Constraining Bureaucrats Today Knowing You'll Be Gone Tomorrow: The Effect of Legislative Term Limits on Statutory Discretion

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Do finite time horizons constrain a state legislature's ability to control the bureaucracy? I argue that legislators subject to legislative term limits are incentivized to enact legislation with less statutory discretion today to ensure their preferences are implemented by the bureaucracy tomorrow since most of these legislators will not be around to monitor the bureaucracy over the long term. Although past works suggest that legislative term limits decreases legislators' rate of bureaucratic oversight, I find that term-limited legislators are incentivized to use ex ante means of bureaucratic control to a greater extent by granting less statutory discretion to the bureaucracy.

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Legislators have the opportunity to use ex ante and ex post means of bureaucratic control to ensure that bureaucrats implement a given policy in accordance with legislative intent (McCubbins et al. 1987, 1989; McCubbins and Schwartz 1984). Lawmakers may constrain the executive branch beforehand by enacting more restrictive guidelines for the policy through legislation (Epstein and O'Halloran 1999; Huber and Shipan 2002). Afterwards, lawmakers can monitor the executive branch to ensure proper implementation of that policy in the long term.

What happens when legislators are subject to shortened political time horizons? How do finite time horizons impact lawmakers as they enact legislation for bureaucrats to implement after they leave office? Are these legislators ultimately less capable of controlling the bureaucracy? Fortunately, the term limits movement in state politics over the past decade gives us a unique window into how shortened political time horizons affect legislative control over the bureaucracy. Legislative term limits has been implemented exogenously through direct democracy (with the exception of Louisiana) in sixteen states in the United States in different years (Mooney 2009). Thus, term limits allows us to clearly test the change in bureaucratic control once finite time horizons are implemented within a given state.

Previous works have shown that term-limited legislatures are less likely to enact complex legislation (Kousser 2006) and are less likely to use monitoring and other ex post means of bureaucratic control (Berman 2004, Cain and Kousser 2004, Farmer and Little 2004, Moen et al. 2005, Cain et al. 2007, Farmer et al. 2007, Kurtz et al. 2007, Sarbaugh-Thompson et al. 2010). However, Woods and Baranowski (2006) provide a counterintuitive finding that legislator turnover increases perceived legislative influence according to state agency leaders. This paper makes sense of these contradictory findings by claiming that term-limited legislatures use ex ante means of bureaucratic control to a greater extent than legislatures without term limits. Facing

finite time horizons in office, I argue that term-limited legislators rely on ex ante means of control and grant lower levels of statutory discretion to the bureaucracy. Legislators subject to legislative term limits are incentivized to enact legislation with less statutory discretion today to ensure their preferences are implemented by the bureaucracy tomorrow since most of these legislators will not be around to monitor the bureaucracy over the long term.

Legislative Term Limits and Bureaucratic Control in the U.S. States

Prior work on legislative term limits suggests that term limits will negatively impact legislators' ability to control the bureaucracy. Although legislators generally have little incentive to monitor the bureaucracy to achieve reelection (Rosenthal 1981), existing works demonstrate that term limits further decreases the rate of legislative oversight activity (Sarbaugh-Thompson et al. 2010). Using interviews with legislators in term-limited states, Gurwitt (1996) suggests legislators are unaware of what questions to ask to evaluate bureaucratic performance, which weakens the bureaucrats' accountability to legislators. Cain and Kousser (2004) and Cain et al. (2007), in their study of California's term limits, show that term-limited legislators are less likely to pursue budget supplemental requests and state audits from state agencies. In their case study of Michigan's term limits, Sarbaugh-Thompson et al. (2010) claim term limits decrease the extent to which legislators monitor the bureaucracy. Similar findings are found in other term-limited states such as Arizona, Ohio, and Maine (Berman 2004; Farmer and Little 2004; Moen et al. 2005). Farmer et al. (2007) and Kurtz et al. (2007) also claim term-limited states engage in less bureaucratic oversight.

The extant term limits literature focuses entirely on ex post measures of bureaucratic control (e.g. monitoring). According to a recent review of the state delegation literature, there has been no work on the effect of term limits on ex ante means of bureaucratic control in the term

limits and state delegation literature[1] (Krause and Woods 2014). This is not surprising since many works use datasets from a time period when the term limits have yet to be implemented in many states (e.g. Huber and Shipan 2002; de Figueiredo and Vanden Berge 1998). Nevertheless, the state delegation literature has so far demonstrated legislative capacity as an important determinant of ex ante control. Legislators with higher salaries on average are less willing to grant statutory discretion in times of divided government (Huber and Shipan 2002), restrict appointment powers for state board members (Volden 2002), and enact less flexible administrative procedures (Potoski and Woods 2001). Legislative capacity also increases perceived legislative influence by state agencies (Baranowski 2001; Woods and Baranowski 2006).

Theory and Hypotheses

Once a state enacts legislative term limits, legislators adopt a finite time horizon mindset and these legislators are forced to enact their policy preferences within their finite terms (Gurwitt 1996; Kousser 2008). Prior literature suggests that term-limited legislators have less expertise and incentive to oversee the bureaucracy through monitoring. Within the context of lawmaking and ex ante control, this literature suggests that finite time horizons would also discourage legislators to attend to lawmaking and focus on attaining their next position. Legislation is simply a means for legislators to credit claim in order to win their next position, so legislators have little incentive to spend their time writing detailed legislation. If anything, there may be an increase in detailed legislation when long-time legislators are being termed out for the first time in a state (Kousser 2005; Carey et al. 2006).

By contrast, I argue that legislators are motivated to enact their preferences into statute today to ensure their preferences are implemented by the bureaucracy tomorrow since they will

not be around to monitor the bureaucracy over the long term. In addition, ex ante means of control, especially legislation, allows these legislators to easily demonstrate and credit claim their productivity to their current or future constituents to win their next election. Given the limited amount of time legislators have to achieve their preferences and ensure proper implementation of those preferences, legislators are inclined to use ex ante means of control over the bureaucracy. Overall, I argue that regardless of their motives to shape policy or achieve reelection, term-limited legislators will grant less statutory discretion to the bureaucracy.

