The Bigger They Are: Cross-State Variation in Federal Education and Medicaid Waivers, 1991–2008

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Federal waivers to state governments from conditions attached to grants-in-aid and other programs have become a critical factor in U.S. intergovernmental relations, yet no systematic empirical analysis has considered which factors make some states more likely to receive waivers. This article presents results of model estimations of time-series panel data that use as dependent variables measures of waivers to federal Medicaid and education policy from 1991 to 2008. Different factors influence the waivers states receive to different federal programs, suggesting that the waiver process varies greatly from policy to policy. These results do suggest that scholars of future waiver processes look to the capacity of each state's government and the relative size of populations the federal program most affects.

More than ever, the states are coming to Washington. State governments no longer feel that they can rely on constitutional protections of their power and federal deference to state supremacy on certain policy issues. Increasingly, states feel the need to engage the federal government over the terms of programs that will affect their affairs (Nugent 2009). Most studies of state attempts to influence federal policy have concentrated on ways in which the fifty states act together to promote their common interests, often through organizations like the National Governors Association (NGA) and the National Conference of State Legislatures (Herian 2011; Cammisa 1995). As valuable as such studies are, the activities of such groups are not sufficient to fully describe the interests or efforts of individual states (Creek 2012). In addition to ''universal'' state interests, where all fifty states share a common interest, ''categorical'' (interests shared by some subset of states) and ''particularistic'' (interests unique to a single state) exist (Nugent 2009) (see also Bowman 2004). The difficulty of obtaining and preserving consensus and other collective action problems limit the range of policies that groups like the NGA can undertake (Schneier and Gross 1993; Dinan 2011).

Publius: The Journal of Federalism volume 43 number 3, pp. 452–473
doi:10.1093/publius/pjt011
Advance Access publication May 15, 2013
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Thus, scholarship must consider attempts to influence federal policy that individual states undertake on their own. Around two-third of state governments maintain their own office in Washington (Jensen 2010). Individual states can often move more quickly than multistate organizations to influence policy and have found great success in securing beneficial outcomes like extra funding. Anecdotal evidence suggests tremendous variation in the amount of influence each state can exercise in Washington, but few studies systematically examine the causes of variation in state efforts across time, state, and policy area. ''Individual lobbying activities receive little scholarly attention and scrutiny'' (Smith 2008; see also Creek 2012).[1]

This article seeks to fill the gap on individual state efforts to influence federal policy through an examination of federal waivers granted to state governments. Since 1990, waivers have become a critical ''informal and extraconstitutional safeguard'' of state power and one of the most popular methods by which federal and state governments have reached accommodation on grants-in-aid and other programs that cause dispute (Nugent 2009, 9). Maybe the ''primary mechanism by which the federal government carries out its domestic priorities'' is the grant-in-aid to state and local governments (Gais and Fossett 2005, 491). As the twentieth century progressed, the federal government learned that attaching conditions to grants would cause state governments to adjust their policies to accomplish Washington's goals. State governments can and have declined grants with unfavorable conditions (Schwartz and Robinson 2000) and/or pursued more confrontational strategies like state legislation and lawsuits against federal terms (Shelly 2008; Wong and Sunderman 2007), but they would almost always prefer to continue to receive federal funding but achieve some flexibility in what the federal government will count as compliance with the terms of a grant. Today, when Congress and the President enact a new domestic program or reform that requires state cooperation, bargaining between the two levels has become the norm, and the accommodation that the two levels reach can often result in significant programmatic changes from what Congress passed into law. Waivers have reshaped such enormous and notable federal programs as Medicaid, the No Child Left Behind Act of 2001 (NCLB), and Temporary Assistance for Needy Families.

Existing studies of waivers have made valuable contributions that highlight the possible roles of new, expansive federal regulations (Gormley 2006), special interest groups (Krane 2007; Posner 2007; Thompson and Burke 2009), and partisan, economic, and population factors (Shelly 2012). However, most of these studies do not make use of multivariate statistical analysis, which remains one of the best ways available to social scientists to isolate and identify causal factors, and none of them use any type of statistical time series analysis. Also, most existing studies consider waiver requests in only one policy area.[2] Given the importance of waivers, the lack of systematic evidence on the conditions that make state governments more likely to receive them is a significant gap in the literature (Thompson and Burke 2007).

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This article presents results of the first study of cross-state variation in waivers received that uses appropriate multivariate statistical methods and accounts for variation across state, time, and policy. It examines the factors that made the federal government grant waivers to states from 1990 to 2008 in two policy areas in which waivers have played a major role: Medicaid and federal education policy. Random effects negative binomial regression and Poisson maximum likelihood model estimations show that the factors that influence federal decision making on waivers vary depending on the program. While these results cannot identify distinct factors that are likely to influence waivers in every policy area, they do suggest that scholars who study future waiver situations should look to variables related to state governing capacity and the relative size of affected populations to determine which states are likely to receive more waivers.

