

Their Boot in Our Face No Longer? Administrative Sectionalism and Resistance to Federal Authority in the U.S. South

State Politics & Policy Quarterly
2019, Vol. 19(1) 101–122
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DOI: 10.1177/1532440018803960
journals.sagepub.com/home/sppq



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Abstract

What explains state agency resistance to actions taken by their federal counterparts? And do sectional tensions make state bureaucratic nonacquiescence particularly likely in the U.S. South? We theorize that state resistance to federal administrative policy is more likely among Southern state bureaus due to administrative sectionalism. We argue that state agencies can and do resist federal administrative orders independent of other political constraints. This study is among the first to consider the policy consequences of sectionalism in state bureaucracies. We test our claims by employing a mixed methods approach that analyzes each instance of litigation and intervention by state bureaucrats in opposition to actions and orders by the Federal Energy Regulatory Commission (FERC) from 2010 to 2017. We find that, all else equal, state agency resistance to federal utility policy is about 3.75 times as likely among Southern utility regulators. This research has important normative implications for administrative politics as it suggests agencies with putatively apolitical policy jurisdiction have political preferences driven by sectional tension.

Keywords

administrative politics, energy policy, federalism, intergovernmental relations, partisanship, sectionalism, Southern politics

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Introduction

“[W]e will tolerate their boot in our face no longer . . . and let those certain judges put that in their opium pipe of power and smoke it for what it is worth,” thundered George Wallace from the dais during his 1963 Inaugural Address. Ascending to the Alabama statehouse, Wallace stoked more than a century of Southern resentment toward federal control, calling for “segregation now, segregation tomorrow, and segregation forever.” Decades later, scholars continue to observe the exceptional strand of Southern resistance to federal policy, from race relations to health care. The high salience of racial politics and health care understandably leads to considerable policy disagreements. But might examining less salient policies yield a similar result? In an original dataset observed over eight years and across all fifty states, we find that the exceptionally Southern tendency to resist federal authority extends even to the contemporary bureaucratic regulation of public utilities.

Southern state agency responses to actions from the Federal Energy Regulatory Commission (FERC) suggest there is a dimension to administrative resistance at the state level based on the parochial preferences of state administrators. While most existing research examining demonstrations of state opposition to federal policy focuses on nonacquiescence in state legislatures (Olson, Callaghan, and Karch 2017) and governors (Jensen 2017), we instead consider whether and how state *agencies* might serve as sites of state resistance to national policy. In other words, we consider the relationship between state and federal bureaucrats, by investigating the conditions under which state agencies resist policies promulgated by their federal counterparts. More specifically, we seek to answer the following question:

Research Question: Is state administrative resistance to orders, policies, or directives issued by analogous federal agencies grounded in administrative sectionalism among agencies in the U.S. South?

We argue and show empirically that there is a significantly increased likelihood of state resistance to federal policy among Southern state bureaus. To test our claims, we evaluate state administrative resistance to federal administrative policy in the regulation of public utilities. In our analysis, we examine every instance of litigation and intervention by state bureaucrats in opposition to actions or orders by FERC from 2010 to 2017. We employ a mixed-methods strategy that analyzes state resistance using both quantitative and qualitative approaches. This research design permits us to consider a time frame during which there was considerable variation in partisan control across most institutions at both the state and national levels, and as such, allows us to account broadly for the changing political circumstances that might influence state agency resistance to federal policy. To our knowledge, this is among the only studies to examine the intergovernmental dynamics between national and state agencies, and the first that considers the sectional origins of state agency nonacquiescence in federal administrative policy.

The possibility that state agencies publicly and systematically resist policies or directives from their federal counterparts based on bureaucratic parochialism not only

calls into question the classical notion of bureaucrats as politically neutral public officials but also suggests that the traditional model of cooperative policy implementation in a federal system ought to be revised based on a more expansive conception of which state institutions are likely to resist federal directives. In the sections that follow, we first describe the state and national landscapes of public utilities regulation in the United States. Then, we provide an overview of the existing research on decision making in state bureaucracies, followed by an articulation of our theory regarding the sectional basis for state agency resistance. We then describe the data and methods employed to test the expectations that flow from our theory and present the results of our empirical models. We close by offering some concluding thoughts about potential avenues for future research in state regulatory policy and the ramifications of administrative sectionalism.

Designing Dual Federalism: Public Utility Regulation at the National and State Levels

Regulation of interstate electricity and natural gas markets in the United States is primarily governed by the Federal Power Act (FPA). The FPA is currently implemented by FERC, an agency created within the Department of Energy in 1977 to replace the independent Federal Power Commission (42 U.S.C. § 7134). FERC is a bipartisan, five-person commission that regulates “the transmission of electric energy in interstate commerce and . . . the sale of electric energy at wholesale in interstate commerce” (Dadok 2013; Davis 2015; FPA 16 U.S.C. § 791a *et seq.*). Although the FPA vests a considerable amount of regulatory power in FERC, it reserves “all other aspects of service by load-serving utilities,” including sales to consumers and placement of generation and transmission facilities, to the states (Hoecker and Smith 2014). That is to say, Congress delegated fragmented authority both to state and national bureaus (Farhang and Yaver 2016; McCann 2016; Peterson 2018). Thus, the federalism scheme engendered by the FPA is one of dual federalism rather than cooperative federalism.

The changing landscape of American electricity grids, however, has frustrated the neat division of state and national jurisdiction (Eisen 2017; Peskoe 2011). In response to both the increasingly interstate nature of electricity transmission and FERC’s inability to influence national policy consistently, FERC promulgated Order 1000, officially titled “Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,” in July 2011, which altered the distribution of federal and state obligations (Klass and Wilson 2012). Exclusive state jurisdiction over the siting of electricity infrastructure created by the FPA complicates FERC’s ability to influence public policy through, for example, utility rates and renewable energy initiatives. Order 1000 was, thus, promulgated to leverage what authority FERC does have to influence electricity markets in favor of FERC’s conception of the public good. The order “directs organizations and states to cooperate and to consider the benefits of interstate transmission lines” (Klass and Wilson 2012, 1823).

