# COMMITTEES AND DELEGATION IN THE US HOUSE OF REPRESENTATIVES

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ABSTRACT

Greg Austin Bussing: Committees and Delegation in the US House of Representatives
(Under the direction of Sarah Treul Roberts)

Congressional committees are thought to be comprised of legislators with specific interest or expertise in the policy areas over which they are given jurisdiction. However, there exists an informational asymmetry between these legislators and the bureaucrats in the executive branch who will implement the laws they pass. If committee members care about reducing the potential for bureaucratic drift in implementation, they can allocate time and staff resources towards crafting detailed legislation that constrains the executive branch. To establish the conditions under which committee members will engage in drafting detailed legislation, I propose a new measurement of legislative delegation and conduct empirical tests on committee markups of bills from the 105th-114th congresses. My results demonstrate that committee staff size and ideological congruence among majority party leadership are important factors in the committee-level decision to draft detailed legislation in markup. Additionally, I find mixed support for the assertion that divided government incentivizes committees to constrain the executive branch through the addition of specific policy language in committee markup.

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# INTRODUCTION

During the 112th Congress, Kevin McCarthy (R-CA), then the House Majority Whip, introduced a bill that would allow small businesses to publicly advertise an offering of securities without registering with the Securities and Exchange Commission (SEC). The "general solicitation" of securities that McCarthy's bill would allow had been prohibited since the establishment of the SEC in 1933, due to concerns that unwitting investors would be taken advantage of by unscrupulous companies. However, at the time McCarthy introduced H.R. 2940, the "Access to Capital For Job Creators Act," House Republicans were addressing the lingering economic crisis with an ambitious deregulatory agenda; and concerns about investor protection were relegated to an afterthought for the newly-minted majority.

For Maxine Waters (D-CA), on the other hand, such concerns were decidedly salient. While a prerequisite for lifting the ban on general solicitation was a requirement that all purchasers of publicly-advertised securities must be "accredited investors" as defined by the SEC, Waters was concerned about the enforcement of this requirement. During subcommittee markup of H.R. 2940, Waters expressed these concerns:

> "If we are rolling back protections for a targeted audience of sophisticated individuals, we must take steps to ensure that those folks are, in fact, sophisticated... [I am] concerned about the process in which accredited investors verify they are [sic] accredited investors. As I understand it, it is currently a self-certification process. This obviously leaves room for fraud."

To address this concern, Waters, the Ranking Member of the subcommittee marking up the bill, offered an amendment that required issuers of publicly-advertised securities to "take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the [Securities and Exchange] Commission."

By leaving the methods of investor verification to be determined by the SEC, Waters' amendment granted the Commission substantial discretion to move policy outcomes. The adoption of stringent and intensive methods could potentially discourage small companies from relying on general solicitation, as the heavy burden of investor verification would fall squarely on their shoulders. If the SEC was too zealous in determining these methods, it could essentially nullify the intended deregulatory effect of the bill.

If members were worried about Waters' amendment opening up this potential for bureaucratic drift, they did not express their concerns —at least not immediately. The amendment was passed by voice vote, and the Subcommittee on Capital Markets and Government Sponsored Enterprises reported this amended version of the bill to the full Committee on Financial Services. The full committee reported out the bill with the amendment intact and, when H.R. 2940 was combined with four other bills and repackaged as the "Jumpstarting Our Business Startups (JOBS) Act," this delegation of authority to the SEC became law.

A little more than half a year after the JOBS Act became law, while the SEC was engaged in the rulemaking process, this delegation became a partisan battleground. During the public comment period in which the SEC solicits input on their rules, SEC Chair Mary Schapiro received two letters from members of the House, each urging the commission to take a different direction in its implementation of the JOBS Act. One letter was from Kevin McCarthy, the original sponsor of H.R. 2940, Scott Garrett (R-NJ) the chair of the subcommittee that marked up McCarthy's bill, and Patrick McHenry (R-NC), another Republican from the House Committee on Financial Services. McCarthy, Garrett and McHenry urged Schapiro to adhere to congressional intent while implementing the law, claiming that "New complex regulatory regimes regarding verification of investor accreditation is not an approach lawmakers had in mind when the JOBS Act was passed."

While McCarthy, Garrett and McHenry were concerned that the SEC was placing too heavy of a regulatory burden on companies through its proposed rule, Maxine Waters (D-CA) wrote Chairman Schapiro expressing the opposite belief. Waters wrote that the rule, as proposed, left open the possibility that self-certification would be accepted as a legitimate form of investor accreditation in some circumstances. Waters made it clear that "self-certification was never contemplated to be an adequate form of verification," and went on to "urge the Commission to consider defining specific, additional verification requirements."

The diverging thrusts of these two letters is clearly evident, begging the question of why two political principals with drastically differing preferences over outcomes would agree to delegate discretion over those outcomes to an external agent. More specifically, if Scott Garrett and other Republicans comprising a majority on the House Committee on Financial Services were concerned with what they saw as regulatory overreach by the SEC, why would they agree to an amendment that presumably gave the SEC the authority to engage in such overreach? Conversely, if Maxine Waters held a clear preference for "specific, additional verification requirements" to help bolster investor protection and guard against fraud, what kept her from defining those requirements herself, rather than leaving them up to the SEC?

Existing work on legislative delegation of authority to the executive branch provides a number of possible answers to this puzzle. However, this work is focused on the "end of the pipe," looking exclusively at the content of bills as they are passed into law. While these findings give us an important snapshot of interbranch relations in a U.S. context, they gloss over the dynamics of the legislative process that produce the output of interest. The extent to which a bill specifies or delegates policy decisions may be viewed as a function of the legislative process itself —and this aspect of delegation has been understudied. If bills that become law during divided government include more specific policy instructions to the executive branch (Epstein and O'Halloran, 1999; Huber and Shipan, 2002), is this because they were introduced in such a form, or because specific policy language was added at later stages of the process? To the extent that committees amend the language of introduced bills, do they tend to add more specific language constraining the executive branch, or do they delegate more authority, as in the case described above?