McCubbins et al. (1987, 1989) argue that ex ante means of control, such as administrative procedures, enacted by politicians reduces agency loss while minimizing the costs in pursuing bureaucratic oversight. Given the costs of ex post monitoring, the politicians' lack of expertise necessary to evaluate bureaucratic compliance, the lower electoral rewards for bureaucratic oversight (Rosenthal 1981), and the higher electoral rewards for enacting legislation (as a stronger basis for credit claiming) (Mayhew 1974), ex ante means of control is the more appealing means for legislators to control the bureaucracy. Epstein and O'Halloran (1999) extend this cost-benefits approach to apply to statutory discretion in general, acknowledging the tradeoffs politicians must make with their time and resources to minimize agency loss by enacting more or less constraints on the bureaucracy. Huber and Shipan (2002) extend Epstein and O'Halloran's transaction cost politics approach to the U.S. states. Macdonald's (2007) interviews with congressional staffers and Poggione and Reenock's (2009) survey of state legislators provide face validity for the transaction-cost politics approach at the federal and state levels, respectively.

Building off of the transaction-cost politics approach, I assume the legislature weighs the costs and benefits of detailing a law subject to executive branch influence. The legislature aims

to enact its policy preferences and proposes more restrictive legislation to ensure the bureaucracy implements the law according to its preferences (Moe 1989). At the least, the executive branch has a large influence in the interpretation of a given law by the degree of discretion a state agency (i.e. state boards of education) grants in the regulations pertaining to the implementation of that law. The governor may have further influence if a governor-appointed agency leader has the authority to implement the provisions within the law. Epstein and O'Halloran (1999) and Huber and Shipan (2002) demonstrate that legislators are willing to incur greater costs, by specifying laws in greater detail, in times of divided government. In addition, Huber and Shipan (2002) argue that legislators are willing to enact grant less statutory discretion as legislative capacity increases in times of divided government and in cases where the legislature has formal powers in approving regulations adopted by state agencies. I argue that finite time horizons by term limits incentivize legislators to incur the cost of writing more detailed legislation to ensure their preferences will be implemented by the bureaucracy even after these legislators complete their terms. Building upon Huber and Shipan (2002), I expect term-limited legislators to grant less discretion as legislative capacity increases. These short-sighted legislators are incentivized to enact legislation before their term expires and an increase in capacity enables them to write more detailed legislation.

H_1: Legislative term limits decreases the degree of statutory discretion granted to the bureaucracy.

H_2: As legislative capacity increases, legislative term limits decreases the degree of statutory discretion granted to the bureaucracy.

Research Design

In order to test these hypotheses, I use a dataset of enacted charter school authorization, renewal, and revocation statutes across 354 state-year observations. In particular, this policy area addresses how charter school authorizers, namely state and local boards of education, may approve or reject applicants attempting to establish a charter school or convert a public school to a charter school for the first time as well as procedures regarding renewal and revocation of existing charter schools. Charter schools refer to public schools subject to greater discretion by state and local governments in its operations than traditional public schools. However, charter schools are subject to similar funding and accountability standards as traditional public schools. Charter school authorization includes the application process for individuals or groups to apply to operate a charter school, the application content requirements, the criteria charter school authorizers must use to approve applications, and the process to propose and approve a charter or contract between an applicant and authorizer regarding the operation and evaluation of the charter school. Renewal refers to the process for a charter school to renew its charter beyond its initial term of operation, the charter school renewal application content requirements, and the criteria charter school authorizers must use to renew or deny renewal of a charter school. Revocation refers to the conditions granting a charter school authorizer to revoke a charter (i.e. close a charter school) and the criteria charter school authorizers must use to revoke a charter. Altogether, this policy area addresses how charter schools may be established or terminated in a given state. Unlike charter school funding or personnel issues, this issue area largely involves state and local bureaucratic entities, state and local school boards of education, across the U.S. states.

[INSERT FIGURE 1 HERE]

The National Association of Charter School Authorizers identifies forty-two states with charter school legislation and notes that there is wide variation across these states regarding the restrictiveness of charter school authorization, renewal, and revocation procedures as of 2014.[2] The relevant statutes are relatively easy to locate in each state's education code compared to other policy areas, which makes it feasible to track the legislative history for each relevant statute. Figure 1 illustrates the forty-two states with charter school legislation, specifically legislation pertaining to authorization, renewal, and revocation procedures. Washington is the only state to have enacted their statutes by initiative whereas the other states enacted statutes by approval of the state legislature and governor. Since the goal of this paper is to predict statutory discretion granted by elected officials to the bureaucracy, Washington is excluded in the later analysis.

Charter school authorization, renewal, and revocation policy is an ideal policy area to predict statutory discretion across the U.S. states for several reasons. First, states have voluntarily enacted charter school statutes, beginning with Minnesota in 1991. This policy area reflects states' willingness to enact statutory discretion according to their own preferences rather than compliance to a federal mandate. Although the federal government has provided grants to incentivize states to establish or expand charter schools since 1995, states can choose to apply for these grants. In order for schools to be eligible for federal funding, states must first enact legislation on their own before submitting an application for a federal grant. Second, to address the concern that states may start off with different infrastructures and policies in place for a given policy topic, this analysis extends from 1991-2013 to include the first enactment of charter school legislation for every state. Third, this voluntary policy topic over a longer time period

allows for a larger sample size, 354 enactments, to include necessary explanatory variables and fixed-effects in the regressions.[3]

[INSERT TABLE 1 HERE]

Finally, charter schools are a partisan issue which allows for testing whether institutional factors predict statutory discretion generally or only during times of divided government. This policy area is preferred to a hyper-partisan issue such as a school vouchers since a smaller number of states adopt such legislation. This policy area is also preferred to a non-partisan or bipartisan issue such as school accountability since the distinction between unified and divided governments is expected to be negligible. In this regard, charter school legislation is the ideal context since it is a partisan issue where the policy stances between the two major parties' preferences is distinct (where Republicans prefer more discretion to charter school authorizers and charter schools than Democrats) and also there are unified and divided governments enacting this type of partisan legislation to test for the conditional effect of divided government. Of the 354 enactments from 1991-2013, as shown in Table 1, states with Republican control of the governor's office are more likely to enact charter school legislation than other forms of government. Unified Republican governments are the most likely to enact charter school legislation.

Overall, this research design provides an appropriate policy area to determine the effects of legislative term limits over time with a large sample size to include necessary control variables and state fixed-effects. The strongest feature of this research design is the intrastate variation of legislative term limits across enactments of charter school authorization, renewal, and revocation statutes for twelve of the sixteen states with legislative term limits implemented

during 1991-2013. With regards to the state delegation literature, this partisan issue is ideal to test for conditional effects of political institutions in times of unified and divided government.

