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# BEYOND REPUBLICANS AND THE DISAPPROVAL OF REGULATIONS: THE INSTITUTIONALIZATION OF THE CONGRESSIONAL REVIEW ACT

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# *Beyond Republicans and the Disapproval of Regulations: The Institutionalization of the Congressional Review Act*

## ABSTRACT

The Congressional Review Act (CRA), under which the United States Congress deploys expedited procedures to disapprove agency regulations, has long been viewed as a powerful but rarely exploited means of legislative oversight. This article examines legislative action—introductions, cosponsorship, and votes—on resolutions of disapproval by committees, political parties, and congressional majorities. This approach advances understanding of the CRA beyond extant emphasis on Republicans nullifying regulations in concert with co-partisan presidents immediately following transitions from Democratic administrations. A series of statistics and visualizations illustrates that both Republicans and Democrats, as well as committees of jurisdiction, have been pivotal in accounting for the persistence of action on resolutions during the twenty-five years in which the CRA has been in effect. These findings, derived from the complete set of resolutions considered between 1996 and 2020, provide evidence that the CRA has become an institutionalized instrument of oversight of regulatory policymaking.

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## I. Introduction

Ever since its enactment in 1996, the narrative surrounding the Congressional Review Act (CRA) has been straightforward and consistent. The CRA, under which the United States Congress deploys expedited procedures to disapprove agency regulations, is a potentially powerful but rarely exploited instrument of legislative oversight of administrative rulemaking (Copeland and Beth 2008). Prior to 2017, the CRA was responsible for the disapproval of a single regulation, an ergonomics rule issued at the close of the Clinton administration and nullified by Republicans early in the George W. Bush presidency (Rosenberg 2012).

Although Congress disapproved 16 rules early in the Trump administration, this flurry of activity represented an aberration from policymaking as usual (Pérez 2020). The regular passage of resolutions of disapproval—the parliamentary procedure through which rules are nullified—was the consequence of Republicans in Congress working in close cooperation with a White House dedicated to “deconstructing the administrative state” (Mills 2017). Notwithstanding this momentary confluence of forces, the dominant narrative remains that the CRA is a seldom used, largely ineffective tool of legislative oversight of regulatory policymaking (Shapiro 2015).

To put it differently, the conventional wisdom holds that the CRA has not become an institutionalized instrument of legislative oversight. Institutionalization is the “process by which organizations and procedures acquire value and stability” (Huntington 1965, 394). As this classic definition states, institutionalization entails the realization of two broad outcomes. First, institutionalized procedures are stable, that is, they persist beyond their creation and initial implementation. Novel procedures, regardless of their transformational possibilities, do not necessarily become regular elements of policymaking.

Second, institutionalization generates procedural and substantive value for stakeholders. The sponsors of the CRA described its purpose in the following manner: “Our constitutional scheme creates a delicate balance between the appropriate roles of the Congress in enacting laws, and the Executive Branch in implementing those laws. This legislation will help redress the balance, reclaiming for Congress some of its policy making authority, without requiring Congress to become a super regulatory agency.”<sup>1</sup> With this statement in mind, the immediate stakeholders of the CRA are members of Congress with an interest in particular agency actions. The intended value derived from the CRA by such legislators is an increase in congressional authority vis-à-vis agencies in the making of regulatory policy.

Congress, of course, is not a unitary actor, but rather is composed of individual members and groups of legislators pursuing common objectives. This reality raises the question of the

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<sup>1</sup> *Congressional Record*, Vol. 142, No. 50, Thursday, April 18, 1996, <https://www.govinfo.gov/content/pkg/CREC-1996-04-18/html/CREC-1996-04-18-pt1-PgS3683.htm>.

characteristics of members who primarily utilize the CRA. Research on the organization of Congress offers three perspectives regarding the locus of policymaking authority (Maltzman 1997). The independent-committees perspective posits that parochial interests dominate Congress (Shepsle and Weingast 1987, Weingast and Marshall 1988), through logrolling across policy areas and the power of “iron triangles” of committee members, agency officials, and organized interests (Huntington 1952, Lowi 1969). The party-dominated perspective, by contrast, advances the notion that congressional procedures primarily serve the interests of the majority party, given that members benefit from the record of the party with which they are affiliated (Cox and McCubbins 1993, Kiewiet and McCubbins 1991). Finally, the chamber-dominated perspective argues that procedures advance the goals of Congress as an institution (Gilligan and Krehbiel 1990, Krehbiel 1991), operating as instruments of the “collective wishes of the chamber” (Maltzman 1997, 13).

This article investigates legislative organization and the institutionalization of the CRA by addressing the following research questions. Has the CRA become a regular means of congressional oversight of regulatory policymaking? To what extent is the CRA utilized by members of committees with jurisdiction over regulations, members of the majority party, and members with preferences representative of Congress as an institution? By grounding the inquiry in the behavior of various types of legislators, the article breaks from the notion that the CRA is essentially an instrument of Republicans acting in concert with co-partisan presidents immediately following transitions from Democratic administrations (Olen 2021, Staley 2016). Is there evidence that the CRA is regularly deployed as an instrument of legislative oversight beyond this particular set of circumstances?

As a means of examining these research questions, the article assembles an original data set of every resolution of disapproval introduced in either the Senate or House of Representatives. This data set consists of information regarding actions—introductions, cosponsorship, and votes—taken by legislators on 211 resolutions between 1996 and 2020. In analyzing behavior throughout the legislative process, the article is distinct from existing research, which focuses on the enactment of resolutions (or, more precisely, the lack thereof) (Larkin 2018). The incorporation of antecedent actions recognizes the potency of the CRA in shaping regulatory policymaking beyond nullification (e.g., agencies modifying rules in response to the introduction of resolutions) (Rosenberg 2012).

Taken together, the article’s theoretical and empirical approaches break new ground by considering the behavior of various types of members at different stages of the legislative process, as a means of evaluating the CRA as an instrument of congressional oversight. A series of statistics and visualizations illustrate that members of both political parties and committees with jurisdiction over targeted regulations have been pivotal in accounting for the introduction, cosponsorship, and occurrence of votes on resolutions of disapproval. Such actions have persisted throughout the quarter century during which the CRA has been in effect, including periods outside of transitions from Democratic to Republican administrations. These findings provide evidence of the

institutionalization of the CRA, in particular the utility of the disapproval process to legislators irrespective of party affiliation.

