

## \*Executive Prerogative: The Use of Executive Orders in New Jersey

By

Jason D. Rivera<sup>†</sup>  
Research Associate  
William J. Hughes Center for Public Policy  
The Richard Stockton College of NJ  
PO Box 195  
Jimmie Leeds Road  
Pomona, NJ 08240  
[Jason.Rivera@stockton.edu](mailto:Jason.Rivera@stockton.edu)

Janet M. Wagner  
Dean of Business  
The Richard Stockton College of NJ  
PO Box 195  
Jimmie Leeds Road  
Pomona, NJ 08240  
[Janet.Wagner@stockton.edu](mailto:Janet.Wagner@stockton.edu)

### **Abstract:**

In the midst of political polarization and the continuous debate over difficult national policy issues, such as job growth, unemployment, healthcare, education policy and fiscal responsibility, individual states are left with the responsibility of developing public policy that seek to address their population's concerns until federal decisions are made. Due to the growing influence of polarized party politics, in addition to a number of other dynamics, governors in most states have the ability to use executive orders to push policies they view as important to the forefront of legislative business with little legislative debate. This article uses the case study of the New Jersey Office of the Governor to observe the tendency of New Jersey governors to utilize executive orders in order to push their legislative agendas. This longitudinal study of the tendency of the governor to use this executive power is observed in relation to the composition of the whole state legislature, the state senate and assembly, and the political affiliation of prior governors between 1947 and 2009. Through observing the tendencies of past New Jersey governors, predictions on the use of executive orders by New Jersey governors in the future will be presented to help prepare legislatures for the executive actions of future governors.

**Key Words:** New Jersey, Executive Orders, State Legislatures, Governors

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\* The authors would like to acknowledge the contributions of Emily Davidson who served as a summer student intern for the William J. Hughes Center for Public Policy and aided in the preparation of this paper.

<sup>†</sup> Corresponding author

## **Introduction**

Issues such as job growth, unemployment, healthcare, education policy and fiscal responsibility are currently on the national agenda, and until federal decisions are made state governments are responsible for attempting to address these issues. A child's civics textbook will describe the classic ideal of the governor and the state legislative bodies working in concert to pass legislation that meets the needs of their state. However, the relationship between governors and state legislatures is a considerably more complex issue, raising interesting questions regarding executive strength and uses of power.

As a way of examining the interplay between the executive and legislative branches at the state level, this paper will examine the use of executive orders as a policymaking tool. In many states, executive orders are an attractive tool that can be utilized by governors to set policy agendas. The use of executive orders is one that has not received a large amount of attention in academic and professional sources. A significant number of sources relating to the issue are more than two decades old and subsequently need to be updated with new trends in political practice and a recognition of the increased political polarization in many arenas. Additionally, most of the research about the use of executive orders focuses on the national level.

This paper will study the usage of executive orders at the state level of government, using New Jersey as a case study. Governors in most states have the ability to use executive orders to push policies they view as important to the forefront of legislative business with little legislative debate. In a time of growing influence of polarized party politics, increasing factions within individual parties and the general presence of divided government, it is important to understand the ways in which unilateral policymaking methods, such as executive orders, are being

employed, and to look for trends and patterns in past usage that can inform the discussion about effective and fair ways of governing.

In the following section, we discuss the general issue of executive strength and examine a number of methods for the executive branch to use that power. The next section discusses gubernatorial executive orders in particular. We then discuss the dataset developed about the use of executive orders by New Jersey governors, and develop some hypotheses. The analysis of the dataset follows, and we conclude the paper with suggestions for further work.

### **Executive Strength and Manifestations of Power**

The strength of the state legislature with regard to the governor has received a significant amount of attention. Herzberg and Rosenthal (1971) argue that legislative strength is defined as the power a legislature has compared to the power a governor has over the determination of state policy and the direction of the government. According to Burns (1995), the beginning decades of the twentieth century witnessed changes in the power of governors due to state government reorganization, the rise of executive branch bureaucracies, and other Progressive Era reforms. However, increases in the executive powers of the governor were not consistent across the country. Because of the American federal system, in some states the governor became the dominant political actor and in others the office of the governor remained relatively weak (Burns 1995). Beyle (1983) maintains that the formal power of governors is contingent on the physical size, economic wealth and urban growth of a state. Moreover, Bernick (1979; Beyle 1983) divides states into five different categories<sup>1</sup> that describe their respective governor's power in relation to their legislature. Along these lines, New York, Pennsylvania, New Jersey, and Massachusetts have been observed as states with relatively powerful chief executives.

