

Presidential Pens and Power: Signing Statements, Reputation, and the Battle for Inter-Branch Authority

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Abstract

The vague language of the U.S. Constitution has created a balance of political power that is difficult to pin down. Because of the ambiguity in the formal legal documents of the American government, the boundaries of presidential power need to be understood as a product not just of those rights codified in law, but also as a function of the informal actions taken by the president to advance his agenda. In this paper, I provide a theory that explains how informal actions help the president consolidate power in the executive branch – namely, they help him establish a reputation of political strength, allowing him to operate unfettered by interference from the other branches of government as his term in office moves into the future. I apply this reputation-based framework to one particular action taken by the president – signing statements. I find that, from 1989 to 2012, presidents have used signing statements in a manner that is consistent with my theory. As Congress encroaches more upon executive authority, presidents are increasingly likely to object. Moreover, when the president has established a track record of objecting to congressional activity through signing statements, Congress tends to respond by encroaching upon the president at lower levels going forward.

The formal powers of the President of the United States are vaguely defined. The origins of this imprecision can be traced to the United States Constitution, which attributes to the President such ambiguous authorities as the “executive power” and the right to “take care that the laws be faithfully executed.”¹ Assuredly, despite this unclear language, there are limits to the President’s authority; the U.S. government consists of three branches, each meant to check and balance one another. In practice, though, the exact boundaries of the President’s political reach remain difficult to identify, for scholars and politicians alike. And presidential administrations, for their part, are intent to exploit the ambiguities of the rules in an ongoing effort to expand the authority of their branch (Moe 1985; Moe and Howell 1999; Yoo et al 2005).

Indeed, presidents employ a wide range of actions to expand their power. Some of these actions, such as the Presidential veto (Cameron 2000; Cameron and McCarty 2004), executive order (Mayer 2001; Howell 2003), and appointments process (Lewis 2008), carry intrinsic legal standing, making their ability to augment presidential power relatively transparent. Due to their legal standing, I refer to this category of actions as formal.² Over the past few decades, scholars have identified how each of these formal actions, along with many others, play a role in the President’s accumulation of power (Mayer 2001; Howell 2005; Waterman 2009).

However, presidential power does not end at the boundaries codified in the formal rules and procedures of the Constitution. Precisely because of the ambiguities in both the Constitution and subsequent statutes, we must look beyond the formally documented powers of the President in order to properly identify and analyze the limits of presidential power. As Richard Neustadt famously wrote, “presidential power is the power to persuade” (1960),

¹United States Constitution, Article II.

²Some of these actions, such as the Presidential veto, draw their authority directly from the Constitution, while others, such as executive orders, are not explicitly defined in the Constitution, but nonetheless carry the full force of law so long as they meet certain well established criteria.

and the power to persuade need not rely upon formal procedures. For this reason, I argue that presidential power is a product not just of formal actions, but also of *informal* actions – that is, actions that do not carry any intrinsic legal authority. While some presidential informal actions have received scholarly attention in recent years, such as centralized policy formulation (Rudalevige 2002) and “going public” (Kernell 1993; Canes-Wrone 2010), many others have been sparsely studied, such as signing statements (Kelley 2003; Cooper 2005) and memoranda (Cooper 2002). The literature on signing statements in particular returns mixed results.³ Because of their unstructured, ever-changing nature, informal actions are difficult to systematically analyze and to link to the expansion of presidential power. Thus, the question remains: if an action does not carry the weight of law behind it, can it elicit power for the executive branch? If so, how?

In this paper, I posit a theory to explain *how* informal presidential actions help build the power of the executive branch, despite their lack of legal standing. Informal actions, I argue, serve as a mechanism through which the President is able to signal to Congress his political strength – his willingness to confront Congress if he dislikes their actions. The more the President can build a reputation of political strength, the fewer challenges he will face from Congress in achieving his objectives. As such, informal actions help the President centralize power in the executive branch by reducing future obstructionism from Congress.

To test this theory, I focus on one particular informal action – presidential signing statements. Analyzing a new data set consisting of the universe of public laws passed between 1989 and 2012, I find support for two hypotheses consistent with my theory of presidential informal actions. First, I find that presidents are more likely to contest an act of Congress via a signing statement when that act more clearly encroaches upon executive branch authority. Second, when presidents have contested a higher percentage of bills through signing

³While Kelley and Marshall 2008 find that presidential signing statements have an effect, Ostrander and Sievert 2013 see no systematic link between signing statements and policy change.

statements in the recent past, Congress is less likely to encroach upon executive authority in the present. These findings strongly support the contention that presidents use informal actions, such as the signing statement, to build a reputation of political strength, which in turn provides the President more leeway to pursue his political agenda unobstructed. As such, informal actions can bolster presidential power despite their lack of legal standing.

This paper proceeds as follows. In the first section, I review the literature on models of reputation building, and show how they connect to the negotiations between the President and Congress. In section two, I develop a reputation-based model of presidential action, solve for the equilibrium, and derive testable comparative statics. Section three tests the empirical implications of my theory, looking at the President's use of presidential signing statements. In the fourth section, I conclude and discuss future steps that can be taken with this research program.

1 Existing Models of Reputation Building

In the field of economics, an extensive literature analyzes how competing groups interact in a repeated game setting with uncertainty regarding the preferences of at least one of the players. This work began with Kreps and Wilson (1982) and Milgrom and Roberts (1982), both analyzing the behavior of firms to explain the presence of monopolies. They find that, so long as potential market entrants hold some small amount of uncertainty regarding the payoffs of an existing firm, the existing firm will threaten to engage in aggressive price undercutting to deter entry, and no new firms will enter the market. This threat is credible because new firms do not know the payoffs of the existing firm, so if the existing firm acts as though it is tough, the potential market entrants will believe that the existing firm would rather run the entire marketplace into the ground than share profits. And for the existing firm, the short term costs of competing with a new firm are outweighed by the long term

benefit of controlling the marketplace.

This same framework can be straightforwardly applied to explain the behavior of the President in his relations to Congress. If we think of the existing firm as the President, and of potential market entrants as Congress, and further assume that Congress is unsure of the President's payoff structure, then it follows that the President will be incentivized to develop a reputation that may or may not reflect his true preferences in order to extract concessions from Congress. Cameron (2000), for example, uses this reputation-based framework to explain the occurrence of presidential vetoes.

While this framework provides an excellent foundation from which to assess interactions between the President and Congress, two shortcomings must be addressed. First, in the canonical models, in equilibrium, the existing firm will never confront the new firm, and no new firm will enter the marketplace (until the final stages of the finite game). In the context of executive-legislative interactions, this plainly is not the case. Congress is periodically encroaching upon presidential authority, and the President is therefore forced to confront Congress and object to the encroachment.