## II. The CRA Process

The process of disapproving regulations under the CRA is relatively straightforward (Carey and Davis 2020, Copeland and Beth 2008, Pérez 2019). Agencies are required to submit promulgated rules to Congress and the Government Accountability Office. This submission opens a period of 60 working days during which expedited procedures are available for the disapproval of regulations.

Resolutions of disapproval introduced during this period require simple majorities for passage in both chambers of Congress. Although resolutions are assigned to committees of jurisdiction, the threshold for discharging Senate committees is lower than for ordinary legislation. Floor debates in the Senate are limited to ten hours, amendments to resolutions are not permitted, and filibusters are prohibited. A regulation is disapproved when a resolution is passed by both chambers and signed by the president, or when Congress overrides a presidential veto with two-thirds majorities.

The CRA includes a provision pertaining specifically to the transition from one Congress to the next. If a regulation is submitted fewer than 60 working days prior to the adjournment of a Congress, then a new review period is automatically established in the subsequent Congress. All such rules are treated, for purposes of the CRA, as if they had been submitted on the 15<sup>th</sup> working day of the succeeding Congress, at which point a 60-day window for review commences. This reset feature makes it possible for legislators to disapprove regulations in the months following presidential transitions (i.e., after the issuing administration has left office).

The CRA states that disapproved regulations “may not be reissued in substantially the same form.” This provision has generated considerable attention, given uncertainty regarding the operational meaning of “substantially the same” (Carey and Davis 2021, Cole 2018, Dude 2019). The Department of Labor (DOL) has never promulgated a revised ergonomics rule (Finkel and Sullivan 2011). In 2019, however, the DOL reissued a rule on drug testing of unemployment compensation applicants that had been nullified at the outset of the Trump administration (Carey 2019b). To date, the only other example of a disapproved rule being reissued is a 2021 Securities and Exchange Commission action on payments for commercial development of oil, minerals, and natural gas. In both instances, the agencies included detailed explanations arguing that the reissued rules were different enough so as not to run afoul of the CRA’s “substantially the same” provision (Carey and Davis 2021).

## III. Research on the CRA

From the outset, CRA research has focused on the fact that resolutions of disapproval are enacted on the rarest of occasions. Disapprovals in the Bush and Trump administrations generated and

sustained the conventional wisdom that the CRA is, in practice, an instrument deployed during unified Republican control of Congress and the White House to nullify actions taken at the close of Democratic presidencies (Larkin 2018, Parks 2003). In this view, Democratic reluctance to deploy the CRA is a function of practical considerations (the prohibition on issuing rules that are “substantially the same”) as well as philosophical objections (an aversion to legitimizing what is seen as an anti-regulatory, “fundamentally bad law”) (Olen 2021).

One researcher has asserted that, since 2017, the CRA has become an “institutionalized tool of the legislative branch to check the executive power” (Batkins 2019, 352). This assertion is grounded in the experiences of the Trump administration, during which an unprecedented number of regulations were disapproved. Before such a characterization can be confidently sustained, research is required that conceptualizes and analyzes institutionalization in a more comprehensive manner.

More than two decades ago, research explored the association between legislative organization and use of the CRA by members of the House of Representatives (Balla 2000). This analysis demonstrates that the logrolling across policy areas posited by the independent-committees perspective does not manifest in cosponsorship of resolutions of disapproval. At the time of the analysis, however, only four resolutions had been introduced, none of which had become law. This lack of activity limits the generalizability of the findings.

The focus on legislative action other than the enactment of resolutions of disapproval emphasizes the “second face of power” in the implementation of the CRA (Bachrach and Baratz 1962). In 1998, resolutions disapproving of a home health care agency rule were introduced in both the Senate and House of Representatives. Shortly thereafter, the Health Care Financing Administration suspended the rule, a concession the National Association for Home Care stated “would have been much harder” to achieve in the absence of the resolutions (Freedman 1998). Other research highlights additional instances in which the threat of disapproval has compelled agencies to delay, modify, or withdraw targeted regulations (Copeland 2014, Finkel and Sullivan 2011, Rosenberg 2012).

In sum, research has thus far devoted limited attention to CRA activity beyond Republicans and the disapproval of regulations. As a means of filling in these gaps, this article considers the institutionalization of the CRA through the theoretical lens of legislative organization (committees, political parties, and congressional majorities) and the empirical approach of analyzing behavior throughout the legislative process (introductions, cosponsorship, and votes). In the sections that follow, this theoretical perspective is developed and applied in the context of actions taken by Congress on all resolutions of disapproval introduced in the 25 years during which the CRA has been in effect.

## IV. Policymaking Authority in Congress

A variety of traditions in law and political science consider the locus of policymaking authority in Congress (Kagan 2001, Maass 1983, Wilson 1885). A particularly influential research program on the organization of Congress is grounded in the new institutionalism, in particular the notion that self-interested legislators design procedures as a means of allocating power over the lawmaking process (Shepsle 1989). In the absence of institutions—broadly conceived of as the “rules of the game” (Knight 1992)—legislators encounter difficulties in the pursuit of goals such as reelection, power in Congress, and preferred public policies (Fenno 1978, Mayhew 1974). Institutions are crafted to solve specific problems that goal-oriented legislators experience in the collective decision making environment of Congress.

### a. Independent-Committees Perspective

According to the independent-committees perspective, congressional procedures facilitate logrolling across policy areas. Legislators represent constituencies with varying characteristics. This variation creates opportunities for gains from trade, in which legislators cede authority in areas of little concern to the jurisdictions they represent in return for dominance over policymaking on issues of consequence for important constituencies (Shepsle and Weingast 1987, Weingast and Marshall 1988). The committee system institutionalizes practices that help such bargains stick. Legislators select onto committees with authority over policies salient to constituencies influential in their jurisdictions. Committees exercise control over policymaking and agency oversight in these areas, thereby advantaging committee members vis-à-vis other legislators in the chamber (Shepsle and Weingast 1987, Weingast and Marshall 1988).

### b. Party-Dominated Perspective

The party-dominated perspective emphasizes the fundamental assistance that parties in Congress—in particular, majority parties—provide to rank-and-file legislators. Although member offices operate to some degree as autonomous organizations, success in achieving goals in part depends on the record of the legislator’s party (Cox and McCubbins 1993, Kiewiet and McCubbins 1991). The occurrence of electoral tides, in which co-partisans fare in a similar manner at the ballot box, provides members of Congress with incentives to cultivate well-regarded party records (Cox and McCubbins 1993). Party records, however, are public goods and therefore pose collective action problems (Olson 1965). Rather than take costly actions to contribute to the provision of advantageous party records, self-interested legislators prefer to free ride on the efforts of fellow partisans.

