

To Revoke or Not Revoke? The Political Determinants of Executive Order Longevity

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Abstract: *Though many scholars study the formation of policy, less attention is given to its endurance. In this article, I seek to determine what contributes to the longevity of policy by examining the case of presidential unilateralism. While scholars widely recognize presidents' ability to unilaterally make policy with executive orders, they largely do not account for how these same orders can be easily changed by subsequent administrations. To address this deficiency, I develop a theory of executive order duration based on both time-invariant characteristics of the order and time-variant changes in the political climate it faces. Using survival analysis to examine all orders revoked between 1937 and 2013, I find support for the theory. This study has implications for understanding the endurance of executive orders and other policy instruments as part of the law as well as understanding the strategic actions of policy makers given the transient nature of these tools.*

Replication Materials: The data, code, and any additional materials required to replicate all analyses in this article are available on the *American Journal of Political Science* Dataverse within the Harvard Dataverse Network, at: <http://dx.doi.org/10.7910/DVN/LZGQOH>.

On February 17, 1981, President Ronald Reagan issued Executive Order (EO) 12291, empowering the Office of Management and Budget (OMB) to review agency regulations and to require supplemental cost-benefit analyses.¹ The order revoked a 1978 order under Jimmy Carter, which had limited the power of this White House office to an advisory role.² Instead, EO 12291 expanded the ability of the OMB to oversee the executive branch (Copeland 2009). Though it fundamentally transformed the regulatory process, the Reagan order was later revoked by Bill Clinton in EO 12866.³ With this new directive, Clinton reduced the “gatekeeper” role of the Office of Information and Regulatory Affairs (OIRA)—the regulatory oversight subunit within the OMB—by reducing the scope of its

review to just significant rules, while also requiring greater transparency and easing some agency requirements (Copeland 2009).⁴ Yet, George W. Bush attempted to significantly expand presidential power over rule making with EO 13422, which broadened OIRA’s review to include guidances and increased the role of political appointees within agencies (Copeland 2009).⁵ However, this attempt was quickly halted by Barack Obama, who issued an executive order to revoke the Bush order, shortly after assuming office.⁶

These attempts to control the regulatory review process demonstrate the transitory nature of executive orders as implements of policy. Widely recognized as having the force of law, many agree that these orders give presidents vast opportunities to influence policy outcomes

I would like to thank Alex Bolton, Jeff Cohen, George Krause, and Ashley Moraguez as well as audiences at the University of Georgia, the 2014 annual meeting of the American Political Science Association, the 2105 meeting of the Midwest Political Science Association, and the 2016 annual meeting of the Southern Political Science Association for their helpful comments. Additionally, I’m grateful to Phil Green, Jack Millard, and Cassie Schwartz for their excellent research assistance.

¹Ronald Reagan. February 17, 1981. “Executive Order 12291—Federal Regulation.”

²Jimmy Carter. March 23, 1978. “Executive Order 12044—Improving Government Regulations.”

³William Clinton. September 30, 1993. “Executive Order 12866—Regulatory Planning and Review.”

⁴EO 12866 also revoked Reagan’s EO 12498, which placed additional submission requirements on agencies. Although Clinton maintained elements of Reagan’s review process, his numerous changes allowed him to better pursue his policy agenda (Warber 2006).

⁵George W. Bush. January 18, 2007. “Executive Order 13422—Further Amendment to Executive Order 12866 on Regulatory Planning and Review.”

⁶Barack Obama. January 30, 2009. “Executive Order 13497—Revocation of Certain Executive Orders Concerning Regulatory Planning and Review.”

(Cooper 2002). Yet, as previously shown, executive orders are often amended or revoked by subsequent presidents, thus altering or invalidating their content. As a result, these orders often have a time limit on the influence they wield. While there is a substantial body of research examining when presidents decide to use this unilateral tool, little is known about why and how long executive orders remain a part of the law. Consequently, there exists a facet of presidential power left unexplored—the power to change or overturn previous orders.

Further, this highlights a deficiency in the larger policymaking literature. Though there is an abundance of work explaining the formation of policies, less is known about their duration. Whereas there are some studies on agency termination (e.g., Kaufman 1976; Lewis 2002, 2003), few systematically explore the longevity of federal programs (e.g., Berry, Burden, and Howell 2010; Maltzman and Shipan 2008);⁷ almost no attention is given to the duration of presidential unilateralism.⁸ This inattention is surprising given that future regimes can easily change policies, particularly presidents who can act independently from other political actors through unilateral action.

To address this deficit in the literature, this article examines one case of policy duration where it can be easily changed: executive orders. In particular, I develop a theory of executive order longevity based on both an order's characteristics and the changing political climate it faces in the years to follow. Specifically, I argue that orders created under ideological discord endure longer since they are more likely to reflect moderate policy compromises. Additionally, orders based on stronger authority face longer lives given presidents' desire to maintain power and political support. Further, presidents are more willing to revoke executive orders when it is less costly to do so and when issued by a political adversary. Yet, this propensity to revoke opposing orders is diminished by the president's desire to preserve others based on more legitimate authority.

Using survival analysis to examine executive order longevity between 1937 and 2013, I find strong support for the theory's hypotheses. Overall, this study reveals the conditions under which presidents choose to alter executive orders and the qualities that facilitate their durability. This study has implications for understanding the endurance of presidential policymaking as a part of the law and the temporal dynamics of unilateral power. Moreover, this furthers our overall understanding of the

transitory nature of public policy and institutional decision making.

The remainder of the article proceeds as follows. I first discuss background on executive orders and related literature. Then I develop a theory of executive order longevity, followed by a description of the data and empirical tests of its predictions. The final section discusses implications and future directions.

Background

An executive order is a unilateral directive issued by the president to instruct agencies on how to implement the law. They serve a variety of functions, including executive branch maintenance, creating or altering policy, and responding to crises. They are generally viewed by the courts as legally binding as long as they do not violate statutes or the Constitution (Cooper 2002; Mayer 2001). As such, executive orders are published in the *Federal Register* and viewed as part of the law.

Though presidents have issued orders since 1862, they have only been systematically recorded since 1937; and the rate of their usage has varied greatly over time. Much of the presidential policymaking literature is devoted to explaining this variation. Of particular interest is whether presidents use executive orders to bypass an obstructionist congress or if they are constrained. Scholars mostly find the latter, with fewer orders issued during divided government (Bailey and Rottinghaus 2014; Fine and Warber 2012; Howell 2003, 2005; Young 2013), though only in modern eras (Bolton and Thrower, forthcoming). Other political factors found to be influential include legislative success, public approval, administration change, the economy, and executive branch size (Krause and Cohen 1997; Mayer 1999, 2001; Shull 2006; Young 2013).