Dependent Variable

My dependent variable, statutory discretion, is measured by the number of *mandatory* words enacted per state-year. An optional phrase (e.g. "may") authorizes the subject of the sentence to carry out an action or consider a criterion whereas a mandatory phrase (e.g. "shall") requires the subject of the sentence to carry out an action or consider a criterion. I use automated text analysis to classify every relevant sentence altered by enacted legislation. An increase in the number of mandatory words added to a state's education code indicates less statutory discretion granted to the bureaucracy from elected officials.

I modify Huber and Shipan's (2002) word count measure by distinguishing between optional and mandatory words. Informal interviews with California Assembly and Senate education committee consultants, legislative staff, and legislative attorneys in spring 2014 all pointed to the distinction between optional and mandatory clauses as the main determinant of discretion when interpreting statutes.[4] According to these experts, the addition of mandatory words restricts the subject of the sentence whereas the addition of optional words is less restrictive. My operationalization builds upon Huber and Shipan's (2002) word count measure by incorporating an important distinction claimed by experts found in the content of the words.

In order to make sense of the relative impact of the number of mandatory words added per state-year, I also include the number of mandatory words repealed and the total number of mandatory words related to charter school authorization, renewal, and revocation in the state's education code per state-year as separate control variables in the later regression. I argue the former is necessary since it is very common for enacted bills to repeal statutory language and

replace those words with new language. The latter is necessary to make sense of the overall impact of added words per state-year. If a state adds 100 words to a code with only fifty words as of that year, it has relatively a larger impact if the same state adds 100 words to a code with 500 words in another year. Additionally, the latter variable addresses the variation of verbosity across the U.S. states' charter school statutes. Some states like Iowa tend to specify the types of charter schools that can be created in one sentence whereas other states like Ohio tend to rewrite a similar set of statutes for each type of eligible charter school. Providing a denominator value allows for more appropriate comparisons within (and across) states over time.

I executed the following steps to generate this new measure and the two control variables. First, I recorded every section from each state's education code related to charter school authorization, renewal, and revocation.[5] The full list of relevant statute sections is provided in Online Appendix B. Second, I downloaded each bill adding, amending, or repealing language in each relevant section from 1991-2013 from WestlawNext or Lexis Advance. Third, I formatted each bill to remove unrelated content, legislative intent, definitions, technical changes, reenactments, and "chaptered out" language. Content and formatting guidelines are provided in Online Appendix C. Fourth, I aggregated the number of words added and repealed by sentence for each of the remaining sentences. Fifth, I automatically coded these sentences as optional or mandatory using supervised learning methods. Sixth, I aggregate the number of mandatory words added and repealed by state-year. Finally, to aggregate the number of total mandatory words in a state's education code pertaining to charter school authorization, renewal, and revocation, I added total number of mandatory words added and repealed to the total number of words in the state's education code in the previous year.

In order to efficiently code the 6,514 relevant sentences, I used supervised learning methods to automatically code sentences as optional or mandatory separately.[6] A supervised learning method, as opposed to an unsupervised learning method, allows me to intentionally classify sentences in a manner similar to how education committee consultants and legislative staff assess policy discretion – whether a sentence contains an optional or mandatory phrase. Additionally, the individual classification provided by RTextTools (Jurka et al. 2012) allows me to apply the automated coding output to each sentence to determine the number of mandatory words by sentence and, ultimately, by state-year. I hired a practicing attorney to collectively code a stratified random sample by state of 1,000 sentences for the training and test sets[7] to validate an ensemble algorithm comprised of the Support Vector Machine, Random Forest, and Classification/Regression Tree algorithms of RTextTools. The codebook is provided in Online Appendix D. This ensemble of algorithms is able to agree on its coding for 92% of the sentences (i.e. coverage) and collectively code 91% of the time correctly (i.e. recall) whether a sentence is optional. The same ensemble of algorithms is able to agree on its coding for 93% of the sentences and correctly code 92% of the sentences whether a sentence is mandatory.

[INSERT FIGURE 2 HERE]

Figure 2 shows the distribution of charter school authorization, renewal, and revocation enactments from 1991-2013 by state. Fortunately, over a majority of the fifty states have at least five enactments. The frequency of enactments appears to vary across regions and states' government ideology. Figure 3 displays the number of mandatory words added, mandatory words repealed and the total number of mandatory words in the state's education code by state-year for the twelve states with legislative term limits in this paper. The vertical line indicates the first year of enactment of legislative term limits, which is defined in the next section. This figure

substantiates my justification for adding the two new control variables – the number of mandatory words repealed and the total number of relevant mandatory words currently in the state's education code – since some states appear to repeal as much language as they add to the education code. In addition, the states' education code word count largely varies within and across states over time.

[INSERT FIGURE 3 HERE]

Figure 4 shows the number of mandatory words added across the states from 1991-2013. This trend aligns with the enactment of the first federal charter school grant in the Improving America's Schools Act (1995-1999), its renewal in the No Child Left Behind Act (2002-2006), and in the Race to the Top grant (2009-2010). Even though the reasons are unclear, the spike in mandatory words added from 2011 to 2013 corresponds with observations made by the Education Commission of the States, a non-partisan group known for tracking state education legislation.[8] Overall, this initial overview of the dependent variable aligns well with the trends in charter school legislative activity across the states over time to federal incentives.

[INSERT FIGURE 4 HERE]

Independent and Control Variables

Term Limits Variable. The key explanatory variable in this paper is legislative term limits. In order to test my hypotheses regarding the effects of finite time horizons on statutory discretion, I code the first year of impact as the year where at least one legislator of either chamber is ineligible to run for reelection the fall of that year (or the following year if the state has odd-year biennial sessions.) I assume that once term limits impacts a legislator in either chamber in this manner, the legislature altogether adopts a finite time horizon mindset. Although a legislator may not be termed out of office for another few years, she has realized the finality of

her time in office when term limits first comes into effect for her peers. The twelve states with intrastate term limits variation in the later analyses (with the years of impact in parentheses) include: Arizona (2000-2013), Arkansas (1997-2013), California (1996-2013), Colorado (1998-2013), Florida (2000-2013), Louisiana (2007-2013), Michigan (1998-2013), Missouri (2002-2013), Nevada (2009-2013), Ohio (2000-2013), Oklahoma (2004-2013), and Oregon (1997-2001). With the exception of Louisiana, which adopted term-limits through the legislative process, the remaining eleven states adopted term limits by initiative (Mooney 2009). This variable is based off of the National Conference of State Legislatures

Party Control Variables. Since charter schools are a partisan issue, it is important to account for party control for the governor and both chambers of the legislature by party. I include the following variables to account for party control: unified Republican government, divided government with a Republican governor and a Democrat legislature, divided government with a Republican governor and a divided legislature, divided government with a Democrat governor and a Republican legislature, and divided government with a Democrat governor and a divided legislature. Unified Democrat government is the excluded category in the later regression. Data regarding party control is based on the Book of States.

