

# LAWMAKERS' PREFERENCES FOR BUREAUCRATIC DISCRETION: THE CLEAN AIR ACT AMENDMENTS OF 1990 AND THE TELECOMMUNICATIONS ACT OF 1996

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*Research on delegation stresses that chief executives are “privileged actors” well positioned to influence bureaucratic policy decisions. Therefore, legislative coalitions provide less authority to agencies when they disagree with executives about what policy should look like. Otherwise, executives would take advantage of voluminous agency discretion to direct bureaucrats to make decisions inconsistent with legislative coalitions’ policy goals. I stress that, in the U.S. lawmaking system, congressional committees are also privileged actors. As such—as with the president—those who experience policy disagreement with committees should wish to limit bureaucratic discretion. In addition, I examine individual lawmakers’ preferences for bureaucratic discretion to evaluate this perspective on agency design. As policy disagreement increases between senators and the Senate committee that oversees the agency/agencies receiving authority, senators prefer to limit the volume of discretion agencies receive.*

Politics intrudes on the policy decisions of bureaucracies. This imposition occurs because elected officials, through collective lawmaking processes, devise the processes that bureaucrats must employ to make policy choices. In doing so, lawmakers design processes to serve their policy and electoral goals, influencing the substance of the bureaucracy’s decisions (McCubbins, Noll, and Weingast 1987).

An important insight emerging from research on such political design of the bureaucracy is that, when deciding how much authority or “discretion” to delegate to agencies, lawmaking coalitions consider the policy priorities of “privileged actors” well positioned to influence agencies’ decisions (Huber and Shipan 2002). As policy disagreement between coalitions that control the lawmaking process and

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privileged actors that control the post-legislative process of influencing agencies increases, agencies receive less discretion (Epstein and O'Halloran 1999; Huber and Shipan 2002; Huber, Shipan, and Pfahler 2001; Lewis 2003; Potoski 1999; Wood and Bohte 2004). For example, a lawmaking coalition in the U.S. Congress may disagree with the president regarding the political and policy goals of a law. In addition, the president is well positioned to influence how an agency furthers these goals, e.g., by requiring that the substance of agency regulations corresponds to the president's priorities. Given policy disagreement with the president, however, the coalition wishes to limit such presidential interference. Therefore, the congressional coalition reduces the volume of discretion executive agencies receive (Epstein and O'Halloran 1999) and creates structures, such as independent regulatory commissions, intended to limit presidential influence over policy decisions (Lewis 2003; Wood and Bohte 2004). Reducing discretion in this way raises the transaction costs to the president of influencing bureaucratic policy decisions, making it harder for him to undermine the congressional coalition's goals.

In examining the relationship between policy disagreement and the transaction costs of influencing agencies' policy decisions, this literature has focused largely on chief executives as privileged actors, omitting consideration of whether, and how, the existence of other privileged actors affects delegation (though see MacDonald 2007). In this article, I argue that chief executives are not the only privileged actors capable of influencing bureaucratic policy choices, at least in the context of the U.S. lawmaking system. In fact, research on congressional oversight stresses the capacity of congressional committees to influence the substance of agencies' decisions. Therefore, any account of how disagreement between lawmaking coalitions and privileged actors shapes the context in which agencies make policy must account for committees. Below, I develop this argument and assess it by examining lawmakers' preferences for bureaucratic discretion.

This focus on individual lawmakers also broadens the study of agency design in an attempt to strengthen the foundation for the finding that disagreement between legislative coalitions and privileged actors reduces discretion. As an empirical matter, studies have focused on assessing whether policy disagreement between legislative coalitions and chief executives, often measured by the presence of divided government, leads to reductions in discretion. Predictions that legislative coalitions limit discretion when they disagree with privileged actors, though, are based on the premise that individual lawmakers pursue their political and policy goals. Legislative coalitions represent the aggregation of individual decisions to support packages of provisions combined into bills/laws. As such, observing that individual lawmakers' preferences for discretion are influenced by policy disagreement with privileged actors would constitute important support for the findings of previous studies that disagreement between coalitions and privileged actors leads to reductions in authority delegated to agencies. To be sure, both Bawn (1997) and Reenock and Poggione (2004) examined individual lawmakers' priorities for limiting agency discretion through bureaucratic design. However, Bawn (1997) focused on lawmakers'

positions within the legislature, showing that individuals on committees with jurisdiction over agencies prefer not to limit discretion through agency design. In addition, Reenock and Poggoine (2004) found that policy disagreement between state legislators and governors did not affect legislators' preferences for limiting discretion. As such, relatively little research exists on individual lawmakers' preferences for discretion and there is no evidence that policy disagreement between lawmakers and privileged actors leads lawmakers to prefer limiting bureaucratic discretion.

Therefore, I assess whether individual members of Congress prefer to reduce discretion when they experience policy disagreement with committees responsible for overseeing agencies. I find that such disagreement is associated with preferences on the part of senators to reduce discretion. In observing this relationship with respect to the priorities that individual lawmakers—rather than legislative coalitions—have for bureaucratic discretion, the findings provide a new type of empirical support for transaction cost theories of agency design.

