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The Use of Statutory Control by U.S. State Legislators:
One Step Closer to a More Complete Understanding of Legislative Control of Bureaucrats

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Abstract

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Legislative scholars examining the use of statutory control to oversee and control bureaucrats have consistently found that the political environment influences the amount of policy-making discretion provided to bureaucrats in legislation. These studies however, have focused predominantly on statutory control decisions made by the U.S. Congress, an institutionally static legislature, or by U.S. state legislators in general legislation over a discrete period of time. These research designs severely limit our understanding of statutory control strategies in addition to the factors other than partisanship that influence legislative decisions. This study builds upon the prevailing research by examining a new dataset of statutory control decisions by state legislators in both general legislation and appropriations bills over six legislative sessions (1997-2007). More specifically, using enacted legislation pertaining to the Children's Health Insurance Program (CHIP) from 1997-1998 through 2007-2008 across all 50 states, I examine how the political and institutional arrangements that vary across states influences statutory control decisions made by legislators, as well as further explore the substantive content of CHIP legislation to bring the discipline one step closer to a more complete understanding of statutory control of bureaucrats.
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Chapter 1:

Introduction

In 2003, the Texas Department of Transportation (TXDOT) sold a transportation bill to state legislators as a way to build roads quickly and without public money. Eager to please their constituents with better transportation options and at minimal costs, legislators backed the legislation only to learn later that TXDOT hid their intentions to privatize toll roads and subsidize them through tax breaks and exemptions, low-interest loans, and grants. Legislators felt they were duped by the agency and sought to control what they believed to be an “imperious department” that threatened their objectives (The Texas Observer, Feb 23, 2007).

In 2008, amid complaints by constituents and environmental groups about the potentially hazardous chemicals in consumer products and the lack of state oversight, California legislators provided the Department of Toxic Substances Control (DTSC) broad authority over the issue. Acknowledging that they possessed a limited knowledge of hazardous chemicals and the procedures necessary to deal with them, legislators provided the DTSC with the discretion to regulate and ban hazardous chemicals used in consumer products, develop a panel of scientists to advise the department, and create a website to inform consumers (The Sacramento Bee, Aug 25, 2008).

The relationships between legislators and bureaucrats highlighted in these examples have received significant scholarly attention in legislative studies. It is widely accepted that legislators who lack resources and information, like those in California, will rely on bureaucrats to assist and guide them in the development and implementation of policy due to their expertise and knowledge of specific policy areas. However,
bureaucrats, like legislators, possess preferences for policy outcomes that may differ from those of their legislative counterparts. In some cases, the differences in preferences are minimal and are not likely to significantly impact the legislative process or outcomes. Yet, in other instances, the differences may be substantial, as with the TXDOT. Legislators must find ways to balance the amount of discretion provided to bureaucrats with the ability to ensure that their preferred outcomes are realized. The research presented in this study examines these dilemmas, specifically the use of language in legislation, or statutory control, by legislators to control bureaucratic behavior and ensure the development and implementation of policy that is consistent with their intent.

Despite the numerous mechanisms used by legislators to control and oversee bureaucrats (e.g. fire alarms, report and monitoring requirements, etc.), statutory language is often considered the most powerful tool possessed by legislators to change agency behavior (Wood & Waterman 1993; Ringquist, Worsham & Eisner 2003) or as a signal of legislative dissatisfaction with the status quo (Calvert, McCubbins & Weingast 1989; Bawn 1997; Ringquist, Worsham & Eisner 2003). Not only are legislators able to shape bureaucratic behavior and ensure specific outcomes through legislative language, but they are also able to include many of the control mechanisms normally used outside of the legislative process (Ringquist, Worsham & Eisner 2003).

Most of what we know about legislative control strategies and the factors that influence decisions to engage in statutory control come almost exclusively from studies of the U.S. Congress (Moe 1987; McCubbins & Schwartz 1984; McCubbins, Noll & Weingast 1987, 1989; Shipan 2004). However, Congress is a politically and institutionally static legislature that severely limits our understanding of legislative
control decisions as well as the effectiveness of statutory control (Huber, Shipan & Pfahler 2001; Volden 2002b; Gerber, Maestas & Dometrius 2005). As a result, scholars have begun to examine these issues in the U.S. states where political and institutional environments vary across states. Although the state-level studies have improved our understanding of the use of statutory control, even these designs are limited.

As in congressional studies, state scholars have focused on the use of statutory language to control a single agency or group of similar agencies over a limited period of time. The most cited of the state-level studies is Huber & Shipan’s (2002) *Deliberate Discretion*, which examines the adoption of Medicaid managed care legislation ("MMC") across the U.S. states. The authors find that the amount of discretion provided to agencies is influenced by the capacity of the legislature when different parties control the proposing chamber and the executive branch. Although other studies support these findings (Epstein & O’Halloran 1999; Huber, Shipan & Pfahler 2001; Shipan 2004; but see Volden 2002b), I posit that previous studies have provided an incomplete assessment of statutory control decisions.

The improvements made in this study are designed to expand upon the research of Huber & Shipan and the prevailing research on statutory control. In particular, this dissertation makes four main contributions to the literature. First, I develop and empirically test an expanded institutional model of statutory control that expands upon previous research by using measures of legislative capacity and legislative veto that more appropriately capture the variation that exist across U.S. state legislatures. Additionally, I incorporate additional measures that account for the influence of other institutional actors such as the governor and the bureaucracy.
The second contribution of this study is the examination of statutory control decisions as a two-stage process. Although previous studies of statutory control only examine the decision by the legislature to engage in control and the amount of discretion in general legislation (Huber, Shpian & Pfahler 2001; Huber & Shpian 2002; Volden 2002b; Huber 2004), I posit that this only provides half of the statutory control story. More specifically, once legislators decide to engage in statutory control, they must then decide where to impose the control— in general legislation or appropriations bills. I argue that this is a rational calculation on the part of legislators based on the desire to enact policies that governors will not alter or veto. Examining statutory control as a two-stage process provides a more realistic control environment, while incorporating a control mechanism that is widely accepted as a viable bureaucratic control (see Fenno 1966; Calvert, McCubbins & Weingast 1989; Ting 2001; Dometrius & Wright 2006).

Thirdly, I create and use of a new dataset of statutory control decisions by legislators across all 50 states pertaining to the Children's Health Insurance Program (CHIP). While previous studies merely count the amount of words in statutes (Huber, Shpian & Pfahler 2001; Huber & Shpian 2002), this dataset measures mandates—the words and mechanisms used by legislators that specifically refer to the CHIP policy thereby eliminating the superfluous non-policy related language that often accompanies legislation. Coding the mandates allows me to replicate Huber & Shpian's research, but more importantly, I develop a new measure of legislative control based on the substantive content of CHIP legislation and the specific language legislators use to convey their policy intent. The new variable, total control, provides a more accurate assessment of
legislative policy intent and significantly improves our understanding of statutory control strategies across states and over time.

The dataset coded for this study provides a final contribution – the ability to examine statutory control decisions over time. Previous studies have focused primarily on snapshots of statutory control decisions or examined decisions over a discrete period of time (see Clingermayer 1991; Potoski 1999; de Figueiredo & Vanden Burgh 2004). However, this design does not provide us with a complete understanding of the statutory control process or the use of specific control strategies. Specifically, this design cannot tell us whether state legislators impose statutory control once and hope for the best, or whether decisions are based on changes to the political environment, the budget, the salience of the policy area, or simply boilerplate legislation, where identical bills are introduced with each new legislative session. Evidence of legislators writing mandates that are more detailed after a shift in legislative control might provide evidence that partisanship affects these decisions. However, if an investigation over time reveals this as a consistent control strategy despite the political environment, changes to the budget, or salience of the policy, the previous findings may be less compelling.

The contributions of this study will not only build on previous research and provide a more appropriate model of legislative control of bureaucrats, but it will also provide legislative scholars with a more complete understanding of the use of statutory control and the factors that influence its strategies and decisions.
Do Institutions Matter?

The institutional focus of this dissertation and the attempt to assess whether institutions matter is not uncommon in political science. Political scholars often debate whether political actors shape institutions to meet their personal and collective needs (e.g. securing pork for their district, protecting preferences, etc.), or whether the institutions themselves shape human behavior and the interactions between them. However, simply stating that institutions shape human behavior or interactions between individuals is of little value if the phenomena were unobservable or not empirically tested (Mezey 1993; Gamm & Huber 2002; Volden 2002b).

Although much has been learned because of studies examining the development and structure of institutions by rational choice theorists (see Smith 2000) and new institutionalists (see March & Olsen 1984), most of this research has studied institutions on the national level, primarily the U.S. Congress (see above). As mentioned previously, the U.S. Congress is static institution - a single legislature with minimal turnover in members, relatively stable rules and enduring institutional arrangements (Gamm & Huber 2002). As a result, institutional studies focusing on Congress severely hinder our understanding of the effects of institutions generally and our understanding of how different arrangements affect political behavior and strategies more specifically (Mezey 1993; Hamm & Squire 2001; Polsby & Schickler 2002).

Many scholars believe that for institutions to matter, we must be able to compare them in different settings and under different conditions in order to adequately assess

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2 Rational choice theorists claim that political actors play a significant role in shaping institutions to meet their individual and collective needs; while new institutionalists claim that legislative structure shapes individuals. Riker (1980), in so many words, claims that both claims are correct.
their consequences and impact on other political phenomena (e.g. actors and other institutions) (see Epstein & O’Hallorn 1999; Gamm & Huber 2002; Volden 2002b; Squire & Hamm 2005). The U.S. states provide us with the variation necessary to accomplish this goal, and as a result have received significant scholarly attention (Morehouse & Jewell 2004; Squire & Hamm 2005; Volden 2005). Prior to discussing how this dissertation brings institutions back into the study of legislative control of bureaucracies, I will briefly discuss how two institutions - legislative professionalism and term limits - have influenced political behavior and strategies.

The Institutional Impact of Legislative Professionalism

Although numerous definitions for legislative professionalism have surfaced over the years (Grumm 1971; Mooney 1994; Clucas 1995; Rosenthal 1998), a consensus centers around the transition of the institution to become more like the U.S. Congress, as measured by member pay, number of days in session and level of staff support (Squire & Hamm 2005). U.S. states vary significantly in these factors and are thus classified according to their level of professionalism: amateur (e.g. low professionalized), hybrid (e.g. moderately professionalized), or professional (e.g. highly professionalized).

The degree that a state legislature is professionalized has been found to significantly impact the behavior of legislators. Rosenthal (1998) finds that the professionalization of state legislatures has led to a decline in turnover which, in turn, has diminished teamwork and increased incentives for legislators to work alone in order to credit claim and improve re-election chances (see also Morehouse 1996; Brace & Ward 2000). Similarly, in an examination of the transition from state legislatures to the U.S.
House, Berkman (1993) posits that legislators from more professionalized legislatures are more likely to pursue a mastery of public policies that are relevant to their state jurisdictions. This finding is consistent with Maestas (2003) that suggests that professionalism attracts more ambitious members and thus responsive to their districts and constituents. Berry, Berkman & Schneidermann (2000) find that professionalism institutionalizes and insulates members from external shocks, thus securing them and extending their careers (see also Squire, Hamm, Hedlund & Moncrief 2004).

The Institutional Impact of Term Limits

An additional institutional factor that influences political behavior and strategies is legislative term limits. With its rapid diffusion across 18 states beginning in the early 1990s, legislative term limits were designed to limit the maximum number of years an elected official could serve in a particular office. Although initial studies were speculative, political scholars anticipated that they would dramatically effect the composition of legislatures and the behavior of its members as well as significantly influence the electoral arena and policy outcomes (Powell 2000; Carey, Niemi & Powell 2000; Peery & Little 2003). Like the level of legislative professionalism, term limits differed across states. While some states possessed no limits on legislative careers, others varied in the amount of years an elected official could serve (e.g. 6, 8, or 12 years) and the nature of limits (e.g. lifetime or temporary ban from re-entry).

Research examining the impact of term limits has also found a significant impact on the strategies and behavior of legislators. In an investigation of state legislative careers, Kousser (2003) finds that states with term limits create a “non-iterated” game in
which members, who once looked solely at party leadership for guidance on policy and reelection, are now forced to do much of the legislative work on their own. The study concludes that term limits provide members with less time to make a name for themselves within the chamber or initiate policy (see also Hodson 1995). In another study, Moncreif & Thompson (2001) find that members in term limited states will leave their present legislative seats early when an opportunity for advancement to another office arises. This result was challenged, however, by Meinke & Hasceke (2003) that suggests that term limits only impacted the incentive structure of legislators in moderately professionalized legislatures (see also Fiorina 1994).

The imposition of term limits in the U.S. states has also influenced the attention legislators dedicate to their constituents. Through personal interviews with legislators across all 50 U.S. states, Carey, Moncrief, Niemi & Powell (2003) report that legislators spend less time on district work (e.g. parochial policy, constituency services) and more time developing and implementing general policies that reach a wider constituency in anticipation of their next elected office (see also Copeland & Rausch 1991; Hibbing 1991; Carey, Niemi & Powell 2000). Chen & Niou (2006), however, find that term limits "reign in" legislators and force them to be more attentive to the needs of their constituents and pursue policies closer to the median voter.

Legislative professionalism and term limits are but two examples of institutional factors that influence the behavior and strategies of political actors and thus evidence that institutions do matter. Based on these studies, we would anticipate that the differences in institutional environments that exist across U.S. state legislatures would influence

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3 Similar institutional impacts on legislative behavior and strategies can be found in studies of the strength of legislative committee systems across U.S. states (see Francis 1985a; Hamm & Hedlund 1990, 1994; Hamm, Hedlund & Martorano 2005, 2007).
statutory control decisions made by legislators. As a result, this dissertation brings institutions back into the study of statutory control and attempts to determine if institutions matter in this context as it does in those discussed above. If similar statutory control decisions are made despite the institutional arrangements, then we can be more confident that Huber & Shipan (2002) are correct; that the institutions are secondary to partisanship in understanding the use of statutory language to control bureaucracies. However, if we find different legislative strategies and behavior based on the institutional arrangements, we can be more confident that institutions do matter, and our expanded institutional model succeeds in bringing the discipline a step closer to a more complete understanding of legislative control of bureaucracies.

The Importance of Legislative Control of Bureaucracies

Aside from the theoretical justifications of studying statutory control, this study is an important undertaking for a number of other reasons. One issue of particular importance concerns the motivation of legislative abdication of policy responsibility to bureaucracies. More specifically, why do legislators delegate the policy-making authority entrusted upon them by voters to non-elected bureaucrats who have demonstrated the ability to not only resist legislative control (Wood 1988; Balla 1998) and behave autonomously (Potoski 1999; Shipan 2004), but also influence the development of policy (Ruhil & Teske 2003; Meier & O’Toole 2006)? Initially, the decision to delegate to bureaucrats seems understandable. Like the California example at the beginning of the chapter, legislators who lack information and expertise, and do not have sufficient resources (e.g. time, staff) to dedicate to all of society’s policy demands, will delegate
policy-making authority to bureaucrats who possess time, resources, and the knowledge of the policy area. In this scenario, bureaucrats perform a valuable policy service by providing legislators with information and time to dedicate to other responsibilities, as well as significantly lowering the costs of policy development and implementation.\textsuperscript{4} The concern over abdication arises, however, when legislators continue to delegate this authority when they are not hindered by a lack of information, time or resources.

Although some scholars consider this type of abdication a welcome alternative to policy-making authority in the hands of self-interested and self-serving politicians (see Hibbing & Theis-Morse 2002), others perceive it as a threat to a basic tenet of representative democracy, a principle in which voters expect the politicians that they elect to be the vehicles of policy formation, adoption, and maintenance (see Stewart 1975; Fisher 1985; Kiewiet & McCubbins 1991). Combine this view with the already tarnished reputation elected officials have as a result of the frequency of governmental scandals, and the perceived increase in influence of special interests in the policy-making arena, and the abdication of policy responsibility to bureaucrats by legislators looks even more questionable.

Understanding legislative motivations to delegate and the amount of discretion will undoubtedly shed some light on which of these two extremes are closer to the truth. Previous attempts to investigate legislative motivations for abdication at the federal level, however, have revealed that decisions are based on necessity and are unavoidable due to institutional constraints (see Ogul 1976; Lowi 1979; Ornstein, Mann & Malbin 1990; Potsoski 1999; Reenock & Poggione 2004), the differences in the salience and

\textsuperscript{4} This is especially true for state legislatures that sought help from bureaucracies as a result of the devolution of federal policy that occurred in the 1960s and 1970s (Weber & Brace 1999; Barrileaux & Berkman 2003; Squire & Hamm 2005).
complexity of the issue area (McCubbins 1985; Gromley 1986; Ringquist, Worsham & Eisner 2003), or the result of partisanship (Epstein & O’Halloran 1999; Ringquist, Worsham & Eisner 2002). As mentioned previously, the validity of these results are suspect due to the static nature of the U.S. Congress. Examining this question using the differences in political and institutional environments in U.S. legislatures will provide me with the variation needed to determine the impact of these factors on decisions by legislators to abdicate authority. More specifically, examining abdication decisions by state legislators will help us to determine whether elected officials are “playing it safe,” continually deferring to bureaucrats regardless of issue area or partisanship. Studying these decisions can also tell us whether legislators engage in statutory control based on the institutional arrangements, partisanship, or whether they only do so when a problem or scandal reaches a level of political discourse and compels them to act. Having this information will not only provide voters with a better understanding of their elected officials but more importantly for this study, it will allow us to better understand legislative intent and the relationship between legislators and bureaucrats.

An additional issue that is raised by studying legislative use of statutory control involves the influence of other institutional actors in development and implementation of policy, specifically the executive branch. The influence of the executive influence in the legislative arena is well documented in political science. In particular, scholars have examined the impact of presidential approval ratings and popularity on their legislative success in the U.S. context (Neustadt 1960; Bond & Fleischer 1990; Covington, Wright & Kenney 1995; Canes-Wrone 2001; Binder & Maltzman 2002), in cross-national studies (see Shugart & Carey 1992; Mainwaring & Shugart 1997; Cox & Morgenstern 2001),
and at the state level where research has examined the influence of gubernatorial "formal" or constitutional powers (Bernick 1979; Clynch & Lauth 1991; Beyle 1996; Hall 2002; Barrilleaux & Berkman 2003), as well as "informal" or personal powers (Jewel 1962; Beyle 1983; Sigelman & Dometrius 1985; Ferguson 2003). These studies suggest that legislators do not make policy decisions in a vacuum and, as a result, are likely to develop strategies in anticipation of executive influence in legislation through their formal and informal powers.

In terms of the use of statutory control, governors vary in their ability to alter both general legislation and appropriations bills (e.g. the scope of their veto power, or their ability to transfer or alter funds, and reorganize departments or agencies, influence the budget). Yet, the motivations of governors are difficult to ascertain; is their policy-making behavior simply a consequence of the institutional environments within their state or do they engage in policy-making based on partisanship despite their capacity to influence legislation? Or, like legislators, do governors only engage in policy-making when they are compelled to do so? Studying different statutory control decisions by legislators that confront executives with varying gubernatorial powers in the policy-making arena will not only provide us with a better understanding of legislative decisions, but it will also allow us to better understand those made by governors as well.

**Plan of the Study**

The goal of this dissertation is to assess the impact of the political and institutional environments that vary across the U.S. states on the amount of discretion imposed in CHIP legislation using a new database of statutory control decisions by
legislators in all 50 U.S. state legislatures. Specifically, this study answers the following theoretical and empirical questions: to what extent do state legislators engage in the use of statutory language to control the behavior and actions of bureaucrats? Given the decision to engage in statutory control, do legislators impose such control in general legislation or in appropriations bills? What factors influence the decision of state legislators to engage in statutory control of bureaucracies?

Chapter 2 introduces the theoretical framework for the dissertation - the principal-agent theory ("PA" model). Although this dissertation does not deviate from this theoretical framework, I believe that it is important to review the theory – its premise, its origin and its application in order to understand the challenges and hurdles legislators face in attempting to control and oversee bureaucrats. In particular, I examine the problems legislators, as principals, must overcome in order to ensure that bureaucrats, their agents, achieve their preferred policy outcomes: divergent policy preferences, asymmetric information and the costs associated with both obtaining information and controlling bureaucrats. I posit that the presence of these problems adversely affects the interactions principals have with their agents and thus increases the principal’s incentive to utilize control and oversight mechanisms to ensure that their agents behave in a manner consistent with their intent. In developing this argument, I review the literature addressing these problems and evaluate each in terms of the PA relationship between legislators and bureaucrats. In addition, I address the issues of political costs and the impact of the political and institutional arrangements that are unique to this particular PA relationship. I also address criticisms of the PA framework as it has been applied to the PA relationship between legislators and bureaucrats.
The chapter continues by addressing how legislators, given the problems and challenges they face in their relationships with bureaucrats, are able to control and oversee bureaucratic behavior and ensure the legislature’s preferred outcomes. To answer this question, I review the literature surrounding legislative control of bureaucracies and address how theoretical questions and mixed empirical results caused “shifts” in the literature that led to an institutional focus of legislative control and ultimately a concentration on the use of statutory control in U.S. State legislators.

Chapter 3 provides a more detailed examination of focus on legislative use of statutory language to control and oversee bureaucrats. In particular, this chapter discusses the origin of the use of the mechanism in addition to its development in congressional studies and its evolution to U.S. state legislatures. I review the variation in political and institutional environments that exists across the U.S. states. This dialogue stresses the importance of these differences in assessing the effectiveness of statutory control as well as understanding legislative decisions that involve control and oversight of bureaucrats. I highlight Huber & Shipan’s (2002) Deliberate Discretion as an example of an attempt to assess the impact of the political and institutional environments on the ability of legislators to control and oversee bureaucracies, but ultimately suggest that their model is incomplete. Building this argument, I present my expanded model of legislative control of bureaucracies and show how it both incorporates and expands upon Huber & Shipan’s (2002) model in order to take the discipline a step closer to an understanding of legislative control of bureaucracies. The chapter concludes with a discussion of my expanded empirical model and the hypotheses to be tested in the empirical chapters.
Chapter 4 focuses specifically on the motivation, development, and measurement of my two dependent variables, mandate length and amount of control. In particular, I begin the chapter with a discussion of the Children’s Health Insurance Program ("CHIP"). In this section, I discuss the choice of CHIP legislation, the data itself, and address why the adoption, implementation, and timing of CHIP legislation is ideal for this type of inquiry in U.S. state legislatures. Following the discussion of the data, I provide an in depth analysis of each dependent variable.

Chapter 5 is the first of two chapters examining the variation in my dependent variables. Chapter 5 focuses exclusively on mandate length, detailing the differences across states in the amount of CHIP bills enacted, mandates produced, and the amount of words pertaining to mandates. The chapter also examines the variation in mandate length that exists in both general legislation and appropriations bills, as well as over time both across states and within specific states. The chapter concludes by analyzing a mixed effects model which provides information about which of my independent variables might provide the most explanatory power.

Chapter 6 replicates the analysis in chapter 5 only using my second dependent variable, total control. Although I examine the direct measure of total control, the chapter focuses primarily on the variation that exists in the factors that make up total control, specifically, procedural, policy, and both mandates, and the additional control mechanisms included in mandates to further constrain bureaucrats. I argue that these factors contribute much more to our knowledge and understanding of statutory control decisions and the strategies employed by legislators than a simple measure based on length of a mandate. These factors are based on the substantive content of legislation and
allow me to observe what aspects of the policy are important to legislators, how
legislators limit discretion, and the costs they are willing to incur to control bureaucrats.

Chapter 7 is the first of two main empirical chapters that examine the causes of
the variation I observe in my dependent variables. Chapter 7 focuses specifically on
mandate length. The chapter begins by re-introducing Huber & Shipan's and my
empirical model, and the hypotheses to be tested. I then begin building my model of
statutory control starting with the partisanship and leading to Huber & Shipan's model.

The second empirical chapter replicates chapter 7 only focusing on the causes of
the variation in total control and the amount of control imposed in factors that make up
the variable, procedural, policy, and both mandates. Additionally, I assess the causes of
the variation in the use of additional control mechanisms, specifically time constraints
and approval requirements.

My final chapter concludes the dissertation by summarizing the major findings
and evaluates how well I have answered my main research questions. I discuss possible
or necessary alterations to this study and prescribe potential avenues of future research to
take us even closer to a more complete understanding of legislative control of
bureaucracies.
Chapter 2:

Legislative Control of the Bureaucracies: Theoretical Foundations & Literature

Review

Bringing institutions back into an examination of legislative control of bureaucracies requires a theoretical framework capable of explaining how legislators successfully delegate policy-making authority to bureaucrats while ensuring their preferred policy preferences are realized. Despite an early focus on linking legislative preferences with bureaucratic outcomes (see Weingast & Moran 1983; Weingast 1984), legislative scholars have consistently relied upon the principal-agent framework (henceforth “PA”), a variant of the rational choice theory, to provide more than a simple link between legislative influence and bureaucratic compliance (Mitnick 1973; Pertshuk 1982; McCubbins, Noll & Weingast 1987; Huber & Shipan 2002; Worsham & Gattrell 2005). The power of the PA framework lies in its ability to explain the factors that frustrate the relationship between principals and their agents - divergent preferences, information asymmetries, and costs of control – as well as its ability to demonstrate how and to what degree institutions influence the ability of legislators to control and oversee bureaucracies (Moe 1987; Wood & Waterman 1991).

Based on the rational choice framework, the literature examining legislative control of bureaucracies has evolved to its present comparative focus, examining the impact of the variation in U.S. states, because studies have built upon the perceived theoretical and empirical deficiencies in the research (see Spence 1997; Balla 1998; Shipan 2004). Although these studies have further improved our understanding of the impact of institutions, their interactions with bureaucracies, and the policies that they
produce, a review of the literature will show that despite moving in the right direction, research in this area remains incomplete.

This chapter has two distinct goals. The first is to discuss the theoretical framework for the study of legislative control of bureaucracies. I review the PA framework by addressing its origins, its application to political relationships, and perceived shortcomings of the theory. In particular, I examine the central problems that frustrate the relationship between principals and agents - preference divergence, information asymmetries, and costs of control, and apply them to the PA relationship between legislators and bureaucrats. The second goal is to provide a general overview of the literature pertaining to legislative control of bureaucracies, from the debate between administrative and congressional dominance, to a focus on the determinants of legislative control. I conclude by addressing how this research and its shortcomings have led to a predominant focus on the use of statutory control to control and oversee bureaucrats.

The Principal-Agent Dilemma: Origin & Problems

The PA framework originated in economic studies where scholars sought to explain the contractual relationship between the buyer ("principal") and seller ("agent") of goods or services specifying the requirements of each in order to fulfill their contractual obligations (see Perrow 1986). In particular, economic research focused on

5 Although not all research examining legislative control of bureaucracies classifies their studies as PA relationships, most studies generally utilize a rational choice framework to examine the incentives control and oversight. I posit that these two approaches are not mutually exclusive and both "speak from the same book" to examine the purposeful action or inaction of a rational actor to influence the behavior of another.

6 These problems are addressed by Jensen & Meckling (1976) in their examination of the ownership structure of corporations. The authors posit that the problems occur as a result of buyers and sellers possessing different attitudes toward risk (see also Fama 1980; Fama & Jensen 1983). Alchian & Demsetz (1972), who build upon Coase's (1937) discussion of organizations and the efficiencies associated with hierarchical development, also address the issue of insufficient information on the part of decision-making
the cooperation between parties to a contract, the problems that with divergent preferences and division of labor, and the attempts by buyers to control the seller’s who were thought to be driven by their own interests and made decisions with information only imperfectly known to the buyer (see Mitnick 1973; Ross 1973; Moe 1987).  

The focus on preferences and goals of those in power ("principals") and those that possess both information and expertise ("agents") has also provided a foundation for scholars interested in explaining political relationships (Weber 1958; Moe 1987; Worsham & Gattrell 2005). The PA framework is primarily concerned with addressing and resolving three central problems associated with the relationship between principals and their agents: preference divergence, information asymmetries, and the costs associated with the control of agents. It is widely accepted that the existence of these problems create substantial hurdles for principals in their attempts to achieve their preferred policy outcomes (Pertshuk 1982; Moe 1987; Calver, McCubbins & Weingast 1989; Bawn 1995; Potoski 1999; Gerber, Maestas & Dometrius 2005). In particular, the presence of these problems adversely affects the interactions principals have with their agents and thus increases the principal’s incentive to utilize control and oversight mechanisms to ensure that their agents behave in a manner consistent with their intent.

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7 Some research argues that the economic framework does not translate well to political relationships. Moe (1987) finds the transition from the economic model to be fraught with peril given problems of translation and applicability. Wood (1988) suggests that political relationships involving bureaucrats do not possess the same incentives as employees in a firm (see also Mitnick 1986). Waterman & Meier (1998) posit that preferences for both legislators and bureaucrats change or are altered over time as a result of changes to the institutional and political environments as well as external relationships (pg 176).

8 Political scholars utilized the PA framework to examine presidential decisions to use force (Chubb 1985; Downs & Rocke 1994), the influence of interest groups on bureaucratic action (Moe 1989; Banks & Weingast 1992), and decisions between different levels of the judiciary (Songer, Segal & Cameron 1994). Much of the early political PA research focused on interactions involving elected officials and bureaucrats attempting to assess whether political control of bureaucracies was possible (Wilson 1887; Mitnick 1973; Weingast & Moran 1983; Weingast 1984).
Preference Divergence

The first problem associated with PA relationships assumes that principals and agents possess different preferences for policy procedures and outcomes. The reason for this assumption is fairly straightforward: if principals and agents share similar preferences then the incentive for principals to control the actions of their agents and attempt to limit their discretion is minimized significantly, if not eliminated altogether. PA research has consistently found that bureaucrats have their own preferences for procedures and outcomes (McCubbins, Noll & Weingast 1987; Bawn 1997; Huber & Shipan 2002; Gerber, Maestas & Dometrius 2005) and, if desired also possess the ability to influence the development and implementation of those policies (Potoski 1999; Ruhil & Teske 2003; Shipan 2004; Meier & O'Toole 2006). Yet, if their preferences are consistent with those of the legislature, then the uncertainty surrounding the actions and goals of the bureaucracy is alleviated. As a result, legislators can feel more secure providing policy-making authority to bureaucrats and limiting (if not eliminating) the need to engage in statutory control. In the event of divergent policy preferences, the incentive for legislators to control the bureaucrats is increased. Legislators will feel less secure about delegating extensive policy-making authority knowing that they not only have the ability and incentive to influence legislation.

It is important to point out that despite similar preferences for policy outcomes, legislatures might still decide to engage in statutory control to ensure the use of specific procedures. This point will be developed further in the next section, but legislatures are likely to require bureaucracies to use particular procedures in order to appease constituents and credit claim (e.g. hold hearings), or simply to protect their political or party interests (McCubbins & Schwartz 1984; McCubbins, Noll & Weingast 1987).
Asymmetric Information

The second assumption derived from the PA framework assumes that agents possess an informational advantage over their principals (McCubbins, Noll & Weingast 1987; Kiewiet & McCubbins 1991; Worsham & Gattrell 2005). Asymmetric information on the part of bureaucrats involves both information about themselves (e.g. their capabilities, experience and expertise) as well as the specific area in which they specialize (e.g. sources of information, feasible and effective procedures and outcomes).

In the relationship between legislators and bureaucrats, bureaucratic knowledge and expertise benefits legislators in the development and implementation of policy. However, when confronted with divergent policy preferences, the information disadvantage create additional problems for legislators who must continue to delegate policy-making authority to bureaucrats, but must also find ways to control and oversee their actions to ensure their preferred outcomes (McCubbins, Noll & Weingast 1987). In particular, asymmetric information causes problems of adverse selection, moral hazard, and unintended policy outcomes.

The problem of adverse selection, or hidden or private information, involves the inability of principals to determine whether their agents have adequately represented themselves in terms of their capabilities, expertise or experience. In terms of the PA relationship between legislators and bureaucrats, the problems of hidden and private information are alleviated over time because of repeated interactions between the two

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10 Hidden information involves principals' not knowing specific information about their agents — whether they have misrepresented their capabilities (i.e. lazy, unqualified, risk averse) or their experience in a specialized area. Private information involves principals lacking information possessed by their agents regarding the feasible and effective processes and procedures for achieving goals in their specialized area (see Moe 1984; McCubbins, Noll & Weingast 1987). Agents are policy experts and are likely to be at the forefront of advancements in the field (Moe 1985; Gromley 1986). It would therefore be reasonable to expect that agents would possess the most accurate information about the policy area and the procedures that are most feasible and effective.
actors. For example, the prevalence and influence of sub-governments (e.g. iron triangles, policy subsystems), have structured and solidified the relationship between legislators and bureaucrats. These institutions have enabled legislators to learn about bureaucratic capabilities and experiences and subsequently obtain information about the feasible and effective procedures in a specific policy area (see Heclo 1978; Kingdon 1984; Hamm 1986; Baumgartner & Jones 1993; Sabatier 1999).

Although a certain degree of uncertainty is likely to remain as a result of changes to the political environment and external relationships (Waterman & Meier 1998), the technical nature of the policy area (Bawn 1997; Potoski 1999; Volden 2002b), or the ability of bureaucrats to be at the forefront of policy innovations and advancement (Moe 1985; Gromley 1986), much of these information deficiencies are likely to be alleviated. Based on these assumptions, the more important problem for legislators as principals is their inability to observe the hidden actions of bureaucrats, or the moral hazard problem.

The moral hazard problem stems from the belief that principals cannot adequately monitor or verify that their agents are behaving in a manner that is consistent with their intent. In particular, agents with their own policy preferences may purposely hide or conceal their actions in order act opportunistically and achieve their own goals. In terms of the PA relationship between legislators and bureaucrats, bureaucrats are likely to engage in various types of opportunistic behavior such as shirking, bureaucratic drift, or exploitation – all of which result in saved costs and increased payoffs for bureaucrats (see McCubbins, Noll & Weingast 1987; Kiewiet & McCubbins 1991; Waterman & Meier 1998; Worsham & Gattrell 2005)\textsuperscript{11}.

\textsuperscript{11} Shirking involves an agent engaging in behavior that is risky or intended to cut corners in order to save time and resources and thus their profits. “Bureaucratic drift” involves an agent using their knowledge and
Although divergent preferences intensify the problem of moral hazard, the inability of legislators to observe bureaucratic action is still a concern even when the two political actors share similar policy preferences. Waterman & Meier (1998) argue that although bureaucrats possess policy preferences, they are primarily concerned with maximizing their budget: not only obtaining funds and resources but, also minimizing their expenses to retain as much funding and resources as possible (pg 176). It is likely that, despite possessing similar policy goals as the legislature, bureaucrats will choose procedures and processes that minimize their expenditures while allowing them to achieve their preferred ends. These choices may not be preferred by legislators who, in addition to their policy preferences, have preferences for re-election (see Fenno 1971; Mayhew 1974) and blame-avoidance (see Fiorina 1982a). As a result, legislators would like to shape bureaucratic behavior in a manner that satisfies their constituents but, at the same time, avoid blame for failed policies or unintended adverse policy consequences (see McCubbins & Schwartz 1984; McCubbins, Noll & Weingast 1987).

The problem of unintended policy outcomes is of particular importance to this study. Implemented policies often result in outcomes that were not anticipated by legislators (see Clingermayer 1991; Waterman & Meier 1998). Unanticipated events may be the result of a state’s financial windfall, a change in technology, acts of the judiciary, or even acts of nature (e.g. natural disasters). In these situations legislators will possess an incentive to re-visit and alter the policy in order to adjust for (or take advantage of) the particular event.

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*Expertise to develop and implement policies that drift from the legislature’s preferred outcome to their preferred outcome (Spence 1997; Balla 1998; Huber & Shipan 2002). Exploitation involves bureaucrats taking advantage of the favorable strategic position in which they have been placed.*
Although in some instances unintended consequences will affect legislators and bureaucrats similarly (e.g. financial windfall), it is likely that the results are zero-sum, where the benefit to one results in the detriment to another. In these instances, divergent policy preferences and asymmetric information further compel legislators to oversee the actions of bureaucrats as well as utilize mechanisms to control or shape their behavior.

**Costs of Control**

The informational advantage held by agents, the threat of their opportunistic behavior, and the demand of non-policy related preferences further increase the incentives for principals to control and oversee the actions of their agents. However, control and oversight do not occur automatically and the choice of control mechanisms depends upon the costs the principal is willing and able to incur in order to “minimize the gap between desired and actual performance” (Moe 1987). These costs of control represent the third assumption associated with principal-agent relationships. In particular, this assumption focuses on *time and resources* and *political costs*.

**Time and Resource Costs**

The primary cost that principals must endure in order to alleviate, if not eliminate, the problems they face in their relationships with their agents is the cost of *time and resources*. The argument regarding time and resources is fairly straightforward: principals confronted with problems of adverse selection and / or moral hazard must possess enough time (e.g. time in the legislative session) and resources (e.g. staff, salary, funds, infrastructure) to dedicate to obtaining and disseminating the information about
specific policy areas and/or their agents\textsuperscript{12}. At the same time, legislators must have time and resources to establish and monitor control and oversight mechanisms where the actions and behavior of their agents is unobservable. The difficulty for legislators to obtain information varies significantly depending on the specific policy, the nature of the agent, as well as the type of control and oversight mechanism utilized\textsuperscript{13}.

In terms of the PA relationship between legislators and bureaucrats, legislators are likely to invest more time and resources in policy areas where they have limited knowledge or which represent more complex and technical issues (Bawn 1997; Ringquist, Worsham & Eisner 2003)\textsuperscript{14}. Policies involving more complex or technical issues create greater demands on legislators and, although they are more likely to delegate authority involving these issues (Bawn 1997; Huber & Shipan 2002), they must still obtain information to understand the policy area as well as credit claim for success.

In addition to the complexity of the policy area, the nature of bureaucrats may influence the amount of time and resources legislators must incur to obtain information (see Moe 1987; Waterman & Meier 1998). At the U.S. state level, bureaucracies vary not only in size and in the nature of their personnel (civil servants vs. patronage), but also in their ability to influence policy, act autonomously and resist both legislative and executive control (see above). For example, some bureaucracies are led by executive branch appointees while others are elected positions (Book of the States, 2007). Appointed administrative agency heads are likely to be “beholden” to the executive and

\textsuperscript{12} This refers to private or hidden information regarding the agencies and/or procedures and outcomes.

\textsuperscript{13} The costs for obtaining and disseminating information will be alleviated somewhat as a result of the specialization of legislative committees to tap the talents of its members (Hamm & Hedlund 2004; Hedlund & Hamm 2005) and the continuous interactions between the two actors (e.g. policy subsystems, sub-governments) (see Heclo 1978; Kingdon 1984; Baumgartner & Jones 1993; Sabatier 1999).

\textsuperscript{14} Radner (1985) suggests that interactions between legislators and bureaucrats are constant and iterative and thus the costs can be more substantial than if the relationship was a one-shot game.
are more likely to share similar preferences for policy outcomes. Elected administrative heads must satisfy their own constituent’s preferences and thus are more likely autonomous and more likely to resist pressure from the other branches of government. At the same time, bureaucracies that are staffed by merit based employees (civil servants) are more likely to be career bureaucrats driven by the policy area than partisan preferences (Gailmard & Patty 2007). Consequently, these bureaucracies are more likely to pursue outcomes that differ from those of the executive and legislative branches.

The type of mechanism used to control bureaucrats impacts a principal’s investment of time and resources. For example, principals may require their agents to submit reports, hold hearings, consult with groups, use specific procedures, or engage in budget manipulation. Each of the mechanisms comes with its own costs, and their effectiveness depends upon the particular relationship between the principal and agent as well as the principal’s specific informational needs (Kiewiet & McCubbins 1991; Huber & Shipan 2002). In situations where principals possess a significant informational disadvantage, they may choose to require their agents to submit reports on progress or procedures associated with policy development and implementation. This mechanism will provide information about the policy area and updates so that the legislature may monitor bureaucratic actions and make sure that they are not shirking or pursuing their own outcomes. Alternatively, principals may require bureaucrats to hold hearings in order to provide information to constituents as well as alleviate costs by shifting the burden of oversight to constituents who are most interested in the specific policy area.\(^{15}\)

\(^{15}\) McCubbins & Schwartz (1983) classify these mechanisms as fire alarms since the legislature’s “alarm” will be triggered by constituents or interested parties when the bureaucracy deviates from their preferred procedures or outcomes (see also McCubbins, Noll & Weingast 1987).
Political Costs

In addition to time and resources principals must incur in order to control and oversee the actions of their agents, some principals must face additional costs to overcome the problems associated with their relationship with their agents. In terms of legislators as principals, these costs can also be political in nature. As mentioned previously, legislators have preferences for re-election and as a result, will focus on achieving policy outcomes that are consistent with those preferred by their constituents (see above). In order to achieve this goal, legislators will attempt to shape bureaucratic behavior in a manner that satisfies the needs and/or desires of their constituents while at the same time avoiding blame for failed policies or unintended, adverse consequences of policy implementation (see McCubbins & Schwartz 1984; McCubbins, Noll & Weingast 1987). Political costs arise when legislative control and oversight decisions fail to accomplish these goals and thus adversely impact their re-election chances as evidenced by lower confidence or favorability ratings, challenges to legislative seats, and declining campaign contributions or support (see Fenno 1971; Mayhew 1974; Fiorina 1982a). Legislators thus have an incentive to make careful control and oversight decisions as well as utilize mechanisms that minimize time and resources as well as alleviate the possibility of incurring political costs. For example, in situations where legislators are confronted with a controversial policy area, they are more likely to choose a control mechanism that minimizes their or the bureaucrats’ involvement with constituents, such as a requirement to submit periodic reports or consulting with specific groups or individuals rather than holding hearings. Using these mechanisms will allow legislators to gain the requisite information about both the policy area and bureaucratic action in addition to insulating
the process and their involvement in the event that outcomes are inconsistent with the preferences of their constituents.

**Shortcomings in the Principal Agent Framework**

Until this point in the chapter, we have discussed the origin of the PA theory and the problems and/or challenges faced by legislators, as principals, in their attempts to control and oversee bureaucrats, their agents, and ensure the development and implementation of their preferred policy outcomes. Although the PA framework has played a prominent and powerful role in examining the relationship between politicians and bureaucrats (Huber & Shipan 2002, 26), it has not escaped criticism. In fact, over the past few decades, a significant amount of attention has been dedicated to addressing both its theoretical and empirical shortcomings. In general, the criticisms levied on the PA framework center on the dyadic relationship between principals and agents, the failure to treat bureaucracies as an institution, the focus on a single agency, and the inability of PA researchers to adequately model the political or institutional environments in which the PA relationship resides. I will address each separately and discuss how this dissertation will improve upon these shortcomings.

**Principal – Agent Dyads**

The first criticism of the PA framework is that the dyadic relationship between a single principal and a single agent is unrealistic. The argument states that although the PA framework is based on the ability of the principal to ensure that the agent is behaving in a manner consistent with their intent, focusing on a single principal to test these
assumptions does not adequately represent most PA relationships (see Moe 1987; Waterman & Meier 1998; Worsham & Gattrell 2005; Meier & O'Toole 2006). In fact, PA critics suggest (and have found) that bureaucrats often balance the preferences and attempts at control from multiple principals (Mitnick 1986; Waterman, Rouse & Wright 1998; Worsham & Gattrell 2005).

PA critics contend that although bureaucracies serve the executive branch, this does not limit the institutions involved in attempting to influence the processes and procedures they utilize or the decisions they make. Wood & Waterman (1994) provide an excellent example of this argument in their examination of bureaucratic appointments in both the Carter and Reagan administrations. Bureaucratic appointments are a shared power between the two branches of government and the authors find that bureaucrats must – and do - respond to both principals – even when their preferences diverge. Waterman & Meier (1998) concur by suggesting that findings of influence by a single principal is suspect since it is impossible to determine if the bureaucracy is shirking or simply achieving the goals of another principal.

Bureaucratic autonomy scholars also contend that studies of the relationship between legislators and bureaucrats do not take into consideration other variations in PA relationships. For example, Sabatier & Pelkey (1987) find that although principals often act in “concert” with one another, evidence of and the impact of competing principals on bureaucratic behavior is substantial in studies examining the PA relationship (see Wood & Waterman 1991, 1993, 1994; Hammond & Knott 1999; Brehm & Gates 1997; Waterman, Rouse & Wright 1998; Worsham & Gattrell 2005). At the same time, Sabatier & Jenkins-Smith (1993) find that bureaucrats must also adjust to the fact that some
principals enter and exit the PA relationship depending on the particular issue, its salience, or the stance of competing principals.

This dissertation addresses this criticism in two distinct ways. First, I assume that bureaucracies possess the ability to pursue their own preferences as well as withstand legislative control and oversight. I posit that the degree to which bureaucrats can act autonomously is based on the structure, leadership and size of the agencies involved in policy development and implementation. As mentioned above, bureaucracies vary significantly across states based on these factors and these differences will be included in my model of legislative control. Secondly, I account for the possibility of multiple principals attempting to control and oversee bureaucratic action. In particular, I examine the relationship and the bargaining that takes place between legislators and the governor. I assume that legislators and the governor both have policy preferences, and when they diverge, both actors - depending on their institutional powers (e.g. legislative & appropriations powers) - will attempt to influence legislation in order to compel bureaucrats to pursue their preferences rather than their counterpart's.

Bureaucracies as an Institution

An additional criticism levied on PA studies stems from the fact that agencies are ignored as an autonomous and influential institution. Although the PA framework is founded on the assumption that principals and agents have divergent policy preferences, most PA researchers assume that the preferences possessed by bureaucrats mirror those of the executive branch for which they serve (Ogul & Rockman 1990; Kiewiet & McCubbins 1991; Brehm & Gates 1997). Bureaucrats are thought to be responsive only
to the executive branch and lack their own values, goals, or preferences, let alone the ability to pursue them and influence the policy-making process (Arnold 1979; Ogul & Rockman 1990; Carpenter 2001). Studies of bureaucrats, however, have revealed a much different environment. Not only is there significant variation between bureaucracies - administrative histories, organizational structures and resources, norms and standards, operating procedures, as well as size and personnel, and the appointment or election of administrative heads (see Worsham & Gattrell 2005) – but bureaucrats have been shown to be quite autonomous with distinct policy preferences (Dodd & Schott 1979; Calvert, McCubbins & Weingast 1989; Carpenter 2001). In fact, research has shown that bureaucrats with the resources and desire can influence policy development and implementation, and often do so (Wood 1988, 1998; Cook 1998). Although PA critics contend that the assumption of shared preferences is the result of the difficulty differentiating between bureaucracies and assessing their preferences (Waterman & Meier 1998; Worsham & Gattrell 2005), Meier & O'Toole (2006) argue that without knowledge of the specific bureaucracies' values and preferences, attempting to determine the degree of political control is futile (pg. 178). As stated above, this dissertation assumes that bureaucracies possess the ability to pursue their own preferences as well as withstand legislative control and oversight. As a result, I test whether more autonomous bureaucrats impact of control strategies by legislators.

**Single Bureaucracy or Similar Bureaucratic Group Studies**

Building off of the criticism regarding the dyadic nature of PA relationships, PA critics also question the examination of PA relationships involving one agency or a group
of similar bureaucracies. As stated above, there is significant variation in bureaucratic autonomy and each possess different values, goals and preferences. PA critics contend that lumping bureaucracies into the same mold and assuming that they will act and react similarly is unrealistic (see Meier & O'Toole 2006). Meier & O'Toole (2006) suggest that although examining a single bureaucracy provides leverage for easy measurement (e.g. use of dummy variables) it adversely impacts the generalizability of the results since they will be idiosyncratic to the particular agency in question.