Party organizations step into this breach. As a means of obtaining collective benefits, legislators sacrifice the unbridled pursuit of self-interest by establishing a hierarchy among party members (Cox and McCubbins 1993, Kiewiet and McCubbins 1991). Leaders exert disproportionate authority over decisions such as the party’s legislative agenda and committee assignments. The

influence of party extends to legislative-executive relations, in that instruments of agency oversight are utilized to advance the advertising, position taking, and credit claiming efforts of the majority party (Kiewiet and McCubbins 1991, Mayhew 1974).

### c. Chamber-Dominated Perspective

According to the chamber-dominated perspective, the foremost difficulty confronting members of Congress is uncertainty regarding the connection between policies and outcomes (Gilligan and Krehbiel 1990, Krehbiel 1991). Policies consist of the legislative outputs produced by Congress. Outcomes are the consequences of these lawmaking actions, such as economic growth and the quality of air and water. Given that constituents are primarily concerned with outcomes, legislators prefer outputs with known consequences (Gilligan and Krehbiel 1990, Krehbiel 1991). Such knowledge reduces the risk that congressional actions produce unintended outcomes detrimental to legislator interests.

Policy uncertainty—a problem facing members of all characteristics—is mitigated through subsets of legislators acting as agents of Congress as an institution. By becoming experts on policy within particular jurisdictions, such legislators generate specialized information about the relationship between outputs and outcomes (Gilligan and Krehbiel 1990, Krehbiel 1991). The chamber-dominated perspective holds that diverse collections of legislators are particularly informative, as the chamber as a whole derives confidence regarding the preferability of outcomes from outputs endorsed by members drawn from across the policy spectrum (Austen-Smith and Wright 1992, Epstein and O'Halloran 1995, Gilligan and Krehbiel 1990, Krehbiel 1991). By contrast, actions taken by members representing narrow constituencies or particular partisan perspectives do not provide broad-based informational signals. In this view, legislative oversight is an instrument deployed as a means of bolstering the consistency of agency actions with the preferences of heterogeneous chamber majorities.

### d. Applying the Perspectives to the CRA

As this discussion highlights, the independent-committees, party-dominated, and chamber-dominated perspectives advance alternative expectations regarding the characteristics of members of Congress who primarily deploy instruments of legislative oversight. Although distinct, these explanations are not necessarily in competition in the context of the CRA. For example, the conventional wisdom that partisanship is the main driver of the enactment of disapprovals does not necessarily imply that committee members and chamber majorities exert little authority over antecedent actions such as the introduction of resolutions. By examining behavior throughout the legislative process, the analysis explores the extent to which committee, party, and majoritarian uses of the CRA are conditional, that is, vary systematically across stages of implementation (Maltzman 1997).



## V. Expectations

The analysis treats the basic elements of institutionalization—the acquisition of stability and value (Huntington 1965)—separately, with two categories of expectations developed. The first hypothesis concerns the extent to which the CRA has become a regular instrument of legislative oversight of regulatory policymaking. The second set of hypotheses focuses on the groups of legislators—committees, parties, and congressional majorities—expected to derive value from, and therefore drive, CRA utilization.

### a. Acquisition of Stability: CRA Persistence

A fundamental attribute of institutionalized procedures is persistence beyond their creation and initial implementation (Huntington 1965).

*Persistence Hypothesis: The CRA has experienced a stable level of utilization in the years since Congress instituted the disapproval process.*

This hypothesis runs counter to the conventional wisdom, which holds the CRA to be a neglected instrument of legislative oversight that is periodically called into action immediately following transitions from Democratic to Republican administrations (Larkin 2018, Parks 2003, Staley 2016).

The persistence hypothesis raises the issue of what level of activity constitutes regular utilization of the CRA. Agencies promulgate thousands of regulations on an annual basis (Carey 2019a). Given the prolific nature of administrative rulemaking, it is not surprising that the CRA—under which 211 resolutions of disapproval were introduced between 1996 and 2020—targets a small percentage of regulatory policymaking. Does such limited activity hold for other instruments as well? Research highlights appropriations riders as a salient point of comparison in this regard (Batkins 2019, Copeland and Beth 2008, Rosenberg 2012). Riders are “provisions in appropriations bills that forbid agencies from spending money for specific purposes” (MacDonald 2010, 766). In some instances, riders are deployed to “stall rule development or the implementation of final rules” (Rosenberg 2012, 39). Over a twenty-year period, 105 riders were analogous to disapproval under the CRA in that they prohibited agencies from taking particular regulatory actions (MacDonald 2013). The rate at which such riders are utilized is broadly similar to the CRA, in that the vast majority of regulations are not subject to congressional prohibitions.

The comparison of the CRA and appropriations riders highlights the irregularity of oversight as a congressional function, as measured against the rate at which agencies promulgate regulations (Bibby 1968). Within this overarching constraint, the analysis focuses on the extent to which the CRA has experienced stable, as opposed to cyclical, utilization over the years.

## b. Acquisition of Value: CRA Utilization

The independent-committees perspective emphasizes the advantages held by committee members over other legislators in exercising authority in particular policy areas. This viewpoint suggests that committee members derive primary value from—and are therefore the main drivers of—the CRA, which targets actions taken by agencies on issues in specific jurisdictions.

*Independent-Committees Hypothesis: The CRA is primarily utilized by members of committees with jurisdiction over targeted regulations.*

The party-dominated perspective stresses the importance of the majority party in advancing the interests of caucus members, who are limited in their unilateral ability to pursue electoral, personal, and policy objectives. From this vantage point, the CRA is valuable as an instrument of bolstering the majority party record in the context of regulatory policymaking.

*Party-Dominated Hypothesis: The CRA is primarily utilized by members of the majority party.*

This expectation is distinct from the conventional wisdom, which extrapolates from experiences at the outset of the Bush and Trump administrations to assert that the CRA essentially advances the regulatory policy goals of congressional Republicans (Larkin 2018, Parks 2003, Staley 2016). In contrast to this interpretation, the party-dominated hypothesis expects the CRA to be deployed by members of the majority party, irrespective of whether the chamber is under the control of Republicans or Democrats.