### **CONGRESSIONAL COMMITTEES AS PRIVILEGED ACTORS AND LAWMAKERS' PREFERENCES FOR DISCRETION**

Transaction cost theories of the political design of the bureaucracy stress that, as policy disagreement between lawmaking coalitions and privileged actors increases, the bureaucracy receives less discretion. The basis for this prediction is that coalitions should not provide discretion to agencies when the agencies will be encouraged to make policy decisions that the coalitions will abhor. In empirical investigations of this prediction, scholars conceive of lawmaking coalitions in terms of the policy position of the legislator/actor who controls whether legislation passes his or her chamber. In practice, this conceptualization has often meant viewing the majority party as a unified actor that controls whether bills pass the chamber (Epstein and O'Halloran 1999; Huber and Shipan 2002; Huber, Shipan, and Pfahler 2001).

The corollary for individual lawmakers is straightforward. Like lawmaking coalitions, lawmakers do not want the bureaucracy to make decisions inconsistent with their priorities. As such, they should prefer ceding less discretion to agencies as they experience greater policy disagreement with privileged actors. After all, lawmakers expect that privileged actors will pressure agencies to make policy decisions consistent with the privileged actors' priorities. Therefore, for lawmakers whose policy priorities diverge from those of privileged actors, as the volume of discretion increases, so too does the volume of policy decisions that undermine lawmakers' priorities for what public policy should look like.

In particular, lawmakers should consider chief executives privileged actors. As Huber and Shipan (2002, 13) note, chief executives enjoy advantageous positions when it comes to influencing how bureaucrats employ delegated authority. In the context of the analysis of the U.S. lawmaking system below, the U.S. president

possesses leverage over agencies' decisions through his authority under the "Take Care Clause" of the Constitution, his role in formulating budgets, and his access to policy information courtesy of his appointees (Lewis 2003, 72–75). Therefore, members of Congress should prefer ceding less discretion to agencies as they experience greater policy disagreement with the president.

Notwithstanding this focus on chief executives, it is likely that other privileged actors are well positioned to influence agencies' policy decisions. In the context of the U.S. lawmaking system, Aberbach (1990, 2002) shows that congressional committees engage in active oversight of agencies under their jurisdictions through regular informal contact with agency personnel (1990, 83–86) and committee hearings (1990, 35). Such oversight does not merely occur "fire-alarm" style (McCubbins and Schwartz 1984), in reaction to complaints by interest groups unsatisfied by agency decisions. Rather, the "Committee Intelligence System" "use[s] an impressive array of oversight techniques" to monitor agencies proactively through "well-developed information network[s]" (1990, 194), leading to a "significant effect on agency behavior" (1990, 195). Likewise, Shipan (2004) shows that the House and Senate committees with jurisdiction over the Food and Drug Administration influenced the agency's policy decisions from 1947 to 1995 when it was credible that the committees would introduce legislation to overturn FDA decisions with which the committees disagreed. Thus, even if congressional committees do not always "dominate" agency decision making (Weingast and Moran 1983), committees enjoy privileged status when it comes to affecting agency policies.

As such, lawmakers should view agency decisions as susceptible to committee influence. By extension, when lawmakers' policy priorities diverge from those of the committees overseeing agencies, lawmakers should expect that their priorities will be undermined by committee oversight. This observation leads to the hypothesis that individual members of Congress prefer giving agencies less discretion as they experience greater policy disagreement with the committees that oversee the agencies.<sup>1</sup>

In summary, lawmakers prefer agency decisions that serve their political and policy priorities. How well lawmakers are served by congressional oversight to

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<sup>1</sup> One consideration that could affect the degree to which lawmakers favor limiting agency discretion is that opportunities exist to influence agencies in the future. Whitford (2005), for example, notes that Congress revised the "Superfund" law in response to the shape of policy as it was made by President Reagan's appointees. Given the potential to revisit policy decisions in the future, should members try to limit discretion in the present? One response to this question is that lawmakers are not guaranteed that they will be able to revisit decisions through the legislative process in the future. For example, the Clean Air Act was last reauthorized in 1990 and statutory authority for it has long since expired. However, Congress has not tackled reauthorization, preventing members from revisiting clean air decisions that they dislike. Of course, there is always the possibility of trying to influence clean air policy through oversight. But it is the privileged actors who control such oversight—not the floor. Furthermore, as McCubbins, Noll, and Weingast (1989) note, committees, to the degree that they prefer agency decisions to policies that the floor would adopt, will not refer legislation to the floor to overturn the agency. Given these considerations, lawmakers have an incentive to limit agency discretion when they have the chance, i.e., when legislation delegating authority is under consideration.

influence such decisions varies. When lawmakers agree with committees overseeing agencies, oversight serves them well. When lawmakers disagree with committees about what policy should look like, oversight serves them poorly, leading lawmakers to prefer low levels of agency discretion. After all, committees cannot encourage an agency to make a policy decision—with which lawmakers disagree—if the agency lacks discretion to make the decision. The analysis below assesses this perspective by examining the amendment offering behavior of U.S. senators during Senate consideration of the Clean Air Act Amendments of 1990 and the Telecommunications Act of 1996.