Critics of PA literature also point out that agencies are often in competition with each other for limited money and resources, not to mention the competition that takes place between factions or departments within bureaucracies (Waterman & Meier 1998). This was evident in Waterman, Rouse & Wright's (1994) examination of the strategies and behavior of state and federal level bureaucrats. The authors find that both groups of bureaucrats compete for the same resources, but that they also possess different preferences and strategies. These findings are supported by studies that find preference divergence between policy implementation bureaucrats and those that are involved in policy development (Mazmanian & Sabatier 1983) as well as between career and temporary bureaucrats (Pfiffner 1988). Simply examining a single agency or group of similar agencies does not allow the researcher to account for the bargaining and coordination legislators must take into consideration when developing and implementing a control and oversight strategy.

To address the single agency criticism, instead of focusing on control and oversight of a specific agency or group of agencies, this dissertation focuses on a specific

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16 Meier & O'Toole (2006) note that some PA scholars have, in fact, examined the impact of legislative control on multiple agencies. See Gormley, Hoadley & Williams 1983; Mitinick & Backoff 1984; Chaney & Saltzstein 1998.
policy area and examines legislative attempts to control and oversee all agencies involved in the development and implementation of the policy. This focus will allow me to assess how all agencies involved in the policy area are impacted by the legislative control strategy. At the same time, by examining the type of constraint and the amount of discretion provided by the legislature, I will also be able to assess the importance legislators place on the agencies or the policy as a whole.

**Political and Institutional Impacts on PA Relationships**

The last criticism of PA studies centers on the context in which relationships are examined. In particular, critics have found that the political and institutional environments in which the relationship is embedded affect interactions between legislators and bureaucrats. The political and institutional environments that vary across states have consistently been found to influence legislative strategies and structure (Squire & Hamm 2005; Kousser 2005), the development and implementation of policy (Epstein & O’Halloran 1999; Huber & Shipan 2002; Volden 2006), as well as the choice of mechanisms to control and oversee bureaucrats (Moe 1987; McCubbins, Noll & Weingast 1987; Huber, Shipan & Pfahler 2001; Huber & Shipan 2002). Additionally, this variation has been shown to influence interactions between legislators and bureaucrats as well as the severity of the problems associated with their relationship. In fact, Moe (1987) suggests that without knowing more about the two parties – “their underlying goals and value structures, the nature and availability of rewards and sanctions, the presence of institutional constraints...,” it would be difficult to predict whether a principal is likely to engage in control of its agent or the extent of that control (pg 481).
Political Environment

It is widely accepted that political parties are not unitary in their policy preferences as each member has different personal preferences in addition to those of his/her constituents (see Downs 1957; Smith 1997; Barrilleaux et al 2002). Thus, it should be expected that chambers in a legislature that are controlled by different parties will interfere with the passage of party policies and pursue their own preferences (Downs 1957; Smith 1997). As a result, the initiating or proposing chamber possesses an incentive to control and oversee the actions of the bureaucracy to ensure that their, and not the other chambers’ preferred outcomes are enacted. If the chambers are controlled by the same party, it is more likely that they will share similar preferences or differ slightly due to differences in constituents, their needs and the length of their legislative terms. As a result, the incentive of the initiating chamber to control the bureaucracy is diminished.

The impact of the political environment in state legislatures also applies to the relationship between the legislature and the executive branch. Although PA studies have found that bureaucrats can and will influence policy (see above), they are an extension of the executive branch which maintains significant control over their composition, structure, and resources (e.g. budget, personnel, etc) (see Branokowski & Gross 2006). As a result, if the executive and legislature are controlled by different parties, and thus possess divergent policy preferences, the executive branch can influence the actions and strategies of the bureaucracy “away” from the legislature’s preferred outcomes. This will likely increase the incentive for the legislature to find ways to control and oversee bureaucratic actions. In these settings, the legislature knows that the executive possesses differing policy goals and, thus the flow and dissemination of policy and bureaucratic
information will likely be stifled (Waterman & Meier 1998). Consequently, the costs for legislators to obtain and disseminate policy and bureaucratic information, as well as utilize control and oversight mechanisms will be increased. If, however, the executive and the legislature share preferences, the incentive for the legislature to engage in bureaucratic control is diminished since the executive will encourage the bureaucracy to pursue policy outcomes that are consistent or similar to those of the legislature.

Institutional Environment

In addition to the impact of the political environment on the incentive for legislators to engage in bureaucratic control and on the mechanisms themselves, the institutional environment in which they reside also influences legislators at the U.S. state level. U.S. state legislatures vary in the amount of time that they are in session, ranging from a few months every two years (biennial session) to year around legislatures (annual sessions), and in the amount of resources they possess (e.g. staff, legislator salary) (see Squire & Hamm 2005; Squire 2006), the capacity of their institution (e.g. strength of committee system, policy-making and appropriations powers) (see Huber & Shipan 2002; Volden 2002b), as well as the powers of the legislature in relation to that of the chief executive. The differences have been shown to significantly impact a legislature's ability to obtain and disseminate policy and bureaucratic information, as well as impact their ability to develop and implement policy (Berry & Berry 1990; Rosenthal 1998; Barrilleaux & Berkman 2003), and control and monitor bureaucrats (Thompson 1986; Huber, Shipan & Pfahler 2001). Legislators that are in session year around, possess more resources, and have stronger committee systems (e.g. floor and agenda control, deference
from chamber, etc.) (see Hamm, Hedlund & Martorano 2006), can be considered highly capable and are thus able to invest more time obtaining and disseminating information about bureaucrats and the specific policy area, as well as establishing control mechanisms and monitoring behavior. At the same time, the larger staffs and stronger institutions (i.e. committee systems) enable these legislators to alleviate much of the costs of both obtaining and disseminating information as well as engaging in bureaucratic control and oversight (Huber, Shipan & Pfahler 2001; Huber & Shipan 2002). Less capable legislatures - legislatures that meet in session only a few months out of the year, possess limited resources, and have weaker committee systems – are less effective in obtaining and disseminating information and have less time and resources to perform all of their legislative functions, let alone bureaucratic control and oversight (Thompson 1986).

As discussed previously – as well as more fully in the chapter 3 - this dissertation builds upon existing PA studies that have examined legislative attempts to control and oversee bureaucratic action using the variation in political and institutional environments that exist in U.S. state legislatures (Epstein & O’Halloran 1999; Huber, Shipan & Pfahler 2001; Huber & Shipan 2002; Volden 2002b; Gerber, Meastas & Domertirus 2005). This study provides a richer set of institutional variables in which to assess more completely the impact of institutional environments on legislative control and oversight strategies, and does so over a 10-year period. This time frame will allow me to better understand the strategies employed by legislators as well as the impact of changes to the political and institutional environments.
Where Do We Go From Here?

Given the problems of divergent policy preferences, asymmetric information, and the costs of control that adversely impact the PA relationship between legislators and bureaucrats, how are legislators as principals able to control the actions and behavior of bureaucrats? In particular, how do legislators decide which control mechanisms fit their specific relationships and political and institutional environments in which they reside?

Over the past several decades, legislative scholars have performed a significant amount of research attempting to answer these questions. The research began by assessing who exerted control over whom – the U.S. Congress or bureaucrats, and the effectiveness of specific control and oversight mechanisms, and then shifted to an institutional focus due to mixed results deriving from studies attempting to examine these relationships empirically (see Spence 1997; Potoski 1999). At the same time, research shifted because of the belief that variation in the political and institutional environments was necessary to assess the impact of specific control and oversight mechanisms (see above). This institutional shift also led many legislative control scholars to concentrate specifically on the language in legislation, or statutory control, as the preferred control and oversight mechanism due to its effectiveness and ability to minimize costs (see Meier 1993; Bawn 1997; Ringquist, Worsham & Eisner 2003).

Although these extensions have vastly improved our understanding of decisions to engage in control and oversight of bureaucracies, as well as the choice of mechanisms, a review of the literature will show that, despite moving in the right direction, our understanding of legislative control of bureaucracies remains incomplete. Not only does the literature fail to adequately account for the variation in institutional environments that
exist across U.S. state legislatures, but it also only examines this relationship over a
discrete period of time. At the same time, existing models of legislative control provide
inadequate measures for legislative capacity and the legislative veto, and fail to account
for other institutional features that have been shown to impact the relationship between
legislators and bureaucrats. Examining these decisions over one or two legislative
sessions also provide us with a limited understanding of legislative incentives or
strategies to control and oversee bureaucracies. Combined with the PA framework, this
dissertation remedies these theoretical and empirical shortcomings.

In the remaining part of this chapter, I review the literature surrounding legislative
control of bureaucracies and the research examining the use of control and oversight
mechanisms. I conclude with a discussion of how this literature has led to a focus on
statutory control, as a legislative control and oversight mechanism and set up a more
complete discussion of statutory control in the next chapter.

**Legislative Control of Bureaucracies: Literature Review**

The early research examining the relationship between legislators and bureaucrats
focused on the power and influence of the administrative state and its ability to withstand
legislative control and influence the policy-making process (see Ogul 1976; Dodd &
Schott 1979; Wilson 1980; Peters 1981; Rourke 1984).\textsuperscript{17} While some scholars believe the
deferece to bureaucrats is of practical necessity (Huber & Shipan 2002, pg. 23) and

\textsuperscript{17} Administrative dominance scholars believe that the complexity of policy issues, the rapid expansion of
government and subsequent policy overload, as well as the size and expertise of administrative state (see
Skowronek 1982; Skocpol 1992), enabled bureaucrats to "run the show, while politicians essentially had no
choice but to sit on the sidelines and watch the show" (Huber & Shipan 2006, pg. 256-257). Other scholars
suggest sociological explanations for bureaucratic dominance in policy-making including the internal
organization of bureaucracies (Selznick 1949; Wilson 1980), the competing interests within bureaucracies
(Katzman 1980), and the insulation of bureaucracies due to growing professionalism (Dodd & Schott 1979;
Knott & Miller 1987).
beneficial to the policy-making process (see Mashaw 1997; Meier & O'Toole 2006), other scholars found bureaucratic dominance to be detrimental, fearing self-serving agents (see Putnam 1975; Wright 1978) and a threat to representative democracy (Lowi 1969; Offe 1972; Huber & Shipan 2002).

Support for the *administrative dominance theory* is based primarily on studies examining the policy-making process and the ability of bureaucrats to incorporate competing interests (see Stigler 1971; Peltzman 1976), in addition to research establishing bureaucratic ability to withstand or resist legislative control (Wood 1988; Balla 1998; Carpenter 2001). These studies also downplayed the role of institutions, specifically legislatures, defining them as “little black boxes” that exerted minimal influence and control (Moe 1987).

Congressional dominance scholars attribute bureaucratic dominance to the inattentiveness of the U.S. Congress (Sher 1963; Ogul 1976; Dodd & Schott 1986; Huber & Shipan 2002). Specifically, these studies contend that Congress possesses the tools and resources to control and oversee bureaucrats (Ogul 1976; McCubbins 1985), but also chooses not to use them because the “threat of control” is sufficient to shape agency behavior (McCubbins & Schwartz 1984). Studies also suggest that Congress is more concerned with satisfying the demands of their constituents than spending time and resources to control and oversee bureaucracies (Bibby & Davidson 1972; Ogul 1976; Sudquist 1981). Wood & Waterman (1991) also suggests that much of the early congressional control and oversight was tied to money, and accomplished through the

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*Wood (1988), in its examination of the Environmental Protection Agency's (EPA) response to the 1980 Clean Air Act, finds that despite research that suggests that political institutions can control the behavior and thus the outputs of bureaucracies, those agencies with substantial resources and the desire to do so, can alter their outputs in directions completely opposite of what a model of hierarchy would predict.*
appropriations process that was more decentralized and incremental and was thus not easily observable (see also Wildavsky 1964; Fenno 1966).

The empirical research supporting the attempts to dispel administrative dominance suggests that the manner in which bureaucratic dominance is measured is flawed (see Moe 1982; Shipan 2004). Huber & Shipan (2002) claim it is difficult to measure the preferences of actors, policies, and outcomes (pg. 23-24; see also Gross & Baranowski 2006), and claim of bureaucratic dominance are based on “anecdotes and intuition rather than empirical study” (pg. 23). In their empirical study of bureaucratic actions, Weingast & Moran (1983) find that the choice of cases agencies hear as well as their level of activism is influenced by congressional oversight committees and contend that bureaucratic dominance is observational equivalence; a result of researchers viewing the relationship through a lens attributing broad discretion.

Evidence of \textit{congressional dominance} is also supported empirically by Moe (1985) which finds that quarterly decisions of the National Labor Relations Board (NLRB), rather than outcomes, are affected by numerous federal institutions including Congress. Olson (1995), like Weingast & Moran (1983), finds that Congress, specifically congressional committees, influence the Federal Drug Administration’s (FDA) approval rates for drug and medical devices and finds additional influence on levels of inspection (see also Mayhew 1974; Calvert, Moran & Weingast 1988). Although the literature focuses exclusively on the relationship between the U.S. Congress and federal bureaucracies, the congressional dominance scholars believe that legislators willing to incur the costs of bureaucratic control could successfully do so (Barke & Riker 1982; Moe 1982; Weingast & Moran 1983; Calvert & Weingast 1984).
Like administrative dominance studies, congressional dominance research also has its critics. Moe (1987) contends that the “great promise” of congressional dominance studies to explain legislative control of bureaucracies never materialized as studies continued to ignore the bureaucracy as an autonomous, political actor (see also Waterman & Meier 1998; Meier & O’Toole 2006) and failed to account for the influence of other institutions such as the executive, courts, and interest groups (pg. 477). Moe’s (1987) belief is supported by empirical studies that reveal the power of bureaucrats to resist legislative control (Wood 1988; Balla 1998), behave autonomously (Potoski 1999; Shipan 2004), influence the development of public policy (Ruhil & Teske 2003; Meier & O’Toole 2006), and demonstrate the impact of other influential actors in the relationship between legislators and bureaucrats such as the executive, courts, and interest groups (Calvert, McCubbins & Weingast 1989; Aberbach 1990; Hammond & Knott 1996).

Despite the theoretical questions and empirical results that continue to contradict one another, both administrative and congressional dominance scholars insist that there is enough evidence to support one theory or the other and thus end the controversy over “who controls” and shift the focus of legislative control research to investigations of the determinants of control (see Wood & Waterman 1991). As a result, the focus of legislative control literature shifted from “who controls?” to an examination of “how the legislature controls.”

With the shift in the legislative control research, studies began to investigate how legislators control and oversee bureaucracies. More specifically, legislative control scholars began to focus on - given the decision by legislators to engage in control and oversight of bureaucracies - how legislators facilitate control and what mechanisms are
most effective at making bureaucrats pursue legislative interests. This focus has led to the study of two main legislative control strategies: *ex ante* controls – those imposed prior to policy implementation, and *ex post* oversight – legislative control and oversight imposed after policy implementation.

**Ex Ante Controls**

*Ex ante* legislative controls involve rules, processes, and procedures that are integrated into a particular policy during the legislative process to ensure that bureaucrats behave in a manner consistent with legislative intent and ultimately achieve the legislature’s preferred policy outcomes (see Bawn 1995; McCubbins, Noll & Weingast 1987). The use of *ex ante* controls is thought to provide legislators with an effective mechanism in which to shape and control bureaucratic behavior (Calvert, McCubbins & Weingast 1989; Bawn 1995; Huber & Shipan 2002), limit a bureaucrat’s choice of feasible policy alternatives (Bawn 1997; Huber, Shipan & Pfahler 2001), alleviate the costs associated with obtaining and disseminating policy and bureaucratic information in addition to the costs of control and oversight (Bawn 1995; Epstein & O’Halloran 1994, 1999; Huber & Shipan 2000; Reenock & Poggione 2004), enable elected officials to credit claim and improve re-election chances (McCubbins, Noll & Weingast 1987; Fiorina 1989; de Figueiredo & Vanden Burgh 2004), and minimize the need to use other control mechanisms (Bawn 1997; Gerber, Maestas & Domethius 2005).

Although research has provided important information about *ex ante* controls specifically and legislative control of bureaucracies generally, they have also received considerable theoretical and empirical criticisms, many of which are similar to those
levied on bureaucratic dominance studies (see Spence 1997; Gerber, Maestas & Dometrius 2005). Epstein & O’Halloran (1994) argues that *ex ante* controls place restrictions and constraints on agencies that ultimately hinder their flexibility and stifle the provision of potentially valuable information. This point is supported by Spence (1997) which suggests that structural and procedural requirements exacerbate legislative drift (see also Horn & Shepsle 1989). Wilson (1989), on the other hand, believes that certain agencies (the military) are difficult to monitor and control due to their unobservable actions or production of observable but “noisy” results (Wilson 1989).

*Ex Post Controls*

Legislative *ex post* political controls, on the other hand, allow legislators to “right an agency gone wrong” (Ringquist, Worsham & Eisner 2003). These controls involve mechanisms and/or procedures to monitor, audit, or sanction agency behavior after the implementation of policy as well as provide sticks or carrots (i.e. rewards or punishments) for compliance or noncompliance (Bendor, Taylor & Van Gaalen 1987; Aberbach 1990; Ringquist, Worsham & Eisner 2003). The use of *ex post* controls are thought to be less costly for legislators because of their flexibility (Kiewiet & McCubbins 1991). Because legislators can wait until after the implementation of policies to decide whether they “need to” or “want to” correct their implementation, it is believed, the costs associated with obtaining and disseminating information as well as imposing specific controls is lowered.\(^\text{19}\)

\(^{19}\) One of the most cited studies of *ex post* controls is McCubbins & Schwartz (1984) discussion of congressional use of procedures to alert the legislature about bureaucrats that pursue policy outcomes that are inconsistent with legislative intent or “fire alarms,” as well as direct surveillance and monitoring by the legislature or “police patrols” (see also McCubbins, Noll & Weingast 1987, 1989; Balla 1998). Aside from
Like *ex ante* controls, *ex post* research has also been heavily criticized for measurement problems (Spence 1997; Balla 1998; Potoski 1999) and the exclusion of the other potentially influential institutions (see Carpenter 1996; Cook 1998; Wood & Bothe 2004; Meier & O'Toole 2006). At the same time *ex post* controls are seen as inefficient due to the fact that information is only available after the fact (Niskanen 1971; McNollGast 1989; Macey 1992), bureaucracies are too large to monitor (Ogul 1976), and too costly to implement (Balla 1998; Gerber, Maestas & Dometrius 2005).

Empirical studies examining the effectiveness of specific *ex ante* and *ex post* legislative control strategies have also produced mixed results (see Spence 1997; Ringquist, Worsham & Eisner 2003). Although some research has found specific control strategies to be influential in shaping and/or altering bureaucratic behavior, including administrative procedures (Potoski 1999; Gerber, Maestas & Dometrius 2005), agency design (Ruhill & Teske 2003; Reenock & Poggione 2004), monitoring devices (Shipan 2004), and a combination of both *ex ante* and *ex post* controls (Bawn 1997), other studies have found no such impact. Balla (1998), for example, in an examination of the effectiveness of notice and comment procedures used by the Health Care Financing Administration (HCFA), finds, contrary to the deck stacking thesis purported by McCubbins, Noll & Weingast (1987) (see above), that certain procedures are not effective in controlling agencies. Balla (1998), like Wood (1988), finds that the agency,

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"fire alarms" and "police patrols," research on *ex post* legislative controls has examined the use of oversight hearings (McCubbins & Schwartz 1984), monitoring or auditing procedures (Aberbach 1990; Lupia & McCubbins 1994a), sanctions for noncompliant bureaucrats (Weingast & Moran 1983; Huber & Shipan 2000), the legislative veto (see Ringquist, Worsham & Eisner 2003), and the use of appropriations to reward or sanction bureaucrats (Fenno 1966; Wison 1989; Ting 2001).

Fiorina (1981a) questions the incentives for legislators to engage in post-implementation oversight in the first place. The author contends that since the benefits of oversight are public goods and individual legislators can benefit without participating, there exists little incentive for the legislature to engage in oversight.

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in some cases, is more likely to listen to its own constituents rather than those preferred by Congress. These findings are supported by Potoski (1999) which uses survey data to examine legislative design of air pollution control agencies. This study shows empirically how legislators use different types of administrative procedures depending on the policy area and the type and level of uncertainty that exists in the relationship.

Legislative control scholars have debated the cause of the mixed empirical results. Some scholars suggest that the spurious results are the result of the difficulty differentiating between *ex ante* and *ex post* mechanisms (see Bawn 1977; Ting 2001; Ringquist, Worsham & Eisner 2003). In particular, scholars have questioned whether legislative action that significantly alters bureaucratic structure or procedures is an *ex post* control because it was imposed after policy implementation - or an *ex ante* control because it, in itself, alters the agency’s subsequent behavior (Ringquist, Worsham & Eisner 2003). To correct the problem, some scholars suggest examining *ex ante* and *ex post controls* together (see Bawn 1997; Ting 2001) or temporally (Ringquist, Worsham & Eisner 2003). Spence (1997), however, suggests that the mixed results are problems associated with how control has been measured (see Spence 1997; Potoski 1999; Ringquist, Worsham & Eisner 2003). The study suggests that legislative scholars model away the problems associated with legislative control by measuring control in terms of agency actions and/or policy outcomes that oversimplify the degree to which control exists (pg. 200). Spence (1997) argues that the focus on these dependent variables are ineffective in assessing control because they ignore the substantive policy foresight possessed by legislators in their efforts to control bureaucracies. This policy foresight provides invaluable information about what policies are important to legislators as well as
the extent to which they will go to control and oversee their achievement and bureaucratic behavior, if at all\textsuperscript{21}. Without legislative policy foresight, the use of specific control and oversight mechanisms may be deemed ineffective when in reality the legislature was not concerned about controlling the bureaucracy and/or the policy outcome in the first place (see also Epstein & O’Halloran 1994).

To resolve the empirical problems associated with \textit{ex ante} and \textit{ex post} control studies, legislative scholars began examining control strategies that not only incorporated the use of both \textit{ex ante} and \textit{ex post} control mechanism, but also captured the legislature’s policy foresight (Wood & Waterman 1991; Ringquist, Worsham & Eisner 2003). One strategy that has received significant attention is the use of language in legislation, or \textit{statutory control}\textsuperscript{22}. Not only is it widely accepted that legislators impose substantive policy constraints on bureaucratic discretion via enabling legislation (see Spence 1997; Epstein & O’Halloran 1999; Huber & Shipan 2002), but scholars have also found statutory language to be more effective in alleviating the problems associated with PA relationships (McCubbins & Schwartz 1984; McCubbins, Noll & Weingast 1987; Moe 1989, 1990; Bawn 1997; Huber, Shipan & Pfahler 2001; Reenock & Poggiore 2004). In particular, the costs associated with legislators placing policy and procedural constraints on bureaucrats in legislation is considered minimal compared to the time and resources that legislature’s would have to incur acquiring information about bureaucracies and policy issues on their own, as well as engaging in individual forms of control and

\textsuperscript{21} According to Spence (1997), most legislative control studies assume a norm of limited bureaucratic discretion on the part of legislators due to the belief that addressing all substantive policy areas is both impossible and inefficient.

\textsuperscript{22} Legislative control scholars often use other names beside statutory control to classify the use of language in legislation to control and oversee bureaucratic action. For example, many studies refer to this as administrative procedures (McCubbins, Noll & Weingast 1987, 1989; Bawn 1995; Fotoski 1999; Gerber, Maestas & Dometrius 2005).
oversight. This fact combined with the difficulty and additional costs associated with overturning or altering enacted legislation due to the nature of separation of powers systems (i.e. multiple veto players, majority rule cycling) (see Moe 1989), provides an ideal control and oversight mechanism for legislators to ensure that bureaucrats will pursue their preferred outcomes (McCubbins, Noll & Weingast 1987) as well as protect against alterations to outcomes by future legislative coalitions, or legislative drift (McCubbins, Noll & Weingast 1989; Horn & Shepsle 1989; Horn 1995).

Although research continued to examine specific control mechanisms, this revelation regarding the use of statutory language led to another shift in the literature. In particular, legislative control scholars began to examine the use of statutory control as a means to alleviate the problems associated with their PA relationship and protect the implementation of their preferred outcomes. The use and effectiveness of statutory control will be the focus of the next chapter. Specifically, I will address the literature surrounding statutory control as well as discuss how this research initiated an institutional focus on legislative control of bureaucracies. I posit however, that the institutional focus presented by the prevailing research is incomplete, and in justifying the argument, I present my expanded model of legislative control of bureaucracies as well as the hypotheses to be tested.
Chapter 3:

The Use and Effectiveness of Statutory Control in U.S. State Legislatures

A review of the legislative control of bureaucracies literature in the previous chapter reveals a progression from studies focusing on *who controls?* and *how to control?* to an understanding that without legislative foresight, scholars will not be able to effectively determine how legislators control bureaucrats and the extent of their control. Although legislative language, or *statutory* control has been found to provide the necessary legislative foresight, in order to better understand decisions to both engage in statutory control and where that control is imposed, it is important to examine its use and effectiveness across varying political and institutional settings (see Huber & Shipan 2002; Volden 2002b).

Some legislative scholars have attempted to examine statutory control in U.S. state legislatures where significant variation exists in political and institutional environments (see Epstein & O’Halloran 1999; Huber, Shipan & Pfahler 2001; Huber & Shipan 2002; Volden 2002b, 2006). I argue, however, that despite the important information provided by these studies, they only partially capture the impact of the varying political and institutional environments and provide an incomplete assessment of the statutory control options available to state legislators. Additionally, the state studies only examine the use of statutory control in general legislation within a discrete period of time. This chapter provides the foundation for addressing and rectifying these shortcomings in the study of statutory control of bureaucrats.

I begin the chapter by providing a more detailed analysis of statutory control, the literature surrounding its use and effectiveness, as well as discuss the transition to more
institutional studies in U.S. state legislatures. This discussion will focus predominantly on the work by Huber & Shipan (2002) which provides the most cited investigations of state legislative use of statutory control and its impact on the adoption of Medicaid Managed Care legislation across the U.S. states. I posit that despite the important contributions of their work, Huber & Shipan (2002) provides an incomplete picture of the statutory control environment that exists across states. More specifically, the author's model only partially captures the institutional variation that exists in the U.S. states and only examines statutory control decisions in general legislation over a discrete time period. These factors provide a limited understanding of the factors that influence statutory control decisions as well as the different strategies used by legislators to control and oversee bureaucrats. In making this argument, I discuss how this dissertation improves upon Huber & Shipan's research and outline the research design presented in the next chapter. The chapter concludes with hypotheses, measurements, and empirical expectations derived from the model, the theoretical framework and control literature.

The Use and Effectiveness of Statutory Control

As mentioned in the previous chapter, the transition from legislative control to statutory language came about to solve the empirical and theoretical problems associated with examinations of *ex ante* and *ex post* control mechanisms. Additionally, statutory control provided researchers with legislative policy foresight necessary empirically assess which aspects of the policy are important to legislators as well as which agencies are targeted (see Spence 1997)\(^23\). The focus on the use of statutory language, however, was

\(^{23}\) Epstein & O’Halloran (1994) suggests that statutory language provides researchers with a legislative control strategy that, when compared to actual bureaucratic behavior and subsequent policy outcomes,
also thought to assist in alleviating – if not solving – problems associated with the PA relationship between legislators and bureaucrats (Calvert, McCubbins & Weingast 1989; Reenock & Poggione 2004). Specifically, it is believed that statutory control allows legislators to improve their informational deficiencies and lower costs of control by providing an effective control and oversight mechanism, the ability to integrate or stack the deck in favor of the legislators’ preferred constituents, as well as provide the ability to protect policy outcomes and preferred interests from future legislative majorities.

Statutory Control: Controlling & Overseeing Bureaucratic Action

Statutory control is considered the most powerful tool legislators have at their disposal for controlling or altering agency actions (Wood & Waterman 1993; McCubbins, Noll & Weingast 1987; Ringquist, Worsham & Eisner 2003)\textsuperscript{24}. Although not all legislative language reduces agency autonomy or controls bureaucratic behavior, statutory control generally signifies the desire of legislators to control bureaucratic action as a result of their dissatisfaction with a specific policy area and/or their lack of confidence in the agency’s ability to achieve their preferred outcomes (Calvert, McCubbins & Weingast 1989; Bawn 1997; Ringquist, Worsham & Eisner 2003). As a result, it is believed that by strategically using language in legislation, legislators can effectively control and alter bureaucratic action \textit{ex ante} as well as secure specific policy outcomes \textit{ex post} (see McCubbins, Noll & Weingast 1987; Bawn 1997; Ringquist, Worsham & Eisner 2003). In particular, legislators can use language to create or shape an

\textsuperscript{24} McCubbins, Noll & Weingast (1987) posit that statutory control provides a more effective mechanism for altering the incentives of agencies, claiming that individual \textit{ex ante} and \textit{ex post} controls "do not comprise a perfect solution because they are costly, inexact, and have limitations" (pg. 235).
agency, require it to use specific procedures or processes, submit a report or findings, hold a informational or fact-finding hearing, or define and clarify the parameters of the policy area in order to guide or constrain the policy options available to bureaucrats.

Statutory Control: Protecting Preferred Constituents

In addition to using legislative language to control and oversee bureaucratic action, statutory control protects the interests of groups and constituents for whom the policy area is of particular importance (McCubbins & Schwartz 1984; McCubbins, Noll & Weingast 1987, 1989; Kiewiet & McCubbins 1991). Since remaining in the legislature is one of the most important goals for elected officials (see Fenno 1971; Mayhew 1974), legislators can use language in legislation to require bureaucrats to consult with specific groups or constituents or hold hearings to present findings to satisfy constituent goals or needs and thus ensure that they are included in the development and implementation of policy. McCubbins, Noll & Weingast (1987, 1989) define this use of statutory language as enfranchising particular constituents or stacking the deck in their favor by predisposing agencies toward policy choices that satisfy their favored constituents' preferred outcomes (1989, p. 444; see also Balla 1998). This legislative control tactic has also been classified as a fire alarm by McCubbins & Schwartz (1984). In this instance, legislators' favored constituents inform legislators, or sound the alarm, when an agency behaves in a manner that is inconsistent with their preferred policy goals or produces outcomes that deviate from their preferred policy goals.
Statutory Control: Ensuring Policy Outcomes

Not only do legislators control and limit agency discretion most commonly through legislative directives, but they also routinely alter or clarify policy decisions through legislation (see Moe 1989; Clingermayer 1991). Although altering legislation is considered difficult due to the nature of separation of powers systems (i.e. multiple veto players, majority rule cycling) (see above), there are instances in which legislators will choose to alter legislation in response to altered economic, political, or social conditions (see Pertschuk 1982; Melnick 1983; Ringquist, Worsham & Eisner 2003) or policy outcomes that were not anticipated by the legislature (see Clingermayer 1991; Waterman & Meier 1998). Statutory control enables legislators to revisit policy decisions ex post in order to correct for these situations as well as to amend policy that has deviated from their intended outcomes. Although this use of legislation allows legislators to adjust (or take advantage) of economic, political, and social changes, it also allows them to alter the policy in order to protect or reinforce their preferences because of the changes.

In addition to protecting against policy uncertainty, legislators also use statutory language to protect against the political uncertainty faced by majority coalitions in legislatures. Legislators in the current majority coalition can take advantage of the fragmented nature of the American political system by imposing policy and procedural constraints in legislation that ensure their preferred policy procedures and outcomes will not be easily altered by future legislative coalitions (i.e. legislative drift) (Moe 1989; Horn & Shepsle 1989; Horn 1995). McCubbins, Noll & Weingast (1987) claim that the encumbrances imposed in legislation place bureaucrats on auto-pilot by limiting their
choice of policy procedures and outcomes\textsuperscript{25}. This tactic, combined with the difficulty altering or overturning legislation, makes it difficult for future majorities to influence bureaucratic behavior even with changes to preferences or the majority coalition\textsuperscript{26}.

In terms of the PA problems faced by legislators in their attempt to control bureaucrats, protect their favored constituents, and ensure their preferred policy outcomes, statutory control also allows legislators to obtain invaluable information about the specific policy area, the feasibility and effectiveness of specific procedures, and the nature of bureaucrats themselves. In particular, these constraints help to alleviate informational disadvantages and reduce the uncertainty surrounding the policy area. At the same time, statutory control helps alleviate many of the costs legislators would have to incur as a result of performing control and oversight on their own. Not only are bureaucrats in a better position to obtain policy information due to their experience, expertise and connections, but they also know the procedures and process that are most feasible and effective (see Kiewiet & McCubbins 1991; Huber, Shiman & Pfhaler 2001). In addition to improving information, legislators are also able to insulate themselves from potential political costs that may arise because of a failed policy, unanticipated negative outcomes, or from participating in risky or controversial issues (see Fiorina 1982, 1989; McCubbins 1985; Clingermayer 1991). In what Kiewiet & McCubbins (1991) call “blame avoidance,” statutory language provides legislators with cover to instruct bureaucrats to perform policy development and implementation and the

\textsuperscript{25}McCubbins & Schwartz (1984) use the term lock in to describe this effect.

\textsuperscript{26}The nature of legislative attempts to alter constraints or change legislation also provides a degree of policy security. Specifically, the strategic bargaining and negotiating that takes place between political actors in passing legislation ensures that, at the very least, some degree of the majority coalitions procedural and policy constraints will incorporated in the legislation. At the same time, because non-majority legislators and the executive branch are involved in the enactment of legislation, the chances of passing the legislation are also increased (see Huber & Shiman 2002, pg 13).
ability to decide *ex post* whether they will take credit for the policy or blame bureaucrats for its development (see also McCubbins & Schwartz 1984; Spence 1997).

**Research Examining Legislative Use and Effectiveness of Statutory Control**

Although statutory language improves the ability to assess the impact and effectiveness of legislative control of bureaucracies by providing legislative policy foresight, some scholars have criticized the mechanism on empirical and theoretical grounds. Empirically, studies testing the theoretical assumptions have produced conflicting results (Spence 1997; Potoski 1999; Huber & Shipan 2002). Aberbach (1990) tests McCubbins & Schwartz’s (1984) contention that, in the delegation of policy-making authority to bureaucrats through legislation, Congress favors the use of fire alarms over police patrols. Aberbach (1990) examines congressional oversight decisions during the 1960s and 1970s and finds that Congress does not favor fire alarms over police patrols, and that the choice of control mechanisms by Congress is issue and context specific. More specifically, the study finds that the changing levels of oversight that occurs between 1960 and 1970 are directly attributed to the changes to the incentive structure within Congress’ internal environment as well as the larger political environment. Balla (1998), on the other hand, tests McCubbins, Noll & Weingast’s (1987) assertion that Congress stacks the deck in favor of the legislators’ preferred constituents through administrative procedures imposed in legislation. In an examination of the imposition of a notice and comment process in the context of Medicare physician payment reform, Balla (1998) finds that bureaucrats are influenced more by their own constituents than

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27 These findings are further supported by Lupia & McCubbins (1994a) which extends Aberbach (1990) to determine the conditions under which fire alarms or police patrols are preferable.
those favored by legislators. Additionally, the author finds that despite Congress’ attempts to stack the deck in favor of their preferred constituents, bureaucrats remain autonomous in their decision-making\textsuperscript{28}.

Theoretical questions further compound the empirical criticisms. In particular, some legislative control scholars believe that statutory control studies are too interpretive and are not generalizeable due to their almost exclusive focus on legislation passed by the U.S. Congress – a static legislature that experiences little to no change in institutional arrangements, structure or composition across sessions (Squire & Hamm 2005). The criticism also stresses the fact that the research does not address the conditions under which structure and procedural hypotheses would operate (Potoski 1999; Huber & Shipan 2002; Volden 2002b). This criticism remains despite the fact that scholars moved to a focus on statutory language so that they could obtain legislative policy foresight in order to accomplish this goal (Spence 1997).

Ultimately, the research design examining the use of statutory language in federal legislation severely limits our understanding of legislative decisions to engage in statutory control of bureaucrats and its effectiveness (Epstein & O’Halloran 1999; Huber, Shipan & Pfahler 2001; Huber & Shipan 2002).\textsuperscript{29} Volden (2002b) suggests that these limitations – both empirical and theoretical – are due to the inability to obtain data at the federal level on factors that are thought to influence legislative control generally and

\textsuperscript{28} Hamilton & Shroeder (1994) and Hamilton (1996) examine the use of administrative procedures to facilitate political control over the Resource Conservation and Recovery Act (RCRA). The authors conclude that the Environmental Protection Agency (EPA) withstood congressional attempts at control and retained significant policy-making discretion.

\textsuperscript{29} Legislative control critics point to studies of a single agency, studies examining a snapshot of control decisions, and a single policy area as other biases in theories of legislative control of bureaucracies (see Epstein & O’Halloran 1999; Huber, Shipan & Pfahler 2001; Volden 2002b).
statutory control specifically (p 188-189). Volden (2002b) suggests that research "must systematically analyze decisions across varying political settings if we desire to more thoroughly understand the political processes governing delegation or control" (pg. 188).

To address these problems, the literature examining legislative control of bureaucracies shifted once again. In particular, legislative scholars began testing their theories and examining the relationship between legislators and bureaucrats in an environment that varied in political and institutional arrangements – U.S. state legislatures (see Keiser & Soss 1998; Holburn & Vanden Bergh 2000; Huber, Shipan & Pfahler 2001; de Figueiredo & Vanden Bergh 2001).

**Statutory Control in U.S. State Legislatures**

U.S. state legislatures are widely accepted as ideal laboratories in which to examine the impact of political and institutional arrangements on political phenomena (Morehouse & Jewell 2004; Kousser 2005). Not only do state legislatures mirror the U.S. Congress as an institution in terms of historical and political origins, Republican ideals, similar electoral systems, party systems, and legislative functions (see Polsby 1975; Squire & Hamm 2005), but their similarities enable scholars to focus exclusively on the variation between states and sidestep thorny issues of culture, history and environment that often interfere with the ability to make reliable inferences about the effects of their differences (Squire & Hamm 2005). However, it is the differences between state

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30 Other federal level examples that lack sufficient data to test the effectiveness of statutory control include the political environment (Epstein & O'Halloran 1994; Huber, Shipan & Pfahler 2001), the policy area (Bawn 1997; Ringquist, Worsham & Eisner 2003), the executive branch (see Beyle 1994; de Figueiredo 1997; Ferguson 2003), the judiciary (Hill & Brazier 1991; Mashaw 1997; Shipan 1997), and the bureaucracy (Shipan 2004).
legislatures and Congress that make states ideal for assessing the true impact and consequence of institutional design.

State legislatures are composed of many of their own structures, rules and procedures, and have developed or institutionalized differently and at different times (see Brace & Ward 1999; Squire & Hamm 2005). Although state legislatures are bicameral (except Nebraska) and have a two-party system, they differ in their institutional rules (e.g. voting requirements, campaign finance laws), degrees of professionalism, party dominance (e.g. unified or divided government), composition, and organization (e.g. committee systems), to name a few (Squire & Hamm 2005). Because of this variation, scholars can observe the impact of behavior, rules and policies in different contexts and under different conditions. At the same time, the variation translates into the ability to isolate the effects of the variation to answer questions about the impact of legislative and institutional design on behavior and policy development and implementation (Kousser 2005), as well as on decisions to engage in statutory control and its effectiveness (see Huber, Shipan & Pfahler 2001; Huber & Shipan 2002; Volden 2002b).

**Huber & Shipan’s (2002) Deliberate Discretion**

Although numerous scholars have examined the use and effectiveness of statutory language to control bureaucracies by U.S. state legislators (see Epstein & O’Halloran 1994, 1999; Huber, Shipan & Pfahler 2001; Volden 2002b, 2006), the most cited research is Huber & Shipan’s (2002) *Deliberate Discretion*\(^{32}\). In this study, the authors examine

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\(^{31}\) Some scholars attributed this variation in development as the result of regional factors (Mooney 1995), the variation of expertise within states (Burns et al 2005) or reflective of the wealth of the state (Squire & Hamm 2005).

\(^{32}\) Hereafter, ‘Huber & Shipan (2002)’ will be referred to as ‘Huber & Shipan.’
how the institutional and political environments that vary across U.S. states influence the amount of discretion provided to bureaucrats to develop and implement the MMC policy. In particular, the authors examine 67 laws in 35 U.S. states over a two-year period and measure the total number of new words enacted into law in non-appropriations legislation that pertains to Medicaid managed care provided to Medicaid recipients (pg. 141).

Huber & Shipan posit that the amount of discretion legislators provide to bureaucrats depends on the existence of four main factors: the policy conflict between the legislature and bureaucrats, the bargaining environment within the legislature, the capacity of the legislature, and the presence of non-statutory policy-making mechanisms (legislative veto). To test their model, the authors measure the amount of new words in legislation and argue that the length of legislation is inversely related to the concept of discretion. In other words, as the number of words in the legislation increase, the amount of discretion provided to bureaucrats decreases. Table 3-1 provides a brief description of the main explanatory variables in Huber & Shipan’s model.

Huber & Shipan’s examination of decisions by state legislators to provide discretion to bureaucrats confirms previous studies’ findings regarding the impact of the political environment (see Epstein & O’Halloran 1994, 1996, 1999; Huber, Shipan & Pfahler 2001). In particular, the authors find that although there is no difference in the amount of new words used by state legislators with low compensation (i.e. legislative capacity) between unified and divided legislatures, more capable legislators in unified legislatures produce more words than those in divided legislatures. These results lead the authors to conclude that divided government is necessary but not a sufficient factor to produce the incentive for legislators to write more detailed legislation to control and
oversee bureaucrats (pg. 161). Additionally, the authors find that those legislators that can rely on the legislative veto to control and oversee bureaucrats will do so and, if possible, will forego the costs of writing more detailed legislation and allow their legislative veto to act as a control and oversight mechanism.

**Table 3-1: Model of Legislative Control of Bureaucracies**
*Huber & Shipan (2002)*

<table>
<thead>
<tr>
<th>Conceptual Variable</th>
<th>Measurement &amp; Expectation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policy Conflict</strong></td>
<td><strong>Dummy Variable</strong></td>
</tr>
<tr>
<td>The degree to which legislators and</td>
<td><em>(1 = divided government)</em></td>
</tr>
<tr>
<td>the executive branch agree on</td>
<td>*Expectation – Divided government will increase the likelihood</td>
</tr>
<tr>
<td>policy goals. Conflict is likely to</td>
<td>of legislator engaging in statutory control (+)*</td>
</tr>
<tr>
<td>be greater during divided government,</td>
<td></td>
</tr>
<tr>
<td>when the party that controls the</td>
<td></td>
</tr>
<tr>
<td>executive branch does not also</td>
<td></td>
</tr>
<tr>
<td>control bother chambers of the</td>
<td></td>
</tr>
<tr>
<td>legislature.</td>
<td></td>
</tr>
<tr>
<td><strong>Bargaining Environment</strong></td>
<td><strong>Dummy Variable</strong></td>
</tr>
<tr>
<td>The degree to which both chambers of</td>
<td><em>(1 = divided government, given divided legislature)</em></td>
</tr>
<tr>
<td>the legislature and executive branch</td>
<td>*Expectation – Given divided government, a divided legislature</td>
</tr>
<tr>
<td>agree on policy goals. Given divided</td>
<td>will increase the likelihood of legislators engaging in</td>
</tr>
<tr>
<td>government, conflict is likely to</td>
<td>statutory control (+)</td>
</tr>
<tr>
<td>be greater when each chamber is</td>
<td></td>
</tr>
<tr>
<td>controlled by a different party,</td>
<td></td>
</tr>
<tr>
<td>than with a unified legislature</td>
<td></td>
</tr>
<tr>
<td><strong>Legislative Capacity</strong></td>
<td><strong>Legislator Compensation</strong></td>
</tr>
<tr>
<td>the degree to which legislators have</td>
<td>*Expectation – the higher the compensation (professionalism)</td>
</tr>
<tr>
<td>the time and resources to engage in</td>
<td>will increase the likelihood of engaging in statutory control</td>
</tr>
<tr>
<td>statutory control of bureaucrats.</td>
<td>(+)*</td>
</tr>
<tr>
<td>Capacity is likely to increase</td>
<td></td>
</tr>
<tr>
<td>with the compensation of legislators</td>
<td></td>
</tr>
<tr>
<td><strong>Non-Statutory Factors</strong></td>
<td><strong>Legislative Veto</strong></td>
</tr>
<tr>
<td>The ability of legislators to alter</td>
<td><strong>Dummy Variable</strong></td>
</tr>
<tr>
<td>or deny agency rules &amp; regulations</td>
<td><em>(1 = existence given unified legislature)</em></td>
</tr>
<tr>
<td>without engaging in statutory</td>
<td>*Expectation - The presence of a legislative veto, the less</td>
</tr>
<tr>
<td>control</td>
<td>likely legislatures will engage in statutory control (-)*</td>
</tr>
</tbody>
</table>

Despite the invaluable information *Deliberate Discretion* reveals about the impact of the political and institutional environments on the amount of discretion provided to
bureaucrats, I argue that improvements and expansions to Huber & Shipan’s research design and institutional model can provide a much more complete understanding of legislative control of bureaucrats and the factors that influence these decisions. In particular, Huber & Shipan use a dependent variable that is fraught with theoretical and empirical problems. *Length of legislation* is used as a measure for the amount of discretion provided to bureaucrats and the authors argue that longer, more detailed legislation provides less discretion to bureaucrats to develop and implement policy and thus ensures the preferred policy outcomes of the legislators. Although I agree with Huber & Shipan’s assumption that longer statutes are more likely to provide less discretion on bureaucrats, I do not believe that legislators must write longer, more detailed legislation in order to effectively constrain bureaucrats and limit their policy-making discretion. Instead, I posit that the length of legislation may be sufficient to limit bureaucratic discretion, but it is not a necessary condition simply because legislators possess other less costly statutory options to control and oversee bureaucrats.

Legislators can overcome informational asymmetries and the costs associated with writing more detailed legislation by using specific, constraining language, including additional constraints in legislation (time constraints, approval requirements, and sanctions), or by clearly defining the parameters of the policy area designed to limit policy-making flexibility and interpretation. At the same time, *length of legislation* includes additional superfluous language that addresses other policy areas or constitutes

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33 Huber & Shipan originally coded MMC legislation based on the type of instruction given to bureaucrats — procedural or policy, but concluded that “lumping together of policy and procedure [sections] is not only necessary from a coding perspective but also desirable from a conceptual one” (pg 61). The authors argue that “[they] cannot and should not treat the role of procedures as independent of the way in which policy is specified in a statute” due to the nature of MMC legislation where procedures are intertwined with policy instructions (pg. 61).
general legislative language that does not provide any information about the specific policy area and does not convey any instructions to bureaucrats that is crucial to assessing and understanding legislative policy intent. Lastly, the length of legislation tells us almost nothing about the foresight of legislators to control and oversee bureaucrats shown to be so important in determining legislative intent and assessing the impact of statutory control decisions. Although longer bills suggest that legislators intend to limit bureaucratic discretion, they do not provide us with information about the aspects of the policy are important to legislators. For example, the amount of words in a bill cannot tell us whether legislators are more concerned with the development of the policy, the outcomes of policy implementation, or whether they are simply engaging in cheap talk to appease particular constituents and ensure re-election.