The chamber-dominated perspective draws attention to the value for members of all characteristics of reducing uncertainty regarding the connection between policies and outcomes. The provision of such knowledge is facilitated by subsets of members who are positioned to send credible signals to broad-based legislative majorities. A primary indicator of credibility is preferences that are representative of the chamber as a whole (Gilligan and Krehbiel 1990, Krehbiel 1991).

*Chamber-Dominated Hypothesis: The CRA is primarily utilized by members with preferences representative of broad chamber majorities.*

This expectation raises the question of what it means for preferences to be representative of legislative majorities. Extant analysis of the chamber-dominated perspective emphasizes two characteristics (Krehbiel 1991). First, the central tendency of the preferences of signaling legislators is in close proximity to the central tendency of the preferences of the chamber as a whole. Second, credible signals are sent by collections of legislators whose preferences are heterogeneous, in that they incorporate viewpoints drawn from across the policy spectrum. Groups of legislators possessing these two attributes operate as microcosms of the chamber, and are therefore informative for wide-ranging majorities seeking to mitigate uncertainty regarding the link between policies and outcomes (Gilligan and Krehbiel 1990, Krehbiel 1991).

## VI. Data

To assess the article’s hypotheses, an original data set was constructed. The unit of analysis is the resolution of disapproval. The data set consists of all 211 resolutions (124 in the House and 87 in the Senate) introduced between 1996 and the spring of 2020, when the information was collected.

The data set was primarily compiled from [Congress.gov](https://www.congress.gov), the official website for information about congressional activities. For each resolution of disapproval, the website provides such details as cosponsorship and chamber action. As detailed below, this information is used to assess the persistence, independent-committees, and party-dominated hypotheses.

Analysis of the chamber-dominated hypothesis requires information about the preferences of members and groups of legislators. Preferences are measured on the basis of roll-call votes, scaled on a liberal-conservative dimension (Poole 2005, Poole and Rosenthal 2007). Specifically, the analysis utilizes first dimension DW-NOMINATE scores, which were obtained from [Voteview.com](https://www.voteview.com).

By way of example, one observation consists of Senate Joint Resolution 53. This resolution—introduced on September 9, 2019 by Senator Benjamin Cardin (D-MD)—sought to disapprove the Trump administration’s repeal of the Clean Power Plan, a regulation issued by the Environmental Protection Agency during the Obama presidency. The resolution attracted 22 cosponsors, all Democrats with preferences considerably more liberal than the typical Senator in the 116<sup>th</sup> Congress. The Senate voted by unanimous consent to discharge the resolution from the Environment and Public Works Committee on the 17<sup>th</sup> of October. On the same day, the measure was defeated when 53 Senators voted against the resolution. Such information regarding legislative history and member preferences was collected for all 211 resolutions. Table 1 presents descriptive statistics for the resolutions.

Table 1: Descriptive Statistics for Resolutions

<i>Variable</i>	<i>Mean</i>	<i>Standard Deviation</i>	<i>Minimum</i>	<i>Maximum</i>
Whether a vote occurred on the resolution	.18	.38	0	1
Whether the resolution was introduced by a committee member	.47	.50	0	1
Proportion of cosponsors who were committee members	.30	.29	0	1
Proportion of committee members who cosponsored the resolution	.18	.19	0	.90
Whether the resolution was introduced by a member of the majority party	.76	.43	0	1
Proportion of cosponsors who were members of the majority party	.75	.40	0	1
Difference in NOMINATE score between the introducing member and the chamber mean	.41	.16	.10	.86
Difference in NOMINATE score between the mean cosponsor and the chamber mean	.39	.11	.04	.61
Whether the NOMINATE scores of cosponsors were on both sides of the chamber mean	.31	.47	0	1

In what follows, a series of statistics and visualizations are presented as a means of examining the consistency of congressional action on resolutions of disapproval with the persistence, independent-committees, party-dominated, and chamber-dominated hypotheses. All reported differences of means and proportions are statistically significant at  $p < .05$  or greater, unless otherwise noted. In addition, patterns generally hold for both the Senate and House of Representatives.

The analysis is conducted not only on the complete set of resolutions, but on subsets of matched observations as well. Specifically, coarsened exact matching was used to prune observations from the data set in order to limit comparisons to treatment and control resolutions of similar

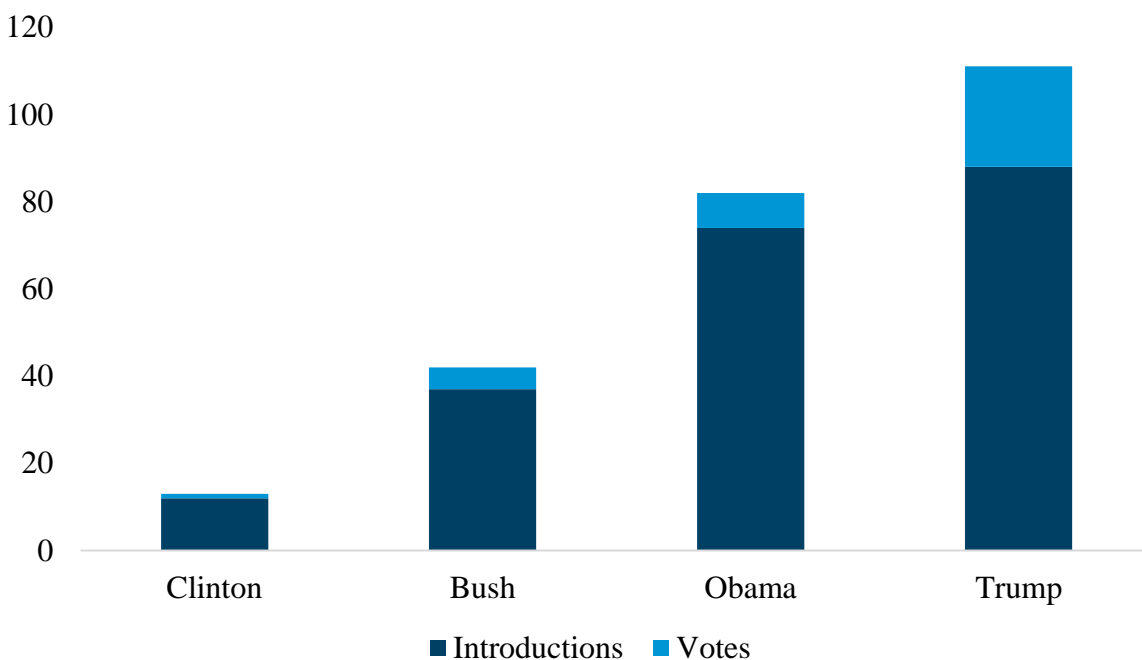
characteristics (Iacus, King, and Porro 2012). Observations were matched according to presidential administration, issuing agency, congressional chamber, and whether or not the targeted regulation was economically significant. The results reported below—all of which are derived from the complete data set—are generally robust to analysis restricted to the matched observations.