Waivers and Other State Options

While constitutional safeguards to their power have eroded over time, states have developed a host of strategies to protect their interests, secure benefits from the federal government, and maintain a voice in the policy process (Nugent 2009). State governments have effectively lobbied Congress in numerous specific circumstances. Such lobbying may come directly from governors and other high-ranking state officials or from state offices in Washington (Jensen and Emery 2011). Governors try to influence policy through testimony to Congress (Creek 2012) and state-of-the-state addresses that focus on intergovernmental issues (Nugent 2009). State officials have "gone public" to curry public support and exert pressure on the federal government to support state-friendly legislation (Conlan, Riggle, and Schwartz 1995). State governments may pass legislative memorials urging the federal government to undertake or change a certain policy (Leckrone and Gollob 2010). States occasionally try to pressure the federal government into policy changes through lawsuits, but this strategy seems to be of limited effectiveness (Dinan 1997; McDermott and Jensen 2005).

Waivers have been one of the most common ways in which states have achieved federal policy change. Both the federal government and state governments have numerous reasons to seek flexibility in the implementation of conditions attached to federal grants in aid. Relative to the combined manpower of all fifty state governments, the federal government is small.[3] Federal policy makers may understand that if they are to implement ambitious reforms successfully, they must, in the words of Manna (2006), "borrow strength" from the states. State and local governments have traditional powers and responsibilities, experience with specific issues, or knowledge of relevant conditions that may make the federal government willing to heed their input (Agranoff and McGuire 2004). Congress may see waivers as an opportunity to push decisions on polarizing topics that could derail

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legislation onto administrators and to avoid both difficult decisions about the nuts and bolts of policy implementation and blame when a policy goes wrong. The federal executive branch makes decisions on whether to grant waivers, which allows presidents to change policy without congressional approval (Weissert and Weissert 2008).

For their part, state officials want to continue to receive federal funding but gain input into the content of the program they will implement. Flexibility can reduce the amount of federal oversight and allow state governments to modify policies to fit specific state needs (Weissert and Weissert 2008). Waivers may allow states with less developed capacity to still participate in a program and address the issues that gave rise to it. Those states with more developed capacity may be able to experiment with alternate approaches that may become models for future nationwide reform. Ambitious governors with aspirations of higher office can and have used waivers to demonstrate national leadership on pressing social programs (Gais and Fossett 2005).

Waivers in Medicaid and Education Policy

Table 1 shows the number of waivers that the Centers for Medicare and Medicaid Services (CMS) granted annually in 1990–2008.[4] Between the two types of Medicaid waivers discussed below, CMS granted 348 waivers. Records from the Department of Education (ED) exist only for 1995–99 and 2002–2008, which table 1 also presents. During these two time periods, ED granted 301 waivers to state governments. These totals understate the effect of waivers on intergovernmental relations. Both agencies, but particularly CMS, issues waivers that either are valid for multiple years or can be renewed indefinitely, almost like licenses (Weissert and Weissert 2008). By October 2007, forty-eight states and the District of Columbia operated 257, 1915 waivers (Thompson and Burke 2007).

CMS offers two primary types of Medicaid waivers. Under Section 1115 of the Social Security Act, CMS may grant states "demonstration waivers" that allow for broad changes to the delivery of services, subject to ongoing federal verification that states are acting to achieve Medicaid's goals. 1115 waivers have allowed states "to experiment with a wide variety of health-care service delivery, financing, and coverage options" (Schneider 1997, 43). States have used 1115 waivers to expand or limit eligibility criteria, services and benefits offered, and cost. Over time 1115 waivers have strayed from their original purpose of allowing the federal government to experiment with reform in individual states and instead allow state governments increased input into the shape of Medicaid programs in their state (Thompson and Burke 2007; Weissert and Weissert 2008).

Section 1915 of the Social Security Act allows CMS to grant more targeted waivers that do not require ongoing evaluation but allow for "alternative health

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Table 1 CMS and ED waivers to all state governments, 1990–2008

Year	1115 Medicaid waivers (CMS)	1915 Medicaid waivers (CMS)	ESEA/NCLB waivers (ED)
1990	0	13	–
1991	0	21	–
1992	0	15	–
1993	4	18	–
1994	0	15	–
1995	5	17	4
1996	3	14	11
1997	3	11	35
1998	3	18	72
1999	2	14	88
2000	2	9	–
2001	4	18	–
2002	8	14	0
2003	2	16	16
2004	9	15	4
2005	7	14	4
2006	6	13	20
2007	3	15	18
2008	2	15	29
Total	63	285	301

Sources: U.S. Department of Education 2003, 2011; CMS 2012.
Note. ED did not grant waivers granted from 1990 to 1994 and from 2000 to 2001.

care delivery and payment systems (mainly managed care) and the provision of services in a home or community-based setting rather than a larger institution'' (Thompson and Burke 2009). 1915 waivers helped overcome Medicaid's bias toward institutional care and increased the number of people who received care in a home or community based setting greatly (Thompson 2012). In 2004, over one million of the 2.7 million Medicaid recipients (38 percent) received treatment from services provided under 1915 waivers. Their effect on spending was even more dramatic. Until the rise of 1915 waivers, spending on home and community based services (HCBS) was a relatively small part of Medicaid expenditures for long-term care, but by 2004, services authorized under 1915 waivers accounted for 20.5 billion of the 31.2 billion dollars spent, or 66 percent. Whereas existing Medicaid law insisted that all disabled must have access to all services, 1915 waivers allowed states to place benefit limits based on geography, type of disability, and total number of participants (Thompson and Burke 2009, 23).

