

Political Circumstances and President Obama's Use of Statements of Administration Policy and Signing Statements

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Abstract

Presidents have many tools at their disposal to use as bargaining chips with Congress that can assist the President with handling the legislative process. Presidents can strategically use two of these tools, signing statements and statements of administration policy (SAPs), to alert Congress of his feelings on a bill. Depending on the type of document, this can occur before the bill crosses his desk, or when he signs it into law. I examine whether divided government and election years helped determine whether presidents utilize signing statements or SAPs. To perform this investigation, I employ a dataset of all 570 SAPs and 40 signing statements issued across President Obama's two terms. After categorizing the documents, I discovered that divided government and election years played a role in how and when President Obama issued these documents.

Presidents can utilize many tools when attempting to influence policy. These can include vetoes when the president does not feel a bill should be signed into law and executive orders when he feels he does not need the approval of Congress. Two more of these tools, which he can utilize, are signing statements and statements of administration policy. Scholars have long debated whether these tools are a way by which the president unilaterally affects policy, or uses them to gradually expand his power (Cooper 2005, Ostrander and Sievert 2017). Nonetheless, many scholars agree that presidents can use these tools strategically when working with Congress. This can be especially true in cases where the president knows Congress is working on a bill he does not agree with, or when he doesn't agree with one or more provisions, but does not want to veto the entire bill. A close examination of these tools not only gives insight into whether political circumstances affect the issuance of these documents, but they also illuminate much about the true nature of the President and Congress's relationship.

However, this is not a simple relationship, as many different factors affect how their relationship works. To fully understand the dynamics at work, we must examine how these documents affect laws, and when they are issued. I argue that when they are issued is a big component of understanding their use. Times of unified and divided government should yield differing results, as should elections, whether midterm or presidential.

These documents are important ways for presidents to communicate preferences about bills to Congress. SAPs can alert Congress what he disagrees with before a bill crosses his desk, and gives Congress the opportunity to change the contested provisions. Signing statements are not always preceded by a SAP, but a majority of the time, roughly 70%, they are. This tool is important because it allows the president to state his interpretation of one or more provisions of a bill when he signs it into law.

Important bills, such as appropriations, are a good example of this. For instance, in 2011, Congress considered H.R. 1473, the Department of Defense and Full-Year Continuing Appropriations Act. This bill triggered two SAPs from President Obama, as well as a signing statement. On April 12 and 14, 2011 he issued two SAPs in which he discussed what he liked

about the bill, and stated that he opposed the provision that would cut women's health funding, and other healthcare spending reductions (Obama 2011). Then, on April 15, 2011, he issued a disregard signing statement for several provisions in the bill including, funding cuts to Guantanamo Bay, and decreased funding for his advisors (Obama 2011). He felt the cuts in funding to the executive office infringed on his constitutional authority when he stated that, "Despite my continued objection to these provisions, I have signed this Act because of the importance of avoiding a lapse in appropriations for the Federal Government, including our military activities, for the remainder of fiscal year 2011." (Obama 2011).

After looking at the existing literature on signing statements and SAPs, I will then lay out my expectations and methodology, followed by my analysis of the data. I will review the results as a whole and the possible implications of those results. Finally, I will conclude with the limitations to my research, and areas which need more research but were beyond the scope of this paper.

Background

Many scholars have studied the effectiveness, legality, and wording of these documents. Korzi (2011) defines signing statements as, "a statement of the president's views on a law, sometimes containing his interpretation of particular provisions, or the drift of the law in general, and, of course, sometimes including a president's intentions to challenge or, arguably, to refuse to enforce certain provisions of a law" (Korzi 2011). Two sets of categories have been introduced for this document. Kelley and Marshall (2008) coined them as "rhetorical", meaning they did not include any constitutional objections, and "constitutional" for those that did encompass such concerns. Rice (2010) named these categories differently, calling them "cheerleading" and "disregard", respectively.