Overall, this literature widely agrees that executive orders have the ability to influence policy outcomes, particularly given their legal validity. Yet, their status as part of the law is often transitory. Warber (2006) reviews a number of ways in which presidents are able to change or eliminate previous orders by issuing new ones. First, an order can be amended, which preserves its legal authority. For example, Lyndon Johnson's executive order establishing nondiscriminatory employment practices for government contractors⁹ has been subsequently amended by himself, Nixon, Carter, George W. Bush, and Obama to expand its coverage.

Second, presidents can revoke an executive order. Unlike amendments, revocations completely nullify

⁷However, some scholars offer insightful case studies (Patashnik 2000, 2003, 2008).

⁸See Cohen and Eshbaugh-Soha (2012) for a study on the duration of presidential legislative agendas.

⁹Lyndon Johnson. September 24, 1965. "Executive Order 11246—Equal Employment Opportunity."

an order's legal authority. For example, on his first day in office, Obama revoked a George W. Bush order limiting public access to presidential records.¹⁰ This order thwarted Bush's attempts to grant previous administrations more authority than current ones (Shane 2009). Finally, presidents can issue executive orders that supersede previous ones, suspending their authority indefinitely or until they are reversed. Although there can be some ambiguity, superseding appears similar to amending and may be reserved for the most extensive changes (Warber 2006). Presidents commonly use this process to reorganize agencies, adjust executive salaries, and continue advisory committees.

Of the 6,158 executive orders issued between 1937 and 2013, 18% are amended, 8% are superseded, and 25% are revoked. From those altered orders, it takes an average of 5 years until an order is first amended or superseded and 13 years until revocation. As Figure 1 shows, most change occurs within the first 10 years of an order's life. Yet, alterations still occur even after 20 or more years. Such change can vary depending on the executive order and its surrounding political environment. With one notable exception (Warber 2006), scholars have not systematically explained this variation. As such, the next section develops a theory of executive order revocation. Given the scarcity of research in this area, this initial focus on revocations can offer valuable insights and serve as a useful starting point upon which subsequent studies on amendments and supersessions can be developed.¹¹

Theory

While the policymaking literature is abundant, fewer studies are devoted to exploring how policy endures

following its initial passage. This is surprising given that the status quo can be altered by future regimes, especially if opposed to the previous policy. This lack of attention could be due to the once predominant view that policies and agencies are durable (Bardach 1976; Kaufman 1976), largely because of the costs associated with termination (deLeon 1978; Frantz 1992, 1997; Ragusa and Birkhead 2015) and changing the status quo (Baumgartner et al. 2009).

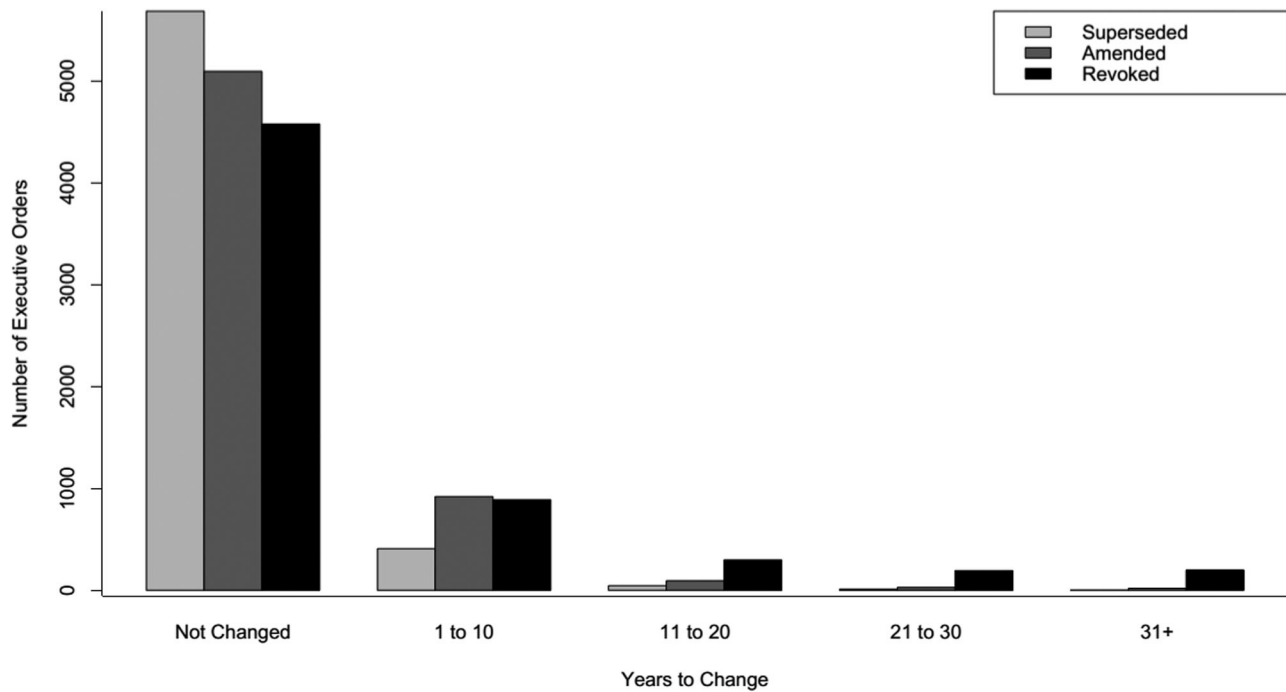
However, others have recognized that public policies are far from impermeable (Patashnik 2000, 2003, 2008). Moe (1989, 2012) highlights the uncertainty surrounding a policy's stability given possible shifts in future authority. Particularly, he argues that current regimes "cannot commit to tomorrow's authorities—who may turn out to be their opponents—to respect whatever deals are arranged, and whatever structures and policies are created, in the current period" (Moe 2012, 11). Similarly, other scholars describe how policy makers can deal with this problem of "coalitional drift"—when future political regimes change policies from the intentions of enacting coalitions (Cox 2004; Horn 1995; Horn and Shepsle 1989; Shepsle 1992; Wood and Bohte 2004).

While there is a long-standing literature identifying patterns in agency termination (Boin, Kuipers, and Steenbergen 2010; Carpenter and Lewis 2004; Downs 1967; Greasley and Hanretty 2014; Kaufman 1976; Lewis 2002, 2003; Peters and Hogwood 1988), scholars have only recently begun to systematically examine the continuation of policies such as legislation (Alder and Wilkerson 2013; Maltzman and Shipan 2008; Ostrander and Sievert 2014; Ragusa 2010; Ragusa and Birkhead 2015) and federal programs (Berry, Burden, and Howell 2010; Corder 2004). Thus, questions remain concerning why policies of all types are more enduring than others and when they are more likely to be terminated. Additionally, though previous literature identifies coalitional drift as an impetus for policy change, questions concerning the conditions under which policies can resist changes by opposing coalitions remain.