To improve our knowledge on statutory control of bureaucrats and the factors that affect these decisions, I expand upon Huber & Shipan’s research design. First, I construct and test two separate dependent variables. The first variable, mandate length, sums the length of words pertaining to a particular mandate instead of a simple measure of bill length. Mandates are words that convey policy or procedural instructions that only directly relate to the specific policy area. This measure provides me with a more accurate count of the length of words pertaining specifically to instructions or directives imposed on bureaucrats for that specific policy, but it does so without the superfluous language that refers to other policies. At the same time, mandate length also allows me to replicate Huber & Shipan’s empirical model to assess the impact of political and institutional factors on the statutory control decisions.
The second dependent variable, *total control* is a measure of the amount of control in individual mandates reserved for legislators based on the specific type of mandate imposed, the specific language used to convey legislative policy intent, and additional control mechanisms designed to further constrain bureaucratic behavior (time constraints, approval requirements, or sanctions for non-compliance). Summing the amount of control legislators placed in individual mandates, I am able to assess the amount of control in each mandate, as well as the amount of control in each bill, in all bills in a particular legislative session, and in all bills in a particular state across sessions. Although I cannot assess changes in the amount of control as a result of the nature of specific policy areas and the structural and institutional differences that exist across state legislatures, *total control* provides me with the necessary policy foresight to more accurately assess of the intent of legislators, the importance of the specific policy area, and the degree to which legislators choose to provide or constrain bureaucratic discretion based on the political and institutional arrangements. In other words, I will not only be able examine statutory control strategies within one particular legislative session, but I will also be able to compare strategies over legislative sessions as well.

The second improvement to Huber & Shipan’s design involves their predominant focus on statutory control decisions in general legislation. By focusing exclusively on general legislation, previous studies have only addressed half of the statutory control story that exists in state legislatures. I argue that once legislators decide to engage in writing more detailed legislation, they must then decide where to impose the control to ensure that their preferred outcomes will be enacted and not vetoed or significantly altered by the governor. Huber & Shipan’s design ignores the possibility of placing
statutory language in appropriations bills despite its wide acceptance as a viable bureaucratic control mechanism whether through the manipulation of budgets and resources (Fenno 1966; Calvert, McCubbins & Weingast 1989; Ting 2001), as a threat used to shape agency behavior (Bendor, Taylor & Van Gaalen 1987; Carpenter 1996; Shipan 2004; Aldrich, Gomez & Merolla 2006) or based on the belief that governing and budgeting are synonymous (Wildavsky 1988; Gerber, Maestas & Dometrius 2005).

This dissertation expands upon this design by examining data on both decisions to engage in statutory control and where the control is imposed, in general legislation or in appropriations bills. Including this second stage of the statutory control process provides a more realistic environment, as well as enables me to perform a subsequent test to determine the impact of the political and institutional environments on these decisions. Although results suggest that the capacity of the legislature and partisanship influence statutory control decisions, finding out that those or other factors have no impact on where language is imposed may render their findings suspect. On the other hand, if we find that these factors affect both decisions to engage in statutory control and where that control is imposed, than we can be even more confident that institutions do matter.

A third contribution of this study involves expanding the examination of statutory control decisions beyond a single legislative session. Huber & Shipan examine new MMC legislation across a discrete period of time, specifically in the one session following the 1995-1996. The authors justify their examination due to the variation in the way states write legislation and the fact that legislators do not address the same issues in each legislative session (pg. 143)\textsuperscript{34}. Huber & Shipan claim that these factors and the fact

\textsuperscript{34} While some states carry over the entire bill without indicating which aspects of the law are new, others note additions or subtractions to the law, and others only enact the altered sections. The inability to observe
that they did not code the substantive content of MMC bills make it difficult to assess the amount of discretion given to bureaucrats over time. Although their design is consistent with other studies of statutory control (see Clingermayer 1991; Potoski 1999; de Figueiredo & Vanden Burgh 2004), it does little to improve our understanding about the long-term effect of statutory control or the use of different strategies based on the specific PA relationship, the current political and institutional environment, or changes to these environments. In particular, not only do PA relationships develop over time (Harris & Milkis 1989; Waterman & Meier 1998; Worsham & Gattrell 2005) but attempts to control and oversee bureaucrats may be useful in the short run but lose their effectiveness over time, or vice versa (Waterman 1989; Wood & Waterman 1994; Worsham & Gattrell 2005). More specifically, this design cannot tell us whether legislators incur the costs of imposing constraints on bureaucrats once and hope that agencies do what they are told, or whether they engage in subsequent attempts to control based on changes to the partisanship (e.g. change in partisanship, scandal) or institutions (e.g. elections, term limits, procedural changes). At the same time, they cannot tell us whether legislators are simply following the suggestions or demands of agencies who articulate their preferences to legislators who, in return, write legislation in order to credit claim or appease the bureaucracy. An examination of statutory control decisions over time will provide me with more information to determine which of these are correct.

As addressed by Huber & Shipan, the nature of state legislation makes comparing statutory control decisions across legislative sessions difficult. Not only are there changes to policy over time led Huber & Shipan to abandon the length of legislation and adopt the amount of new words. 35 Huber & Shipan justify not coding substantive content or language used because they claim that most MMC legislation across states is policy specific and very few procedural instructions are used by legislators (pg 143). This is not the case with my data; which will be discussed more fully in the next chapter.
structural and institutional differences across states that influence the manner in which legislation is written and issues addressed, but it also makes tracking specific issues and changes to policy difficult. In particular, some states include previous legislation in subsequent bills displaying how the policy has been altered while other states only include changes to the existing policy. Understanding these limitations and constraints, I proceeded to code substantive content in the hopes of obtaining more information about specific decisions and strategies over time to improve our understanding of statutory control. In particular, I coded the amount of words pertaining to mandates across a 10-year period (1997-2007), but also the specific language used by legislators to convey policy intent or procedural requirements, in addition to any additional mechanisms that further constrain bureaucratic action. Coding the substantive content of legislation in this manner will allows me to develop a measure of total control in individual mandates and bills by each state in a single legislative session, but it also enables me to compare the amount of control legislators impose in mandates and bills across sessions. More specifically, although I cannot observe changes to the amount of control placed in specific mandates and bills across sessions, I can compare statutory control decisions by legislators in one legislative session to decisions made in subsequent sessions. For example, some states may pass a lengthy bill or one that provides little discretion through language and mechanisms in one session and then not address the policy again for many years. Other states may pass smaller bills year after year that address different issues and thus repeatedly incur the costs associated with statutory control while other states may be able to write legislation at will, regardless of time and resources. Ultimately, this design

36 This approach is consistent with the assumptions that longer bills are more costly to write and that particular constraints are more costly to include in legislation that others. In particular, Huber & Shiman,
will allow me to determine whether differences in statutory control decisions are based on changes to the political and institutional environments within the particular state or the result of factors the impact all states equally.

Lastly, this dissertation expands on Huber & Shipan’s research by testing an empirical model that more appropriately captures the variation in institutional arrangements that exist across state legislatures. In particular, Huber & Shipan use a measure of legislator salary as a proxy for legislative capacity, a dummy variable for the presence of a legislative veto, and measures of the influence of the bureaucracy and governor that do not adequately capture their potential impact on statutory control decisions. Although their model provides important information about the institutional impacts on the amount of discretion provided to bureaucrats, a more appropriate institutional model will provide us with a better assessment of the impact of these variables. To achieve this goal, I utilize two separate measures of legislative capacity: legislative professionalism and committee system strength, and an index of legislative veto powers based on differences across state legislatures. Additionally, I employ separate measures that better account for the influence of the bureaucracy and the governor on statutory control decisions.

An Expanded Institutional Model of Statutory Control of Bureaucracies

Based on the theory literature, the proposed improvements and expansions stated above, Table 3-2 displays Huber & Shipan’s statutory control model and the one used in my study.

(see also Epstein & O’Halloran 1994, 1999; Huber, Shipan & Pfahler 2001), argue that policy constraints are more costly than procedural ones due to the time and resources necessary to gather information and articulate it at a level and in a manner that will shape or constrain bureaucratic behavior.
Table 3-2: Comparison of Statutory Control Models  
Huber & Shipan and Goodman

<table>
<thead>
<tr>
<th>Conceptual Variable</th>
<th>Huber &amp; Shipan</th>
<th>Goodman</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policy Conflict</strong></td>
<td>dummy variable (1 = divided government)</td>
<td>Same as Huber &amp; Shipan</td>
</tr>
<tr>
<td><strong>Bargaining Environment</strong></td>
<td>dummy variable (1 = divided legislature, given divided government)</td>
<td>Same as Huber &amp; Shipan</td>
</tr>
<tr>
<td><strong>Legislative Capacity</strong></td>
<td>Legislator compensation</td>
<td>Legislative Professionalism Committee System Strength</td>
</tr>
<tr>
<td><strong>Non-Statutory Control Mechanisms</strong></td>
<td>dummy variable (1 = presence of legislative veto given unified legislature)</td>
<td>Legislative Veto Scale</td>
</tr>
<tr>
<td><strong>Bureaucratic Autonomy</strong></td>
<td>Salary of Administrative Heads</td>
<td>Bureaucratic Autonomy Scale</td>
</tr>
<tr>
<td><strong>Executive – Legislative Relations</strong></td>
<td>Gubernatorial powers</td>
<td>Gubernatorial Effectiveness Scale</td>
</tr>
</tbody>
</table>

While I adopt their hypotheses for policy conflict and bargaining environment, I expand upon their measures legislative capacity, legislative veto, and the independent influence of the bureaucracy and the governor. The following section addresses each variable separately and provides the hypotheses I employ to test them.

**Policy Conflict**

Although the executive branch in state legislatures (e.g. governors) vary in the amount of policy-making and appropriations powers, (see Beyle 1990), their involvement in the policy-making arena is well documented (see Dometrius 1979b; Morehouse 1996; Ferguson 2003). Governors possess their own constituents and policy preferences that are
likely to be different even if they share the same party as the majority party in the legislature (Barrilleaux & Berkman 2003). As a result, legislators have the incentive to protect their preferences through legislation and control the actions of the governor’s servants (bureaucrats), especially when the executive branch is controlled by a different party. Thus if the legislature is controlled by one party (unified legislature) and the executive branch is controlled by another (divided government), I assume that the two branches possess divergent policy preferences and compete to enact policies that better represent their preferences and outcomes. As a result, I would expect legislators to incur the costs of engaging in statutory control to protect their interests. This is consistent with Huber & Shipan’s assumption that legislators will provide less discretion to bureaucrats when policy conflict exists. I agree with this expectation and adopt it as a hypothesis:

\[ H_1 – \text{State legislators within a divided government will be more likely to engage in statutory control of bureaucracies than state legislators within a unified government.} \]

**Bargaining Environment**

When the two chambers of the legislature are controlled by different parties (divided legislatures), the costs of writing more detailed legislation rise significantly as a result of the bargaining and compromise that takes place because of chambers with different policy preferences attempt to pass legislation that is closer to their preferred outcomes. This conflict between chambers will also limit the extent to which the proposing chamber opposing the governor can limit the amount of discretion provided to bureaucrats. If the proposing chamber decides to engage in statutory control, it will therefore likely expend more resources (i.e. time, staff) gathering and developing language in legislation that will be acceptable not only to the opposing chamber, but to
the governor as well. This further raises the costs of engaging in statutory control and the uncertainty of policy enactment. In some cases, if the costs get too high, it is likely that legislators will be deterred from engaging in statutory control altogether. As a result, the second hypothesis states:

\[ H_2 - \text{Given divided government, legislators in a unified legislature are more likely to engage in statutory control of bureaucrats than legislators in a divided legislature.} \]

It should be noted that in addition to adopting Huber & Shipan’s measures of policy conflict and bargaining environment, I also adopt their classification of the variables as well. More specifically, Huber & Shipan combine their measures of policy conflict and bargaining environment to make their empirical tests more straightforward and readable. In particular, the authors measure two separate variables: divided legislature and unified legislatures against the governor. Divided legislature refers to instances where the governor's party controls only one of the legislative chambers. This incorporates the policy conflict that would arise as a result of the governor and one chamber possessing divergent policy preferences, as well as the divergent policy preferences associated with both chambers controlled by different parties (bargaining environment). The expectation in divided legislature is that the costs will be too high for legislators to engage in statutory control given the adversarial environment and the hurdles they must overcome to enact policies that represent and ensure their preferred outcomes. Divided legislatures take the value of “1” when the governor's party controls one chamber of the legislature.
Unified legislatures against the governor refers to situations in which both chambers of the legislature are controlled by the same party and the executive branch is controlled by an opposing party. In these instances, legislators in both chambers likely share similar policy preferences and, as a result, can minimize the costs associated with engaging in statutory control as well as obtaining information and overcoming informational disadvantages. Additionally, the expectation in unified legislatures against the governor is that legislators will engage in statutory control to make sure that bureaucrats with divergent preferences will pursue policy outcomes and procedures consistent with legislative intent. Unified legislatures against the governor take the value of “1” when the chambers are controlled by the same party but not the executive.

Legislative Capacity

Huber & Shipan find that highly capable legislators are better able to write more detailed legislation and incur the costs of controlling and overseeing bureaucrats than legislators in low capacity legislatures. However, they use a measure of legislative capacity based on the total amount of compensation paid to legislators per year. Huber & Shipan justify the use of the measure of compensation stressing the importance of the individual legislator’s motivation to control bureaucrats (pg. 151). I do not believe, however, that legislator salary is sufficient on its own to represent the type of resources necessary to engage in statutory control. More specifically, the decision to engage in statutory control is a collective agreement on the part of legislators in a chamber or both chambers based on shared policy preferences and/or a desire to control bureaucratic behavior and ensure their collective preferred outcomes. At the same time, there also
exists more appropriate institutional factors in state legislatures that influence the collective ability of legislators to write longer, more detailed legislation. Testing only the one measure of capacity limits our understanding of impact of other variables or their interactions with compensation. To expand on this analysis I examine two separate measures of capacity: legislative professionalism and committee system strength.

**Legislative Professionalism**

Legislative compensation is a proxy for legislative professionalism, a measure that was developed primarily to gauge how much the state legislative institution resembles the U.S. Congress in terms of member salary, time spent in session, and resources available to its members, such as staff and facilities (see Squire 1992b; Squire & Hamm 2005). However, I argue that the costs (time, resources) associated with researching and developing policy and writing detailed legislation is related to more than just the salary of legislators. In fact, legislative resources – in particular, legislative staff - are often intimately involved in the legislative process and in some cases (term limited states) play a much more dominant role in the development of policy and in the writing of legislation (Grossbeck & Peterson 2004). At the same time, the length of the legislative session has the potential to influence statutory control decisions. Longer legislative sessions provide legislators with more time in which to research, develop, and write policy, as well as engage in the bargaining and compromise that takes place between

37 State legislatures that pay higher member salaries, are in session longer, and provide members with more staff and resources are considered similar to the U.S. Congress and thus highly professionalized, while other legislatures are considered hybrid or amateur depending on the level of these factors in their institutions (Squire 1992b; Hamm & Squire 2004; Squire & Hamm 2005). Research has found that the level of professionalism significantly influences decisions to adopt control mechanisms (Hamm & Robertson 1981; de Figuieredo & Vanden Burgh 2004) and influences incentives to impose control on bureaucrats (Rosenthal 1981; Epstein & O’Halloran 1994).
political actors in the policy-making arena. Unlike legislators that meet once every two years (biennium), legislators that meet year around (annual) are also more stable and typically composed of career politicians who have a better grasp of specific policies and the legislative process (Squire 1988a). Career politicians are also more likely to have established relationships with bureaucrats and interest groups (Heclo 1978; Baumgartner & Jones 1993; Sabatier 1999) and thus can alleviate the costs associated with gathering information and writing detailed legislation.

Huber & Shipan test a measure of legislative professionalism and find that it introduces an unacceptable level of collinearity (pg 151). The authors claim, however, that the collinearity problem is the result of the “relatively small data set and the use of multiple interacted terms” (pg 152). The data in this study, however, are not small – nearly 8,300 individual observations. As a result, I feel more comfortable using Squire’s (2007) index of legislative professionalism which represents how close the state legislature resembles the U.S. Congress in terms of legislator salary, time in session and resources (e.g. staff, facilities, etc).

Squire’s (2007) index combines the base legislative salary amount in each state (salary), number of legislative days (not calendar days) a legislator is at the state capitol conducting business (session length), number of staff members providing assistance to legislators (resources). I believe that this measure of professionalism will better assess the impact of these factors on the capacity of legislators to write more detailed legislation and incur the costs of control. I do believe, however, that the level of professionalism will impact primarily the amount of discretion (i.e. whether to engage in statutory control) since legislators that lack the time and resources necessary to invest in writing more
detailed language will likely be deterred from doing so in the first place. As a result, the third hypothesis states:

\[ H_3 \text{ – more professionalized state legislators will be more likely to engage in statutory control of bureaucrats than less professionalized state legislators} \]

**Legislative Committee Strength**

To better assess the impact of the capacity of the particular legislature, I also include a measure of legislative committee strength. Legislative committees at the heart of the policy-making process (Francis 1989; Hedlund & Hamm 2004; Squire & Hamm 2005), and stronger committee systems, in terms of structure and formal rules have been found to impact the behavior and strategies of individual legislators (Hedlund & Hamm 1996; Hamm, Hedlund & Martorano 2001; Martorano 2002), as well as influence the context of lawmaking (Hamm, Hedlund & Martorano 2006) as a result of the specialization of the committees and the ability of its members to self-select onto committees that match theirs or their constituents’ interests (Hedlund & Hamm 2005)\(^{38}\).

Research has also found that stronger committee systems interact directly with agencies to develop and implement legislation and do so outside of the public purview (see Hall & Wayman 1990). This insulation from the public enables committees to deal with sensitive and controversial policy issues without the threat of adverse political costs.

In terms of the PA relationship between legislators and bureaucrats, stronger committee systems enable legislators to minimize the informational disadvantages with the ability to research, develop and disseminate information in addition to the specific policy knowledge of the committee members who self-selected to the particular committees.

\(^{38}\) Hamm, Hedlund, & Martorano (2006) find that strong committee systems possess significant power to obtain information, review and alter legislation, control committee and floor actions, as well as enjoy significant deference from the chamber as a whole (see also Francis 1989).
committee. As a result, legislators can significantly reduce the costs associated with gathering information, writing more detailed legislation, and controlling bureaucratic action. Legislators in states that are less professionalized and who lack the requisite time and resources to invest into writing detailed legislation may also be able to rely on stronger committee systems to help gather information in addition to alleviating the costs associated with statutory control. As a result the fourth hypothesis states:

\[ H_4 - \text{state legislators with strong committee systems will be more likely to engage in statutory control of bureaucrats than state legislators with weaker committee systems} \]

To capture the impact of committee system strength on statutory control decisions I use individual state measures developed by Martarano (2006) that measure committee system power across 99 state legislative chambers (Nebraska has one chamber) based on 6 dimensions: committee effectiveness; the ability to receive, screen, and shape bills; affect the passage of bills; the ability to hold meetings and gather information; and the institutional capacity and power of the committee system. I argue that legislative committees that possess these powers will be better able to gather information and incur the costs of writing more detailed legislation (see above).

It is important to mention here that using committee system strength as a measure of legislative capacity is based on the assumption that state committees are structured and organized in a manner that ensures that they are agents and not outliers of the full chamber. This belief is consistent with the informational theory of legislative organization as posited by Krehbiel (1990) (see also Gilligan & Krehbiel 1991; Overby & Kazee 2000; Aldrich & Battista 2002; Hedlund & Hamm 2005; Prince & Overby 2005). In this rationale, legislators organize committees to achieve the needs of the parent
chamber, especially in ways to overcome informational disadvantages and a lack of resources to become more specialized and improve the development and implementation of policy (Krehbiel 1991). Although other theories of legislative organization (distributive and partisan theories) provide different explanations for committee assignments\(^{39}\), the informational rationale has found the most empirical support at the state level. Specifically, Overby & Kazee (2000) use interest group ratings of state legislators in 12 lower state houses to examine roll call votes and find that outlying committees are rare, especially in more professionalized and amateur legislatures. In instances where committees are outliers, Overby & Kazee (2000) finds that they are not important control or money committees (appropriations, ways and means). Further support of the informational rationale is found by Hedlund & Hamm (2005). In this study, the authors assess whether different state committees are outliers of the parent chamber in five different states from 1909 to 1989. Using a Monte Carlo simulation to obtain percentages of specific committees occupational traits, the authors find that legislators with specific occupational experience are assigned to committee for which that experience is relevant, and that this has occurred consistently throughout the century. As a result of these studies, I am confident in making this assumption.

**Non - Statutory Control Mechanism: The Legislative Veto**

Non-statutory control mechanisms are institutional arrangements or procedures enacted through statutes that act to constrain the behavior of bureaucrats automatically,

\(^{39}\) The distributive theory posits that committee assignments are the result of “gains for exchange” in which members seek assignments to obtain benefits for their constituents (see Shepsle 1978; Weingast & Marshall 1988). The partisan rationale suggests that assignments are made to solve collective action problems by delegating assignment power to party leaders (see Cox & McCubbins 1993),
without re-establishing them with every new piece of legislation (see McCubbins, Noll, Weingast 1987, 1989; de Figueiredo & Vanden Burgh 2004; Rossi 2006). For example, the American Procedures Act ("APA") regulations require agencies to receive some form of tacit if not explicit approval from the legislature prior to policy action (see McCubbins & Schwartz 1984; Clingermayer 1991; Reenock & Poggione 2004). In essence, "they create a set of super-ordinate requirements including rules of notice, standing, information gathering, and judicial review that every agency must follow in making policy decisions" (de Figueiredo & Vanden Burgh 2004, 569-570). The procedures allow legislatures to bypass potential hurdles to the passage of legislation such as gubernatorial vetoes (McCubbins, Noll, Weingast, 1989, 435-440).

The legislative veto, on the other hand, is the "ultimate in...oversight power" (Ethridge 1984). It provides legislators with a significant mechanism in which to shape or alter agency behavior automatically by allowing them to review agency rules and regulations prior to their adoption in order to determine whether they are reasonable and faithful to the legislative intent (see Ethridge 1984; Gerber, Maestas & Dometrius 2005). Although legislators vary in the scope and power of their legislative vetoes (formal versus advisory, ability to suspend rules, and result of inaction, to name a few) legislators "do not have to rely solely on statutory strategies to achieve the policy outcomes they desire from bureaucratic activity" (Huber & Shipan 2002, 149). As a result of this variation, legislators with extensive legislative vetoes may alleviate the need to engage in statutory control altogether. Bureaucrats know ex ante the power of legislators to influence the adoption of their proposed rules and regulations and are thus more likely to adopt rules that are closer to the preferences of the legislature (McCubbins, Noll &
Weingast 1987; de Figueiredo & Vanden Burgh 2004). At the same time, this self-monitoring on the part of bureaucrats enables legislators to save time and resources by alleviating the bargaining and compromise that would take place in the absence of the ongoing statutory control mechanisms.

Although Huber & Shipan (2002) find that a legislative veto diminishes the incentive for legislators to provide more discretion to bureaucrats, they use a dummy variable for the presence of a legislative veto given a unified legislature. They justify the use of the dummy variable in this situation by claiming that all states that have a legislative veto have similar procedures (pg 160) and that it is likely only to be utilized in a unified legislature. Although I suspect that the presence of a veto will reduce the need to engage in statutory control, eight states do not possess a formal veto (CA, HI, MN, MS, NE, NM, RI & TX), and there exists significant variation in veto powers in the remaining 42 states. These differences can slow down the process, create gridlock, and increase costs of policy-making as well as diminish the veto’s effectiveness.

In half of the states that possess a legislative veto, the mechanism is only advisory and possesses no formal power over agency rules and regulations. In the other half of the states, legislators vary in whether they must act (approve or disapprove) of agency rules and regulations, or simply not act and allow the submission to die without implementation. Of the states that vary in whether they must act or not, they also differ on by the actors necessary to overrule the veto (one committee, one chamber or both chambers). At the same time, based on the variation in scope and power of the veto, I also believe that its use will extend beyond unified legislatures, especially in situations where the veto is advisory or not as difficult to overrule. As a result, I replace Huber & Shipan’s
dummy variable with a scale of legislative veto power with "0" constituting no power and "7" constituting the most power and most difficult to overturn. I develop the index using information obtained from the NCSL and research performed by Ethridge (1984). As a result, the seventh hypothesis states:

\[ H_7 \text{ - state legislators that possess extensive non-statutory control mechanisms are less likely to engage in statutory control of bureaucrats than state legislators that have less extensive non-statutory control mechanisms.} \]

**The Impact of Other Political Actors on Statutory Control Decisions**

Legislators do not make statutory control decisions in a vacuum. Although legislators must have the power and capacity to engage in bureaucratic control, these factors must be examined in relation to the competing power of other institutions involved policy-making, specifically the power of the bureaucracy and the governor. An executive or bureaucracy that does not share the legislators' preferences and possesses extensive policy-making and appropriations power can significantly affect the ability of legislators to ensure their preferred policy outcomes.

**Bureaucratic Autonomy**

As discussed earlier, bureaucrats not only have the ability and desire to influence policy and its outcomes, but they often do so. To capture the impact of the bureaucracy as an independent institution, Huber & Shipan use the salary of agency administrators to measure the amount of their autonomy and ability to both withstand legislative directives and influence the policy-making process. Higher paid agency administrators, according to Huber & Shipan, are more likely to head larger agencies and/or lead bureaucrats in more
important policy areas. The authors believe that these factors improve the ability of agencies to influence legislation and withstand legislative directives (Hammond 1986).

Although the salary of the agency administrators is likely to constitute larger and agencies dealing with more important policy areas, I do not believe that administrator salary alone is a sufficient measure to account for bureaucratic autonomy. In addition to the importance or size of the agency, the salary of the administrator may simply reflect the cost of living in the state or amount of time a specific administrator has held the position. At the same time, other factors exist that can have an impact the policy-making process and the ability of bureaucracies to withstand legislative directives. For example, the governor appoints some agency administrators, while others are elected and not beholden to the governor. They possess their own constituents and, like other elected officials, will adopt policy preferences that will ensure their reelection. Additionally, some agency administrators are members of the governor’s cabinet and some have tenure that overlaps with that of the governor. Both of these factors will influence whether they share similar preferences as the governor or whether they will pursue their own.

The nature of the bureaucrats themselves can affect bureaucratic autonomy. Aside from the size and the salary of bureaucrats, those that are civil servants are career policy professionals that likely possess different preferences than their administrators who are likely to be directly or indirectly tied to the executive branch. To capture the influence of the bureaucracy on statutory control decisions, I include a measure of bureaucratic autonomy developed from survey responses of state agency heads from the American State Administrators Project (ASAP) (Bowling & Wright 2004). The ASAP project began surveying state agencies twice every decade since 1964 regarding their specific
agencies, but also attitudinal questions regarding the influence of the executive and legislative branches on the agency in general and their budgeting process in particular. Scores are based on a "0" to "3" scale ("3" being the most influential) and the means for each survey year (1994, 1998, and 2004) are added together and divided by the number of years to obtain a single score of bureaucratic autonomy.

Although survey responses are thought to introduce a degree of bias\(^{40}\) and are considered rough indicators of executive and legislative influence, they are the best we have available due to the dearth of research examining bureaucratic autonomy (see Waterman & Meier 1998; Meier & O'Toole 2006). Additionally, the ASAP project gathers survey responses over time so that we can evaluate any significant changes or trends over time. This will enable me to better evaluate the responses and determine if changes were the result of political and/or institutional forces.

The impact of bureaucrats is likely to be similar regardless of where the control is imposed (Potoski 1999; Ruhil & Teske 2003; Shipan 2004; Meier & O'Toole 2006). If bureaucrats are going to influence legislation, they will do so whether it is in appropriations bills or general legislation. As a result, the eight hypothesis states:

\[ H_6 \text{ -- state legislators confronted by more autonomous bureaucrats are more likely to engage in statutory control than state legislators that are confronted by less autonomous bureaucrats} \]

\(Gubernatorial\: Effectiveness\)

In the case of governors, scholars have consistently demonstrated gubernatorial influence in the policy-making arena through formal powers such as agency

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\(^{40}\) Survey responses run the risk of biased results due to question construction, word choice, definitions, and ordering (see Morgan & Sonquist 1963; Achen 1975), as well as by the incentive of some respondents to either promote or negate the influence of other political actors.
appointments (Dometrius 1979b), agenda power (Morehouse 1996; Hall 2002), budget powers (Sharansky 1968; Barrilleaux & Berkman 2003), and through informal powers such as persuasion and personality (Jewell 1962; Rosenthal 1990; Ferguson 2003).

Governors, however, vary in their formal powers across states (see Beyle 1999). Specifically, governors differ in their tenure potential (term limited or not), appointment power, veto capabilities, whether they received an electoral mandate in the previous election, the year of their term (election year or not), and whether their party controls the legislature. These factors contribute to the governor’s ability to influence legislation and thus impact statutory control decisions. In particular, a governor with a mandate in the previous election, who is not in an election year and not constrained by term limits and possesses a line-item veto can significantly frustrate the ability of legislator’s to obtain information due to their control over bureaucrats, in addition to raising the costs of engaging in statutory control due to their ability to alter language or veto the legislation altogether. On the other hand, governors with strong legislative powers can influence the decision of legislators where to impose the control as well. A governor with weak appropriations powers but who possesses a line-item veto, an electoral mandate, whom appoints the majority of executive branch officers, and is not constrained by term limits will limit the legislator’s statutory control options and likely force them to impose the control in appropriations bills, if at all.

Legislators know ex ante gubernatorial policy preferences as well as their formal (institutional) and informal (personal) powers. It is reasonable to believe that legislators

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41 Executive influence in the legislative arena well established in political studies at both the national (Neustadt 1960; Bond & Fleischer 1990; Covington, Wright & Kenney 1995; Edwards & Wood 1999; Canes-Wrone 2001; Binder & Maltzman 2002) and the U.S. state level (Schlesinger 1971; Bernick 1979; Clynch & Lauth 1991; Gosling 1994; Beyle 1996; Rosenthal 1998; Barrilleaux & Berkman 2003; Ferguson 2003).
take these factors into consideration when making a decision to engage in statutory control as well as where that control will be imposed. As a result, it makes little sense for legislators in low capacity legislatures to engage in statutory control when confronted by a governor from a competing party with extensive legislative power and/or appropriations powers. The costs for legislators are simply too high. Not only must a legislature invest scarce resources and time to legislation that is unlikely to receive the governor’s signature, but they must also incur the political costs of supporting legislation that is likely to be defeated or significantly altered by the chief executive. The same costs arise in the decision where to impose the control. As mentioned previously, legislators are less likely to impose statutory control in appropriations bills when the governor enjoys significant appropriations power and thus the ability to alter language and amounts to ensure his/her preferred policy outcomes.

Huber & Shipan include measures “specific to the governor that might influence the level of discretion” including the percentage of vote necessary to override a gubernatorial veto, gubernatorial appointment powers, his/her prospects for staying in power, veto powers, and a summary measure of the governor’s institutional powers. The authors find that none of the variables are significant but admit that this is “somewhat surprising” (pg. 165) and gubernatorial influence and bureaucratic professionalism “deserves further investigation” (pg. 165). Although they find no impact of their measure on the amount of discretion provided, the measure used only addresses a few ways in which the governor can influence policy.

To improve upon Huber & Shipan’s measure, I create an index of gubernatorial influence or effectiveness in the legislative arena based on the Beyle (1999) measure
consisting of a governor’s appointment, budget, veto, and tenure potential. However, the Beyle (1999) measure is coded differently across years and only dates back a few years. To expand upon the Beyle (1999) measure, I re-cod ed all of the variables using the Book of the States and various internet sources (National Conference of State Legislatures website) from 1990 to 2007. The new, expanded measure provides me with consistent values throughout the timeframe of this study and enables me to more accurately assess the impact of gubernatorial effectiveness and their impact on statutory control. As a result, I include the following hypotheses:

\[ H_j - \text{state legislators that face a highly effective governor are less likely to engage in statutory control of bureaucrats than those that face less effective governors.} \]

**Control Variables**

An additional reason for choosing to examine mandates that refer directly or indirectly to the CHIP policy is to eliminate language referring to other policies that are often included in legislative bills that lead to more words and thus longer bills. Huber & Shipan’s dependent variable does not differentiate between discretion and this superfluous language and, as a result, they must control for the possibility of length of legislation being related to policy change. Although I do not have to worry about these additional words impacting my findings, I choose to utilize numerous controls to account for the length of mandates and the amount of control not related to discretion. First, I control for the type of CHIP program established in the state. It is argued in this study that CHIP programs that are encompassed by the larger Medicaid program (i.e. Medicaid expansion) will have much of the health care specifics already in place at the time of
CHIP initiation (e.g. enrollment procedures, eligibility process). An established program will significantly diminish the need for more detailed instructions. Hybrid programs will require more attention than Medicaid expansions, but less than a stand-alone program that will require legislators to spend significant time establishing the program and defining its parameters. To account for the type of CHIP program used in the state, I include a measure of CHIP program type that takes the value of "0" for states that adopt a Medicaid expansion, a "1" for states that possess a hybrid program, and a "2" for states with a stand-alone CHIP program.

Second, the length of CHIP mandates or the amount of control may simply be the result of an increase in demand for insurance for low-income children rather than a function of changes in partisanship or institutional arrangements. In other words, legislators are likely to alter or expand CHIP policy when a demand for the program is increased. As a result, we should see more detailed, and thus longer, CHIP legislation in states that spend more money on CHIP to meet the demand. To account for this possibility, I include a measure of the average CHIP expenditures in each state between 2000 and 2006 obtained the Kaiser Family state health facts website (www.statehealthfacts.org).

Third, consistent with the demands of the CHIP program type and CHIP expenditures, legislators may simply engage in statutory control of bureaucrats because of the control that they imposed in the previous legislative session. In other words, the demands on legislators are similar from session to session and they must engage in statutory control in order to meet the continued needs of the program they chose as well as the amount of expenditures they dedicate to their CHIP programs. I expect, however,
that legislators that impose a significant amount of control in one session will be less likely to impose similar levels in a subsequent session since many of the issues or needs were addressed in the first session. This does not mean that they will not engage at all, only that the level of control will be diminished.

**Chapter Summary**

The goal of this chapter was to provide a more in depth analysis of the research on the use of statutory control and address how this dissertation improves upon this research. In doing so, I focused predominantly on Huber & Shipan's *Deliberate Discretion* and examined how my empirical model expands upon the variables and measurements used in their model of statutory control. Based on the PA framework, the literature and Huber & Shipan, the chapter concluded with a discussion of the specific variables and the hypotheses to be tested in the dissertation.

The next chapter introduces the policy area I have chosen to examine – the Children’s Health Insurance Program (“CHIP”) and examines the dependent variables to be tested in this study. In particular, I discuss the how the data was collected and coded to develop my two dependent variables, *mandate length* and *amount of control*, as well as how these measures improve upon the prevailing literature on statutory control of bureaucrats at the state level.
Chapter 4: Dependent Variables and Research Design

As discussed in the preceding chapters, the goal of this dissertation is to improve upon the prevailing literature by testing an expanded empirical model of statutory control of bureaucrats that more appropriately captures the institutional variation that exists across the U.S. states and utilizes a new dataset of statutory control decisions over a 10-year period. The previous chapter described the progression of statutory control research at the state level and examined the explanatory and control variables that I use in this study. This chapter continues the examination of my model, addresses the policy area from which I obtain my data, and begins the discussion of my dependent variables, mandate length and total control. In particular, I introduce the Children’s Health Insurance Program (CHIP) and discuss why the CHIP program is an ideal policy in which to examine statutory control of bureaucrats. Within this discussion, I also address how I collect and code the data to develop my dependent variables. The chapter concludes with an examination of my dependent variables and a discussion of how they improve upon previous studies of statutory control, in particular the research by Huber & Shipan.

The Children’s Health Insurance Program (CHIP)

Addressing the growing popular support for expanding the insurance coverage to children in low-income families in the U.S., and an attempt to protect the existing Medicaid coverage for children and parents, the U.S. Congress passed the Children’s Health Insurance Program (CHIP) through the Balanced Budget Act of 1997 as Title XXI of the Social Security Act of 1997. The program provides individual states with funds to
assist in the development, implementation, and maintenance of their CHIP program designed to cover children in families ineligible for Medicaid coverage and unable to afford private insurance. The funds are in the form of grants, capped annually, that match the amount of state expenditures on the population of uninsured children. Nearly $40 billion in matching funds were appropriated for the first 10 years of CHIP and, by fiscal year 2003, 48 states had programs approved by Congress and were receiving these grants (U.S. Dept. of Health & Human Services, 2005).

Although the CHIP legislation passed by Congress provides states with significant flexibility in the development and implementation of their programs, states were expected to meet specific requirements including setting income eligibility limits up to 200% of the federal poverty level (FPL) and choosing among 3 program designs: a separate or stand-alone CHIP model, a Medicaid expansion model, or a hybrid system that incorporates both the stand-alone design and an existing Medicaid design (Dubay et al. 2002). Medicaid expansion programs extend CHIP enrollees the same benefits covered by the Medicaid plan, while the stand-alone CHIP programs provide enrollees with limited benefits primarily because of skepticism over the funding cap and the desire by states to adopt a program similar to a private system (Dubay et al. 2002). Although the stand-alone and hybrid programs provide states with more flexibility in program design (premiums, copayment amounts, and other forms of cost sharing), they also constrain their ability to use funds (Dubay et al. 2002).

Since the initial enrollment of CHIP recipients in 1997, most states have altered their original designs, expanded, and in some cases constricted, their coverage through

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42 Arkansas and Tennessee dropped their CHIP programs in 2002 due to Sect. 1115 demonstrations that offered Medicaid coverage that included all children under 100% of the poverty level up to the age 19 (USDHHS 2005).
waivers and amendments, altered enrollment procedures, defined new co-payment standards, and modified benefits packages (Dubay et al. 2002). In addition to the nearly 5.9 million low-income children enrolled in CHIP during 2003, 8 states enrolled nearly 500,000 adults in CHIP through program waivers despite the erosion of private health coverage during this time (Broaddus & Park 2007). The adults included in many CHIP programs range from pregnant women, parents of uninsured children and, in Connecticut, to qualified, non-state residents.

**CHIP and Statutory Control**

For the purposes of assessing the impact of the political and institutional environments on statutory control decisions, CHIP is an ideal policy for various reasons. First, all U.S. states have passed CHIP legislation in one form or another, and have used legislation to both develop and implement their program. Individual state attention to the CHIP program is due in part to the popularity of the policy that provides health care for low-income children. Citizens favor protecting children and elected officials favor opportunities that allow them to appease their constituents and credit claim to improve their re-election chances. However, the CHIP policy is also attractive to individual states because federal matching grants are “too attractive to pass up” (Volden 2006, pg 296). At a time when many states were experiencing budget shortages, increased Medicaid expenditures, and increased levels of uninsured children (Lambrew 2007), the opportunity to acquire federal funds was welcomed by legislators seeking to offset and prevent further budget shortfalls as well as obtain funds for essential state programs.

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43 Most states passed their CHIP legislation between the years of 1997 – 1999 with a few states doing so by 2001. Tennessee was the last state to apply for matching funds in 2006.
Second, although the federal government required all states to enact some structural and procedural requirements, states were given considerable flexibility to develop, implement, and maintain their policy programs based on their own individual needs, culture, and resources (Broaddus & Park 2007). As a result, there exist significant differences in CHIP programs across state legislatures. Table 4-1 provides a brief description of some of the variation in CHIP programs that exist across the U.S. states. In particular, the table displays differences in the name

**Table 4 - 1**  
Variation in CHIP Programs across Eight States (2003)

<table>
<thead>
<tr>
<th>State</th>
<th>Program Name</th>
<th>Design Type</th>
<th>Enrollment</th>
<th>Income Eligibility</th>
<th>Waiting Period</th>
<th>Continuous Eligibility</th>
<th>Required Copayment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado</td>
<td>Child Health Plan Plus</td>
<td>Separate</td>
<td>52K</td>
<td>185%</td>
<td>3 months</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Texas</td>
<td>TexCare</td>
<td>Medicaid</td>
<td>730K</td>
<td>185%</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Illinois</td>
<td>Kid Care</td>
<td>Medicaid</td>
<td>70K</td>
<td>133%</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Missouri</td>
<td>MC+ for kids</td>
<td>Medicaid</td>
<td>112K</td>
<td>300%</td>
<td>6 months</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Family Care</td>
<td>Combined</td>
<td>117K</td>
<td>200%</td>
<td>12 months</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Louisiana</td>
<td>LaCHIP</td>
<td>Medicaid</td>
<td>88K</td>
<td>133%</td>
<td>3 months</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Health Choice</td>
<td>Separate</td>
<td>120K</td>
<td>200%</td>
<td>2 months</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>New York</td>
<td>Child Health Plus</td>
<td>Separate</td>
<td>807K</td>
<td>185%</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

of individual state programs, the type of program (Medicaid expansion, separate CHIP program, or hybrid), the income level at which low-income children are eligible to receive coverage, the waiting period a participant must wait for coverage when converting from private insurance, whether a recipient has continuous eligibility of must reapply after a designated time, and whether a copayment is required for coverage.

The differences between states also provide an ideal opportunity in which to examine the impact of changes to these environments on decisions whether to engage in statutory control and where such control was imposed (see Volden 2006). Because most states implemented their CHIP programs between 1997 and 1999, I am able to examine initial CHIP legislation in each state as well as observe subsequent legislation and statutory control strategies over time. Although most of the institutional arrangements remain relatively stable within each state over time, the political environment and other factors (salience of the policy, budget shortfalls or surpluses) are subject to change and can influence whether legislators choose to engage in statutory control and where they impose such control, if at all.

In the state of Connecticut, for example, legislators appeared to be at the forefront of CHIP legislation by making children in families below 300% of the FPL eligible for their CHIP program called Husky Care (Congress only mandated 200%), as well as by expanding coverage to pregnant women and some non-state residents. At the same time, Connecticut legislators reserved significant policy-making powers to bureaucrats developing and implementing the program. In 2001, however, legislators significantly

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44 As discussed in the previous chapter, the nature of state legislation prevents me from comparing specific policy issues over time, yet because of the coding procedures used in this study, I can assess the type of language and constraints employed as well as any additional constraints placed on bureaucrats in their development and/or implementation of the policy (e.g. time, approval, and sanctions).
shifted their CHIP program and strategies as evidenced by an increase in policy language and procedural requirements. Was this shift the result of a change in partisanship or were there exogenous shocks such as a budget crisis or scandal that spurred legislators to limit bureaucratic discretion? An examination of Connecticut’s program over time will allow us to better understand these decisions.

The CHIP program is also an ideal policy because of its potential impact on the PA relationship between legislators and bureaucrats. In terms of the preference divergence, the major factor responsible for differences in preferences between legislators and bureaucrats is money. Although the CHIP program is considered a politically “safe program” because both constituents and elected officials favor the provision of insurance coverage to low-income children, the monetary investment states must incur in order to qualify for federal matching grants has made the program controversial and created disagreements over CHIP budgets, sources of funds, eligibility requirements, and enrollment levels. While legislators must take money and resources into consideration in the development and implementation of the CHIP policy, bureaucrats are less likely to do so, focusing instead on the best way to solve the problem and reach as many uninsured children as possible. The fiscal crisis that took place across the states between 2001 and 2003, for example, significantly altered state legislative preferences for many policies since the financial pie that states enjoyed had diminished significantly (Boyd 2003). Additionally, CHIP matching funds have not kept pace with
the rising cost of health care or the growing population of uninsured children. State programs were thus altered to account for limited funds and budget shortfalls.\(^{45}\)

The CHIP program also poses significant informational disadvantages for legislators attempting to write CHIP legislation. The technical and often complex nature of insurance coverage, health care services and procedures, as well as eligibility and income requirements are not likely to be possessed by the average legislator. This creates an incentive for legislators to provide more discretion to bureaucrats who possess both the policy and procedural knowledge to develop and implement the CHIP program. Their knowledge of the costs and procedures benefit legislators in their attempt to write legislation designed to achieve their goals and those of their constituents. At the same time, bureaucratic discretion insulates legislators and prevents them from incurring political costs, ultimately improving their reelection chances.

Lastly, the CHIP program is ideal for this study because of the similarities the CHIP policy shares with the policy examined by Huber & Shipan. In *Deliberate Discretion*, Huber & Shipan examine the adoption of Medicaid managed care ("MMC") legislation across states, which like CHIP is federally imposed upon the states. Much like the CHIP authorization, Congress required states to follow certain guidelines, but ultimately provided them with significant discretion in the development and implementation of their program. CHIP, like MMC is accompanied by federal matching funds for states complying with the federal guidelines and is based on state enrollments and expenditures (Huber & Shipan 2002). Additionally, both policies possess similar potential impacts on the PA relationship between legislators and bureaucrats. Funding

\(^{45}\) This was one of the problems surrounding the 2007 reauthorization of CHIP after its initial 10-year authorization. States feared inadequate funding and the failure of the federal government to match their expenditures for the continued enrollment of children post 2007 (Broaddus & Park 2007).
issues are likely to create divergent policy preferences and when combined with the informational disadvantages faced by legislators, the incentive for legislators to control bureaucrats in both MMC and CHIP legislation is significantly increased.

**CHIP Legislation: Data Collection & Coding**

In order to improve our understanding of the statutory control decisions made by legislators we must examine the manner in which they use language to control and oversee bureaucracies. This is especially important in terms of the PA relationship between legislators and bureaucrats since the theory suggests that the actions and strategies employed by legislators are influenced by preference divergence, information asymmetries, and the costs of control.

To examine these decisions and assess the impact of these factors, I collected and coded 1654 enacted bills that refer directly to the development and/or implementation of the CHIP program across U.S. legislatures between 1997 and 2007\(^{46}\). I obtain the bills using various sources including Lexis-Nexis, Lexis-Nexis State Capitol, individual state websites, and countless emails and telephone calls to legislative staff, legislative librarians and CHIP program administrators and staff\(^{47}\). I chose to collect enacted bills for several reasons. First, enacted bills have been subjected to the bargaining and compromise that takes place in each individual chamber. Depending on the strength of

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\(^{46}\) The choice of bills with “direct” references to CHIP program is due to the multitude of indirect references that simply use it as an example of structure or process but does not impact the policy itself.

\(^{47}\) CHIP bills were not collected in AK, SD, SC, & WY due to the difficulty obtaining CHIP legislation, and in TN were matching funds were not sought until 2006. The collection and coding process was hindered significantly by the fact that CHIP program names vary across states and do not always coincide with how they are referred to in legislation. Georgia’s “PeachCare” for example, is not spelled consistently from bill to bill (e.g. “Peach Care” or “PeachCare”). As a result, bills were searched under “CHIP” “Children’s Health Insurance Program” “Child Health” “Child Insurance” and variations of the individual state program name.
the majority party in the chamber, this process ensures that the bill that is passed by the chamber represents the true intent of the legislators and has been impacted by both endogenous (institutional arrangements) and exogenous (interest group influence) factors that are likely to be unique to that particular state. Additionally, enacted legislation has not yet been subject to executive action. This further ensures that the bill reaching the governor’s desk encompasses the true intent of legislators. As a result, I can better assess the impact of legislative preferences on bureaucratic action and subsequently control for other factors that might influence this relationship.

In addition to coding general bill information (state, year, chamber, and bill number), I code the CHIP legislation using an extensive coding scheme to capture the legislative policy foresight and to better understand statutory control strategies across states (see Appendix A). In particular, I first identify specific instances in which legislators’ articulate instructions or mandates to bureaucrats regarding the CHIP program in the state. The term mandate refers to language used by legislators to articulate legislative policy intent or preferences and thus limits bureaucratic discretion. The policy intent articulated by legislators primarily involves setting the parameters of the policy area (policy mandates), the use of specific procedures or processes (procedural mandates), and instructions that require specific procedures and articulate how the specific policy should be impacted by the procedures (both procedure and policy mandates). I focus on mandates because they encompass only the language that directly relates to the development and/or implementation of the state’s CHIP policy without any superfluous language that is common in some states (California and Massachusetts). This provides a much clearer measure of length of legislation and enables me to more easily
determine the specific language used by legislators to convey their policy intent and any additional mechanisms placed in mandates to further limit bureaucratic discretion.