### **THE CLEAN AIR ACT AMENDMENTS OF 1990, THE TELECOMMUNICATIONS ACT OF 1996, AND AMENDMENTS TO REDUCE DISCRETION OFFERED BY U.S. SENATORS**

To measure lawmakers' preferences for reducing discretion, I count the number of amendments that U.S. senators sponsored and/or cosponsored to do so during the U.S. Senate's consideration of the Clean Air Act Amendments of 1990 and the Telecommunications Act of 1996. This focus raises several questions. Why focus on amendments to bills rather than support for these bills? Why focus on sponsorship and cosponsorship of amendments rather than roll-call votes on whether to pass amendments? Why focus on consideration of these bills in particular?

Examining amendments offered by lawmakers to legislation that would, if enacted into law, delegate policy authority to agencies is an attractive strategy for observing how much discretion individual lawmakers prefer to delegate. If amendments contain language that reduces the volume of discretion agencies receive, lawmakers can be considered to prefer reducing discretion. An alternative strategy to gauge lawmakers' preferences for discretion would be to observe whether they support or oppose legislation that delegates authority to agencies. However, lawmakers' "yea/nay" votes on the final passage of legislation are likely to be wrapped up in a number of considerations—in particular, whether they endorse the purpose of the law—that have nothing to do with role of agencies in making policy and/or the role of privileged actors in overseeing agencies. Therefore, support for legislation communicates little specific about lawmakers' preferences for discretion. Amendments, however, are narrower in scope, proposing specific changes to the underlying bill.<sup>2</sup> Therefore, when lawmakers propose amendments that reduce

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<sup>2</sup> Of course, some amendments propose wholesale changes to legislation, as is the case with amendments that are offered "in the nature of a substitute." Such amendments propose to replace the bill under consideration with a new bill. I account for this fact in the analysis below by not incorporating the one such amendment offered during consideration of the two bills analyzed for this study. This amendment was offered in the nature of a substitute by Majority Leader George Mitchell to the Clean Air Act Amendments of 1990. Amendments were then proposed by senators to Mitchell's amendment in the nature of a substitute. After the amending process was completed, the amendment in the nature of a substitute was passed and became the new bill, which was

discretion, their proposals can be taken as direct evidence that they prefer cutting discretion.

I focus on sponsorship and cosponsorship of amendments, rather than roll-call votes on the passage of such amendments, because sponsorship and cosponsorship indicates more intense support for reducing discretion. These endorsements require lawmakers to incur “resource costs” (lawmakers commit the resources of their office, e.g., their time and that of their staffs to producing language, if the primary sponsor, or determining whether supporting the language is helpful to lawmakers’ goals if a cosponsor), “opportunity costs” (lawmakers forgo the opportunity to sponsor/cosponsor other measures by committing resources to the ones they do endorse) and “political costs” (lawmakers risk exposing themselves to criticism of their support for the measures they sponsor and cosponsor when they run for reelection) (Schiller 1995). Therefore, when lawmakers are willing to incur these costs to sponsor or cosponsor an amendment, their endorsement of the measure is clear, distinguishing them from their colleagues who merely vote for/against the amendment. By focusing on roll-call votes, one would ignore information on the intensity with which lawmakers prefer language reducing discretion, making analysis of the sponsorship/cosponsorship of amendments preferable.

I focus on consideration of bills in the Senate because the House of Representatives considers legislation under special rules that substantially constrain members from offering amendments. The limited freedom of House members to propose amendments precludes using analysis of House amendments to assess lawmakers’ preferences for discretion. Senate rules, however, often ensure that senators enjoy substantial freedom to offer amendments.<sup>3</sup>

I examined senators’ amendment-offering activity during the Clean Air Act Amendments of 1990 and the Telecommunications Act of 1996 for several reasons. First, during debate on these bills, senators deluged their colleagues with amendments, offering 173 amendments to the Clean Air Act and 134 amendments to the Telecommunications Act. This volume ensured that senators had the opportunity to reveal their preferences regarding the level of discretion that the Environmental

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then passed by the Senate. Therefore, in coding amendments that reduced discretion, I coded amendments to the substitute amendment but did not assess whether the substitute amendment itself decreased discretion compared to the initial bill.

<sup>3</sup> One potential objection to considering Senate committees as privileged actors capable of influencing agencies is that Senate committees are considered to be weaker than House committees. Therefore, if one wishes to examine committees as privileged actors, one should focus on House—not Senate—committees. This relative weakness of Senate committees, though, occurs on the chamber floor in that it is easier for legislative coalitions to amend committee-referred bills on the Senate floor than the House floor due to procedural restrictions on amendments in the House (e.g., Smith 1989, 92–93). No feature of Senate deliberation provides senators not on committees with leverage over committee oversight activity. In addition, no research suggests that Senate committees can be overturned by noncommittee members any more easily than in the House. Nothing in Aberbach’s comprehensive (1990) or follow-up (2002) studies of oversight suggests that this is the case. Taylor (2001), who probes for differences in House and Senate oversight strategies, stresses that the chambers conduct oversight in largely similar manners.