Presidential policymaking offers an interesting case for answering these theoretical questions, though none of the existing literature examines its duration. Executive orders too can be subsequently changed or reversed. However, unlike other policies, presidents can easily alter these orders without the same immediate constraints faced by the other branches of government. The courts must wait until particular cases are brought before them when trying to change policy. Congress faces collective action problems, while also relying on the executive to sign and enforce new legislation.

¹⁰Barack Obama. January 21, 2009. "Executive Order 13489—Presidential Records."

¹¹I focus on revocations for a few reasons. First, a more expansive theory examining their trade-offs would be required in order to fully consider amending, superseding, and revoking orders. Indeed, an analysis of all three methods shows that many key covariates exert opposing effects on each strategy, whereas some remain similar (see the supporting information). This gives us further confidence that separate theories are needed for amendments and supersessions, which is beyond the scope and space limitations of this article. Second, such a study would need to distinguish between different types of amendments, such as those that reject versus expand authority, when making inferences. The majority of revocations, however, involve a rejection of authority (see the supporting information for related robustness checks). Because revocations reject the legal authority of orders, whereas amendments and supersessions preserve or expand it, this suggests these categories should be treated differently.

FIGURE 1 Number of Years until an Executive Order Is Altered

On the other hand, presidents act alone when revoking orders without these constraints. Yet, they are still limited in how often they revoke, given the associated costs. Thus, executive orders provide an appealing opportunity to explore the conditions of policy duration. As such, this section develops a theory of executive order longevity based on the characteristics surrounding the order at issuance and changes in the political climate it faces over time. It also considers the intersection of these factors by considering which policies are most resistant to ideological targeting. First, I begin with some assumptions.

Assumptions

The first assumption is that presidents pursue their policy preferences through executive orders (Howell 2003), particularly since orders are viewed as legally valid (Cooper 2002). They can pursue these goals by modifying orders in two ways. On one hand, presidents can reverse an order without specifying new policy, reverting to the status quo. Such a reversion occurred when Obama revoked Bush-era changes to regulatory review, returning policy back to the Clinton order. On the other hand, a president can specify new policies when revoking orders, moving the previous policy or initiating another one to anywhere he or she chooses. Clinton's EO 12866 provides an example of this type of change, where it not only revoked

Reagan's order on regulatory review but also established an updated system.

Next, I assume that issuing executive orders is costly because they can draw public criticism concerning the abuse of power (Cooper 2002; Reeves and Rogowski 2016), often resulting in decreases in presidential approval (Reeves and Rogowski, n.d.). Furthermore, there may be additional costs to revoking orders, given the possibility of intensifying political opposition (Warber 2006). Additionally, issuing executive orders often involves a lengthy bargaining process within the executive branch (Kennedy 2014; Rudalevige 2012). With these assumptions, I turn to developing a theory of executive order duration based on both executive order characteristics and the changing political environment.

Executive Order Characteristics

There are several characteristics of an executive order at issuance that could make it more susceptible to revocation. Perhaps one of the most important factors is congressional influence. Although presidents use executive orders to move policy toward their preferred positions, they are constrained by Congress in how far they can do so given it can overturn orders and limit executive discretion through statutes. Such constraints are more likely to occur when presidents face ideological opponents in the

legislature; as a result, this is when they choose to moderate the use of executive orders (Deering and Maltzman 1999; Howell 2003; Moe and Howell 1999). Consequently, fewer executive orders are issued when the president faces congressional opposition (Howell 2003, 2005).

Likewise, presidents who fear the retaliatory actions of a hostile congress can moderate not only the frequency of orders but also the content of them, making smaller changes to the status quo in ideologically moderate directions (Moe and Howell 1999). Such moderation is used to decrease political opposition, similar to presidents moderating the content of other policy measures such as legislative agendas (Cohen 2012). Similarly, scholars argue that policies created under divided government tend to be more moderate and bipartisan, reflecting greater interinstitutional deliberation (Thorson 1998; Weatherford 1993). Such policies are, therefore, more resistant to change by future governing coalitions given their wide support at passage (Niskanen 2003; Ragusa 2010).

Thus, executive orders making ideologically moderate or modest changes should amass fewer controversies and opposition from subsequent presidents, as with Congress (Deering and Maltzman 1999; Howell 2003). Consequently, these orders stand a better chance of enduring longer than ideologically extreme or wide-sweeping ones that likely attract the negative attention of successive administrations. Following this reasoning, the first hypothesis states:

Ideological Compromise Hypothesis (H1): Executive orders issued under president–Congress ideological division endure longer than orders issued under alignment.

The strength of an executive order's authority is also important when considering its longevity. In every order, presidents cite a source of empowering authority, usually from the Constitution or a specific statute, to justify their unilateral action; and they tend to select the firmest authority possible (Howell 2003). While the Constitution's ambiguity has given presidents wide opportunity to expand institutional powers, their ability to act by executive order is stronger when they have clear congressionally delegated authority (Howell 2003; Mayer 2001; Moe and Howell 1999). Furthermore, the accumulation of statutes and Congress's tendency to broadly delegate within them afford presidents plenty of ambiguity from which to derive even more power (Moe and Howell 1999).

Moreover, courts tend to view executive orders claiming statutory authority as having greater validity than ones lacking congressional authorization (Howell 2003). In *Youngstown v. Sawyer* (1952), Justice Robert H. Jackson argued that presidential action is the strongest when

based on explicit authority from statutes and weakest when in direct violation. Yet, when the law is silent, the president's authority is unclear and requires greater judicial scrutiny. Consistently, courts are more likely to uphold executive orders based on the former (Howell 2003).

In sum, executive orders have weaker authority when based solely on the inherent powers claimed from the Constitution. Yet, the authority of orders is strongest when based upon statutes, where presidents can claim both inherent and delegated powers. Thus, it may be easier to garner political support to revoke orders based on vague constitutional authority, given the widespread perception among other political actors that they are less legitimate than ones based on statutory authority. Gathering such support may be desirable for presidents because revocations often draw opposition from Congress and interest groups (Warber 2006). Additionally, given their desire to protect and expand executive powers, presidents have incentives to maintain previously empowering arrangements (Howell 2013), including statute-based executive orders that draw more legal recognition and support from other political actors.