Second, in the basic formulation, if the existing firm ever allows a new firm to enter the market, the existing firm is forever revealed to be weak, and new firms will continue to enter the market in every subsequent round of the game. When applied to executive-legislative interactions, this would mean that if Congress ever encroached upon executive authority and got away with it, it would encroach every chance it got for the rest of the President's time in office (at least), and the President would never object. However, we know that the President and Congress are continually butting heads, and moreover, that the President might accept a certain level of congressional meddling today but object to it tomorrow.

Thus, while a reputation based model provides a solid foundation on which to build a theory of inter-branch negotiations, some additional wrinkles must be added to capture the complexities of executive-legislative interactions.

2 A Reputation-Based Theory of Presidential Action

My model remedies the two deficiencies of previous models of reputation building. First, I allow for both the President and Congress to have different types, and moreover, I allow for exogenous shocks to the payoffs of both players in each round of the game. Second, I allow for the types of both players to be drawn from a continuum, rather than from a bernoulli distribution, meaning that Congress can update its beliefs about the President's type without learning his exact type. With these adjustments, my model supports an equilibrium in which Congress encroaches upon executive authority at a level that varies from round to round, and the President will sometimes, but not always, object to Congress's actions. Much like canonical models of reputation building, the President's confrontations of Congress will be motivated by the desire to build a reputation of political strength, so as to deter future encroachments.

Setup

The game consists of two players – a representative member of Congress (C) and the President (P). Hence, $I = \{C, P\}$. For both Congress and the President, there are a continuum of types, denoted τ_C and τ_P , respectively. The different types distinguish the toughness of each player, where a tougher player is more willing to fight with the other branch. For $I \in \{C, P\}$, $\tau_i \sim U[\underline{\tau}_i, \bar{\tau}_i]$, with $\underline{\tau}_i$ indicating the lower bound for player i 's toughness, and $\bar{\tau}_i$ indicating the upper bound. At the beginning of the game, τ_C and τ_P are determined.⁴ While τ_C is common knowledge, τ_P is known only by P ; Congress knows just that $\tau_P \sim U[\underline{\tau}_P, \bar{\tau}_P]$.⁵

⁴In accordance with the Harsanyi transformation, there is a third player in the game – Nature (N) – which draws the values of certain parameters from common knowledge distributions. However, since Nature never acts strategically, I omit Nature from the list of players.

⁵For mathematical simplicity, I assume that all random variables are uniformly distributed. However, the results hold under any symmetric distributional assumptions, and are generally robust to asymmetric distributional assumptions as well.

Once the types of Congress and the President are established, the stage game begins. This starts with another move by Nature to determine the cost of fighting for Congress (a_t) and the President (k_t). Both of these parameters are also distributed uniformly, such that $a_t \sim U[\underline{a}_t, \bar{a}_t]$ and $k_t \sim U[\underline{k}_t, \bar{k}_t]$. These parameters are meant to capture the costs that Congress and the President will incur should the two branches engage in a public battle over the balance of inter-branch power. These costs emanate from loss of public approval (felt by both branches) for appearing power-hungry, which can ultimately affect one's ability to stay in office, or to advance a desired policy agenda.⁶ By allowing these two parameters to fluctuate from round to round, the model accommodates the possibility that exogenous factors may make it more (or less) costly for, say, the President to fight in round t than in round $t + 1$.⁷

Play begins with Congress choosing a level at which to encroach on the President's established jurisdiction, denoted by $E_t \in [0, 1]$, where $E_t = 0$ indicates no encroachment whatsoever, and $E_t = 1$ indicates the maximum amount that Congress could encroach on presidential territory.⁸ Thus, $S_C = E_t \in [0, 1]$. Upon observing E_t , the President then chooses whether to acquiesce ($S_P = A$) or fight ($S_P = F$) the congressional encroachment. Because this is an extensive form game, his strategy set is as follows: $S_P = f : \{E_t \in [0, 1]\} \rightarrow \{A, F\}$. Once the President chooses his action, stage game payoffs are realized, and Congress updates its beliefs about the President's type (τ_P).

⁶Note that the real world effect on the likelihood of reelection need not be large; any perception of threat to an incumbent's seat will motivate his actions, regardless of whether that perception accurately mirrors reality.

⁷One could imagine making a_t and k_t endogenous to the model. For example, as more fighting occurs between the two branches, the public might become increasingly frustrated with government, meaning that the costs of fighting increase for each branch as a function of how much fighting has transpired in recent history. While such extensions are interesting, I leave them to future work, as this model is meant to provide a baseline framework through which to consider power battles between the two branches.

⁸By bounding Congress's level of encroachment from above, I assume that there is only so much that Congress can encroach upon presidential authority through any one action. Instead of bounding it at one, the upper bound could be set to \bar{E}_t . This would achieve the same effect, and so I have opted for the more parsimonious approach, with one less moving parameter.

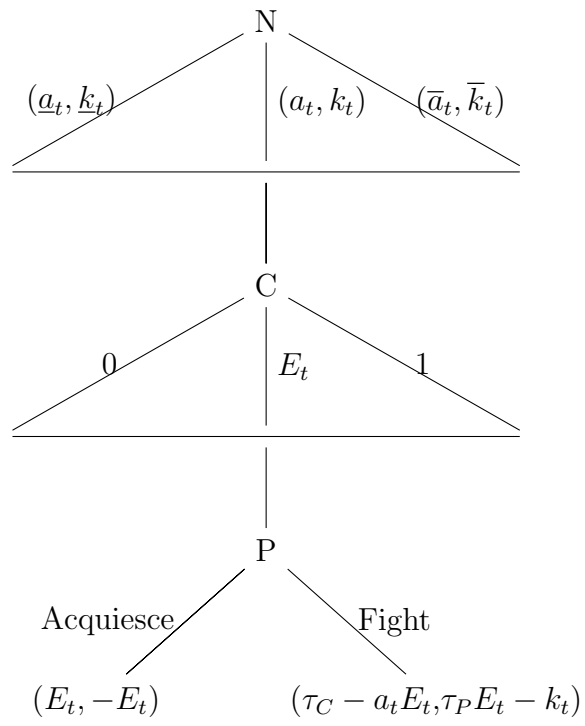
Payoffs in the stage game depend upon the strategies taken by both Congress and the President. If the President acquiesces, then the payoffs are very simple: Congress and the President receive payoffs of E_t and $-E_t$, respectively. In words, if the President acquiesces, then Congress gains authority equal to the level at which it encroached; likewise, the President loses an equal amount of authority.

Utility functions are slightly more complicated if the President fights congressional encroachment. In this case, Congress's payoff is an increasing function of its toughness (τ_C), and a decreasing function of Congress's cost of fighting in that period (a_t) and the level of congressional encroachment on presidential jurisdiction (E_t). In sum, Congress's payoff in the event of a presidential challenge takes the following form: $\tau_C - a_t E_t$. In this formulation, a_t is multiplied by E_t because Congress takes an increasing amount of public scrutiny for a fight if Congress did more to provoke the fight.