Once individual mandates are identified, I code them based on their type (policy, procedural, or both procedural and policy), and determine their length in words which makes up my first dependent variable, mandate length. This not only allows me to replicate Huber & Shipan’s model, but also to compare results from the two empirical models. However, because I believe that mandate length is a necessary condition to constitute the amount of discretion provided to bureaucrats, I code CHIP legislation to allow me to develop a second dependent variable, total control. Total control is based on the type of mandate used (procedural, policy or both mandates), the specific language used by legislators to articulate the amount of discretion (no discretion, limited, or broad), as well as additional mechanisms designed to further constrain bureaucrats (time constraint, approval requirement, sanctions for non-compliance). I conclude by coding where the mandate was imposed (general legislation or appropriations bills) in order to evaluate statutory control decisions as a two stage process. I will discuss each of these coding procedures separately.

Dependent Variable I: Mandate Length - Length of Words Pertaining to Mandates

Table 4-2 provides a summary of the dependent variables used both in Huber & Shipan’s study and my study. Mandate length is coded to measure the amount of discretion that is provided to bureaucrats in the development and implementation of the CHIP policy. This is done primarily to replicate Huber & Shipan’s model, which measures discretion by length of the legislation, but also as evidence of the decision by
Table 4-2
Dependent Variables for Huber & Shipan (2002) and Goodman (2009)

<table>
<thead>
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<th></th>
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<tbody>
<tr>
<td><strong>DV I</strong></td>
<td><strong>Bill Length</strong></td>
<td></td>
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<tr>
<td></td>
<td>• Longer bills</td>
<td>• Longer mandates constitute less discretion</td>
</tr>
<tr>
<td></td>
<td>constitute less</td>
<td>• Measures only the words that directly / indirectly refer to the CHIP policy</td>
</tr>
<tr>
<td></td>
<td>discretion</td>
<td>• Eliminates superfluous words / language</td>
</tr>
<tr>
<td></td>
<td>• Measures the amount of “new” words imposed in legislation</td>
<td></td>
</tr>
<tr>
<td><strong>DV II</strong></td>
<td><strong>None</strong></td>
<td><strong>Amount of Control</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Length alone does not provide the complete story of discretion / control</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Examines (1) type of mandate (2) language used (“must” “may” “as agency sees fit”) (3) additional constraints in mandates (time, approval, &amp; sanctions)</td>
</tr>
</tbody>
</table>

Legislators to engage in statutory control of bureaucrats. It is important to point out here that my measure of mandate length is a measure of words pertaining to CHIP mandates produced in a single legislative session. This is a critical point because, as will be discussed more fully later in this chapter, the nature of state legislation and the differences between types of state legislation (general legislation and appropriations bills), does not allow me to observe changes to specific CHIP issues or instructions across legislative sessions. Developing a measure of mandate length in a specific session allows me to compare the lengths of mandates across sessions and better assess the impact of the political and institutional arrangements in place during the particular session. These points will be discussed more fully in this and subsequent chapters.
Examining the length of legislation, Huber & Shipan posit, “the more words a legislature puts into legislation on the same issue, the more it constrains other actors who will implement policy on that issue. Similarly, the fewer words it writes, the more discretion it gives to other actors” (pg 73). The authors do not code the specific language that makes up the language of the bill and choose to abandon attempts to code any additional constraints imposed on agencies. The authors also acknowledge that their dependent variable “may be controversial” (pg. 73), but engage in numerous tests to make sure that legislation does not consist of merely general language or contain proportionally more procedural language than policy language.

Despite the lengths that Huber & Shipan go to in order to justify their dependent variable, I am not convinced that bill length alone is a necessary condition to constitute discretion. Not only does the CHIP legislation coded for this study not share the same characteristics as MMC bills, legislators possess other less costly statutory options to control and oversee bureaucrats. Not only do different mandate types require different costs and demands for information, but legislators can use specific language and additional control mechanisms to constrain bureaucrats, rather than incur the costs of researching, writing, and passing longer, more detailed legislation. At the same time, using the length of legislation includes superfluous language and provides no evidence of the policy foresight that is crucial to understanding the intent of legislators.

To improve our understanding of legislative attempts to control and oversee bureaucrats, I choose to construct a second dependent variable, total control. Total control measures the amount of control reserved by legislators in mandates based on the

48 General policy language is language in a statute that does not impact the policy specifically but discusses the state’s specific reasons for legislation, its specific goals or needs, and in most cases, opportunities for the legislature to credit claim for the state’s progressive stance on children’s health care (see California).
type of mandate used, the specific language used by legislators, language used to establish the parameters of the policy, and any additional control mechanisms imposed to further constrain bureaucratic action.

**Dependent Variable II: Total Control**

Legislators choose their words carefully. This is especially true in legislation where problems of interpretation and ambiguity can mean the difference between achieving policy success and policy failure. Ambivalent or highly discretionary language ("may," "can," "as the agency sees fit") provides bureaucrats with significant flexibility in policy development and implementation. Not only does this diminish the impact of the mandate, but it also provides bureaucrats with discretion whether to abide by the instructions or, more importantly, the ability to behave in a manner that can adjust procedures or outcomes closer to their preferred outcomes.

On the other hand, language that limits bureaucratic discretion ("must," "should," "is required to") signals to bureaucrats that abiding by the particular mandate is of the utmost importance and that no flexibility in interpretation is acceptable\(^{49}\). As a result, these mandates impose a much higher level of constraint than mandates that use ambivalent or highly discretionary language. At the same time, if the discretion limiting language is accompanied by additional mechanisms designed to further control bureaucratic behavior (time constraints, approval requirements, sanctions), an even greater level of control is imposed upon bureaucrats.

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\(^{49}\) For more information regarding the use of language to creating and maintaining institutions, in this case a set of rules and procedures, see Crawford & Ostrom (1995).
If we take this research design an additional step and impose the language and additional constraints in mandates that vary in scope (requirements placed on bureaucrats, setting policy parameters, or both), we also further increase the amount of control imposed on bureaucrats. This is the rationale for my second dependent variable. More specifically, although I agree with Huber & Shipan that the length of a particular bill may be sufficient to limit the amount of bureaucratic discretion, based on these premises, I do not believe that it is a necessary condition. The type of mandate used, the specific language articulated by legislators, and additional control mechanisms may be more effective in achieving their goals and ensuring their preferred outcomes. I will discuss the separate parts of my second dependent variable, total control, more fully, focusing on how it is coded and impacts the relationship between legislators and bureaucrats.

**Mandate Types**

For the purposes of this dissertation, there exist three types of mandates: policy, procedural, and both procedural and policy mandates (hereafter “both” mandates). *Policy Mandates* are instructions by legislators that define, clarify, or set the parameters of the policy. More specifically, depending on the scope and detail of the language, policy mandates let bureaucrats know how legislators interpret the specific policy as well as what outcomes they prefer. California’s Assembly Bill 1126 (1997) provides an example of a policy mandate:

*The discount shall reduce the portion of the family contribution described in subdivision (b) to the following: (1) A family contribution of four dollars ($4) per child with a maximum required contribution of eight dollars ($8) per month per family for applicants with annual household incomes up to and including 150% of the federal poverty level.*
In this dissertation, policy mandates are broken down into two categories: policy terms and policy procedures. Policy terms are mandates that define a term or a process pertaining to the CHIP policy. For example, the Arkansas Senate Bill 684 (1999) states that “‘Health Care Coverage’ means health care insurance as defined by rules promulgated by the Arkansas Department of Human Services for the ARKids First Program.” This is a specific definition of a policy term. Policy procedures, on the other hand, are policy mandates that define or clarify how the policy is to be developed or implemented. California Assembly Bill 1126 above is a good example of a policy procedural mandate. By specifically defining terms, bureaucrats are unable to interpret the policy in a manner that favors their preferences. This is also true with policy procedures. Without directly requiring bureaucrats to perform any action, legislators can effectively constrain their actions in policy development and implementation.

Procedural Mandates are non-policy related instructions by legislators placed in legislation that directly requires the agency or agencies to “do something” in order to achieve the preferred outcomes. Examples of procedural mandates include legislators requiring bureaucrats to submit a report, hold a hearing, interact with an individual or group, create a committee, or develop specific procedures. California’s AB 1126 (1997) provides an example:

*The board shall provide a family contribution discount to those applicants who select the health plan in a geographic area which has been designated as the Community Provider Plan.*

I emphasize the direct requirement by legislators for bureaucratic performance for both substantive and empirical reasons. Substantively, I believe that it is not a coincidence that legislators write bills with a particular agency or group of agencies in mind. Not only is it more costly to impose mandates to all agencies individually, but a direct requirement to a
single agency serves to signal that the mandate applies specifically to them while absolving other agencies from responsibility. Empirically, examining direct requirements also prevents potential coding problems that would arise while attempting to interpret legislative language. Coding legislation is difficult enough that when coders are required to make decisions based on their judgment, coding inconsistencies arise and the reliability of the data quickly diminishes.

*Both Procedural and Policy Mandates ("Both" mandates)* are instructions by legislators that require an agency to not only *do something*, but also instructs bureaucrats as to how the requirement will impact the specific policy parameters. In other words, *both mandates* articulate a particular requirement for bureaucrats to utilize (develop enrollment procedures) followed immediately by an explanation of how this requirement will impact, alter, or expand the policy or the policy outcome. I code *both mandates* when it is not substantively possible to separate them. California’s AB 1126 (1997) provides an example of a *both mandate*:

(d) The board shall provide a family contribution discount to those applicants who select the health plan in a geographic area which has been designated as the Community Provider Plan. The discount shall reduce the portion of the family contribution described in subdivision (b) to the following: (1) A family contribution of four dollars ($4) per child with a maximum required contribution of eight dollars ($8) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level. (2) Six dollars ($6) per child with a maximum required contribution of eighteen dollars ($18) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level.

The type of mandate used to constrain bureaucratic strategies or behavior is an important factor in understanding legislator’s statutory control strategies. This is

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50 Huber & Shipan found that, in the MMC statutes, it was difficult to “separate” out procedural instructions from policy instructions because the two were often intertwined (pg 61). This was one of their justifications for abandoning the coding of separate instructions into categories. Instead they lump procedural and policy instructions together into “text blocks”.

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especially true in the PA relationship between legislators and bureaucrats where different mandate types represent different costs to legislators and require different amounts of information to write policy specific legislation. Additionally, the mandate chosen signifies the particular goal that legislators are attempting to achieve, whether it is ensuring specific policy outcomes, appeasing particular constituents, or both. For example, legislators incur more costs imposing policy mandates than procedural ones due to the need for information about the policy (see Epstein & O’Halloran 1999; Huber & Shipan 2002). However, even though they can influence procedures (see above), the fact that they are general statements that impact the policy without directly referring to a specific agency signifies to bureaucrats that the outcome is the central focus of the mandate and not the particular procedure. This goal may reflect uncertainty surrounding policy implementation or an attempt to appease favored groups who are more concerned about the policy outcome rather than the manner in which the policy is achieved.

Imposing procedural mandates, on the other hand, requires information about agency capabilities and specific procedures, but less about the particular policy. As a result, it is argued that procedural instructions are less costly than policy instructions (see McCubbins, Noll & Weingast 1987; Huber & Shipan 2002). However, by focusing specifically on particular procedures or actions, legislators can signal the importance of the process or manner in which the policy is developed or implemented. This is accomplished in situations where the outcome is less in doubt or favored groups have stronger preferences for the way in which the policy is achieved.

If my assumptions regarding policy and procedural mandates are accurate, then instances in which both procedural and policy instructions are used together should
reflect situations in which legislators possess the strongest incentive to control and oversee bureaucratic behavior. By requiring specific behavior or procedures, in addition to articulating the expected policy outcomes of that behavior, legislators incur the most costs, but they are also strongly signaling to bureaucrats that there is little to no discretion or flexibility in their actions or outcomes. These mandates are likely to be used in situations where legislators are less secure about both bureaucratic action and outcomes.

Legislative Language

To capture the impact of the language used by legislators to control and oversee bureaucratic behavior I code whether the mandate provides broad, limited or no discretion. Broad discretion is established by language such as “as the agency sees fit” or “when the agency deems appropriate,” while limited discretion is established by language such as “the agency may” or “the agency can.” Limited discretion minimizes the amount of flexibility possessed by bureaucrats in the development and/or implementation of policy. Lastly, mandates that use language such as the agency “must,” “should,” or “is required” are coded as no discretion. This language provides no flexibility for bureaucrats and constrains their behavior completely.

Although coding mandates in this manner allows me to determine if there is any correlation between the mandate length and amount of control, more importantly, it enables me to obtain information about legislator’s statutory control strategies generally and their desire to provide or limit discretion more specifically (policy foresight and intent). In particular, I can assess whether legislators that use language that provides no discretion are actually attempting to control and oversee bureaucrats, simply engaging in
cheap talk, or attempting to credit claim and appease their constituents. At the same time, observing the language used in different CHIP bills both within and across sessions will allow me to determine whether changes in the control placed in mandates are the result of state specific factors or factors that impact all states equally.

Additional Bureaucratic Constraints

In addition to the specific language used by legislators to control and oversee bureaucrats, my second dependent variable also consists of additional mechanisms placed in legislation to further constrain bureaucratic behavior and limit their discretion that are unrelated to the length of the bill. One mechanism is a time constraint. Time constraints are attached to procedural mandates and are used to restrict the amount of time the agency has to satisfy the mandate requirement. For the purposes of this study, there are three types of time constraints: no time constraint, time constraint with no specified time ("within a reasonable time"), and time constraint with specified time ("by January 31, 2008"). Time constraints with a specified time provide less discretion and flexibility to bureaucrats in carrying out the mandate. For example, the procedural mandate from CA AB 1126 (1997) with a time constraint would read:

*By January 31, 1998, the board shall provide a contribution discount to applicants who select a plan in an area which has been designated as the Community Provider Plan*

Previously, the board responsible for developing and implementing a contribution discount to applicants were not given a time in which this procedure had to be performed. This provides the board with significant discretion over when they will comply with the mandate. Even if a time constraint is implied, the fact that the legislators incurred the
costs of including it in the mandate suggests that the timeliness of procedural performance is important to them.

Another mechanism used to further constrain bureaucrats and limit discretion is an approval constraint. Like time constraints, these mechanisms are added to procedural mandates that require the agency to have their actions or product approved either by the legislature, a non-legislative body, or both. Similarly, this mechanism affects the behavior and strategies of bureaucrats who must now satisfy the mandate requirement in a manner that the approving body will accept and support. In essence, the approval constraint acts like a secondary hurdle or a safety net for legislators in the event that the agency strays from legislative intent and attempts to move procedures or outcomes closer to their preferences. CA AB 1126 (1997) with an approval constraint would read:

Following approval by the legislature, the board shall provide a family contribution discount to those applicants who select the health plan in a geographic area which has been designated as the Community Provider Plan

Approval constraints are coded in four ways: no approval, approval by legislature, approval by non-legislative body (executive branch, another agency), and approval by both legislature and non-legislative body. An approval by the legislature itself is more constraining on bureaucrats since legislators are responsible for making sure that agencies behave in a manner that is consistent with their intent. With this responsibility, however, comes with additional costs to legislators. Additionally, an approval requirement by both the legislature and a non-legislative body is considered the most constraining on bureaucrats, since they must behave in a manner that satisfies the preferences of both legislators and a non-legislative body.
The third mechanism used by legislators to constrain bureaucratic action further is a sanction. Sanctions are punishments or penalties levied on agencies for non-compliance with a mandate. Sanctions can come in many forms (fines, reorganizations, firings) and can be imposed on its own to ensure that the procedural requirement is complied with or to further strengthen a time or approval constraint. The justification for sanctions centers on its deterrence for bureaucrats who know ex ante what they can expect for non-compliance and thus providing additional force behind the mandate. Once again CA AB 1126 (1997) with a sanction reads:

*By January 31, 1998, the board shall provide a family contribution discount to those applicants who select the health plan in a geographic area which has been designated as the Community Provider Plan. If the board fails to provide such a discount by the designated time, their authority will be transferred to the Department of Health until notice by the legislature.*

Sanctions are coded similarly to time constraints: no sanction, sanction not specified ("non-compliance will result in penalties"), and sanction specified ("non-compliance will result in a budget reduction of $250,000"). Although specified sanctions allow bureaucrats to know ex ante what the penalty for non-compliance, unspecified sanctions require subsequent legislative action, which will require additional time and resources on the part of legislators. A sanction combined with a time or approval constraint is even more constraining on bureaucrats and provides the least amount of discretion for policy development and implementation.

The addition of constraints in a mandate usually only adds a few words to the length of the bill and would thus not represent any significant change to Huber & Shipan’s analysis. However, the impact on the behavior or strategy of the agency and their discretion is substantial. By adding the few strategic words, legislators significantly
constrain bureaucratic behavior and signal to them the importance or necessity of
satisfying the requirement either in a timely fashion or having their performance or
product approved by another body. Additionally, using a sanction provides a threat to
bureaucrats in the event of non-compliance and when combined with a time or approval
constraint, provides the least amount of discretion and represents instances of significant
legislative control and oversight.

In Wisconsin AB 100 (1997), the following mandate provides the Department of
Health and Family with significant discretion in the development of rules limiting access
to their CHIP program, called Badger Care:

"The department may promulgate rules limiting access to the program under
this section to defined enrollment periods ".

What makes this mandate even more powerful is that legislators also give the department
discretion whether to promulgate the rules or not by using the word may. Not only can
they develop their own rules without approval or review by another body (chamber,
executive or agency), but they can decide whether they want to develop them in the first
place. This degree of policy-making discretion would not be captured in Huber &
Shipan’s length of bill. If this mandate is indicative of the entire bill, then Huber &
Shipan would consider it a shorter bill and thus one that provides more discretion to
bureaucrats. However, if the word “may” was replaced by the word “must,” this
significantly changes the amount of discretion provided to bureaucrats without changing
the length of the bill or having legislators incur any more costs associated with writing
more detailed legislation. Instead of having the option of promulgating rules, the
department must do so which transfers the burden of costs and time to bureaucrats who
must now gather information, determine which rules are appropriate, and develop and
implement rules. If we compare the Wisconsin AB 100 (1997) with Wisconsin AB 100 (2006), we see another variation in the amount of discretion provided to bureaucrats. AB 100 (2006) states:

"The department of health and family services may contract with the department to investigate suspected fraudulent activity on the part of recipients of medical assistance under subchapter IV, food stamp benefits under the food stamp program under 7 USC 2011 to 2036, supplemental security income payments under section 49.77, and under health care benefits under the Badger Care health care program under section 49.665 and to conduct activities to reduce payment errors in the medical assistance program under subchapter IV, the food stamp program under 7 USC 2011 to 2036, the supplemental security income payments program under section 49.77, the program providing payment for the support of children of supplemental security income recipients under section 49.775, and the Badger Care health care program under section 49.665, as provided in this section."

In this mandate, legislators in Wisconsin instruct the department that they may contract with the department to investigate suspected fraudulent activity and follow with the specific areas where, if they choose to do so, they can investigate fraud. The language used by the legislators clearly makes investigation on the part of the department discretionary and, although they limit the amount of discretion by establishing the areas eligible for investigation, the department still has the ability to decide whether to investigate or not. Providing this sort of discretion to bureaucrats also creates the possibility of additional costs (time and resources and political costs) in the event that development or implementation produces unfavorable results. Legislators have to incur the costs of revisiting the legislation to correct the problem, and they will likely incur political costs as constituents blame them for a failed policy or unanticipated outcomes.

Based on Huber & Shipan's dependent variable, the use of 131 words in this mandate would constitute much less discretion than the 17 word mandate in the previous example. However, the language states that the department may contract to investigate
fraud, providing them with significantly discretion whether to do so or not. Compare this to legislators using only 17 words to instruct the department that they must promulgate rules in the previous mandate. This would significantly limit their discretion in a fraction of the amount of words.

Let's now compare the Wisconsin mandate Kentucky SB 128 (1998):

"The cabinet for human services shall prepare a state child health plan meeting the requirements for the Title XXI of the Federal Social Security Act, for submission to the Secretary of the United States Department of Health and Human Services within such time as will permit the state to receive the maximum amounts of federal matching funds available under Title XXI."

This mandate is 61 words long, about half of the 2006 WI mandate and about three times as large as the 1997 WI mandate. However, if we examine the language and additional constraints used by legislators to convey their intent, this mandate eliminates the flexibility for the cabinet in preparing a health plan, and forces them to submit it to the Secretary of the HHS within an unspecified amount of time ("such time as will permit ..."). In essence, bureaucrats in the department of human services have no flexibility in preparing the plan, no flexibility in submitting it to HHS, and only a limited amount of flexibility in both the timing of the submission and in developing the plan itself. Based on Huber & Shipan's criteria, if we examine this mandate to the others, its length would provide more discretion than the first Wisconsin mandate and less than the second, but based on the language and constraints placed in the mandate, it far exceeds both mandates in limiting bureaucratic discretion.

These examples show that by examining the language and presence of additional constraining mechanisms provides a much deeper understanding of statutory control decisions than the length of legislation alone. Not only will language and constraints
allow me to compare them to Huber & Shipan's discretion measure but, it will enable me to better understand the conditions that prompt their use. Although time constraints and sanctions require less policy and agency specific knowledge and are cheaper to impose than writing more detailed legislation, we do not know how the political and institutional environments influence these decisions. Are they used to substitute for more detailed bills, or are they used in conjunction with more detailed legislation to further limit bureaucratic discretion? Or, in the alternative, are legislators simply engaged in cheap talk or attempts to credit claim? And under what circumstances would legislators impose approval or sanctions that require subsequent action on their part? An examination of these decisions will allow us to better understand and answer these questions.

Amount of Mandates

Although the discussion of total control has focused exclusively on the type of mandate, the language used and additional control mechanisms, it is important to mention that the individual mandate plays an equally important role in this variable as well. In particular, I assume that if legislators are going to incur the costs of writing a mandate that they are engaging in statutory control no matter what mandate type, language they use or whether additional mechanisms are included. The fact that the mandate was imposed in the first place is evidence of statutory control. As a result, it is very likely that states that pass more CHIP mandates are more likely to have higher total control scores simply because each mandate constitutes a level of control whether it is the minimum or the maximum. Even if a state passes mandates with minimal control, if they enact enough of them, they will be increasing their level of total control over bureaucrats. It is,
therefore, just as meaningful that legislators in a state enact 50 individual mandates with minimal control as it is for legislators in a state to pass five mandates with significant control imposed. This simply illustrates different legislative strategies used by legislators and the type of variation that we would like to see across states so that we can assess how the political and institutional arrangements impact these decisions.

*Where Mandates are Imposed*

One of the other contributions of this study is the examination of statutory control decisions as a two-stage process: whether to engage in control and second, if so, where that control is imposed, in general legislation or appropriations bills. The explanation for this second stage has been discussed extensively in previous chapters and will not be re-addressed here. In furtherance of examining statutory control as a two-stage process each mandate is coded based on which mechanism is used to convey the legislator’s intent. It is important to mention here, however, that structural and institutional differences exist between general legislation and appropriations bills at the state level.

When legislators enact general legislation, the rules and regulations passed therein become law and remain *in force* until a subsequent bill alters the existing law or eliminates it. This *status quo* arrangement is not the case in appropriations bills. In fact, when legislators pass a budget or an appropriations bill, in most cases, the rules and regulations, along with any instructions, limitations, requirements, or restrictions, do not carry over to subsequent legislative sessions and must be re-addressed in subsequent appropriations or budget bills. Some states may simply use the same appropriations template and adjust budget amounts from session to session. However, in states that re-
address policy intent in each new appropriations bill, legislators incur significant time
and resources to write bills, and t engage in statutory control. As a result, this will impact
the manner in which discretion and control are imposed by legislators and how the
control changes over time, if at all.

In addition to the structural differences between general legislation and
appropriations bills, differences across states in the budget cycle, session length, and
average amount of appropriations bills. States that possess a biennial budget cycle have
less time to research and write detailed legislation. If we combine this arrangement with a
biennial legislative session and the passage, on average, of only a few appropriations
bills, this significantly hinders the ability of legislators to engage in statutory control or
correct problems that arise in the session or in the interim. Legislators in states that
possess a budget cycle with two-annual budgets and pass more appropriations bills have
more opportunities to not only to engage in statutory control, but also to correct or adjust
appropriations if needed. These differences do not impact the ability of legislators to
engage in statutory control in general legislation in the same manner, and thus examining
the two control mechanisms in the same model would not only be substantively wrong,
but the results would be highly suspect as well.

**Coding Limitations**

Although I designed the coding scheme for this dissertation to provide a more
accurate assessment of the length of actual policy instructions in addition to the amount
and degree of discretion that is provided (or not provided) to bureaucrats, there are some
potential limitations to this process. As addressed by Huber & Shipan, coding legislation
is a difficult and often frustrating endeavor not just because of the sheer volume of words in some bills, but also because of the variation in bills that exists across states. Some state bills are thousands of pages long such as in California or Wisconsin. This makes searching for mandates or instructions extremely tedious and increases the likelihood of error due to simple fatigue. States also use different bill formats with some writing completely new bills when policy is altered while others merely note the changed section and which words or sections are replaced (see Massachusetts). This requires a bit of a learning curve when embarking on a new state which significantly slows down the coding process and increases the likelihood of error.

One of the main challenges for any study that involves the coding of data is the reliability of the coding. In particular, it is very important to use consistent coding procedures in order to evaluate the data in the same manner, and be confident with the conclusions. This not only insures consistency in coding, but it provides more validity to the results. This is especially true in research, which requires coders to make subjective decisions as in this study. Interpreting language and attempting to assess legislative intent by the use of certain words is a difficult task for any individual. For the most part, identifying mandates is obvious and straightforward due to the language utilized by legislators and the coding scheme designed to use objective measures to capture the intent of legislators. However, in some cases, the language is difficult to interpret, such as the legalese that is used in Massachusetts’ bills. As a result, identifying mandates in these instances is significantly more challenging.

Although all 1654 bills were ultimately coded by me, I did hire a team of paid undergraduate research assistants to assist me in identifying, and in some cases, coding
mandates for my dependent variables. Each of the students were subjected to multiple training sessions and provided an extensive coding manual designed to make coding as objective as possible. To test for consistency of the coders and the coding process, a sample of bills was drawn from the total bills. I used Cohen's Kappa statistic (see Stemler 2001) to compute the reliability of the coding.

\[
K = \frac{P_A - P_c}{1 - P_c}
\]

\(P_A\) calculates the proportion of the units (mandates, in this case) on which the coders agree, and \(P_c\) is the proportion of the units (mandates) for which the agreement that is expected by chance. Scholarly research suggests that the acceptable benchmark for interpreting Kappa ranges from .61 to 1.00 (see Landis & Kock 1977; Stemler 2001). A score between .61 and .81 indicates substantial agreement in coding, and a score between .81 and 1.00 indicates almost perfect agreement. The range of agreement for coders in this study (including myself) was between .63 and .76 constituting substantial agreement. The areas in which less agreement occurred involved coding mandates as both procedural and policy as opposed to either individual policy or procedural mandates. This is not surprising since it is sometimes difficult to determine when a policy mandate refers to or is an extension of the proceeding procedural mandate. Other aspects of the coding process appear to have been fairly clear as evidenced by the level of agreement. As a result, these results provide support for the coding of this study as well as for future studies attempting to replicate my findings.

As discussed previously, another limitation of the data involves the inability to examine specific CHIP issues over time. Because of the differences in the way states write and alter legislation, it is extremely difficult to track specific policy issues across...
sessions and legislatures. Even if all states wrote legislation like California where altered and existing policy exist in the same bill, states simply do not address the same CHIP issues session after session. Examining a single CHIP issue (enrollment requirements, eligibility levels, etc) would only produce a very small dataset, which would not provide me with enough observations to adequately test the impact of political and institutional arrangements across sessions and across legislatures.

Huber & Shipan address this problem by adjusting their dependent variable to examine new words added to MMC legislation in the 1995-1996 session across states. They justify this decision by showing that most MMC legislation was passed in this session and, consistent with their previous analysis, most was policy specific with little procedural instructions (pg. 143). This is not the case with CHIP legislation. In fact, although 38 states passed their initiated CHIP policies by the 1998-1999 legislative session, many of these bills did not constitute the bulk of CHIP legislation in many states. While states like Arizona, Texas, Kansas, Connecticut, and California passed large initial bills, most states passed CHIP legislation in piecemeal fashion – addressing specific issues, and in most cases, in separate bills, or passing smaller initial bills and significantly altering bills over the 10-year period. As a result, I made the decision to examine statutory control decisions over the 10-year period in order to obtain a better understanding of statutory control strategies. The longer time period enables me to determine whether legislators incur the costs of imposing constraints on bureaucrats once and hope for the best, or whether legislators engage in subsequent attempts at control based on changes to the partisanship or institutions (elections, term limits, procedural changes). At the same time, the longer time period allows me to determine whether
legislators follow the suggestions or demands of agencies who articulate their preferences to legislators who, in return, write legislation in order to credit claim or appease their constituents or the bureaucracy.

Chapter Summary

In this chapter I introduce the Children’s Health Insurance Program (CHIP), the policy area that provides the nearly 8,300 mandates from 1624 bills across a 10-yar period, that are used to construct my two dependent variables. I also introduce and describe my two dependent variables, mandate length, which measures the amount of words pertaining to mandates and total control, which measures the amount of control reserved by legislators in the mandate. Lastly, I provide examples to support my contention that bill length alone may be sufficient to constitute less discretion provided to bureaucrats, but it is not always necessary to do so.

The next three chapters represent the main empirical analysis of this dissertation. Chapter 5 focuses on examining my first dependent variable, mandate length, to determine if sufficient variation exists across states, within states, in both general legislation and appropriations bills, and over legislative sessions to justify assessing the causes of the differences. I repeat this process in chapter 6 using my second dependent variable, total control. Given the variation my dependent variables, chapter 7 and 8 explore the causes of the variation in my dependent variables.
Chapter 5:

A Map of Statutory Control Patterns across State Legislatures and Over Time: Mandate Length

In the previous chapter, I introduced the Children's Health Insurance Program (CHIP), and discussed the operationalization and measurement of my two dependent variables – mandate length and total control. The discussion of the coding process, the construction of the dependent variables, and the challenges associated with their creation concluded the examination of the variables in my model of statutory control. This chapter is the first of two chapters to examine what the data tells us about my dependent variables. More specifically, in this chapter I inspect the data as it relates to mandate length to make sure that there is sufficient variation across states, within states, in both general legislation and appropriations bills, and over legislative sessions to warrant an empirical analysis to assess the causes of the differences.

This may seem like strange place to address these questions, but because I examine a new policy area, introduce a unique coding process, and use a new dataset, it is important to make sure that the data provides the necessary information to assess the causes of differences in statutory control decisions both across states, within individual states, and over time. If there is no variation in decisions by legislators across states that possess different political and institutional environments then we can be less confident that these factors are influencing control decisions in the CHIP legislation. At the same time, if we observe no difference in decisions in a particular state across legislative sessions then the statutory control snapshots used in previous studies will suffice in examining statutory control and over time and studies like this one will have little additional benefit. Legislators may simply not be the strategic actors balancing costs and
resources in their attempt to control their agents as I have predicted. However, if variation exists in these phenomena across states and within states over time, then we can be more confident that *something* is causing these differences whether specific to the individual state, all states, or by legislative session. At that point, we can take the next step and test our empirical model to assess which factors are responsible and to what extent.

An examination of the data is even more important for this study due to the use of two dependent variables. In either case, I must be able to show sufficient variation and be able to show that the two variables are substantively meaningful. In particular, although I agree that the length of a mandate is sufficient to limit bureaucratic discretion, I argue that it is not a necessary condition. In other words, longer mandates are more likely to provide less discretion to bureaucrats, but because of the language used by legislators to convey their intent in addition to additional constraints (time, approval requirements, and/or sanctions), some shorter mandates may be more constraining to bureaucrats than longer ones. Support for this finding could significantly influence the manner in which state legislators view and engage in statutory control of bureaucrats. Rather than incur the costs of researching and writing longer, more detailed policy instructions and directives, legislators can simply utilize more constraining language and include mechanisms to limit bureaucratic discretion and shift the burden of costs to bureaucrats.

I begin the chapter by providing a brief examination of the data in general, specifically the amount of variation that exists in CHIP legislation enacted and mandates produced between 1997 and 2007 across states and whether legislators imposed their CHIP intent in appropriations bills or general legislation. The remainder of the chapter focuses on my first dependent variable, *mandate length*. I observe whether there exists
any variation in the variable across states, within states over legislative sessions, and
across states over time. I conclude the chapter by examining a mixed effects model to
provide additional evidence of which theoretical variables will produce the highest
explanatory payoffs in my empirical model.

Total CHIP Bills & Mandates

As a reminder, the database consists of 8,274 mandates from 1,652 bills collected
and coded across 45 states. Figure 5-1 ranks from largest to smallest the amount of CHIP
related bills enacted by each state during the 10-year period. Figure 5-1 clearly shows
that significant variation exists across state legislatures. The mean amount of CHIP bills
enacted by state is 36 with nearly 70% of states producing less than that amount. Total
enacted CHIP bills ranges from seven bills in Idaho and eight in Delaware to 91 in
Connecticut and 189 in California. Although we will not be able to assess the causes of
this variation in this chapter, Figure 5-1 does provide some evidence that something is
cauing differences across states. This is even more intriguing given the specific policy
area that is mandated on the states and involves complying with specific requirements
and thresholds to receive federal funding.

More appropriate for the purposes of this study, however, is the information in
Figure 5-2, which orders from largest to smallest, the total amount of CHIP mandates
produced across states. It is clear from Figure 5-2 that there exists significant variation in
CHIP mandates produced across states with a mean of 444 mandates. However, this
average is skewed by the 1255 mandates produced by the California legislature.
Eliminating California from the model drops the mean to 299, but nearly 90% of states
Figure 5-1: Total CHIP Bills by State
(1997 - 2007)

- 1652 Total Bills

<table>
<thead>
<tr>
<th>State</th>
<th>Bills</th>
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<tbody>
<tr>
<td>California</td>
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<tr>
<td>Connecticut</td>
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<tr>
<td>Colorado</td>
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<td>Kansas</td>
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<td>Illinois</td>
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<td>Indiana</td>
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<td>Virginia</td>
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<td>Florida</td>
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<tr>
<td>Massachusetts</td>
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<td>Rhode Island</td>
<td>45</td>
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<tr>
<td>New Jersey</td>
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<tr>
<td>Utah</td>
<td>38</td>
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<tr>
<td>West Virginia</td>
<td>36</td>
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<tr>
<td>Iowa</td>
<td>35</td>
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<tr>
<td>Texas</td>
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<td>Louisiana</td>
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<td>Georgia</td>
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<td>Oklahoma</td>
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<td>North Carolina</td>
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<tr>
<td>Nevada</td>
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<td>Hawaii</td>
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<td>Washington</td>
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<td>Vermont</td>
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<tr>
<td>Delaware</td>
<td>8</td>
</tr>
<tr>
<td>Idaho</td>
<td>7</td>
</tr>
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### Figure 5-2: Total CHIP Mandates by State (1997-2007)

<table>
<thead>
<tr>
<th>State</th>
<th>Mandates</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
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<tr>
<td>Virginia</td>
<td>728</td>
</tr>
<tr>
<td>Arizona</td>
<td>594</td>
</tr>
<tr>
<td>Colorado</td>
<td>470</td>
</tr>
<tr>
<td>Connecticut</td>
<td>436</td>
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<tr>
<td>Massachusetts</td>
<td>351</td>
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<td>Indiana</td>
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<tr>
<td>New Jersey</td>
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<tr>
<td>Florida</td>
<td>262</td>
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<tr>
<td>Rhode Island</td>
<td>243</td>
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<tr>
<td>New York</td>
<td>213</td>
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<tr>
<td>Texas</td>
<td>190</td>
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<tr>
<td>Michigan</td>
<td>185</td>
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<tr>
<td>Illinois</td>
<td>180</td>
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<tr>
<td>North Carolina</td>
<td>152</td>
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<td>West Virginia</td>
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<td>Iowa</td>
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<td>Louisiana</td>
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<td>Wisconsin</td>
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<td>Utah</td>
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<td>Georgia</td>
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<td>Vermont</td>
<td>33</td>
</tr>
<tr>
<td>New Mexico</td>
<td>23</td>
</tr>
</tbody>
</table>

Total mandates: 8,274
fall below the average. Only Massachusetts, Colorado, Connecticut, Arizona, Virginia, and California produce more mandates than the mean. New Mexico produced the least amount of mandates (23) from 15 bills while California produced the most (1,255) mandates from 189 bills.

As discussed in the last chapter, the number of mandates produced does not necessarily say anything about the amount of discretion in individual mandates, but it does provide information regarding statutory control strategies. The decision to write CHIP legislation and produce mandates suggests that legislators possess an incentive to engage in statutory control and oversight of bureaucrats, and in some cases, legislators engage in enacting shorter, but more mandates as opposed to fewer, but longer mandates.

It is important to reiterate here that we do not know the relationship between the bills enacted and the mandates produced in each state due to differences in the way legislation is written and the manner in which this data was coded. However, whether legislators address a new CHIP issue, alter or eliminate an existing issue, or simply submit policy templates in subsequent sessions, the fact that they do constitutes statutory control.

As discussed in relation to the PA model, if legislators anticipated that bureaucrats would not pursue their policy preferences or preferred outcomes then there would be no reason to incur the costs of engaging in statutory control in the first place. I therefore assume that legislators in states that enact more bills and/or produce more mandates are further limiting bureaucratic discretion regardless of the amount of control that is imposed in the individual mandate or bill. This is an important issue that will be addressed more fully in the discussion of my second dependent variable, but is important to mention here in relation to enacted bills and mandates produced across states.
Aside from the indirect evidence more CHIP bills and mandates provide me, examining the amount of bills and mandates across states allows me to observe certain trends that will be important when examining the impact of my explanatory variables in the next chapter. Not surprisingly, some of the states identified by Huber & Shipan as policy leaders in the area of health care produced more CHIP mandates than other states (California and New York). However, like Huber & Shipan, my data also reveal that states seen as policy leaders produced very little mandates (Hawaii and Minnesota) and states not expected to engage in statutory control did so at surprising levels (Arizona, Indiana). In the case of Minnesota, the CHIP program is one of many children’s health programs in the state (see also Minnesota Care) and was subsumed by the larger Medicaid program when adopted in 1998. However, Minnesota was at the forefront of health insurance for children and laid the foundations for much of the CHIP program in 1987. As a result, legislators in Minnesota may have had much of the policy specifics in place by the adoption of CHIP and thus did not need to address many of the issues that other states adopting the program for the first time would have to address.

Type of Mandate Bill

As mentioned previously, research on statutory control decisions have ignored the use of appropriations bills as a viable bureaucratic control and oversight mechanism despite the extensive research surrounding their use and effectiveness. This study, however, examines whether legislators impose their CHIP policy intent in general legislation or appropriations bills. Figure 5-3 displays this distribution. Ordering states from top to bottom based on the extent that they used only general legislation to impose
Figure 5-3: Use of Legislation Type by State

West Virginia
Pennsylvania
Nevada
Connecticut
Oregon
Maryland
Montana
Oklahoma
Missouri
California
North Dakota
Mississippi
Georgia
Arkansas
New Hampshire
Nebraska
Utah
Florida
Kentucky
Washington
Louisiana
Texas
New Jersey
Ohio
Illinois
Indiana
Virginia
Idaho
North Carolina
Vermont
Iowa
Rhode Island
Kansas
New York
Colorado
Hawaii
Maine
Minnesota
Massachusetts
Delaware
Arizona
Wisconsin
New Mexico
Michigan
Alabama

0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%

■ General Legis  ◀ Appropriations
statutory control decisions, Figure 5-3 shows that, with the exception of three states (West Virginia, Pennsylvania, and Nevada), legislators across state legislatures used appropriations bills extensively to convey their CHIP policy intent. Three states, Michigan, Alabama, and New Mexico, only used appropriations bills. More specifically, of the 8,274 coded mandates in this study, 2,966 or 36% were imposed in appropriations bills. This is a staggering statistic considering that previous research of statutory control decisions excluded these bills from their models altogether. Although these studies have provided important information about statutory control decisions, the exclusion of a mechanism that was utilized 36% of the time raises questions about their findings, and provides enough evidence to justify the addition of a second stage in the examination of statutory control decisions.

CHIP Related Statutory Control Decisions across States, 1997-2007

Although the variation in the amount of CHIP bills, mandates, and location of statutory control decisions suggests that something is causing differences in statutory control decisions across states and provides important evidence to move forward with the empirical analysis, the crucial variation for this study lies in the mandates themselves. Remember that the focus of this research is to assess how the statutory control decisions are impacted by the political and institutional arrangements present in the particular state, if at all. If there is no variation in these decisions across states that vary in political and institutional environments, then we can be sure that partisanship and institutions do not matter and continuing with this analysis would be futile. Therefore, despite the variation that we have observed thus far, determining whether variation exists in my dependent
variables is the ultimate goal. The remaining section of this chapter is dedicated to investigating whether differences in mandate length exists. In particular, I investigate the variation that exists in both general legislation and appropriation bills across states and over time for the first dependent variable and discuss any trends or outliers that might assist me in identifying potential causes of these differences in the next chapter.

**Mandate Length: The Amount of Words Pertaining to Mandates**

In justifying their use of bill length as a measure of the amount of discretion provided to bureaucrats, Huber & Shiman find significant variation in MMC bills passed by state legislatures during the 1995-1996 legislative session (pg 146). Choosing a similar policy area to Huber & Shiman, and one that is ideal to examine statutory control (see chapter 4), I should also expect to see variation in the length of mandates across states. In particular, given the incentive to engage in statutory control of bureaucrats, I should observe states with different political and institutional arrangements vary in the amount of words pertaining to CHIP mandates. Graph 5-1 provides evidence of this variation. In particular, Graph 5-1 shows that the average sum of the length of words pertaining to CHIP mandates significantly across states throughout the 10-year
period of this study, excluding California. States range from an average of 467 words in mandates per session in New Mexico to 10810 words on average per session in Virginia. The mean average sum of words pertaining to mandates is 2878.4 words per session and nearly 71% of the states fall below the mean length. California, which averages 27644 CHIP mandate words per session, has both the smallest and largest individual mandates. The smallest was placed in AB 1126 (1997) and consisted of three words: “employ necessary staff,” while the longest mandate was placed in AB 1533 (2005) consisting of 10,172 words defining policy restrictions.

California is excluded from Graph 5-1 because its average sum of mandate words per session significantly skews the distribution and greatly impacts the visual representation of the variation that exists across states.
Graph 5-1 also shows that many states that were leaders in enacting the most CHIP bills and mandates also wrote the longest mandates, including California, Virginia, Arizona, and Connecticut. In Virginia, legislators produced the second most CHIP mandates (728) in 58 bills and averaged 10810 words pertaining to mandates per session, the second most of any state in the study. The situation in Colorado is similar. Legislators in the state enacted the third most bills (84) and the fourth most mandates (470), and averaged 7581 words in mandates per session, well above the mean average for states.

Although it is reasonable to expect that the states that enacted more bills and produced more mandates would average the most words per session, in some instances this was not the case. Graph 5-1 shows that some states that enacted fewer CHIP bills and mandates chose to incur the costs of producing longer, more detailed mandates and produced a larger average sum of mandate words per session. In particular, Pennsylvania averaged 7350 words pertaining to mandates per session, the fifth most of any state, but did so in only 128 individual mandates from 16 CHIP bills. Legislators in Oregon also averaged well above the mean sum of mandate words per session (3609) in 135 individual mandates in 13 CHIP bills. Although, at this point, we do not know why legislators in Pennsylvania and Oregon incurred the costs of writing more CHIP mandates across the 10-year period, but the fact that they did suggests that some state specific factors may be influencing decisions by legislators to engage in statutory control of bureaucrats. Whether these factors vary over time (political factors) or vary by state (institutional arrangements) will be the focus of chapter 7. Yet, this is the type of differences across states that I need to observe to justify moving forward.
The results observed in Graph 5-1 are also similar to Huber & Shipan’s finding that states considered health care policy leaders do not necessarily produce longer MMC bills during the 1995-1996 legislative session (pg. 146). In particular, the authors find that Florida, Minnesota, and Hawaii, known to be health care policy leaders, wrote significantly less new words (4,356, 1074 and 951 respectively) while Arizona, not considered a policy leader, wrote significantly more new words (7240). Although Huber & Shipan conclude that being a policy leader does not guarantee longer MMC legislation, or vice versa, their study only examines a snapshot of statutory control decisions. Using my dataset of 10 years of CHIP mandates and Huber & Shipan’s typology of health care policy leaders (see Huber & Shipan 2002, 146) a different picture of statutory control decisions emerges. In particular, Graph 5-1 confirms that health care policy leaders such as New Jersey, California, and to a lesser extent Florida, wrote more mandate words per session than other states that are not considered policy leaders. Minnesota and Hawaii, however, do not behave like a policy leaders when examined over the 10-year period. Legislators in these states average significantly less mandate words per session than other policy leaders. Even more surprising are legislators in Arizona who do not behave like non-health care policy leaders by averaging the 6th most mandate words per session.

Without running the empirical models and assessing the impact of the political and institutional arrangements within the state, I can only speculate as to possible causes of these differences. I suspect that one of the possible reasons for legislators in Minnesota producing less mandate words per session is related to the discussion of the Minnesota CHIP program above. Possible causes of the situation in Hawaii, however, involve the nature of the state’s CHIP program and the multiple children’s programs that exist in the
state. In particular, Hawaii’s CHIP program is a Medicaid expansion and the state provides healthcare assistance to children through Covering Kids, an umbrella program that encompasses CHIP, Keiki Care, Quest, Medicaid fee service, and Med-Quest. Additionally, legislators’ in Hawaii have consistently provided bureaucrats’ extensive policy-making discretion over their CHIP program. These factors are likely to limit instances in which legislators will engage in statutory control of bureaucrats in CHIP legislation. Not only will many of the instructions and procedures relating to children’s health be addressed in other policy areas but, the fact that legislators routinely defer to bureaucrats suggests that they will produce shorter, less detailed CHIP related mandates. The CHIP program in Arizona is separate from Medicaid and, as a result, legislators likely incurred the costs of writing longer, more detailed legislation to establish the parameters of the program and provide extensive instructions and requirements to ensure that they behaved in a manner that was consistent with their CHIP policy intent.

*Mandate Length and Type of Legislation: General Legislation vs. Appropriations Bills*

To account for the structural and institutional differences in general legislation and appropriations bills, I examine mandate length in both mechanisms separately in order to determine whether the type of legislation influences statutory control decisions. Table 5-2 displays a statistical comparison of the control mechanisms, Table 5-3 displays the correlation matrix assessing the relationship between mandate length in general legislation and appropriations bills, and Graphs 5-2 and 5-3 display from smallest to largest, the sum of words pertaining to mandates produced by states per session in appropriations bills and general legislation respectfully. These visualizations show
differences in the sum of mandate length by session in both mechanisms across states, with more variation in the use of general legislation.

Table 5-2 reveals that the mean sum of mandate length for all legislation types is 2879 words per session, yet if we separate the bill types, the mean drops to 1374 for mandates in appropriations bills and 2241 for those in general legislation per session. It also shows that there is a wider variation in the amount of words pertaining to CHIP mandates in general legislation than appropriations bills. Table 5-3, on the other hand, shows us that there is a slight negative relationship between the two control mechanisms.