Furthermore, presidents often use vague claims of authority from the Constitution to justify a wide range of power grabs (Howell 2003). Such claims of inherent or prerogative authority are more expansive and often disputed exercises of power (Mayer 2001). As a result, presidents often use executive orders based on this authority to make more extreme changes to the status quo. Consequently, the content of these orders has a higher likelihood of being opposed by subsequent presidents as compared to orders that make incremental or ideologically moderate changes. As such, I argue that these orders have a greater chance of being revoked. Comparatively, executive orders based on statutory authority are likely to make more moderate and less controversial changes, given that they are at least partially directed by statute. Thus, subsequent presidents should be less likely to object to their content and these orders should endure longer, similar to agencies created by statute (Carpenter and Lewis 2004; Kaufman 1976; Lewis 2002, 2003).

Overall, presidents may be less likely to revoke executive orders based on statutory authority given their stronger legal validity in the eyes of other political actors, as compared to orders based on weaker constitutional authority. Furthermore, orders solely claiming inherent constitutional powers are more likely to be controversial and conflict with the preferences of subsequent presidents, eliciting reversals. Thus, the second hypothesis states:

The EO Authority Hypothesis (H2): Executive orders based on strong authority endure longer than orders based on weak authority.

Changing Political Environment

Beyond its static characteristics, the possibility of an executive order being revoked can depend on the changing political climate it faces over time. Accordingly, the theory considers these time-variant factors that influence when current presidents are more or less willing and able to revoke executive orders. To begin, eliminating policies is costly (deLeon 1978; Frantz 1992, 1997; Ragusa and Birkhead 2015), and administrations are more reluctant to do so when the costs are relatively high (Carpenter and Lewis 2004; Glazer 2012; Horn 1995). Presidents in particular are constrained when revoking previous orders, given the public scrutiny and opposition that these unilateral actions can potentially draw (Cooper 2002; Warber 2006). Consequently, there are certain politically sensitive times during a president's administration when he or she may be more cautious when exercising unilateral power.

One such time is during election years, when greater attention is given to executive action and presidents have incentives to garner public support for themselves and their party. Therefore, the costs of exercising executive power are exacerbated when these political stakes are increased. As a result, presidents may be more reluctant to revoke executive orders during election years, consistent with previous research on order use (Fine and Warber 2012; Mayer 2001).

Yet, these political costs can often be mitigated. Particularly, presidents with high political capital are generally more successful and given greater leeway (Beckmann 2010). Because they have more political capital under better economic conditions and an ideologically aligned congress (Beckmann 2010), they tend to push more ambitious agendas during these times (Cohen 2012) and issue more executive orders (Fine and Warber 2012; Gleiber and Shull 1992; Howell 2003, 2005; Young 2013). Finally, high approval ratings also correspond to greater political capital (Beckmann 2010) and more opportunities for executive action. Taken together, presidents face elevated political costs during years with elections and low political capital, making them more hesitant to revoke. Accordingly, the third hypothesis states:

The Political Costs Hypothesis (H3): Executive orders encountering presidents with high political costs endure longer than when facing presidents with low political costs.

Second, there is wide recognition that policies can change due to coalitional drift, that is, when new administrations move the status quo set by previous ones (Cox 2004; Horn 1995; Horn and Shepsle 1989; Moe 1989; Shepsle 1992). Though this could occur as time since passage progresses (see Corder 2004), the most drift arises when the current regime's policy goals have substantially changed from the enacting one. Thus, coalitions seek to repeal policies set by their political adversaries (Carpenter and Lewis 2004; Lewis 2002, 2003). I refer to such occurrences as "ideological drift."

Following these arguments, an executive order faces one of the greatest threats when confronted with a president whose beliefs conflict with those of the issuing president. Since presidents use orders to pursue their policy goals, they are more likely to revoke an order inconsistent with their own preferences.¹² Disagreement between the current and issuing presidents over an order occurs more often when they are from opposing parties or ideologies (Warber 2006). As such, the next hypothesis states:

The Opposing President Hypothesis (H4): Executive orders issued by presidents ideologically opposed to the current president endure for a shorter amount of time than orders issued by aligned presidents.

A Conditional Relationship

Although policies are less likely to endure when facing ideologically distant coalitions (Berry, Burden, and Howell 2010; Carpenter and Lewis 2004; Lewis 2002, 2003), this raises the question of whether this applies to all types of policies. That is, are some policies more resistant to ideological drift than others? As previously argued, presidents are more likely to revoke executive orders based on constitutional authority, given that political actors should be more supportive of eliminating them over statute-based orders that are viewed as more legitimate. Consequently, I argue that the incentive to maintain valid sources of power and political support from preserving statutory orders overcomes a president's desire to overturn policies initiated by opposing administrations. As such, ideological drift is most likely to occur for orders that are most vulnerable to subsequent change—those based on weaker, constitutionally based authority.

Furthermore, while presidents tend to revoke executive orders issued by political adversaries, such orders are

¹²For instance, Clinton issued an executive order (EO 13083) revoking a previous one issued by Reagan (EO 12612) concerning federalism, offering a more liberal policy interpretation as compared to Reagan's conservative position (Mayer 2001; Warber 2006).

particularly objectionable when making extreme changes to the status quo. As previously mentioned, this likely occurs most often for orders based on vague constitutional authority. As such, these weaker executive orders are more likely to be revoked by ideologically opposed administrations than statutory ones. Thus, the final hypothesis states:

The Conditional Hypothesis (H5): Executive orders based on weak authority endure for a shorter amount of time when facing a current president who is ideologically opposed to the issuing one. The duration of orders based on strong authority will not be influenced by the ideological alignment between the issuing and enacting president.

Data and Measurement

Dependent Variable

To test these hypotheses, I collect data on executive orders issued between 1937 and 2013 from the National Archives.¹³ This resource provides a list of all orders and whether each order has been amended, revoked, or superseded based on references in the order's text. To test for both the time-invariant and time-variant influences, I create a data set composed of every executive order for each year that it remained a part of the law before it was revoked.¹⁴ Thus, the unit of observation is executive order–year. The first observation for an executive order is the year that it is issued, and the last is the year it is revoked. If that order is never revoked, the final observation is 2013. For the analyses, I exclude ceremonial orders not related to substantive policy, such as those related to holidays or creating flags and seals.¹⁵

With these data, I use a Cox proportional hazards model to estimate the determinants of executive order duration. For this survival analysis, the dependent variable is an indicator for whether the executive order is revoked in any given year—assuming the value of 1 the

year the order is revoked and 0 for every year the order is not revoked.¹⁶

EO-Specific Explanatory Variables

Ideological Compromise. To proxy for the ideological compromise captured by an executive order, I include variables measuring the alignment between the president and Congress at the time of issuance. *Divided Government* is coded as 1 if the president is from a different party than at least one chamber of Congress and 0 otherwise. Alternatively, $D(\text{President}, \text{Congress})$ is the absolute distance between the ideal points of the president and the median of Congress, averaged across both chambers, using DW-NOMINATE scores (Poole 2000).