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In education, the scheduled 1994 reauthorization of Elementary and Secondary Education Act (ESEA) gave rise to ambitious programs like Goals 2000, which encouraged states to develop systems of curricular standards and standardized tests. Fearful of overly expanding the federal role in K-12 public education, Congress only passed the ESEA reauthorization after promising states "an unprecedented amount of flexibility" in its implementation (Superfine 2005, 18). The law allowed ED to waive any requirement that interfered with a state or LEA school improvement plans. Superfine (2005) argues that waivers and other methods of flexibility robbed the ESEA reauthorization of its ability to improve U.S. public education.[5]

Initially, ED discouraged state requests for waivers from NCLB provisions, possibly because waivers gave an easy target to critics like Superfine who argued that flexibility had undermined the ability of previous reform efforts to improve public schools. However, beginning in 2005, ED began to offer states flexibility in the terms it would approve as compliant with NCLB. In addition to waivers, ED offered "workbook amendments, which Erpenbach and Forte (2005, 2006, 2007) considered to be the functional equivalents of waivers.[6] One amendment that ED granted to numerous states allowed schools and LEAs to change the way they used test scores to calculate Adequately Yearly Progress (AYP). NCLB's remedies to help students in underachieving schools only activate after a school or LEA misses AYP benchmarks for two years in a row and is assigned "needs improvement" (NI) status. In the 2004–2005 school year, under the original method of determining AYP, 36.4 percent of California's and 63.5 percent of Georgia's school districts would be have been labeled NI. However, both California and Georgia were granted a waiver to use a new "grade span" method to calculate AYP, which resulted in only 14.4 percent of California's districts and 6.6 percent of Georgia's districts were labeled NI (Sunderman 2006). In 2011, citing Congress's failure to reauthorize NCLB on schedule as required, President Barack Obama indicated that he would instruct ED to grant waivers to state governments to change fundamental parts of NCLB, including its requirement that all students be proficient in reading and math skills by the end of the 2013–14 school year (Cavanaugh 2012).

Factors That May Impact Waiver Grants

States that apply for waivers are more likely than not to receive them. Thompson and Burke (2007) find that CMS approved roughly 57 percent of 1115 waiver requests under both the Clinton and George W. Bush Administrations, although the Bush's rate of approval is higher if one includes requests related to Hurricane Katrina. Once states receive Medicaid waivers, they start to resemble an intergovernmental license, with renewal becoming routine (Weissert and Weissert 2008). From 1995 to 2001, ED approved 613 of 780 state and local government

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waiver requests, or 78.6 percent (Gormley 2006). From 2004 to 2007, ED rates of approval of NCLB waiver and workbook amendment requests hovered around 70 percent (Erpenbach and Forte 2005, 2006, 2007).

Beyond the likelihood that waivers that are requested are usually granted, we know little about the causes variation in state requests and federal approval of these request. The federal government is more likely to grant waivers to all states when intergovernmental conflict is high or in response to expansive new legislation like NCLB (Gormley 2006). Only one known study considers systematic empirical evidence to explain the causes of waiver variation in even one policy area. Analysis of NCLB waiver and workbook amendment requests for a three-year period suggest that larger states, more affluent states, and more Republican states were more likely to request flexibility and that ED was more likely to approve flexibility requests from more Republican states, states that received more federal funding, and states with more extensive systems of standardized testing prior to NCLB approval (Shelly 2011). To this point no study has systematically analyzed federal waivers across multiple policy areas, years, and states to determine whether certain factors influence federal response to state requests for flexibility generally (Thompson and Burke 2007).

Perhaps the most obvious characteristics which may give states an advantage in the waiver process are money and population size. The primary advantage large states enjoy stems from the capacity of state governments.[7] States with larger and better resourced state government are better able to pursue independent policies (Bowman and Woods 2007). Larger and better resourced state governments develop and submit more waiver requests (Shelly 2012) and are better able to develop waiver proposals that will win federal approval (Burgess and Gress 1999). Areas with less population may lack the necessary government strength to seek waivers and are be likely to bargain with the federal government (Agranoff and McGuire 2004). More populous states may be more likely to have lobbying offices in Washington or larger Congressional delegations, both of which may give them greater influence with the federal government (Smith 2008).[8]

For many of the same reasons that large states enjoy an advantage in negotiations with the federal government, more affluent states may be better able to secure favorable outcomes (Watts 1999). The federal government may trust that states with greater resources will be better able to administer the programs their waivers propose and therefore be more likely to grant them (Schneider 1997). More affluent states may provide greater resources to their state governments to develop winning waiver proposals, and the potential high costs of effectively bargaining with the federal government may deter less affluent states, no matter how great their need for flexibility may be (Agranoff and McGuire 2004; Schneider 1997).