Questions about legislators' involvement in drafting policy language in committee are fundamentally questions about the allocation of time and staff resources. Members of the U.S. House of Representatives are faced with a multitude of competing demands on their time. Fundraising, media appearances, committee meetings, floor votes, and constituent services are all important activities in which members are expected to engage. Both conventional wisdom and congressional scholarship posit that members will spend more time on the activities that more effectively further their goals —whether those goals be electoral (Mayhew, 1974), policy-oriented, or a combination of both (Fenno, 1978; Smith, 2007). Given the relative scarcity of member time, when and why do members choose to engage in the drafting of policy in standing committees? Drafting amendments and attending full-committee and subcommittee hearings and markup sessions are activities with substantial opportunity costs. Additionally, given the well-documented shift away from committee-centered government and toward party leadership-centered government (Rohde, 2005), some of the incentives for members to participate in committees have started to erode (Curry, 2015). However, committees still regularly hold hearings and markup sessions, and are often instrumental in crafting legislative language that may ultimately end up becoming law.

In order to systematically observe how bills change from committee markup, I perform text analysis on the introduced and reported versions of 2,481 bills reported by House committees from the 105th-114th Congresses. In this analysis, I am looking for the presence of delegation phrases in both the introduced and reported versions of each bill. This allows me to isolate the bills to which delegation language was added in committee markup. I then utilize multinomial logistic regression to test a set of hypotheses about the conditions under which committees will make certain types of changes to a bill on a delegation dimension.

## LITERATURE REVIEW

Many scholars have sought to understand and explain legislative delegation as a systematic component of a government characterized by the separation of powers. Early work castigated Congress for abdicating its constitutionally-granted legislative responsibilities to unelected members of the executive branch (Lowi, 1969; Niskanen, 1975). These authors were concerned that unaccountable, budget-maximizing bureaucrats were making the bulk of substantive policy decisions, with little to no oversight from their political principals in Congress.

Claims of bureaucracy run amok led to scholarly interest in the various activities that comprise congressional oversight. Weingast and Moran (1983), McCubbins and Schwartz (1984), and Aberbach (1990) all argued that oversight was occurring at a much higher rate, and to much greater effect, than previous observers had claimed. McCubbins, Noll, and Weingast distinguished between ex-ante and ex-post congressional controls over the bureaucracy, demonstrating that Congress could monitor and control agency actions by structuring the administrative procedures by which bureaucrats made policy decisions (McCubbins et al., 1987, 1989).

Much of the delegation literature assumes that members of Congress will want to constrain the executive branch during times of divided government, and thus will delegate less discretion to executive agencies that are ideologically distant from them (but see Gailmard and Patty, 2007, 2013). However, constraining these agencies is not costless, as members of Congress must spend time and resources to write and pass detailed policy. Different scholars have treated the cost function of writing detailed legislation differently. In Huber and Shipan (2002), the costliness of drafting policy details is one of the foundational assumptions of the authors' model. Epstein and O'Halloran's transaction cost politics theory of policymaking posits that a legislature will delegate policy discretion when the cost of making policy decisions internally exceeds the benefits that will accrue to legislators from making those decisions themselves (Epstein and O'Halloran, 1999).

My paper departs most substantially from the literature in its explicit focus on the legislative *process*, rather than legislative outcomes. Specifically, I choose to examine the role of House committees in deciding whether to increase or decrease delegation to the executive branch. As (Bawn, 1997) points out, committee members have potentially conflicting incentives as it relates to specifying legislative language or delegating policy decisions. If committee membership incentivizes members to become specialized policy experts (Krehbiel, 1992), then these legislators are uniquely qualified to write specific policy. However, if legislators derive electoral benefits from oversight activities, they may delegate authority to the agencies under their committee's purview in order to increase the utility gained from overseeing that delegated authority. Bawn tests committee members preferences for delegation or statutory control by examining votes on floor amendments to two bills[1] that would increase or decrease the scope of authority delegated to the Environmental Protection Agency (EPA). She finds that senators with membership on committees that oversee the EPA prefer amendments that delegate more authority to the agency. While my paper is motivated by similar theoretical questions, I focus on House committees in the modern era, and look specifically at the committee markup process, rather than committee member voting behavior on the floor.

I also depart from the literature in my strategy for measuring the costs of detailed policymaking in Congress. Huber and Shipan (2002), provide an insightful discussion of how policy conflict and legislative capacity affect a legislature's ability to draft and pass detailed legislation, but only set out to measure *interchamber* policy conflict. The authors measure policy conflict by including a dichotomous variable indicating unified or divided partisan control over the two legislative chambers. Studying state legislatures, Huber and Shipan use the level of compensation that legislators receive to measure the legislature's capacity to write detailed statutes. Such a measurement strategy overlooks the importance of intrachamber (and intraparty) policy conflict and underplays the capacity-related costs incurred by a highly-professionalized legislature such as the U.S. Congress.

As will be discussed in greater detail below, I measure a committee's capacity to make specific policy as a function of two components: committee staff and the degree of ideological cohesion among the majority party contingent of the committee. The observation that committee staff are instrumental to the crafting of policy language in committee has a solid foundation in the literature (Mills and Selin, 2017; Aberbach, 1990; Curry, 2015; Rohde, 2005; Deering and Smith,

[1]Clean Air Act Amendments of 1990 and the Solid Waste Disposal Act of 1984

1997). However, the relationship between committee staff and the type of policy language added in committee markups has not been systematically tested, to my knowledge.