The organization of utilities regulation at the federal level is complemented by an analog set of regulatory agencies in the states. At the state level, public utilities are

regulated by state commissions of various institutional forms. The Alabama Public Service Commission, for example, is an elected, three-person bureau, while the South Carolina Public Service Authority is a seven-person agency appointed by the state legislature. The Tennessee Public Utility Commission is composed of five commissioners, with one appointed by the governor, one by the lieutenant governor, one by the speaker of the house, and the remaining two jointly appointed by all three political leaders. Heterogeneity extends beyond appointment methods and numbers of executives. The California Public Utilities Commission, for example, has no requirement for a partisan-balanced commission, whereas the Massachusetts Department of Public Utilities requires that no more than two of its three commissioners be of the same political party. Even of those with elected executives, some are elected by geographical districts and others at large. The combination of these intergovernmental dynamics and the variation in institutional design of utility regulating commissions across states provides a unique framework for examining sectionally motivated state resistance to federal administrative policy. Furthermore, anecdotal evidence from Texas suggests that sectionalism extends to utility regulation as Texas is alone among states in refusing to participate in interstate electricity markets specifically to avoid FERC encroachment into Texas jurisdiction (Clump 2017).

American Federalism, Southern Resistance, and Bureaucratic Decision Making

The American federal system simultaneously allows states to determine a substantial portion of their own policies while nevertheless subsuming many aspects of state government operations within a broader scheme of national supremacy. This sets the stage for inevitable conflicts over policy-making jurisdiction between state and federal governments. While much existing research on state resistance to federal policy implicitly characterizes state nonacquiescence as a legislative or gubernatorial prerogative, we argue that state agencies function as sites of resistance to federal policy as well. Our theory suggests that in addition to implementing policies pursuant to delegations of authority from the state legislature, state agencies serve as vehicles for the sectional contestation of federal policy, with particular frequency in the U.S. South.

Intergovernmental friction throughout the federal system has engendered much research on general state resistance to federal policy. Recent studies have focused on the role of governors in resisting federal policy (Jensen 2017) and the role of state legislatures in resisting the federal government (Olson, Callaghan, and Karch 2017). Others have sought to disaggregate the federal policies against which states resist by salience and complexity (Balla and Deering 2015). However, much of the extant literature focuses on highly salient policies such as the Affordable Care Act, No Child Left Behind, and environmental regulations, and on the roles of elected state officials in resisting federal policy. While earlier research has considered the manner in which career bureaucrats at FERC can frustrate the policy goals of political appointees in charge of the agency should the two disagree (Garvey 1993), the determinants of state

resistance to low salience policies and state bureaucratic resistance to federal policy have thus far eluded scholarly consideration. In addition to providing a means of assessing the likelihood of administrative sectionalism in the American federal system, state administrative resistance to national policy would suggest the need for reappraisal of some fundamental conceptions of what drives bureaucratic policy choices.

Over the past two centuries, there has been no shortage of state resistance to federal policy in the U.S. South. After the end of Reconstruction, manifestations of Southern nonacquiescence have tended to come in the form of state-level intransigence regarding the extension of civil rights to nonwhites (Jones 2001) or the integration of public facilities and services (Webb 2005). While such defiance was witnessed perhaps most prominently in the broad and dramatic Southern efforts to circumvent or delay the desegregation of public schools in the aftermath of *Brown v. Board of Education* (Bullock and Rodgers 1976; Edelman 1973), Southern resistance to federal policy has also extended to other policy areas such as the expansion of voting rights (Black 1978; Harada 2012), equalizing access to public accommodations (Lerman and Sanderson 1978), the amplification of Medicaid after the passage of the Affordable Care Act (Vukadin 2015), and determining the scope of federal authority over rail infrastructure in the antebellum period (Callen 2016). Some scholars, however, contend that opposition to the civil rights agenda in particular was more of a national problem than a specifically Southern one (Lassiter 2010), and others have found no particular tendency for Southern states to resist federal guidelines either as a general matter (Olson, Callaghan, and Karch 2017) or in specific policy areas such as occupational safety and health (Thompson and Scicchitano 1985). This existing research, however, has focused on Southern state nonacquiescence to high-salience policies issued by either Congress or the federal judiciary. Here, by contrast, we select utility policy as our case for examination to consider the possibility of Southern resistance in a low-salience policy area in which there is no immediate basis for assuming intersectional tension. Likewise, we expand the consideration of Southern nonacquiescence by examining state agency resistance to orders and directives from their counterparts in the federal bureaucracy.

The classic perspective of bureaucratic decision-making is an idealized vision of neutrality and technical expertise (Weber 1958). Yet more realist theories of administrative behavior suggest that bureaus are subjected to political control by their principals in the elected branches (Gerber, Maestas, and Dometrius 2005; McCubbins, Noll, and Weingast 1987; Moe 1985; Weingast and Moran 1983) or that bureaucrats have and pursue their own preferences (Gailmard and Patty 2007; Selin 2015; Whitford 2007; Yaver 2014). Others still have considered that policy salience conditions the potential for political control of the bureaucracy and contend that overhead control is more likely when dealing with highly salient policies, whereas bureaucratic preferences are more likely to drive behavior with less salient policies (Baekgaard, Blom-Hansen, and Serritzlew 2015). In this article, we examine how decision-making by Southern state agencies with respect to their federal counterparts in a low-salience policy environment may be driven by what we call administrative sectionalism.