Meanwhile, the President's utility (in the case of fighting) is an increasing function of his toughness (τ_P) and the degree to which Congress has encroached (E_t), and a decreasing function of his costs of fighting in that period (k_t). Altogether, then, the President's payoff is $\tau_P E_t - k_t$. Note that τ_P is multiplied by E_t : this captures the intuition that a tougher President is going to derive greater utility for fighting as he feels increasingly provoked by Congress.

Upon conclusion of the stage game – shown in Figure 1 – in round t , the next round, $t+1$, begins, with Congress utilizing its updated beliefs about the President's toughness level. In this paper, I consider a two-round game, but the general findings hold as more rounds are added. As this is a game of imperfect information, the solution concept is Perfect Bayesian Equilibrium.

Figure 1: Stage Game



Equilibrium Analysis

Having established the elements of the game, I turn now to an equilibrium wherein Congress encroaches on presidential authority at a level that varies from round to round, and the President often fights congressional encroachment, even if it is costly in the short run to do so. This section outlines the conditions needed to sustain this equilibrium, and highlights some of its features.

Theorem 1:

An equilibrium exists wherein Congress encroaches upon presidential authority at a positive level that varies from round to round (as a function of τ_C , $\underline{\tau}_P$, and $\bar{\tau}_P$, a_t , and k_t), and the President fights this encroachment in early rounds of the game even if such action is costly in the immediate stage game.

Proof:

Consider first a single stage game. The President fights Congress ($S_P = F$) if the payoffs to the President for fighting are greater than the payoffs of acquiescing (i.e., $(\tau_P E - k_t > -E_t) = (\tau_P > \frac{k_t}{E_t} - 1)$). Likewise, the President acquiesces if this does not hold (i.e., $(\tau_P \leq \frac{k_t}{E_t} - 1)$). The utility of Congress, then, is given by $U_C = E_t \cdot Pr(\tau_P \leq \frac{k_t}{E_t} - 1) + (\tau_C - a_t E_t) \cdot Pr(\tau_P > \frac{k_t}{E_t} - 1)$.

However, the President's toughness (τ_P) is imperfectly known by Congress; Congress only has its prior beliefs about τ_P , which are that $\tau_P \sim U[\underline{\tau}_P, \bar{\tau}_P]$. Given these beliefs, $U_C = E_t \cdot (\frac{\frac{k_t}{E_t} - 1 - \underline{\tau}_P}{\bar{\tau}_P - \underline{\tau}_P}) + (\tau_C - a_t E_t) \cdot (\frac{\bar{\tau}_P - \frac{k_t}{E_t} + 1}{\bar{\tau}_P - \underline{\tau}_P}) = \frac{k_t - E_t - E_t \underline{\tau}_P + \tau_C \bar{\tau}_P - \frac{\tau_C k_t}{E_t} + \tau_C - a_t E_t \bar{\tau}_P + a_t k_t - a_t E_t}{\bar{\tau}_P - \underline{\tau}_P}$. Taking the first order derivative yields:

$$\frac{\partial U_C}{\partial E_t} = \frac{-1 - \underline{\tau}_P + \frac{\tau_C k_t}{E_t^2} - a_t \bar{\tau}_P - a_t}{\bar{\tau}_P - \underline{\tau}_P} = 0$$

$$\begin{aligned}
\Rightarrow \frac{\tau_C k_t}{E_t^2} &= 1 + \underline{\tau}_P + a_t \bar{\tau}_P + a_t \\
\Rightarrow E_t^2 &= \frac{\tau_C k_t}{1 + \underline{\tau}_P + a_t \bar{\tau}_P + a_t} \\
\Rightarrow E_t^* &= \sqrt{\frac{\tau_C k_t}{1 + \underline{\tau}_P + a_t \bar{\tau}_P + a_t}}.
\end{aligned}$$

Recall that $E_t \in [0, 1]$. Depending on the realized values of τ_C , k_t , $\underline{\tau}_P$, $\bar{\tau}_P$, and a_t , then, E_t^* may take on a corner solution of zero or one. Therefore, in the stage game, Congress will encroach some amount E_t^* , and the President will fight encroachment if $\tau_P > \frac{k_t}{E_t} - 1$.

What happens when we transition to a repeated game? Now, Congress has the capacity to update its beliefs about the President's toughness based on his action in the previous round, and to act on those updated beliefs. Also, payoffs are summed over multiple rounds, meaning that a player might be willing to incur utility losses in the immediate stage game if those losses are offset by gains in subsequent rounds. This creates incentives for the President to appear tough even if he is not, as this will prevent further encroachment in future rounds.

I consider a game that lasts two rounds.⁹ The equilibrium strategies are as follows. For all rounds t ,

$$S_{C,t} : E_t^* = \sqrt{\frac{\tau_C k_t}{1 + \underline{\tau}_P + a_t \bar{\tau}_P + a_t}} \text{ where } E_t^* \in [0, 1].$$

and

$$S_{P,t}^{10,11} = \begin{cases} \{F, F\} & \text{if } \tau_P > \tau_P''; \\ \{F, A\} & \text{if } \tau_P \in (\tau_P', \tau_P'']; \\ \{A, A\} & \text{if } \tau_P \leq \tau_P'. \end{cases}$$

⁹The same general logic can be extended for as many rounds as desired.

¹⁰ $\tau_P'' = \left(\frac{k_t}{\sqrt{\frac{\tau_C k_t}{1 + \underline{\tau}_P + a_t \bar{\tau}_P + a_t}}} \right) - 1$.

¹¹ $\tau_P' = \frac{k_t + \sqrt{\frac{\tau_C (\frac{k_t+1+\bar{k}_t+1}{2})}{1 + \underline{\tau}_P + (\frac{a_t+1+\bar{a}_t+1}{2}) \bar{\tau}_P + (\frac{a_t+1+\bar{a}_t+1}{2})}} - \sqrt{\frac{\tau_C k_t}{1 + \underline{\tau}_P + a_t \bar{\tau}_P + a_t}} - \sqrt{\frac{\tau_C (\frac{k_t+1+\bar{k}_t+1}{2})}{1 + \underline{\tau}_P + (\frac{a_t+1+\bar{a}_t+1}{2}) (\sqrt{\frac{\tau_C k_t}{1 + \underline{\tau}_P + a_t \bar{\tau}_P + a_t}}) + (\frac{a_t+1+\bar{a}_t+1}{2})}}}{\sqrt{\frac{\tau_C k_t}{1 + \underline{\tau}_P + a_t \bar{\tau}_P + a_t}}}.$

where $\{F, F\}$ indicates that the President would fight in round 1 and in round 2; $\{F, A\}$ indicates that the President would fight in round 1 and acquiesce in round 2; and $\{A, A\}$ indicates that the President would acquiesce in round 1 and in round 2.¹²