Political Institutions Variables. I also include the variables commonly used in the state delegation literature in the regression: legislative capacity (Baranowski 2001; Potoski and Woods 2001; Huber and Shipan 2002; Volden 2002; Woods and Baranowski 2006), legislative staff and session length (Volden 2002; Woods and Baranowski 2006); whether the legislature has a formal process in place to oversee the approval and review of new and existing regulations (Huber and Shipan 2002; Gerber et al. 2005); Beyle's governor's institutional powers index (Huber and Shipan 2002; Woods and Baranowski 2006), and Ranney's interparty index (de

Figueiredo and Vaden Berge 1998; Potoski 1999; Huber and Shipan 2002; Volden 2002). I also include a biennial session variable to account for Arkansas and Oregon, which switched from biennial to annual legislative sessions in 2009 and 2011, respectively. The salary, expenditures, regular session length variables are provided by Bowen and Greene (2014). The salary and expenditure measures are presented in the following regressions as the ratio of salary or expenditure to a state's personal income per capita in 2010. Since Bowen and Green's dataset is by legislative session and the unit of analysis for this paper is by year, the salary, expenditures, and session length values for states with *annual* sessions are divided in half. The state personal income per capita data is from the Bureau of Economic Analysis. The legislative regulations review process is from the Book of States. The Beyle institutional index is from "State Politics and the Judiciary Codebook" by Stefanie Lindquist. I generated the party control component of this index using the aforementioned party control variables. The four, six, eight, and ten-year Ranney party competition index is provided by Carl Klarner and I extended his index to 2012 and 2013 using his codebook. The biennial session variable is based off of the National Conference of State Legislatures.

State Finance and Demographics Variables. I include state finance and demographics to account for the centralization of state legislation and demand for charter school legislation, respectively. I expect that a state with a more centralized, state-based source of elementary and secondary education revenue for the state's schools will result in an increase of number of mandatory words added since I assume that states providing a greater proportion of elementary and secondary education revenue for its schools are more likely to specify in statute the mandates schools must execute to be eligible for funding in the first place. Building on the charter school policy diffusion literature, I expect states with a larger proportion of non-white

student population and private student population to the total student population to provide greater discretion, a decrease in the number of mandatory words added (Renzulli and Roscigno 2005; Stoddard and Corcoran 2007). States with a greater non-white student population or private school population are more likely to support charter schools to improve the achievement gap and alternative education programs, respectively. All four variables are based of off the Digest of Education Statistics. Lastly, a right-to-work variable, based off of the National Conference of State Legislatures, is included to account for a teacher union's political influence.[9]

Findings

Tables 2 and 3 report the effect of legislative term limits on the number of mandatory words added per state-year for the 354 enactments using a fixed-effects regression. Overall, these findings suggest a legislature with term limits enacts approximately 285 more mandatory words to a state's education code than a non-term limited legislature. Given the 25th percentile, 50th percentile, and 75th percentile of states' total relevant number of mandatory words in the education code is 837, 1,411, and 2,582 words respectively, this effect is substantively large. This consistent finding supports the hypothesis that finite time horizons due to term limits results in less statutory discretion. This robust result withstands various types of control variables suggested by previous works regarding state delegation and charter school policy diffusion in Table 3. The fifth model in Table 3 supports the hypothesis for a conditional effect between legislative term limits and legislative capacity.

[INSERT TABLE 2 HERE]

Table 2 illustrates the effect of incorporating the distinction between optional and mandatory words, the number of (mandatory) words repealed, and the total number of (mandatory) words related to charter school authorization, renewal, and revocation in a state's

education code per- state year. The first three models use the total words added – both optional and mandatory words – as the dependent variable. The second three models use only mandatory words as the dependent variable. The first and fourth models only include the main explanatory variable, the second and fifth models add the number of words repealed variable, and the third and sixth models add the total number of relevant words in a state's education code variable. For both dependent variables, the coefficient decreases in value once the number of words repealed variable is added but largely increases once the education code word count variable is added. Between the two dependent variables, the mandatory words measure results in a significant effect across all three measures for the term limits variable and an underestimate of its effect relative to the total words measure. These results signify the importance of the three distinctions provided by the new measure and the robust effect of term limits on statutory discretion across measurement type.

[INSERT TABLE 3 HERE]

Table 3 demonstrates the robust effect of legislative term limits on statutory discretion while controlling for competing explanatory variables suggested by the state delegation and charter school policy diffusion literature. As a point of reference, the first model in Table 3 is the same as the sixth model in Table 2. The second model includes the party control variables, with unified Democrat government as the baseline, omitted category. At the very least, there are opposite trends in discretion in times of divided government for this partisan issue. In times of divided government when the Democrats control the legislature, there is an increase of approximately 220 mandatory words added (significant at the 90% level) compared to the baseline. However, when the Republicans control the legislature, there is a decrease of approximately 184 mandatory words added (significant at the 90% level).

As shown in the fifth model, there is a conditional effect of term limits in times of divided government with a Democrat legislature. The coefficient of the interaction term, comprised of 17 of the 354 state-year observations, is in the opposite direction. The coefficient shows that term-limited state legislatures with divided government and a Democrat legislative majority enact approximately 396 mandatory words less than their counterparts. There is no significant effect for term-limited legislatures with divided government with a Republican majority.

The third model includes the most prevalent state political institutions variables in the state delegation literature. A one-unit increase in legislative capacity, measured by the proportion of the average legislator's salary to a state's personal income per capita, results in approximately a 506-word increase in the number of mandatory words enacted. There is no significant conditional effect of legislative capacity for either type of divided government (or divided government altogether.) Although this finding contradicts with Huber and Shipan (2002) and Woods and Baranowski's (2006), the general transaction-cost politics theory arguably accounts for this effect. State legislators with greater legislative capacity generally face lesser costs using ex ante means of control than legislators with lower levels because they have greater resources to attend to achieving their policy goals through legislation.