My focus on the ideological cohesion of the majority contingent on a committee also draws from existing literature. Epstein and O'Halloran (1999, pp. 83, 186) make a similar argument, borrowing from theories of conditional party government (Rohde, 1991; Aldrich and Rohde, 2001) to hypothesize that centralization of authority in the majority party leadership "should be associated with more effective legislative policy making, leading Congress to delegate relatively less authority [to the executive branch]." The authors find support for this hypothesis, demonstrating that the degree of majority party cohesion has a negative effect on the amount of discretion a law delegates to the executive branch. In this paper, I adhere to a similar theoretical logic in my assumption that ideologically cohesive committee majorities will be able to add specific policy language to bills in committee markup without delegating additional authority to the executive branch.

(Epstein and O'Halloran, 1999) write about committees and executive agencies as substitutes in the production of policy details. In their model, the median floor member chooses between these substitutes, preferring agency-produced policy when the committee alternative is an ideological outlier, and committee-produced policy otherwise. The expectation is that, when a committee that is an ideological outlier relative to the floor median reports a bill, the floor median will amend the bill to delegate more authority to the executive agency, thus undermining the committee's ability to set specific policy.

The increasing frequency of closed and structured rules (Sinclair, 2016) renders unworkable the assumption that the median floor member is able to amend committee-reported bills to her liking. In fact, some work has shown that bills reported from ideological outlier committees, or those which floor members would most prefer to amend according to Epstein and O'Halloran, are statistically *more* likely to receive restrictive rules for floor consideration (Marshall, 2002), thus potentially precluding such amendments. I am not suggesting here that committees are unconstrained by their parent chamber, but rather that the relevant relationship in the current Congress is between the committee and the majority party leadership, not the median floor member. Given that the leadership-aligned Rules Committee writes the rules under which bills are considered on the floor, including rules containing self-executing amendments that could substantially change the underlying bill (Curry, 2015), the relationship between the reporting committee chair and majority party leadership is of central importance.

My paper also differs significantly from the literature due to the specific time frame on which I focus, and the nature of congressional committees within that time frame. The most recent laws in the Epstein and O'Halloran (1999) study of legislative delegation were signed in 1992. Soon thereafter, the committee system in the House underwent major changes with the Republican's takeover of that chamber in 1994. Newt Gingrich and other congressional leaders of this "Republican Revolution" began to implement promises that had been made in the party's campaign platform, the Contract With America. One such change was to cut committee staff by one-third. These staffing cuts, in combination with deliberate erosion of the seniority norm for committee chair appointments, elimination of independent subcommittee staff, and a subsequent concentration of staff and resources in majority party leadership offices significantly shifted the locus of specific policy production in Congress from committees to party leaders (Curry, 2015; Rohde, 2005; Petersen et al., 2011; Bendix, 2016).

This paper brings new data to bear on the question of how House committees operate under the long shadow of majority party leadership. Given diminished staffing levels, increased dependence on leadership, and the ever-present threat of bypass or a self-executing amendment, under what conditions will committees invest substantial time marking up and reporting a bill? The following theory seeks to establish a framework in which questions of this nature can be answered.

## THEORY AND HYPOTHESES

My theory of legislative delegation in committees is primarily a theory about when and why members decide to engage in committee markup of a bill. Questions about member involvement in committee markup sessions are, at their core, questions about allocation of scarce time; and so I seek to establish the conditions under which members will allocate a portion of their time to committee markup sessions. I argue that members vary in their motivation and capacity to draft and pass committee amendments that constrain the executive branch in implementation. Motivation, in my theory, is affected by two factors: 1) the potential for agency loss in the case of delegation; and 2) the perceived likelihood that committee amendments will be maintained in later stages of the legislative process. Capacity is also affected by two factors: 1) the possession of specialized knowledge about the connection between legislative language and policy outcomes; and 2) the ability to convince other committee members to vote for specific changes made to legislative language in committee markup.

Before fully explicating the motivation and capacity of members and specific committees to specify policy through committee markup, it is first necessary to establish a theory about why members should participate in committee markup in the first place. Members should engage in drafting or amending bills in committee markup to the extent that they believe such behavior is a productive use of their time. More directly, members will participate in markup when they believe that doing so will further their individual goals —whether these goals are policy-oriented, institutional, electoral, or a combination of these. To merit the attention of a time-strapped legislator, a bill must attain a certain threshold of importance, either to the legislator's party or to her constituency. Since members tend to self-select[2] onto standing committees that deal with policy areas important to constituents in their district (Weingast and Marshall, 1988), the bills referred to the committee on which a legislator sits are not a random sample of all introduced bills, but rather bills that the legislator is particularly likely to see as important.

[2]with approval from party steering committees

Once a member of a committee has decided that a specific bill merits her attention, the question becomes whether her individual involvement in the drafting or amending of that bill will further her policy or electoral goals. Offering an amendment during markup may give a member the requisite credibility to credit claim to her constituency later on. Additionally, involvement in committee markup or early stage bill drafting could allow members the opportunity to funnel selective benefits to preferred constituencies, or bring about policy outcomes that are otherwise favorable to the member. As will be discussed in further detail below, a legislator may also require some degree of assurance that the changes made in committee markup will be maintained throughout the rest of the legislative process. Generally, legislators will be hesitant to invest time and energy making amendments to a bill that will be nullified after the bill is reported out of committee.