Protection Agency (EPA) (in the case of the Clean Air Act) and the Federal Communications Commission (FCC) (in the case of the Telecommunications Act) should enjoy.<sup>4</sup> Second, the complex nature of anti-pollution and telecommunications policy required that policy-making authority had to be delegated to these agencies. As a result, the bills reported to the Senate provided the agencies discretion, giving senators the opportunity to remove discretion from the bills through amendments. In summary, although these cases are not representative of the diversity of legislation considered in Congress, the features of the bills, combined with the extensiveness of Senate deliberation on them, renders them analytically revealing when it comes to observing senators' preferences for discretion.

Finally, these cases provide insight into lawmakers' preferences for discretion on major laws that delegate substantial regulatory authority. In this sense, such laws are "where the action is" when it comes to determining the circumstances under which agencies make many of the policy decisions for which they are responsible. Understanding such cases, then, is critical to understanding lawmakers' preferences for much of the discretion that agencies exercise.

## DATA AND METHODS

To obtain a count of the number of amendments offered by senators to decrease the volume of discretion ceded to the EPA and FCC during consideration of the laws, I coded whether each amendment imposed "ex ante" constraints that, if adopted, would have diminished agency discretion. Such constraints can reduce discretion by compelling agencies to follow guidelines before their decisions take effect (McCubbins, Noll, and Weingast 1987), influencing the substance of policy choices. Following Bawn (1997), who coded whether senators' amendments offered to the Clean Air Act Amendments of 1990 and the Clean Water Act Amendments increased ex ante control of the EPA's decisions, I consider amendments to decrease discretion if they (1) allow other agencies input into the agencies' regulatory decisions, (2) specify the agencies' research agendas, thereby determining the information that agencies would use in developing regulations, (3) specify criteria that the agencies had to, or could not, use when making decisions, (4) strip authority away from the agencies to make decisions that the bills otherwise would have delegated to the agencies and (5) compel the agencies to make decisions by a specific date and outlined a default policy that would take effect if the agencies did not meet the deadline (1997, 114–116).<sup>5</sup> Of the 173 amendments offered to the Clean

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<sup>4</sup>In fact, other agencies received authority from these bills. For example, the Justice Department received authority under the Telecommunications Act to regulate indecency on the Internet. Nevertheless, the bulk of the responsibility for enforcing provisions and developing regulations was delegated to these agencies in these bills.

<sup>5</sup>Ex ante provisions can limit discretion in the manner specified by these criteria. Such provisions can also facilitate "ex post review" by, for example, requiring agencies to report on the basis for their decisions. Such

Air Act Amendments bill reported by the Senate Environment and Public Works Committee, 64 (37%) diminished EPA discretion; of the 134 amendments offered to the Telecommunications bill reported by the Senate Commerce, Science, and Transportation Committee, 40 (30%) reduced the FCC's discretion. For each bill, I counted the number of amendments each senator offered that diminished the agencies' discretion in this way.<sup>6</sup> Senators indicated greater preferences for limiting the agencies' discretion as the number of such amendments that they offered increased. This count served as the dependent variable in the analyses reported below.<sup>7</sup>

To assess the degree to which lawmakers experienced policy disagreements with privileged actors, I employed interest group ratings of senators' policy priorities with respect to the issues embodied in the bills. Since these analyses do not pool lawmakers across congressional sessions and chambers, the problems associated with employing interest group ratings raised by Groseclose, Levitt, and Snyder (1999) are not present. For the Clean Air Act analysis, League of Conservation Voters (LCV) ratings for the 101st Congress (1989–1990) measure lawmakers' priorities. The LCV rates members of Congress according to how environmentally friendly their voting records are, providing a jurisdiction specific measure of senators' priorities for environmental protection.<sup>8</sup> Since consideration of the Telecommunications Act revolved around establishing an environment in which market competition could provide consumers with expanded access to products at the lowest cost (Healey 1996), U.S. Chamber of Commerce (COC) ratings, which measure lawmakers' commitment to markets free from governmental regulation, for the 104th Congress (1995–1996) measure senators' policy priorities. LCV and

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provisions can also specify procedures that increase the latitude agencies have to make decisions. Here, I only include in the dependent variable those amendments that restrict discretion, because doing so inhibits influence by privileged actors in the future. Provisions that foster oversight after the fact and provide agencies with more wiggle room would undermine the goal of limiting privilege actor influence and would therefore not be appropriate to include in the dependent variable's count of amendments that diminish agency discretion.