Scholars have found that a host of other factors have influenced variation in state policies in relevant areas. Numerous studies have shown that the racial and

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ethnic composition of a state's population influence its social welfare and education policies (Fellowes and Rowe 2004; Hero and Tolbert 1996; Radcliff and Saiz 1995). The dispersion of a state's population might also affect the number of waivers they receive. Often rural states with low population density can struggle to deliver the level of service that the federal government requires, a situation observers believe to be true of Medicaid and NCLB (Reeves 2003; Thompson and Burke 2009).[9] Waivers may offer states with more dispersed population ways to participate in programs that they otherwise could not. For example, 1915 waivers allow for variation in services provided based on geography and total population served (Thompson and Burke 2009). States with relative large populations of children eighteen and under might be more likely to request some say into the role the federal government plays in that state's public education. Medicaid has several programs that provide service exclusively to elderly patients, so states with large elderly populations may be more likely to seek and receive input into the design of Medicaid in their state.

Political factors may also affect a state's likelihood of requesting and receiving a waiver. Strong interest groups may push state governments to request flexibility and help them make their case to the federal government (Krane 2007; Posner 2007; Thompson and Burke 2009). Teachers unions and other groups representing educators were among the most vociferous critics of NCLB, so states with a strong public education interest group coalition might be more likely to seek relief from federal education regulations (National Education Association 2007; Public Agenda 2003). The strength of a state's interest groups representing nursing homes and senior citizens has an impact on a host of state Medicaid policies (Pracht and Moore 2003; Miller and Wang 2009). Gais and Fossett (2005) suggest that presidents may use waivers to help those governors that they consider allies to achieve success. In the first great expansion of 1115 waivers in the eighties and nineties, some evidence suggested that the federal government's likelihood of waiver grants depended on which political party controlled the White House (Schneider 1997). One might also suspect that presidents may use waivers as a way to curry favor with states that have a history of being competitive in past federal elections.

Analyzing Waivers

This article presents results from statistical analyses of original time series panel data that contains values for the fifty states for all variables from 1991 to 2008 except where noted. CMS (2012) provides data on all Medicaid waivers granted during this time period. ED (U.S. Department of Education 2003, 2011) provides information on all waivers granted under the 1994 reauthorization of the ESEA between 1995 to 1999 and under NCLB between 2002 and 2008.[10] The number of

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waivers each state received each year served as the dependent variables for the models described below. The 1915 Medicaid and NCLB dependent variables were employed in a series of estimates of random-effects negative binomial regression models. Negative binomial regression is the appropriate modeling technique for count dependent variables with evidence of over dispersion (King 1989). Negative binomial estimations that use counts of 1115 Medicaid and ESEA waivers as dependent variables do not converge, so the estimated models for these two dependent variables use random-effects Poisson maximum likelihood analysis (Allison 2012).[11] All results presented below are robust when estimated with random-effects ordinary least squares regression models.

Included in the models are independent variables that measure factors described in the previous section that may influence the likelihood that states receive waivers to federal education and Medicaid policy. The primary measures of state government capacity are total funding of state government per year and state government spending (SGS) per 100,000 of population.[12] The latter variable is included to test whether small states can gain more waivers by having a well-resourced state government relative to their population. Because population size and state government funding are so highly correlated, separate models needed to be constructed for each. The primary measure of state affluence is its poverty rate. This study uses standard Census data for all demographic measures. Klarner's (2003, 2012) data allows for the construction of a dichotomous variable that measures whether a state's governor belonged to the same political party as the sitting president. To measure a state's perceived electoral importance independent of its size, a dichotomous variable (''swing state'') was used reflecting whether the margin of victory for the winner of a state's preceding presidential election was less than five percent of its total voters. At three separate instances between 1991 and 2008, Nownes, Thomas, and Hrebenar (2008) polled experts in all fifty states on which interest groups had strong influence, some influence, or no influence over state policy. The author uses this data to include independent variables in the Medicaid models that measure the strength of interest groups representing senior citizens and nursing homes in each state and in the education models that measure the strength of teacher unions and other interest groups with an educational focus, such as superintendent, school board, or parent organizations.[13]

Results

Table 2 presents the results of model estimates of federal 1115 and 1915 Medicaid waivers granted to states. In the random-effects Poisson maximum likelihood model estimates that use 1115 Medicaid waivers as the dependent variable, no independent variable has an effect that meets conventional thresholds of statistical significance. The only effect that comes close is that of SGS in Model 2 ($p = .057$).