Table 5-2: Comparison of the Sum of Mandate Length Per Session by CHIP Legislation Type

<table>
<thead>
<tr>
<th>Variable</th>
<th>Both General Legislation &amp; Appropriations Bills</th>
<th>General Legislation Only</th>
<th>Appropriations Bills Only</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(8274 mandates) 100%</td>
<td>(5308 mandates) 64%</td>
<td>(2966 mandates) 36%</td>
</tr>
<tr>
<td>Mean</td>
<td>2879</td>
<td>2241</td>
<td>1374</td>
</tr>
<tr>
<td>Standard Deviation</td>
<td>2578</td>
<td>1834</td>
<td>1739</td>
</tr>
<tr>
<td>Minimum &amp; Maximum</td>
<td>467 - 10810</td>
<td>196 - 7757</td>
<td>37 - 6554</td>
</tr>
</tbody>
</table>

Table 5-3: Correlation Matrix Examining the Relationship between General Legislation & Appropriations Bills

<table>
<thead>
<tr>
<th>Variable</th>
<th>General Legislation</th>
<th>Appropriations Bills</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Legislation</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Appropriations Bills</td>
<td>-.169</td>
<td>1</td>
</tr>
</tbody>
</table>
This strongly suggests that one control mechanism is not substitutable for the other. In other words, legislators do not impose mandates in appropriations bills simply because they do so in general legislation. This provides some support for my argument regarding weighing the competing costs of engaging in one control mechanism rather than the other. The slightly negative relationship, I suspect, relates to those states that are precluded from imposing statutory control in appropriations bills or that choose not to based on the rational calculation.

In examining the variation that exists in mandate length across states it makes little sense to examine states that use one control mechanism predominantly. Although at this point we cannot be sure what is influencing the decision of legislators to favor one legislation type over the other, my hypotheses suggest it is the political and institutional factors within the state. In particular, given the opportunity to choose between general legislation or appropriations bills, legislators in a divided government (or unified legislature based on Huber & Shipan’s classification) may favor general legislation if confronted by a governor with powerful budget powers, or favor appropriations bills if confronted by a governor with extensive veto powers. Consequently, it makes more sense to examine the sum of mandate length per session in states that utilize both general legislation and appropriations bills. The fact that these states routinely use both mechanisms to convey their policy intent raises the possibility that they are not constrained by these factors and, if variation exists in their decisions, that other factors may be influencing their decisions.

Figure 5-3, at the beginning of this chapter, displays the percentage of use of general legislation and appropriations bills across all states in this study. Seven of the 45
states – New York, Kansas, Rhode Island, Iowa, Vermont, North Carolina, and Idaho – use both mechanisms between 40-60% throughout the 10-year period of this study. In three of these states (New York, Kansas, and Vermont) not only did legislators enact roughly the same amount of appropriations and general legislation bills, but the sum of mandate length per session in appropriations bills and general legislation only differed by an average of less than 500 words per session. Again, we do not know whether this is the result of a favorable bargaining environment or the lack of policy conflict, or simply comparable appropriations or legislative powers between the legislators and the governor, but it suggests that legislators were less constrained in imposing statutory control in both mechanisms or even that a statutory control strategy was unnecessary.

In the remaining states (Iowa, North Carolina, Rhode Island, and Idaho), the sum of mandate length per session was significantly different. In fact, although legislators enacted roughly the same amount of bills, there was a predominant preference for one mechanism over the other and a significant difference in the average sum mandate length per session. In Iowa, legislators enacted 52 appropriations bills and 64 general legislation bills, but imposed longer, more detailed mandates in general legislation than they did in appropriations bills. In fact, the average sum of mandate length for general legislation was 2590 words per session compared to 537 words per session for appropriations bills. Similar results occurred in North Carolina where legislators enacted 89 general legislation bills and 63 appropriations bills and imposed on average 3360 words pertaining to mandates per session in general legislation and on average 1246 words per session in appropriations bills. Idaho legislators imposed, on average, 1245 words per
session in general legislation (29 bills) and, on average, 212 words per session in appropriations bills (20 bills).

These results suggest that, in each of these states, legislators passed, on average, longer, more detailed mandates in general legislation than they did in appropriations bills despite. Even if we account for the difference in the amount of mandates imposed in each mechanism, the difference in mandate length is significant and likely the result of more detail in addition to the sheer number of mandates. In fact, if legislators in these states were more constrained in one mechanism we should expect to see control behavior similar to legislators in the four states above; utilizing only one mechanism. In North Carolina, Iowa, and Idaho, however, legislators use both mechanisms to convey their intent but impose more detailed mandates in general legislation.

Although this is exactly the type of variation in the use of appropriations bills and general legislation that we want to observe, what accounts for these differences? Aside from the influence of partisanship, one possible reason for this variation might be associated with the differences the appropriations processes across states discussed previously. In particular, some states vary in the amount of appropriations bills that they enact each legislative session. While most states pass, on average, one to five appropriations bills per session, other states like Alabama, Idaho, and Mississippi enact, on average, over 100 appropriations bills per legislative session, with Arkansas passing the most with an average of 500 individual bills. It can be argued that those states that pass more individual bills are more likely to have shorter mandates since they have the ability to re-address an issue, if necessary, in a subsequent bill or make adjustments to appropriations in the event of a changing budget environment (windfall, shortage,
emergency). Consequently, in states that only pass a handful of appropriations bills, legislators are more likely to include all policy instructions and procedural requirements since they have a fewer opportunities to address appropriations or alter them in subsequent bills. This may explain the statutory control environments in Iowa or Idaho where legislators pass on average more than 20 appropriations bills per session, but not in North Carolina where legislators pass, on average, only three appropriations bills. Determining what influences their statutory control decisions may be more complicated but the presence of this contextual variation provides sufficient evidence to move forward to the empirical analysis to assist me in determining the answer.

CHIP Mandate Length Over Time: 1997-2007

If the analysis were to stop here, we would have some contradictory results to Huber & Shipan’s research and have an incomplete understanding of the statutory control strategy that exists across state legislatures. In particular, Huber & Shipan’s snapshot of statutory control decisions only provides information for one legislative session, and although my full measure of mandate length provides information across six legislative sessions, it tells us very little about what happens from session to session across that time period. One of the goals of this dissertation, however, is to improve our understanding of the use of statutory control by examining decisions over time, to better understand the strategies utilized by legislators confronted by different political and institutional arrangements. Not surprisingly, if we examine mandate length over legislative sessions, we are presented with a much different picture of statutory control strategies used to control and oversee bureaucrats.
Before looking at statutory control strategies across legislative sessions, it is important to remember that because I cannot track specific CHIP issues across legislative sessions due to the nature of state legislation (general legislation versus appropriations bills) and the limitations of my dataset, mandate length is the measure of words pertaining to CHIP mandates produced in a single legislative session. Examining statutory control at the legislative session level is also important because of other institutional differences that exist across states that influence the ability of legislators to engage in statutory control. For example, it would be substantively incorrect to examine the amount of control imposed in a single year when, in addition to differing between annual and biennial sessions, some legislators are precluded from introducing appropriations bills in the first year of a session (Connecticut and Louisiana). At the same time, other states start at different points in the year (Louisiana, New Jersey, Kentucky, and Mississippi) or depending on whether it is an even or odd numbered year (Kansas, Indiana, Maine, to name a few). Examining control in a single year would allow me control for these institutional constraints as well as more adequately assess the impact of the institutional and political arrangements on statutory control decisions in the state.

In addition to measuring mandate length at the session level, I also assume that the sum of mandate length in one session is carried over to the next session in general legislation. In other words, if no new mandates are produced in the subsequent session, than the sum of mandate length for that session equals the length in the previous session. This point becomes even more important when examining the following visualizations of the sum of mandate length over time. In particular, because of these constraints, the distribution represents the amount of new words pertaining to mandates that are enacted.
in that session and does not represent a change in sum of mandate length from the previous session. In other words, changes to the distribution are the result of legislators in the state producing less or more words pertaining to CHIP mandates in the subsequent session. If no new words pertaining to mandates are produced in a given legislative session, the graph will display this as a "0" but, as I discussed above, theoretically the amount of control imposed carries over to the subsequent session in general legislation.

Given these constraints and the explanation of measuring sum of mandate length, I examine the statutory control decisions made by New Jersey and Massachusetts legislators across legislative sessions. New Jersey and Massachusetts are ideal states in which to examine statutory control decisions over time primarily because of the similarities between the two states. Not only are both states leaders in enacting CHIP bills and mandates, but both also produce longer mandates in general as well as when mandate length is separated by general legislation and appropriations bills. In particular, New Jersey legislators produced 276 mandates from 45 bills with a per session average of 7557, while the mean for all states was 2879 words. Massachusetts legislators produced 351 mandates from 49 bills and averaged 6377 words per session.

Without addressing the political or institutional environments, we might expect that legislators in the two states would behave similarly given their comparable standing. At the same time, given the research design by Huber & Shipan and the prevailing research, a snapshot of statutory control decisions would lead us to believe that legislators in both states consistently incurred the costs of writing longer, more detailed legislation to ensure that their preferences and outcomes were realized. However, if we examine their decisions across legislative sessions, we see a much different picture.
Graph 5-4 displays the sum of mandate length for the states of New Jersey and Massachusetts across the six legislative sessions in this study. As we can see, not only would presenting the total mandate length for all legislative sessions provide us with a much different understanding of statutory control decisions in each state, but despite having similar totals, New Jersey and Massachusetts have engaged in significantly different statutory control strategies over time\textsuperscript{52}. More specifically, a snapshot of legislative behavior in Massachusetts in the 1997-1998 session, as done in the prevailing literature, would lead researchers to believe that legislators engaged in a significant amount of statutory control since they produced mandates.

\textsuperscript{52} It is important to remind the reader that the distribution for session to session does not represent a change in the amount of words pertaining to mandates, only the imposition of new words with each new session.
that totaled in excess of 10000 words. The snapshot of statutory control would not allow us to see that Massachusetts legislators produced much shorter mandates in each subsequent session for the remainder of the study. In particular, following the CHIP adoption bill in the 1997-1998 legislative session totaling nearly 11000 words, Massachusetts legislators produced mandates that totaled about 7000 words in the 1999-2000 session, followed by nearly 8000 new words in 2001-2002, only to produce less than 6000 in each of the remaining three sessions. The snapshot of statutory control decisions would also not allow us to see that despite only producing just over 5000 words pertaining to mandates in the 2005-2006 session, Massachusetts legislators did so in the most bills of any session in the study (75 bills). Is there a reason why in the 1997-1998 session 81 CHIP bills produced over 11000 words but in the 2005-2006 session 75 bills only produced just over 5000 words? Examining statutory control decisions over time enables me to make this observation and the empirical models will allow me to answer.

A snapshot of statutory control decisions in New Jersey would lead Huber & Shipan to believe that, compared to other states, New Jersey was producing shorter, less detailed legislation. When we examine the behavior of legislators across sessions, however, nothing could be further from the truth. In fact, despite the nearly 4000 words produced in the 1997-1998 session, legislators in New Jersey produced nearly 11000 new words in the 1999-2000 and 2005-2006 legislative sessions, while producing considerably less new words in between (6000 and 4000 respectfully). Although we do not know at this point what caused such differences in the amount of new words in mandates, but observing all six sessions provides more information about what control was imposed and how it relates to previous and subsequent sessions.
Just as important as showing why a snapshot of statutory control decisions limits our understanding of legislative control of bureaucrats, it also allows me to observe the variation that exists between two states that based on their total bills and mandates were expected to behave similarly. Although this was not the case in the 1997-1998 session, comparing average mandate lengths for New Jersey and Massachusetts does show that legislators in both states did share some similar behavior, just not to the same level. Legislators in both states produced less new words in the 2001-2002 and 2003-2004 sessions, and again in 2007-2008, as well as produced more words in 2005-2006.

Although we cannot be sure what is causing these similarities and differences, Graph 5-4 provides me with information that I would not have obtained had I relied solely on a snapshot of statutory control decisions, but also information about the type of factors that may be influencing legislative decisions to incur the costs of writing longer, more detailed legislation. In particular, the similarities suggest that there may be similar forces impacting all states (national economy) while the differences might suggest that state specific factors are influencing decisions (partisanship or institutional arrangements). These assumptions can be further evaluated by examining mandate length across all states over all legislative sessions.

Displaying the average sum of mandate length for all states across all legislative sessions, Graph 5-5 shows that, on average, states displayed similarly strategies in some sessions but not in others. In particular, in addition to averaging just over 6000 words pertaining to mandates in the CHIP adoption sessions in 1997-1998 or 1999-2000, states produced, on average, roughly the same amount of new words in the 2001-2002 and
2003-2004 sessions, before imposing about 9000 words in the 2005-2006 session. The average amount of new words in the 2007-2008 session was significantly less.

Although the visual representation of the average sum of mandate length across states over time in Graph 5-5 displays similar shifts in strategy and changes to the amount of words pertaining to CHIP mandates specifically, we cannot be sure if the factors influencing these shifts. I suspect that for most states that passed their first CHIP bills in 1997-1998 or 1999-2000 legislative sessions, the initial policy intent and instructions were included in these mandates and did not need to add more or re-address them as bureaucrats began working on developing and
implementing the program. In the 2001-2002 session, although Graph 5-5 displays a similar average amount of new words as the previous session, Graph 5-4 revealed that this was not the case in New Jersey where legislators incurred the costs of imposing longer mandates than the average for all states. I also suspect that the increase in new words in the 2005-2006 session was, in part, the result of states coming out the fiscal crises in the precious session, only to be followed be the imposition of fewer new words in the 2006-2007 session as a result of questions surrounding the reauthorization of CHIP. In particular, legislators likely scaled back CHIP legislation or were reluctant to incur costs due to concerns over obtaining matching funds from the federal government that was concerned about rising health care costs and expansion of benefits and eligibility that was beyond the original scope of the program.

At this point we do not know whether these assumptions regarding these trends across states and legislative sessions are correct, but the evidence of variation in mandate length both across states, across legislative sessions and in both general legislation and appropriations bills suggests that something is causing these differences. Are similar forces influencing all states equally as shown in Graph 5-5 or are the state specific factors that simply coincided with other states? At the very least, by observing mandate length across states and over legislative sessions provides me with a much more complete picture of legislative strategies concerning bureaucratic control and some areas in particular to focus on when I proceed to determining their differences.
Additional Explanation of Variation: Mixed Effects Model

The examination of mandate length thus far has confirmed that there exists contextual variation in the variable across states, in both general legislation and appropriations bills, as well as over legislative sessions both within individual and across states. These visual inspections have also given us some insight into the type of factors that might be causing this variation, specifically state-specific factors or those that influence all states equally. One mechanism that can provide a deeper understanding of this variation is a mixed effects model. A mixed effects model aggregates mandate length to the specific state and sums the average in order to determine how much of the variance in the mandates are attributed to factors that vary by year but not by state (national issues, national economy, federal mandate), factors that vary by state but not over time (institutional arrangements that vary between states but remain relatively stable across time), and factors that vary across states and across years (partisan makeup of the legislature or government that varies over time). Like the graphs displaying statutory control decisions over time, observing the magnitude of these factors will provide me with a much better idea which of the theoretical variables will produce the highest explanatory payoffs in my empirical model.

The results of the mixed effects model estimates 55% of the explanatory power to come from factors that vary across states and time, 39% to come from factors that vary across states but not over time, and 6% of the explanatory power to come from factors that vary by time by not state. In other words, if I could identify all of the variables to account for 100% of the variance in mandate length across states, I would expect that nearly half of the explanatory power to come from variables that are unique to the
individual state but do vary over time (partisanship), more than a third to come from variables that are unique to the individual states but do not vary over time (institutional arrangements), and less than ten percent to come from variables not unique to specific states that vary over time (national economy).

The results of the mixed effects model suggests that factors that vary across states and over time provide the most explanatory power while less power is attributed to factors that vary across states but not over time. These results are encouraging especially if we consider the discussion of mandate length and the variation observed in this chapter. In particular, there has been considerable evidence of the impact of state specific factors and, to a lesser extent, factors that influence all states equally. The mixed effects model suggests that these observations are correct and that political and institutional factors are driving most of the variation in mandate length. What we do not know is whether the political factors are related to the bargaining environment or policy conflict, or which institutional factors are influential. We will have to wait to test the empirical model to answer these questions. Yet, before proceed to testing our hypotheses in our empirical model, we must determine if total control possesses the same variation observed here. The next chapter is dedicated to this determination.
Chapter 6:

A Map of Statutory Control Patterns across State Legislatures and Over Time:
Total Control

In the examination of mandate length in chapter 5, we observed sufficient variation within individual states, across states, between general legislation and appropriations bills, and over legislative sessions to justify proceeding to the empirical analysis to determine the causes of the variation. In this chapter, I focus on the variation in my second dependent variable, total control. In particular, I begin by discussing the motivation behind creating a new dependent variable and how it is measured. I follow this discussion by examining the relationship between my two dependant variables and argue that despite their similarities in assessing the total level of control in mandates, the mandates that make up total control provide us with a much more complete understanding of statutory control decisions and strategies both within states and over time. In particular, total control provides information not only about the amount of control imposed in mandates, but, more importantly, it provides information about the type of control imposed by legislators and how, if at all, strategies change over time. This information takes us much further than speculating about the amount of discretion based on the length of mandates and brings us closer to a more complete understanding of legislative control of bureaucrats.

I support the argument in favor of total control by examining the variation that exists in the type of mandates imposed by legislators (procedural, policy, and both mandates), as well as in the types and amounts of additional control mechanisms imposed in mandates (time constraints, approval requirements, and sanctions for non-compliance). I conclude the chapter by examining a mixed effects model to determine what factors
account for the variance in total control and provide guidance about which theoretical variables are most likely to produce the highest explanatory payoffs.

Total Control – The Amount of Control Reserved for Legislators

Unlike my first dependent variable, which I constructed to replicate Huber & Shipan’s length of legislation, total control has no previous study or variable for which I can compare or look to for guidance. As a measure of the amount of control reserved by legislators in each legislative session, I construct total control for this study based on the specific language used by legislators to convey their CHIP policy intent, requirements imposed in mandates, and any additional constraints placed in the legislation to limit bureaucratic discretion. As a result, it is even more important to determine whether sufficient variation exists in the variable to justify its use as a measure to assess the amount of discretion not provided to bureaucrats, or in this case, the amount of control reserved for legislators in CHIP legislation. Like my first dependent variable, I should also expect to see variation in the amount of control placed in mandates across states and across legislative sessions. More specifically, given the incentive for legislators to engage in statutory control of bureaucrats, I should observe states with different political and institutional arrangements vary in the language used by legislators to convey their policy intent as well as in their use of additional constraints to further limit discretion.

Creation of a New Dependent Variable: Total Control

The motivation to construct a new variable measuring discretion was more than Huber & Shipan’s own acknowledgment that length of legislation “may be controversial”
(Huber & Shipan 2002, pg. 73), or their abandonment of coding the substantive content of MMC legislation, as discussed previously. My motivation was based on the contrasting empirical research attempting to assess the impact and effectiveness of various mechanisms, the inability of these mechanisms to provide information about legislative policy foresight, and the presence of alternative less costly mechanisms that can assist legislators in overcoming the challenges associated with their PA relationship with bureaucrats. In particular, the ability to examine the actual language used by legislators to impose policy instructions and requirements on bureaucrats and additional mechanisms to further constrain their actions.

Although many of the challenges and difficulties associated with coding substantive policy was discussed previously, there are few additional issues that relate specifically the creation of this variable that should be addressed before I proceed to examining the data. First, in developing a score of the total control in each individual mandate, I assume that individual mandates imposed within the same legislative session do not overlap and represent unique issues as they relate to the CHIP policy. I make this assumption because of the need to establish a process by which I can appropriately measure the amount of control in each session, but also because it is an accurate assessment of the legislative process. In particular, it is unlikely that legislators would address the same issues or impose control on the same issues in different bills or pass bills that contradict one another within the same session. Bills that refer to the same issues are often subsumed into one bill and inconsistencies are resolved to preserve valuable time and resources, and to improve the likelihood of passage, so that legislators can ultimately credit claim and improve their reputations.
Second, given this first assumption, I develop total control based on the amount of control imposed by legislators in each individual mandate, whether they are procedural, policy, or both mandates. As discussed previously, each mandate type represents different levels of control and costs for legislators, with both mandates being the most constraining on bureaucrats and the most costly for legislators to impose, followed by policy mandates, and then procedural ones (see chapter 4). In each legislative session, however, I assume that a level of control is imposed upon bureaucrats when legislators enact a bill that produces CHIP mandates. The individual mandate may constitute the very lowest amount of control (a three word mandate in California mentioned above) and provide broad bureaucratic discretion, but the fact that a procedural requirement or policy instruction was imposed in the first place suggests that legislators intended to engage in statutory control. Taking this assumption an additional step, the fact that legislators in a state enact more mandates, despite their amount of control, constitutes more control of bureaucrats. This strategy may very well be the result of the political or institutional environment from which the legislators reside, but more mandates mean more instructions and/or directives that bureaucrats must address or incorporate into the development and implementation of the CHIP policy.

Lastly, given a score for each individual mandate, I aggregate the scores for all mandates to the session level. Aggregating the sum of the amount of control to the session level enables me to compare the amount of control imposed in each state, as well as across states and across sessions. This is an important distinction given the nature of state legislation, the limitations of my dataset, and the institutional constraints confronted by legislators in many states discussed previously. At the same time, my main
explanatory variables vary, if at all, at the session level. If control of the legislature, chamber, or governorship shifts to the opposing party, this will take place at the beginning of the next legislative session. At the same time, the session level enables me to better present the variation in strategies both across states and within states. Not all states enact mandates in all sessions and if I were to aggregate control scores to the state level, this variation would be missed and our understanding would be incomplete.

_Total Control: Coding Process_

Based on the theoretical discussions in chapter 4 and the assumptions and explanations discussed above, I coded each of the 8,274 CHIP mandates obtained from 1,674 bills in 45 states across six legislative sessions and obtained a score for the _total control_ in each mandate. Appendix B provides a complete description of the process utilized to code each mandate type, but Table 6-1 provides a summary of this process.

Each column displays the factors involved in coding each mandate type and the scores given for each factor. Higher numbers represent more control legislators impose in mandates and thus less bureaucratic discretion. At the bottom of each column is the total possible control score for each mandate type. In other words, the closer the mandate score approaches the control score, the less discretion provided to bureaucrats and the more control reserved for legislators.
Table 6-1: Coding Procedures for Total Control

<table>
<thead>
<tr>
<th>Procedural Mandates</th>
<th>Policy Mandates</th>
<th>Both Mandates</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Procedural Requirement</strong>&lt;br&gt; (report, hearing, contact, body &amp; procedure)&lt;br&gt;No Procedure = &quot;0&quot;&lt;br&gt;Yes – Non – Legislative = &quot;1&quot;&lt;br&gt;Yes – Legislative = &quot;2&quot;&lt;br&gt;Yes – Legis &amp; No-Legis = &quot;3&quot;</td>
<td><strong>General Language</strong>&lt;br&gt;No General Language = &quot;0&quot;&lt;br&gt;Not General Language = &quot;1&quot;&lt;br&gt;General Language = &quot;2&quot;&lt;br&gt;Both Not &amp; General Language = &quot;3&quot;</td>
<td><strong>Combination of:</strong></td>
</tr>
<tr>
<td><strong>Discretionary Language Specificity</strong>&lt;br&gt;Broad (&quot;as agency sees fit&quot;) = &quot;0&quot;&lt;br&gt;Limited (&quot;may&quot;) = &quot;1&quot;&lt;br&gt;No Discretion (&quot;must&quot;) = &quot;2&quot;</td>
<td><strong>General Language Specificity</strong>&lt;br&gt;Not Applicable = &quot;0&quot;&lt;br&gt;Minimal Specificity = &quot;1&quot;&lt;br&gt;Moderate Specificity = &quot;2&quot;&lt;br&gt;Significant Specificity = &quot;3&quot;</td>
<td><strong>Procedural Mandate Calculation</strong></td>
</tr>
<tr>
<td><strong>Additional Constraints</strong>&lt;br&gt;</td>
<td><strong>Mandate Subject Matter</strong>&lt;br&gt;Define Not Terms = &quot;0&quot;&lt;br&gt;Define Not Procedures = &quot;1&quot;&lt;br&gt;Define Terms = &quot;2&quot;&lt;br&gt;Define Procedures = &quot;3&quot;&lt;br&gt;Defines Both Not &amp; Terms = &quot;4&quot;&lt;br&gt;Defines Both Not &amp; Procedures = &quot;5&quot;&lt;br&gt;</td>
<td><strong>Policy Mandate Calculation</strong></td>
</tr>
<tr>
<td><strong>Time Constraints</strong>&lt;br&gt;No Constraint = &quot;0&quot;&lt;br&gt;Constraint – Not Specified = &quot;1&quot;&lt;br&gt;Constraint – Specified = &quot;2&quot;</td>
<td><strong>Define Specificity</strong>&lt;br&gt;Not Applicable = &quot;0&quot;&lt;br&gt;Minimal Specificity = &quot;1&quot;&lt;br&gt;Moderate Specificity = &quot;2&quot;&lt;br&gt;Significant Specificity = &quot;3&quot;</td>
<td>Each of the mandates are calculated and added together to obtain a score of <em>both mandate</em></td>
</tr>
<tr>
<td><strong>Approval Requirements</strong>&lt;br&gt;No Approval Necessary = &quot;0&quot;&lt;br&gt;Approval by Non-Legis body = &quot;1&quot;&lt;br&gt;Approval by Legis body = &quot;2&quot;&lt;br&gt;Approval by Non &amp; Legis bodies = &quot;3&quot;</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sanctions</strong>&lt;br&gt;No Sanction = &quot;0&quot;&lt;br&gt;Sanction – Not Specified = &quot;1&quot;&lt;br&gt;Sanction – Specified = &quot;2&quot;</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Possible Score = 12</strong></td>
<td><strong>Total Policy Score = 14</strong></td>
<td><strong>Total Both Score = 26</strong></td>
</tr>
</tbody>
</table>

**Total Control Across States**

*Total control* is the sum of the amount of control in *procedural, policy, and both mandates*. More specifically, it is the score for the amount of control legislators impose in
all mandates produced throughout the six sessions based on discretion limiting language, additional control mechanisms, policy limiting definitions, and general policy language.

Graph 6-1 reveals the variation in the average total control across states per session.

It is clear from the distribution that there exists significant variation in the average total amount of control across states over the six legislative sessions in this study. Specifically, the mean average total control for all states is 242 with 70% of all states falling below the mean, compared to 71% for mandate length. The distribution ranges from an average total amount of control per session of 47 by legislators in New Mexico to 1155 by legislators in Virginia.

The variation displayed in Graph 6-1 is also similar to the variation observed in mandate length in terms of states that enact more CHIP bills and mandates. Although some of the leaders in CHIP bills and mandates also impose more control in mandates
(Arizona, Indiana, Connecticut), other leaders produce mandates with significantly lower than the mean average of control (Kansas, Illinois, Michigan). This is also true for those states considered health care policy experts. Legislative health care experts in Minnesota and Hawaii produce low levels of total control per session while non-expert legislators in Arizona produce the most control. In terms of statutory control, however, this makes sense for Arizona legislators who likely lack specific health care knowledge and understanding of both technical information and procedures. To obtain this information and protect their preferences, Arizona legislators impose mandates with little discretion and specific requests to not only provide reports and develop procedures, but also to meet with specific constituents and health care related groups.

Without fully examining the factors that make up my second dependent variable, Graph 6-1 and the analysis above provide evidence that the two dependent variables are quite similar in terms of amount of control and exceptions to Huber & Shipan’s findings. In fact, if we compare the two dependent variables we see that they two are highly correlated as evidenced by Graph 6-2 which collapses the sums of mandate length and total control for all states (except California) across all legislative sessions. More specifically, the graph takes all mandate lengths and total controls and collapses them to the bill level, then the session level and finally to the state level. Graph 6-2 thus examines all mandate lengths and control scores for every state throughout all six sessions in this study. It is clear from the distribution that mandate length and the total control are highly correlated. In fact, a correlation reveals a score of .956 supporting a strong relationship. At the same time, examining mandate length and total control across states, there is
no support for my contention that legislators can impose more control in CHIP mandates rather than writing longer, more detailed mandates. Based on the sum of all mandate lengths and the sum of total control across all sessions, legislators that produce more mandates and pass longer mandates also impose the most control in mandates.

At first glance, this result does not bode well for the total control as a viable alternative to mandate length. On its face, Graph 6-2 suggests that Huber & Shipan’s decision to calculate the length of legislation was correct; that the length of legislation is sufficient to determine the amount of discretion imposed by legislators, and necessary. However, simply examining the amount of discretion is not the important story in this study. The important story in this study is the fact that there is more to the level of discretion provided to bureaucrats than simply the amount of words in legislation or the
total control imposed by legislators. More specifically, I argue that the factors that make up the total control contribute much more to our knowledge and understanding of statutory control decisions and the strategies employed by legislators than a simple measure based on length of a mandate or the total control imposed in a mandate.

Although discussed previously in chapter 4, it is important to reiterate the benefit and value of total control to the research on statutory control of bureaucrats. First, rather than speculating about the amount of discretion imposed in legislation based on the length of the bill or mandate, total control focuses on the content of legislation. Specifically, I develop the variable based on the language used by legislators to convey their policy intent and the additional control mechanisms included to control bureaucratic behavior and ensure their preferred outcomes. As shown in chapter 4, if a bill or mandate does not contain language that limits bureaucratic discretion or flexibility (using words such as “must” rather than “may”), imposes additional constraints on their behavior (specified time, approval requirements, sanctions for non-compliance), or specifically defines policy terms or procedures, no matter how long or detailed the bill or mandate is, bureaucrats can and will find ways to develop and implement the policy in a manner that achieves their preferred outcomes. As I have shown in chapter 4, even mandates classified by Huber & Shipan as providing vast discretion to bureaucrats based on its short length can effectively direct bureaucrats, constrain their behavior, and limit their policy-making discretion and flexibility. We have also seen long, detailed mandates that use ambiguous language and unspecified requirements that provide bureaucrats with extensive discretion and flexibility. We cannot be sure how much discretion the amount of words provides to bureaucrats.
Second, in addition to enabling me to assess the amount of control or discretion placed in an individual mandate, *total control* allows me to observe specifically how legislators limit discretion. By examining the type of mandates used by legislators (*procedural, policy, and both mandates*), I am able to observe what aspects of the policy that are important to legislators as well as information about the specific costs incurred by legislators in their attempt to control and oversee bureaucrats. This is invaluable information, especially in terms of the PA relationship between legislators and bureaucrats. For example, *procedural mandates* require bureaucrats to “do something,” whether it is to develop procedures, hold a hearing, create a study group, or consult with a specific group. At the same time, by requesting that bureaucrats perform duties, legislators also shift the burden of the costs (time and resources) to bureaucrats and/or constituent groups. For these reasons, I consider *procedural mandates* less costly for legislators to require and impose in legislation. Consequently, by requiring bureaucrats to “do something” as opposed to defining the parameters of the policy itself (*policy mandates*), legislators signal to bureaucrats that the manner in which the policy is developed and implemented is their main concern. Whether this is a decision made based on time and resources or timing in the statutory control process, we do not yet know. However, examining a snapshot of *mandate length* cannot tell us any of this information.

Third, having this additional information about the types of mandates and additional control mechanisms provides a more complete understanding of the specific statutory control strategies employed by legislators across states. No longer are we constrained by simply comparing the lengths of bills or mandates when *procedural, policy, and both control* allows us to observe which legislators incur the costs of
imposing *policy mandates* rather than the less costly *procedural mandates*, or which legislators strengthen their mandates by including additional control mechanisms. Now we can better assess the impacts of the political and institutional arrangements in the particular state. Does the capacity of legislators affect the decision of which type of mandate or control mechanism legislators impose? Or, are decisions based purely on the political environment and the incentives legislators have for controlling bureaucrats? *Mandate length* can help us understand which of these factors influence the amount of discretion, but *procedural, policy, and both control* can accomplish this *and* provide us with information about different strategies both in general and over time.

Even though the factors that make up *total control* provide me with little additional power in assessing the total amount of discretion in mandates, they are extremely valuable to improving our understanding statutory control decisions and strategies both within states, across states, and over legislative sessions. The important part now is to make sure that the different aspects of *total control* possess the same variation that I observed in my first dependent variable. This shall be the focus of the remainder of this chapter. In particular, I will investigate whether variation exists in the use of different mandate types and additional control mechanisms across states, and in the amount of control in different mandates across states, within states, between general legislation and appropriations bills, and across legislative sessions.

*Variation in Use of Mandate Types*

Of the 8,274 total CHIP mandates, 2,952 are *procedural* mandates (36%), 3,171 are *policy* mandates (38%), and 2,151 are *both* mandates (26%). Displaying the
percentage of use of *procedural, policy, and both mandates* across all states throughout the study, Figure 6-1 reveals that, much like the differences between states that enacted more CHIP bills and mandates, there exists significant variation in the use of the different mandates across states. While legislators in many states used similar amounts of each mandate type (see West Virginia, Massachusetts, Washington, Texas, Arizona, Oregon, and Kentucky), legislators in other states favored one mandate type over the others as evidenced by the predominant use of *policy mandates* in New York, New Mexico, Missouri, and Alabama. If our assumptions are accurate, we might expect to observe legislators using more *procedural mandates* than *policy* and *both mandates* because of the higher costs associated with researching policy and procedural information and writing *policy* and *both mandates*. Consequently, we should also expect to see legislators that use more *both mandates* to impose less *policy* mandates for these very same reasons.

The data reveal that this is not always the case. Legislators in no state use predominantly *procedural mandates*. In fact, New Hampshire was the only state where legislators used *procedural mandates* 50% of the time, followed closely by legislators in Ohio and Utah. Figure 6-1 shows that most legislators opted for more control and higher costs associated with *policy* and *both mandates*. Even the states that incurred more costs to impose *both mandates* also incurred the costs of writing and including *policy mandates*. For example, Louisiana legislators utilized *policy mandates* 38% of the time (43 of 114 mandates) and *policy mandates* 35% of the time (40 mandates). Similar percentages are found in Delaware, Montana, and Nevada while other states behaved in a more expected manner. Of its 185 total mandates, Michigan legislators, for example, utilized *both mandates* 42% of time throughout the 10-year period (78 mandates) and
Figure 6-1: Variation in Use of Mandate Types Across State Legislatures

- Michigan
- Delaware
- Louisiana
- Connecticut
- Virginia
- Nevada
- West Virginia
- Montana
- Massachusetts
- Washington
- Texas
- Iowa
- Arizona
- Ohio
- Vermont
- Georgia
- Oregon
- Kentucky
- Oklahoma
- North Dakota
- Wisconsin
- New Jersey
- Minnesota
- Indiana
- California
- Florida
- Rhode Island
- Illinois
- Mississippi
- Kansas
- Colorado
- Pennsylvania
- Hawaii
- Arkansas
- Nebraska
- Maine
- North Carolina
- Idaho
- Utah
- Alabama
- New York
- New Hampshire
- Missouri
- Maryland
- New Mexico
policy mandates only 18% of the time (33 mandates). A similar strategy was used by Montana legislators who used policy mandates 45% of the time (49 total) and both mandates 31% of the time (34 total).

Again, at this point we do not know for sure why states vary in their use of mandate types or whether the choice is influenced by political or institutional arrangements, but we can speculate more generally about the increased use of both and policy mandates. As discussed previously, most state legislators lack sufficient time and resources to dedicate to all policy areas, especially like CHIP that involves technical and specialized knowledge of health care procedures and processes that the average state legislator is not likely to possess. This brings us back to the Texas and California examples of the legislative dilemma discussed at the beginning of the study: do legislators who lack the time and resources defer to bureaucrats who are experts in a specific policy area or do they incur the costs of overcoming information asymmetries and controlling bureaucratic behavior to ensure their preferred policy outcomes? It would seem that, on the one hand, legislators would be more likely to use both mandates and/or policy mandates to maintain a certain level of control over bureaucrats, as well as shift the burden of costs to bureaucrats and constituents. Although it is cheaper and easier to impose procedural mandates in legislation, they do not provide the same level of control. On the other hand, legislators able and willing to incur the costs associated with statutory control can control their behavior. The use of policy and both mandates in these situations are preferable to procedural mandates.
Examining the use of *procedural mandates* across states a little closer, displaying from top to bottom, the use of additional control mechanisms by state throughout the period of the study, Figure 6-2 reveals that time constraints are used more frequently than either approval requirements or sanctions. In fact, in the 1,674 CHIP bills coded for this study, sanctions for non-compliance were only used 12 times throughout the 10-year period of the study, three times by legislators in the state of Washington alone. In terms of the costs associated with imposing additional constraints, the predominant use of time constraints makes sense considering that they require no additional actions on the part of legislators unless they are combined with an approval by a legislative body.

Displaying the use of additional control mechanisms across states throughout the six legislative sessions, Figure 6-2 reveals significant variation in the use of additional control mechanisms by states that used more *procedural mandates*. In particular, New Hampshire legislators used time constraints in 23 of its 46 *procedural mandates*, 16 of which were specified times rather than unspecified. In Ohio, legislators only used 10 time constraints – all specified – in its 44 *procedural mandates*. Utah legislators, whom imposed the third most *procedural mandates*, like those in New Hampshire, included time constraints in 30 of its 49 *procedural mandates*, 25 of which were specified times.

In states where legislators predominantly used *both* and *policy mandates*, we observe similar differences in the use of additional control mechanisms. For example, legislators in Delaware, Louisiana, and Montana used *procedural mandates* in less than 20% of their mandates. Montana legislators used 12 time constraints in 25 *procedural mandates*.
Figure 6-2: Total Use of Additional Constraints in Procedural Mandates by State 1997-2007

- California
- Massachusetts
- Virginia
- Colorado
- Connecticut
- Arizona
- North Carolina
- Rhode Island
- Indiana
- Florida
- Texas
- New Jersey
- Utah
- Illinois
- New York
- West Virginia
- Nebraska
- New Hampshire
- Michigan
- Pennsylvania
- Louisiana
- Maryland
- Hawaii
- Oregon
- Montana
- Washington
- Ohio
- Minnesota
- Maine
- Kansas
- Iowa
- Georgia
- Wisconsin
- Oklahoma
- Vermont
- Alabama
- Missouri
- Mississippi
- Idaho
- Nevada
- Kentucky
- Delaware
- North Dakota
- New Mexico
- Arkansas

- Total Sanctions
- Total Approval Constraints
- Total Time Constraints
mandates and 10 time constraints in 34 both mandates. Legislators in Louisiana and Delaware were less concerned, using them in less than half of their mandates.

Although the variation in the type of mandate use of additional control mechanisms provides me with information about the policy intent of legislators and their desire to impose more or less control on bureaucrats, without observing the actual language imposed by legislators, this variation means very little. As we discussed in chapter 4, legislators can write long, detailed mandates constraining bureaucratic behavior and setting strict policy parameters with the help of specific time constraints, multiple approval requirements, and specified sanctions, but if the language that they use to convey these mandates does not eliminate any discretion or flexibility in carrying out the requirements or interpreting the policy in a different way, then all the time and resources incurred by legislators' has the potential of being wasted. In other words, it does not matter which mandate type is used or how many additional control mechanisms are imposed in a mandate, if legislators use language like “may” or “as the agency sees fit,” they ultimately lose control and bureaucrats gain discretion. In these instances, bureaucrats increase their chances of successfully maximizing their profits or pursuing their own goals. With this in mind, I examine total control imposed in each mandate type. As mentioned above, my second dependent variable provides a score for each mandate based on the mandate type imposed by legislators, any additional control mechanisms, and, most importantly, the specific language they use to convey their policy intent.

*The Amount of Control in Procedural, Policy & Both Mandates*
Table 6-2 provides a comparison of the average amount of control in *procedural, policy* and *both mandates*\(^\text{53}\). It is clear that the amount control in *procedural mandates* is significantly smaller than those for *policy* and *both mandates*. In fact, there considerable variation in the amount of control within the different mandate types and there is more variation in *policy and both mandates* than in *procedural mandates*. These results support Figure 6-1 at the beginning of the chapter that showed the percentage of use of mandate types across states. Most states used less *procedural mandates* when compared to *policy* and *both mandates*, and we know that they, on average, imposed less control as well.

### Table 6-2: Variation in the Average Amount of Control in Procedural, Policy, & Both Mandates by Session Across States

<table>
<thead>
<tr>
<th>Mandate Type</th>
<th>Mean</th>
<th>Standard Deviation</th>
<th>Minimum &amp; Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedural</td>
<td>48.5</td>
<td>50.2</td>
<td>2.8 – 228.4</td>
</tr>
<tr>
<td>Policy</td>
<td>102.7</td>
<td>89.1</td>
<td>15.3 – 352.4</td>
</tr>
<tr>
<td>Both</td>
<td>90.5</td>
<td>109.9</td>
<td>4.4 – 599.2</td>
</tr>
</tbody>
</table>

**Amount of Control in Procedural Mandates**

The sum of the amount of control in *procedural mandates* is based on the requirement that bureaucrats *do something* (create a body, hold a hearing, consult with a group, create a body, or develop procedures), the specific language used to impose policy intent, and additional control mechanisms imposed in the mandate to further limit

\(^\text{53}\) California was excluded from this analysis because it significantly skew the results. In the subsequent graphs, including California depresses the distribution and cause the variation that exists across states to be less apparent.
bureaucratic discretion. Displaying from left to right the sum of the amount of control in procedural mandates across states, Graph 6-3 reveals that legislators vary in the amount of procedural control imposed in mandates.

Although the mean sum of the amount of control in procedural mandates per session for all states is 48.9, this number alone means very little unless we examine it in conjunction with scores for individual states. In particular, 68% of all states fall below the mean score per session, while the remaining 32% of states range from 49.7 in Maryland to 228.3 in Virginia. This suggests that the variation across states comes from these 14 states, most of which are also leaders in the enactment of CHIP bills and mandates.

54 The sum of procedural control per session for California is 324.
Although it makes sense that states that enact more bills and mandates will have higher procedural session control scores due to the sheer number of bills and mandates, Graph 6-3 reveals that this is not true for all states. In fact, despite legislators in Virginia, Indiana, Arizona, and Colorado imposing procedural mandates that reserve a significant amount of control for themselves and limit bureaucratic discretion, legislators in New York engaged in a much different statutory control strategy as evidenced by their session procedural control score of 7.5, well below the mean of 48.9. In particular, although New York legislators imposed procedural mandates with some constraining language and specified time constraints, it produced very few procedural mandates opting to use primarily policy and both mandates to control and oversee bureaucrats. This strategy was similar to the one used by legislators in Illinois and Kansas, two additional states classified as a CHIP bill and mandate enactment leaders. Legislators in Illinois received a procedural session control score of 14.8 despite enacting 78 bills and 180 individual mandates, while their counterparts in Kansas received a score of 11.2, both significantly lower than the mean for all states. However, as in New York, legislators in Illinois chose to use only 39 procedural mandates of its 180 mandates, while Kansas legislators used 33 of its 116 total mandates.

Contrast these procedural session control scores with the 65.2 achieved by Oregon legislators. In Oregon, legislators imposed significant control through discretion limiting language in 25 of its 33 procedural mandates, directing bureaucrats to engage in significant procedural requirements in 33 of 57 mandates, and specified time constraints and approval requirements consistently in their 135 mandates in 13 CHIP bills. These results are similar to those in Nebraska where legislators received a score of 57.3. In both
Nebraska and Oregon legislators are not leaders in the enactment of bills or mandates yet still imposed significantly more control on bureaucrats in 23 bills and 133 mandates.

In addition to differences between states that enacted more and less CHIP bills and mandates, there exists variation in the sum of the amount of control between states regarded as health care policy experts and non-experts (see chapter 5). Although I found that state legislators considered health care experts in California, New Jersey, and to a lesser extent Florida, wrote more mandate words per session than other non-expert states, legislators in Minnesota and Hawaii did not behave like policy leaders. In these states, legislators wrote significantly less mandate words per session than other policy leaders. I also found that non-policy expert legislators in Arizona wrote the 5th most mandate words per session of any state, expert or not. Graph 6-3 confirms similar results when using my second dependent variable, total control. In particular, policy experts in Florida and New Jersey, as well as non-policy expert legislators in Arizona, receive higher procedural session control scores, while expert legislators in Minnesota and Hawaii receive lower procedural session control scores. These results may reflect the number of bills and mandates enacted, but the fact the policy expert legislators in Minnesota and Hawaii are not enacting more bills or using specific language and specified additional control mechanisms in their mandates suggests that they are not behaving like policy experts.

Amount of Control in Policy Mandates

The sum of the amount of control in policy mandates is based on mandate definitions (policy terms or procedures) and the type and amount of general policy language imposed within the mandate. Legislators in states that receive higher control
scores in *policy mandates* are more likely setting the parameters of the CHIP program by defining policy procedures with significant specificity and including both general policy and not-general policy language in individual mandates. Graph 6-4 reveals that although most legislators are engaging in this type of policy control, all are not thus risking the development and implementation of the CHIP program that is not consistent with their intent. In particular, 68% of states fall below the mean sum of the amount of control in *policy mandates* per session (102.7), and the remaining 32% of states range from a *policy* session control score of 107.4 in North Carolina to a score of 352.4 in Colorado.

The distribution in Graph 6-4 suggests that much of the variation comes from the 14 states with the highest *policy* session control scores. While legislators in Indiana,
Virginia, Pennsylvania, and Arizona all used general policy and not-general policy language extensively in their policy mandates, legislators in Indiana and Virginia spent a great deal of time and resources defining CHIP related terms and providing extensive support for their definitions. Pennsylvania and Arizona legislators, on the other hand, incurred the costs of defining terms and procedures, a strategy that seems appropriate for legislators in Arizona who are not considered health experts and want to ensure that bureaucrats not only know what they prefer but also pursue those ends.

The one glaring policy session control score in Graph 6-4 is the one given to legislators in New York. Recall that New York legislators consistently provided bureaucrats with extensive discretion in the procedural mandates it imposed throughout the 10-year period, as evidenced by their low procedural session control score, despite being a leader in enacting CHIP bills and mandates and producing longer mandates. It appears, however, that the strategy used by legislators in New York was to focus their time and resources on writing policy mandates with substantial controls for bureaucrats including discretion limiting language, defining CHIP terms and procedures with significant specificity, and including substantial general policy language to further set the parameters of the policy and further limit bureaucratic flexibility. At the same time, legislators in New York used fewer both and procedural mandates, but when they did, they did not exercise the same level of control or incur the same costs. Whether this was the result of uncertainty over partisanship or the institutional arrangements in the state is left to be determined, but exactly the type of variation that I was hoping to observe.

Another interesting result from Graph 6-4 is the sum of the amount of control in policy mandates per session in the states of Mississippi, Louisiana, and Montana.
Legislators in these states are not leaders in enacting CHIP bills and mandates, nor are they leaders in writing longer mandates. However, Mississippi, Louisiana, and Montana legislators imposed considerable amount of control per session in their policy mandates. Montana legislators received a policy session control score of 89.8 while their counterparts in Mississippi received a score of 95, and Louisiana a score of 144.5. These scores suggest that legislators in these states imposed significant control and limited discretion in fewer policy mandates. In fact, legislators in each of these states not only used language eliminating bureaucratic discretion, but also provided significant specificity to the policy terms and procedures they defined for bureaucrats.