Assuming that a legislator believes her contributions to a bill will survive later stages of the legislative process, she must at least have some minimum level of specific policy knowledge to understand the relationship between the legislative language she adds and the policy outcome she prefers. If legislators decide they want to tackle the nationally salient problem of rising health care premiums, do they know which legislative solutions will be most effective in controlling these premiums? Do they have enough specific knowledge about the unintended consequences that may flow from any given legislative solution? If legislators believe that they will be held electorally accountable for the effectiveness of government programs they create or alter, it would certainly behoove them to have such knowledge themselves —or to be able to leverage the knowledge and expertise housed in the executive bureaucracy.

### Two Components of Motivation

One compelling justification for Congress and its members to maintain the committee system is the potential for legislative committees to act as a bulwark against the expanding executive branch. If members are motivated by policy outcomes, either intrinsically or because of their relation to re-election prospects, they may sometimes be motivated to participate in the creation of the legislative language they hope will bring about those outcomes. Members can always decide to delegate the filling-in of policy details to the executive branch in order to leverage the policy expertise housed there; but as (Bawn, 1995) argues, when members delegate for this purpose, they are inherently decreasing their level of political control over the bureaucracy. Congressional committees, then, can theoretically help decrease Congress' reliance on the executive branch for the production of policy details, as they provide an institutionalized venue in which these policy details can be created in-house (Epstein and O'Halloran, 1999).

The importance of committees in this vein should increase as the executive branch moves further from the congressional majority in ideological space. As agency loss from delegation grows more costly, majority party committee members become more motivated to add specific policy language in markup. Therefore, majority party committee members during divided government should be highly motivated to add specifying policy language during committee markup —or at least to avoid adding delegating language.

- **H1:** During divided government, committees are less likely to add delegation language to a bill during markup.

- **H1a:** During divided government, committees are more likely to add specific language to a bill during markup *without* delegating authority to the executive branch.

To a significant extent, the motivation for members to add specifying policy language to a bill during committee markup is also contingent upon a belief that the member's contribution to a bill will remain intact throughout the rest of the legislative process. In an age of multiple referrals, frequent self-executing rules (Curry, 2015), and the declining prevalence of conference committees to hammer out intracameral differences in legislation (Park et al., 2017), there is more and more uncertainty about whether committee-crafted language will be maintained.

As argued by (Deering and Smith, 1997), standing committees cannot be understood without reference to their parent chamber. Additionally, I argue that contemporary standing committees cannot be understood without reference to *majority party leadership* in their parent chamber. Bills reported out of committees chaired by members who are ideological outliers relative to leadership may not be granted as much deference on the floor as bills reported by a committee that is more ideologically proximate. Therefore, ideological differences between committee chairs and majority party leadership, primarily the Majority Leader and the Speaker of the House, should shape the incentives that committee members have to invest time and staff resources in committee markups.

- **H2:** Committees chaired by members who are ideologically distant from the majority party leadership will be less likely to to add specific language to a bill during markup *without* delegating authority to the executive branch.

### Two Components of Capacity

In the context of a given bill, members of the committee to which the bill was referred, and particularly the committee chair (Oleszek, 2011; Curry, 2015), must decide which actions to take on the bill. Generally, these options range from ignoring the bill to holding hearings on the bill, marking it up, and reporting it out of committee. When a committee decides to hold a markup session on a bill, it makes a collective decision on whether or not to amend the bill before reporting it. Amendments offered in markup sessions can expand the discretion delegated to an executive agency,[3] restrict that discretion,[4] or leave delegated discretion unaffected. My theory rests on an assumption that drafting constraining amendments is more costly to a member than drafting delegating amendments. Constraining amendments can be viewed as attempts to substitute congressional policy knowledge and expertise for that of executive agencies (Epstein and O'Halloran, 1999; Gailmard, 2002), and therefore such amendments require some non-negligible investment of time and resources on the part of members and staff. While drafting delegating amendments may also require staff time and resources, the assumption is that committee members are essentially outsourcing the creation of policy details to the executive branch, and therefore saving the committee resources that would have been allocated to specifying those policy details in-house.[5]

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[3] An example is provided by Maxine Waters' (D-CA) amendment to the JOBS Act, requiring issuers of securities to "take reasonable steps to verify that purchasers of the securities are accredited investors, *using such methods as determined by the* [Securities and Exchange] *Commission*." By offering this amendment, Waters is granting the SEC wide latitude to determine what these "reasonable steps" will be; and by accepting the amendment, the House Financial Services Committee (and later the entire body of Congress) is forgoing its authority to spell out acceptable verification requirements for issuers of securities.

[4] An example is provided by Patrick McHenry's (R-NC) amendment to the JOBS Act, which forbids the SEC from promulgating "any rule regulation or policy that bars a national securities exchange from adopting... a program under which an emerging growth company... provides financial incentives through a national securities exchange to market makers".

[5] It should be made clear that the relative costs of drafting any given amendment, regardless of whether it constrains the executive branch or delegates discretion, are decreasing as a function of staff size.

In this paper, I argue that legislative staff, and particularly committee staff, provide legislators on committees with policy expertise and specific knowledge about the relationship between legislative language and policy outcomes. This argument is already well established in the literature (Mills and Selin, 2017; Aberbach, 1990; Curry, 2015; Rohde, 2005; Deering and Smith, 1997), and makes intuitive sense. While committee membership may provide legislators with some incentive to specialize, they are typically generalists with many roles to fill, and are often focused more on politics than on policy. Committee staff, on the other hand, are paid exclusively to provide policy expertise and analysis in the issue area over which their committee has jurisdiction. Therefore, committee staff helps build the capacity of any given committee to draft specific policy language.