EO Authority. I include two variables to capture when executive orders have the greatest authority. Following Howell (2003), *Recent Statutory Authority* is coded as 1 if the order cites authority based on a recent statute¹⁷ and 0 if authority is based on older statutes or the Constitution, or if no authority is claimed. Due to limited availability of executive order texts, this variable is measured beginning in 1949. Since presidents are also given more authority to act on matters related to foreign policy (e.g., Wildavsky 1966), I include an indicator for whether the order relates to foreign policy as an alternative measure (*Foreign Policy*).

Time-Changing Political Explanatory Variables

Political Costs. Following the theory, political costs are conceptualized in two ways. First, *Current Election Year* is coded as 1 during presidential election years and 0 otherwise. Second, a president's political capital is based on support in Congress, public approval, and economic conditions (Beckmann 2010). Accordingly, *Current Divided Government* is measured as 1 if the current president and Congress are from opposing parties and 0 otherwise. Alternatively, $D(\text{Current President}, \text{Current Congress})$ is the absolute distance between the current

¹³See <http://www.archives.gov/federal-register/executive-orders/disposition.html>.

¹⁴While most orders are revoked by subsequent ones, there is a small percentage reversed by other means, such as public land orders, proclamations, or legislation (8.73%). The analysis holds when dropping these cases. Further, revocations in this data set do not include court invalidations. See Howell (2003) for a study of judicial review of executive orders.

¹⁵The results hold when including all executive orders and when only including the most significant orders based on *New York Times* mentions.

¹⁶Some of the independent variables violate the proportional hazards assumption, when examining the Schoenfeld residuals. To correct for this, I use nonproportional hazards analyses. Additionally, I run multinomial probit models, which do not require the same constraining assumptions of survival analysis. With both of these models, I find that the interpretation of the main covariates remains unchanged (see the supporting information).

¹⁷Following Howell (2003), the statute must be passed within a year of the order's issuance.

president and Congress's ideal points. *Current Public Approval* is the current president's average yearly public approval rating from the Gallup Poll, with data availability beginning in 1941. Finally, I include a measure for the annual inflation rate (*Current Inflation*) collected from the Bureau of Labor Statistics.¹⁸

Opposing President. I include two measures of the alignment between the president who issued the order and the current president. *Opposing President* is coded as 1 if the issuing president and current president are from opposing parties and 0 otherwise. *D(Issuing President, Current President)* measures the absolute distance between the issuing and current presidents' ideal points.

Recent Statutory Authority and Opposing President Interaction

Interaction. To test the Conditional Hypothesis, I interact *Recent Statutory Authority* with *D(Issuing President, Current President)* to obtain a measure of the conditional relationship between authority and ideological drift.¹⁹

Controls

Given the political costs of executive action, presidents may only wish to alter previous orders dealing with important issues that can bring them actual policy gains (Warber 2006). As such, I control for the policy significance of an executive order in two ways. First, I include an indicator variable for whether the order is mentioned in the *New York Times* within a year of its issuance (*NY Times Mention*).²⁰ Second, *Public Mention* is coded as 1 if the president publicly mentioned the executive order within a year of its issuance.²¹ Because some argue that complex policies endure for shorter periods of time given their widespread scope and reach (Maltzman and Shipan 2008; Ragusa 2010), I include a measure for the complexity of an executive order using the logged number of words it contains (*Ln (EO Words)*).²²

¹⁸I find similar results when using unemployment.

¹⁹The results hold when using *Opposing President* instead.

²⁰See Howell (2003).

²¹Following Mayer (2001), this is coded from searching the *Public Papers of the President*.

²²See Maltzman and Shipan (2008). Due to text availability, this variable begins in 1949.

Based on previous literature (Howell 2001; Mayer 2001; Young 2013), I include variables controlling for the first and last year of a current president's administration (*Current Administration Change* and *Current End Term*)²³ and years during a war (*Current War*).²⁴ For consistency, I also include these same variables at the time the order was issued. Similarly, I include variables measuring the inflation rate and public approval rating, as well as an indicator for election year at order issuance. Additionally, *Ln (EO Total)* captures the logged number of executive orders issued per year, to proxy for the president's yearly workload.

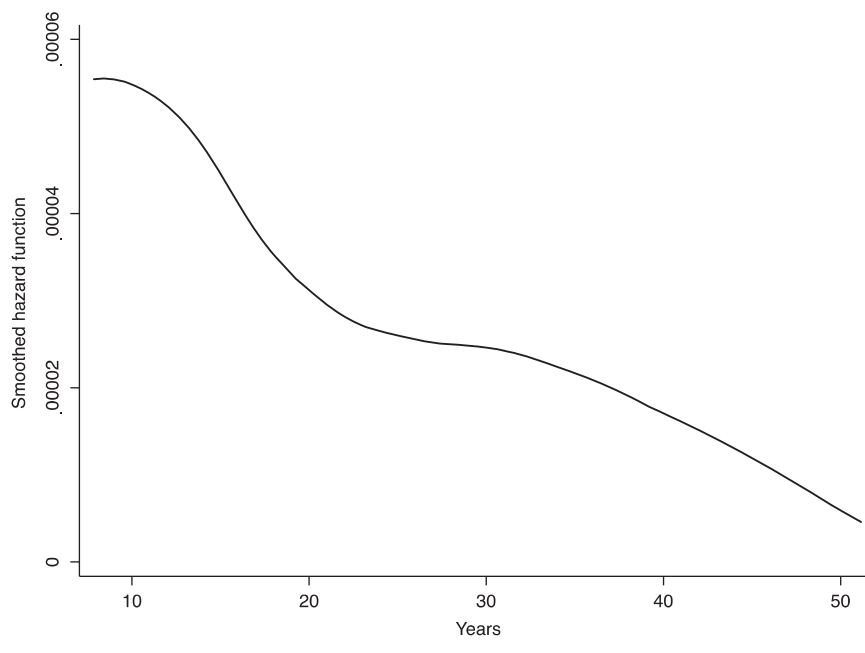
Next, I include trend variables to capture possible changes in executive order use and revocation over time. *Trend* is coded as 0 if the EO is issued in 1937, 1 if issued in 1938, 2 if 1939, and so on. *Current Trend* is similarly coded for current years. Finally, to control for the idiosyncrasies of individual presidents when exercising unilateral powers, I include fixed effects for issuing and current presidents. See the supporting information for variable descriptions and summary statistics.