## VII. Analysis of CRA Persistence

To assess the persistence hypothesis, the implementation of the CRA over time is evaluated across three types of actions—introductions, cosponsorship, and votes—taken during the legislative process. In the period under analysis, 37 regulations were subject to floor roll call votes. Sixteen of these votes occurred in years characterized by transitions from Democratic to Republican administrations (2001 and 2017), with 15 specifically taking place in the initial year of the Trump presidency.

Although 2017 is the year during which the single largest number of votes occurred on resolutions of disapproval, restricting attention to this aberration obscures the fact that more than half of all votes took place during periods not marked by transitions from Democratic to Republican administrations. Furthermore, as illustrated in Figure 1, the prevalence of votes has increased during each successive presidency. The figure demonstrates that this pattern of increasing CRA utilization across administrations holds for the introduction of resolutions as well.

Figure 1: Number of Resolutions Introduced and Voted On, By President



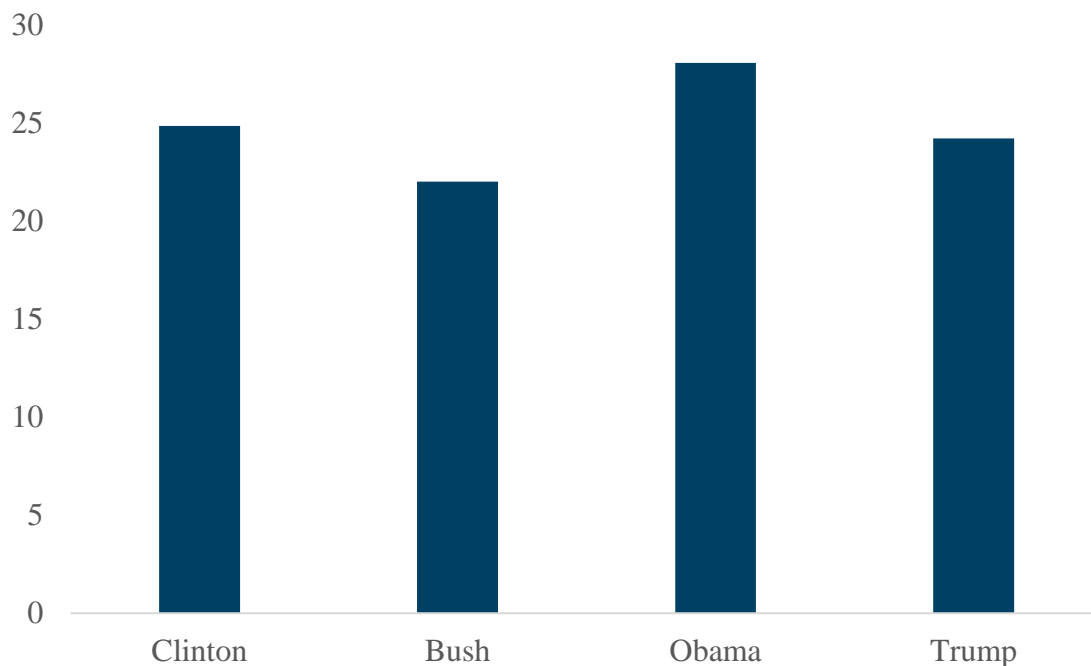
*Note:* The y-axis represents the number of resolutions of disapproval introduced and the number of resolutions voted on during presidential administrations.

Resolutions of disapproval routinely attracted robust levels of cosponsorship. The average number of cosponsors was 30 and 18 for resolutions introduced in the House of Representatives and Senate, respectively. Such levels are considerably higher than cosponsorship rates for legislation in general (Fowler 2006, Wilson and Young 1997). For example, during the 108<sup>th</sup> Congress (2003-2004)—which was typical of proximate Congresses in terms of cosponsorship activity—the average bill generated 16 cosponsors in the House of Representatives and 4 cosponsors in the Senate (Fowler 2006).

Cosponsorship varied substantially across resolutions of disapproval. Thirty-four resolutions—23 in the House of Representatives and 11 in the Senate—failed to attract a single cosponsor. On the other extreme, 11 resolutions were cosponsored by more than 100 House members and 18 resolutions were cosponsored by more than 40 Senators. The largest number of cosponsors (171) occurred in support of a House resolution disapproving of the Federal Communications Commission’s 2017 repeal of a regulation on net neutrality.

As illustrated in Figure 2, levels of cosponsorship have been broadly consistent across presidential administrations. Resolutions of disapproval introduced in Democratic to Republican transition years did not attract larger numbers of cosponsors than resolutions occurring during non-transition periods. The average resolution in 2001 and 2017 generated 18 cosponsors, while resolutions in other years averaged 29 cosponsors.

Figure 2: Average Number of Cosponsors, By President



*Note:* The y-axis represents the average number of cosponsors of resolutions of disapproval during presidential administrations. These means are not statistically different across administrations.

Across a variety of metrics, the evidence demonstrates stable utilization of the CRA. It is indisputable that the transition from Presidents Obama to Trump resulted in the passage of an unprecedented number of resolutions of disapproval. It is not the case, however, that the CRA has otherwise laid dormant since its enactment. Resolutions have been introduced and voted on—and levels of cosponsorship have remained robust—across administrations.