Signing statements are a controversial tool in the president's arsenal of options. Scholars appear to be divided about their necessity, and whether they constitute a gross misuse and abuse of his power. For instance, Pfiffner (2008), argues that these documents in the form of disregard, are unconstitutional, and that the president has neither the power nor the

authority to interpret the law how he chooses, but instead needs to utilize the proper channels to resolve any disputes between himself and Congress in relation to bills which are signed into law. Conversely, Ostrander and Sievert (2014), believe signing statements do have a usefulness, they shed light on any revisions to laws which Congress may need to make.

Signing statements were not all that well known until the Administration of George W. Bush. He used them excessively, causing many members of Congress to question whether they were being sidestepped (Sonnett 2006). As the controversy over signing statements grew, the American Bar Association created the Task Force on Presidential Signing Statements (Sonnett 2006). Contained within the Separation of Powers doctrine are the history of the statements, what the Constitution says about the separation of powers, how Congress feels about them, and recommendations to the president for how to communicate his feelings without utilizing the signing statement itself (Sonnett 2006). One states “urge the president, if he believes that any provision of a bill pending before Congress would be unconstitutional if enacted, to communicate such concerns to Congress prior to the passage”, in other words, utilize the SAP more (Sonnett 2006). Additionally, another recommendation of the report is to “urge the president to confine signing statements to his views regarding the meaning, purpose, and significance of bills, and to use his veto power if he believes that all or part of a bill is unconstitutional”, essentially this recommends only using “cheerleading” signing statements (Sonnett 2006). These two recommendations are significant in the fact they came two years before President Obama was elected. Scarsdale (2017) found that his usage of these tools appears to align with these recommendations. Her data found that of the 40 signing statements, 28 had no SAP warnings (Scarsdale 2017). Additionally, 21 were “cheerleading” in nature, and 19 were “disregard” (Scarsdale 2017). Of the 19 which were “disregard”, only eight of them had no forewarning form an SAP, indicating the bulk of the “disregard” were in fact preceded by an SAP (Scarsdale 2017).

Technically speaking, signing statements do not hold the force of the law, but if the Supreme Court rules on the constitutionality of a law,

they do take the signing statement, which is the presidents interpretation of the law, into account for their decision (Yoo 2016). This could potentially cause problems later down the road, especially with each new administration and their own interpretations of these laws.

One set of scholars believe that presidents used signing statements increasingly over the Reagan administration up to the administration of George W. Bush (Ostrander and Sievert 2017). Even though presidents use this tool to try to slowly expand their powers, there has been a decline in their usage after the controversy of George W. Bush and his overly excessive use of them (Ostrander and Sievert 2017). In his first 4 years in office, President Bush issued 505 disregard signing statements, with 17 different constitutional reasons (Cooper 2005). Because of the volume of disregard statements he wrote in his first term, the controversy surrounding them grew dramatically (Garvey 2011). This is the reason Obama set the guidelines for their issuance in a 2009 memorandum (Obama 2009). This laid out the only six reasons he felt the usage of these documents would be acceptable (Obama 2009).

Kelley and Marshall (2010) looked at the usage of signing statements from the Reagan administration to the G.W. Bush administration and the impact elections and unified or divided government had on their issuance. They found that presidents were more likely to use disregard signing statements in times of unified government, and election years posed the same findings (Kelley and Marshall 2010). However, the administration of George W. Bush changed this way of thinking, and has proven that if unified or divided government plays a role in the issuance of these documents depends on the administration itself (Ostrander and Sievert 2013).

SAPs

Statements of Administration Policy (SAP) are a tool for the president to tell Congress about certain provisions of a bill with which he disagrees before they send it to him to be signed into law (Scarsdale 2017). These also can contain threats from the president to veto the bill, or to tell Congress that he approves of the bill, and will sign it with no issues (Kernell 2005).

SAPs are a relatively recent discovery for academics, one which has had a massive impact on the way scholars assess how the president interacts with Congress, and the effect he has the potential to have on the legislative process itself. Kernell (2005) initially analyzed these documents, and found that they could take on many forms, such as support, opposition, or an all-out veto threat. These documents are a way for the president to make his thoughts on a bill known before the bill arrives (Rice 2010).