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<sup>1</sup> Beyle (1983) divides states into the following categories: "very strong," "strong," "moderate," "weak," and "very weak."

Herzberg and Rosenthal (1971) argue that strength is partly based on partisan distribution of power in a state. Little attention has been given to the issue of divided government at the state level (Morehouse and Jewell 1992). In divided government, governors lack many of the advantages that are present when a governor is supported by a majority (Morehouse 1996). Bernick and Wiggins (1991) argue that when the legislature is controlled by the governor's party opposition, the legislature is able to constrain the governor's legislative authority. According to Morehouse (1996:362), when a divided government is present, the house speaker, senate presiding officer, majority leaders, and usually all committee chairs are members of the opposition party and are in a position to control the legislative timetable and agenda. When situations similar to these occur, the governor may have to make compromises that result in less partisan voting, which can potentially weaken support for the governor within his/her own party.

A lack of a divided government does not necessarily mean that the governor will be successful in his/her programs being enacted into law (Taylor 2008). Although Beyle (1983) maintains that governors usually exhibit greater formal powers in states where there is greater political party competition, such as in divided governments, competition within individual parties also has the ability to constrain the power of the governor. When there are factions present within political parties, even having one's own political majority in the legislature can have mixed outcomes for the governor. The presence of factions within the governor's own political party makes it difficult for him/her to build legislative coalitions to support policies (Taylor 2008). Similar to when a governor's political party is weak, factional party organization disperses power among different ideologies throughout the legislature and not solely in the numeric strength of the governor's party members in the legislature, subsequently decreasing the power of the governor (Herzberg and Rosenthal 1971). Moreover, when there are factions

within the governor's own political party, the governor must attempt to accommodate some of these factions in order to achieve any legislative success. Again, as in a divided government situation, members of factions that are not accommodated will tend to vote against the governor's proposed programs. According to Morehouse (1996:362), in less cohesive parties, the governor should expect less success in winning unanimous support from members of his/her party, and place a high degree of effort into "wooing" less supportive factions of the party.

Regardless of whether or not there is a divided government present or if a governor's own party is fractured, patronage becomes an important aspect of the governor's power to attempt to implement his or her programs. According to Jewell (1969), patronage is more important in one-party states and states that contain factions within the parties because when a governor lacks the support of a cohesive majority coalition, the governor must build a personal coalition instead. A governor's patronage can consist not only of jobs, but also from services and favors. In most states, the dispensing of jobs is one of a governor's best opportunities to influence legislators; however, this option includes risks because an appointment or appropriation may disappoint more legislators than it pleases. In order to avoid this situation, some governors attempt to ensure party discipline by withholding patronage appointments until the end of legislative sessions (Mahoney 1982); thereby rewarding party members committed to a governor's policy agenda (Jewell and Whicker 1994). Governors can also offer many different types of services and favors to legislative districts, such as improvements to infrastructure that are tangible and meaningful to constituents, which theoretically garners the support of their representatives (Jewell 1969). By increasing support within the legislature through patronage, the office of the governor increases its potential of successfully developing and implementing its own policies.

Through the checks and balances system, legislatures and the office of the governor have the potential to come to a stalemate on issues that are socially or politically controversial. Although in the normal course of policy discussion this may be beneficial so that policies cannot be haphazardly created, in some situations the stalemate must be broken in order to maintain an operating state government. In times like these, all state governors have the power to call their legislature into special session (Bernick 1994). According to Ransone (1982:157) a governor's ability to call a special session developed out of "the belief that certain emergencies might arise, such as war, invasion, or economic collapse which would make it desirable for the legislature to meet at some other time than that regularly appointed by the constitution." Jewell (1969) states that the ability to call special sessions is an important power of the governor, especially when only the governor can call the session. Calling special sessions allows governors to focus attention on specific issues and possibly increase their prestige when the governor is unable to secure legislative cooperation in the regular session on a specific issue (Colburn and Scher 1980). This has specifically been the case in reference to special sessions being called to finalize state budgets (Dometrius 1991). Although calling a special session can be a powerful tool within a governor's political arsenal, Bernick (1994) notes that even when a governor calls a special session, the governor can not force the legislature to act on what is discussed. Moreover, special sessions may cause resentment between the legislature and the office of the governor that can have negative long-term consequences for the governor in reference to future policy implementation (Colburn and Scher 1980; National Governor's Association 1978).