Together these patterns are indicative of the institutionalization of the CRA, in that utilization of the disapproval process has persisted in the quarter century since its enactment. One caveat to this characterization is that, as is the case for instruments of legislative oversight in general, the vast majority of agency actions are not subject to congressional attention (Bibby 1968, MacDonald 2013). Nevertheless, the CRA has demonstrably impacted congressional, administration, and agency behavior in a variety of ways. In 1997, for example, a resolution disapproving a rule setting occupational exposure limits on methylene chloride was used by Representative Roger Wicker (R-MS) not to nullify the regulation, but rather to garner support from members of Congress for providing small businesses with assistance in complying with agency requirements (Freedman 1998). In 2019, a Trump administration official stated that “from now through the end of the year and the first few months of the following year we expect agencies to drive home the important initiatives that they’ve begun” (Bolen 2019). One rationale for this timeframe was the prospect of President Trump losing his reelection bid and Democrats gaining control of the Senate, thereby opening up a post-transition window for resolutions disapproving of regulations issued toward the end of the administration (Bolen 2019). In sum, the evidence—which is consistent with the persistence hypothesis—underscores the procedural and substantive value of the CRA to members of Congress.

## VIII. Analysis of CRA Utilization

The persistence of the CRA raises the issue of the types of members and groups of legislators who principally derive value from, and therefore deploy, resolutions of disapproval. To what extent is the CRA utilized by members of committees with jurisdiction over targeted regulations, members of the majority party, and members with preferences representative of broad chamber majorities? In what follows, the independent-committees, party-dominated, and chamber-dominated hypotheses are evaluated across stages of the disapproval process.

### a. Introductions

#### *i. Independent-Committees Hypothesis*

A majority of resolutions of disapproval (53 percent) were introduced by legislators who were not members of committees with jurisdiction over regulations targeted for nullification. Such evidence is inconsistent with the independent-committees hypothesis, which posits that resolutions are predominantly introduced by committee members.

## *ii. Party-Dominated Hypothesis*

Consistent with the party-dominated hypothesis, majority party status was associated with the propensity of members of Congress to introduce resolutions of disapproval. More than three-fourths of resolutions were introduced by members of the majority party. Both Republicans and Democrats were more likely to introduce resolutions during majority party periods. Although Democrats introduced a smaller aggregate percentage of resolutions than Republicans, the prevalence of Democratic introductions increased substantially during periods in which the party commanded congressional majorities. Democrats were responsible for 16 percent of introductions when the party was in the minority. By contrast, one-half of resolutions were introduced by Democrats when the party maintained majority status. This difference suggests that the conventional wisdom that the CRA is primarily an instrument for advancing the regulatory objectives of the Republican Party offers an incomplete account of the introduction of resolutions of disapproval.

## *iii. Chamber-Dominated Hypothesis*

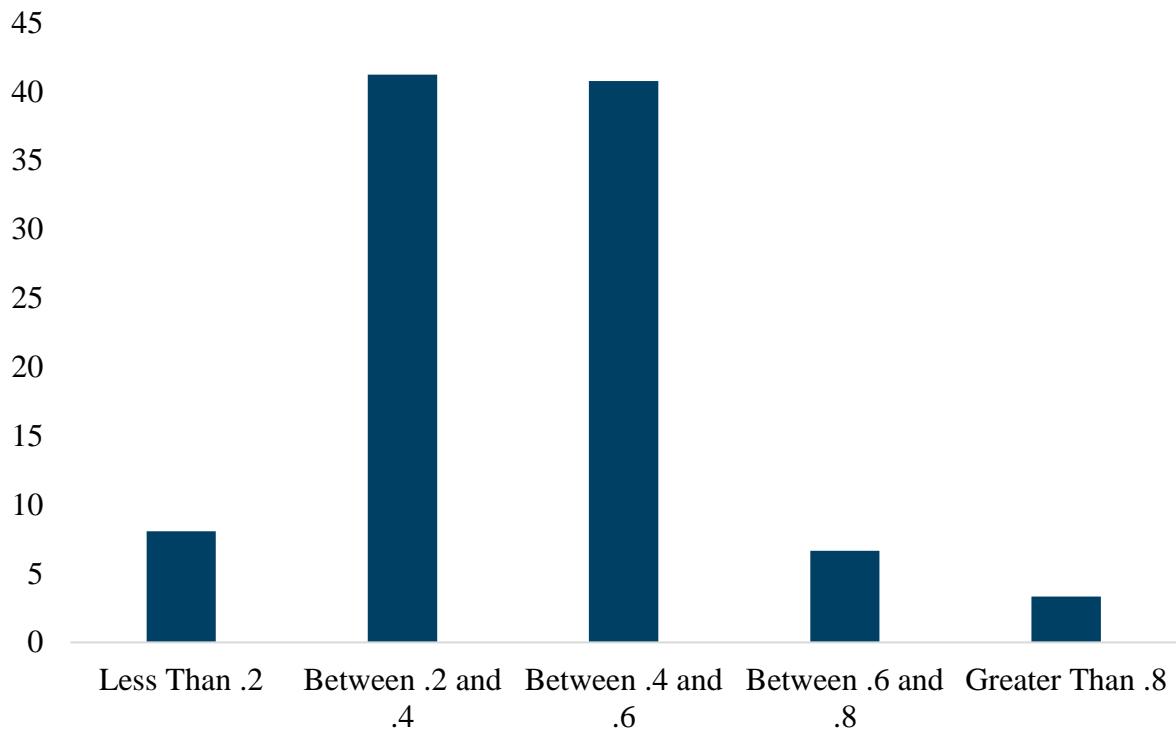
To assess the chamber-dominated hypothesis, the preferences of legislators who introduced resolutions of disapproval are juxtaposed with the central tendency of chamber preferences. NOMINATE scores—which are scaled from -1 (most liberal) to +1 (most conservative)—are utilized for these comparisons. For each resolution, the absolute difference between the NOMINATE score of the introducing legislator and the chamber mean is calculated. Across resolutions, the average difference is .41.

The magnitude of this difference is illustrated by the following example. House Joint Resolution 47—which sought to disapprove fee increases promulgated by Citizenship and Immigration Services—was introduced in the 110<sup>th</sup> Congress by Representative Zoe Lofgren (D-CA). This resolution is archetypal in that the difference between Representative Lofgren’s NOMINATE score (-.4) and the chamber mean is .41. Lofgren’s score is more liberal than nearly 80 percent of legislators who served in the 110<sup>th</sup> House of Representatives.

As Figure 3 illustrates, the vast majority of resolutions of disapproval were introduced by members whose NOMINATE scores differ from the chamber mean by between .2 and .6. Furthermore, 10 percent of resolutions were introduced by members with scores more than .6 from the mean. These magnitudes are substantial, in that the standard deviation for the difference between the score of the introducing legislator and the chamber mean is .16. These patterns underscore that, contrary to the chamber-dominated hypothesis, resolutions were for the most part introduced by legislators with preferences not in close proximity to the central tendency of the preferences of the chamber as a whole.