Survival Analysis Hazard Function

Figure 2 shows that the estimated smoothed hazard function for the time until an executive order is revoked is decreasing. Thus, with each year following passage, an order's chances of revocation diminish. This is consistent with findings on federal agency and program durability (Downs 1966; Glazer 2012; Kaufman 1976; Lowi 1969; Simon, Smithburg, and Thompson 1950), yet it is contrary to claims that policies are more susceptible to termination over time due to coalitional drift (Horn and Shepsle 1989; Shepsle 1992; also see Corder 2004). Nonetheless, drift is perhaps most pronounced when subsequent administrations hold opposing views to the enacting regime, as in the case of ideological drift. Further, though executive orders are increasingly durable over time, there is significant variation in which ones are revoked and when termination occurs. The following statistical models account for these considerations.

²³Specifically, this variable only includes years preceded or succeeded by the president of the opposing party.

²⁴Following previous literature (Cohen 2012; Howell, Jackman, and Rogowski 2013), I code the following periods as an instance of war: World War II (1941–45), the Korean War (1950–53), the Vietnam War (1964–75), the Gulf War (1990–91), and the most intense period of combat during the Afghanistan and Iraq wars (2001–3).

FIGURE 2 Hazard Function

EO-Specific Results

Table 1 reports the estimated coefficients from the Cox proportional hazards models. Negative coefficients correspond to less risk of revocation, whereas positive coefficients correspond to greater risk. Models are estimated using alternative measures of interbranch conflict: party based (columns 1 and 3) and ideology based (columns 2 and 4). Because some variables (logged words, approval, and recent authority) are not measured until the 1940s, columns 1 and 2 report models without these variables beginning in 1937, whereas columns 3 and 4 include all variables beginning in 1949.

Column 1 shows that executive orders created under divided government are at a lower risk of being revoked, given its negative and significant coefficient. Specifically, orders created under partisan division have a 20% reduced hazard of revocation, in support of the Ideological Compromise Hypothesis. Though the direction remains the same, this effect is insignificant in Model 3. One downside to this measure is that it can lack variation across time given extended periods of unchanging partisan control.

Alternatively, I estimate models using an ideology-based measure of executive-legislative alignment (columns 2 and 4). In further support for this hypothesis, I find that a standard deviation increase in the issuing president's distance to Congress significantly decreases the risk of revocation by 10–11%, depending on the

model. Overall, these results support the theory's claim that executive orders issued under interbranch conflict endure longer than those conceived in more congenial environments.

Next, I find that executive orders' being related to foreign policy significantly impacts order duration, but only in the full models (columns 3 and 4). In particular, foreign policy orders decrease the risk of revocation by 24% over domestic ones, consistent with the EO Authority Hypothesis.²⁵ Similarly, I find that orders based on recent statutory authority face significantly decreased hazards of revocation by 30%, as compared to orders based on vague authority. Taken together, executive orders issued under greater authority tend to last longer than ones based on weak authority, supporting the theory's claim that these orders are less controversial and provide greater power to future administrations.

Furthermore, many of the time-invariant control variables also impact order duration. Across all models, I find that policy salience significantly corresponds to shorter life spans. In particular, orders mentioned in the *New York Times* have a 14–18% increased risk of

²⁵The supporting information presents an analysis of the impact of other policy areas on revocation, finding that orders related to transitory functions face shorter lives, whereas orders relating to continuing policy generally has no significant impact on longevity. Further, this analysis shows that the exclusion of these categories does not substantively change the results. Finally, including an indicator for whether an order was previously amended does not significantly impact revocation and does not alter the results.

TABLE 1 Cox Proportional Hazards Model—Baseline Model

	(1)	(2)	(3)	(4)
EO-Specific Covariates				
H1: Ideological Compromise				
Divided Government	−0.23 (0.11)*		−0.13 (0.15)	
D(President, Congress)		−1.78 (0.56)**		−1.42 (0.69)*
H2: EO Authority				
Recent Statutory Authority			−0.35 (0.09)**	−0.36 (0.09)**
Foreign Policy	−0.06 (0.06)	−0.06 (0.06)	−0.27 (0.07)**	−0.28 (0.07)**
Controls				
NY Times Mention	0.16 (0.07)*	0.16 (0.07)*	0.13 (0.08)	0.13 (0.08)
Public Mention	0.51 (0.08)**	0.51 (0.08)**	0.35 (0.08)**	0.35 (0.09)**
Ln (EO Words)			0.26 (0.03)**	0.26 (0.03)**
War	−0.08 (0.09)	−0.06 (0.09)	−0.14 (0.13)	−0.13 (0.13)
Inflation	0.01 (0.01)	0.01 (0.01)	−0.00 (0.02)	−0.00 (0.02)
Public Approval			−0.01 (0.01)*	−0.01 (0.01)
Election Year	0.06 (0.08)	0.06 (0.08)	0.15 (0.11)	0.15 (0.11)
Administration Change	0.11 (0.10)	0.12 (0.10)	0.11 (0.11)	0.13 (0.12)
End Term	−0.23 (0.11)*	−0.20 (0.11)	−0.28 (0.14)*	−0.27 (0.14)*
Trend	0.11 (0.02)**	0.13 (0.02)**	0.06 (0.03)	0.08 (0.03)**
Time-Changing Political Covariates				
H3: Political Costs				
Current Divided Government	0.12 (0.13)		−1.21 (0.18)**	
D(Current President, Current Congress)		−2.39 (0.50)**		−5.66 (0.71)**
Current Public Approval			0.05 (0.00)**	0.04 (0.00)**
Current Inflation	−0.02 (0.01)	−0.01 (0.01)	−0.02 (0.02)	−0.03 (0.02)
Current Election Year	−1.12 (0.11)**	−1.06 (0.11)**	−1.51 (0.14)**	−1.37 (0.14)**
H4: Opposing President				
Opposing President	0.27 (0.07)**		0.24 (0.07)**	
D(Issuing President, Current President)		0.32 (0.07)**		0.29 (0.08)**
Controls				
Ln(EOs Issued)	−0.60 (0.19)**	−0.62 (0.19)**	−0.80 (0.35)*	−0.59 (0.33)
Current Administration Change	−0.11 (0.10)	−0.12 (0.10)	−0.21 (0.13)	−0.05 (0.12)
Current End Term	1.11 (0.17)**	1.08 (0.17)**	1.84 (0.24)**	1.69 (0.23)**
Current War	−0.05 (0.10)	−0.07 (0.10)	0.29 (0.21)	0.49 (0.23)*
Current Trend	−0.10 (0.02)**	−0.05 (0.02)*	0.04 (0.03)	0.12 (0.03)**
Log-likelihood	−18098.49	−18081.85	−11856.21	−11840.82
N	261,670	261,670	102,626	102,626
Years	1937–2013	1937–2013	1949–2013	1949–2013
Presidential Fixed Effects	yes	yes	yes	yes

Note: Coefficients are from Cox proportional hazards model with robust standard errors in parentheses and presidential fixed effects (not shown).