The interaction term between term limits and legislative capacity in the fifth model is positive and significant. Based on 94 observations of the total 354 enactments, this interaction suggests that the effect of term limits is conditional on legislative capacity. For state legislatures with term limits, a one-unit increase in legislative capacity increases the number of mandatory words added to a state's education code by approximately 484 words.[10] In a transaction cost

politics framework, these results suggest that higher-capacity legislators are more incentivized to accept the cost of writing more detail statutes once term limits are enacted.

The results in Table 3 also consistently show a negative effect of gubernatorial strength, measured by Beyle's governor's institutional powers index, on statutory discretion. Every one-unit increase on the five-point scale results in approximately an increase approximately 297 mandatory words enacted (significant at the 90% level). Session length, expenditures per legislator, biennial session, legislative oversight of regulations, and Ranney's interparty index are consistently insignificant. The Ranney index measure remains insignificant when the six, eight, and ten year averages are substituted in the model for the four-year average. The fourth model includes state-level demographic and financial variables provided by the charter school literature such as the degree of fiscal centralization, proportion of non-white students, the proportion of private school students, teacher union strength. Unlike Stoddard and Corcoran (2007), there is a negative effect of the proportion of private school students on the number of mandatory words added. States with a higher enrollment of private school students are more likely to grant discretion to the bureaucracy regarding charter school authorization, renewal, and revocation. Similar to Stoddard and Corcoran (2007), teacher union strength is insignificant. Although teacher union strength negatively predicts the likelihood of adoption of a charter school law for the first time, it does not appear to explain the degree of discretion granted in a state.

Conclusion

Finite time horizons alter the incentives of legislators in the lawmaking process and, ultimately, the content of statutes imposed upon the bureaucracy. Regardless of their motives to enact their policy preferences or achieve election to another position, legislators are forced to enact their policy preferences within their finite terms. As legislative capacity increases,

legislators are more willing to undergo the costs of writing more detailed legislation to ensure their preferences are implemented by the bureaucracy in accordance with legislative intent. Such legislators are incentivized to enact legislation with less statutory discretion today to ensure their preferences are implemented by the bureaucracy tomorrow since most of these legislators will not be able to monitor the bureaucracy over the long term. This claim is validated by the consistent finding in this paper that once a state enacts legislative term limits, its elected officials grant less statutory discretion to the bureaucracy. Even though this claim is tested within the context of a partisan policy area, this result overwhelms competing explanations provided by the federal and state bureaucracy literature such as divided government, party turnover, and legislator capacity. By testing this claim within the context of education policy, a policy largely managed by state governments in the United States, this finding also clarifies the influence of legislative institutions on the degree of statutory discretion granted by governors and state legislatures.

The main findings challenge the predominant notion in the term limits literature that term-limited legislatures are less capable of controlling the bureaucracy than their counterparts. Although term-limited legislatures may use ex post controls (e.g. monitoring) less often, I show that these actors use ex ante means of bureaucratic control more often than their counterparts. Whether one means of control is more effective than the other in minimizing agency loss is a great question for future research. In relation to the state delegation literature, which finds legislative capacity to be one of the most common predictors of statutory discretion, the main findings of this paper suggest instead that the interaction between legislative term limits and legislative capacity to be the strongest determinant of statutory discretion. Lastly, this paper builds upon Huber and Shipan's (2002) foundational work to provide a more comprehensive

research design and measure of statutory discretion beyond initial legislative enactments. The distinction between optional and mandatory words and the inclusion of repealed words and the length of the existing statutes allows for better comparison across countries, states, and localities and within units over time. Future work can apply this measure to predict the causes and effects of policy discretion in regulations, legislative riders, and executive orders at the local, state, and federal level.

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Figure 1. States with enacted charter school, authorization, renewal, and revocation statutes, 1991-2013.

Table 1. Charter School Authorization, Renewal, and Revocation Enactments, 1991-2013.

Party Control	Enactments	Percentage
Republican governor, Republican legislature	114	32.2%
Republican governor, Democrat legislature	65	18.4%
Republican governor, divided legislature	31	8.8%
Democrat governor, Republican legislature	44	12.4%
Democrat governor, divided legislature	38	10.7%
Democrat governor, Democrat legislature	62	17.5%