- **H3:** Committees with a higher number of professional staffers per member will be less likely to add delegating language to a bill during markup.
- **H3a:** Committees with a higher number of professional staffers per member will be more likely to add specific language to a bill during markup *without* delegating authority to the executive branch.

In addition to the costs inherent to drafting amendments, members must also consider the costs of convincing their peers to support their proposed amendment. Again, I assume that these costs are higher for constraining amendments than they are for delegating amendments.[6] If constraining amendments specify policy outcomes while delegating amendments leave such outcomes to the discretion of the executive branch, it follows that constraining amendments are more likely to be viewed by members as zero-sum proposals. Following the assumption that members' utilities are defined over actual outcomes rather than policies (Krehbiel, 1992), specifying outcomes in statutory language constitutes a decision in which members lose utility as a function of the ideological distance between their ideal outcome and the outcome selected. When a bill specifies a policy outcome, average utility losses incurred by the majority party contingent of the committee[7] can be defined

[6] Both drafting costs and "decision" costs are assumed to be higher for constraining amendments than for delegating amendments, ceteris paribus. However, these two dimensions of costs are determined by separate functions. Drafting costs are a function of committee staff size, while decision costs are modeled as a function of the ideological cohesion of a committee's majority party contingent.

[7] I argue that the majority party contingent of a committee is the relevant group, as it can always pass a bill out of committee without minority party votes.

by the degree of ideological dispersion of its members.[8] In other words, as a group becomes more ideologically heterogeneous, it becomes more costly for that group to decide on specific outcomes.

- **H4:** Committees with a more ideologically heterogeneous majority party contingent will be less likely to add specific language to a bill during markup *without* delegating authority to the executive branch.

As discussed by MacDonald (2007), delegation is often used in markup sessions in order to gain votes from members who are ambivalent about the underlying policy thrust of the bill being considered. MacDonald's interviews with congressional staff suggest that members can agree on an amendment delegating policy details to the executive branch even when they do not agree over policy outcomes. This evidence supports my assumption that it is less costly for members to agree on delegating amendments than to agree on amendments or existing bill text that specifies policy outcomes. Furthermore, members of the committee of jurisdiction will be even more likely to support delegating amendments because of their effect on opportunities for oversight (Bawn, 1997). Regardless of the policy ultimately determined by an executive agency pursuant to a delegation of authority, committee members can score electoral points with their constituents by position taking and credit claiming in oversight hearings.

If legislators are concerned with maintaining the policy-making influence of Congress as a co-equal branch of the federal government, they are faced with a collective action problem in constraining the executive branch. Constraint of the president and the executive branch, whether accomplished through committee oversight or statutory design, can be costly for members of Congress. Importantly, the costs of these activities are distributed unevenly across the chamber, creating a scenario in which some legislators have to bear a disproportionate burden to help provide Congress with the public good of executive constraint.

The resources that can be committed to producing ex-ante legislative constraints on the executive are not distributed evenly throughout the chamber. Given that legislative staff are instrumental in drafting legislative language (Mills and Selin, 2017; Aberbach, 1990; Curry, 2015; Rohde, 2005;

[8] Measured as the standard deviation of the first-dimension NOMINATE scores for members of the majority contingent. This measurement strategy constitutes an assumption that NOMINATE scores are valid indicators of ideal points with regard to outcomes.

Deering and Smith, 1997), the disproportionate concentration of staff in majority party leadership and committee chair offices (Curry, 2015; Petersen et al., 2011) essentially subsidize efforts by those actors to write specific policy prescriptions into bills. Furthermore, procedural considerations may affect members' decisions to invest in drafting specific policy language. For example, the majority party leadership's frequent use of self-executing provisions to alter bills before floor consideration (Curry, 2015) could serve as a disincentive for rank-and-file legislators to invest time and resources in crafting legislative language during the pre-floor stage. Differential capacity and incentives to engage in the production of ex-ante constraints should have predictable implications for legislators' decisions to allocate time and effort to such activities.

While the constitutional framework of separation of powers and interbranch checks and balances would suggest that all members of Congress benefit when the legislative branch protects its policy-making prerogatives from executive branch encroachments, it is likely that different members derive different levels of utility from constraining the executive branch. The utility derived from ex-ante constraints on the executive branch varies systematically based on partisanship and ideology of legislators and executive branch actors, such that the utility of ex-ante constraints is higher for members of Congress who have particularly stark ideological or policy-driven disagreements with executive branch actors. Conversely, partisan allies of the president would have little incentive to take on the costs required to constrain the executive through detailed statutes that spell out the minutiae of administrative procedures. Members of Congress are thus differentiated in both their capacity and their motivation to constrain the executive through the construction of detailed statutes. This differentiation should have predictable and observable implications for the nature of committee markups.

## DATA AND METHODS

To collect my data for this paper, I wrote a webscraping script in R that scraped the introduced and reported text from all bills from the 105th-114th congresses. I excluded all bills reported by multiple committees, as well as unimportant bills dealing with routine governmental functions,[9] and bills that were reported out of committee as on original measure.[10] After these exclusions, I was left with the introduced and reported versions of 2,481 bills.

### Dependent Variable

Using the text from these bills, I created a dependent variable with three different categories to test my various hypotheses. The first category, Delegating Markup, is comprised of markups in which a committee added "delegating language" to a bill. I identify delegating language with the use of a delegation dictionary containing a list of terms and phrases that accompany delegations of authority to the executive branch. The delegation dictionary, more fully explained in the Appendix, contains a combination of the common recipients of delegated authority ("Secretary," "President," "Administrator," "Commissioner"), and the phrases used to delegate authority to these recipients ("shall determine," "may make a determination," "may make an exemption," "may exempt," "in the public interest," "may waive," etc.). In an attempt to ensure that I capture all instances of delegation, I allow for these phrases to occur within a specified gap of one another.[11] This gap

[9]This exclusion criteria is taken from (Wilkerson et al., 2015), who, using Major Policy Topic Codes from the Policy Agendas Project (Adler and Wilkerson, 2014), eliminate bills that name buildings, transfer parcels of land, issue commemorative coins, etc.

