing delegations.

The ally principle helps explain when delegations will occur. It holds that principals, in most circumstances, are more likely to delegate to agents with similar preferences. That concept has deep roots in the formal theoretic literature on delegations (e.g., Bendor et al., 2001; Holmström, 1984). It also is borne out empirically. For instance, the most important congressional committees, to which Congress assigns property rights over introducing bills in their issue areas,

tend to be representative of floor preferences (Krehbiel, 1991). Further, Congress tends to delegate to executive agencies during periods of unified government (Epstein & O'Halloran, 1999), when congressional leaders and executive-branch appointees are relatively likely to be in agreement. A similar logic suggests that the ally principle also ought to apply in the context of intra-agency subdelegations from appointees to civil servants.

The ally principle is central to the entrenchment account. This account hinges on the assumption that appointees and civil servants are to some extent in ideological alignment—or, at least, that appointees' believe that their views are more closely aligned with civil servants' views than they are with the expected views of future appointees. Accordingly, the entrenchment account predicts that principals are more likely to delegate when they are in ideological agreement with their agents.

The entrenchment account adds to the ally principle, however, in two respects. First, whereas entrenchment presumably would be most useful in the period immediately preceding a presidential transition, in which the reins of government are to be turned over to an oppositional incoming administration (cf. Mendelson, 2003), the ally principle does not fully account for such strategic behavior. Second, the entrenchment account offers a specific prediction for the revocation of subdelegations, whereas the ally principle does not—namely, that such revocations are unlikely to occur given that delegations are sticky, that is, can entrench a policy preference. In other words, delegators rely on the stickiness of subdelegations when they decide to subdelegate in advance of a partisan transition.

It is worth noting that the ally principle is not inconsistent with the expertise, efficiency, and credible-reasoning accounts. To be sure, the ally principle plays no direct role in these accounts. Irrespective of whether a principal and agent are ideological allies, the principal still can benefit from that the agents informational advantage, the efficiency gains from pushing decisions down the organizational chart, or agent's greater ability to credibly reason. Nonetheless, if one believes that agency appointees delegate to civil servants to further these goals, that assertion leads to a natural next question: why do appointees not take these goals to their logical conclusion and delegate *all* of their power to civil servants? The answer may be that appointees face an optimization problem: delegate for expertise, efficiency, or credible-reasoning goals, subject to the desire to reduce the risk of policy drift from subdelegation.¹² This risk of policy drift is correlated with the extent to which the principal's views and those of the agent diverge.

The ally principle plays a different role in the blame-avoidance account. In the weak version of this account, the principal does not care about the eventual

¹²Our emphasis on this tradeoff is consistent with theoretic work by Gailmard and Patty (2013), Stephenson (2007), and Dessein (2002), among others.

decisions that its agent makes, only that it is not blamed for those decisions. This buck-passing principal would be indifferent regarding its agent's views. A stronger version of the blame-avoidance account contends that the principal benefits from "bad" decisions from its agent, because the principal can then criticize those decisions to curry favor with its supporters (Fiorina, 1977). Thus, this even more cynical principal would be *more* likely to delegate to an oppositional agent, in contravention of the ally principle.

Entrenchment

Among the accounts presented above, we posit that entrenchment best explains intra-agency subdelegations from appointees to civil servants. The theory here is that appointees prefer in the short term to retain authority, but they also are aware that a future change in presidential administration will place that authority in the hands of their political opponents. Accordingly, appointees may view subdelegations to aligned civil servants as a second-best option given that such delegations are costly to reverse. In effect, they abnegate their own powers to prevent their political opponents from wielding these powers in the future.

Indeed, scholars observe that outgoing presidential administrations take steps to entrench their policies, including by "burrowing" appointed officials into civil-service positions (Levinson & Sachs, 2015; Mendelson, 2003). Presidential administrations do so to mitigate policy drift and make their policies more durable in the face of oppositional future administrations. Subdelegations offer such a strategy: the delegatee can make final agency decisions that align with the delegator in ways that are potentially costlier for a subsequent administration to reverse.

Subdelegations can increase the costs of later policy reversal in several respects. *First*, subdelegations that qualify as legislative rules are more likely to be deemed judicially enforceable through the *Accardi* doctrine—that is, the principle that an agency must abide by its own rules (United States ex rel. *Accardi v. Shaughnessy*, 1954; see also Merrill, 2006). Whether a subdelegation qualifies as a legislative rule can be unpredictable due to what is often described as the "hazy" nature of the tests involved (*Chisholm v. FCC*, 538 F.2d 349, 393 (D.C. Cir. 1976); *Am. Hosp. Ass'n v. Bowen*, 834 F.2d 1037, 1045 (D.C. Cir. 1987)),¹³ but publication in the Code of Federal Regulations can serve as a factor in deeming it legislative in nature (*American Mining Congress v. Mine Safety & Health Administration*, 995 F.2d 1106, 1112 (D.C. Cir. 1993); *Health*

¹³Some courts, for example, rely on the agency's own characterization, while others apply a more objective test examining the rule's practical impact, whether the agency invoked general rulemaking authority, whether an adequate legislative basis exists, and the extent to which there is an effective amendment of a previous legislative rule, among other factors. Still others ask whether the challenged rule creates new legal obligations instead of simply clarifying previous ones, or whether the agency intended the rule to be binding (Nou, 2019).



Insurance Association of America, Inc. v. Shalala, 23 F.3d 412, 423 (D.C. Cir. 1994)). Due to the *Accardi* doctrine, if a new administration attempts to reverse some decisions by delegates, it could face a lawsuit to keep the decision in place (Nou, 2019). Accordingly, *Accardi* helps to entrench subdelegations.

Second, transferring authority down the organization chart to civil servants can raise the information costs for new appointees to understand which actors exercise their agency's various powers. For instance, former SEC Commissioner Luis Aguilar advised new commissioners that "from time to time, you might read in a newspaper about a 'Commission action,' and ... have no idea what it is about" (Aguilar, 2015). That is because SEC civil servants can "take[] action pursuant to more than 376 separate rules where the Commission previously granted delegated authority to [them]" (id.). With relatively short time horizons and steep learning curves, some subsequent appointees may be unaware of the scope of subdelegated powers. Thus, the need for new appointees to marshal scarce resources to understand the scope and content of subdelegations contributes to their entrenchment.

Third, subdelegations can become politically entrenched. Given that government policies often create their own political constituencies, it is natural to expect decisions about who decides—essentially second-order policy decisions—to do so as well. Outside groups that perceive a benefit from a given delegatee acting as decision-maker could mobilize around an attempt to revoke the subdelegation (Levinson & Sachs, 2015; Magill, 2009; Posner & Vermeule, 2007). In addition, the delegates themselves also presumably would vigorously oppose a future attempt to claw back their authority (Kahneman & Tversky, 1979), and could pull "fire alarms" to notify allied lawmakers and others about the proposed changes (McCubbins & Schwartz, 1984). As an example of the role that outside groups can play in altering the political calculus of reversing a subdelegation, consider that Secretary of Health and Human Services Alex Azar published a memorandum in 2020 prohibiting FDA personnel from signing off on new rules and reserving that power to himself (Kaplan, 2020). An important nongovernmental organization and congressional subcommittee both criticized the measure (Lienhard, 2021; Select Subcommittee on the Coronavirus, 2021). Following a change in presidential administration, Secretary Azar's revocation was reversed (86 Fed. Reg. 49337).

Finally, where a subdelegation is published in the Federal Register, its revocation must be as well (5 U.S.C. § 552). Publication in the Federal Register requires time and effort. Lest one think these costs are trivial, note that the Federal Deposit Insurance Corporation (FDIC) opted two decades ago to no longer publish subdelegations in the Federal Register and instead post them on the agency's website in order "to provide the maximum amount of flexibility and efficiency" (67 Fed. Reg. 79246). In other words, the FDIC

perceived publication in the Federal Register to be a costly requirement that hindered its ability to alter its subdelegations with relative ease.

For these reasons, subdelegations allow appointees to burrow policymaking authority to ideologically aligned, tenure-protected civil servants situated downstream in the agency's organization chart. When appointees convey decision-making authority to aligned civil servants, they can entrench their preferences beyond their term in office. That statement does not imply that appointees require the recipients of subdelegated powers to be complete facsimiles of themselves. Appointees still run the risk that newly empowered civil servants will move policy away from their ideal points. This risk may be worth accepting for strategically minded appointees, however, because the alternative, that is, keeping the authority with the appointee, would empower *future* appointees from the opposition party. Accordingly, appointees may prefer to subdelegate powers to ideologically similar—albeit not identical—civil servants over whom they have limited control, instead of retaining those powers at the appointee level, where their ideological opponents can exercise the powers once they regain the White House.

RESEARCH DESIGN

Hypotheses

The entrenchment account generates three testable hypotheses. Evidence in support of these hypotheses would favor the view that appointees devolve power to civil servants to lock-in their policy preferences in the face of oppositional future appointees. Although this (notional) evidence would not disprove the other accounts, it would shift the burden when viewed in toto.

The entrenchment account presumes that political appointees are more (less) likely to delegate power when their preferences align with (diverge from) the potential delegatee. After all, subdelegating power to an ideological adversary would be antithetical to the goal of entrenching one's preferences. Instead, all else equal, the effectiveness of subdelegation as a strategy for policy entrenchment should increase as the ideological distance between delegator and delegatee decreases. When a conservative appointee oversees a relatively liberal civil-service workforce, one would expect to see fewer delegations. And the same goes for liberal appointees delegating to a relatively right-leaning bureaucracy. Thus,

Hypothesis 1. Greater ideological divergence between an agency head and the agency's civil servants is associated with a lower propensity to subdelegate authority to civil servants.

Hypothesis 1 evokes the ally principle; in a sense, the principle is a precondition for the entrenchment account.¹⁴

The entrenchment account also offers a prediction regarding the timing of subdelegations. Under this account, appointees subdelegate to prevent—or at least raise the costs to produce—policy reversals by subsequent appointees. That suggests that subdelegations will be most beneficial in the period leading up to a change in the political party controlling the White House. With a change in presidential personnel on the horizon, current appointees' desire to lock-in policies arguably is most acute. Therefore,

Hypothesis 2. Subdelegations are more likely to occur in the period between a presidential election and the inauguration of a President from an opposing party.

Finally, the entrenchment account predicts that for subdelegations to have any bite as means of entrenching policy preferences, revocations must be relatively unresponsive to changes in appointee and civil servant preference alignment. Because subdelegations are sticky, they serve as a means of embedding policy preferences into future administrations. In other words,

Hypothesis 3. Revocations of authority previously subdelegated to civil servants are not responsive to the degree of ideological divergence between an agency head and the agency's civil servants.

Data

Testing these hypotheses requires two new data sources: a corpus of subdelegations from appointees to civil servants and, for Hypotheses 1 and 3, a measure of the ideological divergence between these two groups within each agency. This section introduces these datasets.

Subdelegations

This research design calls for the collection of original data on recorded transfers of discretionary governmental authority from appointees to civil servants. We consider a subdelegation to grant discretion to the delegatee if that individual does not require the approval or review of the delegator in order to act.

¹⁴As explained *supra*, that principle is consistent not only with the entrenchment account, but also the expertise, efficiency, and credible reasoning accounts. Those accounts arguably see the ally principle as an implicit constraint: principals delegate to maximize expertise, efficiency, or credible reasoning, subject to an imperative to reduce the risk of policy drift from biased agents.

Examples of grants of discretionary governmental authority include the power to write rules, grant or deny waivers, levy fines, and settle litigation on behalf of the agency. By contrast, subdelegations concerning consultative or clerical functions—such as the powers to give advice to decision-makers, provide information to third parties, and represent the agency at an inter-agency working group—do not involve exercises of governmental authority and thus lie outside of our study.

Compiling this dataset involved three steps. *First*, we identified all Federal Register entries from June 14, 1979 through August 31, 2019 in which the word stems *delegat** and *authori** appear within the same paragraph. From examining many subdelegations, we recognized that these word stems appear within the same paragraph in all of the subdelegations that we viewed. For each subdelegation, we recorded the text of the subdelegation, its effective date, and the titles of the delegator and delegatee, among other information. Most of the Federal Register entries that we identified via this method contain multiple subdelegations. Accordingly, we included each discrete subdelegation as a separate entry in our dataset. This process yielded 5549 discrete subdelegations contained in 1389 Federal Register entries.

As a check on the validity of our data-compilation method, we compared the list of Securities & Exchange Commission (SEC) subdelegations that this method returned with the full list of SEC subdelegations, which, conveniently, is published consecutively in the Code of Federal Regulations (CFR). We found total overlap between the SEC subdelegations that our method returned and those that were added to the CFR between 1979 and 2019.

Second, to ensure that, per our definition of subdelegations, only conveyances of discretionary governmental authority would be included, we utilized a machine-classification approach. We began by hand-coding 1400 of these subdelegations, assessing whether each of them transfers discretion to exercise governmental authority. We then divided these entries into a training batch of 1200 subdelegations and a test batch with the remainder; ran myriad machine-learning classifiers on the training batch, and selected the classifier that achieved the highest F_1 score on the test batch.¹⁵ After running the classifier on the full set of subdelegations, we were left with 3358 subdelegations that involved grants of discretionary governmental authority.