A Theory of Administrative Sectionalism and Bureaucratic Resistance

We theorize that state bureaucratic institutions in the South are more likely to resist federal policy given the historical tendency of Southern state governments to oppose management of their policy regimes by the national government. Southern state agencies will take measures to resist federal policy because state bureaucrats are influential political actors with distinct policy preferences. Public officials in state agencies in the South, particularly, are expected to have a preferred policy agenda that differs from the policy preferences of their federal counterparts. Likewise, our theory advances the notion that the institutional environment of state bureaucracy establishes a set of enabling conditions for bureaucrats from state agencies in one region to resist federal policies or orders issued by their national analogues. Specifically, technical expertise serves to legitimize bureaucratically produced policy, and detachment from horseshoe politics insulates bureaus from the democratic accountability that inheres in electoral politics.

Although bureaucratic institutions are generally expected to operate with a degree of remove from politics as usual, officials in state agencies are political actors in the same sense that research has demonstrated officials in national bureaus are, yet non-cabinet bureaucrats often enjoy a buffer from media and popular attention. In addition to involvement in politically driven behavior while serving in the state bureaucracy, at least some prominent members of state agencies view their administrative positions as a resource to fuel their political ambition, and pivot from their agency roles to run for other elected offices in legislative or executive politics. For example, Twinkle Andress Cavanaugh, the Republican President of the Alabama Public Service Commission since 2012, announced her candidacy for Lieutenant Governor of Alabama during her tenure. Similarly, interviews with a commissioner on the Arizona Corporation Commission reveal that “some commissioners have ‘aspirations to move onwards’” (Parinandi and Hitt 2018, 83). These and other similar cases suggest that even state bureaucrats in agencies with putatively apolitical policy jurisdiction have reasonably strong political preferences that likely bear on their decision-making within their institution or otherwise. In addition, if we accept that sectional tension has radiating consequences for state administrative politics, even decisions made by ostensibly neutral administrative officials in state bureaucracies—whether elected or not—may promote interests other than the agency’s formal goals. As a result, and contrary to some expectations, the political motivations of public officials in state bureaucracy should make such agencies fertile ground for sectionally motivated resistance to national policy.

The organizational characteristics of state administrative institutions also permit state bureaucrats to resist federal policy on a sectional basis. State bureaucrats can likely make choices regarding nonacquiescence to federal policy for parochial aims because they face either attenuated or ineffective mechanisms of democratic accountability. Indeed, a vast literature on bureaucratic politics considers the principal-agent problems engendered by bureaucratic governance (for reviews, see Krause 2010; Wood 2010) and the potential problems for democratic governance when regulators are unelected (Besley and Coate 2003; Dal Bó 2006; Gormley 1983). Most state constitutional officers and members of state agencies are not popularly elected. In the case

of state public utility regulators, 39 out of 50 (or 78%) are appointed by their state's governor, with a minority accessing office after appointment by some other elected official or body of officials. Because they are not subject to electoral pressures, these bureaucrats are only in danger of losing their positions if there is sufficient public pressure to force their resignation or if a state's governor enjoys removal privileges for the state bureaucracy and chooses to replace them. As such, it is improbable that decisions made in their official capacity will lead (whether directly or indirectly) to their removal from office, particularly since these officials typically operate in low-salience policy jurisdictions. In addition, bureaucrats may justify their policy decisions by claiming technical expertise uninfluenced by politics in a way that elected politicians cannot.

Due to a long history of intersectional friction across numerous policy areas between state governments in the South and the federal government, we argue that Southern state agencies are more likely than those in states outside the South to resist policies issued by their federal analogues. While most existing research has examined Southern resistance to federal directives in policy areas where the basis for Southern nonacquiescence is rather obviously race-oriented, we contend that there is an increased likelihood of administrative sectionalism among Southern state agencies even in policy jurisdictions where sectional tension is not an obvious factor in gauging bureaucratic preferences in the states. This broadened conception of Southern resistance to national policy involves reconsidering the sectional dynamics of American federalism to account for the possibility that bureaucrats in Southern state governments oppose federal policy as an assertion of state authority independent of their partisan or ideological preferences.

We anticipate that the combination of politicized state bureaucracies relatively insulated from public accountability and the established tendency of officials in Southern state institutions to resist federal policy based on sectional tension makes state administrative agencies in the South a probable site of resistance to federal policy enactments. This logic motivates the expectation for the empirical test of our theory:

Hypothesis: Southern state utility agencies will, *ceteris paribus*, resist federal utility policy more frequently than agencies in non-Southern states.

This hypothesis encompasses the observable implications of our theory regarding administrative sectionalism in the U.S. South. We conceive of resistance by state agencies as including any instance of litigation or intervention against actions or orders by FERC initiated by a state agency involved in utilities regulation. We expect to find this state bureaucratic response to FERC policies independent of the underlying state and national political environment, as well as other administrative and geographic factors that might make state resistance more or less likely.

Data and Method

To examine our claims regarding the likelihood of state administrative resistance to federal agency policy in the South, we employ a mixed-methods approach. First, we

estimate a series of logistic regression models, and then supplement this quantitative analysis with six case studies of state administrative behavior vis-à-vis federal bureaucratic policy. In the regression models, our unit of analysis is the state-year, and our dependent variable is *Resistance*, which is coded 1 if a state agency either initiated litigation or joined another party's complaint as an intervenor in opposition to an order, opinion, or ruling by FERC in a given year, and 0 otherwise. In Models 1, 2, 3, and 4, we employ rare events logistic regression because it is designed to enhance the quality of statistical inferences by correcting the tendency of logistic regression to underestimate the likelihood of rare events such as those measured by our dependent variable (King and Zeng 2001). This estimation strategy is methodologically appropriate given the distribution of *Resistance* because most state utility commissions in most years did not elect to resist FERC policy—just 5.5% of the 400 observations in our sample are coded as 1 for *Resistance*. In Models 5, 6, 7, and 8, we subsequently specify standard logistic regression models as a comparison to the rare events models. The specification of Standard Logistic Regression Models 5, 6, 7, and 8 corresponds with the specification of Rare Events Logistic Regression Models 1, 2, 3, and 4, respectively. To gather the information needed to construct the dependent variable, we searched through all court documents filed for matters before FERC during the time period 2010–2017 to find every instance of state agency resistance to FERC policy.

