

## Depending on how they are appointed, State Ethics Commissions can be vulnerable to political influence from elected officials.

*Last year, New York Governor Andrew Cuomo caused controversy by shutting down the Moreland Commission, which had been set up to investigate alleged ethical and legal violations by the state's politicians. But what governs how much control politicians can have over ethics commissions? In new research which examines the perceived autonomy of state ethics commissions, **Jonathan Rauh** finds that commissions with more financial and personnel capacity are more independent. Even more important, though, is the power that elected officials have over commissioners' appointment authority, and which branch – the executive or the legislature- wields that authority.*



Over the past 50 years, 41 American states have created ethics commissions to oversee activities ranging from ensuring that political candidates file financial disclosures and lobbyists register with the state, to providing ethics training to agency heads and investigating ethics complaints. The popular belief about ethics commissions is that they provide oversight of public and elected officials. In practice though, ethics commissions are primarily compliance organizations that adjudicate previously set standards for what is acceptable.

Given that these organizations adjudicate decisions which can be politically harmful to elected officials, and commissions are staffed by bureaucrats who are appointed by those elected officials, a key issue is the degree of autonomy exercised by these ethics commissions. To this end in new research I address the effects of politics on a commissions' autonomy by examining two competing approaches to explaining bureaucratic autonomy – the principal-agent approach and the organizational capacity approach. Ethics commissions are arm's length organizations who oversee the very individuals responsible for their existence and their leaders' positions. Given that current concepts of autonomy address policy actions that do not directly affect elected officials, it is reasonable to assume that they are incomplete for explaining bureaucratic autonomy on ethics commissions.

A fundamental component of autonomy is freedom from political interference. It is this concept that I use to measure the autonomy of ethics commissions. In 2011 the Center for Public Integrity conducted a survey of political reporters across the US, asking them a series of questions addressing the risks of corruption in their states. Among these was a question about the perceived freedom from political influence on state ethics organizations.

Principal-agent approaches examine the relationships between politicians as elected officials and bureaucrats as the implementers of their policies. A principal directs agents by mandating a goal, but at times also mandating how to achieve that goal; for example, increasing confidence in political institutions by requiring disclosure of financial interests. Autonomy from this perspective can be understood as the degree to which the agent can direct its own goals or decide on its own methods for achieving goals absent direction from the principal. A completely autonomous bureaucracy, therefore, receives no mandates whatsoever while a fully non-autonomous bureaucracy is micromanaged by the political principal. To assess the principal agent relationship I examined appointment authority (how many checks are there on elected officials appointing commissioners), budget independence (how much authority do elected officials have over a commission's budget), and how much authority an elected official has to remove members of an ethics commission.



Who's pulling the strings? Credit: [Ian T Edwards](#) (Flickr, [CC-BY-NC-SA-2.0](#))

As George Krause [noted](#) in 2009, “even well-intentioned institutions lacking sufficient capacity are incapable of making credible policy commitments.” Organizational capacity is about how bureaucrats use the variety of resources and tools at their disposal to achieve their mandates or implement policies. Capacity is an important prerequisite for autonomy. Additionally, previous studies have shown that even when agencies are equally competent, those with less capacity are less autonomous. To examine organizational capacity I looked at financial capacity (dollars per number of tasks) and personnel capacity (staff per number of tasks).

My results suggest that current conceptualizations of autonomy are insufficient for explaining autonomy on ethics commissions. More broadly this suggests a need for additional nuance in thinking about the interactions between political control and resource dependence when discussing ethics commissions and potentially oversight organizations in general. Principal-agent explained the most variation of the two approaches, but a combination of the two approaches provides the most leverage.

Increases in financial capacity and increases in staffing capacity are both associated with increases in the probability of respondents agreeing that ethics commissions are free from political interference. Financial capacity shows a stronger effect though. Increases in financial capacity are associated with increases in perceived freedom from political interference. This is important for two reasons. It reinforces previous qualitative studies showing that commissions may be forced to engage in educational and training activities at the expense of other, more exploratory, activities. My study provides empirical evidence of these suggestions. Additionally, my study supports findings in the literature on personnel capacity; the ability of bureaucrats to act autonomously increases as they have more capacity to address issues.

The greatest explanatory power came from elected officials' appointment authority over commissioners – suggesting that elected officials most preferred option is putting desirable individuals in place rather than using budget or staffing as a means of control. After accounting for competition between the executive and legislative branches, the results show that political influence is dependent upon which branch is monitored and which branch has appointment authority. When the commission has oversight of the legislature, but the legislature has higher appointment authority, then autonomy is lower than if the legislature has higher appointment authority but the commission oversees the governor.

Finally, the more difficult it is to remove a commissioner, the greater the perceived freedom from political interference increases. This indicates that when commissioners do not have to worry about retaliation via being fired then they are more likely to be seen as effective. This also indicates that the ability to appoint is important for getting likeminded people in place, but the threat of removal is necessary to keep them in line with one's way

of thinking.

Given that those making ethics policy are also subject to ethics policy, the ability to control the capacity of ethics commissions to act, and the independence of the commission would seem to be a means elected officials would employ to control the ability and/or desire of a commission to take action. My findings support this notion. In this way, my findings indicate the primacy of politics in a specific relationship between elected officials and the bureaucracy. Although this study is confined to ethics commissions, I believe similar findings would hold for other agencies with the capacity to directly affect elected officials.

*This article is based on the paper, “[Predicting Political Influence on State Ethics Commissions: Of Course We Are Ethical—Nudge Nudge, Wink Wink](#)” in *Public Administration Review*.*

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## About the author

### Jonathan Rauh

Jonathan Rauh works in Government Affairs addressing issues of educational policy and accountability. He previously worked in State Regulatory Affairs for Aflac Group Insurance in the US. He received his PhD from the University of South Carolina where he focused on public sector ethics/accountability and educational policy. His current research examines the intersection between public and private organizations and differences in the design of accountability systems.



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