Some of the subdelegations that we exclude are ministerial. For instance, in 2015 the Federal Energy Regulatory Commission (FERC) subdelegated to the

¹⁵Specifically, we ran classifiers with various preprocessing methods and classifier algorithms. Preprocessing methods that we considered included 3-grams and words, 3-grams, 4-grams, 5-grams, and English-language Lemmatization. We also used two classifier algorithms: Bayes and k-nearest neighbor. For all specifications, we converted the text to all lower-case characters, removed atypical characters and punctuation. The specification with the highest F_1 score preprocesses the text into 3-grams and employs a naïve Bayes classifier with a multinomial distribution. This specification correctly classified 95% of all subdelegations. The associated F_1 score is 0.78, with an average precision of 0.80 and average recall of 0.76. This F_1 score is comparable to the scores for other applications of machine-learning classifiers to legal text (see, e.g., Choi, 2020; Nou & Nyarko, 2022).



director of FERC's Office of Enforcement the authority to notify natural-gas market participants if their statutorily mandated annual reports "comply with applicable statutory requirements" or not (80 Fed. Reg. 81178-01). FERC refers to this function as involving "routine matters" that call for "a ministerial judgment by the office director concerning procedural matters" (*id.*). Other excluded subdelegations contemplate merely an internal support role for delegates. For instance, in 1982 the USDA's Assistant Secretary for Economics delegated to its staff director the authority to "analyze the economic policy implications" of USDA policy proposals (47 Fed. Reg. 27539-02). That role may provide the staff director with influence over these proposals, but it does not convey discretionary governmental authority. Appointees presumably could have requested the staff director's input without this subdelegation, and remain free to ignore that civil servant's views after this "authority" was assigned. These support or consultative subdelegations arguably convey even less authority than ministerial subdelegations do, because they do not even permit the delegatee to convene to or receive information from extra-agency actors.

Third, we narrowed our focus to conveyances from political appointees to civil servants. We coded delegators as appointees if their position is classified as such in the most recent edition of the Plum Book—a quadrennial government publication listing the appointment status of thousands of executive-branch leaders—published prior to the subdelegation. Specifically, we consider political appointments to be all positions listed in the Plum Book as presidential, non-career, limited-term, limited-emergency, or Schedule C appointments. We coded delegates as civil servants either if the Plum Book lists their position as a career appointment or if the position is not included in the Plum Book. This step returned a total of 1596 subdelegations of discretionary governmental authority from political appointees to civil servants during the 1979–2019 period.

These 1596 subdelegations exhibit remarkable variation. Thirty-eight executive departments, independent agencies, and other government entities are represented in our dataset at least once. The omitted agencies are as notable; 20 executive departments and major independent agencies did not publish any subdelegations in the Federal Register during the study period, as the Appendix details.

As discussed *supra*, agencies are not required to publish their internal assignments of power in any particular format—or even publish them at all. Assignments of authority arguably can be conveyed through verbal assurances or via norms. If one considers the set of subdelegations to include the immeasurable unpublished—or even unspoken—conventions concerning the allocation of power across agencies, then the project of identifying subdelegations becomes insoluble.

Therefore, collecting data on subdelegations from the Federal Register likely captures just the tip of the iceberg. These data are nevertheless valuable, however, despite being an undercount of the total number of subdelegations. For one, an agency's decision to formalize a transference in a rule likely signals that the agency views it as important. Rules can be public announcements that power relationships within an agency have changed. Written rules can also be binding.

As discussed above, the *Accardi* doctrine requires agencies to follow their own rules, including to be bound by lower-level officials' decisions made pursuant to subdelegated authority. Finally, recorded rules are sticky. Revocation typically occurs through the issuance of another rule, which requires time and resource costs. Beneficiaries of the rule may oppose its reversal, and the endowment effect may encourage interest groups to fight to keep it (Feinstein & Nou, 2023). Accordingly, although the Federal Register does not capture the full universe of subdelegations, there is substantial value in examining this subset.

Table 1 reports summary statistics concerning the number of subdelegations per agency-year reported in the Federal Register during the study period. Panel (a) presents these figures for all executive-branch agencies and major independent agencies. As this panel shows, the mean agency devolves approximately one power from appointees to civil servants per year. Revocations are exceedingly rare, with 0.007 rescissions of powers previously assigned to civil servants per agency-year. Panel (b) reports this information solely for those agencies with at least one subdelegation or revocation during the study period. Within the subset, we observe a mean of 1.651 subdelegations and 0.011 revocations per agency-year. The table also shows that the distributions of subdelegations and revocations are highly skewed, with a substantial majority of subdelegations occurring in the top decile of agency-years.

The Appendix provides additional information concerning these subdelegations, including the most frequent delegators and delegates and the most common topics of subdelegations.

Appointee and civil servant ideology data

Testing Hypotheses 1 and 3 requires a measure of the ideological distance between agency heads' preferences and those of civil servants.¹⁶ Feinstein and

¹⁶Note that both hypotheses consider the ideological distance between the agency head—rather than, say, the President—and civil servants in the agency. Most statutory authorities empower agency heads, not the President. Further, civil servants report to appointees (or other civil servants, who then report to appointees), not the White House.

Although the President appoints the heads of executive agencies in consultation with the Senate and can fire them without cause, there are good reasons to expect divergence between the President's views and those of her appointees. For one, the difficulties of the confirmation process, especially under divided government, may yield appointees whose preferences are not fully aligned with the President due to the compromises struck with Congress (McCarty, 2014). Once installed, agency heads are subject to influence by their entrenched staff (Neustadt, 1960; Spence, 1997). In a similar vein, a host of dynamic, exogenous factors—including pressure from congressional committees and interest groups—also may increase the prospect of disagreement between agency heads and the White House. In fact, empirical studies uncover evidence of preference divergence between these actors (Krause & O'Connell, 2019). Further, that presidents occasionally appoint opposition-party members to their cabinets provides prima facie evidence that appointees are not mere stand-ins for their appointing president's views. Consider, as an extreme example, that Norman Mineta served as a cabinet secretary in both the Clinton and George W. Bush administrations suggests that his views were not aligned with at least one president whom he served (McFadden, 2022).

TABLE 1 Summary statistics, subdelegations, and revocations.

| (a) All agencies | | | | | | |
|---|----------------------|----------------------|---------------|----------------------|----------------------|----------------------|
| | Mean (SD) | 10th Pctl | Median | 90th Pctl | 95th Pctl | 99th Pctl |
| Subdelegations per agency-year | 0.984 (6.953) | 0 | 0 | 1 | 4 | 17 |
| Revocations per agency-year | 0.007 (0.114) | 0 | 0 | 0 | 0 | 1 |
| Observations: 1613 agency-years | | | | | | |
| (b) Agencies with at least one subdelegation or revocation during the study period | | | | | | |
| | Mean (SD) | 10th Pctl | Median | 90th Pctl | 95th Pctl | 99th Pctl |
| Subdelegations per agency-year | 1.651 (8.949) | 0 | 0 | 3 | 9 | 24 |
| Revocations per agency-year | 0.011 (0.147) | 0 | 0 | 0 | 0 | 1 |
| Observations: 931 agency-years | | | | | | |

Wood (2022) generated dynamic preference estimates for agency heads and appointees in executive agencies and major independent agencies annually during a 36-year span.

These scores were derived from Adam Bonica's (2016) Database on Ideology, Money in Politics, and Elections (DIME). DIME compiles information from the Federal Elections Commission on over 130 million political contributions made by nearly 15 million donors from 1979 through 2014. It then employs an item response theory model to group individuals with similar patterns of political giving close together on a unidimensional scale. The resulting ideological scores—termed campaign-finance or “CF” scores—are normally distributed, with a mean score of zero and standard deviation of one (Bonica, 2014). Lower scores denote more liberal donors and recipients; higher scores indicate more conservative ones.¹⁷ The database includes dynamic ideological scores calculated separately for each biennial election cycle from 1979–1980 through 2013–2014.

To determine agency heads' scores, we start by identifying the head of each agency during each year. We obtain this information from datasets created by

¹⁷A growing number of legal scholars use CF scores and other spatial scores that estimate the ideological views of political or legal actors (Bonica et al., 2016, 2019; Chilton & Posner, 2015; Feinstein & Hemel, 2018; Wood & Spencer, 2016). CF scores have been validated based on (1) their close correlation, for those donors who serve in Congress, with ideal point estimates based on congressional roll-call votes, and (2) estimates based on respondents' answers to surveys concerning political issues (Bonica, 2019).

David Nixon (2005) and, separately, Krause and O’Connell (2015), which we supplement with original data collection. For agencies with more than one head during a single year, we identified the individual with the longer tenure during this span. We then locate that individual in DIME, using the name, location, occupation, and employer fields in the database. Once we have done so, we record each agency head’s CF score.

Next, we generate estimates of the ideologies of their agencies’ civil-service workforces. This process involved three steps. First, we identify every donor in DIME that lists a federal agency or subagency in the employer or occupation field. For instance, a DIME entry that mentions the Department of Agriculture, its abbreviation (USDA) or other commonly used names, or any of its subagencies—for example, the Farm Service Agency, Forest Service, and so forth—would be classified as a USDA employee. Second, because we intend on deriving *civil servants’* ideological scores, we eliminate all individuals holding appointed positions from this analysis.¹⁸ Third, we calculate the mean CF score for the remaining individuals. This score serves as our measure of the ideological orientation of civil servants at that agency.¹⁹

Once we have obtained ideological scores for agency heads and civil servants, we calculate the absolute value of the difference in scores between these two groups. That difference serves as a measure of the ideological gap between the agency head and civil service workforce within a given agency.

Figure 1 provides an example of what the agency head-civil service ideological gap looks like at one prominent agency, the USDA, which is also the agency with the most subdelegations over our study period. The circles in the figure denote the Secretary of Agriculture’s ideological score. Unsurprisingly, the Secretary is liberal during Democratic administrations—around -1 , or one standard deviation more liberal than the mean donor in the relevant election cycle—and conservative during Republican administrations, at around $+1$, or one standard deviation more conservative than the mean donor.

The diamonds in the figure represent the ideological score for the mean USDA civil servant. These scores tend to be closer to the average general-population donor than the secretaries’ scores. They also move more gradually than the secretaries’ score, which ping-pong between liberal and conservative

¹⁸Namely, we omit all individuals’ names that appear in our agency head list or in an appointed position in the most recently published Plum Book prior to that election cycle. We recognize that, because turnover among political appointees does not pause between printings of the Plum Book, this measure under-counts political appointees.

¹⁹That only a small minority of civil servants, like all Americans, donate counsels in favor of caution. That those civil servants that donate to political campaigns may differ politically from those that do not remains an open issue. Nonetheless, for the purposes of studying the differences in agency head *and* civil servant ideology *over time*, this donation-based measure represents an advance over past approaches, which either do not separately report appointees and civil servants scores or are time-invariant (see, e.g., Richardson, 2019 [static survey of SES members], Bonica et al., 2015 [scores for appointees], Chen & Johnson, 2015 [aggregate scores for agencies]; Clinton et al., 2012 [static survey of agency personnel], Clinton & Lewis, 2008 [static expert survey], Gilmour & Lewis, 2006; static score based on agency’s enacting coalition).

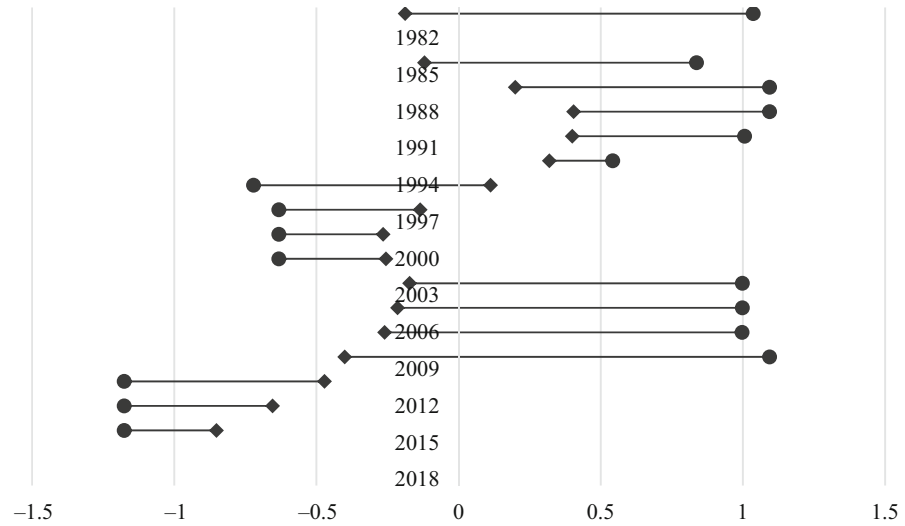


FIGURE 1 Ideological scores, Secretary of Agriculture and USDA civil servants.

with changes in presidential administration. Thus, civil servants can serve as a moderating force within agencies. Both of these features—civil servants that are more moderate than appointees and secular movement in civil servants’ ideological scores—are common across most agencies. Finally, the bars connecting these two marks show the size of the ideological gap between the Secretary and the USDA’s civil servants.