The independent variable of interest, *Southern*, is intended to test our theory of administrative sectionalism in the U.S. South. This variable is coded 1 if the agency in question is in one of the eleven states of the former Confederacy, and 0 otherwise. As stated previously, our theory suggests that the probability of state resistance will be greater in Southern states than in non-Southern ones.

The other independent variables are included to account for the political, administrative, economic, and demographic factors that may explain why state utility commissions resist FERC policy. First, we include a variable called *Conflicting Partisanship*, which measures whether a state public utility commission in a given year shares a partisan majority with FERC. This variable is coded 1 if the majority of commissioners on a state commission and the majority of commissioners on FERC come from different parties, and 0 otherwise. The probability of state resistance will likely be greater when there is conflicting partisanship between state and federal agencies. We also include a second variable, *Degree of Conflicting Partisanship*, to account for the possibility that the magnitude of inter-agency divergences in partisanship is the more appropriate measure for predicting state resistance to federal policy. This variable is measured as the absolute value of the difference between (1) the percentage of state public utility commissioners in a given year who are Republican and (2) the percentage of FERC commissioners in a given year who are Republican.¹ This provides for a continuous measure of partisan divergence between state and federal public utility regulators. We expect that the likelihood of state resistance will be greater given higher degrees of conflicting partisanship between state utility commissions and FERC.

Next, we include a variable at the state level for those states whose public utility commissioners are *Elected* rather than appointed by some other official (coded 1 if a state's commissioners are elected, and 0 otherwise) in case there is a tendency for

one type of commissioner to favor national policies versus the other. We also include the variable *Percent Republican Commission*, which measures the percentage of Republican commissioners on each state utility commission in each year who are Republican, in the event that Republican state commissioners are more likely than others to oppose federal utilities policy. In addition, we measure the *Percent Republican Presidential Vote Share* in the most recent presidential election to control for the underlying partisanship of the state in case commissioners from more Republican states are more likely, as a general matter, to oppose federal policy. To account for whether more Republican state legislatures may influence their state-level administrative counterparts in utilities regulation to oppose federal policies, we include a variable measuring the *Percentage of Republicans in the State Legislature*. Because Nebraska's legislature is nonpartisan, in Models 1, 3, 5, and 7, we omit this variable so our analyses include all fifty states.

We also include a temporal variable measuring whether or not an observation in our analysis occurred before or after FERC issued *Order 1000*, which went great lengths toward reorganizing the scheme of federal-state cooperation in regulating electricity policy among transmission providers, coded 1 if the observation occurred after the implementation of Order 1000, and 0 otherwise. Likewise, to account for any economic and demographic bases in how state regulators differ in estimating the consequences of federal utilities regulation, we include three additional independent variables in Models 3, 4, 7, and 8 related to each state's economy and population. There are significant differences in the way municipalities and regions approach utilities regulation based on underlying patterns of urbanization and development; for example, cities generally demand more energy than rural communities, while rural communities generally supply more energy than cities. As such, we include a variable measuring the *Percent of Population that is Rural* in each state-year. To control for any differences among state utilities regulatory agencies based on the relative vitality of the state economy, we include a variable measuring the *Unemployment Rate* for each state-year. This is consistent with prior scholarship that suggests utility regulators are sensitive to macroeconomic trends (Parinandi and Hitt 2018). Last, in the event that state agencies resist federal regulatory policy differently based on the diversity of their population, we include a variable measuring the *Nonwhite Percentage of the Population* in each state-year. Descriptive statistics of our variables are presented in Table 1.

To further demonstrate our theory that Southern bureaus are more likely to resist federal policy irrespective of political factors, we also provide qualitative case studies of six of our observations, selected by varying the explanatory variables *Southern* and *Conflicting Partisanship*. First, we explain the South Carolina Public Service Authority and the Alabama Public Service Commission—controlled by Republicans and Democrats, respectively—lawsuit against a Democrat-majority FERC. Second, we describe the Democrat-majority Arkansas Public Service Commission's petition for judicial review of a Democrat-majority FERC-issued order. Then, we provide a case study of the Massachusetts Department of Public Utilities in 2017 when it shared partisanship with FERC. Finally, we show two Democratically led state bureaus electing not to resist any FERC policy in 2017, when FERC was controlled by Republican commissioners.

Table 1. Descriptive Statistics.

Variable	μ	σ	Minimum	Maximum	N
Resistance	0.055	0.228	0	1	400
Southern	0.220	0.415	0	1	400
Conflicting Partisanship	0.540	0.499	0	1	400
Degree of Conflicting Partisanship	0.279	0.208	0	0.6	400
Elected	0.220	0.415	0	1	400
% Republican Commission	57.660	30.911	0	100	400
Order 1000	0.750	0.434	0	1	400
% Republican Pres. Vote Share	49.29	9.85	26.6	72.8	400
% Republican Legislature	53.200	17.588	7.9	64.72	392
% Population Rural	26.420	14.436	5.05	61.35	400
% Nonwhite	20.104	12.248	4.372	74.365	400
Unemployment	7.162	2.289	2.8	14.4	400

Note. Unit of analysis is the state bureau-year. Sample is all fifty state bureaus from 2010 to 2017, except % Republican Legislature which excludes Nebraska due to its nonpartisan state legislature.

Results: Resistance to Federal Policy More Likely from Southern State Agencies

The results of our eight regression models appear in Table 2. In these models, we examine whether Southern state utility regulators are more likely to resist federal energy policy than corresponding agencies in non-Southern states. As described earlier, Models 1, 2, 3, and 4 employ rare events logistic regression and Models 5, 6, 7, and 8 employ standard logistic regression. The samples in Models 2, 4, 6, and 8 necessarily exclude Nebraska due to the inclusion of *Percentage of Republicans in the State Legislature*.