Amount of Control in Both Mandates

Both mandates are triggered when legislators impose a procedural requirement followed by a description of how the requirement will affect or shape the development or implementation of the policy. As mentioned above, I consider these mandates the most costly to impose and the most constraining on bureaucrats. Additionally, I argued why I thought that legislators, given the ability and incentive, might choose to incur the costs of not only requiring bureaucrats to do something and imposing additional control mechanisms, but by also articulating how the policy outcomes that they expect. Graph 6-3 reveals that there is considerable variation in the sum of the amount of control in both mandates per session. In particular, 73% of states fall below the mean sum of the amount of control in both mandates (90.5), with the remaining 27% ranging from a score of 105 in Pennsylvania to 599.2 in Virginia. Again, most of the variation in the control in both mandates comes from the 12 states with the highest both session control scores.
As we have seen in the two previous graphs, although the states that receive
higher amount of policy session control scores are predominantly those that enacted the
most CHIP bills and mandates, this is also not the case with both mandates. As
mentioned previously, New York legislators invested their time and resources in
imposing more control in policy mandates than in procedural or both mandates. In fact,
legislators in New York, despite being a leader in enacting

Graph 6-5: Sum of Amount of Both Control Across States

CHIP bills and mandates, received a both session control score of 19.1, significantly
lower than the mean of 90.5 for all states per session. Only 20 of New York’s 213 total
mandates were both mandates, most of which involved non-discretion limiting language
directed at the development of procedures with unspecified time constraints and
unspecified definitions of terms. Legislators in Kansas received a policy session control
score 42.0, also much less than the mean score for all states. Despite enacting 78 CHIP bills and 118 individual mandates, Kansas legislators “hoped for the best” regardless of mandate type as they use no controlling language and no control mechanisms and policy procedure definitions with little supporting or general policy language.

More interesting for this analysis however, is the differences in sum of the amount of control in both mandates between states that used more and less both mandates. We might expect that legislators in states that are going to incur the costs of researching and writing both mandates would want to use constraining language, additional control mechanisms and significantly specified policy term and procedural definitions to ensure that the time and resources invested would produce their desired results. For many states, this was the strategy of choice, but not for all. Legislators in states that used both mandates over 30% of their total mandates, including Connecticut, Virginia, and Massachusetts, procedural requirements and policy impact was reinforced with more constraining language, specified time constraints and approval requirements, as well as significant supporting language for policy terms and procedures. Yet, in other states like Louisiana, Michigan, Minnesota, and Delaware, the predominant use of both mandates was not supported by similar constraints. Even though these states enacted less bills and mandates, both mandates in these states provided more discretion to bureaucrats with unspecified control mechanisms and minimally specified policy terms and procedures. As a result, legislators received lower both session control scores.

The examination of the sum of the amount of control in policy mandates, as in the examinations of procedural and policy mandates, clearly reveals significant variation across states. Although many of the states that possess higher control scores have
obtained them simply because they have enacted the most CHIP bills and mandates, the fact that significant variation exists within states that predominantly used one mandate type over another as well as states that imposed more control in less mandates is important for this study. It should not be a surprise to anyone that a state that produces more mandates will have a higher control score, but when a state like Nebraska that enacts few bills and mandates yet imposes more constraining language and more constraining control mechanisms, there is a reason for it. Or, in a state like New York where legislators are leaders in enacting CHIP bills and mandates and neglect imposing control in *procedural* and *both mandates* to focus predominantly on incurring the costs to limit bureaucrat’s discretion in *policy mandates*, there is a reason for it. Even legislators in Mississippi, Louisiana, or Montana that enact few mandates but protect their preferences by limiting behavior with considerable control. Again, there is a reason for it.

**Amount of Control in Mandate Types: General Legislation vs. Appropriations Bills**

Establishing variation in the use and amount of control in different types of mandates and additional control mechanisms provides the first evidence that the significant differences exist in the factors that make up my second dependent variable. In the previous chapter, however, we also observed differences in the sum of mandate length between general legislation or appropriations bills, providing evidence that legislators may strategically impose their CHIP policy intent in general legislation or appropriations bills. Seven states that routinely used both general legislation and appropriation bills between 40-60% of the time reveals that legislators in New York, Kansas, Rhode Island, and Vermont did not vary significantly in the mandate length in
roughly the same amount of bills, and legislators in Iowa, North Carolina, and Idaho enacted longer, more detailed mandates consistently in general legislation. Here I investigate whether similar variation exists in these states using my second dependent variable, \textit{total control}[^5].

Table 6-3 displays a statistical comparison of the two control mechanisms together and separately[^6], while Table 6-4 reports the correlation matrix examining the relationship between general legislation and appropriations bills, and Graph 6-6 and 6-7 display from smallest to largest, the average sum of \textit{total control} in all states per session in appropriations bills and general legislation. Table 6-3 reveals that the mean sum of \textit{total control} is 241.7 per session for both mechanisms and if we split the bills by type of control mechanism, the mean drops to 129.6 for appropriations bills and 171.8 for general legislation. Unlike our analysis of mandate length, there is roughly the same amount of variation in \textit{total control}, on average, in both appropriations bills and general legislation. This makes more sense now that we have replaced mandate length as a measure of control or discretion with a more substantive measure. Despite the similarities in the amount of control the two mechanisms, Table 6-4 reveals a similar relationship between general legislation and appropriations bills found in chapter 5. There is a slight negative relationship supporting my argument that legislators impose their policy intent strategically and that the two mechanisms are not interchangeable.

[^5]: I use \textit{total control} for this analysis rather than examine each mandate type separately to establish variation in the variable as a whole. I assume that if variation exists in the direct variable, then variation will also exist in the factors that make up the variable.

[^6]: Graph 6-5 does not include Nevada, Pennsylvania, and West Virginia because these states do not use appropriations bills, and Graph 6-6 does not include Alabama, Michigan, and New Mexico because these states do not use general legislation. Both graphs exclude California.
Table 6-4: Comparison of the Sum of the Amount of Total Control in CHIP Bills by Legislation Type

<table>
<thead>
<tr>
<th>Variable</th>
<th>Both General Legislation &amp; Appropriations Bills (8274 mandates) 100%</th>
<th>General Legislation Only (5308 mandates) 64%</th>
<th>Appropriations Bills Only (2966 mandates) 36%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean</td>
<td>241.7</td>
<td>171.8</td>
<td>129.6</td>
</tr>
<tr>
<td>Standard Deviation</td>
<td>230.6</td>
<td>122.5</td>
<td>171.2</td>
</tr>
<tr>
<td>Minimum &amp; Maximum</td>
<td>47.2 – 1154.9</td>
<td>13.3 – 593.8</td>
<td>3.5 – 579.8</td>
</tr>
</tbody>
</table>

Table 6-5: Correlation Matrix Examining the Relationship between General Legislation & Appropriations Bills

<table>
<thead>
<tr>
<th>Variable</th>
<th>General Legislation</th>
<th>Appropriations Bills</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Legislation</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Appropriations Bills</td>
<td>-.170</td>
<td>1</td>
</tr>
</tbody>
</table>
Graph 6-6: Total Control Per Session in Appropriations Bills Across States

Graph 6-7: Total Control Per Session in General Legislation Across States
If we compare Graphs 6-5 and 6-6 to those displayed in chapter 5 (Graphs 5-2 and 5-3), the first thing that stands out is that many of the states with higher session scores for *total control* in general legislation and appropriations bills are the same states that produce more words pertaining to mandates. In particular, Colorado, Virginia, and Arizona receive higher scores for *total control* in mandates in appropriations bills as they did for the sum of mandate length, while Connecticut, Arkansas, and Oklahoma receive the lowest scores. At the same time, Pennsylvania, Oregon, and Connecticut receive higher scores for *total control* in general legislation as they did for mandate length, while Wisconsin, Delaware, and Hawaii received the lowest scores in both analyses. Although this provides us with some information about the relationship between my two dependent variables, it also suggests that we may find similar results to the investigation of the seven states that routinely used both mechanisms between 40-60% of the time throughout the 10-year period of the study. In fact, when we examine the sum of *total control* for New York, Iowa, North Carolina, Kansas, Idaho, Rhode Island, and Vermont in both general legislation and appropriations bills, this is the case with one exception.

Like in our investigation of the *sum of mandate length*, the sum of *total control* does not vary significantly between appropriations bills and general legislation for legislators in Vermont, Kansas, and Rhode Island. In fact, difference between the two mechanisms in Vermont is 13.7 in favor of general legislation, 24.1 in favor of appropriations bills in Kansas, and 18.6 in favor of general legislation in Rhode Island. Additionally, there are significantly higher scores for *total control* in general legislation than for appropriations bills in Idaho (77.5 to 29.5), North Carolina (239.4 to 70.8), and in Iowa (188 to 60.1). These are roughly the same results we found in chapter 5, except
for the fact that the score for the sum of the amount of control in New York differed by 98.1 in favor of general legislation.

In the previous chapter, the sum of mandate length was similar in New York for both control mechanisms. I cannot be sure what is causing this change in New York, but I can speculate that the amount of policy mandates New York legislators imposed in general legislation as opposed to appropriations bills is likely to have caused the difference. Although their overall per session score is higher, the magnitude of their score is also impacted by the fact that legislators in New York also go to great lengths to limit bureaucratic discretion through specific language and additional control mechanisms also contributes to the larger difference in scores between the two control mechanisms.

It may very well be that the same justifications for the variation in mandate length in the previous chapter also apply to total control in this chapter. Without considering the impact of the political environment at this point, the differences in the appropriations process across states may have influenced the type of language used by legislators and the use of additional mechanisms to control and oversee bureaucrats. In particular, legislators in states that only have a few opportunities to address policy in appropriations bills are more likely to use constraining language and specified additional control mechanisms may not have a chance to alter policy decisions in the future. This may be the case for North Carolina, which passes, on average, only three appropriations bills per session. Legislators in the state receive a score of 70.8 per session from 63 appropriations bills across the 10-year period of the study. Although this is significantly less than the
score of 239.4 per session that they impose in general legislation in 89 bills, it does represent a considerable amount of control per session in appropriations bills\(^57\).

A more appropriate example might be the situation in Idaho where legislators enacted roughly the same amount of general legislation bills (29) as appropriations bills (20) in the 10-year period. However, their score for the sum of total control per session for each control mechanism differs by 48 (77.5 for general legislation and 29.5 for appropriations bills). Idaho legislators, however, have the opportunity to pass, on average, more than 20 appropriations bills per session. As a result, they are not constrained in each appropriations bill like their counterparts in North Carolina. Idaho legislators can correct wayward bureaucrats in subsequent bills if they so choose. Granted this involves additional time and resources, but in the event that they need to re-address an issue, they can do so (budget shortfall, windfall, emergency). Consequently, the higher score per session for North Carolina may reflect the fact that they lack subsequent opportunities to correct or adjust their CHIP policy through appropriations bills.

This investigation has demonstrated that variation in total control between the use of general legislation and appropriations bills across states does exist. I am still unsure about the impact of the political environment on these differences, but my assumptions regarding the impact of the appropriations processes appears to hold some validity with both dependent variables. Until we test these hypotheses in the next chapter, we will not know for sure. At the very least, we have observed the type of variation necessary to justify moving forward to assessing the causes of the differences empirically.

\(^{57}\) Again, some of the variation in scores for the sum of the amount of control are attributed to the amount of bills enacted, which in North Carolina's case the distribution is 89 general legislation bills compared to 63 appropriations bills, but the 175.5 difference between the two control mechanisms is also obviously related to the specific language and additional control mechanisms imposed within the bills as well.
In the previous chapter, I argued that had the analysis stopped with the observation of differences in mandate length per session and between general legislation and appropriations bills, we would not only have some contradictory results to Huber & Shipan, but also an incomplete understanding of the statutory control decisions across states. I argued that we could determine the true impact of political and institutional environments on the amount of words pertaining to mandates based on a “snapshot” of statutory control decisions. To expand upon the prevailing literature on statutory control of bureaucrats, I proceeded to examine mandate length in two states – New Jersey and Massachusetts – across legislative sessions. This examination revealed a different statutory control strategy than concluded by the “snapshot” of decisions and displayed different strategies by two states that we might have expected to behave similarly.

In the previous chapter I argued that that these two states were ideal for examining statutory control decisions across time because the enacted roughly the same amount of bills and mandates, and both are leaders in session mandate length generally and when separated by legislation type. In terms of the total control, both states once again share similar results. Not only are legislators in the two states possess higher scores for amount of total control per session (514.1 and 588.8 respectfully), but they also used about the same percentage of procedural, policy, and both mandates, and control mechanisms. As a result, we should see legislators in both states adopting similar strategies over time. However, rather than examine the total control, it makes more sense
to investigate whether these similarly situated states vary in the use of *procedural, policy, and both mandates* since these are my main variables of interest\(^{58}\).

Graphs 6-8, 6-9, and 6-10 display the average amount of session control in *procedural, policy, and both mandates* across all six sessions in New Jersey and Massachusetts. It is once again very clear from the graphs that a snapshot of these decisions would fail to adequately capture the strategy legislators in these states adopt in attempting to control bureaucrats. The different levels of control in each mandate type across sessions suggests that a simple snapshot would provide a limited understanding of the amount of control imposed in the states as well as how they are attempting to control and oversee bureaucrats.

More importantly for this study, each of the graphs displays significant variation in *total control* imposed by legislators in New Jersey and Massachusetts in each of the mandate type. Not only did legislators in each state impose different amounts of control in each mandate type, but their choices and the sequence of their choices provides a much clearer understanding of their statutory control strategies. In particular, New Jersey legislators impose few controls in relatively few mandates at the adoption of their CHIP program. Each of the graphs displays a relatively low average amount of control in *procedural, policy and both mandates* in the 1997-1998 session. However, if we look at the 1999-2000 session in each of the graphs we see legislators imposing significantly more control in each mandate type, with the most control being imposed in *policy mandates*, despite the fact that they did so in roughly the same amount of mandates (34 *procedural* to 30 *policy*). It appears from the distribution that legislators in New Jersey

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\(^{58}\) It should be noted that an examination of the *total amount of control* reveals significant variation in the strategies between legislators in New Jersey and Massachusetts, similar to that shown using *mandate length* in chapter 5.
may have realized that their initial mandates were either not specific enough or did not provide sufficient instructions about what bureaucrats should do (procedural mandates) and how they define and interpret the CHIP policy (policy mandates). At the same time, legislators also expanded the CHIP program in this session, which may be another factor for the increase in amount of control in each mandate type.

In the 2001-2002 session, it appears that New Jersey legislators attempt to further reinforce their directives with the use of more both mandates combined with less control imposed in procedural and policy mandates. These mandates may not have been as successful as legislators had hoped as evidenced by the imposition of more control in policy and both mandates in the 2003-2004 session, followed by more control in all three mandate types in the 2005-2006 session. Once again, New Jersey legislators expanded the CHIP program in both sessions to create the “The Family Health Care Coverage Act” which combined adult and child health insurance under one umbrella program. Yet, aside from the expansion of the program, we can also speculate that legislators in New Jersey were playing “catch-up” and trying to reel in bureaucrats that were developing and implementing the CHIP policy as evidenced by the limited control imposed at the adoption of their program. At the same time, the expansion of the program throughout the six sessions is consistent with the use of more policy and procedural mandates as they expanded the policy parameters.

The situation in Massachusetts is quite different from New Jersey. Legislators in the state incurred substantial costs of imposing considerable amounts of control in both procedural and both mandates in the adoption session of their CHIP program (1997-1998) as well as a moderate level of control in policy mandates. Compared to legislators
in New Jersey, Massachusetts legislators imposed a considerable total control in each of the three mandate types, and followed their investment with similar levels of control in procedural and policy mandates in the 1999-2000, but in their use of both mandates. The 2001-2002 session brought less new controls in all three mandate types which seems reasonable considering the time and resources they incurred in the previous two sessions. The expansion of enrollment and expansion of CHIP benefits to pregnant women is likely the cause of much of the new control imposed in the 2003-2004 session, and seems consistent with the increase in control in procedural and both mandates as legislators were altering the parameters of the CHIP policy. Unlike legislators in New Jersey, aside from the expansion of their program, Massachusetts legislator’s use of the different mandate types seems to suggest that the investment that they made at the beginning of the program was sufficient to control and oversee bureaucrats.

As mentioned in the discussion of mandate length, these observations concerning the statutory control strategies in New Jersey and Massachusetts would not have been available had I only examined one legislative session. Observing the use and timing of different mandates provides me with important information about when legislators attempted to control bureaucrats as well as how they went about achieving that goal. However, what about the rest of the states? In the previous chapter we investigated mandate length for all states across all legislative sessions and found even more information regarding these factors. Would we find similar information examining the amount of control in different mandate types across all states?

Graph 6-11 displays the average total control in procedural, policy, and both mandates across all states throughout all six sessions of this study. It is obvious from the
distributions that, in addition to significant differences in total control imposed in each mandate type across all six legislative sessions, the total control imposed in each mandate type across time provides some additional information about their combined use. For example, as we saw in Massachusetts, the most control imposed in procedural mandates takes place at the adoption of the program. In terms of the PA relationship between legislators and bureaucrats this seems reasonable considering legislators who lack the requisite knowledge of the CHIP policy and/or the procedures and processes necessary to develop and implement the program are likely to require bureaucrats to provide the information (e.g. submit reports, develop procedures) or meet with

Graph 6-11: Amount of Control in Mandate Types Across Legislative Sessions

- Amount of Procedural Control
- Amount of Policy Control
- Amount of Both Control
experts or constituents groups with information or input (consult or hold a hearing). Once this information is acquired concerned groups are involved in the process, and legislators have set the parameters of the policy, it is more likely that legislators will use policy and both mandates to correct an agency that has strayed from legislative intent or to alter the parameters when CHIP policies are restricted or expanded in subsequent sessions. The amount total control imposed in the 2001-2002 session in both policy and both mandates provides some support for this assumption as well as from the investigation of New Jersey and Massachusetts above. Additionally, the less total control imposed in the remaining sessions supports my assumptions regarding legislators anticipating changes to the reauthorization of CHIP, as we observed similar trends in the examination of mandate length in the previous chapter.

I am also not surprised that the amount of total control placed in policy and both mandates follow a similar path. On the one hand, the use of both mandate types requires elevated costs and a certain knowledge and understanding of the policy area in order to effectively define or clarify the policy area. I make this assumption because the sessions in which total control in both mandates is less than policy mandates are in sessions where the amount of control in procedural mandates is higher. I also expected to see the use of more both mandates in the later sessions of the study where CHIP expansions require bureaucrats to develop new procedures, meet with new groups, or hold more hearings, yet combined with how the procedures will impact or affect the policy. This is because legislators at this point have a few years experience dealing with the CHIP policy and a greater understanding of its development and implementation.
Like mandate length, the investigations above have revealed significant variation in mandate types both within states and across states over time. Aside from the fact that we would have missed most of this variation by examining a snapshot of control decisions, we now have a much better understanding of the amount of control legislators have imposed across the six sessions as well as how they have attempted to control and oversee bureaucrats. Although this information does not reveal the causes of these strategies, it does provide us with a better idea about potential causes. To improve our understanding of these potential causes, I run a mixed effects model to find out which theoretical variable will provide the highest explanatory payoffs in my empirical analysis.

**Mixed Effects Model**

As a reminder, the mixed effects model aggregates the amount of control to the specific state and sums the average control in order to determine how much of the variance in the mandates are attributed to factors that vary by time but not by state (national issues, national economy, federal mandate), factors that vary by state but not over time (institutional arrangements that vary between states but remain relatively stable across time), and factors that vary across states and across years (partisan makeup of the legislature or government that varies over time). Unlike the previous chapter, I test the mixed effects model using the direct measure of total control in addition to the separate measures for the each mandate type. The results of the mixed effects model for all variables are presented in Table 6-4.
Table 6-6: Mixed Effects Results of Amount of Control & Mandate Types

<table>
<thead>
<tr>
<th>Variable</th>
<th>Vary Across States &amp; Time (Political Factors)</th>
<th>Vary Across States – Not Time (Institutions Factors)</th>
<th>Vary Across Time – Not States (National Factors)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount of Control</td>
<td>40%</td>
<td>48%</td>
<td>12%</td>
</tr>
<tr>
<td>Procedural Mandates</td>
<td>39%</td>
<td>45%</td>
<td>16%</td>
</tr>
<tr>
<td>Policy Mandates</td>
<td>42%</td>
<td>47%</td>
<td>11%</td>
</tr>
<tr>
<td>Both Mandates</td>
<td>42%</td>
<td>49%</td>
<td>10%</td>
</tr>
</tbody>
</table>

In the previous chapter examining the variance in mandate length revealed that 61% of the explanatory power was likely to come from factors that vary across states and time (political arrangements in each state), 35% to come from factors that vary across states but not over time (institutional arrangements), and 4% of the explanatory power to come from factors that vary by time but not states (national factors). The mixed effects estimates in this chapter provide significantly different results.

Examining the direct measure of total control and when split into mandate type, we clearly see that the overall structure of explanatory power is relatively consistent across all mandate types. In particular, if I could identify all of the variables to account for 100% of the variance in mandate length across states, then I would expect between 39% and 42% of the explanatory power to come from variables that are not only unique to the individual state and are not constant over time such as partisanship, between 45% and 49% of the explanatory power to come from variables that are unique to the individual states but do not vary over time such as institutional arrangements, and
between 10% and 16% to come from factors not unique to individual states and do not vary over time such as the national economy.

These are interesting findings considering the results of the mixed effects model examining mandate length, but not the fact that nearly all of the explanatory power is derived from political and institutional factors. Although there are some similar aspects of the CHIP program across states, the flexibility legislators had in developing and implementing their own programs would justify the heightened influence of state-specific partisan and institutional factors. The procedures required of bureaucrats and the policies defined are based, for the most part, on state needs and preferences. I do suspect that some national factors such as the uncertainty surrounding CHIP reauthorization may affect decisions to engage in statutory control and the amount of control imposed in mandates, but for the most part, the decisions are going to be made by legislators within the state based on their specific programs.

Chapter Summary

The goal of this chapter was to assess whether sufficient variation existed in my second dependent variable, total control to justify moving forward to identify the causes of the differences. Although I found the direct measure of total control to be significantly similar to mandate length, I emphasized the true story that this dissertation is attempting to tell: that there is more to the level of discretion provided to bureaucrats than simply the amount of words in legislation. In fact, the value and benefit of the total control is based on the substantive content of legislation rather than simply relying on the amount of new words to determine the level of discretion. After elaborating on this contribution
and discussing the rationale for developing and coding mandate types, I proceeded to
replicate the examination of the variation in mandate length in chapter 5. Like mandate
type
length, I was able to observe differences not only in the use of different mandate types
and additional control mechanisms, but also in the total control imposed by legislators in
procedural, policy and both mandates within states, across states, between general
legislation and appropriations bills, and over legislative sessions. A mixed effects model
also provided additional information about which of my independent variables will likely
provide more explanatory power when examining the three mandates types empirically.

Based on the variation in this and the previous chapter, I believe that sufficient
evidence of differences exist across states, within states, and over time to move forward
to the empirical tests. More specifically, now that I know that sufficient variation exists in
both of my dependent variables, and the factors that make up total control, I am ready to
find out why these differences exist. Is it merely the political environment or the
institutional arrangements that are driving decisions by legislators to engage in statutory
control, or is there some interaction between the two as found by Huber & Shipan? Do
my results change depending on the dependent variable being tested? In particular, how
does mandate length compare to Huber & Shipan’s length of legislation? And, most
importantly for this study, how does separating my second dependent variable into
specific mandate types impact my findings? How does the political or institutional
environment influence the decision to use specific mandates or control mechanisms?
Each of these questions will be addressed in the next two empirical chapters.
Chapter 7:
Assessing the Causes of Mandate Length across States and Over Time

In the previous two chapters, we observed significant differences in mandate length and total control across states, within states, across legislative sessions imposed, and in both general legislation and appropriations bills. In this chapter, I begin the empirical analysis by assessing the causes of this variation in mandate length. Following a re-introduction of my conceptual model as well as the one used by Huber & Shipan, as well as the hypotheses and the expected results, I begin building a model of statutory control and test my hypotheses that relate to the impact of political and institutional arrangements on mandate length. In particular, I examine the direct and combined effects of the political environment, legislative capacity, and the legislative veto, as well as the impact of institutional control variables. Within this discussion, I address any comparisons or differences to the findings made by Huber & Shipan, and conclude the chapter by assessing the impact of alternative explanations for mandate length and thus the level of discretion provided to bureaucrats by legislators.

Conceptual Models Revisited

Table 7-1 provides a comparison of the conceptual model developed for this study and the one used by Huber & Shipan. In addition to the explanation of the individual measures, I also include the expected findings based on theoretical framework in the PA model. Table 7-2 displays the conceptual variables and corresponding hypothesis to be tested in the empirical models.
Table 7-1: Conceptual Models, Measurements, & Expectations

<table>
<thead>
<tr>
<th>Conceptual Variable</th>
<th>Huber &amp; Shipan Measurement &amp; Expectation</th>
<th>Goodman Measurement &amp; Expectation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policy Conflict</strong></td>
<td><strong>Dummy Variable</strong> (1 = divided government)</td>
<td>Same as Huber &amp; Shipan</td>
</tr>
<tr>
<td></td>
<td><strong>Expectation</strong> - Divided government will increase the likelihood of legislators engaging in statutory control (+)</td>
<td><strong>Expectation</strong> - same (+)</td>
</tr>
<tr>
<td><strong>Bargaining Environment</strong></td>
<td><strong>Dummy Variable</strong> (1 = divided government, given divided legislature)</td>
<td>Same as Huber &amp; Shipan</td>
</tr>
<tr>
<td></td>
<td><strong>Expectation</strong> - Given divided government, a unified legislature will increase the likelihood of legislators engaging in statutory control (+)</td>
<td><strong>Expectation</strong> - same (+)</td>
</tr>
<tr>
<td><strong>Legislative Capacity</strong></td>
<td><strong>Legislator compensation</strong> (salary of legislators)</td>
<td>Legislator Professionalism</td>
</tr>
<tr>
<td></td>
<td><strong>Expectation</strong> - the higher the compensation will increase the likelihood of engaging in statutory control (+)</td>
<td>(Squire 2007)</td>
</tr>
<tr>
<td><strong>Non-Statutory Control Mechanisms</strong></td>
<td><strong>Legislative Veto</strong> Dummy Variable (1 = existence)</td>
<td>Committee System Strength</td>
</tr>
<tr>
<td></td>
<td><strong>Expectation</strong> - The presence of a legislative veto, the less likely legislatures will engage in statutory control (-)</td>
<td>(Hamm, Hedlund &amp; Martorano 2007)</td>
</tr>
<tr>
<td></td>
<td><strong>Expectation</strong> - same (-)</td>
<td><strong>Expectation</strong> - same (+)</td>
</tr>
<tr>
<td><strong>Bureaucratic Autonomy</strong></td>
<td><strong>Salary of Administrative Heads</strong></td>
<td>Bureaucratic Autonomy Scale</td>
</tr>
<tr>
<td></td>
<td><strong>Expectation</strong> - the more autonomous bureaucrats are, the more likely legislators will engage in statutory control (+)</td>
<td>(ASAP Data)</td>
</tr>
<tr>
<td></td>
<td><strong>Expectation</strong> - same (+)</td>
<td><strong>Expectation</strong> - same (+)</td>
</tr>
<tr>
<td><strong>Executive – Legislative Relations</strong></td>
<td><strong>Gubernatorial Power</strong></td>
<td>Gubernatorial Power</td>
</tr>
<tr>
<td></td>
<td><strong>Expectation</strong> - the more power governors possess in the legislative arena, the more likely legislators will engage in statutory control (+)</td>
<td>(Gubernatorial Effectiveness Scale)</td>
</tr>
<tr>
<td></td>
<td><strong>Expectation</strong> - same (+)</td>
<td><strong>Expectation</strong> - same (+)</td>
</tr>
</tbody>
</table>
Table 7-2: Conceptual Variables & Corresponding Hypotheses

<table>
<thead>
<tr>
<th>Conceptual Variable</th>
<th>Hypothesis</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policy Conflict</strong></td>
<td>$H_1$ – State legislators within a divided government will be more likely to engage in statutory control of bureaucrats than state legislators within a unified government.</td>
</tr>
<tr>
<td><strong>Bargaining Environment</strong></td>
<td>$H_2$ - Given divided government, legislators in a unified legislature are more likely to engage in statutory control of bureaucrats than legislators in a divided legislature.</td>
</tr>
<tr>
<td><strong>Legislative Capacity</strong></td>
<td>$H_3$ – More professionalized state legislators will be more likely to engage in statutory control of bureaucrats than less professionalized state legislators.</td>
</tr>
<tr>
<td></td>
<td>$H_4$ – state legislators with strong committee systems will be more likely to engage in statutory control of bureaucrats than legislators with weaker committee systems.</td>
</tr>
<tr>
<td><strong>Non-Statutory Control Mechanisms</strong></td>
<td>$H_5$ – state legislators that possess extensive non-statutory control mechanisms are less likely to engage in statutory control of bureaucrats than state legislators that have less extensive non-statutory control mechanisms.</td>
</tr>
<tr>
<td>Legislative Veto</td>
<td></td>
</tr>
<tr>
<td><strong>Bureaucratic Autonomy</strong></td>
<td>$H_6$ – state legislators confronted by more autonomous bureaucrats are more likely to engage in statutory control than state legislators that are confronted by less autonomous bureaucrats.</td>
</tr>
<tr>
<td><strong>Gubernatorial Effectiveness</strong></td>
<td>$H_7$ – state legislators that face a highly effective governor are less likely to engage in statutory control of bureaucrats than those that face less effective governors.</td>
</tr>
</tbody>
</table>

Empirical Tests

Before we move to the empirical tests, it is important to address a few issues. First, I estimate the models using ordinary least squares (OLS) regression and a simple linear model. For these models I examine the sum of mandate lengths across all legislative sessions. I choose to examine the sum of mandate lengths because in order to assess whether legislators engage in statutory control, and to what extent, I must be able to observe changes in the amount of words pertaining to CHIP mandates across all sessions. Additionally, in order to make the results of my models more understandable
and interpretable, I divide the mandate length by 100000. Mandate length is measured in terms of hundred thousands of words.

Second, I present the estimates of my models using all states regardless of region. This is a deviation from Huber & Shipan’s models that report estimates for non-southern states only. The authors justify their decision based on scholarly research that considers southern Democrats as more conservative than Democrats elsewhere, and policy differences between the parties to be smaller in the south than elsewhere (Huber & Shipan 2002, p. 155). However, running my models with all states and then excluding the southern states, I obtain virtually the same results. Despite the potential differences between southern and non-southern Democrats, I suspect that the initial popularity of the CHIP program was not initially a divisive policy because of the popularity of assisting low-income children and the potential for federal matching funds. As discussed later in this chapter, the CHIP policy likely became more polarizing in later sessions when legislators sought policy expansions and the uncertainty over the reauthorization of the CHIP program caused legislators to be more cautious of spending funds they were not sure were going to be matched by the federal government. As a result, it is reasonable to expect that southern and non-southern Democrats would behave similarly, at least in initial sessions after CHIP adoption.

Third, there are four control variables tested in various empirical models. First, unlike in chapters 5 and 6 where I excluded California in order to better display the variation across states, the statutory control decisions in the state are included in the empirical models. As a result I employ a dummy variable for the significant amount of

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59 Huber & Shipan’s model with southern states does not confirm their hypotheses. States excluded include Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas.
legislation passed in the state since the amount of mandates enacted and the length of mandates imposed by California legislators are likely to skew the results of my analysis.

The second control variable is a measure of the amount of words pertaining to CHIP mandates enacted in the previous session. This measure enables me to obtain a clearer picture of the extent to which legislators engage in statutory control across legislative sessions. In other words, by controlling for mandate length in the previous session, I can prevent the overestimation of control decisions because of the amount of words enacted in one session combining with control decisions in the subsequent session.

The third and fourth controls are CHIP expenditures and CHIP program type. CHIP expenditures is an average per capita CHIP expenditures in each state in three separate years (1999, 2002, 2004) and controls for the differences in demand for children’s insurance across states. CHIP program type measures whether legislators adopt a Medicaid expansion program, a CHIP stand-alone program, or a combination, or hybrid, of the first two programs. As discussed previously, I control for CHIP program type because of the fact that legislators are likely to face different costs and demands depending on the type of program that they adopt. In particular, I posit that Medicaid expansions require less time, information, and resources to incorporate the CHIP program in the Medicaid framework since many of the rules and procedures are already in place and functioning. In stand-alone CHIP programs, legislators must start the program anew, establishing, developing, and implementing a completely separate program. Even if CHIP shares similar rules and procedures, legislators will have to incur the costs of dealing with

\[^{60}\text{CHIP type is coded “0” for Medicaid expansions, “1” for Hybrid and “2” for Stand Alone programs.}\]
two separate policy areas instead of one. I posit that Hybrid programs require fewer costs than stand-alone programs and more than Medicaid expansions.

It is important to mention here that although I control for CHIP expenditures and CHIP program types, I acknowledge that the choices made regarding these variables - how much to spend and what program to adopt – are done so by the legislators and are reflective of the capacity that they possess. In other words, the capacity of legislators dictates the choices that they make. It is not likely that legislators would choose to adopt a stand-alone CHIP program if they did not believe that they could endure the costs and demands the program required. It also makes little sense to allocate funds to and resources to their CHIP program that they know that they cannot afford. As a result, I consider CHIP expenditures and CHIP program types to be extensions of legislative capacity or the mechanisms by which capacity influences the length of CHIP mandates, rather than exogenous forces that influence mandate length independently.

Lastly, Table 7-3 displays the coding process adopted by Huber & Shipan to combine their measures for policy conflict and bargaining environment and thus test their combined impact on legislation length. Specifically, unified legislature takes the value of “1” when both legislative chambers are controlled by one party that does not control the executive branch (unified legislatures against the governor), and divided legislatures takes the value of “1” when one party controls the executive branch and one legislative chamber. The excluded category in Table 7-5 involves instances when both chambers and the governor share the same party (unified legislatures with the governor).
Building an Empirical Model of Statutory Control

In this section, I begin building an empirical model of statutory control to test my hypotheses regarding the impact of the political and institutional arrangements on mandate length. In order to address the shortcomings of previous research, expand upon the prevailing literature, and take a step closer to a more complete understanding of statutory control, I begin this process with a clean slate. More specifically, I first test a baseline model examining the impact of the political environment and subsequently add variables to assess the impact of the new measures on mandate length, as well as the changes to previous models because of the additions. The progression of empirical tests eventually leads me to the model used by Huber & Shipan and clearly shows that the factors that influence statutory control decisions in CHIP legislation are not as complicated as the authors suggest.

The Impact of the Political Environment and Legislative Capacity on Mandate Length

Table 7-4 displays the results of the empirical models testing the impact of partisanship and legislative capacity on mandate length. Column 1 reports the results of the baseline model examining the direct impact of the political environment on mandate
length. Based on my first two hypotheses, I expect legislators to pass longer, more detailed mandates when they possess an incentive to control and oversee bureaucrats (unified legislatures against the governor), but not where the costs of doing so are too high or the likelihood of policy enactment is in question (divided legislatures).

The results of column 1 confirm my expectation that legislators in unified legislatures against the governor not only engage in statutory control of bureaucrats, but they do so by significantly limiting discretion for bureaucrats across all six legislative sessions. At the same time, the measure of divided legislatures is not significant suggesting, at this point, that it has no impact on mandate length. However, this is a baseline model and it is not designed to provide a complete explanation of statutory control as evidenced by its low

**Table 7-4: Assessing the Impact of the Political Environment & Legislative Capacity on Mandate Length**

<table>
<thead>
<tr>
<th>Variable</th>
<th>1: Political Environment</th>
<th>2: Political Environment &amp; Committee System Strength</th>
<th>3: Political Environment &amp; Legislative Professionalism</th>
<th>4: Political Environment, Committee System Strength &amp; Legislative Professionalism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political Environment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unified Legis Against the Gov</td>
<td>70.23*** (9.35)</td>
<td>28.42*** (10.60)</td>
<td>10.68 (8.00)</td>
<td>15.95* (8.47)</td>
</tr>
<tr>
<td>Divided Legislature</td>
<td>8.06 (15.33)</td>
<td>-37.71** (15.63)</td>
<td>-77.47*** (12.70)</td>
<td>-74.13*** (12.77)</td>
</tr>
<tr>
<td>Legislative Capacity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committee System Strength</td>
<td></td>
<td>4.97*** (.741)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legislative Professionalism</td>
<td></td>
<td></td>
<td>255.45*** (17.91)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-30.39 (33.63)</td>
<td>-145.77 (35.31)</td>
<td>-101.73 (25.06)</td>
<td>-76.12 (28.61)</td>
</tr>
<tr>
<td>N</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
</tr>
<tr>
<td>Adjusted R²</td>
<td>.190</td>
<td>.319</td>
<td>.568</td>
<td>.572</td>
</tr>
</tbody>
</table>

\[**p < .1** \]
\[**p < .05** \]
\[***p < .01** \]
explanatory power (adjusted $R^2$). I suspect that the impact of divided legislatures will be different in subsequent models.

These results are even more interesting if we consider that Huber & Shipan find that partisanship only matters when legislators possess sufficient capacity to engage in statutory control (Huber & Shipan 2002). This is not what I find, particularly in regards to unified legislatures against the governor, where Huber & Shipan suggest legislators possess the most incentive to engage in control. In fact, these results suggest that the political environment has the ability to impact mandate length on its own.

In columns 2 through 4, I include my measure of committee system strength, legislative professionalism, and both measures jointly to the baseline model respectfully. It is important to reiterate here that I do not test Huber & Shipan's measure of legislative capacity, legislator compensation. I choose not to because I do not believe that compensation is sufficient on its own to encompass the level of capacity necessary to engage in statutory control. More specifically, I do not believe that the decision to engage in statutory control is based solely on individual motivations as explained by Huber & Shipan. Instead, I posit that it is a collective agreement on the part of legislators based on shared preferences or a shared desire to ensure the realization of their preferred outcomes. At the same time, other institutional factors exist in state legislatures, such as committee system strength and legislative professionalism that better represent the shared capacity of legislators and are thus more appropriate measures to use to assess their impact of capacity on mandate length. As a result, I test these measures instead of compensation.

In terms of the PA relationship between legislators and bureaucrats, I posit that legislators with stronger committee systems are better able to not only acquire and
disseminate the necessary information to develop and implement the CHIP program. This is primarily because of their ability to control legislation both in the committee and on the chamber floor, as well as their long standing relationships with bureaucrats. As a result, I expect legislators with stronger committee systems and the incentive to control bureaucrats to impose longer, more detailed mandates. Column 2 in Table 7-4 reveals supports these assumptions. The measure of committee system strength is significant (at the $p<.001$ level) and in the correct, positive direction. At the same time, the baseline model maintains the significance of unified legislatures against the governor and divided legislatures even with the inclusion of committee system strength.

For legislative professionalism, the PA model posits that legislators that spend more time in session, have larger staffs and legislative resources, as well as receive higher salaries, are better able to alleviate information asymmetries and incur the costs of engaging in statutory control. In particular, legislators that spend more time in session have more time to research, gather, and disseminate information regarding the development and implementation of the CHIP policy, and have more time and resources (e.g. staff, facilities) to engage in the bargaining process and ultimately write longer, more detailed mandates. As a result, I expect to see more professionalized legislators with an incentive to control and oversee bureaucrats write longer, more detailed CHIP mandates. Column 3 in Table 7-4 reveals that this is, in fact, the case. Not only is legislative professionalism significant (at the $p<.001$ level), but it is also in the correct, positive direction. The inclusion of the professionalism, however, does cause unified legislatures against the governor to lose its significance despite improving the
explanatory power of the model (adjusted $R^2$) from .319 with committee system strength to .568. The significance of divided legislatures however, remains significant.

Including both committee system strength and legislative professionalism in the same model in column 4 reveals that both committee system strength and legislative professionalism are significant (at $p<.1$ and $p<.001$ level respectfully). Committee system strength however, is in the wrong, negative direction despite slightly improving the explanatory power of the model (from .568 to .571). This result is expected, however, not just because of the degree of impact in the empirical results, but because legislative professionalism, as a measure of legislative capacity, encompasses more aspects of the legislature that reflect their capabilities. In either event, Table 7-4 reveals that while the political environments are consistent with my theoretical expectations, both of my legislative capacity measures display significant individual direct effect on mandate length. More specifically, the effect of capacity is not contingent upon the political environment as found by Huber & Shipan.

*The Impact of the Legislative Veto on Mandate Length*

Having established the direct, individual impact of committee system strength and legislative professionalism on mandate length, I continue building my model of statutory control by adding a measure of power of the legislative veto that exists across states. As discussed above, the legislative veto enables legislators to control bureaucratic behavior outside of the legislative process and in an on-going process, thus enabling them to diminish the incentive to write longer, more detailed mandates as a means of controlling bureaucrats.
In this study, I test an index of legislative veto powers based on the premise that veto power is not black or white. In fact, unlike the prevailing research that examines a dummy variable for the presence of a veto and posits that it is effective only in unified legislatures against the governor, I believe that the differences in veto powers across states (advisory vs. veto, number of veto players, etc.), make some vetoes effective regardless of the political environment. For example, a veto in divided legislatures that requires legislators to convince a single committee in one chamber to veto or alter agency rules and regulations is much more effective in shaping bureaucratic behavior than a veto in a divided legislature that provides legislators with only an advisory power or which requires them to convince both chambers to override a veto. The bargaining environment in the first example is more favorable to legislators looking to control bureaucrats even in divided legislatures. At the same time, legislators with these veto powers are able to alleviate the costs associated with exercising their veto and ensuring sure that their decision is not overridden. Based on these examples, I expect legislators with more powerful vetoes to write shorter, less detailed mandates, than legislators that possess no veto power or weaker vetoes.

Table 7-5 displays the results of including the index of the veto powers into a model with committee system strength and legislative professionalism. Table 7-5 reveals that, like committee system strength and legislative professionalism, the legislative veto has is influential in determining mandate length. More specifically, column 1 in Table 7-5 reveals that the legislative veto possesses a direct effect on mandate length as evidenced by its significance (at the \( p < .01 \) level). The effect is also in the correct, negative direction confirming that the legislative veto diminishes the incentive for legislators to engage in
control. The direct effect of the veto, however, also results in divided legislatures losing its impact on mandate length.

Table 7-5: Assessing the Impact of the Legislative Veto on Mandate Length

<table>
<thead>
<tr>
<th>Variable</th>
<th>1 Legislative Veto</th>
<th>2 Committee System Strength &amp; Legislative Veto</th>
<th>3 Legislative Professionalism &amp; Legislative Veto</th>
<th>4 Committee System Strength, Legislative Professionalism &amp; Legislative Veto</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political Environment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unified Legis Against the Gov</td>
<td>83.89*** (10.27)</td>
<td>42.56*** (10.94)</td>
<td>21.92** (8.65)</td>
<td>24.96*** (8.93)</td>
</tr>
<tr>
<td>Divided Legislature</td>
<td>13.44 (15.18)</td>
<td>-33.38* (15.22)</td>
<td>-72.12*** (12.59)</td>
<td>-70.06*** (12.66)</td>
</tr>
<tr>
<td>Legislative Capacity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committee System Strength</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legislative Professionalism</td>
<td>-5.59*** (1.86)</td>
<td>-6.51*** (1.69)</td>
<td>251.65*** (17.63)</td>
<td>-1.08 (0.80)</td>
</tr>
<tr>
<td>Legislative Veto</td>
<td></td>
<td></td>
<td></td>
<td>274.38*** (24.38)</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.60 (34.44)</td>
<td>-117.10 (35.10)</td>
<td>-78.85 (25.68)</td>
<td>-61.67 (28.63)</td>
</tr>
<tr>
<td>N</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
</tr>
<tr>
<td>Adjusted R²</td>
<td>217</td>
<td>.358</td>
<td>.584</td>
<td>.584</td>
</tr>
</tbody>
</table>

* p < .1  
** p<.05  
*** p<.01

When I include the veto in a model with my measures of capacity, it maintains its significance and as do my measures of capacity. More specifically, in column 2, committee system strength and veto are significant (both at p<.001 level) in the correct direction and in column 3, the same is true for legislative professionalism and the veto (at p<.001 and p<.01 levels respectfully). Column 3 reveals that both political measures are significant with legislative professionalism. When I include both measures of capacity in the model in column 4, legislative professionalism and legislative veto are significant and
in the correct direction, as are the measures for political environment. However, committee system strength loses its significance when professionalism is included in the model. The results of Table 7-5 reveal both a direct effect of the legislative veto as well as a consistent impact on mandate length even when included in models with my measures of legislative capacity individually and jointly.

The Impact of Institutional Controls on Mandate Length

In this section, I test the impact of my institutional control variables on mandate length in order to assess whether statutory control is a function of the amount of expenditures dedicated to CHIP, the type of CHIP program, or the previous session's mandate length. Table 7-6 displays the results of the models. Column 1 in Table 7-6 displays the results of the impact of CHIP expenditures on mandate length. I posit that the amount of statutory control in legislation may be a function of the amount of money legislators dedicate to the CHIP program. In other words, legislators that dedicate more money to their program are more likely to engage in writing more detailed mandates in order to direct, clarify, or restrict the use of CHIP expenditures. States that allocate fewer funds to their programs are likely to have fewer issues to address.

The results of column 1 provide support for my expectations. CHIP expenditures impacts mandate length in a manner consistent with the PA theory. Not only do legislators impose longer, more detailed mandates in unified legislatures against the governor, but divided legislatures is also significant and in the correct, negative direction. This result suggests that despite the incentive to engage in control, the costs associated
with the executive and both chambers controlled by different parties, and the uncertainty over the enactment, cause legislators to refrain from engaging in statutory control.

Table 7-6: Assessing the Impact of Institutional Controls on Mandate Length

<table>
<thead>
<tr>
<th>Variable</th>
<th>1 CHIP Expends</th>
<th>2 CHIP Type</th>
<th>3 CHIP Expends &amp; CHIP Type</th>
<th>4 Previous Session Length</th>
<th>5 Previous Session Length &amp; CHIP Expends</th>
<th>6 All Controls</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political Environment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unified Legis Against Gov</td>
<td>26.79***</td>
<td>44.86***</td>
<td>18.76**</td>
<td>52.85***</td>
<td>27.04***</td>
<td>18.71**</td>
</tr>
<tr>
<td></td>
<td>(6.86)</td>
<td>(10.87)</td>
<td>(7.75)</td>
<td>(8.21)</td>
<td>(6.88)</td>
<td>(7.92)</td>
</tr>
<tr>
<td>Divided Legislature</td>
<td>-48.36***</td>
<td>-23.08**</td>
<td>-58.13***</td>
<td>-7.22</td>
<td>-47.48***</td>
<td>-58.21***</td>
</tr>
<tr>
<td></td>
<td>(10.94)</td>
<td>(16.57)</td>
<td>(11.75)</td>
<td>(13.20)</td>
<td>(11.04)</td>
<td>(12.12)</td>
</tr>
<tr>
<td>Institutional Controls</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Previous Session Mandate Length</td>
<td>.210***</td>
<td>.203***</td>
<td>.092***</td>
<td>.006</td>
<td>-.0003</td>
<td>-.0003</td>
</tr>
<tr>
<td>CHIP Expenditures</td>
<td>(.012)</td>
<td>(.012)</td>
<td>(.009)</td>
<td>(.001)</td>
<td>(.001)</td>
<td>(.001)</td>
</tr>
<tr>
<td>CHIP Type</td>
<td>23.02***</td>
<td>8.53**</td>
<td>-45.26</td>
<td>-64.94</td>
<td>-53.51</td>
<td>-46.42</td>
</tr>
<tr>
<td></td>
<td>(5.48)</td>
<td>(3.92)</td>
<td>(22.82)</td>
<td>(24.38)</td>
<td>(28.84)</td>
<td>(22.92)</td>
</tr>
<tr>
<td>Constant</td>
<td>-84.73</td>
<td>-64.94</td>
<td>-53.51</td>
<td>-46.42</td>
<td>-64.96</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(34.97)</td>
<td>(24.38)</td>
<td>(28.84)</td>
<td>(22.92)</td>
<td>(24.45)</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
</tr>
<tr>
<td>Adjusted R^2</td>
<td>.244</td>
<td>.634</td>
<td>.410</td>
<td>.630</td>
<td>.635</td>
<td></td>
</tr>
</tbody>
</table>

In column 2, I assess the impact of the type of CHIP program adopted by legislators. As discussed previously, the type of CHIP program represents different costs and demands on legislators. Medicaid expansions are already established programs with much of the infrastructure, rules, and procedures already in place. As a result, legislators will not possess the same need to engage in statutory control as the other programs to incorporate the CHIP specifics into the existing program. A hybrid program with an existing Medicaid element represents slightly more costs for legislators since they will
likely have to develop and implement a CHIP portion of the program, while a *CHIP* stand-alone program is developed anew and represents significant costs because of establishing new policy parameters and procedures. As a result, I expect to see higher, positive coefficients suggesting that legislators are imposing longer, more detailed mandates in *hybrid* and *stand-alone* *CHIP programs*. The results in column 2 support this assumption. Not only is *CHIP type* significant (at $p<.001$ level), but it has a large, positive coefficient confirming my expectations.