Figure 3: Preference Differences Between Introducing Legislators and Chamber Means



*Note:* The bars represent the percentage of resolutions of disapproval for which the difference between the NOMINATE score of the introducing legislator and the chamber mean falls into a particular range.

## b. Cosponsorship

### i. *Independent-Committees Hypothesis*

A pair of measures are used to assess the prevalence of members of committees with jurisdiction over targeted regulations as cosponsors of resolutions of disapproval. The first measure consists of the percentage of cosponsors who are members of such committees. Across resolutions, an average of 70 percent of cosponsors were not committee members. The second measure is the percentage of committee members who cosponsored resolutions. Across resolutions, an average of 18 percent of members of committees to which resolutions were referred served as cosponsors. In 2017, for instance, House Joint Resolution 57—which nullified a Department of Education school accountability regulation—was referred to the Education and the Workforce Committee. Seven of the committee’s 40 members (18 percent) cosponsored the resolution. In sum, both measures offer evidence contrary to the independent-committees hypothesis that the CRA is primarily an instrument of committee oversight of regulatory policymaking.

## *ii. Party-Dominated Hypothesis*

Republicans accounted for an average of more than three-fourths of cosponsors across resolutions of disapproval. Within this context, majority party status was associated with cosponsorship. Democrats constituted an average of 45 percent of cosponsors on resolutions introduced during periods of Democratic congressional majorities. This prevalence was substantially lower—16 percent—when the party was in the minority. Majority party status is therefore associated with cosponsorship in a manner consistent with the party-dominated hypothesis.

## *iii. Chamber-Dominated Hypothesis*

The chamber-dominated hypothesis expects cosponsorship by heterogeneous collections of legislators whose central tendency is in close proximity to the central tendency of the preferences of the chamber as a whole. Contrary to this expectation, only 17 resolutions of disapproval (9 in the Senate and 8 in the House of Representatives) were characterized by (a) differences of less than .2 in NOMINATE scores across cosponsor and chamber means and (b) cosponsorship by legislators with preferences located on both sides of the chamber mean. Across resolutions, the average difference in NOMINATE scores between the mean cosponsor and the chamber mean is .39. For more than two-thirds of resolutions, the preferences of cosponsoring legislators were located exclusively to one side of the chamber mean. For example, the NOMINATE scores of all 26 cosponsors of House Joint Resolution 11—introduced on January 3, 2017 by Representative Evan Jenkins (R-WV) and seeking the disapproval of a stream protection rule promulgated by the Department of the Interior—were more conservative than the mean score for legislators in the 115<sup>th</sup> House of Representatives. In sum, these patterns do not provide evidence in support of the chamber-dominated hypothesis.

## **c. Votes**

### *i. Independent-Committees Hypothesis*

The propensity of resolutions of disapproval to receive floor roll call votes is associated with introduction on the part of members of committees with jurisdiction over targeted regulations. Votes took place on 24 percent of resolutions introduced by committee members. By contrast, 11 percent of resolutions introduced by non-committee legislators were subject to votes. Similar differences manifest for the relationship between the prevalence of committee cosponsorship and the extent to which votes occurred. Committee members constituted an average of 38 percent of cosponsors for resolutions that received votes, as opposed to 28 percent for resolutions not subject to votes. Such patterns are consistent with the independent-committees hypothesis, in that votes took place in tandem with introductions and cosponsorship by committee members.

## *ii. Party-Dominated Hypothesis*

The evidence is inconsistent with the party-dominated hypothesis, in that votes were not more likely to take place on resolutions supported by majority party members. Seventeen percent of resolutions introduced by majority party members received votes, one percent less than resolutions emanating from minority legislators.<sup>2</sup> Majority party members comprised an average of 77 percent of cosponsors for resolutions receiving votes. This prevalence was virtually the same—74 percent—for resolutions on which votes did not occur.

## *iii. Chamber-Dominated Hypothesis*

Contrary to the chamber-dominated hypothesis, the average difference in NOMINATE scores between the introducing legislator and the chamber mean does not vary across resolutions of disapproval that do and do not receive votes. A similar lack of variation holds for cosponsorship. The average difference between the NOMINATE score of the mean cosponsor and chamber mean is .41 for resolutions for which votes took place and .38 for resolutions on which votes did not occur. In addition, resolutions that received votes were not more likely than other resolutions to have cosponsors with preferences located on both sides of the chamber mean.

## **d. Jointly Assessing the Hypotheses**

Regression analysis was conducted to jointly assess the extent to which the independent-committees, party-dominated, and chamber-dominated hypotheses account for the occurrence of votes on resolutions of disapproval. The dependent variable is whether a vote took place on the resolution. Table 2 presents the results of a logistic regression in which the explanatory variables are the committee-, party-, and chamber-specific factors discussed in the preceding analyses. The regression confirms that action on the part of members of committees with jurisdiction over targeted regulations—but not partisanship nor majoritarian preferences—is positively associated with the occurrence of votes.

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<sup>2</sup> The differences discussed in this and the following paragraph are not statistically significant.

Table 2: Correlates of the Occurrence of Votes on Resolutions

<i>Expectation</i>	<i>Explanatory Variable</i>	<i>Parameter Estimate (Standard Error)</i>
<i>Independent-Committees Hypothesis</i>	Whether the resolution was introduced by a committee member	-.06 (.51)
	Proportion of cosponsors who were committee members	2.2* (.96)
	Proportion of committee members who cosponsored the resolution	4.53** (1.28)
<i>Party-Dominated Hypothesis</i>	Whether the resolution was introduced by a member of the majority party	-2.1 (1.66)
	Proportion of cosponsors who were members of the majority party	2.62 (1.85)
<i>Chamber-Dominated Hypothesis</i>	Difference in NOMINATE score between the introducing member and the chamber mean	-.21 (1.35)
	Difference in NOMINATE score between the mean cosponsor and the chamber mean	3.63 (2.99)
	Whether the NOMINATE scores of cosponsors were on both sides of the chamber mean	.37 (.53)
<i>Pseudo R<sup>2</sup></i>		.16
<i>Chi Square</i>		28.07**
<i>Number of Observations</i>		178

*Note:* This table reports the results of a logistic regression in which the unit of analysis is the resolution of disapproval. The dependent variable is whether a vote occurred on the resolution. The number of units is less than 211 because the “Whether the NOMINATE scores of cosponsors were on both sides of the chamber mean” variable is coded as missing for 33 observations with fewer than two cosponsors. Two variables assessing the conventional wisdom that the CRA is primarily utilized by Republicans—whether the resolution was introduced by a Republican and the proportion of cosponsors who were Republicans—were included in the analysis but are not reported in the table. Neither variable attains statistical significance. The results are robust to the inclusion of variables controlling for presidential administration, whether the resolution was introduced in either 2001 or 2017 (Democratic-to-Republican transition years), and whether the resolution was introduced in the Senate or House of Representatives. The standard errors are robust and clustered by regulation. \*\* = statistically significant at  $p < .01$ . \* = statistically significant at  $p < .05$ .