The veto is another topic that has received a significant amount of attention at the national level; however, research on the usage of vetoes at the state level is more limited. Rosenthal (1990) maintains that all governors except the governor of North Carolina have the

power to veto. Illinois, Massachusetts, Montana, and New Jersey allow, through executive amendment, conditional vetoes or amendatory vetoes. Conditional vetoes allow a governor to influence specific items, statements, or even budget allocations within a proposed bill without totally revoking the bill and possibly creating resentment among the legislature. For example, in Illinois, a governor can return a bill to a legislature with recommendations for changes. If the legislature accepts the revisions by a majority vote in each house, the governor certifies the bill and it becomes law. If the legislature does not, the bill is vetoed, and the legislature needs a three-fifths majority in each house to override the veto (Rosenthal 1990). When conditional vetoes are issued, legislators must compromise with one another in order for the specific bill to be passed. Although bipartisan compromise is publicly viewed as beneficial to the policy process (Schulman and Rivera 2008), individual legislators that lose advantages while negotiating changes to the initial bill can potentially become unhappy with the outcomes. This can affect the governor in future policy proposals because those individuals that lost advantages within a bill subsequent to the conditional veto, may develop a political agenda against the development of other bills, even within the governor's own party.

Another way in which governors can influence legislation through their use of vetoes is through the line-item veto. According to Abney and Lauth (1985), the line-item veto provides the governor a mechanism for discouraging pork barrel activities, logrolling, and extravagant appropriations within legislation. To this end, the usage of line-item vetoes has had the effect of making state budgets more conservative in addition to raising the level of bipartisanship cooperation within government. Increased bipartisanship cooperation may be linked to the tendency of governors to utilize this type of veto. Wiggins (1980) maintains that when the governor's opposition party controls the legislative branch, the line-item veto is used on a higher

proportion of bills in comparison to states where the same party controls both branches of government. Although the use of this executive power has the potential of creating hostility among the legislature, it forces different parties into a situation where they must compromise with one another to pass a successful bill; subsequently increasing civility in government activities (Schulman and Rivera 2008).

The absolute veto is yet another way in which a governor can influence or rather block legislative agendas. A great deal of research has focused on the manner in which the president uses the absolute veto; however, in reference to their usage at the state level, more research is needed. Spitzer (2001) argues that presidents' simultaneous use of the return veto and the pocket veto is an attempt to create a practical absolute veto: an unconstitutional power. In addition, this use of the two vetoes creates ambiguity because the pocket veto and return veto are mutually exclusive vetoes that cannot be overridden. Although the absolute veto is not something used at the national level, there are a variety of states that give the governor the ability to utilize the prerogative. In most cases, when a governor issues an absolute veto on a bill, the legislature can override the veto with a two-thirds majority (Fairlie 1917). However, if a veto is overridden by the legislature, it vividly illustrates to the governor that there are serious disconnects in his/her political agenda and the legislature's, which can allude to future policymaking relationships between the two branches of government.

### **Executive Orders and the Office of the Governor**

One of the governors' more influential powers in reference to directing the policy agenda is in their usage of executive orders. The legal basis for executive orders can be found in states' fundamental charters or constitutions. In all, there are only ten states that explicitly grant a governor the power to issue executive orders; however, in many other states executive orders



that have been made have been issued under authority that has been inferred or implied from other constitutional grants of executive power (Bernick and Wiggins 1984). According to Bernick and Wiggins (1984), a governor's usage of executive orders, when not explicitly stated in a state's constitution, has the potential of being the center of litigation. In some cases, the courts liberally interpret executive power clauses within their constitutions, which subsequently confer upon the governor the designation of supreme executive – giving the governor discretion in matters of concern to the executive branch. When state courts interpret their constitutions in this way, the governor is free to issue executive orders as needed for a wide variety of purposes (Bernick and Wiggins 1984).