For this to be an equilibrium, all players' beliefs must satisfy Bayes' rule. Since Congress's prior belief about τ_P is that $\tau_P \sim U[\underline{\tau}_P, \bar{\tau}_P]$, its prior belief about the probability that $\tau_P > \frac{k_t}{E} - 1$ is equal to $\frac{\bar{\tau}_P - \frac{k_t}{E} + 1}{\bar{\tau}_P - \underline{\tau}_P}$. If the President acquiesces in round 1, then Congress can infer that $\tau_P \leq \tau'_P$. As such, Congress has updated beliefs about τ_P : it will now think that $\tau_P \sim U[\underline{\tau}_P, \tau'_P]$, where $\tau'_P \leq \bar{\tau}_P$. Conversely, if the President fights in round 1, then Congress can infer that $\tau_P > \tau'_P$, leading to its updated beliefs that $\tau_P \sim U[\tau'_P, \bar{\tau}_P]$, where $\tau'_P \geq \underline{\tau}_P$. Both of these beliefs are consistent with the strategies taken by Congress and the President, so Bayes' rule is met. ■

This equilibrium has several noteworthy features. First, when we move beyond the stage game and allow the President to noisily signal his level of toughness to Congress through his actions, the President is increasingly incentivized to fight encroachment, even if it is costly in the short run. By incurring a short term cost induced by fighting in round t , the President can more plausibly convince Congress that he is at least a little bit tougher in expectation than he was previously believed to be, resulting in Congress encroaching *less* in round $t + 1$ than it had in round t . Meanwhile, if the President acquiesces in round t , Congress learns that he is weaker in expectation than previously believed, resulting in Congress encroaching

¹²Note that the president's equilibrium strategies do not include an option where the president acquiesces in the first round, and then fights in the second round. This is because the president's strategy in equilibrium, a priori, assumes that the exogenous shocks to the model (a_t and k_t) are held at their expected values when the president is at his decision nodes. However, a nice feature of this model is that a_t and k_t are both realized and observed at the beginning of each round, prior to either the President or Congress making decisions. Therefore, it *is* possible in equilibrium for the President to acquiesce in round t and subsequently fight in round $t + 1$. This reflects the notion that sometimes, the context of the negotiations between the President and Congress may advantage one branch over the other in an unexpected way; when Congress holds such a temporary advantage, it will exploit that advantage in the current round, but not update its beliefs about the President's type, knowing his acquiescence to be a product of circumstance, not of his type.

more in round $t+1$ than it had in round t . Consequently, by fighting in round t , the President ensures utility gains for himself in round $t + 1$.

Second, in this equilibrium, the level at which Congress encroaches upon presidential jurisdiction fluctuates from round to round, as a product of both previous presidential action and exogenous shocks outside of the model – namely, the fluctuations of the parameters a_t and k_t . Moreover, the President’s decision to fight against or acquiesce to encroachment is a function of both the exogenous shock to his utility (k_t), and endogenous choices within the model (E_t). In short, this model intuitively captures the dynamics of give-and-take between the President and Congress as they battle over jurisdiction and control of policy implementation.

Of course, this model details a two round game; how should we relate this to the real-world interactions of the President with Congress? One could directly apply the two round game to a presidential term in office, wherein round one is the President’s first and second years in office, and round two is the third and fourth years. Alternatively, round one could be considered to be a president’s first term in office, in which case round two would be his second term (should he be reelected). Such assumptions, though, aggregate all of the President’s actions in a two- or four-year window into a single action. This overlooks much of the nuance of inter-branch relations, in which the two branches are constantly interacting with one another, and Congress is updating its beliefs about the President over and over again throughout the President’s administration.

Luckily, the same general equilibrium exists as the game is extended out to N rounds. The major distinction as the game gets longer is that the President has increasing incentives to build his reputation as strong, so he will confront Congress more in the earlier stages of the game. As such, Congress will learn less (though it will still learn something) from observing a confrontational President.

Empirical Implications

What observable implications are produced when the President acts to build a reputation of political strength? Based on the model laid out above, two hypotheses can be derived. First, the theory speaks to when presidents will confront Congress. As noted earlier, the President will confront Congress when $\tau_P > \frac{k_t}{E_t} - 1$. It follows, then, that the likelihood of the President fighting in round t is an increasing function of τ_P and E_t , and a decreasing function of k_t . In words, the President is more likely to confront Congressional encroachment as the encroachment grows larger, as the President is increasingly politically strong, and as his costs from fighting decrease:

Hypothesis 1: The likelihood of a confrontation in round t is:

1. an increasing function of τ_P ;
2. an increasing function of E_t ;
3. a decreasing function of k_t .

Second, the model identifies how confrontation benefits the President. Since the President's type is unknown, Congress must assess his willingness to fight based on his observed actions. Therefore, by confronting Congress in round t , the President secures future payoffs since Congress will encroach less later in the President's administration. This yields a second hypothesis:

Hypothesis 2: Confronting Congress in round t leads to lower levels of congressional encroachment in round $t + 1$.

This is of particular interest because it highlights the value of informal actions (that is, actions that have no formal legal authority) to the President: when a president chooses to commit an act that (1) has no inherent legal standing, and (2) forces him to incur political

costs, he is able to meaningfully signal to Congress that he will not be pushed around. By engaging in costly informal actions, then, presidents are able to build a reputation of political strength. As such, actions need not have legal standing to help the President in negotiations with Congress.

3 An Application: Presidential Signing Statements

In order to test whether presidents use informal actions to establish a reputation of political strength vis-à-vis the legislative branch, one must first operationalize two latent variables: (1) the President's use of an informal action to confront congressional activity, and (2) congressional encroachment on executive authority. In principle, any informal action taken by the President amidst inter-branch negotiations – presidential memoranda, proclamations, statements of administrative policy, and so on – could serve as a testing grounds for the theory. While it is my hope to extend this theoretical framework to account for a wide range of presidential actions, in this paper I focus on just one: presidential signing statements.

Once Congress has passed a bill, the President has three options. The first two are well-documented – he can sign the bill into law, or veto it. The third option, while not uncommon, is less well recognized. The President can sign the bill while attaching a signing statement, which notes his feelings – sometimes positive, sometimes negative – about the new law, as well as his plans for its implementation. Presidential signing statements provide an excellent venue to test the theory laid out above for a number of reasons. First, they are clearly an informal action: they are never mentioned in the Constitution, and as such, do not have any formal authority. Despite their lack of legal standing, though, they are both frequently used – almost as frequently as executive orders over the past 30 years – and easy to measure, as each signing statement is recorded in the Federal Register.