Scarsdale (2017) determined that President Obama seemingly preferred to issue signing statements which were positive versus negative. She also determined that he used this tool strategically, opting instead to issue SAPs (Scarsdale 2017). This was likely due to the memo he wrote in 2009 expressing his views of when signing statements are appropriate to issue.

To fully understand the role these documents play in a unified or divided government, we must first examine how Congress traditionally reacts to their issuance. Ainsworth, Harward and Moffett (2017) examined oversight activity for both chambers when the president issues a signing statement. They found that Congress tends to have more oversight activity after the president issues a disregard (or constitutional) signing statement (Ainsworth, Harward, and Moffett 2017). As for SAPs, since they are issued during the legislative process, they have an entirely different effect on Congress (Ainsworth, Harward, Moffett and Rice 2014). When SAPs are issued, Congress has a chance to fix any issues the president has voiced during the legislative process, before the bill makes it to the president's desk. These documents are not just seen by the president and Congress when they are issued, they go through the Office of Management and Budget (OMB), then to the different committees and agencies that are affected by the president's beliefs on laws, and various other departments and their heads (Ainsworth, Harward, Moffett and Rice 2014). Additionally, Ostrander and Sievert state "Presidential signing statements have been a focal point of inter-branch conflict and discussion about executive branch power throughout the last decade" (Ostrander and Sievert 2014, 366).

Expectations

Scarsdale (2017) found that appropriations and defense bills are more likely to trigger a SAP, signing statement, or both. I predict this trend will hold true across both unified and divided government, but be more prevalent during divided government. I chose to analyze an appropriations bill to test this hypothesis for a few reasons. First, it is established in the literature these are more likely than most to receive a SAP or signing statement. Second, given the likelihood of the SAP or signing statement, I predict there will be SAPs and signing statements from both chambers on at least one of these for comparison purposes. Third, they are more likely to have both SAP and signing statement than most other types.

In 2009, President Obama elaborated when and under what circumstances issuing signing statements would be appropriate (Obama 2009). Overall, I expect that he has kept to his word on frequency of issuance, both in times of unified and divided government. However, I expect that in times of divided government his usage of signing statements, especially disregard, will be lower than times of unified government. As for election years themselves, I predict when he was up for re-election, there will be a drop-in issuance of both documents. Conversely, in the 2016 election he was not running again, and I predict it will be on the same level of issuance as all other years, excluding 2012.

During presidential election years in which the president seeks re-election, there should be a drop in the issuance of both documents. He would not want to do anything which may affect his chances during the election, and the year leading up to it. This would be especially true after the controversy from George W. Bush and his usage of signing statements. This would happen regardless of unified or divided government, as this is an independent phenomenon. When the president is seeking another term, everything he does is scrutinized and put under a microscope. A drop-in issuance of both documents is expected, especially disregard signing statements, which tend to be the most controversial.

Additionally, midterm elections could also contribute to the circumstances affecting the issuance of these documents. Even if a president has a unified government at any point of his administration, Congressional members can

change every two years, leading to a political environment which is constantly fluid.

Methodology

President Obama's Administration is the sole focus of this paper for a few reasons. His 2009 memorandum intrigued me, and I wanted to test if he did in fact stick to his guidelines. He also was in office for eight years, with times of unified government, times of each chamber held by a different party, and times of fully divided government. For this analysis, his administration was able to provide a complete snapshot of issuance.

I will analyze the raw data containing the amount and frequency of issuance of each document from The American Presidency Project, then compare to times of unified and divided government, in addition to election years. I will also assess the frequency of the different types of these documents, and then cross reference those findings to the unified, divided, and election year data.

After gathering the individual SAPs and signing statements from The American Presidency Project (2017), I sorted the SAPs into individual years, and then added them up for individually. For the signing statements, I sorted them by year, and then by cheerleading or disregard. From this point I separated SAPs and signing statements by type, year, and chamber of origin. Overall, there were 570 total SAPs which were sorted and 40 signing statements spanning an eight-year period from 2009-2016.