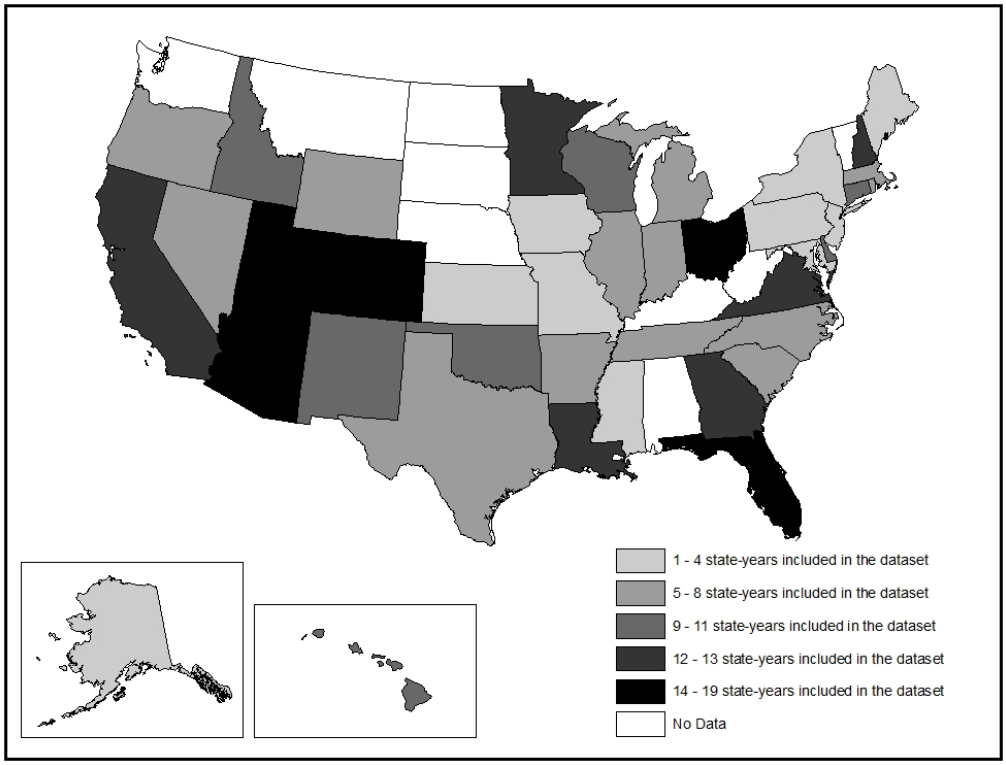
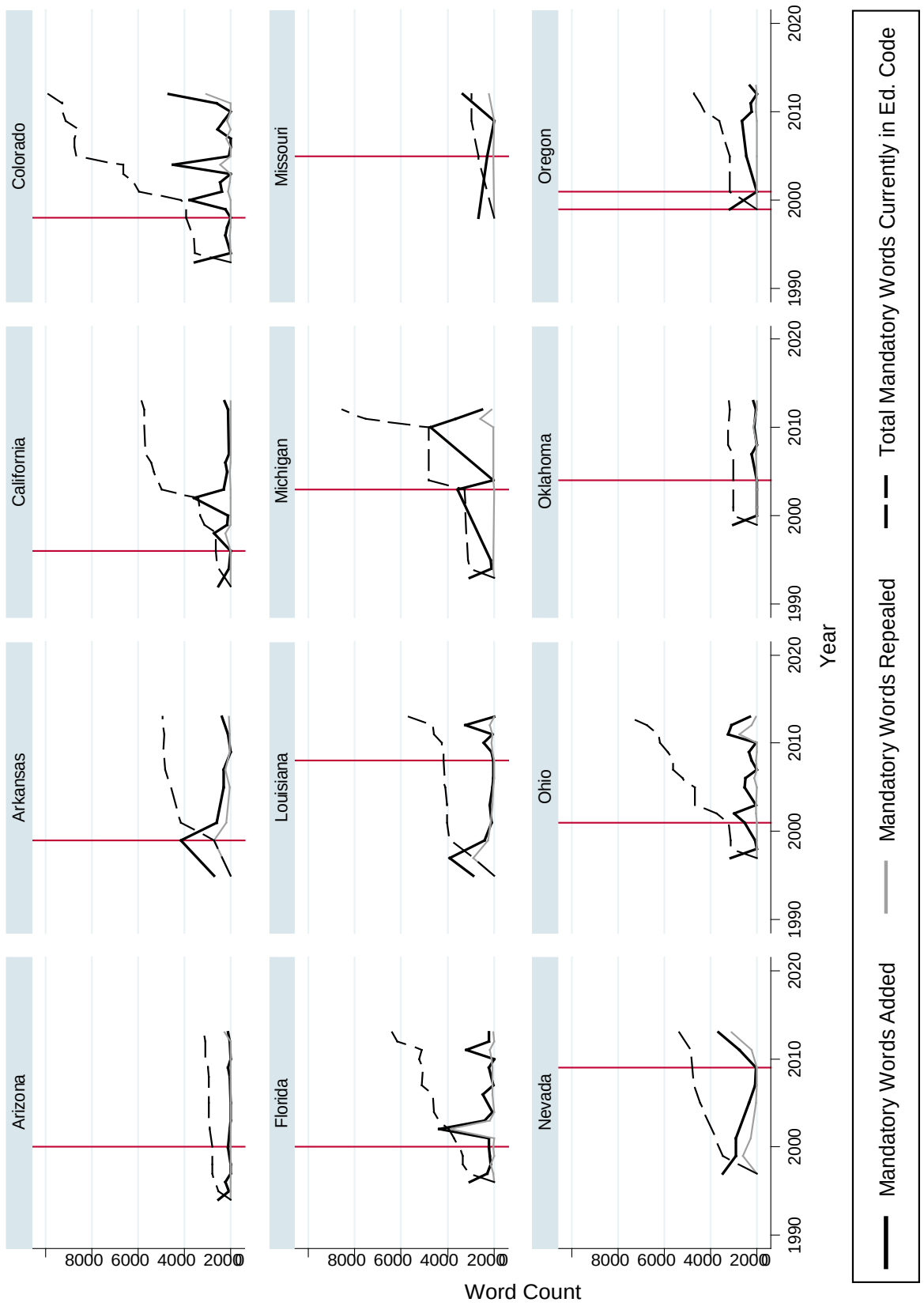


Figure 2. Frequency of charter school, authorization, renewal, and revocation enactments by state, 1991-2013.



Note: The vertical line indicates the first year of enactment. For Oregon, the second vertical line indicates the last year of enactment.

Figure 3. Number of mandatory words added, mandatory words repealed, and the total number of relevant mandatory words currently in the state's education code for states with intrastate term limits variation, 1991-2013.