[10]This includes most bills reported from the Appropriations Committee, and some from the Budget Committee. I decided to exclude these because my interest in the extent to which a committee changes a bill requires that I have some way to observe what the bill looked like before committee markup. Bills reported as original measures do not give me that chance.

[11]I have chosen 15 words

allows me to catch commonly used legislative language in which the recipient of delegated authority does not *immediately* precede the delegation phrase.[12]

The second category of my dependent variable is the Specifying Markup. This category leverages the idea developed by (Huber and Shipan, 2002) that, holding policy area equal, a *longer* bill places more constraints on (and thus delegates less authority to) the executive branch. Given that each of the differences I am examining are between introduced and reported versions of the same bill, I can credibly claim to hold the policy area constant. A measure based purely on word count would assume that, if a committee added any language to a bill in markup, it had made that bill more specific, and thus more constraining on the executive branch. My measure of a "specifying markup" integrates a number of conditions: specifying markups must 1) add language to a bill while either eliminating or maintaining delegating language from the introduced bill, or 2) subtract language from a bill while also subtracting delegating language.[13]

The third category of my dependent variable captures the markups in which a committee simply reports a bill without any amendment at all, or subtracts non-delegation language from the introduced version of a bill while making no change to the delegation language. The distribution of these three different outcomes across the observations in my dataset are shown in Figure 1 below.

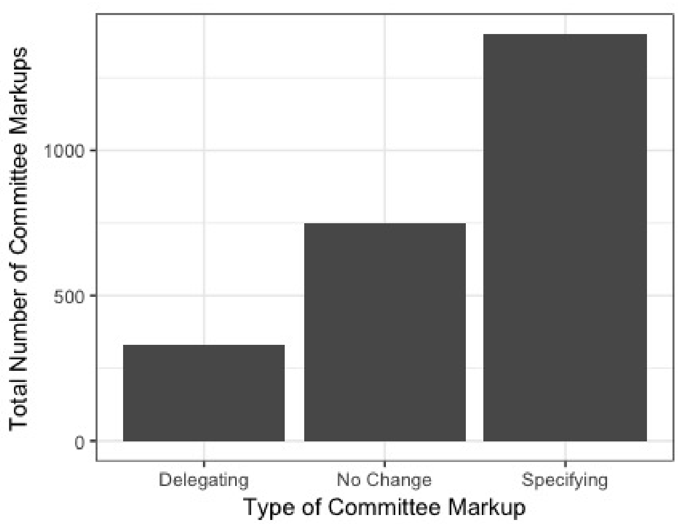


Figure 1: Frequency of Committee Markup Types

[12] "The Secretary, in consultation with the Secretary of Agriculture, shall make a determination..."

[13] This particular condition accounts for only 45 observations out of 2,481.

In the following section, I show the results of a multinomial logistic regression with the three markup outcomes described above as my dependent variable. The model includes fixed effects for Congress, committee type (Deering and Smith, 1997), and issue complexity (Canes-Wrone and de Marchi, 2002).[14]

These controls are included for theoretical reasons, although I do not have hypotheses that directly address them.[15] The committee types established by Deering and Smith (1997) are included to control for the varying importance that congressional parties may place on the amending activities of a given committee. Prestige committees, such as Budget and Appropriations, and policy committees such as Energy and Commerce and Financial Services, often deal with legislation that is particularly important to the two parties in the House, and conflicts over this legislation are typically along partisan lines. On the other hand, constituency committees, such as Agriculture and Veterans Affairs, are less likely to deal with legislation that will evoke partisan conflicts (but see Hurwitz et al., 2001). Given the variation in the extent to which party leaders are likely to involve themselves in the business of these different types of committees, and the variation in types of issues each committee type is likely to encounter, I choose to control for these categories.

Additionally, prior literature has established an expectation that the informational intensity of the issue or issues dealt with in a given bill will affect legislators' preferences for delegation in that bill. For example, Epstein and O'Halloran (1999) argue that "where the policy area is complex, making the link between policies and outcomes more uncertain, legislators will prefer bureaucratic policy making." To control for any variation in committee delegating behavior that may be attributed to bill-level measures of issue complexity, I include a factor variable developed by Canes-Wrone and de Marchi (2002) that categorizes bills as Low Complexity, Moderate Complexity, and High Complexity based on their Policy Agendas Project (Adler and Wilkerson, 2014) topic codes.

[14] Canes-Wrone and de Marchi group issues into High Complexity, Moderate Complexity, and Low Complexity categories based on their Policy Agendas Project topic codes.

[15] The coefficients for my control variables are not included in the output tables below, but are available upon request.

## RESULTS

Table 1 below shows the results of the multinomial logistic regression. Interpreting the reported coefficients requires the reader to compare each column to the reference category, which in this case is the dependent variable category No Change.[16] Therefore, the coefficients in the Delegating column can be interpreted as a measure of how much more likely (or unlikely) a markup is to move from the reference category to the chosen category (in this case, Delegating) as the result of a one-unit increase in the independent variable. In the case of a dichotomous independent variable, such as Divided Government or CQ Key Vote,[17] the reported coefficient is a measure of the likelihood of movement between categories assuming the independent variable takes on a value of 1 (the government is divided, or the bill was the subject of a Key Vote, as determined by Congressional Quarterly).