Analysis

I will break the analysis into three sections: Election year data, unified/divided government data, and appropriations bill data.

Election years

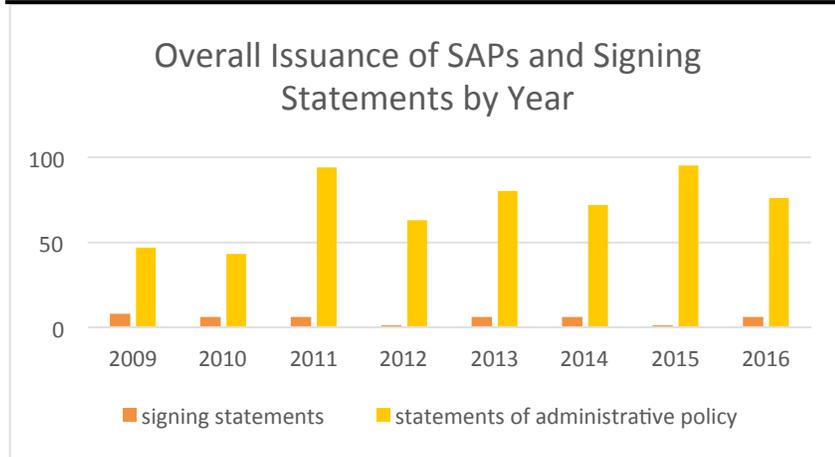


Figure 1: Overall Issuance of SAPs and Signing Statements by Year

Figure 1 is a basic look at how many signing statements and SAPs were issued over his eight-year term. Overall, he issued far more SAPs than signing statements, but there are a few other notable trends in this data. First, 2011 and 2015 are the years with the highest number of SAP issuance, and they are also the year before an election. Second, in 2011, he issued six signing statements, but in 2012, he only issued one. In contrast, during 2015 he issued only one signing statement. In 2016 when he was not up for re-election he issued six. Interestingly, his three highest years for issuing SAPs were 2011 and 2015, and 2013, the year right after the election. His highest year for the issuance of signing statements was his first year in office, 2009.

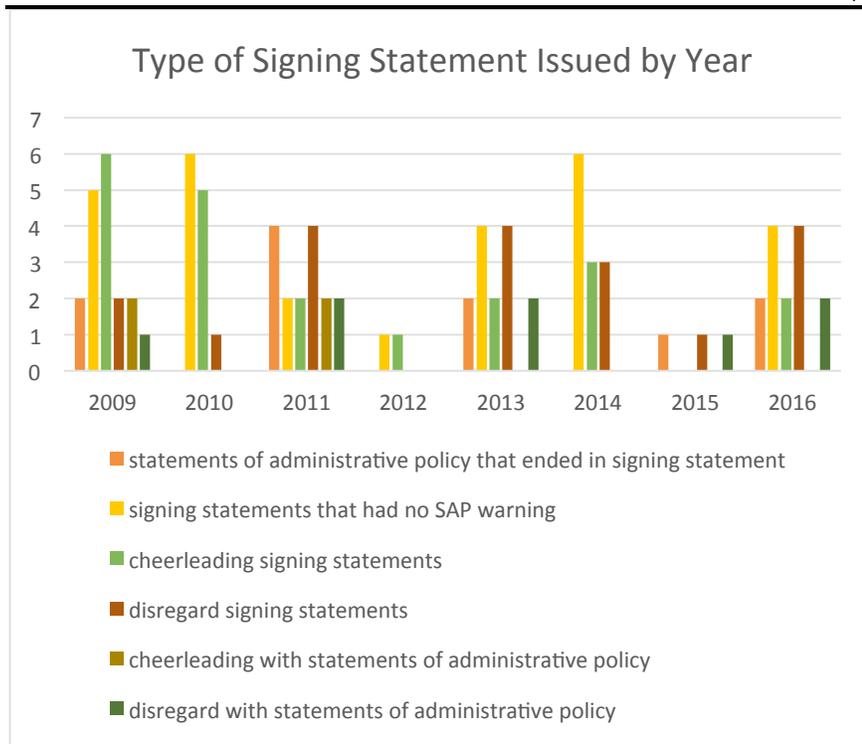


Figure 2: Type of Signing Statement Issued by Year

Figure 2 gives a more in depth look at the type of statements he issued in these years. In 2011 he issued four of the six statements as disregard. 2012 yielded only one signing statement and that was of a cheerleading nature. 2013 again had four of the six end in a disregard statement. In 2015, the only signing statement issued was a disregard statement. However, in 2016, the year he was to leave office, of the six signing statements that year, four were of a disregard nature.