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Table 2 Factors influencing Medicaid waivers grants, 1990–2008

	Section 1115 waivers (Poisson)		Section 1915 waivers (negative binomial)	
	Model 1	Model 2	Model 3	Model 4
Total population/100,000	.0030 (.0023)		.0047 (.0012)**	
SGS		.0010 (.0005)		.0010 (.0003)**
SGS/population divided by 100,000		.0742 (.0715)		–.0667 (.0477)
% Poverty	.0529 (.0450)	.0556 (.0454)	–.0280 (.0246)	–.0288 (.0245)
Controls				
Population density	–.0003 (.0007)	–.0005 (.0008)	–.0013 (.0005)*	–.0012 (.0005)*
% Hispanic	.6367 (1.8273)	.2804 (1.8094)	.5557 (1.0083)	.8389 (.9721)
% Black	.5533 (1.7161)	.7691 (1.7259)	2.5101 (.9284)**	2.4610 (9392)**
% 65 and over	6.6474 (8.6487)	10.4439 (8.9982)	6.9459 (4.4036)	6.4168 (4.7326)
% 18 and under	–5.7838 (6.3808)	–3.5307 (6.5714)	4.6629 (3.0983)	4.5872 (3.1644)
Governor/president same party?	.1549 (.2550)	.1356 (.2563)	–.0994 (.1304)	–.0932 (.1309)
Swing state?	.0917 (.2883)	.2054 (.3006)	.2147 (.1442)	.1961 (.1500)
Interest group strength: senior	–.2704 (.2862)	–.2294 (.2866)	.0927 (.1292)	.1087 (.1277)
Interest group strength: nursing homes	.0218 (.1773)	.0448 (.1784)	.0289 (.0879)	.0394 (.0881)
Summary statistics				
N	950	950	950	950
Log likelihood	–229.1271	–228.1304	–640.2700	–640.0298

*$p < .05$; **$p < .01$.

The random-effects negative binomial regression model estimates that use 1915 Medicaid waivers as the dependent variable shows that both the total population (in Model 3) and the total SGS (in Model 4) are statistically significant at $p \leq .01$. In Model 3, an increase of one standard deviation (SD) in the total population variable (6,053,200 people) is associated with a state receiving .2863 more 1915 waivers. In Model 4, an increase in one standard deviation in the SGS variable (252.01 million dollars) is associated with a state receiving .2520 more 1915 waivers. The percent black variable is significant at $p \leq .01$in both models, and the population density variable is significant at $p \leq .05$ in both models. An increase of one SD in the share of state's population that is African American (9.4006 percent) is associated with .2359 more 1915 waivers, and an increase of one SD in a state's population density (231 more people per square mile) is associated with .3003 more 1915 waivers.

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Table 3 Factors influencing ESEA (1995–99) and NCLB (2002–2008) waiver grants

	ESEA waivers (Poisson)		NCLB waivers (negative binomial)	
	Model 5	Model 6	Model 7	Model 8
Total population/100,000	.0022 (.0018)		.0023 (.0023)	
SGS		.0010 (.0005)*		.0008 (.0004)
SGS/population divided by 100,000		.0000 (.0000)		.0000 (.0000)*
% Poverty	–.0779 (.0352)*	–.0726 (.0336)*	.0479 (.0501)	.0410 (.0497)
Controls				
Population density	–.0001 (.0004)	–.0004 (.0005)	.0006 (.0006)	.0001 (.0007)
% Hispanic	1.9358 (1.6139)	1.5994 (1.4774)	.0644 (1.8923)	.3514 (1.7654)
% Black	–.0663 (1.2102)	–.1581 (1.4774)	5.7054 (1.5420)**	6.2217 (1.5417)**
% 65 and over	3.0817 (5.4458)	6.1246 (5.4124)	–19.4715 (12.4231)	–9.7704 (13.1456)
% 18 and under	–3.1770 (3.7435)	–4.1230 (3.7378)	–6.5655 (13.8725)	–2.6747 (14.3858)
Governor/president same party?	–.0959 (.1755)	–.1414 (.1754)	–.2344 (.2442)	–.2133 (.2392)
Swing state?	.0942 (.1764)	.1373 (.1756)	.6524 (.2734)*	.7427 (.2726)**
Interest group strength: teachers' union	–.3076 (.1385)*	–.3664 (.1330)**	.0582 (.2125)	–.0066 (.2216)
Interest group strength: other education groups	.1956 (.0989)*	.1657 (.0923)	.2918 (.1512)	.2023 (.1533)
Summary Statistics				
N	250	250	350	350
Log likelihood	–304.5695	–302.6320	–212.7652	–210.8339

*$p<.05$; **$p<.01$.

Table 3 presents random-effects Poisson maximum likelihood model estimates of federal waivers granted to states from 1995 to 1999 under ESEA and random-effects negative binomial regression model estimates from 2002 to 2008 under NCLB. In the ESEA models, the SGS variable (Model 6) is statistically significant at the $p \leq .05$ level. The marginal effect of a one SD change in SGS (211.69 million dollars) is associated with a state receiving .2117 more ESEA waivers.[14] Less affluent states are less likely to receive waivers ($p = .031$), with a one SD increase in a state's poverty rate (3.536 percent) associated with .2567 fewer waivers. States with relatively strong teachers unions received fewer waivers ($p = .006$). A decrease of teachers unions' strength on the Nownes, Thomas, and Hrebenar scale by one SD (.603) is associated with .2209 more waivers. Finally, the effect of the independent variables that measures the strength of other education lobbying groups is close enough to conventional thresholds of statistical significance ($p = .073$) that one can be confident that its effect is real. A one SD increase in the strength of these groups (.827) is associated with .1380 more waivers.