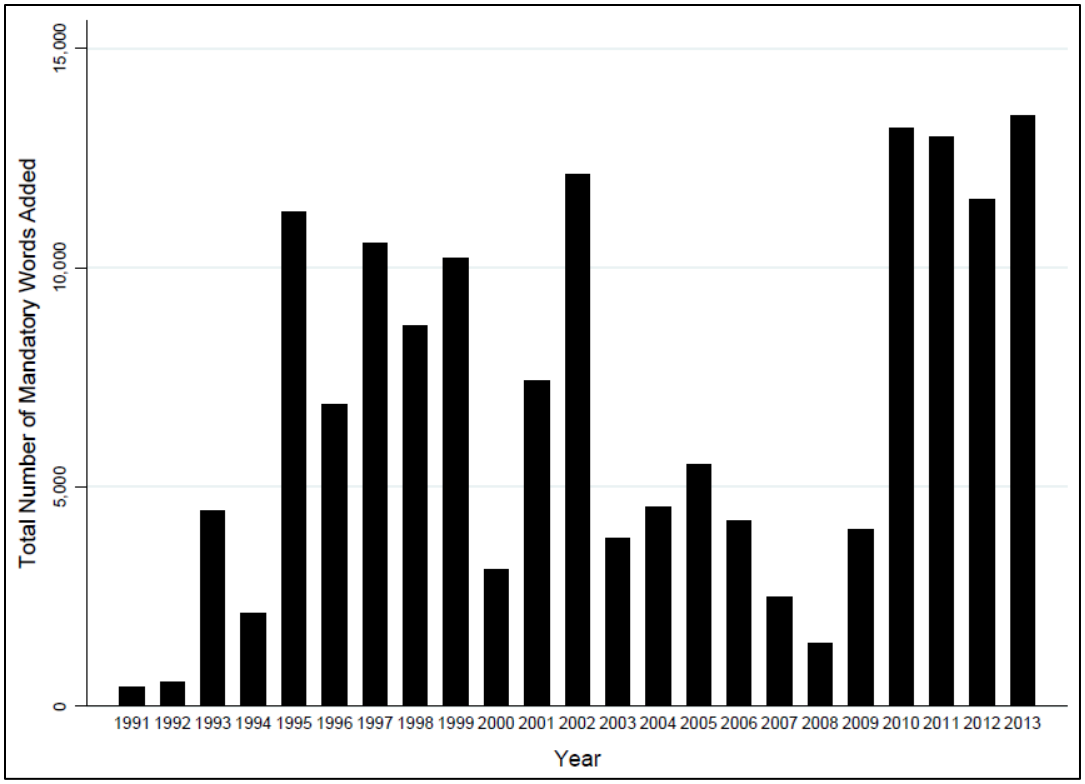


Figure 4. Number of mandatory words added by year, 1991-2013.

Table 2. Effect of Legislative Term Limits with Repealed Words and Total Words Controls

	Total Words Added			**Mandatory Words Added**		
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Term Limits	268.5*	254.1*	402.0**	233.7**	213.0**	342.8**
	(142.4)	(125.8)	(172.5)	(111.8)	(98.80)	(137.5)
Total Words Repealed		1.191***	1.233***			
		(0.134)	(0.133)			
Total Relevant Words in Ed. Code			-0.286***			
			(0.0802)			
Mandatory Words Repealed					1.161***	1.221***
					(0.134)	(0.126)
Relevant Mandatory Words in Ed. Code						-0.291***
						(0.0926)
Constant	1,156***	1,113***	1,307***	706.1***	662.8***	864.8***
	(56.67)	(47.58)	(93.39)	(44.10)	(37.82)	(95.31)
Observations	354	354	354	354	354	354
R-squared	0.136	0.408	0.513	0.129	0.391	0.504
Number of states	41	41	41	41	41	41
State fixed-effects	Yes	Yes	Yes	Yes	Yes	Yes
Year fixed-effects	Yes	Yes	Yes	Yes	Yes	Yes

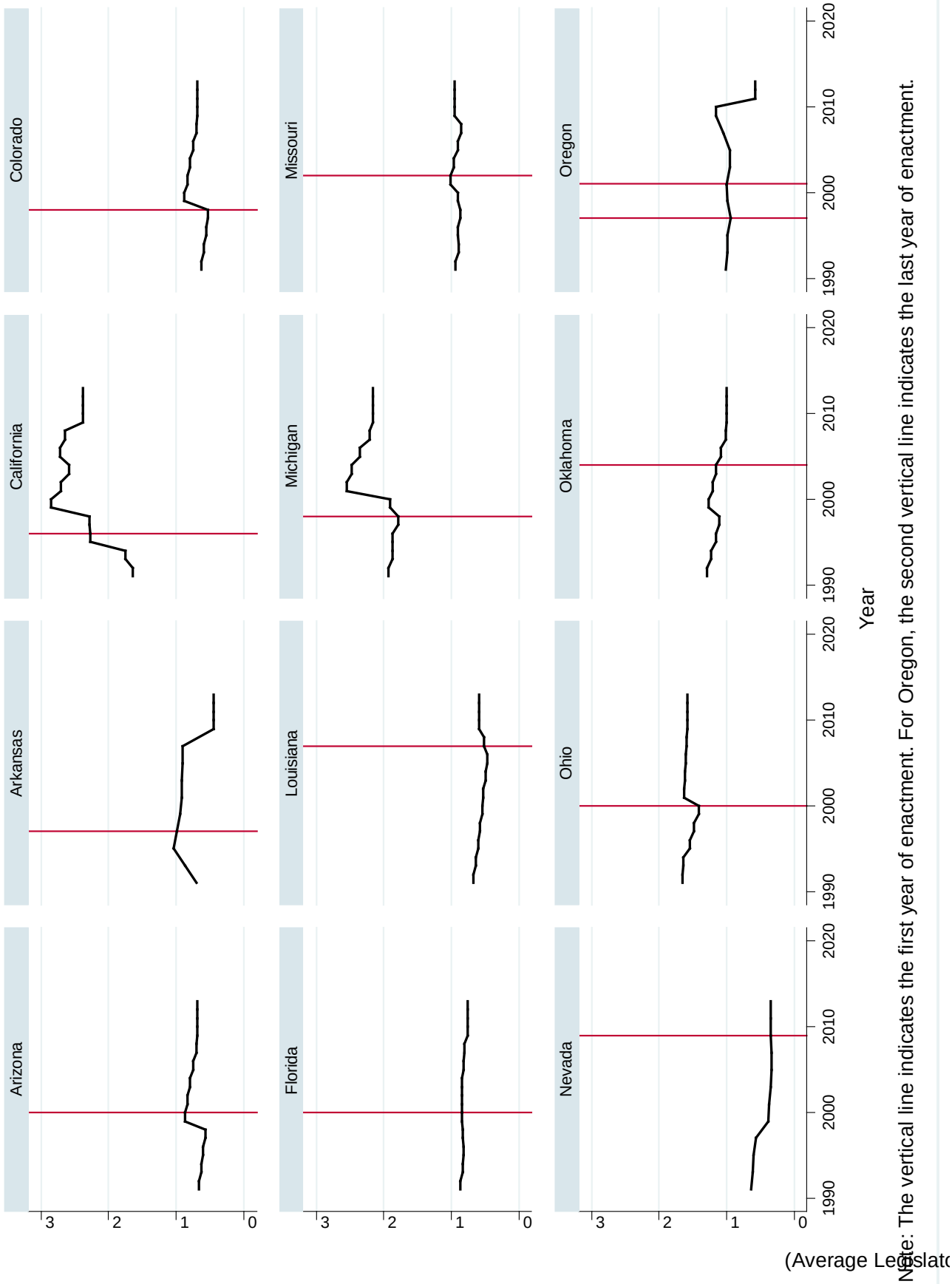
Note: R^2 values do not include state or year fixed-effects; robust standard errors clustered by state in parentheses.