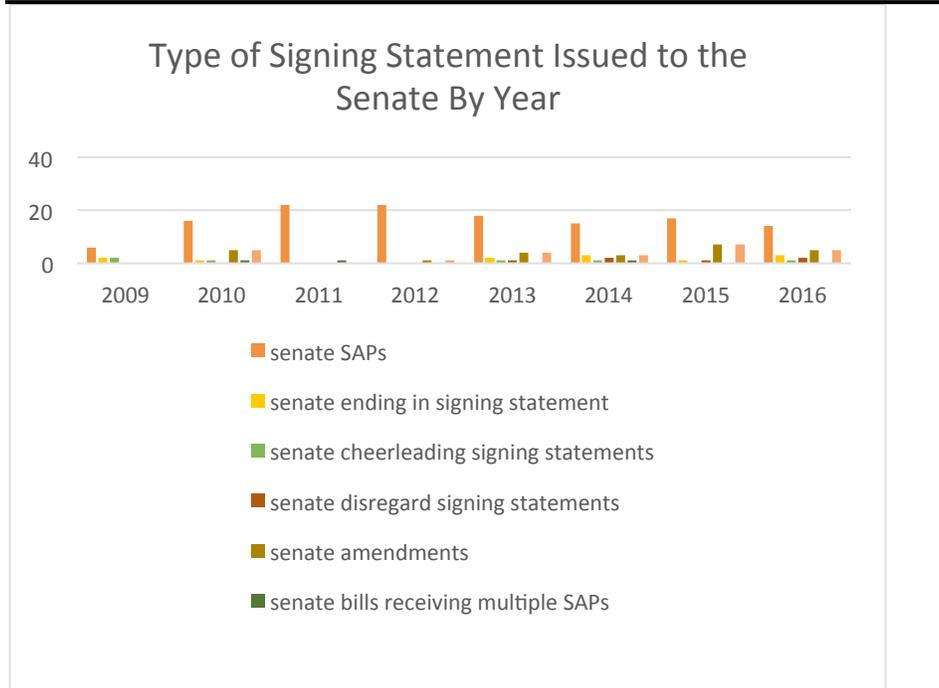


Figure 3: Type of Signing Statement and SAP issuance by year. (Senate)

Figure 3 looks at the Senate. In 2011, 2012, and 2013 he issued the highest number of SAPs out of the eight years of his administration. During these three years he did not issue any signing statements in 2011 or 2012. However, in 2013, the year after the election, he issued two signing statements, which included one cheerleading and one disregard. Interestingly, in 2015 he only issued one signing statement, a disregard statement. In 2016 he issued three, two of which were disregard. SAPs in this period were included the second lowest, and the fourth highest numbers of his administration.