Second, the intent of each presidential signing statement can be relatively clearly dis-

cerned by analyzing its text. Those statements that object to congressional activity usually cite a provision of the Constitution, and assert that the bill in question violates that provision. By subsetting the universe of signing statements to just those that reference a constitutional violation, we are left with a clear indicator for when the President is confronting congressional activity. Therefore, signing statements provide a clean measure of an informal action that signals to Congress that the president will not acquiesce to congressional encroachment.

Third, for each signing statement, there is a corresponding and clear measure of congressional encroachment. Since presidents choose whether to attach a signing statement to each individual bill being signed into law, the unit of analysis is a public law. By looking at the full text of each public law, one can determine the level of congressional encroachment on executive authority in each bill, and then observe whether the President confronts the encroachment. While Congress can encroach upon executive authority in a number of different ways, I focus on the number of legislative veto provisions in each public law. Despite being deemed unconstitutional by the U.S. Supreme Court in 1983, Congress continues to put legislative veto provisions into some legislation – and the President often fights this encroachment through the issuance of signing statements. I provide further discussion of legislative veto provisions in the subsequent section.

Fourth, signing statements are often politically costly for the President to issue, which is essential so that Congress does not discard the action as cheap talk. For a real-world example of these political costs, we can turn to the administration of George W. Bush, when they were particularly visible and cutting. In the wake of President Bush’s use of signing statements, the media declared that he had “gone too far” and “accorded himself the ultimate interpretation of the Constitution” (Savage 2007). The American Bar Association commissioned a Blue Ribbon Task Force to study the use of signing statements, which concluded that “signing statements [are] in violation of rule of law.” Senator Arlen Specter introduced legislation to sue the President over his usage of signing statements on two separate occa-

sions. While these examples focus on George W. Bush, every president since Ronald Reagan has received similar criticism. As such, presidents knowingly incur costs each time they use such statements to object to portions of legislation.

Likewise, the issuance of signing statements is often politically costly for members of Congress, as they are being publicly accused of power-mongering. However slight the true impact might be, legislators disdain having their reputation publicly called into question. Moreover, members of Congress don't appreciate being made to look politically weak, nor do they like having the bills they spent months crafting potentially being altered or even disregarded by the executive branch. Consequently, signing statements represent an action that, despite lacking legal standing, inflicts costs on both the President and Congress.

Last, I focus on signing statements because, despite the attention they have received from scholars and the media in recent decades, the field has yet to establish a clear explanation of how they are used, or what effect they have on policy implementation or the balance of power between the branches of government. We do know that 14% of public laws receive a signing statement, with just less than half of those statements containing constitutionally-grounded objections to legislation. But we have yet to understand why some bills and not others receive signing statements, or what effect signing statements have when used. It is generally accepted that they do not, nor are they intended to, affect policy (e.g., Ostrander and Sievert 2013). In addition, their influence on the implementation of the law to which they are attached is minimal. For example, a series of Government Accountability Office studies found that only approximately one third of provisions identified as unconstitutional in signing statements were subsequently disregarded by the applicable executive agency; and when provisions were not followed, it was usually a matter of the relevant agency not obtaining prior approval for Congress for transferring funds (Kepplinger 2007a,b, 2008). Given these null effects and the noted costs to issuing signing statements, it seems they must provide some other value to the President to be worthwhile. I posit that the value of

signing statements to Presidents – that is, the benefit that offsets the cost of their invocation – is their capacity as a reputation-building tool. In the next sections, I use signing statements to test my first and second hypotheses in order to better understand the use and effects of this particular tool and, more broadly, the spectrum of informal presidential actions.

Data

To test my hypotheses, I use a new data set consisting of all public laws passed between 1989 and 2012 (the George H.W. Bush Administration through Barack Obama’s first term in office). The unit of analysis, therefore, is an individual public law, of which 5,505 were passed during the period studied. For each public law, I record whether or not the President used a signing statement to object to the bill on constitutional grounds. Not all signing statements question the constitutionality of the act to which they are attached – many simply laud the work of members of Congress, or attempt to influence implementation of the bill through non-constitutional means. To discern whether a signing statement invoked a constitutional objection, I examine the full text of each statement, obtained from the Document Archive at the American Presidency Project (www.presidency.ucsb.edu), and check whether the term “constitution” appears anywhere in the document. All bills that are accompanied by a signing statement containing the word “constitution” at least once are coded as one, and all other bills are coded as zero.

To measure the degree of congressional encroachment on executive authority in a public law, I count the number of legislative veto provisions within the law. Legislative veto provisions are statutes within a law that provide for a “congressional review, deferral, approval or disapproval of proposed executive actions” (Norton 1976). In practice, these are provisions that allow for Congress to continue to oversee policy implementation after the bill has been signed into law by the President. According to *INS v. Chadha*, such provisions are unconstitutional because they violate the bicameralism and presentment clauses of

the Constitution. Despite their unconstitutionality, though, Congress continues to include such provisions in public laws to this day, making them an ideal proxy for congressional encroachment on presidential authority through legislation.

Since legislative veto provisions can take many forms, systematically identifying them is challenging. Berry (2009), though, provides an inroad. He notes that legislative veto provisions often contain language such as the following: they “prohibit administrative actions without advance approval of the Appropriations Committees”, or they “require bureaucratic actions to be subject to a 30 day review period.” By plucking out the key elements of this language – which, in these particular cases, are “advance approval” or “30 day” – he composes a list of 29 terms or phrases that can be used to pinpoint legislative veto provisions within public laws.¹³ Thus, to identify legislative veto provisions, I conduct a term search on the full text of public laws and record the number of times that one of Berry’s 29 terms or phrases appears in each law. In my dataset, approximately 36% of public laws contain at least one such provision, and the average bill contains approximately four.

Testing Hypothesis 1

Recall that hypothesis 1 states that the likelihood of presidential action - in this case, the issuance of a signing statement - increases with the magnitude of congressional encroachment. The dependent variable, then, is whether a particular bill received a signing statement containing a constitutional objection; bills that receive such a presidential response are coded as one, and all others are coded as zero. The main independent variable of interest, meanwhile, is the number of legislative veto provisions in the bill. If hypothesis 1 is correct, then

¹³The full list of terms is as follows: ‘15 days’, ‘30 days’, ‘60 days’, ‘advance approval’, ‘after approval’, ‘appropriations committees’, ‘approval is obtained in advance’, ‘approval resolution’, ‘approved by such committees’, ‘approved in advance’, ‘calendar days’, ‘committees on appropriations’, ‘concurrent resolution’, ‘day review’, ‘days elapse’, ‘disapproval resolution’, ‘expressly approved’, ‘joint resolution’, ‘notification procedures’, ‘prior approval’, ‘receive and approve’, ‘reporting to congress’, ‘reprogramming’, ‘requires approval’, ‘review period’, ‘subject to the approval’, ‘submit for approval’, ‘such committees approve’, ‘with(out) the approval’.

an increase in the number of legislative veto provisions in a bill should increase the likelihood that that bill receives a signing statement from the President.