<sup>6</sup> With respect to most amendments, senators offered changes to the text of the bill. In such cases, I determined whether the amendment met one of the criteria itemized above, coding it as diminishing discretion if it did. In a number of cases, however, either the text of the bill or the amendment to it specified changes that were to be made to the U.S. Code. In these cases I noted what the state of the U.S. Code would be without the amendment but with the bill, and compared that state to what discretion would be if the amendment was accepted and the bill passed. Duplicate amendments, i.e., amendments that were offered more than once to a bill, were only counted once.

<sup>7</sup> One could also examine the number of amendments senators offered to increase the volume of authority agencies receive. Such amendments, if adopted, would facilitate ex post influence/oversight by privileged actors over agency decisions. However, as the bills were reported by committee, it is reasonable to assume that the bills provide for circumstances that foster ex post influence/oversight by the committee. Therefore, the opportunity to amend the bill in this way may be circumscribed. As such, I limit my analysis to amendments that limit discretion.

<sup>8</sup> LCV ratings are not merely proxies for traditional liberal-conservative disagreements about how much governmental intervention there should be in the economy. Senators' LCV ratings for the 101st Congress, during which the Clean Air Act Amendments were considered and passed, were only correlated at  $-.77$  with senators' first dimension DW nominate coordinates, which indicate senators' preferences for governmental intervention in the economy (Poole and Rosenthal 1997). Although this correlation is high, it indicates that LCV ratings do not merely measure the same phenomena as first dimension nominate coordinates.



COC ratings place members on a scale of 0 to 100 with higher ratings evincing greater support for the environment and the free market respectively.

To measure how much senators disagreed with the committees that would be conducting oversight over the EPA and FCC, I obtained the absolute value of the distance between senators' LCV (for the EPA's policy decisions under the Clean Air Act) and COC (for the FCC's decisions under the Telecommunications Act) ratings and the ratings of the median member of the relevant Senate committees during the sessions when the bills were considered. For the Clean Air Act analysis, the committee with primary jurisdiction over the EPA was the Senate Environment and Public Works Committee. For the Telecommunications Act analysis, the committee with primary jurisdiction over the FCC was the Senate Commerce, Science, and Transportation Committee. As noted above, these committees referred these bills to the Senate for consideration. These variables should be positively and significantly related to the probability that senators sponsor/cosponsor amendments diminishing the regulatory discretion of these agencies.<sup>9</sup>

In addition, I include a variable measuring the proximity of senators to the median member of the Senate chamber relative to the median member of the relevant Senate committee. The basis for this variable is that, in proposing amendments, senators ask their colleagues to overturn committee-proposed language. The decision to overturn rests with the median member of the Senate.<sup>10</sup> As such, senators ask the chamber to substitute its judgment for that of the committee's. Senators should be more likely to do so when they are closer to the median member of the chamber than the median member of the committee. This variable equals the absolute value of the distance (using COC and LCV ratings) between each senator and the relevant committee median minus the absolute value of the distance between each senator and the median member of the chamber, with greater values indicating closer proximity to the chamber. This variable should be positively and significantly related to the dependent variable.<sup>11</sup>

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<sup>9</sup> More than one committee can stake a claim to jurisdiction over clean air and communications regulation. Therefore, it is possible that members consider the potential oversight activities of more than one committee in formulating their preferences for discretion and when offering amendments to diminish discretion. However, to the extent that senators do so, this factor makes it less likely that I will observe the positive and significant relationship hypothesized between amendments to diminish discretion and senator-committee policy disagreement. As such, this analysis is a conservative approach to testing the hypothesis described above.

<sup>10</sup> To be sure, amendments can be filibustered. However, the filibuster is mainly a tool to prevent legislation that does not have 3/5 support in the Senate from coming to the floor and is unlikely to be used as a weapon against individual amendments. Indeed, the unanimous consent agreement that allows a bill to come to the floor in the U.S. Senate typically specifies what amendments can be offered. Therefore, when amendments are offered, they need majority, not supermajority, support to alter the bill.

<sup>11</sup> This logic also applies to the proximity of senators to the committee relative to the agency receiving authority. Senators whose policy views correspond to those of the committee, but diverge from policymakers within the agency, will welcome oversight by the committee, and therefore should be less likely to offer amendments that reduce discretion. Unfortunately, no measure of agencies' policy priorities, relative to those of lawmakers, is available. This issue confronts all research on agency design. Epstein and O'Halloran (1999) and Huber and

Since the LCV and COC do not provide ratings for the president, I employ a dummy variable indicating that senators were members of the rival party of the president (1 if this was the case; 0 otherwise) to measure senators' policy disagreement with the president. Hence, Democratic senators should be more likely to have sponsored and/or cosponsored amendments decreasing the EPA's discretion during the Senate's consideration of the Clean Air Act in the 101st Congress that met during a Republican administration. Likewise, Republican senators should be more likely to have sponsored and/or cosponsored amendments decreasing the FCC's discretion during the Senate's consideration of the Telecommunications Act in the 104th Congress that met during a Democratic administration.