Table 3. Effect of Legislative Term Limits on the Degree of Statutory Discretion

Mandatory Words Added	Model 1	Model 2	Model 3	Model 4	Model 5
Term Limits	342.8**	359.6**	325.7**	285.7**	-73.36
	(137.5)	(137.5)	(129.2)	(117.5)	(220.0)
Mandatory Words Repealed	1.221***	1.217***	1.229***	1.215***	1.213***
	(0.126)	(0.122)	(0.126)	(0.125)	(0.119)
Relevant Mandatory Words in Education Code	-0.291***	-0.324***	-0.319***	-0.323***	-0.333***
	(0.0926)	(0.0780)	(0.0815)	(0.0847)	(0.0897)
Interaction Effects					
Term Limits*Republican Governor/Democrat Legislature					-396.9**
					(187.6)
Term Limits*Legislator Compensation					484.0**
					(211.7)
Party Control					
Unified Republican		-54.51	-45.60	-5.687	-44.09
		(136.8)	(126.4)	(125.9)	(130.1)
Republican Governor/Democrat Legislature		152.1	233.9**	220.7*	381.2***
		(124.3)	(112.2)	(110.1)	(139.1)
Republican Governor/Divided Legislature		-106.8	-38.46	-34.59	-52.86
		(115.4)	(111.9)	(101.1)	(97.70)
Democrat Governor/Republican Legislature		-240.7*	-168.5	-184.6*	-244.6**
		(132.6)	(120.6)	(102.4)	(109.9)
Democrat Governor/Divided Legislature		49.84	128.8	142.3	107.2
		(148.2)	(144.9)	(142.0)	(140.8)
Political Institutions					
Average Legislator Compensation			524.2*	506.8**	20.74
			(260.7)	(237.0)	(375.7)
Average Expenditures per Legislator			-10.70	-15.18	-6.582
			(28.76)	(31.65)	(28.07)
Session Length			-1.634	-1.189	-0.898
			(1.671)	(1.596)	(1.299)
Biennial Legislative Session			-4.488	126.3	258.7
			(274.1)	(325.5)	(298.6)
Legislative Review of Regulations			10.14	-10.89	-23.22
			(158.9)	(130.6)	(121.4)
Beyle Institutional Index			323.8*	297.0*	260.6
			(166.4)	(162.3)	(156.8)
Ranney Party Competition Index			-618.3	-599.1	-643.4
			(414.5)	(451.8)	(461.7)
State Demographics and Finance					
Proportion of Federal ES Funding				35.46	38.65
				(34.80)	(33.45)
Proportion of State ES Funding				-0.541	-2.515

				(4.392)	(4.411)
Proportion Non-white Students				13.41	15.53
				(22.33)	(20.46)
Proportion Private School Students				-92.45**	-79.46**
				(34.29)	(33.14)
Right-to-Work State				-262.4	-291.9
				(185.1)	(192.2)
Constant	864.8***	817.1***	-246.4	421.3	703.0
	(95.31)	(116.7)	(796.2)	(928.4)	(875.4)
Observations	354	354	354	354	354
R-squared	0.504	0.524	0.545	0.564	0.584
Number of States	41	41	41	41	41
State Fixed-Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed-Effects	Yes	Yes	Yes	Yes	Yes

Note: R^2 values do not include state or year fixed-effects; robust standard errors clustered by state in parentheses.



Note: The vertical line indicates the first year of enactment. For Oregon, the second vertical line indicates the last year of enactment.

Appendix A. Legislative capacity ratio for states with intrastate term limits variation, 1991-2013.

[1] Kousser's (2006) measure of legislative productivity – the breadth and complexity of enacted legislation – could count as a measure of statutory discretion since it resembles Huber and Shipan's (2002) word count measure. If these variables are taken as a measure degree of statutory discretion, Kousser's findings suggest term-limited legislatures grant more discretion to the bureaucracy (except for California.)

[2] See the National Association of Charter School Authorizer's 2014 report "On the Road to Better Accountability: An Analysis of State Charter School Policies": http://www.qualitycharters.org/assets/files/Documents/Policy/NACSA_014_SLR_FINAL_1-15-15.pdf.

[3] The total count of enactments excludes the only enactment from Washington in 2012 as well as three enactments in Minnesota in 1999, 2000, and 2001 when an independent, Governor Jesse Ventura, was governor.

[4] For the purposes of illustrating this point in a quantitative manner, I conducted a follow-up survey of eight of the eleven Assembly and Senate education committee consultants in spring 2015. At least six of the seven respondents agreed that a change from a "may" to a "shall" clause results in "somewhat less discretion" or "significantly" less discretion. The survey results are provided in Online Appendix A.

[5] States with repealed sections that remain in their education code were reviewed in the first step as well to ensure that the maximum number of sections, and subsequently bills and provisions, are included in the dataset.

[6] These categories are coded separately to account for the rare possibility that a sentence has an optional and mandatory phrase in the same sentence. The automated coding results show that only 99 of the 6,514 sentences and 73 of the 354 state-year observations (1.51% of the sentences

and 20% of state-year observations) have an optional and mandatory phrase in one sentence, an optional phrase replacing a mandatory phrase, or a mandatory phrase replacing an optional phrase.

[7] I selected a random sample of 25 sentences for each state (or the maximum number of sentences if a state had a less than a total of 25 sentences (i.e. Alaska and Maryland).) The inter-rater reliability between myself and the attorney is 92% for the optional coding (Kripp's alpha: 0.827) and 91.5% for the mandatory coding (Kripp's alpha: 0.808).

[8] See the Education Commission of the States' June 2014 report "Trends in state charter school laws: Authorizers, caps, performance-based closures and virtual schools": http://www.ecs.org/clearinghouse/01/13/13/11313.pdf

[9] Other variables for teacher union political influence have been considered for this paper, including the percent of teachers who are members of a union (National Center for Education Statistics) and the proportion of teacher union contributions to state legislative and gubernatorial races (Follow the Money). Unfortunately, these variables are not available from 1991-2013.The NCES source provides data only for 1999-2000, 2003-2004, and 2007-2008. The Follow the Money source provides data consistently across all U.S. states starting in 2000. Recent works regarding charter school policy diffusion (Renzulli and Roscigno 2005) and the charter school policy restrictiveness (Stoddard and Corcoran 2007) literature use teacher union membership from a single year but this operationalization is unhelpful for a fixed-effects regression. The right-to-work variable at least approximates a teacher union's ability to collect membership dues to use for campaign contributions and lobbying at the state level for this analysis.

[10] See Appendix A for a figure of the ratio of the average legislator salary and the state personal income per capita over time for the twelve states with term limits.