Across all eight models, we find a statistically significant association between our independent variable of interest, *Southern*, and the likelihood of state utility regulators resisting federal policy.² This provides evidence in support of our theory that administrative sectionalism drives state agency resistance to federal administrative policy. To better illustrate these findings, in Figure 1, we report predicted probabilities based on Model 5 for our dependent variable, *Resistance*, for Southern and non-Southern states, respectively. The results presented in this figure are based on the model employing standard logistic regression and excluding *Percent of Republicans in the State Legislature* because of the limitations of post-estimation analysis in King and Zeng's (2001) rare events logistic regression models, the consistent results across both regression methods, and the consistency of results when excluding *Percentage of Republicans in the State Legislature*.

Figure 1 indicates that the probability of a Southern state bureau resisting federal energy policy (10.54%) is greater than the probability of state agency resistance in non-Southern states (2.81%)—a difference of 7.73 percentage points. Although the estimated likelihood of state resistance may appear somewhat low even among

Table 2. Bureaucratic Resistance to Federal Policy.

Independent variables	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7	Model 8
Explanatory variables								
Southern	1.322*** (0.528)	1.243** (0.559)	0.981* (0.644)	0.940* (0.647)	1.403*** (0.540)	1.346*** (0.572)	1.139** (0.662)	1.096** (0.667)
Conflicting Partisanship	1.277** (0.673)	1.243** (0.666)	1.245** (0.694)	1.204** (0.687)	1.429** (0.687)	1.415** (0.681)	1.429** (0.713)	1.397** (0.708)
Political and administrative controls								
Degree of Conflicting Partisanship	-3.003 (1.626)	-2.888 (1.595)	-2.705 (1.737)	-2.565 (1.711)	-3.626 (1.659)	-3.566 (1.632)	-3.484 (1.785)	-3.379 (1.763)
Elected	0.027 0.593	0.045 (0.610)	-0.133 (0.751)	-0.062 (0.757)	-0.044 (0.605)	-0.030 (0.624)	-0.204 (0.771)	-0.130 (0.780)
% Republican Commission	-0.023** (0.011)	-0.021* (0.011)	-0.024* (0.013)	-0.024* (0.013)	-0.024** (0.011)	-0.022* (0.012)	-0.026* (0.014)	-0.026* (0.014)
Order 1000	0.760 (0.657)	0.777 (.0704)	0.976 (0.791)	0.949 (0.807)	0.894* (0.670)	0.928* (0.720)	1.186* (0.813)	1.165* (0.831)
% Republican Pres. Vote Share	0.003 (0.025)	0.013 (0.033)	0.034 (0.027)	0.033 (0.034)	0.002 (0.026)	0.012 (0.033)	0.036 (0.028)	0.033 (0.036)
% Republican Legislature		-0.007 (0.017)		0.000 (0.019)		-0.007 (0.018)		0.003 (0.020)
Economic and demographic controls								
% Population Rural			-0.020 (0.021)	-0.020 (0.021)			-0.023 (0.022)	-0.023 (0.0219)
% Non-White			0.026 (0.016)	0.024 (0.017)			0.025 (0.017)	0.025 (0.017)
Unemployment			0.098 (0.016)	0.094 (0.017)			0.119 (0.123)	0.115 (0.126)
Constant	-2.553* (1.398)	2.722* (1.503)	4.872* (2.514)	4.723* (2.506)	-2.681* (1.426)	-2.882* (1.538)	5.318** (2.583)	-5.255** (2.582)
N	400	392	400	392	400	392	400	392
χ ²	—	—	—	—	13.47	12.86	15.92	15.84

Note. Models 1, 2, 3, and 4 estimated using rare events logistic regression; Models 5, 6, 7 and 8 estimated using standard logistic regression. Robust standard errors in parentheses.

*p ≤ .1. **p ≤ .05. ***p ≤ .01 (all two-tailed tests except for Southern, Conflicting Partisanship, Degree of Conflicting Partisanship, and Order 1000).

Southern state agencies, it nevertheless represents an increase of 275% from the predicted probability for analogous bureaus in non-Southern states. This suggests administrative sectionalism indeed predicts state bureaucratic behavior vis-à-vis their federal counterparts.

Most of the remaining additional independent variables fail to attain statistical significance. Although we find a statistically significant association between *Conflicting Partisanship* and *Resistance*, we are unable to report any such results for the related variable *Degree of Conflicting Partisanship*. This suggests that the relevant metric for operationalizing partisan divergence in the context of state agency resistance to federal policy is a binary measure of whether partisan control between state and federal bureaus is in conflict, rather than a continuous one that reflects the difference in proportionate partisan control between such agencies. This is likely due to the combination of polarized federalism and majority rule decision-making in state and national

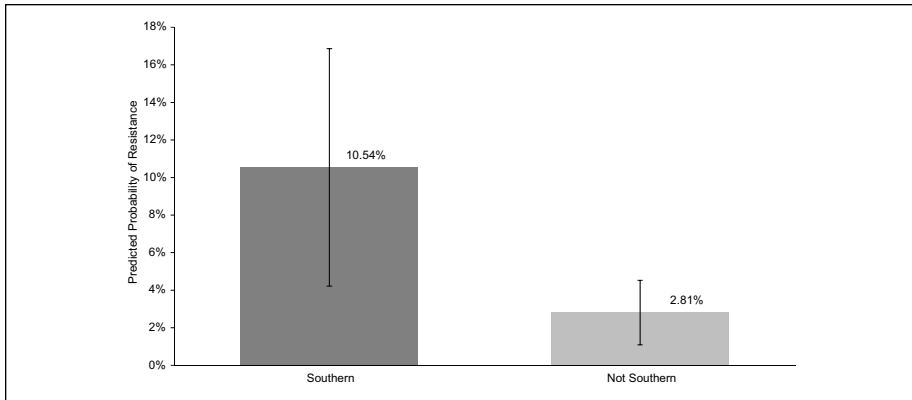


Figure 1. Administrative sectionalism and resistance to FERC.