Table 2 reports summary statistics concerning our *Agency-Head Civil Servant Preference Divergence* measure, along with its two component parts: the agency head’s CF score and the mean CF score for civil servants in that agency and year.

Model

We test these hypotheses via zero-inflated negative binomial regression. Negative binomial models are appropriate for these over-dispersed event-count outcome variables: tallies of the number of discrete subdelegations and revocations measured at the agency-year level.²⁰

²⁰Delegations per agency-year have a mean of 0.98 and variance of 48.35. Further, likelihood ratio tests confirm that negative binomial models better fit the data than do Poisson models for all model specifications.

TABLE 2 Summary statistics, ideological positions of agency personnel.

| | Mean (SD) | 10th Pctl | Median | 90th Pctl |
|---|-------------------|--------------|--------|--------------|
| CF score for agency head | -0.027 (0.967) | -1.245 | -0.018 | 1.101 |
| CF score for agency's mean civil servant | -0.252 (0.544) | -0.956 | -0.265 | 0.422 |
| Agency head-civil servant preference divergence | 0.754 (0.546) | 0.116 | 0.647 | 1.544 |
| Observations = 1613 agency-years | | | | |

The fact that most agencies do not subdelegate new authorities or revoke existing subdelegations in most years may bias our estimates downwards. Zero-inflated models can correct for this potential bias. Assume that, among the many agency-years for which no new subdelegations are made, some of these agencies *sometimes* publish, or conceivable could publish, subdelegations, and others never do. The former type of agency-year observations has a positive probability of a count greater than zero; the latter type is labeled “excess zeros.”

To account for these two distinct reasons why a given observation could be coded as zero, zero-inflated models contain two processes. The first is a logistic regression model predicting whether to classify each observation as an excess zero; the second is an event-count model run only for those observations that are not excess zeros. For the first process, we use “regulatory restrictions imposed by the agency currently in effect” (McLaughlin & Sherouse, 2019) as the inflation variable predicting whether a given observation with the value of zero qualifies as an excess zero. The theory here is that agencies with very few regulations on the books are particularly unlikely to subdelegate.

Although zero-inflated negative binomial models are appropriate given the properties of these data,²¹ as robustness checks we also report results from two more common regression models: standard negative-binomial regression and OLS regression. The OLS model takes the following form:

$$Y_{at} = \beta^* \delta_{at} + \gamma_a + \gamma_t + \varepsilon_{at},$$

where Y_{at} is the outcome variable for agency a in year t , that is, the number of subdelegations to civil servants or revocations of subdelegations from them; δ_{at}

²¹Likelihood ratio tests comparing results from our preferred zero inflated negative binomial models with results from standard negative binomial models reveal that the former fit the data better than the latter.

is the preference divergence measure between the agency head and civil servants for that agency and year, γ_a denotes agency fixed effects; and γ_t denotes year fixed effects.

The agency fixed effects account for the fact that agencies have different regulatory turf and practices regarding delegations, and thus differing tendencies to devolve powers. Year fixed effects capture time-specific factors that could affect subdelegations activity, for example, the party controlling the White House, Senate, and House of Representatives.

Other model specifications include a *Time* running variable in place of year fixed effects. Feinstein and Nou (2023) report a decreasing flow of new subdelegations during the past several decades. This variable captures this time trend. (In unreported models, we substitute various polynomial transformations of *Time*.²² The results are materially identical.) Still other models include presidency fixed effects, based on the notion that different presidential administrations may exhibit differing propensities to subdelegate. A final set of models includes both year- and presidency-level fixed effects.²³

Both the negative binomial models and the second-stage of the zero-inflated negative binomial models include the same covariates as in the above OLS regression equation.

ANALYSIS

Having presented our hypotheses, data sources, and models, we now report regression results. The first subsection provides results from models regressing subdelegations activity on agency head-civil servant preference divergence. The second subsection shows results from models regressing revocations of existing subdelegations on preference divergence.

All subdelegations

To test the hypothesis that appointees are more likely to delegate power to civil servants when these two groups' preferences are aligned, we regress the number of subdelegations to civil servants per agency-year on our measure of ideological divergence between these actors.

²²Most notably, the fractional polynomial regression function in Stata reveals that a cubic polynomial best models this time trend.

²³Because the presidency-level fixed effects and the various measures of time vary collinearly, the coefficient estimates for the presidency fixed effects in models that do not include a time variable, and vice versa, may be biased.

Table 3a reports the results of a series of zero-inflated negative binomial regression models. As described *supra*, each of the models includes a different combination of time, agency, and presidency variables. Panel (b) reports results from negative binomial models, with the same variations in model specifications as before. Panel (c) repeats the analysis with OLS models.

The table provides consistent support for the hypothesis that divergence between agency heads and civil servants is associated with fewer appointee-to-civil servant subdelegations. The coefficient for *Political Divergence* is negatively-signed and achieves conventionally accepted levels of statistical significance across all 18 model specifications.

Interpreting the substantive size of the association between these actors' ideological divergence and subdelegations activity is not intuitive. Accordingly, we generate simulated first differences for Model (1) in Table 3c.

Table 4 reports that moving from an agency in the 25th percentile for *Political Divergence* to one in the 75th percentile—that is, from an agency in which appointees and civil servants are relatively more aligned to one in which they are relatively less aligned—is associated with 1.46 fewer subdelegations from appointees to civil servants per year. The table also reports the mean change in subdelegations when one shifts from the 25th to 75th percentile for *Political Divergence* at the three agencies with the most subdelegations in our dataset.²⁴ The differences reported in the table are substantial. To put them in perspective, consider that the mean number of subdelegations per agency-year is 0.98 and the median is zero.

Lame-duck subdelegations

Next, we test Hypothesis 2: that subdelegations are more likely to occur in the lame-duck period between a presidential election and the inauguration of a new president from an opposing political party. The reasoning here, consistent with the entrenchment account, is that appointees will be most highly motivated to entrench their preferences in the period immediately preceding a partisan change in administration.²⁵

Tweaking the previous models, the unit of analysis is the number of new subdelegations by a given agency in a given month (rather than agency-years, as above). The explanatory variable of interest is whether the month is situated

²⁴Quantities of interest estimated by running 1000 simulations in CLARIFY using a negative binomial model (Tomz et al., 2003).

²⁵In alternative model specifications, we focus on *all* lame-duck periods between presidential administrations, not just those that involve a partisan transitions. In practice, this change simply re-codes the Reagan-to-Bush 41 transition, as all other presidential transitions during the study period involved a change in party control. The reported results are robust to this alternative specification.

TABLE 3 Preference divergence and delegations to civil servants.

| (a) Zero-inflated negative binomial models | | | | | | |
|---|-----------------------|-----------------------|------------------------|-----------------------|-----------------------|-----------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political divergence | -1.115** (0.417) | -1.293*** (0.354) | -1.383** (0.401) | -1.428*** (0.320) | -1.113*** (0.301) | -1.383** (0.401) |
| Time | | -0.520** (0.016) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| Num. of restrictions (inflation variable) | -0.001*** (0.0002) | -0.001*** (0.0002) | -0.0001*** (0.0002) | -0.001*** (0.0002) | -0.001*** (0.0003) | -0.001*** (0.0002) |
| Inflation variable: number of regulatory restrictions in effect. Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1373. | | | | | | |
| (b) Negative binomial models | | | | | | |
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political divergence | -1.599*** (0.401) | -1.740*** (0.350) | -1.798*** (0.369) | -1.880*** (0.329) | -1.766*** (0.395) | -1.798*** (0.369) |
| Time | | -0.061*** (0.015) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| Pseudo R ² | 0.26 | 0.27 | 0.30 | 0.27 | 0.24 | 0.30 |
| Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1613. | | | | | | |

TABLE 3 (Continued)

| (c) OLS models | (1) | (2) | (3) | (4) | (5) | (6) |
|----------------------|----------------------|--------------------------------|--------------------|--------------------|--------------------|----------------------|
| Political divergence | -0.548* (0.211) | -0.730* (0.294) | -0.755* (0.287) | -0.752* (0.307) | -0.609* (0.240) | -0.755*** (0.287) |
| Time | -0.042*** (0.015) | -0.225 [†] (0.116) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| R ² | 0.12 | 0.12 | 0.14 | 0.12 | 0.11 | 0.14 |

Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1613.

***Signifies $p < 0.001$; ** $p < 0.01$; * $p < 0.05$; [†] $p < 0.10$.

TABLE 4 Simulated first differences.

| Moving from the 25th to the 75th percentile for political divergence is associated with a mean change in subdelegations per agency-year of ... | | | |
|--|--------|-------|------------------|
| Agency | Mean | SE | 95% CI |
| All Agencies | -1.463 | 0.727 | (-3.316, -0.495) |
| Agriculture | -1.434 | 0.707 | (-3.327, -0.515) |
| Health & Human Services | -1.419 | 0.700 | (-3.301, -0.443) |
| Transportation | -1.369 | 0.646 | (-2.923, -0.494) |

within one of these lame duck periods, which we define as the last 3 months of a presidency.²⁶ Table 5 reports the results. As before, the table is divided into three panels, employing (a) zero-inflated negative binomial, (b) negative binomial, and (c) OLS models. The explanatory variable of interest is *Last Three Months of Presidency*. All models contain agency fixed effects, and vary in their inclusion of political divergence, time, and presidency fixed effects. Table 5 reports the results.

The evidence for Hypothesis 2 is mixed. As the table shows, the coefficient estimates for *Last Three Months of Presidency* are positive across-the-board. These estimates, however, only achieve statistical significance at the $p < 0.05$ level in 10 out of 18 model specifications, with another two models meeting the $p < 0.10$ threshold.

Finally, we consider two alternative explanations for these results. *First*, it is possible that lame-duck *Congresses*, rather than lame-duck presidential administrations, drive these results. With lawmakers possessing limited time and attention during the waning months of a 2-year Congress, appointees may believe that decisions made during this period fly under-the-radar. Because subdelegations typically involve a reassignment of authority that Congress vested in a high-level appointee, decisions to subdelegate understandably may attract the attention of congressional overseers. To avoid this scrutiny, appointees may concentrate subdelegations during the period between a congressional election in November and the seating of a new Congress in early January. Because every lame-duck presidential administration roughly corresponds to a lame-duck Congress,²⁷ failure to account for lame-duck Congresses may introduce omitted variable bias.

To assess this possibility, we add a new covariate: whether the observation falls within the lame-duck period between a congressional election and the seating

²⁶This definition draws on an empirical literature that either defines “midnight” rules as rules issued in the final 3 months of a presidential administration or focuses on differences in rulemaking behavior during this three-month period (Beermann, 2013; O’Connell, 2008; O’Connell, 2011; Potter & Shipan, 2019; Yackee & Yackee, 2009). Our last-3-months definition also overlaps substantially with the November 1 through January 20 period in Stiglitz (2014).

²⁷Because new Congresses are seated in early January but presidential inaugurations occur on January 20 or 21, the correspondence is approximate.

of the new Congress. The results of these models are reported in Appendix Table B1. As this table shows, the inclusion of this new covariate does not materially change the direction, size, or statistical significance of the coefficient estimates for *Last Three Months of Presidency* and *Political Divergence* reported in Table 5.

Second, we consider the possibility that subdelegations are more common at the end of 4-year presidential terms *in general*, including the final months of the first term of a president who has been reelected (and thus is not a lame duck in the sense that we use the term above). To assess this possibility, we replace *Last Three Months of Presidency*, with a dummy variable for whether the observation occurs during the period between an incumbent first-term president's reelection and her second inauguration: *Last Three Months of Reelected President's First Term*.²⁸

This analysis is essentially a placebo test. Per Hypothesis 2, we expect to see increased subdelegations only in the period between a presidential election and inauguration of a *new* president of an opposing party. The entrenchment account offers no explanation for a notional finding of increased subdelegations during this period for first-term presidents who are reelected to a second term. In these instances, appointees should expect policy continuity in the second term, and thus would have no heightened reason to subdelegate in this period. Accordingly, we expect that—whereas the coefficient estimate for *Last Three Months of Presidency* is positive—the estimate for *Last Three Months of Reelected President's First Term* should not be.

Appendix Table B2 reports the results. As expected, we do not observe greater subdelegations in agency-months during the last 3 months of a reelected president's first term. Instead, Table B2 reports a *negative* relationship. In most models, the coefficient estimates for *Last Three Months of Reelected President's First Term* are negative, large, and statistically significant. In other words, we observe far fewer subdelegations in the last quarter of the first terms of Presidents Reagan, Clinton, Bush 43, and Obama than during other times, controlling for other factors. One possible explanation for this strongly negative correlation is that, with more than 4 years to go in these administrations, administration officials know that they will hold the reins for a long time, and thus the benefits of entrenching their views via subdelegations to civil servants are at their nadir.