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In the NCLB models, the percent African American and swing state variables are statistically significant in both models. Based on marginal effects generated from Model 8, a one SD increase in a state's African American population (9.401 percent) is associated with .5363 more NCLB waivers, and swing states were granted .6524 more waivers. In Model 8, a state government's spending per 100,000 of population is a significant predictor of NCLB waivers received at the $p \leq .05$ level, but the effect size is negligible. An increase of one SD in SGS per 100,000 population ($2,075,399) is associated with less than .0001 more waivers. A final independent variable whose effect approaches conventional thresholds of statistical significance is SGS ($p = .10$). If one accepts that this effect is real, a one SD increase in SGS (300.13 million dollars) is associated with .2401 more waivers.

Variation Across Policies

Two principal conclusions can be made from these results. First, this study offers support for the findings of authors such as Derthick (2001) that intergovernmental politics varies across policy areas. Table 1 shows that despite not granting any waivers from 1990 to 1994 and 2000 to 2001, ED granted almost as many waivers in twelve years (301, or approximately twenty-five per year) as CMS granted in nineteen years (348, approximately eighteen per year). The disparity in rates of waivers granted between ED and CMS does not necessarily mean that the federal government is willing to allow greater flexibility in public education. The method this study employs is not able to distinguish the amount of flexibility each waiver gives, so each CMS waiver could grant significantly more flexibility than an individual ED waiver. This hypothesis is especially plausible for 1115 waivers, which grant broad authority to deviate significantly from federal Medicaid requirements. Also, waivers may be the most dramatic agreement on flexibility that state and federal governments can reach and may only be considered after less dramatic measures are exhausted. Besides waivers, the federal government can offer flexibility through rulemaking, selective enforcement, changing the interpretation of the law, and a host of other methods (Gais and Fossett 2005). Relative to ED, CMS could grant more flexibility through other methods and less through waivers, a hypothesis that is beyond the subject of this study to test. The high number of waivers in 1998 and 1999 inflates the average for annual education waivers and may indicate circumstances particular to the ESEA, rather than a more generous attitude toward waivers in ED.

On the other hand, one should allow for the possibility that the federal government may simply grant more flexibility in education policy than in Medicaid. For most of U.S. history until the fifties, the federal government was largely uninvolved in public education. Today, the idea of state and local control of public education remains deeply ingrained in the American political psyche today

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(McDermott 1999; Reed 2001), and the federal government often seems able to act in public education only when it can "borrow strength" from the capacity of state and local educational agencies (Manna 2006). Given such constraints, the federal government may recognize it needs state and local cooperation, while state and local officials may understand their relatively strong bargaining positions.

For the general study of federalism, what is most important may be not differences between the role of waivers in Medicaid and education policy mean but that such differences exist at all. With only two exceptions, no independent variable was a statistically significant predictor of more than one type of waiver. Different factors, which may be related to how a state experiences an issue, seem to matter for waivers in different policy areas. Future studies of flexibility in state/federal relations should keep in mind that the factors that determine which states receive flexibility and which do not will vary greatly depending on the policy under discussion.

Capacity, Population, and Politics (Maybe)

The mixed results from the models mean that one cannot draw hard conclusions about a single set of independent variables that scholars can use to predict how many waivers a state will receive. That said, these findings do suggest that regardless of context, some categories of factors are likely to influence cross-state variation across multiple policies. Scholars should think broadly about sets factors that will probably influence the waivers a state receives and one that may.

First, state government capacity appears to have played a role in the politics of Medicaid and public education, as states with greater capacity appear more likely to get waivers. In the 1915 and ESEA models, SGS had a statistically significant effect on the dependent variable. While its effect does not meet conventional thresholds for statistical significance in the other two models, the effect in both the 1115 ($p = .06$) and NCLB ($p = .10$) models does approach these thresholds, which suggests (albeit not as strongly as in the other two models) that SGS may have influenced which states received these waivers.[15]

To better demonstrate the magnitude of these effects, table 4 uses the marginal effects of the SGS independent variables generated from the models in tables 3 and 4 to predict the difference in the number of all four types of waivers between California, the state with the greatest SGS in 1998 and 2008, and five other states when the other independent variables in the models are controlled. The models predict that, based solely on differences in SGS, California would have received 1.490 more 1115 waivers, 1.490 more 1915 waivers, and 1.192 more NCLB waivers in 2008 and .790 more ESEA waivers in 1998 than North Carolina, the state that spent the tenth most on state government in 2008.[16] Compared to South Dakota, which spent the least of all fifty states in 2008 on state government, California was

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Table 4 The effect of SGS on medicaid and education waiver rates for selected states [California SGS: 2,000 (2008); 1,100 (1998)]