Note. Error bars represent 90% confidence intervals. FERC = Federal Energy Regulatory Commission.

energy agencies. Given this polarization, members of the same party in such bodies tend to vote identically, and pursuant to majoritarian procedures, the pivotal decision-maker is a member of the majority party. This affords the majority party substantial control over policymaking in such institutions and renders less important the magnitude of the majority's advantage.

Our finding regarding *Conflicting Partisanship* both complements our argument that bureaucrats make decisions influenced by factors other than the formal goals of their agency and suggests that polarization in the United States extends even to the bureaucracy. This finding also provides more evidence in support of the extant literature on polarized or partisan federalism, which argues that the ideal model of cooperative federalism has been supplanted by a more contentious relationship between federal and state governments (Bowling and Pickerill 2013; Conlan 2017; Goelzhauser and Rose 2017; Pickerill and Bowling 2014; Rose and Bowling 2015). Figure 2 displays the predicted probabilities of a bureau with *Conflicting Partisanship* resisting FERC as compared with that of a bureau with shared partisanship. Figure 2 indicates that the probability of resistance by a state bureau with conflicting partisanship with FERC (7.07%) is greater than the probability of resistance by a state bureau with shared partisanship (1.79%) by about 295%.

We also find the proportion of Republican commissioners on a state utility commission, *Percent Republican Commission*, is negatively associated with *Resistance*. This suggests that Republican state energy regulators are less likely to resist federal energy policy than Democrats. While this may seem counter-intuitive as Republicans are generally considered less prone to accepting directives from federal bureaucrats, the diminished likelihood of resistance to FERC among more Republican state utility commissions may be related to elements of FERC's jurisdiction outside electricity regulation. For instance, there often exists considerable tension between FERC policy on the placement of pipelines for oil and natural gas and environmental

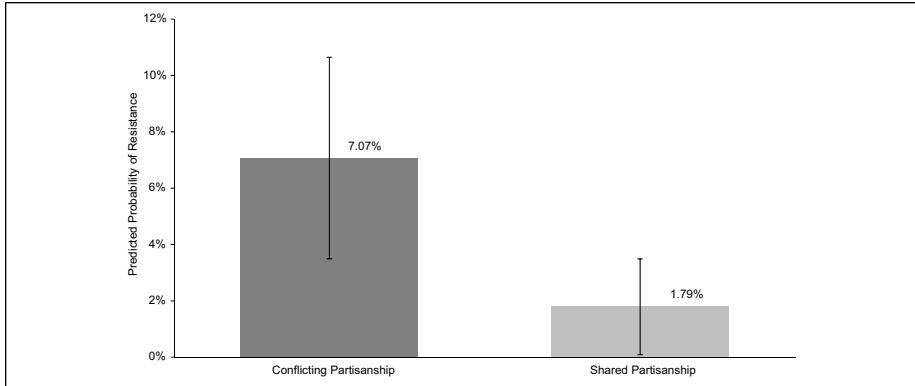


Figure 2. Agency partisanship and resistance to FERC.

Note. Error bars represent 90% confidence intervals. FERC = Federal Energy Regulatory Commission.

advocacy organizations. In such cases, Republicans—typically perceived as the more pro-business of the two parties—may more readily acquiesce to FERC policy choices than Democrats.

In addition, we report a statistically significant association between resistance to FERC policies by state utilities regulators and FERC’s issuance of Order 1000 in Models 5, 6, 7, and 8. This pronounced likelihood of state resistance after Order 1000 presumably stems from the manner in which this directive reorganized state and federal prerogatives regarding the siting of transmission lines. Namely, Order 1000 reallocated some authority from states to the federal government, creating more opportunities for jurisdictional conflict between them. The economic and demographic variables measuring the rural population, unemployment rate, and nonwhite population in each state, however, are not significantly associated with any tendencies among state utilities regulators. However, their inclusion slightly decreases the magnitude of the *Southern* coefficient, suggesting that decisions by state regulators involve a complex set of considerations, which is reasonable given the competing pressures on bureaucrats and the intricacies of administrative politics.

Case Studies in Bureaucratic Resistance

To better demonstrate the relationship between *Southern*, *Conflicting Partisanship*, and *Resistance*, we provide six short case studies on state bureaucratic actions between 2010 and 2017. We selected these cases by looking through our dataset for observations with variation in *Southern* and then variation in *Conflicting Partisanship* within the Southern/non-Southern cases. The first two cases involve two Southern commissions, one with a Republican majority and one with a Democratic majority, during a period of Democratic leadership on FERC. The third is a Southern, Democrat-majority commission during a period of Democratic leadership on FERC. The next case is a

		Southern Non-Southern	
Partisanship	Conflicting	South Carolina (2011)	California (2017) New York (2017)
	Shared	Alabama (2011) Arkansas (2016)	Massachusetts (2017)

Figure 3. Case study selection.

non-Southern Republican-majority commission during a period of FERC Republican leadership and the last two are non-Southern, Democrat-majority commissions during a period of FERC Republican leadership. Figure 3 displays our cases in a two-by-two figure showing variation in *Southern* and *Conflicting Partisanship*.

In 2012, the South Carolina Public Service Authority, then led by seven Republicans, sued FERC, then led by three Democrats and two Republicans, alleging that Order 1000 infringed upon states’ rights to regulate electricity markets and infrastructure. The Alabama Public Service Commission, then composed of two Democrats and one Republican, intervened on behalf of South Carolina. Contrary to the general expectation that Democrats prefer central authority and Republicans prefer decentralized power, both Southern bureaus advocated for the devolution of jurisdiction over energy markets and infrastructure by jointly suing FERC. The D.C. Circuit eventually ruled in favor of FERC, and Order 1000 was upheld. In this case, both states are Southern, yet *Percent Republican Commission* and *Conflicting Partisanship*—two variables significantly associated with *Resistance*—hold different values, thus demonstrating the strength and robustness of *Southern*.