Revocations

In order for subdelegations to serve as an effective means of entrenching an appointee's preferences, those subdelegations must be sticky. In other words, the existing stock of subdelegated powers to some extent must be unresponsive to current appointee-civil servant dynamics. In fact, revocations are relatively rare.

²⁸During our study period, that variable corresponds to the final 3 months of the first terms in office for Presidents Reagan, Clinton, Bush 43, and Obama.

TABLE 5 Delegations to civil servants during lame duck periods.

| (a) Zero-inflated negative binomial models | | | | | | | | |
|---|-------------------------------|------------------------|------------------------|-----------------------|----------------------|----------------------|----------------------|-----------------------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Last 3 months of presidency | 1.013 [†] (0.546) | 1.552 (1.068) | 1.714* (0.708) | 2.568* (1.088) | 1.162* (0.572) | 1.196 (0.805) | 2.019** (0.697) | 2.325** (0.836) |
| Political divergence | - | - | -1.821*** (0.364) | -2.384*** (0.540) | - | - | -2.307*** (0.427) | -2.318*** (0.482) |
| Time | - | - | - | - | -0.068** (0.022) | -0.161 (0.106) | -0.078** (0.024) | -0.157* (0.067) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| Num. of restrictions (inflation var.) | -0.0001** (0.00004) | -0.0001** (0.00006) | -0.0001** (0.00004) | -0.00008 (0.00006) | 0.00007 (0.00006) | 0.00007 (0.00005) | 0.00007 (0.00006) | -0.0001 [†] (0.00007) |

Inflation variable: number of regulatory restrictions in effect. Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7452.

| (b) Negative binomial models | | | | | | | | |
|-------------------------------------|-------------------------------|------------------|----------------------|----------------------|---------------------|-------------------|----------------------|----------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Last 3 months of presidency | 1.023 [†] (0.526) | 1.553 (1.066) | 1.787* (0.730) | 2.689* (1.068) | 1.250* (0.572) | 1.318 (0.805) | 2.130** (0.709) | 2.432** (0.802) |
| Political divergence | - | - | -1.831*** (0.360) | -2.470*** (0.573) | - | - | -2.353*** (0.463) | -2.432*** (0.495) |
| Time | - | - | - | - | -0.066** (0.020) | -0.144 (0.103) | -0.076*** (0.021) | -0.154* (0.067) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| Pseudo R ² | 0.16 | 0.18 | 0.17 | 0.19 | 0.18 | 0.18 | 0.19 | 0.20 |

Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7872.

(c) OLS models

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|-----------------------------|------------------|------------------|--------------------------------|-------------------|--------------------------------|-------------------|--------------------------------|-------------------|
| Last 3 months of presidency | 0.472 (0.448) | 0.470 (0.441) | 0.487 (0.452) | 0.515 (0.449) | 0.473 (0.448) | 0.529 (0.468) | 0.487 (0.452) | 0.610 (0.491) |
| Political divergence | - | - | -0.088 [†] (0.049) | -0.130 (0.077) | - | - | -0.084 [†] (0.048) | -0.185 (0.107) |
| Time | - | - | - | - | -0.006 [†] (0.003) | -0.030 (0.021) | -0.006 [†] (0.003) | -0.039 (0.025) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| R ² | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 |

Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7872.

***Signifies $p < 0.001$; ** $p < 0.01$; * $p < 0.05$; [†] $p < 0.10$.

The Federal Register contains one revocation of authority previously granted to civil servants for roughly every 33 new subdelegations. That is a point in favor of the entrenchment account. To further assess this account, we test Hypothesis 3: that revocations of authority previously subdelegated to civil servants are not responsive to the degree of ideological divergence between an agency head and the agency's civil servants.

Table 6 reports the results.

The table reports null results across-the-board, with standard errors dwarfing the associated coefficient estimates in most models. We caution that this lack of evidence of a relationship between appointee-civil servant preference dynamics and revocations does not *prove* that such a relationship does not exist. In other words, these are null results, not precise zeros. Nonetheless, these results counsel in favor of Hypothesis 3; revocations do not appear responsive to appointee-civil servant preference dynamics.

Additional tests

This section describes two additional sets of tests. *First*, we re-run all of the above analyses on the subset of our data in which the delegator is the agency head, that is, the department's secretary or the collective board of a multi-member body. We do so to address a limitation of our research design: whereas a wide range of appointees act as delegators, our measure of preference divergence uses the agency head's preferences as a proxy for all political appointees that subdelegate power in a given agency. As Appendix Table A1 reports, the most frequent delegator in our dataset is the Commissioner of the Food & Drug Administration (FDA), a sub-agency nested within the Department of Health & Human Services (HHS). Overall, sub-agency-head appointees like the FDA Commissioner account for 40.4% of the included subdelegations. Our agency-level analysis, however, seeks to use the ideological preferences of agency heads, like the HHS Secretary, to model subdelegations by lower-level appointees, like the FDA Commissioner. To the extent that, in this example, the FDA Commissioner and HHS Secretary's views diverge, this modeling choice would bias our results.

To address this concern, we re-run all analyses on the subset of our subdelegations data for which the delegator is an agency head. The results, which are reported in Appendix C, are consistent with those reported above concerning all appointee delegators.²⁹

²⁹The only material difference is that for the revocations analysis, 3 of the 18 model specifications are positive and statistically significant when the analysis is restricted to agency-head delegators, versus null results for all 18 specifications when the analysis includes all appointee delegators. By contrast, all of the subdelegations and lame-duck period analyses produce substantially similar levels of statistical significance across all model specifications. In light of these similarities, the fact that 3 of 18 revocations models generate different results for agency-head delegators versus the results for all appointee delegators should not lead one to meaningfully adjust one's priors.

TABLE 6 Preference divergence and revocations from civil servants.

| (a) Zero-inflated negative binomial models | | | | | | |
|---|--|--|--|--|--|---|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political divergence | 0.556 (1.016) | 2.058 (1.363) | 0.322 (2.533) | 0.173 (0.890) | 6.375 (1.000) | 0.322 (2.533) |
| Time | -0.028 (0.056) | 0.190 (0.110) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| Num. of restrictions (inflation variable) | 8.8×10^{-6} (8.5×10^{-6}) | 5.7×10^{-6} (6.3×10^{-6}) | 1.5×10^{-5} (9.8×10^{-6}) | 9.8×10^{-6} (7.0×10^{-6}) | 1.1×10^{-5} (9.9×10^{-6}) | -1.5×10^{-5} (9.8×10^{-6}) |
| Model: Zero-inflated negative binomial. Inflation variable: number of regulatory restrictions in effect. Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1373. | | | | | | |
| (b) Negative binomial models | | | | | | |
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political divergence | 0.559 (0.877) | 0.201 (0.611) | -0.178 (0.768) | 0.186 (0.619) | 0.608 (0.772) | -0.178 (0.768) |
| Time | -0.038 (0.037) | 0.040 (0.135) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| Pseudo R^2 | 0.32 | 0.35 | 0.52 | 0.35 | 0.31 | 0.52 |
| Model: Negative binomial. Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1613. | | | | | | |

TABLE 6 (Continued)

| (c) OLS models | (1) | (2) | (3) | (4) | (5) | (6) |
|----------------------|---------------------|-------------------|------------------|------------------|------------------|-------------------|
| Political divergence | 0.002 (0.005) | 0.0001 (0.005) | 0.001 (0.005) | 0.001 (0.005) | 0.001 (0.006) | 0.0006 (0.005) |
| Time | -0.0005 (0.0004) | 0.001 (0.003) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| R ² | 0.05 | 0.05 | 0.07 | 0.05 | 0.04 | 0.07 |

Model: OLS. Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1613.

***Signifies $p < 0.001$; ** $p < 0.01$; * $p < 0.05$; † $p < 0.10$.

Second, we re-run the above models on the previously excluded subdelegations. The preceding analyses focused exclusively on those subdelegations that, in our view, assign discretionary governmental authority to a civil servant. Recall that this definition excludes subdelegations of ministerial or clerical functions; authorizations to provide advice or information; and other conveyances that, again in our view, stretch the term “discretionary governmental authority” past its breaking point.

These exclusions by necessity involve subjective judgments and thus reasonably can be contested. For instance, ministerial functions—like the earlier example of FERC’s subdelegation of the power to inform regulated parties if their submitted annual reports comply with the statute—conceivably could provide some decisional authority. In that example, the delegatee may be faced with some ambiguity in whether a required element of an annual report is met, and thus conceivably could have discretion to decide. More generally, the very fact that agency personnel consider a subdelegation to be important enough to formalize in writing and publish in the Federal Register arguably implies that these officials do not consider the matter to be trivial.

To address this concern, we re-run the analyses concerning subdelegations, lame-duck subdelegations, and revocations on the set of subdelegations that we identified as *not* transferring discretion to exercise governmental authority. The results are reported in Tables D1–D3 in Appendix D.

These results are similar to the main results reported above concerning the subdelegations and revocations analyses. Concerning lame-duck subdelegations, although the coefficient estimates for the dummy variable identifying whether an observation occurred during the final 3 months of a presidency are positively signed, they are smaller in size than the estimates in the main analysis. They also achieve conventionally accepted levels of statistical significance in fewer models. Perhaps these more tepid results in lame-duck periods concerning subdelegations that we classify as low-value are attributable to appointees’ prioritization of more consequential subdelegations in these final months of their administration.

DISCUSSION

To review, our analysis produces three basic findings: (1) a statistically significant correlation between agency head-civil servant divergence and new subdelegations; (2) a heightened propensity for agency heads to subdelegate in lame-duck periods before a partisan transition; and (3) null results concerning divergence and revocations.

This section highlights several potential implications of these findings. It begins with a discussion of how this particular combination of results is most consistent with the entrenchment account. We then connect our claim that appointees utilize subdelegations to embed their views into agencies with other

well-studied uses of personnel law and practices to facilitate appointees' control. Next, we note that our findings complicate the conventional account of appointees and civil servants as rivals within agencies. The section concludes with a discussion of limitations of our analysis.

Weighing the evidence

Taken together, these findings support the entrenchment account. *First*, agency head-civil service preference divergence is positively correlated with subdelegations activity. This connection is present in all model specifications at conventionally accepted levels of statistical significance. This finding is consistent with our claim that agency heads strategically transfer discretionary governmental authority to their ideological allies in the civil service.

Second, most models show that subdelegations are more likely to occur in the lame-duck period between presidential elections and inaugurations involving opposing parties. Again, this finding supports the entrenchment account. If agency heads utilize subdelegations as a means to entrench their views in the face of expected challenges from their successors, then it follows that they will find subdelegations to be most useful immediately prior to their administration's conclusion. That the coefficient estimates in some models fall short of conventionally accepted levels of statistical significance, however, tempers this conclusion.

Third, tests of any connection between agency head-civil service preference divergence and revocations yield null results. That we do not find evidence of a connection at least suggests that revocations may be unresponsive to the degree of ideological distance between agency heads and civil servants. Although intra-agency political dynamics are correlated with agency heads' initial choice to delegate, they do not appear to affect revocation decisions. That differential influence of political dynamics on subdelegations and revocations is consistent with the claim that revoking subdelegations is difficult, making them an attractive way for agency heads to entrench their preferences.

To be sure, many of these findings are not inconsistent with other accounts of subdelegation. Most notably, that subdelegations are less likely when the agency head and civil servants have divergent preferences does not conflict with the expertise, efficiency, or credible-reasoning accounts. Agency heads could subdelegate to pursue these goals, subject to the level of preference divergence between themselves and civil servants.

When taken as a whole, however, the findings regarding new subdelegations, subdelegations during lame-duck periods, and revocations support the entrenchment account more than these alternatives. For one, our finding that subdelegations activity is heightened during the lame-duck period—both in absolute terms and when controlling for other relevant covariates in a regression framework—is consistent only with this account, and not its alternatives.

Further, only the entrenchment account offers an explanation for why preference divergence would matter for new subdelegations activity but not for revocations of existing subdelegations. If conveyances of power to civil servants were costless to reverse, then they would not be a rational strategy for appointees. Specifically, if a successor appointee could easily revoke a subdelegation, then there arguably would be little strategic upside for an appointee to tie her hands by subdelegating to civil servants during her tenure, only to see her successor retake the power. Thus, that we observe behavior consistent with appointees' strategic behavior concerning subdelegations but not concerning revocations may be because extant subdelegations are costly to reverse—which is the very reason why savvy appointees use them.

Using personnel for policy entrenchment

The shopworn adage “personnel is policy” is well-known among legal scholars and social scientists (see, e.g., Allen, 2021, Feinstein & Henderson, 2021, Sitaraman, 2020, Moynihan & Roberts, 2010, Lewis, 2008).³⁰ This article shows that the phrase may be the rare cliché that applies even more broadly than its users assume. Our analysis shows how appointees can strategically utilize civil-service personnel to further their policy goals. Specifically, subdelegations enable appointees to exploit civil-service protections to embed their preferences deep into agencies, allowing appointees' views to endure after their tenures in office end.