*p < .05,

**p < .01, two-tailed tests.

being revoked, whereas orders publicly mentioned by the president have a 41–67% additional risk of revocation.²⁶

Additionally, more complex orders also face increased chances of termination, as expected.

²⁶Moreover, orders mentioned in the *Congressional Record* or at least two law review articles face shorter life spans. These variables

are used as alternative measures of significance, following previous scholars (Howell 2003; Mayer 2001).

TABLE 2 Cox Proportional Hazards Model—Interaction Model

	(1)	(2)
Interaction		
Recent Statutory Authority	−0.13 (0.14)	−0.07 (0.13)
D(Issuing President, Current President)	0.26 (0.08)**	0.36 (0.08)**
Recent Statutory Authority × D(Issuing President, Current President)	−0.49 (0.21)*	−0.51 (0.18)**
EO-Specific Covariates		
D(President, Congress)		−1.36 (0.69)*
Foreign Policy		−0.27 (0.07)**
Controls		
NY Times Mention		0.12 (0.08)
Public Mention		0.35 (0.09)**
Ln(EO Words)		0.26 (0.03)**
War		−0.13 (0.13)
Inflation		−0.00 (0.02)
Public Approval		−0.01 (0.01)*
Election Year		0.15 (0.11)
Administration Change		0.12 (0.12)
End Term		−0.27 (0.14)
Trend		0.08 (0.03)*
Time-Changing Political Covariates		
D(Current President, Current Congress)		−5.65 (0.71)**
Current Public Approval		0.04 (0.00)**
Current Inflation		−0.03 (0.02)
Current Election Year		−1.37 (0.14)**
Controls		
Ln(EOs Issued)		−0.59 (0.32)
Current Administration Change		−0.05 (0.12)
Current End Term		1.69 (0.23)**
Current War		0.49 (0.23)*
Current Trend		0.12 (0.03)**
Log-likelihood	−12814.26	−11836.73
N	102,626	102,626
Years	1949–2013	1949–2013
Presidential Fixed Effects	no	yes

Note: Coefficients are from Cox proportional hazards model with robust standard errors in parentheses and presidential fixed effects (not shown).

*p < .05,

**p < .01, two-tailed tests.

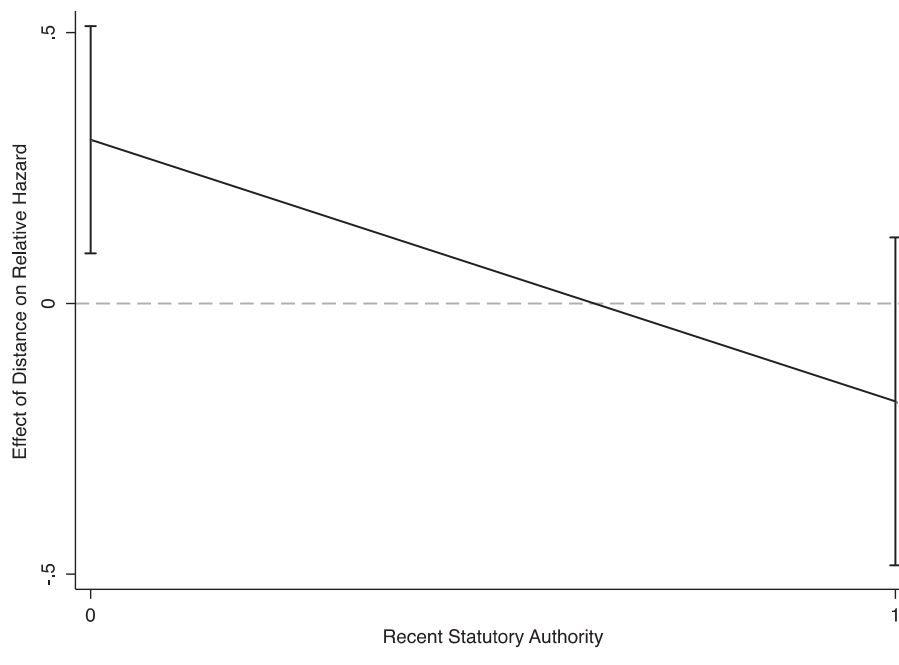
Executive orders created during times of war, economic hardship, election years, and a president's first year in office do not incur significant impacts on their longevity. However, orders issued during the final year exhibit a decreased risk of revocation. This could suggest that outgoing presidents issue less controversial orders because of their desire for their policies, and thus legacies, to endure. Further, it supports claims that presidents attempt to bind subsequent administrations to various policy commitments (Howell and Mayer 2005). Additionally, I find that executive orders issued by popular presidents tend to endure longer than ones issued by unpopular presidents ($p = .023$ and $p = .055$). This implies that current presidents may be reluctant to revoke orders issued during popular administrations for fear of public and political backlash. Overall, I find robust support for the hypotheses related to an executive order's characteristics at time of issuance; I now turn to discussing the results related to the changing political environment over time.

Time-Changing Political Results

To begin, I find strong support for the Opposing President Hypothesis. Across all models, executive orders face increased hazards of revocation when encountering current presidents of opposing parties or ideologies. Specifically, the hazard increases 27–31% when the current and issuing presidents are from opposing parties and increases 15–17% for every standard deviation increase in their ideological distance.

Consistent with the Political Costs Hypothesis, presidents are reluctant to revoke executive orders during election years and when they possess low political capital. In particular, the risk of an order being revoked decreases 65–79% during current election years. Further, during contemporary periods of divided government, executive orders have a 70% increased risk of being revoked; however, this only holds in the full model. Ideological measures of interbranch conflict yield similar results and are robust across models. Particularly, the risk of revocation increases 16–20% for every standard deviation increase in *D(Current President, Current Congress)*. Moreover, executive orders are in danger of being overturned by popular presidents; this risk increases 4–5% for every 1% increase in the current president's popularity. Finally, high current inflation correlates a lower risk of revocation, as predicted. Although this effect is not statistically significant, it approaches significance in the first model ($p = .052$).