I also include variables to control for other factors that may have affected the probability that senators sponsored and/or cosponsored amendments to reduce discretion. Bawn (1997) argues that lawmakers on the committee with jurisdiction over an agency will prefer less ex ante control over the agency, increasing that agency's discretion. The basis for this prediction is that oversight and ex ante control over agencies are substitute strategies for controlling the bureaucracy. Specifically, the more ex ante control imposed on agencies, the less of a need there is for oversight. Committee members, though, are well positioned to conduct oversight because their membership subsidizes their ability to conduct the tasks necessary for effective oversight, such as the generation of expertise with respect to the agency's policy decisions. Therefore, I include a dummy variable in the analyses indicating whether senators were members of the committees with jurisdiction over the EPA and FCC (1 if yes; 0 otherwise), with the expectation that this variable will be negative and significant. I also include a variable indicating whether senators were chairs or ranking members on the committee and/or subcommittee that reported the bill to the Senate. Often such committee leaders are involved in marking up legislation, increasing the probability that they will offer any amendment (1 if yes; 0 otherwise). Thus, all other factors being equal, such members are more likely to offer amendments diminishing agency discretion.

Furthermore, senators from states disproportionately affected by these policies may take an active role, regardless of committee membership, in trying to influence agency decisions informally. Therefore, such senators may desire greater agency discretion so that they can exert influence over agencies' policy choices, making them less likely to introduce amendments that slash discretion. Senators' interest in the substance of the legislation is captured with variables measuring the importance of the legislation to the states which they represented. For the Clean Air Act analysis, this variable indicates the number of pounds of air pollution released in senators' states in 1989, logged due to skewness. For the Telecommunications analysis, the variable measures the percentage of the gross state product of senators' states accounted for by the communications industry, logged due to skewness. If senators

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Shipan (2002) address this issue by assuming that the preferences of agencies equal the preferences of the chief executive. Here, I do not make the same assumption for committee influence over agencies.

are less likely to sponsor and/or cosponsor amendments that diminish discretion in response to the stake that their states have in agencies' decisions, these variables should be negatively and significantly related to the dependent variable.

Finally, the literature on cosponsorship identifies a number of factors affecting the probability that members cosponsor measures (e.g., Balla and Nemacheck 2000; Schiller 1995; Wilson and Young 1997). Rather than control for each of these factors, I include a count of the number of amendments sponsored/cosponsored by senators during the year in which the each bill was considered (not including the number of amendments that senators offered to these bills).<sup>12</sup> This variable controls for the tendency of senators to sponsor/cosponsor amendments generally and is expected to be positively and significantly related to the dependent variable. Since the dependent variables are counts, negative binomial maximum likelihood regression is employed to estimate the relationships between these variables and the independent variables.<sup>13</sup> Summary statistics for these variables are presented in Tables A1 and A2 of the Appendix.

## FINDINGS

Table 1 provides findings from the negative binomial models of the number of amendments offered by senators to decrease the discretion provided to the EPA and FCC. Beginning with the clean air analysis, the statistically significant chi-squared statistic allows for the rejection of the null hypothesis that the independent variables jointly equal zero. Consistent with the hypothesis that lawmakers prefer ceding less discretion as they experience greater disagreement with committees strategically positioned to conduct oversight, the coefficient for the absolute distance between lawmakers' LCV ratings and that of the median member of the relevant committee is positively and significantly related to the number of amendments that senators offered to strip the EPA of discretion.

To provide more substantive interpretation, Table 2, Panel A presents a simulation predicting the number of amendments that senators will offer to reduce the EPA's authority. The "baseline" prediction (the number of such amendments that the Clean Air model from Table 1 predicts a "typical" senator—with mean values on the continuous independent variables and modal values of the noncontinuous variables—would offer) is .60. Increasing the distance between lawmakers' LCV ratings and the median member of the Senate Environment and Public Works Committee by a standard deviation, though, increases this prediction to .92 amendments.

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<sup>12</sup> The *Congressional Record Index*, available at [www.gpoaccess.gov](http://www.gpoaccess.gov), provides information on amendments that members sponsored and cosponsored during a given year.

<sup>13</sup> As indicated in the tables below, the variance of the count of sponsored and/or cosponsored amendments exceeds the mean in both analyses. This should not be surprising because, once a senator incurs the start-up costs of obtaining the necessary information to become sufficiently informed to offer an amendment, it becomes easier for the senator to sponsor/cosponsor similar amendments subsequently. Because of this overdispersion, I employ negative binomial regression rather than Poisson regression to estimate the models.