As such, subdelegations represent one of several strategies for appointees to utilize the legal infrastructure concerning agency personnel to their advantage. The closest analogue is the practice of burrowing appointed officials into civil-service positions in the waning months of an outgoing presidential administration (Mendelson, 2003). Another technique is altering the mix of appointment types—strategically nominating some individuals to Senate-confirmed positions, placing acting officials in other positions, and leaving still other positions vacant—based on how these decisions will affect policy (Kinane, 2021; Noll, 2022; O'Connell, 2020). Indeed, the use of acting officials and subdelegations can be substitute strategies (O'Connell, 2020). Presidential administrations also utilize hiring freezes, early-retirement incentives, and relocations to weaken the civil service at disfavored agencies (Freeman & Jacobs, 2021). Finally, they strategically appoint allies to agency advisory committees to provide a check on civil servants' work, perhaps preventing them from straying too far from appointees' preferences (Feinstein & Hemel, 2020).

³⁰Strikingly, every usage of this term in the governance context that is known to us refers to appointees, not civil servants. We base this claim on our survey of Westlaw and Google Scholar.

Almost all of these techniques focus either on empowering current appointees—for example, burrowing, the strategic use of acting officials, and the like—or on disempowering civil servants, for instance, via hiring freezes, relocations, or elevating advisory committees to check their work. This article shows that a strategy that *amplifies* civil servants' power also belongs in the mix. Like these practices, subdelegations enable appointees to utilize an aspect of personnel law—here, the legal protections that civil servants possess—to project their views into future administrations. By empowering likeminded civil servants, whom subsequent appointees find it difficult to remove or divest of power, appointees can help ensure that their views are represented in the agency after their own departure date.

Internal separation of parties, not powers

Our findings also complicate a prevailing view of intra-agency dynamics. Appointees and civil servants are not necessarily rivals for power within an intra-agency separation-of-powers system. To the contrary, appointees regularly empower civil servants with authority that is often final in practice. Simply put, that political appointees knowingly cede power to civil servants is not how rivals behave. Instead, this behavior implies a relationship involving, at least at times and concerning this one facet, partnership as well as rivalry.

To elaborate on this point, we import a concept from scholarship on the inter-branch separation-of-powers. Levinson and Pildes (2006) argue that the Madisonian assumption of competition between Congress and the President, based on a perceived rivalry between the political branches, persists during divided party control of the branches and breaks down under periods of unified party control. Accordingly, the “enduring institutional form of democratic political competition has turned out to be not branches but political parties” (id.).

So too with intra-agency competition. Appointees and civil servants may behave more like rivals when the two groups hold oppositional political positions, but when their views are more aligned, we see greater voluntary conveyances of power from the former to the latter. That subdelegations are more likely to occur when appointees and civil servants are ideologically aligned suggests that, to some extent, the intra-agency dynamics—like inter-branch relations in Levinson and Pildes' account—is to an extent one of parties, not powers.

Our more nuanced conception of intra-agency dynamics—in which appointees and civil servants may be rivals at times, but also can operate as strategic partners—is consistent with emerging qualitative research on agencies. Most notably, Bernstein and Rodríguez (2023) conduct semi-structured interviews with over three dozen appointees and career officials at 11 agencies. They report that, for the most part, agency decision-making “involve[s] neither centralized command nor oppositional derailing.” Instead, they conclude, “the theme that

emerged was interdependence” (id.; see also Rodríguez, 2021). Our strategic-entrenchment account of subdelegations suggests a similar theme of interdependence.

Limitations and extensions

This article’s empirical analysis was designed to test the entrenchment account. Because the findings are consistent with this account and not necessarily with others, we can conclude only that policy entrenchment appears to be *one* reason why agency heads subdelegate. In other words, the entrenchment account is part of the story, but may not be the end of it. Other possible reasons for subdelegating—namely, expertise, efficiency, credible reasoning, or blame avoidance—also may be in play. We do not directly test these accounts. For instance, the expertise account does not offer predictions regarding the relationship between appointee-civil servant preference divergence and subdelegations or revocations; neither does it address how subdelegations activity will change during president lame-duck periods. Accordingly, we cannot reject any of these alternative accounts or offer a relative weighting of the factors that may bear on agency heads’ decisions to subdelegate. The most we can say is that the entrenchment account is part of the mix.

Ideally, future research would test these alternative theories to weigh the relative importance of each account in explaining subdelegations. The operationalization and measurement challenges in such a project would be formidable. One approach would be to generate a measure of various agencies’ relative expertise and related characteristics based on a survey of insiders. For instance, Richardson et al. (2018) survey a subset of federal workers to ask them to rank “how skilled are the workforces” of various agencies. One could envision similar questions concerning agencies’ relative prioritization of capacity-building, emphasis on credible reasoning, and appointees’ propensity to blame-shift. A survey of knowledgeable outsiders, similar to Clinton and Lewis’s (2008) survey of professors, journalists and think-tank scholars concerning agencies’ relative ideological leanings, offers a similar approach. Alternatively, several extant measures, perhaps in combination, could serve as a proxy for some of these concepts. For instance, the Bush administration developed a set of metrics, termed Program Assessment Rating Tool (PART) scores, to evaluate the performance of disparate federal programs (Lewis, 2007).

The level of aggregation of this article’s research design presents another limitation. For one, we estimate for each agency the mean ideal point estimate for *all* of that agency’s civil servants who are included in DIME. Given that only a fraction of civil servants exercise subdelegated powers, that pool is overinclusive (Feinstein & Wood, 2022). The ideal measure would involve determining the

political views of the specific delegatee, or, for subdelegations to offices, the civil servants working in those offices. This could perhaps be accomplished by using DIME for the subset of delegates that make political donations or by the party affiliation listed on voter rolls.³¹

Relatedly, our use of the agency head's preferences in constructing the agency head-civil servant preference divergence measure assumes that it is the agency head—rather than, say, a lower-level appointee—whose views matter in deciding whether to subdelegate. That assumption is contestable, particularly in large agencies (like HHS) where a sub-agency leader (like the FDA Commissioner) or a subordinate appointee presumably is more involved in these decisions than the agency head (in this example, the HHS Secretary). As discussed *supra*, our results are robust to model specifications that include only subdelegations for which this critique does not apply: those for which an agency head is the delegator. Future work could go further, by identifying the ideological preferences of each specific appointee delegator, rather than using the preferences of the agency head as a proxy or limiting the analysis to subdelegations directly from agency heads, as in our analysis.

Finally, this research design assumes that two elements—expectations about future appointees' preferences and the costs of undoing subdelegations—are static. Both assumptions are subject to challenge. First, the imperative to shield policy from future oppositional appointees is foundational to the entrenchment account. This threat is presumed to be stable, but in reality is likely to vary based on (i) the time until the next presidential election, (ii) the expected winner of that election, and (iii) the expected policy preferences of the expected winner's administration. For instance, a political appointee may continually update her likelihood of being replaced after the next election as polls change and the election date approaches. We do not model the presumably dynamic nature of these expectations.

Second, our account rests on the assumption that subdelegations are costly to reverse. Recall that we justify this assumption based on four features: (1) subdelegations that qualify as legislative rules are likely to be judicially enforceable under the *Accardi* doctrine; (2) new appointees face information costs in identifying which actors exercise their agency's various powers; (3) political constituencies can develop around maintaining subdelegations; and (4) revocation requires publication in the Federal Register. The extent to which each of these

³¹Two jurisdictions in which many civil servants reside, Maryland and the District of Columbia, allow access to voters' party affiliations (National Conference of State Legislatures, 2023).

Another potential solution could be to limit the pool to those agency agencies that list a managerial role in the "occupation" field of the FEC donation reports from which DIME draws. A limitation on this idea, however, is that a substantial portion of government-employed political donors either leave this field blank or do not provide useable information, writing, for example, "EPA employee."

features is present, however, may vary by subdelegation. Thus, the degree to which the entrenchment account applies may similarly vary.³²

CONCLUSION

The Federal Register records nearly 1600 subdelegations of discretionary governmental authority from appointees to civil servants during the past 40 years. This article considered why appointees would empower subordinates, over whom they have limited control, with these substantial powers rather than use civil servants as advisers and retain final decision-making authority themselves.

To address this question, we developed an entrenchment-centered theory of subdelegation: that strategically minded appointees exhibit a greater propensity to subdelegate when their political views are more closely aligned with those of their agency's civil-service workforce. In so doing, appointees empower allies who possess civil-service employment protections. Thus, appointees can utilize subdelegations as a means of entrenching their preferences, increasing the likelihood that they will endure even in the face of an oppositional future presidential administration and its appointees.

We tested this theory using newly collected subdelegations data from the Federal Register and ideal-point estimates for agency heads and civil servants across agencies and time. All model specifications reported a negative and statistically significant association between subdelegations activity and political divergence between these two groups. We also found that subdelegations are most likely to occur in the lame-duck periods at the ends of presidential administrations before partisan transitions, controlling for other factors. These findings suggest that appointees subdelegate in part to entrench their preferences against changes by future appointees.

Our results concerning revocations of existing subdelegations buttress the strategic-subdelegation account. For one, that there are far fewer revocations of existing subdelegations than publication of new ones suggests that subdelegations may be sticky. Relatedly, the finding that, unlike for new subdelegations, revocations of existing subdelegations do not appear to be connected to agency head-civil servant preference convergence further suggests that revocations may be more difficult than new subdelegations for strategic appointees to exploit.

³²Going further, expectations about policy under a future agency head and the cost of revocation could interact. If the costs are high, then the current agency head could confidently subdelegate to a civil servant as close to the agency head's ideal point as possible. If the costs are low, then the agency head may instead find it advantageous to subdelegate closer to the future agency head's ideal point, on the theory that the future agency may consider the delegatee's position to be close enough to her own, and thus not worth expending effort to revoke it. For the current agency head, empowering a delegatee that is even slightly closer than her successor agency head's ideal point is preferable to the power being transferred to her successor. We thank an anonymous referee for this point.

Taken together, these findings support the entrenchment account. We caution, however, that the results indicate merely that this account captures some of the variation in subdelegations activity that is not consistent with the other leading accounts. We do not claim that our account tells the whole story.

Finally, our findings should continue to encourage scholars to better understand the interdependence of political appointees and civil servants. These two groups are neither simple rivals nor mere principals and slavish agents. As part of this nuanced portrait, our findings suggest that appointees strategically subdelegate authority, but many important questions remain about why and how. A better understanding would provide much needed information to shape ongoing policy debates about the character of the bureaucracy. At a time when the fate of the civil service is often questioned, a better understanding of internal agency dynamics is more important now than ever.

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DATA AVAILABILITY STATEMENT

Data necessary to replicate the results of this article are available upon request from the corresponding author.

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APPENDIX A

DESCRIPTIVE OVERVIEW

This appendix provides descriptive information, gleaned from our new dataset, on transfers of discretionary governmental authority from appointees to civil servants. Specifically, it reports the agencies that subdelegate most frequently; the identities of the delegators and delegates that appear most often in the dataset; common themes regarding the content of these subdelegations; and partisan trends in subdelegations.

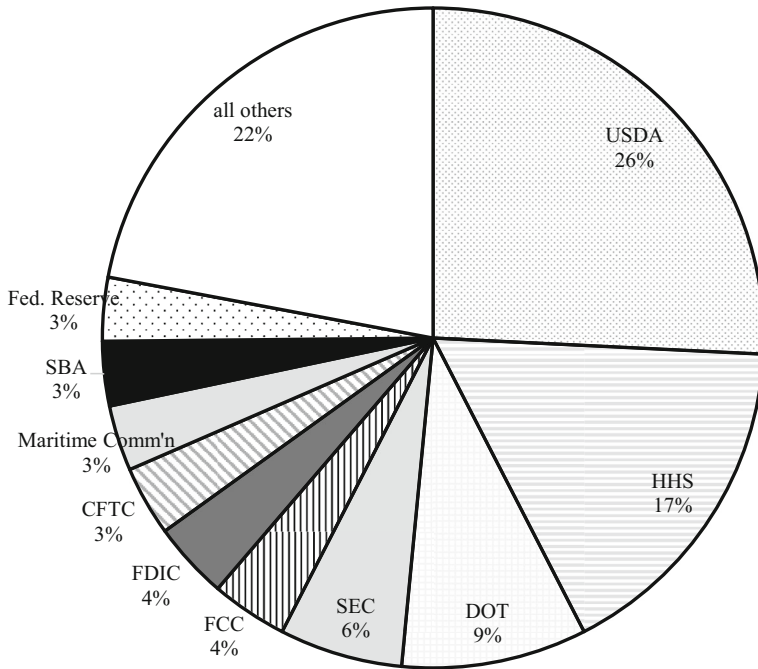


FIGURE A1 Subdelegations by agency.