[16] Models with alternate reference categories can be found in the appendix.

[17] This variable is coded as a "1" if the bill was the subject of a Key Vote, as determined by Congressional Quarterly. The variable was included under the assumption that committee member may behave differently when they are marking up a bill that they know is important and salient.

Table 1: Multinomial Logistic Regression with Fixed Effects for Congress, Committee Type, and Issue Complexity

| | *Dependent variable:* | |
|---|---|---|
| | Delegating v. No Change | Specifying v. No Change |
| | (1) | (2) |
| Committee Staff per Member | $-0.252^{**}$ | $0.162^{**}$ |
| | (0.114) | (0.081) |
| Divided Government | 0.017 | $0.422^{*}$ |
| | (0.308) | (0.230) |
| Majority Leader – Chair Distance | $-0.131$ | $-0.172^{**}$ |
| | (0.090) | (0.067) |
| Committee Majority Ideological Dispersion | $-0.036$ | $-0.002$ |
| | (0.077) | (0.052) |
| Committee Polarization | $-0.282^{***}$ | $-0.034$ |
| | (0.092) | (0.065) |
| CQ Key Vote | $1.740^{***}$ | 0.621 |
| | (0.495) | (0.461) |
| Constant | $-0.563$ | $-0.545$ |
| | (0.651) | (0.451) |
| Observations | 2,481 | 2,481 |
| AIC | 4,341.896 | 4,341.896 |
| *Note:* | | $^{*}$p<0.1; $^{**}$p<0.05; $^{***}$p<0.01 |

I find mixed support for hypotheses H1 and H1a, about the effect of divided government on committee markups. While the presence of divided government does not make it any less likely that a committee will add delegating language to a bill (when no change in delegation is the reference category), the coefficient on the divided government variable in the Specifying column demonstrates that committees are more likely to engage in specifying markups during divided government. In other words, when the White House is controlled by a president from the opposite party of the House majority, standing committees in the House are more likely to add language to the bills they amend without delegating more authority to the executive branch.

The results also demonstrate fairly strong support for my intraparty conflict hypothesis (H2) about the ideological distance between the chairman of the reporting committee and the Majority Leader in the House. The coefficients for Majority Leader – Chair Distance in both the Delegating and the Specifying column are negative, with the coefficient in the Specifying column attaining statistical significance. This shows that committees chaired by ideological outliers are more likely to maintain an introduced bill's content, rather than adding delegation or specifying the bill's legislative language. While more specific case-study work would be necessary to fully elucidate this finding, my theoretical explanation is that, as committee chairs become more wary of their specific changes to a bill being overturned by party leadership, they will be less likely to report out a bill to which their committee has made such changes.

Additionally, I find support for both of my committee staff hypotheses (H3 and H3a). The coefficients for Committee Staff per Member[18] are negative and significant in the Delegating column, and positive and significant in the Specifying column. This demonstrates that, relative to making no change to the delegation included in a bill, well-staffed committees are less likely to add delegating language (H3), and more likely to add specific policy language without adding delegating language (H3a). Again, while additional work may be necessary to clarify the specific role being played by committee staff during markup sessions, these results suggest that committees with more staff are more likely to engage in specifying markups, and less likely to add delegating language to a bill.

[18] This variable is taken from Congressional Research Service reports on House Committee staffing levels.

Also worthy of note is the negative and significant coefficient on committee polarization[19] in the Delegating column, demonstrating that more polarized committees are less likely to add delegation language to bills during markup. If delegation is, in fact, used as a strategy to gain votes during markup (MacDonald, 2007), this strategy may become less necessary (and less desirable) as the partisan polarization of a given committee increases. On highly polarized committees, some minimum level of ideological homogeneity among the majority party contingent should decrease the need to pick up votes from members of the minority party.

Ultimately, I do not find support for hypothesis H4, about ideologically heterogeneous committee majorities. My Committee Majority Ideological Dispersion variable, which is a measure of the standard deviation of the first-dimesion NOMINATE scores of all members on a committee,[20] does not attain statistical significance in either column. The sign on the coefficient in the Specifying column is in the expected direction, but the magnitude of the coefficient is relatively small and statistically insignificant. From these results, I cannot say with confidence that committees with ideologically heterogeneous majorities are any less likely to engage in specifying markups of legislation. The positive and significant coefficient on the Committee Polarization variable, however, suggests that, for all levels of ideological heterogeneity of a committee majority, that majority's increasing ideological distance from the committee minority makes the committee more likely to engage in specifying markups. This finding provides evidence for a conditional party government effect filtering down to the committee level. It is possible that even the most ideologically heterogeneous committee majorities in the time frame I analyze were still cohesive enough, in the face of an ideologically distant minority party contingent, to put aside individual differences and make specifying amendments to legislation by delegating authority and discretion to the committee chair.

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[19]Committee polarization is measured here relative to polarization of the full House. Using Stewart and Woon's committee membership data (Stewart and Woon, 2017) and information on report dates obtained from congress.gov, I created a committee-bill level variable measuring the polarization of each committee at the time it reported out each bill. Formally, committee polarization is the absolute value of the difference between the first-dimension NOMINATE scores of the median members of each party on a committee divided by the polarization score for the House (calculated in the same manner). Values $\geq 1$ indicate that the committee is more polarized than the floor, while values $\leq 1$ indicate that the committee is less polarized than the floor.

[20]Again, this variable was calculated using data from (Stewart and Woon, 2017) and report date information to create a measure of the ideological cohesion of the majority party on a committee *at the time the committee reported the bill.*

# DISCUSSION

This paper is a preliminary attempt to analyze the effect that committees are having on legislation in the modern Congress. Specifically, it seeks to systematically examine how committees move legislation along a continuum from heavily specified policy prescriptions to general policy outlines that delegate significant discretion to the executive branch. Do committee members have a preference for more or less delegation in legislation? What are the conditions, both within and outside the committee room, that affect these preferences? My results here provide an incremental step towards answering these questions.