In 2016, the Arkansas Public Service Commission, comprising two Democrats and one Republican, petitioned for judicial review of a FERC order. FERC was then led by three Democrats and two Republicans. The petition concerned a FERC directive ordering electric company Entergy Arkansas to make bandwidth payments to five of its subsidiaries with which it was party to a system operating agreement and whose costs were higher than those of Entergy Arkansas. Entergy Arkansas subsequently withdrew from the agreement after failing to make all the required bandwidth payments.

The Arkansas Public Service Commission argued that Entergy Arkansas no longer had an obligation to make bandwidth payments while FERC maintained that Entergy Arkansas was still liable for such payments. The D.C. Circuit denied Arkansas’

petition for review, thus maintaining FERC's order. In this case, the Arkansas Public Service Commission and FERC shared partisanship, which is negatively and significantly associated with *Resistance*, yet the state commission still elected to resist.

In 2017, the Massachusetts Department of Public Utilities was led by two Republicans and one Democrat. Thus, the bureau shared partisanship with FERC, had a high value for *Percent Republican Commission*, and a value of 0 for *Southern*. In 2017, many state officials in Massachusetts forcefully and vocally expressed their opposition to various federal policies originating from President Trump's administration, though many of those officials were Democrats. Perhaps most notably, Massachusetts Democratic Attorney General Maura Healey sued the Republican Trump administration on numerous occasions. Yet the Department of Public Utilities, led by a Republican majority, shared partisanship with FERC and clearly is not from a Southern state. As our model predicts, the Department of Public Utilities acquiesced in every FERC policy emanating from a FERC led by a majority of Trump appointees in 2017.

The year 2017 also offers several examples of state bureaus with *Conflicting Partisanship* with FERC and with low values for *Percent Republican Commission*. Because FERC was controlled by Republicans in 2017, any state bureau controlled by Democrats was more likely to resist because *Percent Republican Commission* is negatively and significantly associated with *Resistance*, and *Conflicting Partisanship* is positively and significantly associated with *Resistance*. Despite this, California and New York, both led by Democrats, elected to acquiesce in every order issued by FERC. As our models suggest, these two states were well situated to contest FERC policy since both Democratically led bureaus and agencies whose partisanship conflicts with FERC are more likely to resist. In addition, these two states, like Massachusetts, often and explicitly expressed their opposition to many policies favored by the Trump administration such as immigration restrictions and bans on transgender enlistment in the military. As such, they were prone to other types of visible resistance, yet their public utility commissions still acquiesced to every order issued by a FERC led by Trump appointees. Our theory and results suggest that these decisions not to resist are due to the lack of sectional parochialism that is present in the South.

Much like McCann's (2016) finding that top-down congressional delegation to the states is driven by desired policy outcomes rather than ideological stances toward centralized power in the abstract, these cases, along with the results of the models earlier, suggest that bottom-up state bureaucratic resistance to federal authority may be driven by administrative sectionalism. Together, our findings suggest that the decisions of both national and state officials within the American federal system are driven not by deontological philosophies of federalism but rather by political expediency in the form of sectionalism in the U.S. South and desired policy outcomes in the federal government.

Our results also suggest several other streams of research. First, future work ought to consider whether state resistance to energy policy, specifically, is grounded in any one component of FERC jurisdiction. For example, do state utility bureaus resist FERC directives regarding electricity policy more often than natural gas or oil regulations? Second, because state agencies are able to resist in myriad ways including but not limited to initiating litigation, commenting on notices of proposed rulemaking, and

filing administrative complaints, future research should examine the conditions under which the means of state bureaucratic resistance differ. Third, the study of state bureaucratic resistance to federal administrative policy should be expanded to include more agencies covering diverse policy areas. Such expansion would permit us to understand whether these results are generalizable to instances of state resistance to national policy broadly in the federally fragmented and regionally diverse American political system. Last, following Hopper's (2017) study on environmental regulation at the state level, future research ought to examine how variation in the institutional design of state utility commissions influences policy outcomes, implementation choices, and agency performance.

Conclusion

Southern resistance to federal policy is typically construed as an act of defiance by elected politicians related to controversial social and cultural issues. We expect Southern firebrands to admonish federal overreach, whether it be Wallace obstructing integration in the 1960s, or Kim Davis, a county clerk in Kentucky, resisting the Supreme Court ruling striking down same-sex marriage bans in 2015. This article, however, finds bureaucrats in the South, whether unelected or not, resist federal policy even when it is not so publicly divisive as race or health care.

This article makes three significant contributions to the study of both Southern and administrative politics. First, we show that the enduring strand of Southern resistance to federal authority extends even to low salience policy. Second, we demonstrate that such resistance comes not only from state legislatures, governors, and other elected officials, but also from state bureaus, whether their leaders are elected or unelected. Third, we argue that agencies with putatively apolitical policy jurisdiction actually have reasonably strong political preferences driven in part by sectional tension. Our models show the tendency for Southern bureaus to resist FERC is robust to political, administrative, economic, and demographic variables, and find Southern states are about 3.75 times as likely than their non-Southern counterparts to resist federal policy.

This research has important normative implications for both scholars and casual observers of American politics alike. Scholars of bureaucracy and public administration would do well to consider the regional preferences of bureaus alongside traditional considerations of partisanship, capacity, and technical expertise. Furthermore, our results suggest that the federally fragmented American political system alters the political opportunity structure for inconsistencies in the implementation of national policy, and that these inconsistencies may be explained in part by regional parochialism. Moreover, our findings suggest that such regional parochialism is expressed through a diversity of institutional venues in American government.