	SGS 2008 (SGS 1998)	SGS rank 2008	SGS difference with CA 2008 (SGS difference with CA 1988)	Expected 1115 waiver deficit with California in 2008	Expected 1915 waiver deficit with California in 2008	Expected ESEA waiver deficit with California in 1998	Expected NCLB waiver deficit with California in 2008
Marginal effect of one million dollar change in SGS				0.0010	0.0010	0.0010	0.0008
States							
North Carolina	510 (310)	10	1,490 (790)	1.490	1.490	0.790	1.192
Connecticut	310 (200)	20	1,690 (900)	1.690	1.690	0.900	1.352
Hawaii	220 (130)	30	1,780 (970)	1.780	1.780	0.970	1.424
Nebraska	100 (61)	40	1,900 (1,039)	1.900	1.900	1.039	1.520
South Dakota	42 (29)	50	1,958 (1,071)	1.958	1.958	1.071	1.566

Note. Expected waiver deficit calculated by multiplying marginal effect of a one unit change in SGS from each model by SGS difference between each state and California. All spending figures in millions of dollars.

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expected to receive 1.958 more 1115 waivers, 1.958 more 1915 waivers, 1.566 more NCLB waivers, and 1.071 more ESEA waivers. The reader should note that these figures represent the difference between California and other states for one year and that the models predict a similar effect for each year a regulation endures. For example, to understand the model's prediction for the total difference in the number of unique 1915 Medicaid waivers that California and South Dakota had received by January 1, 2009, one would need to calculate the sum of the expected difference for each individual year from 1990 to 2008, which would be something like 1.958 waivers per year multiplied by nineteen years.[17]

That states with more governing capacity achieve more waivers may come as little surprise to scholars of federalism. Since at least the introduction of the term "asymmetrical federalism," scholars have federalism have acknowledged and researched the differences that subunits of a federation receive from the central government due to differences in size and wealth (Watts 1999, 24). That capacity's role is obvious makes understanding its role no less important. Larger and better financed state governments are likely to receive more waivers from the federal government, and a study of any instance where the federal government grants waivers to states that fails to consider these factors is likely to miss a great deal of the story. Of course, capacity is not limited to just funding and raw manpower. The professionalization of a state's bureaucracy, the expertise of key state officials highly placed within state government, their connections in Washington, and a host of other factors may influence its ability to comprehend areas where the federal government may offer waivers and its ability to craft winning waiver proposals. To some extent, what types of capacity matter will depend on the federal law in play. The point is that capacity in some form will likely matter and matter significantly. However defined, scholars of future instances of waivers would do well to start their analysis here.

The second variable with a statistically significant impact on multiple dependent variables is the African American variable, with a greater share of a state's population self-identifying as African American associated with more 1915 and NCLB waivers. That states with larger African American populations should seek and receive more waivers to federal programs targeted at the poor makes sense. Unfortunately, race and income are highly correlated in the contemporary United States, so African Americans can be expected to participate in Medicaid, a federal healthcare program for low-income citizens, at higher rates than the general population. Throughout recent U.S. history, one of the key drivers of the federal government's involvement in public education has been the need to offset patterns of discrimination and ensure that every child has the chance to receive a quality education (Hochschild and Scovronick 2003). When President George W. Bush made clear that he intended NCLB to end "the soft bigotry of low expectations," he identified that NCLB fit into and extended this history of federal action (Noe

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2004). African-American students make up a disproportionate share of the lowest performing students in the United States, so states with larger shares of African American students may have had a greater need or desire to seek NCLB waivers.

These results suggest that states with higher shares of the population a program targets will be more likely to seek and receive waivers. As discussed above, most federal programs require at least some and often a great deal of state government effort to implement, and state governments with a disproportionate share of the targeted population face a disproportionate share of the implementation burden, which in turn may make them more likely to seek and receive some adjustment in the terms of that implementation. The populations that will drive states to seek waivers may vary depending on the federal law under consideration. To use a hypothetical example, should the federal government start to issue Medicare waivers, one might hypothesize that states like Florida and West Virginia with a relatively high percentage of elderly residents might be more likely to pursue them (Werner 2011). Scholars trying to predict future waivers must first examine which populations the program most affects and ask whether the size of that population varies by state. If so, that variation may contribute to waiver variation.

These results provide mixed findings as to whether partisan political dynamics impact waivers. The estimations for three of the four models show no evidence that either a shared partisan identification between a state's governor and the president or a state's contestability in presidential elections leads states to receive more waivers. The evidence is different for NCLB, and that difference may matter. Previously, Shelly (2012) found that states where the Republican Party won a greater share of the popular vote in presidential elections were more likely to submit requests for NCLB waivers and workbook amendments, and the federal government granted a higher percentage of requests to these same states. This study does not find evidence of partisan favor in NCLB waivers, but it does find that states that were more competitive in federal elections were more likely to receive waivers.