These findings are further bolstered when I combine *CHIP expenditures* and *CHIP program type* in column 3. In addition to the significance of *unified legislatures against the governor* and *divided legislatures* (at the $p<.05$ and $p<.001$ levels respectfully), *CHIP expenditures* remain significant and positive, and *CHIP type* is significant and in the correct positive direction. Even more important is the fact that these results are true for legislators in both *unified legislatures against the governor* and *divided legislatures*.

In this study, I posit that the level of discretion given to bureaucrats may be a function of the amount of statutory control imposed by legislators in the previous session. In particular, it is less likely that legislators that engage in writing longer, more detailed mandates in one session will have less need to impose longer, more detailed mandate in the next session since it is likely that they have already articulated the necessary CHIP policy intent and procedural instructions. At the same time, if the statutory control is intended to control and oversee bureaucrats, then it is also likely that legislators will provide bureaucrats with sufficient time to act as well as assess whether bureaucrats are behaving in a manner that is consistent with their intent. All of these factors diminish the
need and incentive to engage in statutory control in the following session. Without controlling for the mandate length in the previous session, we also run the risk of erroneously attributing the impact on mandate length to other factors such as legislative capacity or the political environment when it may simply be a matter of need or timing.

Column 4 does not support these assumptions. In fact, the results suggest that legislators impose longer, more detailed mandates following a session in which they enacted longer, more detailed mandates. The fact that the coefficient for previous session’s mandate length is fairly small suggests that the increase in mandate length is not substantial, but it is an increase nonetheless. Interestingly, the impact of the previous mandate length is not as significant at CHIP expenditures or the combination of CHIP expenditures and CHIP type. In fact, when I include CHIP expenditures with previous mandate length in column 5, previous mandate length is no longer influential and, once again, CHIP expenditures is significant as are both unified legislatures against the governor and divided legislatures and in the correct direction.

Taking the analysis an additional step, including CHIP type in a model with both CHIP expenditures and the previous mandate length provides similar results. The previous session’s mandate length is significant while CHIP expenditures, CHIP Type, and both unified legislatures against the governor and divided legislatures are significant and in the correct directions. These results and the fairly high correlation between previous session length and CHIP expenditures (.677), clearly suggest that much of the explanatory power of the previous session’s mandate length is captured by the CHIP expenditures. As a result, I exclude previous session’s mandate length from future models and focus exclusively on the impact of CHIP expenditures and program type.
Now that I have established the direct impact of CHIP expenditures and CHIP program type, I include the measures in a model with legislative professionalism, committee system strength, and legislative veto. Table 7-7 displays the results of these models and provides some interesting results. On the one hand, all of the political environment measures and institutional control mechanisms are consistent and completely robust across all specifications and in a manner that is consistent with the theoretical expectations. On the other hand, while both of my capacity measures lose their significance when included in a model with CHIP expenditures alone. When combined with CHIP program however, the two institutional control variables

*Table 7-7: Assessing the Impact of Legislative Capacity & Institutional Controls on Mandate Length*

<table>
<thead>
<tr>
<th>Variable</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Committee Strength &amp; CHIP Expenditures</td>
<td>Committee Strength &amp; CHIP Type</td>
<td>Committee Strength &amp; CHIP Expenditures &amp; Type</td>
<td>Legislative Professionalism &amp; CHIP Expenditures</td>
<td>Legislative Professionalism &amp; CHIP Type</td>
<td>Legislative Professionalism &amp; CHIP Expenditures &amp; CHIP Type</td>
</tr>
<tr>
<td><strong>Political Environment</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unified Legis Against Gov</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Divided Legislature</td>
<td>-46.82*** (11.68)</td>
<td>-49.34*** (15.24)</td>
<td>-56.24*** (11.81)</td>
<td>-45.76*** (13.02)</td>
<td>-77.34*** (12.86)</td>
<td>-50.89*** (12.87)</td>
</tr>
<tr>
<td><strong>Legislative Capacity</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committee System Strength</td>
<td>-3.27*** (.841)</td>
<td>-1.28* (.747)</td>
<td>-21.41 (56.10)</td>
<td>232.17*** (20.62)</td>
<td>-92.76* (59.45)</td>
<td>-2.15 (1.72)</td>
</tr>
<tr>
<td>Legislative Professionalism</td>
<td>-1.095*** (1.97)</td>
<td>-2.89* (1.65)</td>
<td>-2.73 (1.57)</td>
<td>-.604*** (1.69)</td>
<td>-2.15 (1.72)</td>
<td>-2.15 (1.72)</td>
</tr>
<tr>
<td>Legislative Veto</td>
<td>3.27*** (.841)</td>
<td>-1.28* (.747)</td>
<td>-21.41 (56.10)</td>
<td>232.17*** (20.62)</td>
<td>-92.76* (59.45)</td>
<td>-2.15 (1.72)</td>
</tr>
<tr>
<td><strong>Institutional Controls</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CHIP Expenditures</td>
<td>.214*** (.016)</td>
<td>.206*** (.001)</td>
<td>.226*** (.044)</td>
<td>9.95* (5.54)</td>
<td>16.86*** (5.32)</td>
<td>209</td>
</tr>
<tr>
<td>CHIP Type</td>
<td>27.91*** (6.84)</td>
<td>17.40** (5.36)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Constant</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
</tr>
<tr>
<td>Adjusted R²</td>
<td>.625</td>
<td>.399</td>
<td>.640</td>
<td>.625</td>
<td>.588</td>
<td>.639</td>
</tr>
</tbody>
</table>

* p < .1
** p < .05
*** p < .01
cause committee system strength and professionalism to have a negative effect, which is inconsistent with my theory. These results suggest that despite the direct effect of my capacity measures, when combined with CHIP expenditures and CHIP program type, the institutional controls are the factors that influence mandate length.

Given the discussion above regarding the relationship between capacity and CHIP expenditures and CHIP program type, these results make sense. In fact, the decision to engage in statutory control is more than a story about the impact of capacity on mandate length. Although capacity has its own effect, the real story is about the mechanisms by which capacity is influential. In other words, it is about how legislators choose to manage their CHIP programs; how much money they allocate and the type of program they adopt. Legislators are aware, ex ante, of what they are capable of and as a result will choose to allocate an amount of funds or choose a program that reflects this capacity.

*Interactive Effects on Mandate Length*

At this point in the analysis I have better idea about the direct effect my political and institutional arrangements have on mandate length. Both of my measures of legislative capacity and legislative veto impact mandate length directly and behave in a manner that is consistent with my theoretical expectations. At the same time, it is apparent that my institutional control variables are driving statutory control decisions. In this section, however, I address whether there exist interactive effects between these variables. In other words, despite a direct impact, does their impact on mandate length change depending on the political environment?
This is an important section because it takes me another step to building a more complete model of statutory control, but it also enables me to test some of the results found by Huber & Shipan. Although the direct impact of my capacity measures on mandate length contradicts the Huber & Shipan's findings that a threshold of capacity is necessary to engage in statutory control, I have not included an interaction term for the combined impact of unified legislatures against the governor and capacity. Huber & Shipan find that this interaction leads legislators to enact longer, more detailed legislation than they would generally. At the same time, Huber & Shipan posit that the legislative veto will only be effective in unified legislatures against the governor. To test these hypotheses, I include interactions for the combined impact of unified legislatures against the governor with committee strength, legislative professionalism, and veto in Table 7-8.

Table 7-8 reveals that there does not appear to be a lot of empirical support for the combined impact of unified legislatures against the governor and my capacity measures, especially after the robust findings of the direct measures of capacity. In column 1 in Table 7-8 the interaction with committee system strength is significant and in the correct direction, but the political measures are insignificant and in the incorrect directions, and thus are inconsistent with the theory. The results of column 2 are similar in that the interaction with committee system strength is significant, as are the political measures, but unified legislatures against the governor is in the incorrect, negative direction as is the direct measure of committee system strength. I find similar results using legislative professionalism. Based on these results, I am less inclined to believe that the interaction variable belongs in the model. It does not provide any additional explanatory variable and
Table 7-8: Testing the Combined Impact of Political & Institutional Environments on Mandate Length

<table>
<thead>
<tr>
<th>Variable</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Unified X Committee System Strength</td>
<td>Unified X Committee System Strength w/ Comm System Strength</td>
<td>Unified X Legislative Profess</td>
<td>Unified X Legislative Profess w/ Legis Profess</td>
<td>Unified X Legis Veto</td>
<td>Unified X Legis Veto w/ Legis Profess</td>
</tr>
<tr>
<td>Political Environment</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Unified Legis Against Gov</td>
<td>-17.41 (30.23)</td>
<td>-4387.01* (2590.71)</td>
<td>-5592.48**** (1211.27)</td>
<td>-4571.07*** (1297.04)</td>
<td>10854.85**** (1137.44)</td>
<td>3724.75**** (976.22)</td>
</tr>
<tr>
<td>Divided Legislature</td>
<td>7.29 (15.07)</td>
<td>-5698.71**** (1163.26)</td>
<td>127.05 (1172.21)</td>
<td>-4956.55*** (1179.00)</td>
<td>748.75 (1449.52)</td>
<td>-5193.38**** (1277.61)</td>
</tr>
<tr>
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<tr>
<td>Committee System Strength</td>
<td></td>
<td>-2.45*** (.842)</td>
<td>7.84*** (2.57)</td>
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<tr>
<td>Unified Legis Against Gov</td>
<td></td>
<td>6.25*** (2.19)</td>
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<tr>
<td>X Comm System Strength</td>
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</tr>
<tr>
<td>Legislative Professionalism</td>
<td></td>
<td></td>
<td></td>
<td>454.73*** (35.25)</td>
<td>278.08*** (41.52)</td>
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</tr>
<tr>
<td>Unified Legis Against Gov</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>-61.47 (54.62)</td>
<td>-89.82 (38.96)</td>
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<td></td>
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<tr>
<td>Legislative Veto</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Unified Legis Against Gov</td>
<td>-2.22 (1.64)</td>
<td></td>
<td></td>
<td>-13.23*** (2.47)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>X Legislative Veto</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Institutional Controls</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CHIP Expenditures</td>
<td>.207*** (.001)</td>
<td>.2461*** (5.85)</td>
<td>.148*** (.004)</td>
<td>.2752*** (5.12)</td>
<td>.249*** (.004)</td>
<td>.1583*** (5.29)</td>
</tr>
<tr>
<td>CHIP Type</td>
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<td></td>
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</tr>
<tr>
<td>Constant</td>
<td>-30.27 (33.05)</td>
<td>-34.71 (26.65)</td>
<td>-11.84 (25.88)</td>
<td>-46.11 (23.03)</td>
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<td>N</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
</tr>
<tr>
<td>Adjusted R²</td>
<td>.218</td>
<td>.651</td>
<td>.528</td>
<td>.697</td>
<td>.277</td>
<td>.645</td>
</tr>
</tbody>
</table>

* p < .1
** p < .05
*** p < .01

Many of the main explanatory variables lose their impact. Regardless, the inclusion or exclusion of the interaction does not change the fact that the models are influenced most by the level of CHIP expenditures in the state and the type of CHIP program.
The interactions with the *legislative veto*, on the other hand, appear to work well in the models, both as a direct effect and with *professionalism*. The political environment measures are consistent with the theory and the *veto* is significant when the controls are included. The veto interaction also improves the explanatory power from .639 in Table 7-7 to .645 in Table 7-8.

*Testing Huber & Shipan's Baseline Model*

The last empirical model I test in this section is the one used by Huber & Shipan in their analysis of MMC legislation following the 1995-1996 legislative session. In particular, in addition to the combined political measures for *unified legislatures against the governor* and *divided legislatures*, their baseline model includes interaction variables between *unified legislatures against the governor* and *legislative capacity*, *divided legislatures* and *committee system strength* as well as *unified legislatures against the governor* and the *legislative veto*. The model also includes controls for Medicaid expenditures (which I replace with CHIP expenditures) and a dummy variable for California. I also test their model using *CHIP expenditures* and *CHIP program type* for a comparison. Table 7-9 provides the results.

Column 1 displays Huber & Shipan's baseline model and reveals that, although their coefficients are in the correct directions, all of their variables are insignificant except for *CHIP expenditures* and *CA dummy*. The results in column 2 are similar except for the significance of the *veto* interaction. Both models however, are influenced by *CHIP expenditures* and in column 2, also by *CHIP program type*.
Table 7-9: Testing Huber & Shipan's Baseline Model Using Mandate Length

<table>
<thead>
<tr>
<th>Variable</th>
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<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Huber &amp; Shipan</td>
<td>Goodman</td>
</tr>
<tr>
<td></td>
<td>Baseline Model</td>
<td>Replication</td>
</tr>
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<td>Political Environment</td>
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<tr>
<td>Unified Legis Against the Gov</td>
<td>32.36 (25.89)</td>
<td>6.24 (26.47)</td>
</tr>
<tr>
<td>Divided Legislature</td>
<td>-12.84 (42.90)</td>
<td>-52.27 (42.42)</td>
</tr>
<tr>
<td>Legislative Capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unified Against Gov X Comm Strength</td>
<td>.262 (1.97)</td>
<td>2.22 (2.00)</td>
</tr>
<tr>
<td>Divided Legislatures X Comm Strength</td>
<td>-1.13 (3.40)</td>
<td>-.745 (3.35)</td>
</tr>
<tr>
<td>Legislative Veto</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unified Against Gov X Veto</td>
<td>-2.30 (2.06)</td>
<td>-5.11* (2.14)</td>
</tr>
<tr>
<td>Controls</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CHIP Expenditures</td>
<td>.126** (.003)</td>
<td>.181*** (.001)</td>
</tr>
<tr>
<td>CA Dummy</td>
<td>61.82* (30.02)</td>
<td></td>
</tr>
<tr>
<td>CHIP Type</td>
<td></td>
<td>14.82*** (4.44)</td>
</tr>
<tr>
<td>Constant</td>
<td>-33.96 (23.20)</td>
<td>-77.30 (24.46)</td>
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<td>N</td>
<td>234</td>
<td>234</td>
</tr>
<tr>
<td>Adjusted R²</td>
<td>.632</td>
<td>.643</td>
</tr>
<tr>
<td>Legend</td>
<td>* p &lt; .1</td>
<td>*** p &lt; .001</td>
</tr>
<tr>
<td></td>
<td>** p &lt; .05</td>
<td></td>
</tr>
</tbody>
</table>

The results of the replication, however, are less surprising if we consider the progression of the model building in this chapter. Not only have I found that the political environment has a consistent and robust direct effect on mandate length, but I have also found a direct effects for committee system strength, as well as the direct legislative veto and its interaction term. In each of these cases, the impact is lost when we control for CHIP expenditures and program type. The amount of money legislators dedicate to CHIP clearly creates a necessity to engage in statutory control and direct, clarify, and constrain the allocation of funds. At the same time, stand-alone CHIP programs require more
mandates to acquire information and expertise, but also to set up and implement the program. Additionally, the interaction between the veto and unified legislatures against the governor further diminish the incentive to engage in statutory control, while the interaction with committee system strength provided no new explanatory power, was insignificant in some cases, and lost its impact because of CHIP expenditures and program type. As a result, I am not surprised by the results given the inclusion of these interactions, the exclusion of the direct institutional measures, and the consistent impact of CHIP expenditures.

Alternative Explanations for Mandate Length

In the last section of this chapter, I explore the possibility that other factors may be influencing statutory control decisions. In particular, I examine whether mandate length is a function of the ability of bureaucrats to withstand legislative directives and influence policy (bureaucratic autonomy), the competing power of the governor (gubernatorial effectiveness), or a function of the electoral competition in the state. Table 7-10 provides the results of testing these factors using the model of statutory control developed in this chapter.

Bureaucratic Autonomy

Using the ASAP data (see Wright & Bowling 2004) which provides survey responses from state health administrators across all states over 20 years regarding the impact of the governor and legislators on agency budgets and general agency responsibilities, I develop an autonomy score for each state bureaucracy and assess its
impact on control decisions. I posit that more autonomous bureaucrats have the ability to withstand legislative directives as well as influence policy development and implementation. These factors increase the incentive for legislators to control their behavior and ensure their preferred outcomes. As a result, I expect to see a positive coefficient for bureaucratic autonomy signifying that legislators impose more words in mandates to control bureaucrats.

**Table 7-10: Assessing the Impact of Alternative Explanations on Mandate Length**

<table>
<thead>
<tr>
<th>Variable</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Bureaucratic Autonomy</td>
<td>Bureaucratic Autonomy w/ CHIP Expend &amp; CHIP Type</td>
<td>Gubernatorial Effectiveness</td>
<td>Gubernatorial Effectiveness w/ CHIP Expend &amp; CHIP Type</td>
<td>State Competition</td>
<td>State Competition w/ CHIP Expend &amp; CHIP Type</td>
</tr>
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<td><strong>Political Environment</strong></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Unified Legis Against Gov</td>
<td>17.39 (11.19)</td>
<td>34.44*** (10.77)</td>
<td>31.41*** (11.93)</td>
<td>44.70*** (10.83)</td>
<td>14.68 (10.89)</td>
<td>39.53*** (10.24)</td>
</tr>
<tr>
<td>Divided Legislature</td>
<td>-42.47*** (15.54)</td>
<td>-54.46*** (11.69)</td>
<td>-31.40* (16.70)</td>
<td>-55.24*** (11.75)</td>
<td>-49.50*** (15.45)</td>
<td>-57.02*** (11.70)</td>
</tr>
<tr>
<td><strong>Legislative Capacity</strong></td>
<td></td>
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</tr>
<tr>
<td>Committee System Strength</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Bureaucratic Autonomy</td>
<td>28.30*** (3.92)</td>
<td>-3.01*** (1.15)</td>
<td>15.61* (9.43)</td>
<td>-4.66 (5.10)</td>
<td>1.69*** (.215)</td>
<td>.271 (.354)</td>
</tr>
<tr>
<td>Gubernatorial Effectiveness</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>State Competition</td>
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<td></td>
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<tr>
<td><strong>Legislative Veto</strong></td>
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<tr>
<td>Unified Against Gov X Veto</td>
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<tr>
<td>.371 (2.39)</td>
<td>1.25 (2.33)</td>
<td>-7.89*** (2.97)</td>
<td>1.00 (2.37)</td>
<td>-7.25** (2.94)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-5.82* (3.07)</td>
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<tr>
<td><strong>Institutional Controls</strong></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>CHIP Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CHIP Type</td>
<td>.198*** (.001)</td>
<td>.198*** (.001)</td>
<td>20.33*** (6.37)</td>
<td>.195*** (6.36)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.34 (8.38)</td>
<td>148.94 (34.03)</td>
<td>234 (234)</td>
<td>234 (234)</td>
<td>234 (234)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-178.74 (36.73)</td>
<td>-148.94 (40.18)</td>
<td>-44.68 (29.27)</td>
<td>-158.94 (34.03)</td>
<td>-58.59 (27.67)</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
<td>234</td>
</tr>
<tr>
<td>Adjusted R²</td>
<td>.337</td>
<td>.651</td>
<td>.263</td>
<td>.648</td>
<td>.360</td>
<td>.647</td>
</tr>
</tbody>
</table>

*p < .1  
**p < .05  
***p < .01
Column 1 in Table 7-10 reveals that this is the case for the direct measure of bureaucratic autonomy. In fact, one unit increases in bureaucratic autonomy results in a significant increase in the number of words pertaining to CHIP mandates across all six legislative sessions. The inclusion of bureaucratic autonomy also affects the significance of unified legislatures against the governor. When we include bureaucratic autonomy into the model of statutory control in column 2 of Table 7-10, it is significant but in the wrong direction. CHIP expenditures however, remains significant and appears to be affecting the influence of bureaucratic autonomy.

**Gubernatorial Effectiveness**

Like bureaucrats, governors have the potential to raise the costs for legislators to engage in statutory control because of their ability to significantly alter or veto legislation, and thus raise the uncertainty over legislators achieving their preferred outcomes. Using a measure of gubernatorial effectiveness developed for this study based on the power of appointment, budget, and veto, in addition to tenure potential, I provide a score for each governor based on, ranging from “1” (weak) to “5” (strong). I do not expect legislators to incur the costs of writing detailed mandates when confronted with stronger governors who can significantly influence legislation.

Like bureaucratic autonomy, column 3 of Table 7-10 reveals that legislators impose longer, more detailed mandates when confronted by a more powerful governor. However, this impact is lost when we control for CHIP expenditures and CHIP program type. In fact, the results of my model remain consistent despite controlling for
gubernatorial effectiveness; CHIP expenditures and CHIP program type remain significant while the direct measure for committee system strength is insignificant.

State Competition

I posit that states with more competitive electoral districts increase the incentives of legislators to engage in statutory control. In particular, I expect legislators in competitive districts to impose longer, more detailed mandates in order to protect their preferences as well as lock in their preferred policy outcomes in the event that they lose control of the chamber. Using state district level competition scores developed by Holbrook & Van Dunk (1993), I provide a score of competitiveness for each state and test whether legislators that are uncertain about whether their party will maintain control incur the costs of writing longer, more detailed mandates. Like the two previous explanations, state competition is influential on its own but when included with the other variables its influence is lost without significantly changing my results. At the same time, CHIP expenditures and CHIP program type remain significant and influential.

Chapter Summary

The results of my empirical tests assessing the causes of the variation in mandate length provide considerable support for my theory. First, the effects of my measures of the political environment consistent and robust across most model specifications, the results are consistent with the PA model and the expectations of this study. When confronted with an executive with divergent policy preferences (e.g. unified legislatures against the governor) legislators engage in writing longer, more detailed mandates and
thus attempt to control and oversee bureaucratic behavior. When confronted with another chamber and an executive with divergent preferences, legislators pass less detailed CHIP mandates or simply do not engage in statutory control. The costs are simply too high and the likelihood of passage too uncertain.

Second, although my measures of legislative capacity have a direct affect on the level of discretion provided to bureaucrats, their significance rest with the mechanisms by which capacity is influential. More specifically, committee system strength and legislative professionalism are influential because of the level of expenditures dedicated to the CHIP program and the type of CHIP program adopted by the legislature. Legislators that dedicate more expenditures to CHIP and are confronted by more demands as a result of adopting a hybrid or stand-alone CHIP program, write more detailed mandates in order to manage their programs. However, only those legislatures that possess the capacity to undertake more demanding programs or dedicate more funds and resources do so.

Lastly, the results of this chapter allow me to confirm Huber & Shipan’s finding regarding the legislative veto. In particular, confronted with a governor with divergent policy preferences (e.g. unified legislatures against the governor), legislators that possess a veto enact shorter, less detailed mandates because the veto controls bureaucratic behavior outside of the legislative process and thus diminishes the incentive to control bureaucrats through statutory control. However, using my index of veto powers I am able to confirm that legislators with stronger veto powers are able to diminish the incentive to engage in statutory control.

Although the analysis revealed in this chapter brings us a step closer to a better understanding of statutory control, the analysis is not over. The results of this chapter are
based on the impact of the political and institutional arrangements on mandate length, a measure of words in mandates that allows us to speculate about statutory control strategies. The measures does not tell us anything about what aspects of the policy are most important to legislators, what costs they are willing to incur to control bureaucrats, and how they go about achieving these goals. My measure of total control in CHIP mandates, however, provides a mechanism in which to obtain this information and allow us to take yet another step to an even greater understanding of statutory control decisions. This is the focus of the last empirical chapter.
Chapter 8:

Assessing the Causes of the Total Control in Mandates across States and Over Time

In this chapter, I continue the empirical analysis by focusing on the causes of the variation in my second dependent variable, total control. Although I developed total control as an alternative to speculating about the level of discretion and legislative intent based on the amount of words in legislation, its true contribution lies in the added information and understanding about statutory control and legislative strategies that make up the variable. In particular, the procedural, policy, and both mandates that make up total control are based on the substantive content in mandates and enable me to observe how legislators limit discretion, to determine which aspects of the policy are important to legislators as well as what costs they are willing to incur in order to control bureaucrats. This knowledge of legislative policy foresight and the strategies that they employ provide me with a much more complete understanding of statutory control of bureaucrats.

I begin the chapter by testing the model of statutory control developed in chapter 7 using total control. In particular, I assess the impact of the political and institutional variables on the sum of the amount of procedural, policy, and both control imposed in all mandates across all legislative sessions. This analysis will allow me to compare total control and mandate length, as well as acquire important information that I can use to examine the causes of the variation in the amount of control in procedural, policy, and both mandates. Following this analysis, I delve deeper into the individual mandates that make up total control by observing the impact of changes to the political and institutional environments on the amount of control in each mandate type, as well as the impact of these environments on the use of additional control mechanisms.
**Empirical Tests**

As in the last chapter, I begin this section by addressing a few empirical issues. Like *mandate length*, I estimate the models using ordinary least squares (OLS) regression and a simple linear model. I also test the empirical models using *total control*, which is the sum of all mandate controls in all CHIP bills across all legislative sessions (*procedural, policy, and both control*). In the subsequent sections, I examine *procedural, policy, and both control*, which are the sums of all controls in each mandate type in all CHIP bills across all legislative sessions. Additionally, I divide each of my control measures by 1000 to make the results more understandable and interpretable.

I present the results of my models using all 45 states in my study regardless of regions, since estimates of my models excluding southern states provides virtually the same results (see chapter 7 for further explanation). I also test my model of statutory control with the three control variables that were significant and influential in the previous chapter: *CHIP expenditures, CHIP program type, and previous session's control*. I exclude the *CA dummy* variable because it is highly correlated with *CHIP expenditures* and when included it significantly alters the robustness of the variables and the overall fit of the model. Additionally, the previous chapter revealed that *CHIP expenditures* and *previous session's control* captured much of its explanatory power.

**A Comparison of Total Control and Mandate Length**

In this section, I use the model of statutory control developed in chapter 7 to assess the impact of my political and institutional variables on the *total control*. I choose to use this model because of the similarities between my two dependent variables
observed in chapter 6 and the expectation that, as a result, I should observe similarities.

Table 8-1 and 8-2 display the results of the models testing the impact of political and institutional arrangements on total control using committee system strength and legislative professionalism respectfully. In addition to legislative capacity measures, I also include both a direct and an interaction measure for the legislative veto index, and each of the three institutional controls: CHIP expenditures, CHIP program type, and the previous session's total control.

**Table 8-1: Assessing the Impact of Political & Institutional Environments on Total Control With Committee System Strength**

<table>
<thead>
<tr>
<th>Variable</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
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<td><strong>Political Environment</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unified Legis Against Gov</td>
<td>66.18**</td>
<td>356.08***</td>
<td>192.60*</td>
<td>296.90***</td>
<td>134.64*</td>
</tr>
<tr>
<td>Divided Legislature</td>
<td>-531.64****</td>
<td>-236.54***</td>
<td>-339.46***</td>
<td>-369.83***</td>
<td>-471.15***</td>
</tr>
<tr>
<td><strong>Legislative Capacity</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committee System Strength</td>
<td>-5.03</td>
<td>17.82***</td>
<td>3.37</td>
<td>7.87</td>
<td>-6.42</td>
</tr>
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<td>-20.14</td>
<td>-9.65</td>
</tr>
<tr>
<td>Unified Against Gov X Veto</td>
<td>-24.48</td>
<td>-80.15***</td>
<td>-47.22**</td>
<td>-70.94***</td>
<td>-38.23*</td>
</tr>
<tr>
<td><strong>Institutional Controls</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CHIP Expenditures</td>
<td>1.16***</td>
<td>.992***</td>
<td>205.02***</td>
<td>.988***</td>
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</tr>
<tr>
<td>CHIP Type</td>
<td>(119)</td>
<td>(.141)</td>
<td>(43.48)</td>
<td>(.134)</td>
<td>203.24***</td>
</tr>
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*p < .1
**p < .05
***p < .01
Table 8-2: Assessing the Impact of Political & Institutional Environments on Total Control With Legislative Professionalism

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The results from Table 8-1 and Table 8-2 provide some interesting results. Not only do Table 8-1 and 8-2 present virtually the same results, they are also very similar to the results of the model of statutory in the previous chapter examining mandate length. In fact, the results provide four distinct findings. First, in all but one model in Table 8-1 and all but two models in Table 8-2, the measures for unified legislatures against the governor and divided legislatures are significant and in the correct directions as expected by the PA model. The results suggest that when confronted by an executive with
divergent policy preferences (*unified legislatures against the governor*), legislators impose more control in CHIP mandates and decrease the amount of bureaucratic discretion. At the same time, when confronted by another chamber and an executive with divergent policy preferences (*divided legislatures*), legislators impose less control in CHIP mandates or simply do not engage in statutory control. Not only are these findings consistent across most model specifications, and when combined with both *committee system strength* and *legislative professionalism* but, there are no significant changes in the impact of the measures.

The second finding involves the impact of the institutional control variables. As in the previous chapter, *CHIP expenditures*, *CHIP program type*, and the *previous session’s control* are completely robust across all model specifications in both tables, consistent with the theoretical expectations. Unlike chapter 7, which found that *CHIP program type* and *CHIP expenditures* to be providing the most impact on *mandate length*, the results form Table 8-1 and 8-2 reveal that along with *CHIP program type*, the *previous session’s control* appear to be the most influential. In essence, these results suggest that the amount of control legislators impose in CHIP mandates is significantly impacted by the type of CHIP program that they adopt and the amount of control that they imposed in the previous session. *CHIP expenditures* is still influential, but less so in terms of *total control*. What makes these results more interesting is that their impact is consistent regardless of the level of capacity, whether *committee system strength* or *professionalism*.

The third finding involves the direct measures of legislative capacity. Although they possess a direct effect on the amount of control, their impact is contingent upon the institutional control mechanisms, as found in the previous chapter. In fact, Table 8-1
reveals that impact of capacity is present when controlling for the previous session's control, but disappears when the model includes CHIP expenditures. The same is true for professionalism in Table 8-2 except that it is also significant in model 4 with previous control and CHIP program type.

The last finding involves the impact of the interaction between unified legislatures against the governor and the legislative veto. In Table 8-1 and 8-2, the interaction term is significant and in the correct negative direction in all specifications except for models that only control for CHIP expenditures. The results suggest that when confronted by a governor with divergent policy preferences, legislators that possess a veto impose less control in mandates because of the ability of the veto to alter their behavior outside of the legislative process. At the same time, because I use an index of veto powers across states, the findings confirm that stronger veto powers can further diminish the incentive to engage in statutory control.

The results from Table 8-1 and 8-2, and the similarities with the previous chapter, are important for two reasons. First, the similarities between the total control and mandate length suggest that total control is capturing the impact of the political and institutional arrangements. For a new dependent variable developed for this study that is not based on the amount of words, this is a important finding and reassures me that the mandates are coded consistently and, at the very least, total control is a comparable measure to mandate length. Second, the similarities between the tables, and committee system strength and legislative professionalism in particular, provide me with some confidence that this model is appropriately specified and acceptable to use in subsequent empirical tests.
As mentioned above however, the comparison of these variables is not the main purpose of this chapter. The importance of total control is in the mandates that make up the variable: procedural, policy, and both mandates. The individual mandates are important because they provide a level of information about legislative intent and control strategies not previously found in statutory control research. In particular, the choice of a specific mandate type signals to bureaucrats the aspect of the policy that legislators are concerned about controlling or overseeing as well as the costs that they are willing to incur to achieve these goals. This knowledge of legislative policy foresight provides me with a much more complete understanding of statutory control decisions and strategies employed by legislators. More importantly for this study, legislators face different costs and demands with the choice of different mandate types. As a result, I expect to see differences in the use of different mandates depending on the political and institutional arrangements in which the legislators reside. This is the focus of the next section.

The Amount of Control in Procedural, Policy, & Both Mandates

In this section, I examine the amount of control in procedural, policy, and both mandates. In particular, after a brief re-introduction of the three mandate types, I use the statutory control model developed in chapter 7 and tested in the beginning of this chapter to assess the impact of the political and institutional environments on the amount of control in each mandate type.
Recall that procedural mandates are non-policy related instructions by legislators placed in legislation that directly requires the agency or agencies to “do something” in order to achieve the legislator’s preferred outcomes (hold a hearing, consult with a group, or develop procedures). The amount of procedural control in mandates is based on the specific language used to convey discretion (“must” “shall” “may”), as well as the specificity of the language and any additional control mechanisms imposed in the mandate (time constraints, approval requirements).

In terms of the PA model, I consider procedural mandates to require less time and resources for legislators to impose upon bureaucrats. Not only do procedural mandates require bureaucrats to perform specific tasks (develop procedures) or duties (meet with a specific group), but they also shift much of costs associated with developing and implementing a policy to bureaucrats or to constituents who are most concerned with the specific policy area. At the same time, because procedural mandates focus on procedures and not the specific policy details, I consider them credible signals to bureaucrats that legislators are concerned with the manner in which the policy is developed and implemented, as well as the importance of acquiring specific knowledge, or satisfying the needs of specific groups or constituencies.

Unlike procedural mandates, policy mandates are instructions by legislators that define, clarify, or set the parameters of the specific policy area. Depending on the scope and detail of the language, policy mandates are designed to let bureaucrats know how legislators interpret the policy as well as what outcomes they prefer. This is accomplished through the use of policy terms and policy procedures. Policy terms are mandates
designed specifically to define a term or a process pertaining to the policy, while policy procedures are policy mandates that define or clarify how the policy is to be developed or implemented without actually telling bureaucrats to do something. The amount of policy control is based on the focus of the mandate (policy term versus procedures) and the specificity of the language used to convey the policy parameters.

I consider policy mandates to be more costly for legislators to develop and impose on bureaucrats because of the knowledge legislators are required to have about the specific policy, in addition to the costs associated with writing mandates designed to limit the ability of bureaucrats to interpret the policy in a manner that conforms to their policy preferences. Additionally, because policy mandates focus on the content and interpretation of the specific policy, it is a credible signal to bureaucrats that legislators are more concerned with setting the parameters of the specific policy area and/or the specific outcomes of policy implementation.

Both mandates are instructions by legislators that require an agency to not only do something, but also defines how the required action will affect the specific policy parameters. In other words, both mandates articulate a particular requirement for bureaucrats to utilize (develop enrollment procedures) and provide an explanation of how this requirement will influence, alter, or expand the policy or the policy outcome. Both mandates differ from individual procedural and policy mandates because the procedural requirement and the policy parameter are substantively connected and cannot be separated. Calculating the amount control in both mandates is based on the same calculations made for procedural and policy mandates.
I posit that both mandates are the most constraining of the three mandates types simply because they control bureaucratic behavior by imposing specific requirements (procedural mandates), and they limit the ability of bureaucrats to interpret or shape the outcomes of the requirements (policy mandate). The additional constraint provided by both mandates however, comes with a price for legislators. Both mandates are the most costly for legislators they must incur the costs associated with the development and implementation of both procedural and policy mandates together. However, with these additional costs comes a much clearer signal to bureaucrats that legislators are concerned about both the manner in which the policy is developed and implemented as well as the specific policy outcomes.

The Impact of Political & Institutional Environments on Proced, Policy, & Both Control

Based on the descriptions of the different mandate types and their impact on the PA relationship, we should expect to see the political and institutional environments affect the three mandate types differently. Table 8-3, 8-4, & 8-5 provide the results of the models examining the impact of these environments on the amount of control in procedural, policy, and both mandates respectfully. In particular, to test the impact of these environments, I use the model of statutory control developed in chapter 7, which includes both committee system strength and legislative professionalism, a direct and interaction measure for the legislative veto index, as well as different configurations of my institutional control variables to assess the best fit.

Although the three graphs provide similar results in terms of the institutional arrangements, they do differ in relation to the political environment. In particular, all of
my institutional control variables are significant and in the correct, positive direction across all specifications regardless of level of capacity or type of mandate control. Additionally, there are no significant changes in the impact of the three controls. These results suggest that the amount of control legislators impose is affected by the type of CHIP program adopted, the amount of control imposed in the previous session, and the amount of CHIP expenditures.

Tables 8-3, 8-4, and 8-5 also show that despite the direct impact of my legislative capacity measures, both committee system strength and, to a lesser extent legislative professionalism lose their significance when I include the institutional control variables. This is also consistent with my previous findings and supports the notion that the direct impact of capacity is subsumed by the mechanisms that are derived from legislative capacity, specifically CHIP program type, the previous session’s control amount, and CHIP expenditures. Unlike committee system strength, professionalism maintains its significance except when CHIP expenditures is included in the model because the two variables are highly correlated (.865).

In addition to the impact of the institutional measures, the interaction between unified legislatures against the governor and legislative veto is significant and in the correct, negative direction in most models. The veto continues to enable legislators to impose less control in mandates in instances where incentive to engage in statutory control of bureaucrats is present.
Table 8-3: Assessing the Impact of Political & Institutional Environments on Procedural Control

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*p < .1  
**p < .05  
***p < .01
Table 8-4: Assessing the Impact of Political & Institutional Environments on Policy Control

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*p < .1  
**p < .05  
***p < .01
Table 8-5: Assessing the Impact of Political & Institutional Environments on Both Control

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<th>Variable</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Comm System Strength only</td>
<td>Comm System Strength w/ CHIP Expenditures &amp; CHIP Type</td>
<td>Comm System Strength w/ Previous Session Control &amp; CHIP Type</td>
<td>Comm System Strength w/ All Controls</td>
<td>Legislative Professionalism only</td>
<td>Legislative Professionalism w/ CHIP Expenditures &amp; CHIP Type</td>
<td>Legislative Professionalism w/ Previous Session Control &amp; CHIP Type</td>
<td>Legislative Professionalism w/ All Controls</td>
</tr>
<tr>
<td>Political Environment</td>
<td>90.33** (37.99)</td>
<td>27.22 (31.04)</td>
<td>102.92**** (31.81)</td>
<td>65.07** (31.27)</td>
<td>46.97 (32.75)</td>
<td>21.87 (30.05)</td>
<td>56.83* (30.44)</td>
<td>56.45* (30.29)</td>
</tr>
</tbody>
</table>
| Unified Legis Against Gov | -137.83*** (43.39) | -228.42**** (36.05) | -182.51**** (36.46) | -214.88**** (39.47) | -230.23**** (39.22) | ** p<0.05 ** p<0.01 ** p<0.001
| Divided Legislature | 15.85**** (2.14) | 2.22 (2.17) | -2.19 (2.23) | 657.31**** (57.16) | -16.88 (181.53) | 311.74**** (66.80) | -34.28 (175.43) | -8.46 (7.18) |
| Legislative Capacity | -0.621 (8.11) | -13.84 (7.21) | -11.04* (7.46) | -7.96 (7.10) | 2.70 (7.00) | -14.14* (7.30) | -11.20 (7.12) | -16.60 (8.83) |
| Committee System Strength | -21.23* (11.20) | -10.45 (9.05) | -26.58*** (9.24) | -17.98** (8.92) | -15.93* (8.83) | -9.64 (8.84) | -18.82** (8.84) | -16.60 (8.83) |
| Legislative Professionalism | -1.42 (2.36) | 2.22 (2.17) | -2.19 (2.23) | 657.31**** (57.16) | -16.88 (181.53) | 311.74**** (66.80) | -34.28 (175.43) | -8.46 (7.18) |
| Legislative Veto | -0.621 (8.11) | -13.84 (7.21) | -11.04* (7.46) | -7.96 (7.10) | 2.70 (7.00) | -14.14* (7.30) | -11.20 (7.12) | -16.60 (8.83) |
| Unified Against Gov X Veto | -21.23* (11.20) | -10.45 (9.05) | -26.58*** (9.24) | -17.98** (8.92) | -15.93* (8.83) | -9.64 (8.84) | -18.82** (8.84) | -16.60 (8.83) |
| Institutional Controls | 0.382**** (.051) | 94.54**** (17.64) | 6.44**** (.947) | 4.20**** (.997) | 118.37**** (16.39) | 114.95**** (16.30) | 81.20*** (16.27) | 4.48*** (9.89) |
| CHIP Expenditures | 94.54**** (17.64) | 6.44**** (.947) | 4.20**** (.997) | 118.37**** (16.39) | 114.95**** (16.30) | 81.20*** (16.27) | 4.48*** (9.89) | 4.12*** (9.96) |
| CHIP Type | .382**** (.051) | 94.54**** (17.64) | 6.44**** (.947) | 4.20**** (.997) | 118.37**** (16.39) | 114.95**** (16.30) | 81.20*** (16.27) | 4.48*** (9.89) |
| Previous Session's Control | .382**** (.051) | 94.54**** (17.64) | 6.44**** (.947) | 4.20**** (.997) | 118.37**** (16.39) | 114.95**** (16.30) | 81.20*** (16.27) | 4.48*** (9.89) |
| Constant | -358.62 (101.53) | -280.88 (83.92) | -193.34 (83.53) | -192.17 (80.98) | -216.38 (83.67) | -264.09 (79.72) | -221.18 (77.03) | 234 |
| N | 234 | 234 | 234 | 234 | 234 | 234 | 234 | 234 |
| Adjusted R² | .336 | .572 | .577 | .602 | .479 | .672 | .549 | .600 |

* p < .1
** p < .05
*** p < .01
The differences between the procedural, policy, and both control are seen most prominently in the impact of the political environment. Although the results for policy and both control reveal that both unified legislatures against the governor and divided legislatures are relatively stable across all specifications and are consistent with my theoretical expectations. In fact, the measures for divided legislatures are not just robust across all model specifications, but there are also no significant changes to its impact across specifications. At the same time, the measures for unified legislatures against the governor are always in the correct, positive direction, and significant in all models except those that do not include previous session’s control. These results however, are not the same for procedural control. More specifically, while divided legislatures is significant and across all model specifications, the impact of unified legislatures against the governor are insignificant in most models and, in some cases, in the wrong direction. In other words, legislators are less inclined to impose more control in procedural mandates when they possess an incentive to do so (unified legislatures against the governor) than they would in other mandate types.

Although these results confirm my findings regarding the impact of the political and institutional environments on the amount of control in each mandate type, they do not allow me to explore how the different costs and demands associated with each mandate type combine with the political and institutional environments to influence their use by legislators. The next section will focus on delving deeper into the three mandate types and exploring these relationships.

*Looking Beyond the Impact of Political & Institutional Environments*
As mentioned previously, each mandate type represents different costs and demands on legislators that, depending on the capacity and the political environment in which they reside, will influence which mandate they choose and which environment they will impose them on bureaucrats. In order to explore these relationships, I use the statistical software Clarify to present estimates of the expected values of the amount of control in each mandate type based on one-unit increases in my measures of capacity in each political environment: **unified legislatures with the governor, unified legislatures against the governor, and divided legislatures**.61

Based on the different costs and demands associated with each mandate type, I expect to see differences in the use of each mandate type depending on the political environment and the capacity of the legislature. In particular, I expect to see more capable legislatures imposing more control on bureaucrats in instances where they possess the incentive to do so, regardless of the mandate type. At the same time, I expect less capable legislatures to impose less control in mandates than their more capable counterpart in general and regardless of the mandate type. I also expect to see similar control strategies by less and more capable legislatures in instances where one chamber and the governor are controlled by another party and, as a result, the likelihood of bill passage is uncertain the costs of bargaining are elevated.

Graphs 8-1, 8-2, and 8-3 presents the range of expected values derived by Clarify as they relate to the distribution of procedural, policy, and both control respectfully, across all six sessions based on the level of committee system strength in the three different political environments.

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61 Clarify uses Monte Carlo simulations to extract all information from a statistical model and estimates the expected value of my dependent variable for one-unit increases in my main explanatory variables while holding my other independent variables constant at appropriate or meaningful values.
Graph 8-1: Changes in Procedural Control with Increases in Committee System Strength 1997-2007

- Unified Legislature with Governor
- Unified Legislature Against Governor
- Divided Legislature, Divided Government

Non California, CHIP Expenditures at Mean
Previous Session Control at Mean, Legislative Veto at Mean

Graph 8-2: Changes in Policy Control with Increases in Committee System Strength 1997-2007

- Unified Legislature with Governor
- Unified Legislature Against Governor
- Divided Legislature, Divided Government

Non California, CHIP Expenditures at Mean
Previous Session Control at Mean, Legislative Veto at Mean
The results of the estimates of expected values for procedural, policy, and both control in Graphs 8-1, 8-2, and 8-3 provide strong support for my expectations. In each of the graphs we observe more capable legislatures imposing more control in CHIP mandates in instances when the executive branch is controlled by an opposing party and they thus possess an incentive to control bureaucrats. Although we can see differences in the levels of control between procedural, policy, and both mandates, this is true for all three mandate types despite the different costs and demands on legislators. Less capable legislatures simply do not possess the time or resources to engage at the same level or with the same flexibility as their more capable counterparts. Additionally, for more capable legislatures in unified legislatures against the governor, absent legislative capacity, the
range of the level of control imposed in CHIP mandates is above zero, while the same cannot be said of less capable legislatures.

In divided legislatures, where both chambers of the legislature and the executive possess divergent policy preferences, we observe both less and more capable legislators imposing about the same levels of control in CHIP mandates, as expected. Despite the different levels of control imposed by less and more capable legislatures in each of the different mandate types, capacity has little effect in this political environment because the costs of bargaining and policy conflict and the uncertainty over the passage of the CHIP bills is simply too high. Not only are the levels lower in divided legislatures as compared to the other environments, but absent capacity, unlike unified legislatures against the governor, the range of control imposed by legislatures starts at and includes zero.

The distribution of the control imposed in each mandate type in unified legislatures with the governor suggests that as the capacity of the legislature increases, the level of control decreases. This contradicts our theory in the sense that more capable legislatures should always be better able to incur the costs of control regardless of the incentive to engage or not. However, our data in chapter 6 revealed that in many cases, more capable legislatures simply did not engage at all while some less capable legislatures incurred the costs of engaging more than expected. The increased range of control in this environment for less capable legislatures suggests that this may be the cause of the direction of the distribution. In any event, the range of control for each of the mandate types is above zero which is consistent with my theory since the costs associated with the political environment are diminished as a result of all chambers and the executive sharing similar policy preferences.
Based on these graphs, we can see that legislatures impose control in specific mandates based both on their capacity to incur the costs and demands of the mandate type as well as the costs and demands of the political environment. These findings enable me to better understand not only the decision to impose control in a specific mandate but also under what political conditions it will be imposed.

Additional Control Mechanisms

In chapter 6, we observed significant differences in the use of additional control mechanisms across states. In particular, Figure 6-2 revealed that legislators varied in their use of time constraints, approval requirements, and sanctions for non-compliance within procedural mandates. Now that we have observed the strategies of legislators in terms of the type of mandates that they use and the amount of procedural, policy, and both control imposed in each mandate type, I want to examine whether legislators display the same strategies or behavior when it comes to the imposition of additional control mechanisms. More specifically, I want to assess how the political and institutional environments influence the decision to include time constraints and approval requirements.