TABLE 1. Negative Binomial Estimates of the Number of Amendments Offered to Increase Ex Ante Control over Authority Delegated under the Clean Air Act Amendments of 1990

Variable	Clean Air	Telecommunications
Absolute Distance (LCV Scores for Clean Air; COC Scores for Telecom.) btw Senators & Median Committee Member	.032*** (.007)	.044* (.022)
Rival Party to the President (1 = Yes)	.093 (.231)	1.755 <sup>†</sup> (1.237)
Proximity to Chamber Relative to Committee (LCV Scores for Clean Air; COC Scores for Telecom)	.073** (.028)	-.037 (.059)
Member of Relevant Committee (1 = Yes)	.225 (.263)	.569 (.453)
Committee Leader (1 = Yes)	.543 (.553)	.385 (1.043)
Total Pounds of Air Pollution in Senators' States (logged)	-.036 (.104)	
% of State GDP Due to Communications (logged)		-17.169 (25.419)
No. of Amendments Sponsored/Cosponsored in Year of Consideration	.003 (.003)	.018*** (.005)
Constant	-.627 (.449)	-3.644 (1.292)
N	100	100
Log Likelihood	-162.09	-110.94
Likelihood Ratio Chi-Square	31.99***	20.57***
Alpha	.21	1.19
LR Test vs. Poisson	6.20***	25.47***

Notes: The entries are unstandardized coefficients (standard errors are in parentheses); \*\*\*p < .001, \*\*p < .01, \*p < .05, <sup>†</sup>p < .1 (one tailed tests).

This prediction decreases to .25 amendments at the variable's minimum value and increases to 1.27 at the variable's maximum value.

Importantly, this finding supports the transaction cost theories discussed above. Such theories predict that legislative coalitions will limit agency authority

TABLE 2. Predicted Number of Amendments Offered by Senators to Increase Ex Ante Control

Condition	Predicted Number of Amendments
A. Clean Air Act Analysis	
Baseline	.60
Absolute Distance from Committee Median	
+1 Std Dev.	.92
Min.	.25
Max.	1.27
B. Telecommunications Analysis	
Baseline	1.35
Absolute Distance from Committee Median	
+1 Std Dev.	2.84
Min.	.41
Max.	9.20

Note: The baseline predictions were obtained using mean values of the continuous, and modal values of the non-continuous, independent variables employed in the analyses presented in Table 1.

when they disagree with privileged actors. Coalitions, however, are composed of individual lawmakers. If lawmakers do not prefer to limit discretion when they disagree with privileged actors, it is unlikely that coalitions of lawmakers would do so. Therefore, that individual senators proposed to limit the EPA's discretion when they disagreed with the Senate committee primarily responsible for overseeing the agency lends credence to prior research focusing on disagreement between lawmaking coalitions and privileged actors. The finding is also consistent with Balla's (2000) analysis showing that lawmakers were more likely to support a resolution to overturn the regulations of agencies as their policy priorities diverged from those of the committees with jurisdiction over the agencies.

However, the coefficient for senators' membership in the rival party of the president, though positive as expected, is not significantly different from zero. Therefore, the analysis of senators' amendment-offering behavior during the Clean Air Act does not support the transaction cost hypothesis that lawmakers who experience greater disagreement with the president prefer less discretion. Turning to the control variables, the variable measuring senators' proximity to the Senate chamber relative to the Senate Environment and Public Works Committee is positively and significantly related to the number of amendments sponsored and/or cosponsored to diminish discretion. This finding suggests that senators are more likely to offer amendments to strip discretion when they prefer the policy decisions that the floor would make compared to those that the Committee would make if left to its own devices in conducting oversight. The other control variables, however, were not significantly related to the dependent variable in the expected directions. Of particular interest is that senators on the Environment and Public Works Committee—with jurisdiction over the EPA—are no less likely than noncommittee members to offer amendments increasing *ex ante* control over the agencies. This finding suggests that it is not membership on a committee, *i.e.*, the privileged actor well positioned to influence agencies through oversight, that affects lawmakers' preferences for discretion *per se*. Rather, lawmakers—committee members or not—prefer limiting discretion when they disagree with the committee's aggregate preferences on policy matters.

Shifting to the analysis of senators' amendments to the Telecommunications Act in the 104th Congress, the coefficient for the variable measuring the absolute distance of senators' COC ratings from the COC rating of the median member of the Senate Commerce, Science, and Transportation Committee is positively and significantly related to the number of amendments offered by senators to circumscribe FCC discretion. Table 2, Panel B provides substantive interpretation of this relationship. Panel B reports a "baseline" prediction for the number of such amendments that the Telecommunications model in Table 1 predicts a "typical" senator—with mean values on the continuous independent variables and modal values on the non-continuous variables—would offer to the Telecommunications Act. The model predicts that such a senator would offer 1.35 amendments to strip the FCC of discretion. However, increasing by one standard deviation the variable measuring the absolute distance between senators' COC ratings and that

of the median member of the Committee leads the model to predict that senators will offer 2.84 such amendments. This prediction decreases to .41 amendments at the variable's minimum value and increases substantially to 9.20 at the variable's maximum value.

In total, then, the analysis of senators' amendments to the Telecommunications Act also supports the transaction cost hypothesis stressing that lawmakers prefer to give less discretion to agencies that are overseen by committees with which lawmakers disagree: senators were increasingly likely to prefer reducing the discretion held by the FCC as they experienced greater policy disagreement with the Senate Commerce, Science, and Transportation Committee. In addition, unlike the analysis of senators' amendments to the Clean Air Act Amendments, senators of the rival party to the president are more likely to offer amendments to reduce the FCC's discretion ( $p < .1$ ). As such, this finding evinces continuity with prior studies finding that less discretion is delegated to agencies under divided government (Epstein and O'Halloran 1999; Huber and Shipan 2002). Finally, the control variables perform in a similar manner as in the Clean Air Act Amendments analysis with the exception that senators' proximity to the floor relative to the committee of primary jurisdiction is not related to the probability of offering such amendments.