Before estimating any regression models, it is instructive to look at the patterns in the raw data. Table 1 reveals early support for hypothesis 1. Here, bills are grouped into five categories based on the number of legislative veto provisions that they contain: those with no legislative veto provisions, those with 1-5, those with 6-50, those with 51-100, and those with 101 or more. Column 1 shows the number of bills in each category; column 2 indicates the number and percentage of those bills that receive constitutional objections from the President in the form of a signing statement. As we might expect, most bills - 3,513 of 5,505 - contain no legislative veto provision and, thus, have a low likelihood - only 2% - of receiving a constitutional signing statement from the President. From there, we see a monotonically increasing pattern that is consistent with hypothesis 1: the more legislative veto provisions a bill contains, the more likely the President is to fight the encroachment. For those bills with a small number of legislative veto provisions, the President is unlikely to respond with a signing statement. For instance, of those bills containing five or fewer legislative veto provisions, the likelihood of a constitutional signing statement is only 5%. But if we consider bills with more than 100 legislative veto provisions, the likelihood of a constitutional signing statement increases to 79%. In sum, the raw data show a pattern consistent with our expectation that larger congressional encroachments are more likely to be met with presidential action.

While the raw data certainly provide suggestive support for hypothesis 1, a more systematic analysis is needed to account for the numerous factors that may confound the observed relationship. To this end, I estimate a logistic regression to test the effect of the number of legislative veto provisions in a bill on the likelihood that it receives a constitutional signing statement from the President. In doing so, I am able to control for three variables that may influence Congress's propensity to write a legislative veto provision into a bill, as well as that

Table 1: Signing Statements by Legislative Veto Provisions

	Bills Passed	Signing Statements
Total, 1989-2012	5505	332 (6%)
No Legislative Veto Provisions	3513	57 (2%)
1-5 Legislative Veto Provisions	1470	79 (5%)
6-50 Legislative Veto Provisions	428	141 (33%)
51-100 Legislative Veto Provisions	61	29 (48%)
101+ Legislative Veto Provisions	33	26 (79%)

bill's likelihood of receiving a constitutional signing statement. First, I control for whether the bill is considered significant legislation. Many have noted that presidents are more likely to attach signing statements to higher profile bills (e.g., see Kelley and Marshall 2008); if the significance of bills is also correlated with the number of legislative veto provisions it contains, then the connection between legislative veto provisions and signing statements may be spurious. As such, I include an indicator variable for whether or not a bill is significant. These data were obtained from the *Congressional Quarterly Almanac* (*CQ*), which classifies all bills according to whether they are significant. Bills deemed significant by *CQ* are coded as one, while all other bills are coded as zero.

Second, I control for whether the President's party held the majority in both chambers of Congress (i.e., whether the government was unified) at the time the bill was passed. Scholars have found that signing statements are less common during periods of unified government, since the President is less interested in fighting with Congress if both branches are led by the same political party (Ostrander and Sievert 2013). Congress, meanwhile, may have fewer incentives to include legislative veto provisions in bills if it believes that policy implementation

will be in the hands of a co-partisan executive. While nothing in my formal model suggests that partisanship plays a role in the power struggles between the two branches of government, I include an indicator variable here, equal to one if both chambers of Congress align with the President and zero otherwise, to account for this possibility.¹⁴ Last, since each presidential administration has issued signing statements at different rates, I include presidential fixed effects. Therefore, identification comes from variation within administrations.

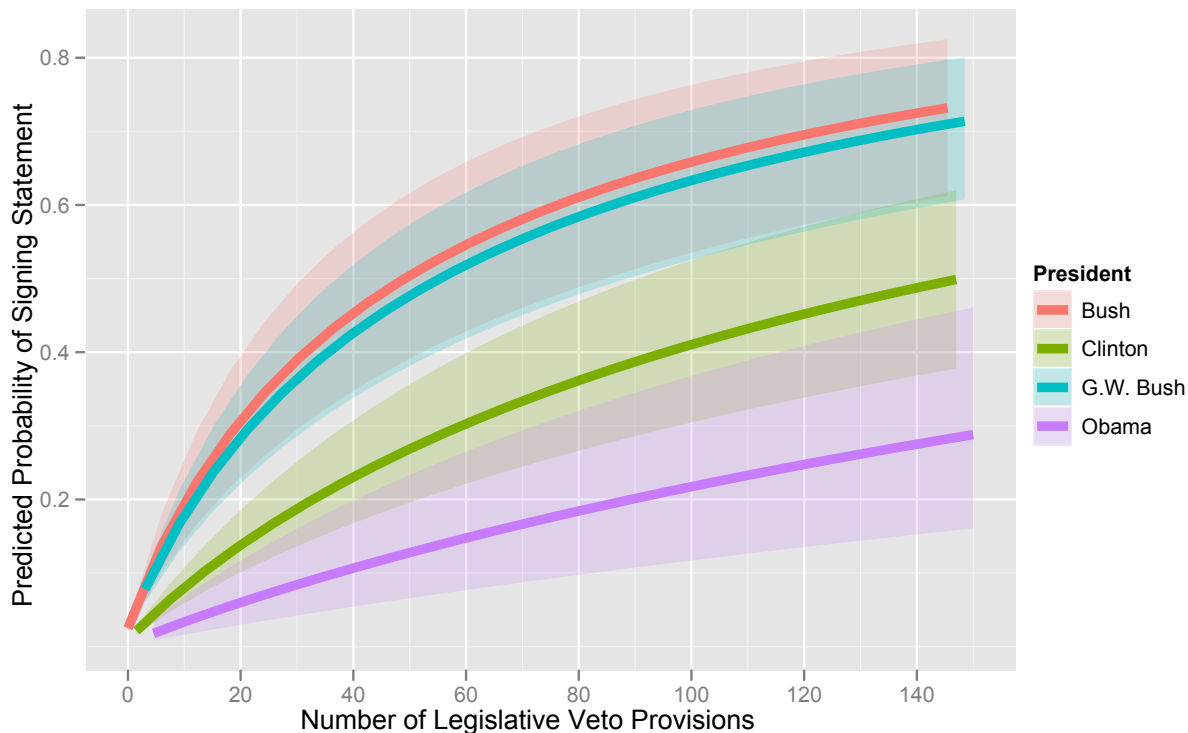
Table 2: Logit, 1989-2012; Probability of Bill Receiving Signing Statement

	Model 1	Model 2
Any Legislative Veto Provisions	1.78*** (0.16)	
# of Legislative Veto Provisions (Logged)		0.94*** (0.05)
Significant Legislation (CQ)	2.12*** (0.14)	1.32*** (0.16)
Unified Government	-0.17 (0.18)	0.16 (0.20)
Clinton	-0.52*** (0.17)	-1.02*** (0.19)
G.W. Bush	0.66*** (0.21)	-0.11 (0.23)
Obama	-0.35 (0.38)	-1.94*** (0.44)
(Intercept)	-4.65*** (0.18)	-3.98*** (0.15)
N	5505	5505
χ^2	637.19	839.04

Standard errors in parentheses; * indicates significance at $p < 0.1$;
 ** indicates significance at $p < 0.05$; *** indicates significance at $p < 0.01$.