Although additional control mechanisms do not represent substantial costs for legislators to impose, their inclusion in mandates have the potential to raise the costs of control significantly for legislators depending on its scope. For example, if legislators require bureaucrats to seek approval from a legislative body, legislators must incur more costs because of reviewing the document, holding a hearing or simply making sure that bureaucrats fulfill the requirements. On the other hand, legislators can significantly

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62 I do not examine sanctions since, as mentioned previously, legislators only use them in ten instances throughout the six legislative sessions.
diminish potential costs by simply by requiring a non-legislative body to approve the requirement (interest group, constituents, study group). Alternatively, if legislators require that procedures be developed by a specific time, they must incur the costs of researching an acceptable time frame to perform the requirement, which may involve meetings and/or correspondence with other groups, as well as the time and resources to make sure that the procedures are submitted on time. At the same time, depending on the political environment, legislators might be more willing to incur the costs because of the incentive to control bureaucrats and ensure consistent behavior. As a result, I expect differences in the use of additional control mechanisms based on both the level of capacity and the political environment in which the legislators reside.

**Time Constraints**

Table 8-6 displays the sum and percentage of the use of unspecified and specified time constraints across all six sessions. Without knowing the level of capacity, it is interesting to see that legislators imposed 27% of all time constraints in the first session, 86% of which specified a specific time frame. At the same time, as the use of specified time constraints diminished in subsequent sessions, except the 2005-2006 session, the use of unspecified time constraints remained relatively stable. This strategy seems consistent with the PA model since the benefit of the time constraints clearly outweighs the minimal costs of imposing them in mandates. More specifically, it is likely that legislators will incur the costs of placing specified time constraints in early sessions of the CHIP program to put pressure on bureaucrats to produce results in a timely matter as well as to send a signal to bureaucrats that they are serious about control and oversight.
Table 8-6: Sum of Time Constraint Types Imposed in CHIP Mandates 1997-2007

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Unspecified</td>
<td>48 (14%)</td>
<td>35 (13%)</td>
<td>38 (23%)</td>
<td>19 (12%)</td>
<td>26 (12%)</td>
<td>19 (16%)</td>
<td>185 (14%)</td>
</tr>
<tr>
<td>Specified</td>
<td>304 (86%)</td>
<td>231 (87%)</td>
<td>140 (77%)</td>
<td>134 (88%)</td>
<td>200 (88%)</td>
<td>97 (84%)</td>
<td>1,106 (86%)</td>
</tr>
<tr>
<td>Totals</td>
<td>352 (27%)</td>
<td>266 (21%)</td>
<td>178 (14%)</td>
<td>153 (12%)</td>
<td>226 (18%)</td>
<td>116 (9%)</td>
<td>1,291</td>
</tr>
</tbody>
</table>

Although the results of Table 8-6 provides me with a general assessment of the use of specified and unspecified time constraints, it does not tell me anything about the impact of the political and institutional environments on the decision to impose time constraints. Table 8-7 displays the use of specified and unspecified time constraints by less and more capable legislatures in both unified legislatures against the governor and divided legislatures.63

Table 8-7 reveals that, like the imposition of control in different mandate types, legislators take into consideration both their capacity to incur the costs and demands of time constraints as well as the costs and demands of the political environment. In particular, when legislators possess an incentive to engage in statutory control and oversee bureaucrats (unified legislatures against the governor), they incur the costs of imposing more time constraints, than in instances when they do not possess the incentive to control bureaucrats (divided legislatures). At the same time, within unified legislatures against the governor, we observe that legislators with more capacity use specified time

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63 The data for Table 8-7 is taken from seven less professionalized legislatures – Alabama, Kentucky, Maine, New Hampshire, New Mexico, North Dakota, and Utah, and five more professionalized legislatures – Massachusetts, Michigan, New York, Ohio, Wisconsin, and Pennsylvania.
constraints at will, whereas less capable legislators must be strategic. The use of more specified time constraints in early sessions by less capable legislators suggests that they know their limitations and are possibly using the constraints to send a credible signal to bureaucrats early in the program.

In divided legislatures, the use of time constraints is significantly diminished for both less and more capable legislators because of the increased costs and uncertainty surrounding policy enactment. In fact, legislators that are more capable behave similarly
to their less capable counterparts in *unified legislatures against the governor* by imposing more specified time constraints in early sessions to conserve resources and possibly attempting to establish a foundation of control early in the program.

**Approval Requirements**

Table 8-8 displays the use of approval requirements (approval by *non-legislative body* or *legislative body*)\(^{64}\) for all legislators across all six sessions.

**Table 8-8: Sum of Approval Requirements Imposed in CHIP Mandates 1997-2007**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non Legislative Body</strong></td>
<td>85 (47%)</td>
<td>64 (54%)</td>
<td>71 (77%)</td>
<td>57 (63%)</td>
<td>60 (56%)</td>
<td>47 (71%)</td>
<td>385 (59%)</td>
</tr>
<tr>
<td><strong>Legislative Body</strong></td>
<td>94 (53%)</td>
<td>54 (46%)</td>
<td>21 (23%)</td>
<td>34 (37%)</td>
<td>48 (44%)</td>
<td>19 (29%)</td>
<td>270 (41%)</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>179 (27%)</td>
<td>118 (18%)</td>
<td>92 (14%)</td>
<td>91 (14%)</td>
<td>108 (16%)</td>
<td>66 (10%)</td>
<td>655</td>
</tr>
</tbody>
</table>

Without knowing the capacity of legislators, we see legislators imposed 27% of all approval requirements in the first session of the CHIP program (1997-1998), 53% of which required approval of a legislative body. As discussed above, this constitutes significant additional costs for legislatures. However, we can see that aside from the 2005-2006 session, the use of approval requirements diminished consistently after the first session, and we even see the focus of the approval requirements shifting to non-legislative bodies. In fact, the use of non-legislative bodies as approval mechanisms remains relatively consistent across all sessions.

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\(^{64}\) I coded approval requirements based on whether legislators required bureaucrats to seek approval from *both* a non-legislative body and a legislative body, but legislators in no states imposed such a constraint.
When we examine approval requirements by less and more capable legislators in unified legislatures against the governor and divided legislatures in Table 8-9, we observe similar strategies to time constraints. In particular, in unified legislatures against the governor, legislators incur the costs of imposing more approval requirements when they possess the incentive to control bureaucrats. We also observe that legislators that are more capable are better able to incur the costs than their less capable counterparts, as evidenced by their use of non-legislative approval requirements almost at will. However, both less and more capable legislators appear to be imposing approval requirements that involve the legislature strategically and in early sessions of the program.

Table 8-9: Use of Approval Requirement by Level of Legislative Professionalism in Unified Legislatures Against the Governor and Divided Legislatures

<table>
<thead>
<tr>
<th>Session</th>
<th>Unified Legislature Against the Governor</th>
<th>Divided Legislature</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Les Professionalized</td>
<td>More Professionalized</td>
</tr>
<tr>
<td>1997-1998</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>1999-2000</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>2001-2002</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>2003-2004</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>2005-2006</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2007-2008</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Totals</td>
<td>11</td>
<td>18</td>
</tr>
</tbody>
</table>
In *divided legislatures*, there is considerable less use of either *approval requirement*, as expected. However, when *approval requirements* are imposed in *divided legislatures*, primarily legislators that are more capable use them and in a manner that enables them to both conserve resources and set a foundation of control and oversight early in the program to ensure that bureaucrats do not defect or pursue their own policy preferences.

Examining the use of additional control mechanisms in addition to the impact of the political and institutional environments on their use has provided us with a much clearer picture of how legislators actually engage in statutory control and of the specific mechanisms that they use to achieve their control and oversight goals. The results suggest that, consistent with our empirical findings, legislators understand their capabilities and shape their statutory control strategies based on this understanding as well as the political environment in which they reside.

*Chapter Summary*

The results of the empirical tests in this chapter provide similar results to the tests performed in chapter 7. In particular, I find that legislators impose more control when they choose a CHIP program that compels them to engage in more statutory control, as well as when they impose more control in the previous session. Additionally, I find that despite the direct effect of my measures of legislative capacity, the type of CHIP program, CHIP expenditures, and previous session's control amount subsume their influence and drive control decisions. Lastly, I find support for the impact of the veto interaction with *unified legislatures against the governor*. Legislators with stronger veto
powers diminish the need to impose control in instances when they possess the incentive to so primarily because the veto shapes bureaucratic behavior itself.

Although confirming these results using a new dependent variable that is not based on the amount of words is a significant finding in itself, delving deeper into total control provides me with a much more complete understanding of statutory control decisions. In particular, by examining the procedural, policy, and both mandates that make up total control, I am able to observe that legislators are well aware of their capabilities as well as the demands and constraints placed on them by the political environments in which they reside. Much like legislators know how much to dedicate to their CHIP programs or what type of program to adopt, they make the same calculations when deciding how much control to include in specific mandates, in which political environments to impose specific mandates, as well as in the choice of when and where to impose time constraints and approval requirements.
Chapter 9:

Conclusion & Future Research

In this dissertation, I set out to improve our understanding of the use of language in legislation by state legislators to control and oversee the actions of bureaucrats in the development and implementation of policy. First, I have expanded upon an existing dependent variable to provide a more accurate assessment of the amount of discretion provided to bureaucrats by examining only the words that directly relate to the specific policy area as well as examining statutory control in both general legislation and appropriations bills. Second, I developed and employed a new dependent variable based on the substantive content of mandates that provides the necessary policy foresight to understand how legislators control bureaucrats and the aspects of the policy that is important to them. Third, I delved deeper into the specific mandates to provide a more complete understanding of statutory control decisions and the strategies employed by legislators. Lastly, I used more appropriate institutional measures to expand upon the prevailing research and provide a better understanding of the influence of the institutional environments that vary across states on statutory control decisions.

Based on the extensions and improvements discussed above, in addition to the results of the empirical tests performed in the previous two chapters, I believe that this project has accomplished its goal. In particular, the information obtaining in this study and the expanded understanding we have acquired has enabled us to take a step closer to a more complete understanding of statutory control of bureaucrats. In this concluding chapter, I discuss why I come to this conclusion by summarizing and addressing the implications of my key findings, as well as possible avenues of future research.
Summary of Findings

Variation in CHIP Mandates across U.S. State Legislatures

Attempting to assess whether the political and institutional environments influence statutory control decisions by legislators in CHIP legislation required that I first observe sufficient variation in my dependent variables so that I would be able to observe differences if they did in fact exist. Examining the data in chapters 5 and 6, I was able to confirm that contextual variation existed for both mandate length and total control across states as well as over sessions both within individual states and across all states.

In chapter 5, I observed states enacting different amount of CHIP bills, mandates, and length of mandates while in chapter 6, I observed significant variation in total control as well as in the use of and control imposed in the procedural, policy, and both mandates that make up total control. At the same time, chapter 6 revealed significant differences in the use of additional control mechanisms such as time constraints, approval requirements, and sanctions for non-compliance. The variation in chapter 6 is especially important considering that total control and the factors that make up the variable I developed for this study and, coupled with its similarities to mandate length, suggest that I coded the measure consistently and correctly.

More importantly, chapter 5 and 6 reveal that the differences in mandate length, total control and in the three mandate types exist across legislative sessions. While the prevailing literature examines a snapshot of statutory control decisions (one or two legislative sessions), my data includes decisions across six legislative sessions. By observing differences between states across legislative sessions rather than in a single session enables me to be more certain about the impact of specific factors as well as the
strategies employed by legislators. Observing decisions in a single session cannot provide this degree of certainty.

**Statutory Control as a Two-Stage Process**

The examination of *mandate length* and *total control* in chapters 5 and 6 also revealed that legislators use both general legislation and appropriations bills to impose their legislative intent. This is an important finding not just because of the variation in the use of the two control mechanisms across states, but because it also suggests that statutory control is a *two-stage process*: legislators choose where they impose their statutory control intent. This finding also reveals that the prevailing literature provides an incomplete assessment of the statutory control environment because of their exclusive focus on general legislation. Figure 5-3 clearly shows that appropriations bills are a significant part of statutory control decisions as evidenced by the nearly 40% of statutory control decisions imposed in appropriations bills. In fact, New Mexico, Alabama, and Michigan used appropriations bills exclusively. At the same time, the visual inspections and the mixed effects model examined in these chapters provided me with some insight into the type of factors that might be causing this variation.

**Mandate Length**

Prior to the empirical tests in chapter 7, I argued that if we wanted to know how much discretion legislators provide bureaucrats, *mandate length* was a better measure than *length of legislation* because it was based only on the words that directly related to the policy area and eliminated the superfluous language some legislators impose in
legislation. Mandate length also includes statutory control decisions that were imposed in appropriations bills. Theoretically, mandate length is a more appropriate measure and although the empirical results in chapter 7 confirmed much of Huber & Shipan's findings regarding the impact of the political environment, legislative capacity, and the legislative veto, mandate length further enabled me to expand upon their findings.

**Procedural, Policy, and Both Control**

I also argued that if scholars wanted to obtain the necessary policy foresight to better understand how legislators control bureaucrats and the aspects of the policy that are important to them, we must observe and investigate the substantive content of statutory control decisions. The creation of separate dependent variables based on the type of mandate imposed by legislators (procedural, policy, or both), the discretion-limiting language used to convey their policy intent, the specificity of the mandate, and any additional control mechanisms included to further constrain bureaucrats enabled me to accomplish these goals. I was able to observe whether legislators were more concerned with the manner in which bureaucrats developed and implemented the CHIP program (procedural mandates) or they were uncertain about the outcome of the CHIP program or believed that it was in jeopardy as a result of bureaucrats pursuing their own policy preferences (policy mandates). At the same time, I could also assess whether they were concerned with both the development and outcomes of the policy (both mandates). Additionally, the use of each mandate type thus provided me with a much more complete understanding of the type of costs legislators were willing to incur to achieve their goals. As a result, I believe this first attempt at extracting the policy foresight and assessing how
legislators controlled bureaucrats was a success, and we are able to observe and understand much more about legislative decisions and the strategies that they employ to control bureaucrats.

**Partisanship Matters**

The fact that the political environment influences decisions by state legislators to write longer, more detailed mandates or impose more procedural, policy, and both control in CHIP mandates is not necessarily a significant finding in itself. In fact, other legislative scholars, including Huber & Shipan, have found that when confronted with an executive with divergent policy preferences (unified legislatures against the governor) legislators engage in writing longer, more detailed mandates in an attempt to control and oversee bureaucrats. At the same time, scholars have also found that when confronted with another chamber and an executive with divergent preferences (divided legislatures), legislators pass less detailed CHIP mandates or do not engage in statutory control because the costs of doing so are simply too high and the likelihood of passage too uncertain. What is significant about these results in this study is that I find that the influence of the political environment is not contingent upon the capacity of the legislators or the legislature. Partisanship has a direct effect on statutory control by itself.

This is a significant finding if we consider that Huber & Shipan conclude that given the incentive to control bureaucrats based on the political environment, legislators will only engage in statutory control if they also possess the capacity to do so. This is not the case in CHIP legislation whether I use mandate length, total control, or examine the impact on procedural, policy, or both control: legislators attempt to control bureaucrats
when they possess the incentive to do so, and when the costs of doing so are not too high or bill passage is not in jeopardy. At the same time, the political environment also affects the choice of additional control mechanisms examined in chapter 6. As with the amount of discretion provided to bureaucrats, legislators impose more time constraints and approval requirements in *unified legislatures against the governor*, when they possess the incentive to control bureaucrats, than they do during *divided legislatures*, when the costs are too high and enactment is uncertain. What is even more significant is that my findings are based on statutory control decisions across six legislative sessions and are robust with either of my measures of legislative capacity, *committee system strength* and *legislative professionalism*.

*It is Not “Whether,” but “How” Legislative Capacity Matters*

In addition to the findings regarding the political environment, this study also confirms the prevailing literatures findings that legislative capacity has a direct effect on the amount of discretion provided to bureaucrats through legislation. In fact, this is true whether I measure it in amount of words pertaining to CHIP mandates or based on the amount of control imposed in *procedural*, *policy*, or *both mandates*: more capable legislatures can and will incur the costs of acquiring the requisite information to develop CHIP policy, as well as writing more detailed mandates. At the same time, these results are relatively consistent whether I examine *committee system strength* or *legislative professionalism*. Although these results differ from Huber & Shipan’s findings that legislatures must meet a capacity *threshold* in order to engage in statutory control, they use *legislator compensation* as a measure of capacity and only examine one session of
control decisions in general legislation. My results are based on six legislative sessions, using two separate and distinct measures of capacity that are based on “collective” and not “individual” motivations and in both general legislation and appropriations bills.

Aside from the direct impact of legislative capacity, the results from the empirical tests in this study reveal that we may be missing the true story regarding legislative capacity by simply assessing whether or not it is influential. In fact, the results from chapter 7 and 8 suggest that the real story of capacity involves the mechanisms that make capacity influential. In terms of the CHIP, the mechanisms are the CHIP program is the type of program adopted, the amount of expenditures dedicated to the program, and the amount of control legislators imposed in the previous session. In fact, the empirical results in chapters 7 and 8 suggest that legislators make policy decisions based on their own capacity to provide funds and resources, as well as withstand the demands the specific program places on them. As a result, the amount of expenditures dedicated to CHIP and the program legislators adopt are a reflection of their capacity, and these factors dictate how much legislators will need to engage in statutory control. More specifically, the more money dedicated and the more demands placed on them by a stand-alone CHIP program, the more directives, instructions, clarifications, and constraints legislators will have to articulate to bureaucrats. The results also suggest that for states that spend more on CHIP and adopt programs that demand more time, resources, information, and thus attention, the previous sessions control influences the amount of control in the subsequent session. In other words, if you impose more statutory control today, you are going to impose more in the future.
Legislative Veto

Lastly, the results of this chapter allow me to confirm Huber & Shipan’s finding regarding the legislative veto. In particular, confronted with a governor with divergent policy preferences (unified legislatures against the governor), legislators that possess a veto enact shorter, less detailed mandates because the veto controls bureaucratic behavior outside of the legislative process and thus diminishes the incentive to control bureaucrats through statutory control. However, using my index of veto powers I am able to expand upon Huber & Shipan’s findings and conclude that legislators with stronger veto powers are even more capable of diminishing the incentive to engage in statutory control. This is an important finding considering the significant differences in scope and power of the veto across states. These results suggest that even legislators that possess advisory veto authority are able to shape bureaucratic behavior outside of legislation and can diminish the incentive to engage in statutory control, although to a much less degree than legislators with vetoes that are more powerful.

Avenues of Future Research

Although I believe that this study has enabled me to advance the study of statutory control of bureaucrats an additional step, more research is necessary. First, if we truly seek to better understand the factors that influence statutory control decisions, then we must continue to focus on policy foresight and the decisions legislators make to control and oversee bureaucrats. In fact, attempts to assess the impact of the political and institutional environments mean little if legislators did not intend to control bureaucrats or were concerned more with the development of the policy rather than specific
outcomes. As a result, we must continue to delve deeper into the manner in which legislators attempt to control and oversee bureaucrats. In particular, the specific mandates imposed, the language they utilize, the aspects of the policy that are important to legislators, and the additional constraints placed in legislation to constrain their behavior further and the outcomes they pursue. Policy foresight is the key to this improved understanding as well as the key to appropriately interpreting the empirical results. If we know that legislators are concerned with the manner in which the policy is developed because they use *procedural mandates*, then we should focus more on bureaucratic behavior rather than policy outcomes.

Second, future research should continue to focus on more than a snapshot of statutory control decisions. While this study examines decisions across six legislative sessions and provides a level of certainty about the impact of the political and institutional environments not previously presented, a closer look at the decisions and strategies in specific sessions will further improve our understanding. In particular, by examining the use of specific mandate types within and across sessions will provide us with a better idea about whether legislators are strategic in their choice of specific mandates or in the timing of their use. We observe some strategic behavior in the imposition of *time constraints* and *approval requirements* across sessions in this study, and I would assume that legislators would also be strategic in the imposition of different mandate types as well. I suspect that all legislators want to signal to bureaucrats that they are serious about control at the beginning of the program as well as impose certain procedures and requirements to put them on auto-pilot, pursuing the legislature’s goals. However, legislators adopting a stand-alone CHIP program are likely to want to obtain
information more quickly and beginning laying the foundation for the new program, necessitating the use of more *procedural mandates* rather than *policy mandates*. Additionally, examining these decisions over legislative sessions will also provide us with even more information about the influence of the political environment. In particular, do decisions regarding the type or timing of mandates change because of partisanship or in anticipation of changes to partisanship?

Third, in addition to the theoretical and empirical research examining statutory control, future research should focus on specific case studies to provide additional information and clarity regarding the influence of political and institutional environments. Although each state deals with similar issues (eligibility requirements, enrollment levels, funding sources, or expansion), examining decisions more closely in specific states can provide invaluable information about the development, implementation, and maintenance of the CHIP policy as well as about differences between states with similar arrangements. Why do some more capable legislators choose not to engage in control while similarly situated legislators in another state do? Why do some legislators adopt programs that place more demands than they are capable of maintaining? Although this study joins the existing research in suggesting that these decisions are based on the political and institutional environments within the state, are there other state-specific forces influencing these decisions? A closer look within states will allow us to answer these questions.

Lastly, future research should attempt to examine statutory control decisions in a more realistic statutory control environment, specifically examining legislative decisions in multiple policy areas simultaneously. Although the prevailing research design
examining a single policy area has provided invaluable information regarding legislative
decisions to control and oversee bureaucrats, legislators do not have the luxury of
focusing exclusively on a single policy area. In fact, legislators must make multiple
policy decisions simultaneously, balancing the amount of discretion and control in
different policy areas with different informational requirements and interacting with
different bureaucrats with different levels of knowledge and expertise, all with the same
amount of time and resources. In terms of the PA relationship between legislators and
bureaucrats, we might expect that different policy areas that represent different costs and
requirements for legislators to result in different statutory control decisions, but we
cannot be sure at this point. At the same time, if we are able to observe multiple policies,
we should also see differences in strategies depending on the degree of preference
divergence (how far apart are legislators and bureaucrats?) as well as how much
information legislators have about the specific policy area. In other words, if a legislators
possess experience or knowledge of health care and less about toxic chemicals, do we
observe more statutory control or the use of specific mandate types for toxic chemicals
than for health care? Examining multiple policy areas simultaneously will enable us to
answer these questions and take another step towards a more complete understanding of
statutory control of bureaucrats.
**Appendix A:**

*Coding State CHIP Legislation*

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>obs</strong></td>
<td><strong>Observation</strong> – number of each observation in the database. Each individual mandate constitutes a separate observation. <strong>Each coder will start with different observation numbers.</strong></td>
<td><strong>Starting observation numbers</strong>&lt;br&gt;David – 1&lt;br&gt;Claire – 5000&lt;br&gt;Shehni – 3000&lt;br&gt;Rob – 8000</td>
</tr>
<tr>
<td><strong>state</strong></td>
<td><strong>State</strong> – refers to the particular state in which the legislation comes from, noted in two-letter abbreviation.</td>
<td>CA – California&lt;br&gt;TX – Texas</td>
</tr>
<tr>
<td><strong>sessyr</strong></td>
<td><strong>Session Year</strong> – refers to the year in which the legislation was <strong>ENACTED</strong> – <em>Signed by the Governor if applicable. Be careful here ... the bill number will provide different years.</em> These may be the year in which it was introduced or the year it was re-introduced after it was tabled (held over due to end of session). Make sure that you put down the year it was enacted.</td>
<td>Biennial Session 2007-2008 = enter 2007&lt;br&gt;Annual Session 2007 = enter 2007</td>
</tr>
<tr>
<td><strong>billnumb</strong></td>
<td><strong>Bill Number</strong> – what is the bill number of the legislation? This is the actual bill number given by the chamber of the legislature that introduced the bill.</td>
<td>H.B. 200 – House Bill 200&lt;br&gt;S.B. 4567 – Senate Bill 4567</td>
</tr>
<tr>
<td><strong>billtype</strong></td>
<td><strong>Bill Type</strong> – the type of bill the legislature placed the mandate – either General Legislation or in an Appropriations Bill. First line of bill will usually determine what type of bill it is.</td>
<td>“An act relating to parks...” (Gen Legis)&lt;br&gt;“An act to make, supplement, and adjust appropriations...” (Appros Bill)</td>
</tr>
</tbody>
</table>
| **Billhouse** | **Bill House** – refers to the chamber of the legislature that the bill was introduced and passed. Either the House/Assembly or the Senate. | H.B. 200 = House Bill 200  
S.B. 4567 = Senate Bill 4567 |
| **billsub** | **Bill Subject** – the subject of the bill. This is for identification purposes. Simply type in the first few words of the first line of the bill | “An act relating to parks …”  
“An act to make, supplement, and adjust…” |
| **mandate** | **Mandate** – a “mandate” is the language used by the legislature to either affect (1) policy development or implementation, AND/OR (2) agency behavior.  
*It is important to cut and paste the mandate here* – we want to be able to track the mandates over time – if legislatures use the same mandates year after year, they use them only once or adjust them over time. | Cut and paste the mandate into the section – the limit on Access is 255 characters so cut and paste as much as will fit in the box. If you do not get all of the mandate in, after the last word place “…” so that we know that the mandate continues  
Ex. “The Dept of Social Services shall implement rules and procedures to address the eligibility requirements for children under 300% of the ….” |
| **Mandlocate** | **Mandate Location** – a mandate can be in either general legislation or an appropriations bill - it will be in different sections either in the body of the bill (section, a “rider,” appendix, notes, or footnotes) or in a subsequent / accompanying or supplemental document that includes legislative intent (committee report, letter of intent, staff report, legislative journal). *Each of these options have the “force of law.”*  
Simply choose where the mandate is located. | General Legislation (GL) or Appropriations Bill (AB)  
• Section (Sec)  
• Rider  
• Appendix  
• Notes  
• Footnote  
• Staff Report  
• Letter of Intent  
• Legislative Journal |
| **Mandsect** | **Mandate Section** – simply write the section and page number of the particular mandate. | Sec 1 (a) (2) pg 34 |
| **Mandtype** *(see above)* | **Mandate Type** – A mandate is a “single” action even though most often it will be combined with other mandates. Legislatures will use them to control agencies through “procedures” or “policy.”  
  
**Procedural mandates** - are instructions by the legislature for the agency to do or not do something related to the development or implementation of the policy (i.e. perform a procedure) (1) develop a procedure / program, (2) hold a hearing, (3) contact or consult with a group, (4) create a group or committee.  
  
**Policy mandates** are instructions for the legislature regarding the policy itself and does not require the agency to act or perform - instead the mandate dictates specifics about the particular policy, (1) what is the intent of the policy, (2) how terms and procedures are defined, (3) what constitutes a “goal” or “achievement,” - how performance and goals are measured, (4) the agency’s rights and/or responsibilities (5) the population “affected” & “not affected” by the policy and (6) who is / is not involved in the implementation of the policy. | **Policy Mandate** – “The program will be called “ARKids” and will cover children below 200% of the poverty level”  
-- ** all instructions are related to the policy and does not require the agency to act or perform any procedures  
  
**Procedural Mandate** - “Sect 1 – Dept. of Corrections shall consult with the Attorney General to develop a program to monitor released inmates. The department shall submit a report to the legislature on its progress”  
--** instructions for agency to “perform” (consultation and report) with no instructions for policy  
  
**Both Policy & Procedural** – The agency shall develop a program called “ARKids” that will cover children below 200% of the poverty level”  
--** both policy and procedural |
| **mandlength** | **Mandate Length** – this variable simply measures how many words are in EACH mandate. |
| **manddiscr** | **Mandate Discretion** - refers to how much discretion the mandate provides the agency.  
  
*This is not a subjective measure.* based on the words used to control or direct the agency. Words such as “must” and “shall” denote that the agency has “no discretion” and that they are “required” to do what the mandate states. Words such as “may” or “should” denote “limited discretion” provided to the agency. Agencies have “broad discretion” when the mandate states that they may do “as they see fit.”  
  
**No Discretion** – “must” “shall” “it is the intent of the legislature that…”  
**Limited Discretion** – “may” “should”  
**Broad Discretion** – “as agency sees fit”  
  
** Sometimes these objective words will not be used and you will have to make a decision about the amount of discretion provided based on the language. Simply decide, what you believe to be the amount of discretion given to the agency |
| **mandgroup** | **Mandate Group** – This measure simply states the amount of agencies that the mandate is directed toward – which agency is the legislature attempting to control? There may be a single agency (i.e. Dept of Corrections must...), or a group of agencies (i.e. agencies dealing with health care). It is argued that if a legislature singles out a particular agency, their behavior and actions are of the utmost importance to the legislature and deserve their own language. |
| **funds** | **Funds** – what type of funds and resources are being referred to in the mandate? Funds and resources will be involved in mandates primarily in appropriations bills “but not always”. Funds in mandates will take the form of Appropriated Funds & Resources (appropriations bills), Non-Appropriated Funds & Resources (both general legislation and appropriations bills), and Supplemental F&Rs. Supplemental F&Rs are primarily F&Rs provided after the passage of the budget in a subsequent document. The mandate will usually state what types of F&Rs are being addressed. Sometimes the mandate refers to “both” appropriated and non-appropriated F&Rs. |
| **fundspecif** | **Fund Specificity** – measures the specificity of the mandate. Legislatures will use more words (more specificity) when they want to control an agency. **Minimal Specificity** – the legislature will provide the mandate with no additional descriptive or supporting words. **Moderate Specificity** – in addition to the mandate, the legislature includes “1” additional descriptive statement. **Significant Specificity** – in addition to the mandate, the legislature includes 2 or more descriptive statements OR provides an example or model to be followed. |
| fundtime | Fund Time – does the legislature place a time requirement on the use the funds? An agency that is required to use funds in a specific amount of time is more constrained than an agency that does not have a time constraint. Constraints also have varying degrees. | No Time Constraint – “The DOC is appropriated $500K to use on education.”
Time Constraint but Not Specified – “The DOC must utilize $500K for inmate education in a reasonable amount of time, or it will be transferred to the DOT.”
Specified Time Constraint – “The DOC has until January 31, 2008 to utilize $500K appropriated for inmate education, or it will be transferred to the DOT” |
| fundaprov | Fund Approval – does the legislature require that an agency’s use of funds be approved by itself or another body? Agencies that must have their use of funds approved by another body are more constrained than agencies that do not have to have their use of funds approved. Approval by the legislature itself is more constraining than if another body is required to do so. | Fund Approval by Legis & Body – “DOC payments must be approved by the legislature and the attorney general”
Fund Approval by Non-Legis Body – “DOC payments must be approved by the attorney general”
Fund Approval by Legis – “DOC payments must be approved by the legislature” |
| Procedures | The following variables refer to specific procedural constraint a legislature can require of an agency. The requirement of one or a combination increase control over the agency. For whom the procedure must be provided for or with also adds to the level of control. Report – does mandate require submission of a report?
Hearing – mandate require agency to hold hearing?
Contact – does the mandate require that the agency contact, consult, or interact with another body?
Body – does the mandate require that the agency establish a body – study group, committee, agency, etc?
Procedure – does the mandate require that the agency perform or develop a particular procedure? | No Report/Hearing/Contact Required
Yes – For Legislature – The DOC must (1) provide a report (2) hold a hearing with (3) consult with the legislature
Yes – For Legis & Non-Legis Body - The DOC must (1) provide a report (2) hold a hearing with (3) consult with legis & constituents / IGs / commission
Yes – For Non-Legis Body - The DOC must (1) provide report (2) hold hearing (3) consult w/ constituents / IGs / commission

*Agencies required to establish a “body” or “procedure,” these will not necessarily be accomplished for the legislature or another body. These should be coded as "No-Not Specified"
### Purpose of Procedures

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report Purpose</td>
<td>does the mandate specify the purpose of the agency writing a report and, if so, what does the purpose pertain to?</td>
</tr>
<tr>
<td>Hearing Purpose</td>
<td>does the mandate specify the purpose of the agency holding a hearing and, if so, what does the purpose pertain to?</td>
</tr>
<tr>
<td>Contact Purpose</td>
<td>does the mandate specify the purpose of the agency contacting, consulting or interacting with another entity and what does the purpose pertain to?</td>
</tr>
<tr>
<td>Body Purpose</td>
<td>does the mandate specify the purpose of the agency establishing a body? What does it pertain to?</td>
</tr>
<tr>
<td>Procedure Purpose</td>
<td>does the mandate specify the purpose of the procedure and, if so, what does it pertain to?</td>
</tr>
</tbody>
</table>

* mandates display more statutory control if they state the purpose of the specific procedure – more specificity. These variables are further distinguished by the focus of the procedure.

### Time Constraint on Procedures

<table>
<thead>
<tr>
<th>Time Constraint</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time Constraint on Requirement</td>
<td>does the mandate require that the agency perform, establish, or develop the procedure in a specific amount of time?</td>
</tr>
</tbody>
</table>

* agencies that must act within a specific time period are more constrained than those that have no or an unspecified time constraint.

### Time Constraint

<table>
<thead>
<tr>
<th>Time Constraint</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Time Constraint</td>
<td>“DOC shall (1) submit a report (2) hold a hearing (3) consult with constituents (4) establish a study group (5) develop a program for the legis.”</td>
</tr>
<tr>
<td>Time Constraint Not Specified</td>
<td>“DOC shall (1) submit a report (2) hold a hearing (3) consult with constituents (4) establish a study group (5) develop a program for the legis in a timely manner.”</td>
</tr>
<tr>
<td>Time Constraint Specified</td>
<td>“DOC shall (1) submit a report (2) hold a hearing (3) consult with constituents (4) establish a study group (5) develop a program for the legis by January 31, 2008.”</td>
</tr>
<tr>
<td>Approval of Procedures</td>
<td>* like procedures, specificity and time constraints, mandates that require that an agency get approval for their procedures imposes additional constraints &amp; control over agencies. Also, agencies that must get approval are more constrained if the legislature is the approving body rather than a non-legislative body</td>
</tr>
<tr>
<td>Approval Requirement on Constraint</td>
<td>does the mandate state that the agency must obtain approval for the procedure?</td>
</tr>
<tr>
<td>Sanction for Non-Compliance of Procedures</td>
<td>* sanctions and/or penalties imposed for non-compliance further increase legislative control. Sanctions can be considered a signal to an agency that complying with the legislature's mandate is more important than if it was not attached to a sanction</td>
</tr>
<tr>
<td>Report Sanction</td>
<td>failure to submit report?</td>
</tr>
<tr>
<td>Hearing Sanction</td>
<td>failure to hold a hearing?</td>
</tr>
<tr>
<td>Contact Sanction</td>
<td>failure to contact, consult or interact another body?</td>
</tr>
<tr>
<td>Body Sanction</td>
<td>failure to contact, consult or interact with another body?</td>
</tr>
<tr>
<td>Procedure Sanction</td>
<td>failure to perform or develop a procedure?</td>
</tr>
<tr>
<td>Sanction by Legis</td>
<td>“DOC shall (1) submit a report (2) hold a hearing (3) consult with constituents (4) establish a study group (5) develop a program”</td>
</tr>
<tr>
<td>Sanction by Non-Legis Body</td>
<td>“DOC shall (1) submit a report (2) hold a hearing (3) consult with constituents (4) establish a study group, and (5) develop a program that must be approved by the legislature”</td>
</tr>
<tr>
<td>Sanction but Not Specified</td>
<td>“DOC shall submit a report on procedures and outcomes by Jan 31, 2008 or incur a penalty for non-compliance”</td>
</tr>
<tr>
<td>Sanction Specified</td>
<td>“DOC shall submit a report on procedures and outcomes by Jan 31, 2008 or face legislative review”</td>
</tr>
<tr>
<td>General Policy Language</td>
<td>“SCHIP legislation shall be passed by the agency”</td>
</tr>
<tr>
<td>Not General Language</td>
<td>“SCHIP legislation is designed to improve the health of eligible children but not to provide care for children above 200% of the poverty level”</td>
</tr>
</tbody>
</table>
| genlangspecif | General Policy Language Specificity – measures the specificity of the general policy language. Legislatures will use more words (more specificity) when they want to control or constrain an agency.  
**Minimal Specificity** – the legislature will provide the mandate only with no additional descriptive or supporting words.  
**Moderate Specificity** – in addition to the mandate, the legislature includes “1” additional descriptive statement.  
**Significant Specificity** – in addition to the mandate, the legislature includes 2 or more descriptive statements OR provides an example or model to be followed. | Minimal Specificity - “The DOC shall develop a program for pregnant inmates.”  
Moderate Specificity - “The DOC shall develop a program for pregnant inmates. The program should include procedures for childbirth in prison”  
Significant Specificity - (1) “The DOC shall develop a program for pregnant inmates. The program should include procedures for childbirth in prison; and day care facilities” OR (2) “The DOC shall develop a program for pregnant mothers that follows the program established in the Harris County Correctional System” |
| define | Definitions – does the mandate define policy terms or procedures? Legislatures are likely to include definitions of policy terms and procedures to make sure agencies are clear about what their intent is and terms or procedures are unambiguous. | No Definitions - “The DOC shall use Texas based products for all improvements.”  
Yes - Definitions – “The DOC shall Texas based products for all improvements. ‘Texas based products’ are materials manufactured in the state”.  
Yes - NOT Definitions - “The DOC shall use Texas based products for all improvements. ‘Texas based products’ are materials manufactured in the state of Texas and not those that originate from any other state.”  
Both Definitions & NOT Definitions - ‘Texas based products’ are materials manufactured in the state and are NOT made in any other state” |
| definespecif | Definition Specificity – measures the specificity of the definition. Legislators will use more words (more specificity) when they want to control or constrain an agency.  
**Minimal Specificity** – the legislature will provide the mandate only with no additional supporting words.  
**Moderate Specificity** – in addition to the mandate, the legislature includes “1” additional descriptive statement.  
**Significant Specificity** – in addition to the mandate, the legislature includes 2 or more descriptive statements OR provides an example or model to be followed. | Minimal Specificity - “The DOC shall develop a program for pregnant inmates.”  
Moderate Specificity - “The DOC shall develop a program for pregnant inmates. The program should include procedures for childbirth in prison”  
Significant Specificity - (1) “The DOC shall develop a program for pregnant inmates. The program should include procedures for childbirth in prison; and day care facilities” OR (2) “The DOC shall develop a program for pregnant mothers that follows the program established in the Harris County Correctional System” |
<table>
<thead>
<tr>
<th><strong>population</strong></th>
<th><strong>Population</strong> – does the mandate specify the population impacted by the policy? Specifically, which individuals, groups or agencies are involved with the particular policy.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>No Population</strong> - “The DOC shall develop a program to improve prison conditions.”</td>
</tr>
<tr>
<td></td>
<td><strong>Population</strong> - “The DOC shall develop a program to improve prison conditions for pregnant inmates”</td>
</tr>
<tr>
<td></td>
<td><strong>NOT Population</strong> - “The DOC shall not develop a program to improve prison conditions for pregnant inmates.”</td>
</tr>
<tr>
<td></td>
<td><strong>Both Population &amp; NOT population</strong> - “The DOC shall develop a program to improve prison conditions for pregnant inmates and not general inmate population”</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>implement</strong></th>
<th><strong>Implementation</strong> – does the mandate specify which individuals, groups, and/or agencies are involved with the implementation of the policy?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>No Implement</strong> - “The DOC shall develop a program to improve prison conditions for pregnant inmates.”</td>
</tr>
<tr>
<td></td>
<td><strong>Implement</strong> - “The DOC shall develop a program to improve prison conditions for pregnant inmates. The DOC shall consult with the Commission and hold a hearing for public input.”</td>
</tr>
<tr>
<td></td>
<td><strong>NOT Implement</strong> - “The DOC shall develop a program to improve prison conditions for pregnant inmates. In developing the program the DOC need not consult with the Commission nor hold a hearing for public input.”</td>
</tr>
<tr>
<td></td>
<td><strong>Both Implement &amp; NOT Implement</strong> – “The DOC shall consult with the Commission and hold a hearing for public input but need not consult with the Dept of Social Services”</td>
</tr>
</tbody>
</table>
Appendix B:

Coding Mandate Types: Procedural, Policy, & Both Mandates

To obtain a score for the amount of control in each of the 8,274 CHIP mandates obtained from the 1,674 bills in 45 states, each mandate was identified as either a procedural, policy, or both procedural and policy mandates. Once identified, the following process was utilized to code each mandate type.

Procedural Mandates

Procedural Mandates are non-policy related instructions by legislators placed in legislation that directly requires the agency or agencies to "do something" in order to achieve the legislator's preferred outcomes. For the purposes of this study, procedural mandates include requiring bureaucrats to submit a report, contact a group, hold a hearing, create a body, or develop a procedure. Once the type of procedure is identified, I code for whom the procedure is to be performed; a non-legislative body (e.g. the executive branch, another agency, constituent), a legislative body (e.g. study group, committee, chamber), or both a non-legislative body and the legislature. Performing a requirement for both a non-legislative body and a legislative body represents the most control that legislators can impose on bureaucrats since they must satisfy the preferences of both groups. At the same time, as legislators minimize the costs of oversight and obtaining information by shifting the burden to bureaucrats, they can also observe bureaucratic action to make sure that they are behaving in a manner that is consistent with their intent. As a result, non-legislative body requirements receive a score of "1" while both groups receive a "3". Once the target of the procedure is identified, I
determine the amount of discretion legislators provide bureaucrats in the mandate. Legislators that provide bureaucrats with broad discretion in the development and implementation of the procedure surrender significant control over bureaucratic behavior, while no discretion provides no flexibility for bureaucrats, constrains their behavior completely, and thus reserves the most control for legislators. Consequently, no discretion mandates receive a score of “3” while broad discretion gets a “0”.

In addition to the language used by legislators to convey their CHIP policy intent, I also code any additional mechanisms imposed in mandates to further constrain bureaucrats and reserve control for legislators. In particular, I code whether the mandate includes a time constraint, approval requirement, or a sanction for non-compliance. Time constraints are broken down into not specified and specified time constraints. Specified time constraints provide less discretion and flexibility to bureaucrats in carrying out the mandate and thus reserve more control for legislators. As a result, specified time constraints receive a score of “2,” not specified time constraint receives a “1,” and no time constraint a score of “0”. Approval requirements are coded based on to whom bureaucrats must seek approval; non-legislative body, legislative body, or both non-legislative and legislative body. Using the reasoning discussed above, both groups receives a score of “3” while a non-legislative body receives a “1”. Sanctions are coded based on whether they are specified or not. Non-specified sanctions are more constraining on bureaucrats than no sanction, but would require legislators to act and incur additional costs to determine and impose a sanction in the event of non-compliance. As a result, specified sanctions receive a score of “2” while non-specified sanctions receive a “1” and
no sanction a “0”. Based on this coding process, the most constraining procedural mandate can receive the score of “12”.

Policy Mandates

Policy Mandates are instructions by legislators that define, clarify, or set the parameters of the policy. More specifically, depending on the scope and detail of the language, policy mandates are designed to let bureaucrats know how legislators interpret the specific policy as well as what outcomes they prefer. Policy mandates are coded as either policy terms, mandates that are designed specifically to define a term or a process pertaining to the policy, or policy procedures, mandates that are designed to define or clarify how the policy is to be developed or implemented. Once the type of policy mandate is identified, I code whether the mandate includes general policy language, and if so, what type it is. General policy language is language in a statute that articulates the state’s specific reasons, goals, or needs for the legislation, and in most cases, opportunities for the legislature to credit claim. Although this language does not impact the policy specifically, it does include aspects of legislative intent and provides additional emphasis for the importance and/or reasons for developing and implementing the policy in a particular manner or at a particular time. Additionally, including this language in legislation represents significant costs for legislators, both in time and resources. States that include more general legislation must incur additional costs writing in legislation.

To account for the inclusion of this language, I include it in this study and code whether the language expresses general policy language, or not general policy language. Not general policy language constitutes an additional level of control on bureaucrats as a
result of legislators telling them what the policy is not intended to accomplish or the needs or goals it is not intended to achieve. This language does not address the policy area itself, but it further narrows the parameters of the policy for bureaucrats and ultimately constrains their behavior and the outcomes that they can pursue. Legislators that include both general legislation and not general legislation impose the most constraining language and is coded as a “3” while only not general legislation receives a “1” and general legislation a “2”.

The specificity of the general legislation is then coded. In some cases legislators simply state the reasons and goals, or the reasons why the policy was not pursued or addressed, and nothing else. I code these as minimal specificity and give it a score of “1”. In mandates where legislators provide an additional sentence providing information about the goals and reasons for the policy (e.g. examples of similar policies or goals), I consider this moderate specificity and code it as “2”. In situations where legislators provide significant support or examples for the general or not general policy language, I consider these significant specificity and code it as a “3”. The more information legislators provide bureaucrats about their goals, reasons, or policy need, the less discretion bureaucrats have and the more control legislators reserve for themselves.

In addition to coding the general policy language, I code the differences in the type of policy mandate. In particular, I code whether the mandate articulates policy terms, policy procedures, not policy terms, not policy procedures, both policy terms and not terms, and both policy procedures and not procedures. I consider policy procedures to be more constraining on bureaucrats than policy terms because defining the manner in which the policy must be developed or implemented provides legislators with more control over
bureaucratic behavior and strategies than simply defining policy terms. Policy procedures also possess the potential of imposing additional costs on bureaucrats in the event that the manner in which legislators define the procedure differs from their established procedures. I also include in this code whether legislators articulate to bureaucrats what they do not consider to be the definition of a term (not term) or a procedure (not procedure). Adding a not term or procedure to a policy mandate further constrains bureaucrats and reserves additional control for legislators. As a result, policy mandates that include both not procedures and procedures as a “5”, terms and not terms as a “4”, procedures only as “3”, terms only as “2”, not procedures as “1”, and terms as “0”.

Lastly, like general policy language, I code the specificity of the policy mandate. Specifically, I code whether legislators articulate only the policy term or procedure (e.g. minimal specificity), include one sentence of clarification or provide an example (moderate specificity), or if legislators include more than one sentence of clarification or examples (significant specificity). These are coded “1”, “2”, and “3” respectfully.

Both Procedural and Policy Mandates

Both procedural and policy mandates are instructions by legislators that not only require an agency to do something, but also instruct bureaucrats as to how the requirement will impact the specific policy. These mandates are substantively linked together and are coded as a single mandate. As a result, I consider both procedural and policy mandates (henceforth called “both mandates”) to be the most constraining mandates imposed on bureaucrats because they not only limit and constrain bureaucratic behavior by limiting the manner in which they can achieve their goals, but they also limit
the set of possible goals that bureaucrats can pursue. In instances where procedural and policy mandates are substantively linked, the *both mandate* is coded separately as procedural and policy mandates. The control score for each mandate is then added together to obtain a combined control score. Since the most constraining procedural and policy mandates receives a score of "12" and "14" respectively, the most constraining *both mandate* for bureaucrats and the one that reserves the most control for legislators takes the value of "26." It is important to mention here that *both mandates* are not simply adding all of the *procedural* and *policy* mandates together. Mandates are first coded whether they are *procedural*, *policy*, or *both mandates* and only those identified as *both* are coded so there is no overlap in mandates.

Once each mandate is coded based on whether it is a *procedural*, *policy*, or *both mandate*, I aggregate the scores to the state session level. As discussed above, this measure allows me to overcome the problems associated with state legislation and the limitations of my data to enable me to compare the *amount of control* within states, across states, and across legislative sessions. Additionally, if our hypotheses are correct regarding the impact of the political and institutional environments on these decisions, then I should not only expect to see variation in the use of specific mandates across states, but also in other factors such as the use of additional bureaucratic control mechanisms (e.g. time constraints, approval requirements, sanctions).

*Total Amount of Control*

Once the *procedural*, *policy* and *both mandates* are coded, I add the scores together to obtain a score for *total amount of control* which will be the variable I test in
the empirical model in the next chapter. This combined score will be aggregated to the legislative session level so that I may examine the relationship between my two dependent variables, *mandate length* and *amount of control*, as well as assess whether statutory control strategies vary within states over time.
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