Developments since 2000 suggest that these results may represent the increased politicization of the waiver process. Poole's and Rosenthal's famous index indicated that political polarization has been on the rise during this time period (Carroll et al. 2013). Previously obscure procedural mechanisms within the federal government like the debt ceiling have erupted into contentious debates stratified by party. The results presented in this article give some credence to a hypothesis that political polarization may be spilling into federal/state relations generally and the politics of waivers specifically. In this story, because the bulk of the Medicaid waivers and all of the ESEA waivers this paper considers took place in a less polarized era, they were not affected by partisan dynamics. NCLB took place during a more polarized time, polarization affected NCLB waivers, and future waiver requests and decisions may be subject to these dynamics so long as polarization

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remains high. The author stresses that this hypothesis remains unconfirmed and that accepting generalizations made from evidence from a single policy is not wise, particularly when 75 percent of the models presented here show no evidence of a partisanship effect. Maybe NCLB or the Bush Administration was unique, and that removing either or both from the waiver equation will cause politics to fall away as a causal factor. Perhaps the Obama Administration's NCLB waivers will show no hints of partisan influence. However, the results presented here do suggest that scholars of contemporary waiver proposals should consider whether relevant partisan factors affect who applies and who receives waivers.

Notes

Thank you to Ann Bowman, Dawn Carsey, John Dinan, Shana Gadarian, Rick Kearney, Carl Klarner, David Lewis, Edward Miller, Shanna Pearson, Mitch Pickerill, and Frank Thompson for their support and assistance.

1. At least two studies have used multivariate time series statistical analysis to assess the efforts of individual states to influence the federal government over time: Jensen's (2010) analysis of governors' lobbying offices in DC and Creek's (2012) analysis of state government testimony before Congress. Both of these studies remain unpublished.
2. The only exceptions to the preceding two sentences are that Gormley (2006) uses crosstab data to consider waiver requests in three policy areas and Shelly (2011) uses multivariate statistical analysis of flexibility in state/federal NCLB relations.
3. In December 2008, 4,362,688 full-time equivalent employees worked for the fifty state governments, compared to 2,518,101 full-time employees of the federal government (U.S. Census Bureau 2012).
4. While this study does not consider welfare policy, waivers played a significant role in the debate and passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). During the debate of that law, President Clinton claimed that 75 percent of welfare recipients were already involved in waiver programs, many of which mirrored those programs that PRWOWA proposed (Gais and Fossett 2005).
5. When this article refers to the ESEA, it refers only to the 1994 reauthorization. While NCLB is technically an ESEA reauthorization, accepted practice is to refer to it as NCLB.
6. For a more complete discussion of the similarities between workbook amendments and waivers, please see Shelly (2011). This study does not code work amendments as waivers.
7. For this data set, state population size correlates highly with total state government employees ($r = .9671$) and expenditures ($r = .9562$).
8. Large states enjoy other advantages not related to capacity. For example, they may receive more favorable treatment from the federal government due to their electoral importance. The presidential administration at the top of the executive branch may be more likely to grant waivers to large states in the hopes of furthering its electoral success and that of its party.

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9. Then again, Agranoff and McGuire (2004) find that rural states may lack professional staff sufficient to negotiate effectively with the federal government, which suggests rural states may submit fewer waiver requests and have less success with the claims they do submit. In 2004 Secretary of Education Rod Paige announced a series of regulatory reforms designed to give states with large rural populations greater flexibility in NCLB implementation, which suggests that the federal government is not deaf to the problems facing rural areas (Manna 2011).
10. Until 1994, the ESEA did not contain waiver authority. From 2000 to 2001, because ED was consumed with advising the legislative process that led to NCLB, ED saw little sense in holding states to the previous ESEA, which was already overdue for authorization, and granted no waivers (Curet 2011).
11. The *N* reported for model estimation with time series panel data is large because each year under consideration yields an observation for each of the fifty states. For example, data for the Medicaid dependent variables is available for nineteen years, so the total *N* equals 950 (19 years*50 states/year).
12. SGS and employees are highly correlated ($r = .9421$). For brevity's sake, this article presents only the results of estimations with state government funding independent variables, but the results presented here are robust if total capacity and capacity per 100,000 of population are measured using employees.
13. The online appendix contains the sources and descriptive statistics for all variables.
14. The descriptive statistics for independent variables from 1995 to 1999 and 2002 to 2008 differ from those from 1991 to 2008 presented in the online appendix.
15. CMS granted so few 1115 Medicaid waivers (3.15 total per year) that no independent variable had a statistically significant effect. One can assume that the decision to grant 1115 waivers is either largely due to factors omitted from this model or, more likely, reserved for specific, isolated instances in which states require dramatic exceptions to existing Medicaid policy. Such instances will be rare and idiosyncratic almost by definition.
16. Because the 1994 reauthorization of the ESEA generated waivers only from 1995 to 1999, the author uses population data from 1998, rather than 2008, to calculate the marginal effect of population on ESEA waivers. For 1915 Medicaid and NCLB waivers, 2008 is the most contemporary data for which these models can predict the marginal effects.
17. The failure of the SGS per 100,000 of population variable to demonstrate a statistically significant effect in any of the eight models this article describes shows that smaller states cannot increase spending on state government enough to narrow this gap. Because Medicaid waivers overwhelmingly tend to be renewed once they are granted, the expiration of waivers is not likely to mitigate the difference in the total number of waivers under which a state operates at a given time. If Texas received a 1915 Medicaid waiver in 1992, it is likely to still be operating under it (Weissert and Weissert 2008).

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