The results are displayed in table 2. Again, the data provide broad support for hypothesis 1: congressional encroachment (i.e., the inclusion of legislative veto provisions in a bill) increases the likelihood of a presidential objection (i.e., the issuance of a constitutional signing statement). In Column 1, the primary independent variable is an indicator that equals one if a bill contains at least one legislative veto provision, and zero if it contains

¹⁴I have also estimated the same model controlling for the percentage of House and/or Senate seats controlled by the President's party in place of a unified government variable. The results are unchanged.



none. Even using this rough measure of the explanatory variable, I recover a large, positive, and statistically significant effect: the presence of *any* veto provisions in a bill corresponds to a significant increase in the likelihood of a presidential signing statement. In column 2, I utilize a more nuanced measure of Congressional encroachment; here, I test whether the *number* of legislative veto provisions in a bill is correlated with an increase in the likelihood of that bill receiving a signing statement.¹⁵ Again, the recovered coefficient is large, positive, and statistically significant. Also of note, we find that in both models, significant legislation is significantly more likely to receive a constitutional signing statement, while the presence or absence of unified government is not correlated with the likelihood of a constitutional signing statement.

How can we interpret the size of this effect substantively? Figure 1 plots the predicted

¹⁵This variable is logged to account for a right hand skew in the distribution; including the un-logged variable does not change the results.

probability of a bill receiving a signing statement as a function of the number of legislative veto provisions that the bill contains (I hold both control variables at their means). The effect for each president is estimated and displayed separately. Consider the average bill passed during the George W. Bush administration, which contained four legislative veto provisions. During President Bush's watch, such a bill had about a 10% chance of receiving a constitutional signing statement. Had that same bill been passed with 50 legislative veto provisions, however, it would have had nearly a 50% chance of receiving a constitutional signing statement.¹⁶ Thus, the effect reported in table 2 is not just statistically significant, but substantively significant also. This is consistent with hypothesis 1, and the contention that greater Congressional encroachment into executive authority increases the likelihood of a presidential confrontation.

Testing Hypothesis 2

Having found strong support for hypothesis 1, I now turn to hypothesis 2 – namely, that if the President confronts Congress in round t , then he will face lower levels of congressional encroachment in round $t+1$. As before, I measure congressional encroachment as the number of legislative veto provisions in each bill. To measure the extent to which the President confronts Congress in each time period, I calculate a new variable based on the President's usage of signing statements. Noting the date on which each bill was passed, I estimate the percentage of bills passed in the previous year that received a presidential signing statement. For example, if a particular bill was passed on October 30, 2008, I calculate the percentage of bills passed between October 30, 2007 and October 30, 2008 that received a constitutional signing statement. This measure, which ranges from 0% to 13.6%, with a mean of 6.1%, constitutes the explanatory variable in my analysis of hypothesis 2. I exclude the first year

¹⁶Recall that 522 bills in the dataset contain 50 or more legislative veto provisions, so it is not a rare event for a bill to contain 50 such provisions.

of each president's term from this analysis, as it is unclear whether Congress would attribute actions of the preceding president to the anticipated behavior of the current one.¹⁷ With these two variables in hand, then, I assess how Congress reacts in the present to confrontations with the President in the recent past.

As with hypothesis 1, I begin by exploring the raw data (see table 3). Excluding the first year of each president's term from the dataset drops the total number of bills passed from 5,505 to 4,809. The remaining bills are classified into three categories based on the percentage of bills in the previous calendar year that received signing statements – 0-4%, 5-9%, and 10+%. Column 1 of table 3 shows the number of bills that fit into each of these three categories. Column 2, meanwhile, provides the average number of legislative veto provisions per bill in each category, with standard errors in parentheses. If hypothesis 2 is correct, the number of legislative veto provisions in a bill should be decreasing as the percentage of bills that received a signing statement in the year prior to its passage is increasing. Indeed, this is exactly what we observe in the data. For the 1,284 bills that were passed following low rates of signing statements over the previous year (0-4%), the average bill contained 4.57 legislative veto provisions. Among the 2,347 bills passed following medium rates of signing statements over the previous year (5-9%), the average bill contained 3.83 legislative veto provisions. And for the 1,178 bills passed following high rates of signing statements over the previous year (10+%), the average bill contained just 3.28 legislative veto provisions. While the standard errors remind us to exercise caution when drawing inference from the raw data, the numbers clearly trend in the expected direction: if the President has questioned the constitutionality of a higher percentage of bills in the past year, then Congress includes fewer potentially unconstitutional provisions in its bills in the present.

Next, I estimate a model that regresses the number of legislative veto provisions in each bill on the percentage of bills in the preceding year that received signing statements. Because

¹⁷I have also run the analysis including the first year of each term; the results are unchanged.

Table 3: Legislative Veto Provisions per Bill, by Annual Signing Statement Rate

	Bills Passed	# of Legislative Veto Provisions
Total, 1989-2012	4809	3.89 (0.32)
0-4% Signing Statement Rate	1284	4.57 (0.87)
5-9% Signing Statement Rate	2347	3.83 (0.43)
10+% Signing Statement Rate	1178	3.28 (0.57)

the dependent variable is a count, I estimate the model using a negative binomial distribution. I also include controls for whether a bill was classified by *CQ* as significant legislation and whether the bill was passed during a period of unified government, and fixed effects for each presidential administration. As before, then, identification comes from variation within administrations. If hypothesis 2 is correct, then we should recover a negative relationship between the signing statement rate preceding a bill's passage and the number of legislative veto provisions in that bill.