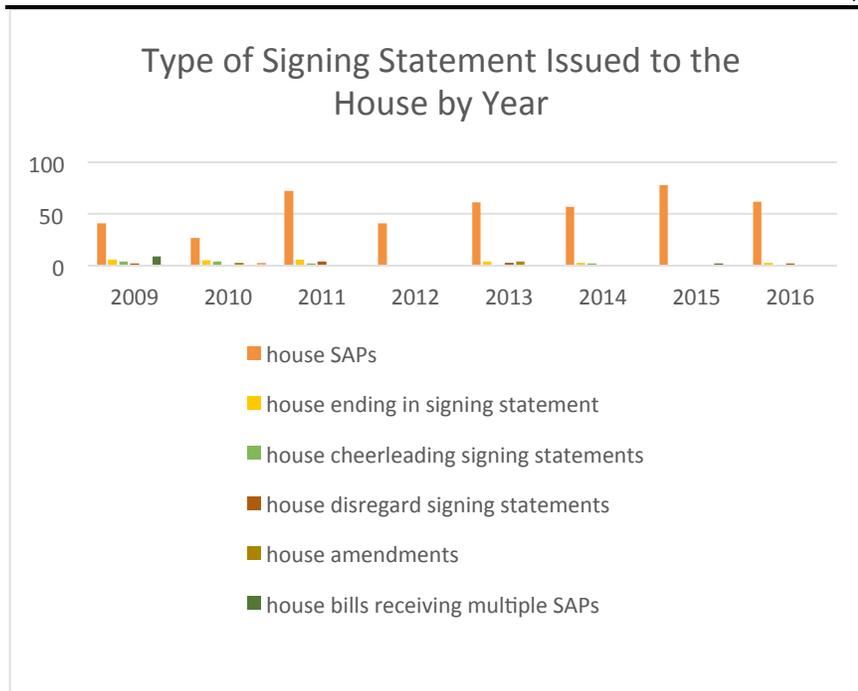
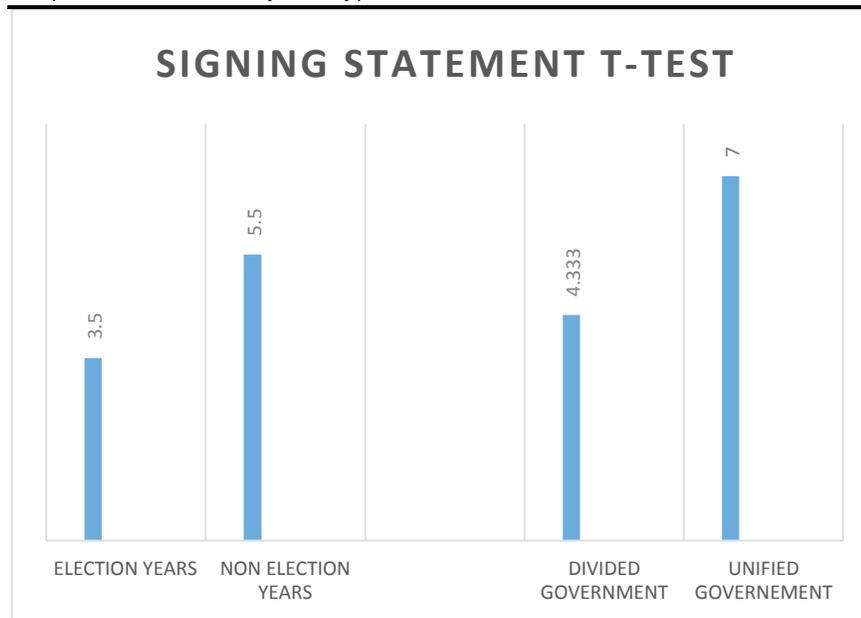


Figure 4: Type of Signing Statement and SAP issuance by year. (House)