While the models included in this paper present factors such as divided government, committee staff, and majority party leadership dynamics that affect the likelihood of what I term a specifying committee markup, more specific work must be done in order to fully elucidate these relationships. In future work, I plan to hand-code individual sections of bills to serve as a template for an unsupervised topic model that will ultimately be able to classify delegation language on its own. This will allow me to create a more nuanced measure of delegation in legislation, based off of the delegation ratio used in (Epstein and O'Halloran, 1999). Using this measure, with bill sections as my unit of analysis I will be able to get a more granular sense of the delegation-relevant changes being made to bills in committee markup.

Additionally, there are natural questions about what happens to bills after House committees report them. When committee bills are the subject of self-executing amendments written by the Rules Committee, do these amendments affect the delegation contained in the underlying bill in any systematic way? How often are the delegations of authority added in committee markup eliminated in later stages of the legislative process? Future work may also seek to find a link between the amending activity and oversight activity of a committee, with the expectation that committee members will be more active in overseeing the implementation of laws to which they added delegations of authority.

Another question for future work more directly involves the role of the president in committee deliberations about legislative language. What are different ways in which a president communicates his desire for more delegation to congressional committees? What are the factors that influence whether or not committees acquiesce to the president? My preliminary work here on delegation decisions in committees provides a foundation from which these questions can be explored.

APPENDICES

## Appendix A: Summary Statistics of Independent Variables

| Variable | n | Min | $q_1$ | Median | Mean | $q_3$ | Max | SD | IQR |
|---|---|---|---|---|---|---|---|---|---|
| Committee Staff per Member | 2481 | 0.5 | 1.1 | 1.6 | 1.6 | 1.8 | 4.9 | 0.6 | 0.7 |
| Majority Leader – Chair Distance | 2481 | 0.0 | 0.1 | 0.1 | 0.2 | 0.3 | 0.6 | 0.1 | 0.2 |
| Committee Ideological Dispersion | 2481 | 0.6 | 0.8 | 0.9 | 1.0 | 1.1 | 2.0 | 0.3 | 0.3 |
| Committee Polarization | 2481 | 0.8 | 1.0 | 1.0 | 1.0 | 1.1 | 1.3 | 0.1 | 0.2 |
| Amendment Length | 2481 | -7387.0 | 0.0 | 59.0 | 551.9 | 297.0 | 108701.0 | 3148.0 | 297.0 |

Table 2:

## Appendix B: Delegation Dictionary

**Delegation Recipients:** Secretary, Administrator, Commissioner, President

**Delegation Phrases:** determine; determination; determined; exempt; exemption; established; create; waive; waiver; public interest; pilot program; shall promulgate regulations

With the exception of "pilot program" and "shall promulgate regulations," an instance of delegating language must include a "Delegation Recipient" and a "Delegation Phrase" within 15 words of one another. The components of this delegation dictionary were determined based on extensive reading of bill text, and examination of delegation coding rules in (Epstein and O'Halloran, 1999).

## Appendix C: Multinomial Logit Models with Alternate Reference Categories

Table 3: Multinomial Logistic Regression with Fixed Effects for Congress, Committee Type, and Issue Complexity

| | *Dependent variable:* | |
|---|---|---|
| | Delegating v. Specifying | No Change v. Specifying |
| Committee Staff per Member | $-0.414^{***}$ | $-0.162^{**}$ |
| | (0.108) | (0.081) |
| Divided Government | $-0.405$ | $-0.423^{*}$ |
| | (0.252) | (0.230) |
| Majority Leader – Chair Distance | 0.042 | $0.172^{**}$ |
| | (0.077) | (0.067) |
| Committee Majority Ideological Dispersion | $-0.034$ | 0.002 |
| | (0.072) | (0.052) |
| Committee Polarization | $-0.248^{***}$ | 0.034 |
| | (0.085) | (0.065) |
| CQ Key Vote | $1.119^{***}$ | $-0.621$ |
| | (0.381) | (0.461) |
| Constant | $-0.018$ | 0.545 |
| | (0.653) | (0.451) |
| Observations | 2,481 | 2,481 |
| AIC | 4,341.896 | 4,341.896 |

*Note:* $^{*}$p<0.1; $^{**}$p<0.05; $^{***}$p<0.01

Table 4: Multinomial Logistic Regression with Fixed Effects for Congress, Committee Type, and Issue Complexity

| | *Dependent variable:* | |
|---|---|---|
| | No Change v. Delegating | Specifying v. Delegating |
| | (1) | (2) |
| Committee Staff per Member | 0.252** | 0.414*** |
| | (0.114) | (0.108) |
| Divided Government | −0.017 | 0.405 |
| | (0.308) | (0.252) |
| Majority Leader – Chair Distance | 0.131 | −0.042 |
| | (0.090) | (0.077) |
| Committee Majority Ideological Dispersion | 0.036 | 0.034 |
| | (0.077) | (0.072) |
| Committee Polarization | 0.282*** | 0.248*** |
| | (0.092) | (0.085) |
| CQ Key Vote | −1.740*** | −1.119*** |
| | (0.495) | (0.381) |
| Constant | 0.563 | 0.018 |
| | (0.651) | (0.653) |
| Observations | 2,481 | 2,481 |
| AIC | 4,341.896 | 4,341.896 |
| *Note:* | | *p<0.1; **p<0.05; ***p<0.01 |

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