Appendix A

In footnote 2, we report that we estimated additional iterations of all models presented in the article. In these additional specifications, we account for geographic variation in

state administrative resistance to federal bureaucratic policy by including indicator variables at the level of the census region rather than simply the *Southern* dummy variable. In Models A1, A2, A3, and A4, we replicate the analyses from Models 5, 6, 7, and 8, respectively, with indicator variables for states in the Northeast, Midwest, and West. States in the South compose the reference category. In these models, the direction and magnitude of the coefficients for fixed effects of regions outside the South generally indicate a greater probability of resistance from Southern states are comparable to the results in the text.

Table A1. Fixed Effects Models with Census Regions.

Independent variables	Model A1	Model A2	Model A3	Model A4
Census Northeast	-1.595** (0.791)	-1.541** (0.803)	-1.149* (0.886)	-1.107 (0.884)
Census West	-.0527 (0.514)	-0.484 (0.537)	-0.524 (0.625)	-0.520 (0.621)
Census Midwest	-0.836* (0.603)	-0.694 (0.692)	-0.433 (0.671)	-.0414 (0.735)
Conflicting Partisanship	1.383** (0.686)	1.369** (0.675)	1.362** (0.736)	1.330** (0.726)
Degree of Conflicting Partisanship	-3.207 (1.607)	-3.116 (1.567)	-3.167 (1.675)	-3.057 (1.643)
Elected	0.208 (0.535)	0.269 (0.537)	0.021 (0.695)	0.099 (0.705)
% Republican Commission	-0.022** (0.011)	-0.021** (0.012)	-0.025** (0.014)	-0.025** (0.014)
Order 1000	0.889* (0.643)	0.912* (0.680)	1.237* (0.804)	1.206* (0.821)
% Republican Presidential Vote Share	-0.004 (0.021)	0.002 (0.029)	0.039 (0.033)	0.032 (0.039)
% Republican Legislature		-0.004 (0.020)		0.006 (0.021)
% Population Rural			-0.023 (0.027)	-0.023 (0.027)
% Nonwhite			0.030 (0.019)	0.030 (0.020)
Unemployment			0.145 (0.123)	0.140 (0.125)
Constant	-1.653	-1.838	-5.206*	-5.122*
N	400	392	400	392
χ^2	14.76	14.05	17.82	17.19

Note. Robust standard errors in parentheses.

* $p \leq .1$. ** $p \leq .05$ (all two-tailed tests except Census Northeast, Census Midwest, Census West, Conflicting Partisanship, Degree of Conflicting Partisanship, Elected, and Order 1000).

Appendix B

In footnote 2, we report that we estimated two additional specifications of Model 5 from the text in which we include alternative conceptualizations of which states qualify as Southern. In Model B1, we code Southern as 1 for all slave states (the 11 former Confederate states as well as West Virginia and the four slave states that did not secede during the Civil War: Delaware, Kentucky, Maryland, and Missouri). In Model B2, we code Southern as 1 for all states considered Southern by the Census Bureau. The results of these additional models appear in Table B1. In Models B1 and B2, the direction and magnitude of the coefficients are comparable to those presented in the text. Yet both models estimate smaller coefficients, suggesting that operationalizing the U.S. South as the former states of the Confederacy is theoretically appropriate for predicting Southern resistance to federal policy.

Table B1. Alternative Operationalizations of Southern.

Independent variables	Model 5: Confederate states	Model B1: All slave states	Model B2: Census
Southern	1.403*** (0.540)	0.585* (0.431)	0.762** (0.442)
Conflicting Partisanship	1.429** (0.687)	1.290** (0.670)	1.356** (0.680)
Degree of Conflicting Partisanship	-3.626 (1.659)	-2.966 (1.587)	-3.145 (1.601)
Elected	-0.044 (0.605)	0.376 (0.548)	0.290 (0.560)
% Republican Commission	-0.024** (0.011)	-0.022** (0.011)	-0.023** (0.011)
Order 1000	0.894* (0.670)	0.866* (0.646)	0.868* (0.649)
% Republican Pres. Vote Share	0.002 (0.026)	0.008 (0.021)	0.006 (0.021)
Constant	-2.681* (1.426)	-3.054** (1.256)	-2.965** (1.255)
N	400	400	400
χ^2	13.47	9.66	10.08

Note. Models estimated using standard logistic regression with the same parameters as Model 5. Robust standard errors in parentheses.

* $p \leq .1$. ** $p \leq .05$. *** $p \leq .01$ (all two-tailed tests except Census Northeast, Census Midwest, Census West, Conflicting Partisanship, Degree of Conflicting Partisanship, Elected, and Order 1000).

Acknowledgments

We would like to acknowledge JoyAnna Hopper, Ari Peskoe, and David Spence for their helpful comments on this article. Many thanks to Janice Beecher for sharing her dataset of state public utility commissioners. We also wish to acknowledge the Citadel Symposium on Southern Politics for providing a forum for us to share this work.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.


Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

Notes

1.
$$\left| \frac{\text{Republican state commissioners}}{\text{Total state commissioners}} - \frac{\text{Republican FERC commissioners}}{\text{Total FERC commissioners}} \right|$$
2. Models with fixed effects for all census regions (South, Northeast, Midwest, and West) similarly show that the South is more likely to resist than any other region (see Appendix A). We operationalize *Southern* as the former 11 states of the Confederacy for historical, social, and political reasons (Key 1949; McKee and Shaw 2003), and models with alternative operationalizations of *Southern* demonstrate that the former 11 states of the Confederacy are the appropriate operationalization in the context of state resistance to federal policy (see Appendix B). Constructing mutually exclusive and exhaustive categories for regions outside the former Confederacy for a fixed effects model would entail arbitrary and historically indefensible decisions.

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