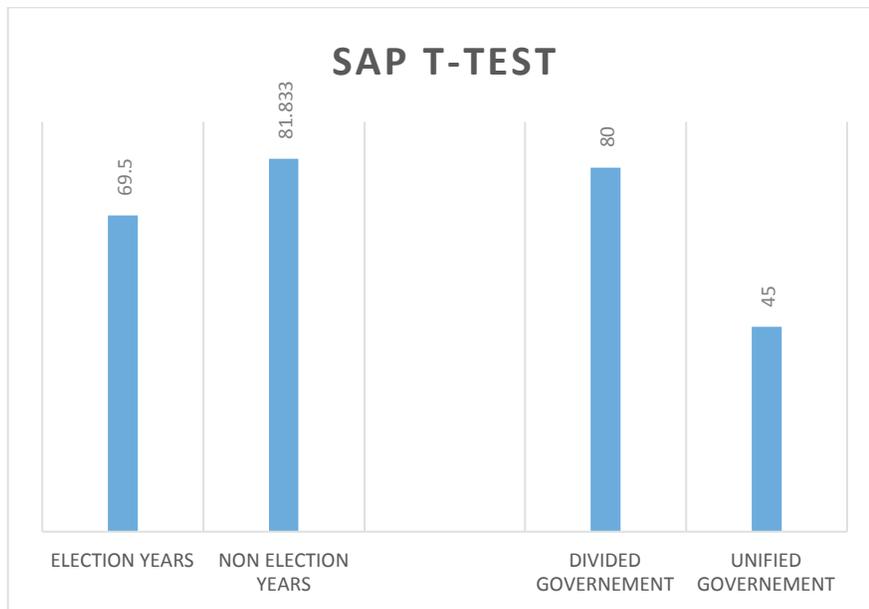
House level data is contained in figure 4. Chambers were separated to see if there were any trends or differences in issuance based on chamber of origin. Even though the House has more bills in general originate there, the results are comparable to those of the Senate.



Notes: Election year $t = 0.74709$, $p = 0.5659$; Divided government $t = 1.8353$, $p = 0.1488$

Figure 5: Signing statement t-test

Figure 5 illustrates the difference in means between election years and non-election years. With a t value of 0.74709 and a p value of 0.5659, the issuance of signing statements in these two timeframes is not statistically significant.



Notes: Election years $t=0.20704$, $p= 0.8441$; Divided government $t= -6.3549$, $p= 0.0007366$

Figure 6: SAP t-test

SAP issuance during election years is illustrated in figure 6. Results of this test were similar to that of signing statements. The t value was 0.20704 and the p value was 0.8441. This was again not statistically significant.

Table 1: Party Makeup of Congress- Number of members of each party per chamber, and which party controlled that chamber.

	2009-2010	2011-2012	2013-2014	2015-2016
Total House	452	451	450	447
Democrats	269	206	210	195
Republicans	183	245	240	252
Controlling Party	Democrats	Republicans	Republicans	Republicans
Total Senate	110	102	105	100
Democrats	66	52	57	44
Republicans	43	48	46	54
Independent		1	2	2
Independent Democrat	1	1		
Controlling Party	Democrats	Democrats	Democrats	Republicans

Table 1 shows the breakdown of each chamber by Congressional terms, and who the controlling parties were for each chamber. President Obama only had a unified government in his first two years. From 2011-2014, the Republicans held the House, while the Democrats held the Senate. However, in 2015-2016 the Republicans still held the House, as well as the Senate.

In Figure 1, we can see that he issued the most signing statements when he had a unified government. This was also the year he had his second lowest number of SAPs issued. Throughout the remainder of his administration, his issuance of signing statements remains the same, except for 2012, and 2015, where only one signing statement was issued per year.

However, his issuance of SAPs over his presidency fluctuated greatly depending on the year. In the first two years of his administration, he issued the two lowest numbers of SAPs. This was also the timeframe when he had a unified government.

Figure 2 illustrates the differences in the type of signing statements which were issued each year. His highest number of cheerleading statements were issued in the timeframe he had a unified government. In those two years, he issued more cheerleading statements than all of the other six years combined. In contrast, that same time period yielded the least disregard statements issued out of the other two-year periods.

In the two years that the Republicans held the Senate, Obama issued the same number of disregard signing statements as the previous six combined (Figure 3). Additionally, in the two years of unified government, he issued the lowest number of SAPs out of all the two-year periods. He also issued the most cheerleading statements. Those two years had the same number of cheerleading as the other years combined.

In Figure 4, the data gets a bit more interesting. The two years Democrats had control of the House, he issued the lowest number of SAPs. Additionally, in that same two years, he issued more cheerleading statements than he did in all other years combined. Which is interesting, due to his own party having full control of Congress, that he issued 53% of all cheerleading signing statements issued during his administration in just this two-year period.

Figure 5 shows us that the issuance of signing statements during election years was not statistically significant. With a t value of 1.8353 and a p value of 0.1488, the lack of significance is evident.