Delegators and delegatees

Agencies exhibit widely differing propensities to subdelegate. Figure A1 displays the agencies with the most appointee-to-civil servant subdelegations during our study period. Three agencies—the Departments of Agriculture, Health & Human Services, and Transportation—are collectively the site of a majority of subdelegations. Other prominent agencies did not publish any subdelegations in the Federal Register during this period.³³

Table A1 lists the 10 delegators and delegatees that appear most frequently in the dataset. The former group is more concentrated than the latter; the top-10 most frequent delegators are collectively responsible for 62% of subdelegations

³³These agencies are: the Agency for International Development, Consumer Product Safety Commission, Department of Education, Department of Homeland Security, Department of Labor, Environmental Protection Agency, Equal Employment Opportunity Commission, Farm Credit Administration, Federal Emergency Management Agency, Federal Energy Regulatory Commission, Federal Housing Finance Board/Agency, Federal Trade Commission, General Services Administration, National Archives and Records Administration, National Credit Union Administration, Office of Federal Housing Enterprise Oversight, Office of Management and Budget, Office of Personnel Management, Pension Benefit Guaranty Corporation, and Social Security Administration.

TABLE A1 Most frequent delegators and delegates.

| Appointee delegator | | Civil servant delegatee | |
|---|-------|--|------|
| Commissioner, Food & Drug Admin., Dept. of Health & Human Serv. | 14.8% | Reg'l Directors, Rural Elec. Admin., Dept. of Agric. | 3.4% |
| Secretary, Dept. of Agric. | 9.4% | Administrator, Coop. State Research Serv., Dept. of Agric. | 3.2% |
| Administrator, Rural Elec. Admin., Dept. of Agric. | 7.5% | Chief, Forest Serv., Dept. of Agric. | 2.5% |
| Commissioners, Fed. Maritime Comm'n | 5.8% | Chiefs, Reg'l Engineering Branches, Rural Elec. Admin., Dept. of Agriculture | 2.5% |
| Administrator, Small Bus. Admin. | 5.0% | Director, Office of Proceedings, Interstate Commerce Comm'n | 2.2% |
| Board, Fed. Deposit Ins. Corp. | 4.9% | Principal Supervisory Agent, Fed. Home Loan Bank Bd. | 2.1% |
| Commissioners, Sec. & Ex. Comm'n | 4.4% | Chiefs, Power Eng'g Branches, Power Supply Div., Rural Elec. Admin., Dept. of Agric. | 1.6% |
| Commissioners, Fed. Comm'cn Comm'n | 4.0% | Director, Power Supply Div., Rural Elec. Admin., Dept. of Agric. | 1.6% |
| Bd. of Governors, Fed. Res. Sys. | 3.1% | Director, Div. of Banking Supervision & Reg., Fed. Res. | 1.5% |
| Board, Surface Transp. Board/ Interstate Commerce Comm'n | 3.1% | Board of Review, Fed. Deposit Ins. Corp. | 1.3% |

in our dataset, whereas the 10 most frequent delegates received only 22% of these authorities.

Subject matter

Regarding content, the included subdelegations have a mean length of 42 words, with substantial variance around that mean (standard deviation = 34). Figure A2 presents a visual representation of the words that appear most frequently in these conveyances. Figure A3 displays the same regarding phrases of up to five words. Both figures provide weighted lists; the relative size of each word or phrase corresponds to its relative frequency in our dataset.

From the figures, we see that several recurring elements: references to legal authorities (*USC*, *section of the act*, *chapter*, etc.); references to the holders of that authority or their delegates (*commission*, *director*, *general counsel*, etc.), and transsubstantive regulatory functions (*approve or execute*, *grant or deny*,



FIGURE A2 Common words in subdelegations. [Color figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com)]

issue, etc.). Other phrases hint at policy areas that are common subjects of subdelegations (*loans, motor vehicle, drug applications, small business*).

We employ structural topic modeling to provide another window into the content of these subdelegations. The method identifies which words tend to be grouped together most frequently with a corpus (Grimmer & Stewart, 2013). Here, we select 20 categories as the optimal number, as this number combines a high held-out likelihood and high semantic coherence with low residuals. We used the *searchK* function in R to conduct these diagnostic tests for 7 through 30 categories (Roberts et al., 2020).

The *keywords* column in Table A2 reports the words with the highest probability of appearing in each topic. The *lift words* column identifies words with high “lift weights” for each topic. Lift weights are generated by dividing the frequency that words appear in a given topic by their frequency in other topics, thus measuring a word’s degree of exclusivity in that topic (Roberts



FIGURE A3 Common phrases in subdelegations. [Color figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com/doi/10.1111/jels.12369)]

et al., 2020). Finally, the table includes our self-created topic labels, based on our impressionistic sense of themes in the keywords and lift words.

Several themes are apparent in the table. For one, verbs associated with common agency actions—*approv**, *develop*, *withdraw*, *issu**, *proceed**, and so forth—are common. Further, words associated with specific regulatory subjects—food & drug, securities, agriculture, and so forth—tend to be grouped together; the topic labels that we affix reflect these tendencies.

Figure A4 reports the proportion of subdelegations in our dataset that the model placed in each of these 20 topics. As the figure shows, no topic or subset of topics predominates. The bookends for the figure are Topic 11, in which approximately 9% of subdelegations in our dataset are classified, and Topic 20, which contains approximately 2%.

Themes in subdelegations by presidential administration

The frequencies of subdelegations concerning each of these topics varies throughout the study period. Figure A5 displays differences in the prevalence of each topic in each presidential administration, from Carter to Trump, relative to its prevalence in the other administrations during the 1979–2019 period. For

TABLE A2 Topics and high-probability words.

| Num. | Topic(s) | Keywords | Lift words |
|------|-----------------------|--|---|
| 1 | Motor Vehicles | relat, motor, usc, complianc, secretary, carri, vehicl | import, elig, correct, carri, motor, vehicle, complianc |
| 2 | Food & Drug | function, act, food, drug, perform, section, commission | export, commission, function, regard, perform, food, pertain |
| 3 | Drug Approval Process | applic, approv, drug, new, use, supplement | supplement, submiss, new, abbrevi, biolog, describ |
| 4 | Medical Devices | act, action, determin, devic, feder, approv, medic | present, devic, medic, premarket, withdraw, health, determin |
| 5 | Lending | loan, approv, administr, author, except, follow, program | guarante, loan, unpaid, advanc, outstand, document, fund |
| 6 | Admin. Determinations | applic, grant, file, request, deni, chapter, approv | revoke, tariff, air, relief, preced, file, temporari |
| 7 | General | regul, administr, polici, standard, procedur, direct, law | formul, promulg, repress, polici, procedur, direct, standard |
| 8 | Environment | make, state, decis, proceed, unit, agenc, issu | decis, abandon, water, make, employ, proceed, environment |
| 9 | Small Bus. Lending | busi, small, develop, capit, section, exceed, follow | vii (refers to Small Business Administration 7(a) lending program), minor, small, busi, certifi, sba, capit |
| 10 | Litigation | author, upon, general, claim, interest, compromis, counsel | committe, compromis, settl, excess, counsel, debt, claim |
| 11 | Lending | borrow, facil, approv, execut, matter, electr (usually refers to electricity), program | organiz, generat, borrow, electr (usually refers to electricity), status, facil, distribut |
| 12 | Agriculture | program, usc, administ, research, grant, agricultur, act | land, conserv, agricultur, administ, energi, rural |
| 13 | Securities | director, author, deleg, commiss, divis, market, pursuant | oversight, write, market, director, region, herebi, supervis |
| 14 | Hearings | notic, issu, propos, order, hear, certifi, chang | letter, opportun, suspens, propos, hear, notic, cancel |
| 15 | Financial Regulation | requir, report, paragraph, agent, institut, supervisor, may | electron (usually refers to banks' electronic submission of supervisory information), merger, supervisor, agent, consolid, recommend, princip |

(Continues)

TABLE A2 (Continued)

| Num. | Topic(s) | Keywords | Lift words |
|------|-----------------------|---|---|
| 16 | General | part, author, manag, cfr, chief, financ, servic | ident, financ, district, part, chief, subpart, bureau |
| 17 | Securities | act, section, usc, pursuant, secur, rule, invest | specifi, exchang, invest, registr, secur, seq, hold |
| 18 | FDA Citizen Petitions | chapter, drug, petit, submit, new, investig, product | citizen, petit, label, stay, contain, investig, anim |
| 19 | Property Mgmt. | agreement, enter, contract, oper, rate, properti, insur | lease, transfer, enter, properti, instrument, rate |
| 20 | General | offic, fee, user, author, waiver, will, redeleg | user, evalu, fee, offic, redeleg, reduc, will |

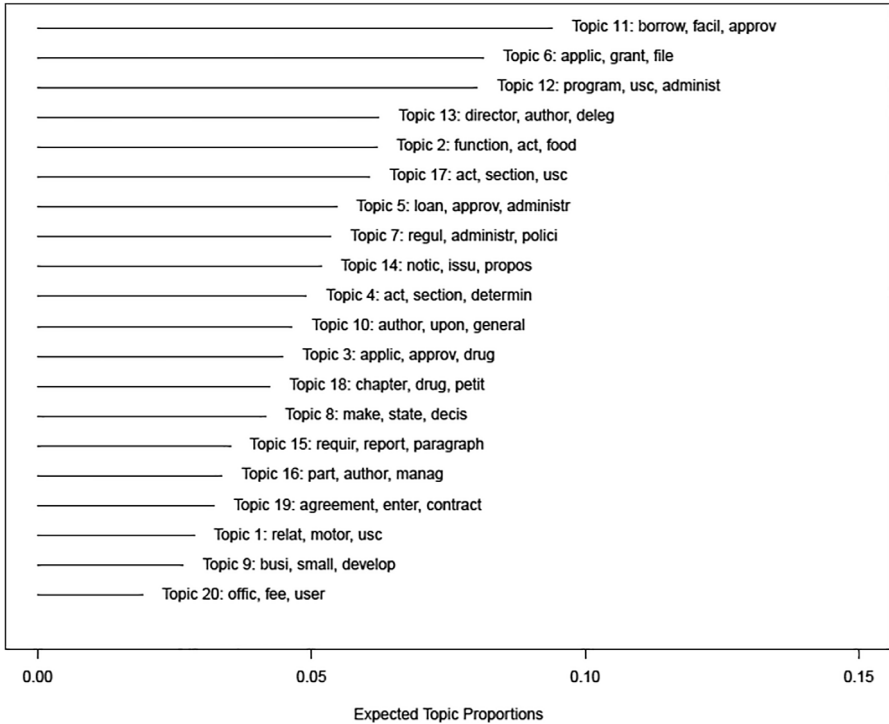


FIGURE A4 Most frequent topics.

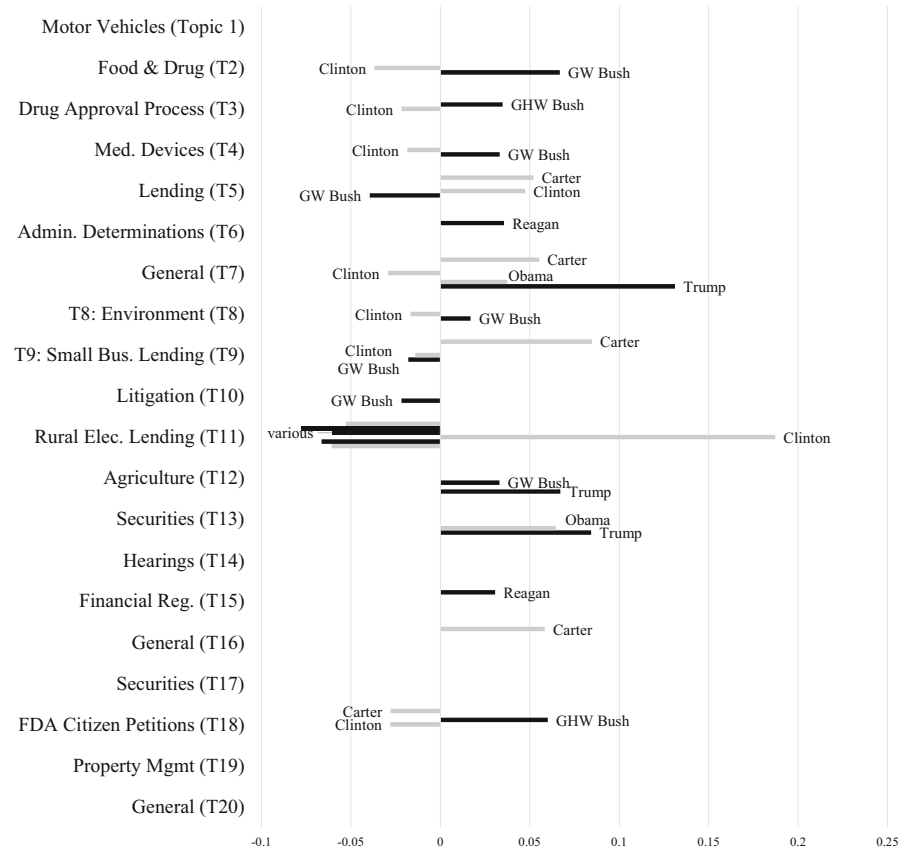


FIGURE A5 Difference in topic prevalence, by presidential administration.

example, the first bar in the figure reports that subdelegations regarding food and drug policy (Topic 2) are 3.7% less prevalent during Bill Clinton’s presidency than in other administrations during the study period. For ease of interpretation, the figure includes only those differences in topic prevalence that achieve statistical significance at the $p < 0.05$ level. Differences in topic prevalence in Republican administrations are shaded black; those in Democratic administrations are shaded gray.