## DISCUSSION

Examining amendments offered by senators to the Clean Air Act Amendments and the Telecommunications Act for the degree to which they diminish bureaucratic discretion yields a new type of support for transaction theories of agency design. Rather than showing that the level of discretion provided to agencies decreased as policy disagreement between a lawmaking coalition and a privileged actor increased, this analysis relies on individual lawmakers' preferences for discretion. These analyses show that senators prefer less discretion when they disagree with privileged actors well positioned to influence the EPA and FCC. By showing that individual preferences are consistent with aggregate level findings, this research should strengthen confidence in transaction cost theories of political design.

Yet, these findings stress that the existence of a privileged actor in the context of the U.S. lawmaking system unacknowledged by prior research on agency design: congressional committees. As such, these findings should emphasize to scholars that committees are also privileged actors. If individual lawmakers are concerned about their role in overseeing how agencies use policy authority delegated to them, then do lawmaking coalitions reduce discretion as their distrust of committees increases? Would prior studies of agency design (Epstein and O'Halloran 1999; Huber and Shipan 2002; Lewis 2003; Wood and Bohte 2004) have observed that coalitions reduced agency discretion, or insulated agencies from external influence in the future, given the presence of policy disagreement between the coalitions they studied and the relevant committees?

Examining lawmakers' priorities for regulatory discretion also raises larger questions about the shape agency design is likely to take given the circumstances lawmakers confront when enacting legislation. In particular, to what degree does the ability to revisit policy decisions in the future affect lawmakers' preferences for discretion? Neither clean air nor telecommunications policy has been revisited significantly since 1990 and 1996 respectively. To the degree that members considered that they would likely not be able to influence the EPA and FCC in the near future through new legislation, were they less likely to prefer conferring regulatory discretion? Although outside the scope of this study, this question identifies another variable that may influence whether lawmakers wish to provide regulatory freedom to agencies, especially in light of the increasing inability of Congress to reauthorize laws (Hall 2004, 103).

These findings also raise questions about the viability of substituting agency policy making for committee policy making. Epstein and O'Halloran (1999) stress that lawmaking coalitions give greater discretion to agencies as they disagree with committees to a greater degree. However, why should coalitions provide agencies with substantial discretion, giving committees—that lawmaking coalitions distrust—the opportunity to mold agencies' decisions through oversight?

In summary, focusing on these cases of the delegation of regulatory authority should strengthen scholars' confidence in theories of political design of agencies and add a nuance not previously appreciated in this literature regarding the importance of committees as privileged actors. What implications does this research have for understanding the circumstances under which agencies make policy, however? A clear implication of this study is that agencies should be expected to receive less authority—holding all other factors constant—when legislative coalitions disagree with actors well-positioned to influence agencies' decisions in the future. Agencies should be expected to be burdened with having to win the approval of other agencies before their decisions can become final, should be expected to have to consider specific types of information when making decisions, and, generally, should be expected to enjoy less discretion when trying to realize policy goals. These circumstances have nothing to do with agencies per se; rather, they are due to the external political environment from which agencies receive policy authority.

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## APPENDIX

TABLE A1. Summary Statistics for the Clean Air Act Analysis (n = 100)

Variable	Min.	Max.	Mean	Std. Dev.
No. of Amendments to Increase Ex Ante Control	0	10.00	1.74	1.92
Absolute Distance btw Senators & Median Committee Member (LCV Ratings)	1.5	48.50	25.15	14.92
Rival Party to the President	0	1.00	.55	.50
Proximity to Floor Relative to Committee (LCV Scores)	-4.50	4.50	.18	4.43
Member of Relevant Committee	0	1.00	.16	.37
Committee Leader	0	1.00	.03	.17
Total Pounds of Air Pollution in Senators' States (Logged)	-.56	4.33	2.13	.96
No. of Amendments Sponsored/Cosponsored in Year of Consideration	11.00	130.00	59.81	25.47

TABLE A2. Summary Statistics for the Telecommunications Analysis (n = 100)

Variable	Min.	Max.	Mean	Std. Dev.
No. of Amendments to Increase Ex Ante Control	0	11.00	.81	1.59
Absolute Distance btw Senators & Median Committee Member (LCV Ratings)	.75	61.75	27.32	15.16
Rival Party to the President	0	1.00	.54	.50
Proximity to Floor Relative to Committee (COC Scores)	-8.60	8.60	.16	8.62
Member of Relevant Committee	0	1.00	.19	.39
Committee Leader	0	1.00	.03	.17
% of State GDP Due to Communications (Logged)	.01	.05	.03	.01
No. of Amendments Sponsored/Cosponsored in Year of Consideration	15.00	173.00	73.69	34.54

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