The results are displayed in table 4. The findings here are consistent with hypothesis 2, as well as the patterns observed in the raw data: As the percentage of bills challenged by the President in the recent history increases, Congress includes fewer legislative encroachments in current bills. Column 1 shows the effect if we focus on the signing statement rate over the past year. As expected, the coefficient on annual signing statement rate is large, negative, and highly statistically significant. While looking back over the past year seems like a reasonable way to characterize the actions taken by the President that might shape his reputation in the eyes of Congress, there is no theoretical reason to believe that this is the correct length of time. Therefore, as a robustness check, the same model is estimated in column 2, except that instead of using the signing statement rate over the past year as the explanatory variable, I consider the signing statement rate over the past month. I log the variable to correct for a

Table 4: 1989-2012; # of Legislative Veto Provisions in Bills

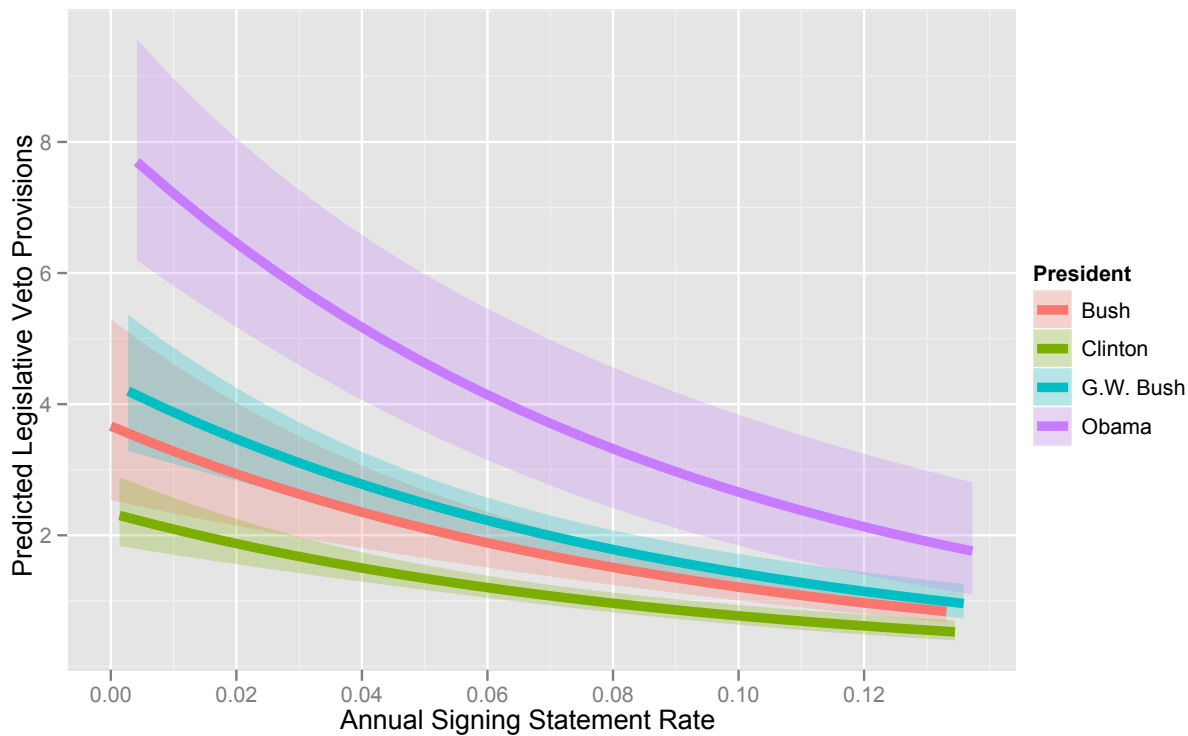
	Model 1	Model 2
Annual Signing Statement Rate	-11.09*** (1.63)	
Monthly Signing Statement Rate (Logged)		-2.82*** (0.42)
Significant Legislation (CQ)	2.84*** (0.10)	2.66*** (0.09)
Unified Government	-0.16 (0.11)	-0.14 (0.09)
Clinton	-0.45*** (0.13)	-0.06 (0.10)
G.W. Bush	0.17 (0.14)	0.29** (0.12)
Obama	0.79*** (0.21)	1.90*** (0.14)
(Intercept)	0.82*** (0.18)	0.10 (0.09)
N	4809	5405
χ^2	1135.74	1229.53

Standard errors in parentheses; * indicates significance at $p < 0.1$;

** indicates significance at $p < 0.05$; *** indicates significance at $p < 0.01$.

right hand skew in the data. Again, the coefficient on the signing statement rate is negative and statistically significant at the $p < 0.01$ level.

Figure 2 shows the substantive size of the recovered effect from table 4. For each of the four presidents in my analysis, I plot the percentage of bills passed in the previous year that received signing statements on the x-axis (annual signing statement rate), and the predicted number of legislative veto provisions in each bill on the y-axis (all other variables in the model are held at their respective means). The top (purple) line shows the relationship for President Obama. In response to the public outrage against President Bush's use of signing statements, Obama promised to refrain from attaching signing statements to bills. And he appears to have followed through on this promise, with few exceptions: my data reveals that President Obama attached signing statements to approximately 1% of bills during his first term. But how did his resistance to invoking this informal right affect legislative encroachment? The average bill to cross Obama's desk contained about seven legislative veto provisions. Now,



if Obama's propensity to issue signing statements had been the same as his predecessor (President George W. Bush – 7.4%), he would have halved the number of legislative veto provisions per bill from just over seven to approximately 3.5. Interestingly, even if Obama had exactly mirrored G.W. Bush's rate of signing statement usage, he still would have faced greater encroachment from Congress into the executive branch – this highlights the plain fact that there is more distinguishing Obama from G.W. Bush than their respective use of signing statements. Despite that, though, Obama could have significantly reduced Congress's oversight into the executive branch if he had been more willing to confront Congress through signing statements.

In conclusion, I find strong support for hypothesis 2: by confronting Congress today, the President builds a reputation of political strength that in turn leads to lower levels of congressional encroachment in the future.

4 Conclusion

The vague language of the U.S. Constitution has created a balance of political power that is difficult to pin down. Because of the ambiguity in the formal legal documents of the American government, the boundaries of presidential power need to be understood as a product not just of those rights codified in law, but also as a function of the informal actions taken by the president to advance his agenda. In this paper, I provide a theory that explains how informal actions help the president consolidate power in the executive branch – namely, they help him establish a reputation of political strength, allowing him to operate unfettered by interference from the other branches of government as his term in office moves into the future.

I apply this reputation-based framework to one particular action taken by the president – signing statements. I find that, from 1989 to 2012, presidents have used signing statements in a manner that is consistent with my theory. As Congress encroaches more upon executive authority, presidents are increasingly likely to object. Moreover, when the president has established a track record of objecting to congressional activity through signing statements, Congress tends to respond by encroaching upon the president at lower levels going forward.

This paper represents the beginning of a larger research agenda. As noted throughout the paper, signing statements are just one potential way for the president to build a reputation of political strength. Presidential reputation can also provide a framework for understanding a variety of other presidential actions. Some of these actions, such as “going public” and presidential veto threats, have already received scholarly attention but may nonetheless fit within a reputation-based theory. Other actions, such as presidential budgetary requests, memoranda, statements of administrative policy, and Office of Legal Counsel opinions, are not yet properly understood; it is my hope that we can better explain their value to the president if we approach them from the perspective that they help him establish a reputa-

tion of political strength that will pay him dividends in future negotiations with the other branches of government.

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