The figure shows that, although subdelegations occur during both Democratic and Republican administrations, several partisan themes are apparent. Subdelegations concerning FDA-related matters (Topics 2–4 and 18) are more frequent during the George H.W. Bush and George W. Bush administrations, and less frequent during the Carter and Clinton presidencies.

Likewise, agriculture-related subdelegations (Topic 12) are more common during the George W. Bush and Trump administrations. By contrast, lending-related subdelegations are more common during the Carter and Clinton administrations (Topics 5, 9, and 11). We note, however, that the Clinton administration's greater propensity to subdelegate concerning rural electrification lending (Topic 11) is almost entirely due to a single Federal Register entry subdelegating a battery of Rural Electrification Administration powers in 1994, when that agency was in the midst of a fight for its political survival.

APPENDIX B

ROBUSTNESS CHECKS FOR LAME-DUCK SUBDELEGATIONS

This appendix reports the results for two robustness checks associated with the lame-duck subdelegations analysis.

Congress's lame-duck periods

Table B1 adds a new covariate to the regression models presented in the lame-duck subdelegations section of the main analysis: an *End of Current Congress* dummy variable coded as 1 if the observation occurred during the period between a congressional election and the start of the next Congress. As the table shows, the coefficient estimates associated with *End of Current Congress* do not approach conventionally accepted levels of statistical significance. By contrast, the covariates of interest for our theory—*Political Divergence* and *Last Three Months of Presidency*, which test Hypotheses 1 and 2, respectively—remained signed in the predicted direction and are statistically significant to the same extent as are corresponding coefficient estimates in the main analysis.

Post-re-election subdelegations

Table B2 replaces the *Last Three Months of Presidency* covariate, as reported in the main analysis, with *Last Three Months of Reelected President's First Term*. Whereas our theory predicts a positive coefficient estimate on *Last Three Months of Presidency*, there is no reason to expect the same for *Last Three Months of Reelected President's First Term*. (For a possible explanation for why instead this estimate is *negative* and statistically significant, see the lame-duck subdelegations portion of the main analysis.)

TABLE B1 Delegations to civil servants during congressional lame-duck periods.

| (a) Zero-inflated negative binomial models | | | | | | | | |
|---|-------------------------------|----------------------|------------------------|----------------------|-------------------------------|----------------------|----------------------|----------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Last 3 months of presidency | 0.945 [†] (0.513) | 1.436 (1.079) | 1.715* (0.705) | 2.563* (1.089) | 1.201 [†] (0.662) | 1.201 (0.800) | 2.056** (0.771) | 2.325** (0.837) |
| End of current congress | 0.072 (0.306) | -0.015 (0.329) | 0.032 (0.314) | -0.196 (0.271) | 0.193 (0.467) | 0.168 (0.300) | 0.198 (0.450) | -0.032 (0.278) |
| Political divergence | - | - | -1.820*** (0.364) | -2.394*** (0.540) | - | - | -2.309*** (0.436) | -2.321*** (0.480) |
| Time | - | - | - | - | -0.069** (0.021) | -0.164 (0.105) | -0.079** (0.023) | -0.156* (0.067) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| Num. of restrictions (inflation var.) | -0.0001** (0.00004) | 0.00007 (0.00006) | -0.00009* (0.00004) | 0.00008 (0.00008) | 0.00007 (0.00006) | 0.00007 (0.00005) | 0.00007 (0.00006) | 0.00007 (0.00007) |

Inflation variable: number of regulatory restrictions in effect. Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7452.

| (b) Negative binomial models | | | | | | | | |
|-------------------------------------|-------------------|------------------|----------------------|----------------------|-------------------|-------------------------------|----------------------|----------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Last 3 months of presidency | 1.025* (0.519) | 1.555 (1.066) | 1.787* (0.724) | 2.688* (1.067) | 1.308* (0.663) | 1.319 [†] (0.794) | 2.183** (0.784) | 2.431** (0.801) |
| End of current congress | 0.027 (0.326) | 0.062 (0.300) | 0.006 (0.326) | -0.129 (0.241) | 0.292 (0.445) | 0.248 (0.269) | 0.297 (0.426) | 0.035 (0.242) |
| Political divergence | - | - | -1.831*** (0.361) | -2.478*** (0.575) | - | - | -2.353*** (0.469) | -2.429*** (0.067) |

(Continues)

TABLE B1 (Continued)

(b) Negative binomial models

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|----------------|------|------|------|------|---------------------|-------------------|----------------------|--------------------|
| Time | - | - | - | - | -0.067** (0.020) | -0.149 (0.102) | -0.078*** (0.021) | -0.154* (0.067) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| Pseudo R^2 | 0.16 | 0.18 | 0.17 | 0.19 | 0.18 | 0.18 | 0.19 | 0.20 |

Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7872.

(c) OLS models

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|-----------------------------|------------------|------------------|--------------------|-------------------|--------------------|-------------------|--------------------|-------------------|
| Last 3 months of presidency | 0.473 (0.449) | 0.471 (0.442) | 0.488 (0.453) | 0.516 (0.450) | 0.474 (0.450) | 0.533 (0.471) | 0.488 (0.453) | 0.616 (0.495) |
| End of current congress | 0.008 (0.036) | 0.007 (0.037) | 0.008 (0.036) | 0.007 (0.037) | 0.012 (0.036) | 0.034 (0.040) | 0.011 (0.036) | 0.042 (0.041) |
| Political divergence | - | - | -0.088† (0.049) | -0.130 (0.077) | - | - | -0.084† (0.048) | -0.185 (0.107) |
| Time | - | - | - | - | -0.006* (0.003) | -0.030 (0.021) | -0.006† (0.003) | -0.040 (0.025) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| R^2 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 |

Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7872.

***Signifies $p < 0.001$; ** $p < 0.01$; * $p < 0.05$; † $p < 0.10$.

TABLE B2 Preference divergence and delegations to civil servants during lame duck periods.

| (a) Zero-inflated negative binomial models | | | | | | | | |
|---|------------------------|-----------------------|------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Last 3 months of reelected president's first term | -17.560*** (0.568) | -18.111*** (0.572) | -17.194*** (0.577) | -18.562*** (0.597) | -17.664*** (0.567) | -17.553*** (0.511) | -18.762*** (0.583) | -17.367*** (0.557) |
| Political divergence | - | - | -1.640*** (0.250) | -1.927*** (0.297) | - | - | -2.021*** (0.322) | -2.057*** (0.089) |
| Time | - | - | - | - | -0.068** (0.023) | -0.155 (0.110) | -0.076** (0.026) | -0.180* (0.089) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| Num. of restrictions (inflation var.) | -0.0001** (0.00003) | 0.00007 (0.00005) | -0.0001** (0.00004) | 0.00007 (0.00005) | 0.00007 (0.00005) | -0.00009 (0.00008) | 0.00007 (0.00005) | -0.00009 (0.00007) |

Inflation variable: number of regulatory restrictions in effect. Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7452.

| (b) Negative binomial models | | | | | | | | |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Last 3 months of reelected president's first term | -17.360*** (0.567) | -18.322*** (0.541) | -17.542*** (0.575) | -21.445*** (0.581) | -17.056*** (0.564) | -18.750*** (0.510) | -28.826*** (0.581) | -17.189*** (0.556) |
| Political divergence | - | - | -1.635*** (0.239) | -1.984*** (0.324) | - | - | -2.031*** (0.305) | -2.057*** (0.325) |
| Time | - | - | - | - | -0.065** (0.021) | -0.155 (0.110) | -0.073** (0.023) | -0.180* (0.089) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |

(Continues)

TABLE B2 (Continued)

| (b) Negative binomial models | | | | | | | | |
|---|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| Pseudo R^2 | 0.16 | 0.18 | 0.17 | 0.19 | 0.18 | 0.18 | 0.19 | 0.19 |
| Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7872. | | | | | | | | |
| (c) OLS models | | | | | | | | |
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Last 3 months of reelected president's first term | -0.136 [†] (0.069) | -0.139 [†] (0.073) | -0.141 [†] (0.071) | -0.146 [†] (0.077) | -0.132 [†] (0.068) | -0.126 [†] (0.065) | -0.137 [†] (0.070) | -0.132 [†] (0.068) |
| Political divergence | - | - | -0.085 [†] (0.048) | -0.121 (0.074) | - | - | -0.081 [†] (0.046) | -0.169 (0.101) |
| Time | - | - | - | - | -0.006* (0.003) | -0.028 (0.019) | -0.006 [†] (0.003) | -0.036 (0.023) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| R^2 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 |
| Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7872. | | | | | | | | |

***Signifies $p < 0.001$; ** $p < 0.01$; * $p < 0.05$; [†] $p < 0.10$.

APPENDIX C

SUBDELEGATIONS FROM AGENCY HEADS

This appendix reports the results of regression models where the unit of analysis is the number of subdelegations by agency heads to civil servants in a given agency-year (or, in Table C2, agency-month). In other words, these model specifications are identical to those reported in the analysis section, except that these analyses count subdelegations by *agency heads* whereas those in the main analysis count subdelegations by *all* appointees at the agency.

All subdelegations

Table C1 reports the correlation between agency head-civil servant preference divergence and subdelegations by agency heads to civil servants. All model specifications report a negative relationship that achieves statistical significance at conventionally accepted levels. These results are consistent with the coefficient estimates reported in the analysis section concerning the correlation between agency head-civil servant preference divergence and subdelegations by all agency appointees heads to civil servants.

Lame-duck subdelegations

Table C2 reports the correlation between preference divergence and subdelegations by agency heads during the final 3 months of presidential administrations during the study period. Most specifications produce positive and statistically significant coefficient estimates, which are similar to the estimates reported in the main analysis.

Revocations

Table C3 reports the correlation between agency head-civil servant preference divergence and revocations of existing subdelegations, where the authority moves from a civil servant to the agency head. Consistent with the results reported in the main analysis, 15 out of the 18 model specifications report null results. In a departure from the main analysis, however, the other three models yield positive and statistically significant results. With null results in most models, we once again cannot reject the null hypothesis that preference divergence has no bearing on revocations activity.



TABLE C1 Preference divergence and delegations to civil servants.

| | (1) | (2) | (3) | (4) | (5) | (6) |
|---|--------------------------------|-----------------------|-----------------------|-----------------------|------------------------|-----------------------|
| (a) Zero-inflated negative binomial models | | | | | | |
| Political divergence | -0.859* (0.373) | -1.239** (0.477) | -1.272* (0.539) | -1.329** (0.455) | -0.975** (0.330) | -1.272* (0.539) |
| Time | -0.030 [†] (0.017) | -0.110* (0.054) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| Num. of restrictions (inflation variable) | -0.001*** (0.0002) | 0.00004* (0.00002) | -0.009*** (0.0002) | 0.00004* (0.00002) | -0.0011*** (0.0003) | -0.001*** (0.0002) |
| Inflation variable: number of regulatory restrictions in effect. Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1373. | | | | | | |
| (b) Negative binomial models | | | | | | |
| Political divergence | -1.492*** (0.417) | -1.690*** (0.436) | -1.913*** (0.443) | -1.784*** (0.424) | -1.76*** (0.447) | -1.913*** (0.443) |
| Time | -0.049** (0.017) | -0.111* (0.051) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| Pseudo R ² | 0.26 | 0.26 | 0.29 | 0.26 | 0.25 | 0.29 |
| Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1613. | | | | | | |

TABLE C1 (Continued)

| (c)OLS models | (1) | (2) | (3) | (4) | (5) | (6) |
|----------------------|--------------------|---------------------|---------------------|--------------------|--------------------|---------------------|
| Political divergence | -0.306* (0.127) | -0.373* (0.146) | -0.407** (0.148) | -0.379* (0.149) | -0.337* (0.144) | -0.407** (0.148) |
| Time | -0.021* (0.009) | -0.065** (0.023) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| R ² | 0.15 | 0.15 | 0.17 | 0.15 | 0.14 | 0.17 |

Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1613.

***Signifies $p < 0.001$; ** $p < 0.01$; * $p < 0.05$; † $p < 0.10$.

TABLE C2 Preference divergence and delegations to civil servants during lame duck periods.