SAP issuance during divided government does indeed have a statistical significance. For this test, the t value was -6.3549 and the p value was 0.0007366. This statistical significance further proves more SAPs are issued during times of divided government than in divided.

Table 2: Signing statements and SAPs issued on appropriations bills.

	2009	2010	2011	2012	2013	2014	2015	2016
Total SAPs	47	43	94	63	80	72	95	76
Appropriations SAPs	20	4	15	8	16	12	13	8
Appropriations SAPs Submitted Multiple Times	8	1	4	0	1	0	2	0
Appropriations Signing Statements	3	0	2	0	0	0	0	0

As Table 2 shows, I was incorrect about the number of appropriations bills triggering a SAP or signing statement being more prevalent during times of divided government. In fact, it appears to be quite the opposite. When he had a unified government, more bills were given multiple SAPs, one of those bills also triggering a signing statement. This timeframe had the most SAPs which ended in signing statements. Interestingly, the years when the Republicans held the House and the Senate, it was the lowest years for appropriations SAPs, and there were only two which received multiple SAPs, and none which received a signing statement.

Results and Implications

President Obama appears to have kept his word, issuing fewer signing statements than his predecessor. Even in years of divided government, he issued relatively few of them. His usage of disregard statements was lower overall during times of unified government, and much higher under divided government. When Republicans controlled both chambers of Congress, he issued more disregard statements than at any other two-year point in his administration. While the two years of unified government had the largest number of signing statements overall, this was also when he had the most cheerleading statements. There were only three of the 14 which were

disregarded. In the year before and the year after the 2012 election, he issued quite a few more signing statements and SAPs than in years which were not surrounding this election. 2012 itself, he issued the least amount of SAPs, and zero disregard statements. Only one was issued, and it was cheerleading. 2015 and 2016 he issued the most SAPs of any other two-year period. All of this suggests that yes, election years do have an influence on issuance of these documents. However, this also appears to only be the case for elections where the sitting president is seeking reelection.

While his issuance of SAPs fluctuated throughout the eight years he was in office, his use of signing statements as a whole remained fairly steady. Overall, his issuance of cheerleading statements outweighed issuance of disregard, but barely. Again, these two types of statements fluctuated throughout the administration, but overall remained semi-constant. When looking at the data broken down by year or two-year segments, it appears that there are large differences in the issuance, but taken as a whole, while there are differences, they do not seem as large. The one exception to this would be 2012.

By looking at the type of bill, interesting trends occur. While my hypothesis about divided government having more appropriations SAPs and signing statements was the complete opposite of what the data states, this gives an unexpected snapshot into how these documents are issued during times of unified and divided government. Further analysis needs to be completed to see if this trend holds for other bills, or just appropriations.

Limitations and Areas for Future Research

This study is a look at these documents overall as a whole, with the exception of the type of signing statement, whether cheerleading or disregard. There are many categories of them, and looking at them on an individual document level may provide further evidence. Additionally, looking at them from a monthly perspective potentially could add another aspect to the relationship between the president and Congress. Given the unexpected trends surrounding election years, when he was up for reelection versus not, a deeper look into if the “lame duck” period had an

effect on issuance is necessary. Analyzing these documents and their frequency in issuance during the Obama administration will allow for a deeper understanding of how changes in political circumstances affect the usage of these documents. It will also help to paint a more accurate picture of not only how the president and Congress work together, but also how a unified or divided government affects the issuance signing statements and SAPs. It will further our knowledge of how crucial studying election years and the years around them are to a president's frequency of issuance of both documents. As this analysis has shown, more research needs to be conducted to see if the trends identified within this paper hold true for other bill types, and if the trends for SAPs and signing statements hold true in cases of unified or divided government, or if appropriations bills are the exception and not the rule.

The findings contained within this study are intriguing, and merit further research. However, this does give us a potential link between unified and divided government, and how it affects the issuance of these documents. Additionally, election years have a strong link within the data as well. This will all help to improve our understanding of how important these documents are, and the potential effects they can have on the policy process.

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