When examining the controls, I find that presidents tend to more aggressively revoke executive orders during

FIGURE 3 The Conditional Hypothesis Interaction

their final year in office, consistent with previous findings on order use (Mayer 2001). Contrast that to the earlier findings, where orders issued in the last year tend to endure longer. Taken together, these results suggest that while presidents appear to be aggressive in revoking orders prior to leaving office, they tend to issue orders that endure through subsequent administrations. Through the creation of enduring policies and the termination of others, both actions are consistent with a president wishing to leave a lasting impact on policy as part of his or her legacy. Finally, I fail to find a consistent effect for administration change and war.

Conditional Results

Overall, these results bolster support for both sets of hypotheses. Notably, I find evidence that the risk of executive order revocation significantly increases when there is ideological drift between the enacting and current presidents. Though other studies find similar effects on federal policy and agency duration (Berry, Burden, and Howell 2010; Carpenter and Lewis 2004; Lewis 2002, 2003), none have examined whether such drift influences policies differently based on their strength. Accordingly, Table 2 tests this conditional relationship by including an interaction between an executive order's basis of authority and the ideological distance between enacting and current administrations.

The results yield support for the Conditional Hypothesis across models with and without control variables. As depicted in Figure 3, *D(Issuing President, Current President)* significantly increases the hazard of revocation for orders based on vague, constitutional claims of authority. However, this effect is insignificant for orders based on recent statutes. In other words, the ideological drift between presidents only positively influences the termination of weak-authority orders. Yet, orders based on strong statutory authority are unaffected by this drift.²⁷ This demonstrates that presidents, regardless of ideology, seek to preserve the authority derived from these more legally sound orders; they only ideologically target weak-authority ones that are less likely to be upheld in court (Howell 2003) and more likely to be controversial (Mayer 2001).

Discussion and Conclusion

This study offers one of the first systematic examinations of executive order longevity, developing and testing a theory of why and when particular orders are altered based on both the time-invariant characteristics of an executive

²⁷I find similar effects when interacting *Foreign Policy* with *D(Issuing President, Current President)*. See the supporting information.

order when it is issued and the time-variant factors of the political environment it faces throughout time. Using survival analysis, I find strong empirical support for the hypotheses. First, executive orders created during interbranch conflict face longer life spans, suggesting that they reflect greater political compromise that raises fewer subsequent controversies. This finding implies that these executive orders should be moderate, but it does not directly test this claim. Future research could analyze the ideological content of executive orders produced under various degrees of political discord and whether the extremity of an order increases the likelihood of revocation. Additionally, future studies could account for the influence of intrabranched conflict on executive order longevity, particularly considering bargaining within the executive branch (Rudalevige 2012).

Further, although these results are consistent with previous arguments that divided government produces greater deliberation and more moderate policies (Thorson 1998; Weatherford 1993), they run counter to findings that legislation produced under partisan conflict is more likely to be revised (Maltzman and Shipan 2008). This discrepancy could be because the latter study focuses on policy revision instead of termination. Thus, future studies should produce a theoretical and empirical examination of executive order amendments as well, instead of just revocations.

Second, the analysis reveals that executive orders based on stronger authority, as measured by those based on recent statutory authority and related to foreign policy, are exceedingly more likely to endure. Consistent with the theory, these findings suggest that such orders likely raise fewer controversies while also demonstrating a president's willingness to preserve the greater authority and support they provide.

In addition to these static characteristics, this study also highlights a number of changing political factors that contribute to an order's longevity. In accordance with the theory, presidents revoke orders less often when the political costs are high—as measured by election years and low political capital. In particular, fewer orders are revoked during election years and under presidents facing greater congressional opposition as well as lower public approval. This is consistent with previous findings of fewer orders issued under greater partisan division (e.g., Howell 2003, 2005), yet it counters arguments of more order use to garner support when public approval is low and during election years (Mayer 2001). These discrepancies could highlight an important distinction between the president's incentives to issue executive orders for revocation versus other policymaking purposes. Given the increased political costs, presidents may need to tread

more carefully when revoking previous orders during election years and according to political capital. However, more scholarly attention is needed in exploring these differences.

Consistent with previous arguments (Warber 2006), the results show presidents are more likely to revoke executive orders issued by ideologically opposed administrations. These findings are consistent with the idea that ideological drift can lead to policy termination (Carpenter and Lewis 2004; Lewis 2002, 2003). Yet, no other studies have systematically applied this to presidential unilateralism. Even further, this study is the first to show the limitations of ideological drift by finding that the strength of an executive order's authority mitigates its risk of revocation. Put differently, ideological targeting only occurs on executive orders based on weaker constitutional authority. Presidents' desire to maintain sources of institutional authority and political support outweighs their tendency to revoke orders from political adversaries. This finding shows a limitation to ideological drift and sheds light on which policies are more resilient, contributing to the larger literature on policymaking and termination. Other studies of policy implements can examine these and other limitations of ideological drift.

Overall, while there is a large body of research examining the determinants of executive order use, little attention is given to their duration. This study illuminates both the time-invariant and time-variant determinants of order longevity. The findings have implications for rethinking presidential motivations behind executive order use. That is, if presidents know that their executive orders can be subsequently amended or revoked, does that influence their decisions on the types of orders they issue—particularly if they care about their legacies? Answering this question will further our understanding of presidential decision making.

Other studies consider how uncertainty surrounding the preferences of future coalitions influences the actions of current policy makers (Clark 2016; de Figueiredo 2002; Farhang and Yaver, forthcoming; Horn 1995; Horn and Shepsle 1989; Moe 1989, 2012; Lewis 2003; Shepsle 1992; Staton and Vanberg 2008). However, these studies mostly examine this question through the lens of congressional control over the bureaucracy, with little attention given to uncertainty in presidential unilateralism.

Finally, this study has implications for more generally understanding the duration of policy, in the face of a literature largely focused on the inputs of this process. While there are many studies examining agency termination, few consider the duration of policy and even fewer consider unilateral directives. To truly understand the actions of political actors, one must also consider the longevity

of the policies over which they bargain (see Moe 2012). Furthermore, the studies that do consider how the threat of being overturned can influence institutional decision making tend to only focus on threats from current political opponents and not future ones (Canes-Wrone 2003; Clark 2009; Howard and Nixon 2002; Howell 2003; Rogers 2001; Wood and Waterman 1993). However, threats to policy duration occur from both interbranch and intra-branch actors in the present as well as the future. This has tremendous implications for understanding contemporary policymaking.

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Supporting Information

Additional Supporting Information may be found in the online version of this article at the publisher's website:

Appendix A: Descriptive Statistics

Appendix B: Robustness Checks