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|--|--------------------|-----------------------------------|-----------------------|----------------------|--------------------------------|-----------------------------------|--------------------------------|----------------------|
| (a) Zero-inflated negative binomial models | | | | | | | | |
| Last 3 months of presidency | 1.939** (0.657) | 2.179* (1.100) | 2.784*** (0.711) | 3.114* (1.244) | 2.135** (0.823) | 2.105 (1.485) | 2.941 [†] (1.586) | 2.994* (1.517) |
| Political divergence | - | - | -2.202*** (0.524) | -2.091** (0.715) | - | - | -2.168* (0.893) | -2.102** (0.692) |
| Time | - | - | - | - | -0.051 (0.035) | -0.020 (0.133) | -0.051 (0.048) | -0.037 (0.118) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| Num. of restrictions (inflation var.) | 0.0001 (0.0001) | 0.00002 [†] (0.00001) | 0.0002** (0.00005) | 0.00002 (0.00003) | 0.00004 (0.0001) | 0.00003 [†] (0.00001) | 0.00006 (0.00008) | 0.00002 (0.00003) |
| Inflation variable: number of regulatory restrictions in effect. Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7452. | | | | | | | | |
| (b) Negative binomial models | | | | | | | | |
| Last 3 months of presidency | 1.977** (0.650) | 2.365* (0.954) | 2.804*** (0.745) | 3.267** (-2.165) | 2.305** (0.742) | 2.379 [†] (1.242) | 3.110*** (0.881) | 3.200* (1.270) |
| Political divergence | - | - | -2.197*** (0.545) | -2.165** (0.661) | - | - | -2.251*** (0.591) | -2.181*** (0.621) |
| Time | - | - | - | - | -0.047 [†] (0.027) | 0.004 (0.107) | -0.048 [†] (0.026) | -0.024 (0.100) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |

TABLE C2 (Continued)

(b) Negative binomial models

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|---|------|------|------|------|------|------|------|------|
| Pseudo R^2 | 0.16 | 0.18 | 0.18 | 0.19 | 0.17 | 0.18 | 0.19 | 0.19 |
| Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7872. | | | | | | | | |

(c) OLS models

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|---|------------------|------------------|--------------------------------|--------------------------------|-------------------|-------------------|--------------------------------|--------------------------------|
| Last 3 months of presidency | 0.564 (0.472) | 0.549 (0.479) | 0.568 (0.474) | 0.561 (0.483) | 0.564 (0.472) | 0.554 (0.481) | 0.568 (0.474) | 0.571 (0.488) |
| Political divergence | - | - | -0.025 [†] (0.014) | -0.034 [†] (0.017) | - | - | -0.024 [†] (0.013) | -0.040 [†] (0.019) |
| Time | - | - | - | - | -0.002 (0.001) | -0.002 (0.002) | - | -0.004 [†] (0.002) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| R^2 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 |
| Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7872. | | | | | | | | |

***Signifies $p < 0.001$; ** $p < 0.01$; * $p < 0.05$; [†] $p < 0.10$.

TABLE C3 Preference divergence and revocations from civil servants.

| (a) Zero-inflated negative binomial models | | | | | | |
|---|--------------------------------|--|--------------------|-----------------------|--------------------|--------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political divergence | 1.205*** (0.322) | 0.664*** (0.174) | 4.552 (8.482) | 0.449* (0.218) | 0.825 (1.120) | 4.551 (8.503) |
| Time | -0.118 (0.110) | -0.447** (0.171) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| Num. of restrictions (inflation variable) | 0.00009*** (0.00002) | 0.0001*** (4.4 × 10 ⁻⁶) | -0.0002 (0.001) | 0.0001** (0.00004) | 0.0001 (0.0002) | -0.0002 (0.001) |
| Model: Zero-inflated negative binomial. Inflation variable: number of regulatory restrictions in effect. Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1373. | | | | | | |
| (b) Negative binomial models | | | | | | |
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political Divergence | 0.375 (0.767) | 0.091 (0.437) | 0.179 (0.827) | 0.059 (0.600) | 0.179 (0.827) | 0.059 (0.600) |
| Time | -0.128 [†] (0.077) | 0.059 (0.285) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| Pseudo R ² | 0.42 | 0.48 | 0.36 | 0.47 | 0.36 | 0.47 |
| Model: Negative binomial. Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1613. | | | | | | |
| (c) OLS models | | | | | | |
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political Divergence | 0.001 (0.002) | 0.0002 (0.002) | 0.00008 (0.003) | 0.0003 (0.002) | -0.0003 (0.002) | 0.00008 (0.003) |
| Time | -0.0005 (0.0004) | 0.001 (0.003) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |

TABLE C3 (Continued)

| (c) OLS models | | | | | | |
|--|------|------|------|------|------|------|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| R^2 | 0.03 | 0.04 | 0.05 | 0.04 | 0.03 | 0.05 |
| Model: OLS. Robust SEs clustered at the agency level. Unit of analysis: agency-year. | | | | | | |
| Observations: 1613. | | | | | | |

***Signifies $p < 0.001$; ** $p < 0.01$; * $p < 0.05$; † $p < 0.10$.

APPENDIX D

SUBDELEGATIONS OF LIMITED AUTHORITY

This article analyzes solely those subdelegations that transfer discretion to exercise governmental authority. It excludes those subdelegations that do not involve grants of discretionary governmental authority. This appendix examines subdelegations that do not meet this standard, and thus were excluded from the analysis thus far. These subdelegations include conveyances of ministerial or clerical functions, of the authority to advise another intra-agency actor, and the like.

In brief, we find that the coefficient estimates and standard errors for these subdelegations of limited authority are broadly similar to those reported above for subdelegations of discretionary governmental authority in most models. The major difference concerns subdelegations during lame-duck periods. Whereas the hypothesis that appointees are more likely to subdelegate toward the end of a presidential administration finds strong support concerning subdelegations of discretionary governmental authority, for most models we cannot reject the null hypothesis concerning subdelegations of more limited forms of authority. Although the relevant coefficient estimates are positively signed in all model specifications, they are statistically significant at the $p < 0.05$ level in four out of 24 models, and at the $p < 0.10$ level in another four.

All subdelegations

TABLE D1 Preference divergence and delegations to civil servants.

| (a) Zero-inflated negative binomial models | | | | | | |
|---|--------------------------------|---------------------------------|----------------------|---------------------------------|--------------------|----------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political divergence | -1.130* (0.482) | -1.471** (0.522) | -1.622*** (0.403) | -1.480** (0.512) | -1.093* (0.422) | -1.629*** (0.405) |
| Time | -0.024 [†] (0.013) | -0.035 (0.064) | – | – | – | – |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| Num. of restrictions (inflation variable) | -0.002 (0.001) | -0.001 [†] (0.0008) | -0.001 (0.001) | -0.001 [†] (0.0008) | -0.002 (0.001) | -0.001 (0.001) |

Inflation variable: number of regulatory restrictions in effect. Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1373.

| (b) Negative binomial models | | | | | | |
|-------------------------------------|---------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political Divergence | -1.556** (0.467) | -1.854*** (0.480) | -1.997*** (0.384) | -1.873*** (0.469) | -1.582*** (0.415) | -1.997*** (0.384) |
| Time | -0.035** (0.013) | -0.058 (0.056) | – | – | – | – |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| Pseudo R^2 | 0.24 | 0.25 | 0.28 | 0.25 | 0.24 | 0.28 |

Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1613.

| (c) OLS models | | | | | | |
|-----------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political Divergence | -0.343* (0.147) | -0.556* (0.247) | -0.575* (0.255) | -0.561* (0.250) | -0.360* (0.153) | -0.575* (0.255) |
| Time | -0.012 (0.007) | -0.055 (0.055) | – | – | – | – |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |

TABLE D1 (Continued)

| (c) OLS models | | | | | | |
|----------------|------|------|------|------|------|------|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| R^2 | 0.19 | 0.19 | 0.20 | 0.19 | 0.19 | 0.20 |

Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1613.

***Signifies $p < 0.001$; ** $p < 0.01$; * $p < 0.05$; † $p < 0.10$.

Lame-duck subdelegations

TABLE D 2 Preference divergence and delegations to civil servants during lame duck periods.

| (a) Zero-inflated negative binomial models | | | | | | | | |
|--|------------------------|------------------------|------------------------|------------------------------------|------------------------|------------------------|--------------------------------|------------------------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Last 3 months of presidency | 0.681 (0.658) | 0.828 (1.060) | 1.224* (0.614) | 1.861 [†] (0.973) | 0.685 (0.683) | 0.837 (1.088) | 1.392 [†] (0.666) | 1.785* (0.896) |
| Political divergence | - | - | -1.912*** (0.399) | -2.622*** (0.420) | - | - | -2.254*** (0.362) | -2.678*** (0.407) |
| Time | - | - | - | - | -0.017 (0.017) | 0.005 (0.118) | -0.032 [†] (0.017) | -0.050 (0.076) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| Num. of restrictions (inflation var.) | -0.00004* (0.00002) | -0.00004* (0.00002) | -0.00004* (0.00002) | -0.00004 [†] (0.00002) | -0.00004* (0.00002) | -0.00004* (0.00002) | -0.00004* (0.00002) | -0.00004 [†] (0.00002) |

Inflation variable: number of regulatory restrictions in effect. Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7452.

| (b) Negative binomial models | | | | | | | | |
|------------------------------|------------------|------------------|-------------------------------|-------------------------------|-------------------|-------------------|--------------------------------|----------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Last 3 months of presidency | 0.625 (0.616) | 0.700 (0.864) | 1.104 [†] (0.644) | 1.607 [†] (0.835) | 0.619 (0.628) | 0.680 (0.840) | 1.222 [†] (0.663) | 1.561* (0.755) |
| Political divergence | - | - | -1.731*** (0.396) | -2.377*** (0.481) | - | - | -2.037*** (0.442) | -2.457*** (0.430) |
| Time | - | - | - | - | -0.020 (0.016) | -0.018 (0.103) | -0.032 [†] (0.017) | -0.067 (0.072) |

TABLE D 2 (Continued)

(b) Negative binomial models

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|----------------|------|------|------|------|------|------|------|------|
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| Pseudo R^2 | 0.15 | 0.16 | 0.16 | 0.17 | 0.15 | 0.16 | 0.16 | 0.18 |

Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7872.

(c) OLS models

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|-----------------------------|------------------|------------------|------------------|-------------------|-------------------|-------------------|--------------------------------|-------------------|
| Last 3 months of presidency | 0.330 (0.365) | 0.342 (0.361) | 0.340 (0.368) | 0.392 (0.384) | 0.330 (0.365) | 0.351 (0.361) | 0.340 (0.368) | 0.423 (0.395) |
| Political divergence | - | - | - | -0.146 (0.088) | - | - | -0.061 [†] (0.035) | -0.163 (0.099) |
| Time | - | - | - | - | -0.001 (0.001) | -0.004 (0.009) | -0.001 (0.001) | -0.012 (0.012) |
| Presidency FEs | N | Y | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y | Y | Y |
| R^2 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 |

Robust SEs clustered at the agency level. Unit of analysis: agency-month. Observations: 7872.

***Signifies $p < 0.001$; ** $p < 0.01$; * $p < 0.05$; [†] $p < 0.10$.

Revocations

TABLE D3 Preference divergence and revocations from civil servants.

| (a) Zero-inflated negative binomial models | | | | | | |
|--|----------------------|-----------------------|--------------------|-------------------------|------------------------|--------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political divergence | 1.039 (1.098) | 0.885 (0.851) | -0.708 (14.724) | 0.872 (0.863) | 0.425 (1.063) | -0.708 (14.723) |
| Time | -0.032** (0.012) | 0.236 (0.177) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| Num. of restrictions (inflation variable) | 0.00002 (0.00002) | 0.00008* (0.00003) | -0.0001 (0.014) | 0.00004*** (0.00001) | 0.00003** (0.00001) | -0.0001 (0.014) |

Model: Zero-inflated negative binomial. Inflation variable: number of regulatory restrictions in effect. Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1373.

| (b) Negative binomial models | | | | | | |
|-------------------------------------|--------------------------------|-----------------------|------------------|------------------|------------------|-------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political divergence | 0.255 (1.074) | 1.073 (0.979) | 0.183 (1.053) | 0.816 (0.799) | 0.183 (1.053) | -0.677 (0.590) |
| Time | -0.024 [†] (0.013) | 0.237 * (0.117) | - | - | - | - |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| Pseudo R^2 | 0.39 | 0.43 | 0.38 | 0.41 | 0.38 | 0.31 |

Model: Negative binomial. Robust SEs clustered at the agency level. Unit of analysis: agency-year. Observations: 1613.

| (c) OLS models | | | | | | |
|-----------------------|---------------------|------------------|--------------------|------------------|-------------------|--------------------|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Political divergence | -0.001 (0.003) | 0.002 (0.002) | -0.0006 (0.002) | 0.002 (0.002) | -0.001 (0.004) | -0.0006 (0.002) |
| Time | -0.0002 (0.0002) | 0.003 (0.002) | - | - | - | - |



TABLE D3 (Continued)

| (c) OLS models | | | | | | |
|-----------------------|------------|------------|------------|------------|------------|------------|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Year FEs | N | N | Y | N | N | Y |
| Presidency FEs | N | Y | N | Y | N | Y |
| Agency FEs | Y | Y | Y | Y | Y | Y |
| R^2 | 0.10 | 0.14 | 0.14 | 0.14 | 0.14 | 0.14 |

Model: OLS. Robust SEs clustered at the agency level. Unit of analysis: agency-year.
Observations: 1613.

***Signifies $p < 0.001$; ** $p < 0.01$; * $p < 0.05$; † $p < 0.10$.