### e. Summing Up CRA Utilization

As Table 3 illustrates, the types of legislators who primarily utilize the CRA varies across stages of the disapproval process. Patterns regarding the introduction and cosponsorship of resolutions of disapproval underscore the importance of partisanship in commencing congressional efforts to nullify agency regulations. Irrespective of whether Congress was under the control of Republicans or Democrats, members of the majority party were disproportionately active in mobilizing resolutions. Subsequent to the initiation of the disapproval process, the locus of action on resolutions was members of committees with jurisdiction over targeted regulations. The likelihood of floor roll call votes was associated with support from members of committees to which resolutions are referred. In sum, these conditional patterns highlight the insights generated by examining CRA implementation beyond a focus on Republicans and the rarity with which regulations are nullified.

Table 3: CRA Utilization, By Legislative Stage

	Independent-Committees Hypothesis	Party-Dominated Hypothesis	Chamber-Dominated Hypothesis
Introductions		✓	
Cosponsorship		✓	
Votes	✓		

*Note:* The check marks denote the stages of the CRA process for which the analysis indicates support for the independent-committees, party-dominated, and chamber-dominated hypotheses.

## IX. Conclusions and Implications

This article has presented evidence that the CRA has become an institutionalized instrument of congressional oversight of regulatory policymaking. Action on resolutions of disapproval has persisted in the quarter century since the CRA was enacted. Political parties and committees with jurisdiction over targeted regulations, but not heterogeneous congressional majorities, have been pivotal in accounting for the introduction, cosponsorship, and occurrence of votes on resolutions.

The article’s findings modify the dominant narrative that the CRA is in essence an instrument of Republican nullification of regulations promulgated at the close of Democratic presidencies. Although Republicans orchestrated an unprecedented burst of activity at the outset of the Trump administration, the CRA has been consistently deployed—by both political parties as well as committees to which resolutions are referred—during periods outside of transitions from Democratic to Republican administrations. Over the course of twenty-five years, the CRA has left

its mark on legislative and executive branch policymaking in a variety of ways, despite the fact that regulations are disapproved on the rarest of occasions.

In this regard, the article offers insight into the implementation of the CRA in contexts that might otherwise be puzzling or elicit ad hoc explanations. Presidents are expected to veto resolutions disapproving of their administration's regulations. What, then, accounts for the regularity of activity on resolutions outside of periods immediately following presidential transitions? In the 114<sup>th</sup> Congress (2015-2016), for example, 12 rules were targeted for disapproval. Five resolutions passed both chambers, all of which were subsequently vetoed by President Obama. Members of Congress who introduced, cosponsored, and voted in favor of these resolutions were surely aware that their efforts would not result in regulatory nullification. Through the theoretical lens of legislative organization and the empirical approach of analyzing behavior throughout the legislative process, the article has underscored the value of the CRA for members of Congress attempting to compel agencies to delay, modify, or withdraw regulations and for groups of legislators seeking to bolster their records through advertising, position taking, and credit claiming.

In sum, the article has broken new theoretical and empirical ground, analyzing implementation of the CRA from the perspective of various types of legislators operating at different stages of the disapproval process. Despite these advances, the analysis is limited in a number of respects, and a variety of salient concerns have been left unaddressed.

Theoretically, the conditionality of CRA implementation—the importance of partisanship in the introduction and cosponsorship of resolutions of disapproval and the association of committees of jurisdiction with the likelihood of floor roll call votes—requires further investigation. One focal point for such investigation is the salience of regulations targeted for disapproval. The party-dominated perspective emphasizes the importance to political parties of cultivating records that resonate favorably with large swaths of the public (Cox and McCubbins 1993). Action in areas of high salience is likely to be particularly effective as a means of constructing broadly popular party records. By contrast, the independent-committees perspective is grounded in the notion of policymaking dominated by “iron triangles” of committee members, agency officials, and organized interests (Huntington 1952, Lowi 1969). Such limited access policymaking is most likely to obtain in contexts characterized by low salience, in which the attention of other actors in the political system does not manifest (Baumgartner and Jones 1993). Putting these accounts together suggests that partisan introduction and cosponsorship is oriented toward signaling priorities on broadly important issues, while the centrality of committees in the occurrence of floor roll call votes is designed to advance policies preferred by narrow sets of interests. With this distinction in mind, case studies offer the possibility of tracing party and committee motivations for actions taken throughout the legislative histories of high and low salience resolutions.

Empirically, the analysis has uncovered novel patterns of persistence and the centrality of majority parties and committees of jurisdiction in CRA implementation. The discovery of such correlates

constitutes an advance in understanding the institutionalization of the CRA. A task for future research is to move from this identification of associations toward the making of causal inferences regarding the exercise of influence in the disapproval process.

Although the CRA has institutionalized, the vast majority of regulations are not subject to resolutions of disapproval. What distinguishes the subset of targeted regulations from the preponderance of rules escaping legislative attention? Congressional behavior regarding the choice of regulations to nullify is a salient consideration for future research on legislative oversight of administrative rulemaking.

Over the past decade, there has been an indisputable propensity on the part of presidents of both political parties to eschew legislation as a means of advancing policy objectives. Confronting intractable gridlock in Congress, Presidents Obama and Trump relied extensively on unilateral executive action—including the promulgation of regulations—to make policy in such areas as immigration, climate change, and the Internet (Appelbaum and Shear 2016, Eilperin and Paletta 2017). Given this expansion of presidential policymaking via the administrative state, the CRA is likely in the years ahead to remain a valuable instrument for legislators seeking to enhance congressional authority over regulatory policymaking.

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