State constitutions are not the only place in which governors are given the power to issue executive orders. In most states, legislatures have given some form of statutory grant of authority to governors to issue executive orders. Depending on the state, some of these statutes are relatively general in nature, allowing a governor to utilize the executive power liberally; however, in other states they can be relatively specific, limiting the governor to utilize executive orders only in reference to specific issues. The purpose of these statutory grants of authority are designed to allow governors to fulfill their responsibilities as commander-in-chief, and preserve domestic order within the state, which subsequently gives them the ability to be a more active and influential policymaker within state government (King 1980; Bernick and Wiggins 1984). In some cases, legislatures have passed statutes that mandate the governor to issue executive orders under specific conditions; however, under these circumstances governors are not usually placed in a strong position to influence policy but simply to ensure that state government does not lapse on an issue that would be detrimental to the operations of the government. Additionally, allowing governors to initiate policy discussions on pressing issues that the legislature has not had the

ability to come to a decision on places “heat” on the governor (Bernick and Bernick 2008) to be successful in their choice to use executive orders.

### **New Jersey Governors and the use of Executive Orders**

Through the New Jersey Digital Legal Library and the State of New Jersey’s government website we able to access data regarding each executive order issued by a New Jersey governor. We developed a dataset showing the frequency with which executive orders were used for each legislative term in New Jersey between 1947 and 2009. We chose 1947 as the initial year of observation because during that year a new constitution was passed that significantly changed the powers available to New Jersey governors. The consensus is that this new constitution resulted in making New Jersey governors the strongest governors in the nation in terms of administrative authority (Lockard 1964).<sup>2</sup>

The dataset records<sup>3</sup> for each legislative term, the governor, his or her party, the majority party of each branch of the legislature, the party of the legislature as a whole, which was determined by the majority control of both the senate and assembly, and the number of executive orders used in each term. We note that we did not include in our dataset two gubernatorial terms in 2002<sup>4</sup> that involved interim governors who were in their terms for only a few days.

We also classified the executive orders by their function. For the purposes of this research, we build off of the method of classifying executive orders employed by Bernick and

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<sup>2</sup> In reference to the changes made by the 1947 constitution - the governor’s terms was extended to four years and he/she was able to succeed him/herself once; the governor’s veto power was strengthened by making a two-thirds vote necessary to override such a veto, and also permitting the governor the use of the conditional veto; the terms of the office of the department heads were to coincide with the governor’s; the governor’s appointment and removal powers were enhanced; the governor was given wider authority to investigate and power to call upon the courts to enforce laws (Lockard 1964: 122 ).

<sup>3</sup> To gain access to the dataset, contact the authors.

<sup>4</sup> John Bennett held the position of Acting Governor between January 8, 2002 and January 12, 2002. Richard Codey held the position of acting governor twice, once in 2002 and again between 2004 and 2006. Here, the authors are referring to the first time Codey was Acting Governor from January 12, 2002 to January 15, 2002.

Wiggins (1984). Under this method, executive orders were analyzed and then classified into one of eleven categories (see Table 1).<sup>5</sup>

**Table 1: Categories**

Executive Order Categories	Executive Order Codes
Creation of Committees/Taskforces	EOComm
Policymaking/Implementation	EOPolicy
Federal Compliance	EOFed
Transfer of Organizational Units	EOTran
Creation of a Department/Office	EODeptOff
Appointments	EOAppt
Extend/Modify Existing Orders	EOExtMod
Revoke/Repeal Existing Orders	EORevRep
Declaration of an Emergency	EOEM
Cancel Declaration of an Emergency	EORevRepEM
Miscellaneous	EOMisc

Often, the language of executive orders is clear enough to determine their function (Ferguson and Bowling 2008); however, many times an individual executive order may have several outcomes and therefore fall under several different categories (Bernick and Wiggins 1984). Because an order can be issued for more than one function, the sum of the eleven categories does not equal the number of orders issued.

In the analysis section to follow, we start by doing an exploratory data analysis using basic time series methods to look for patterns in the use of executive orders over the entire period of 1947 to 2009. Moreover, we explore the use of these orders over a particular governor's term.

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<sup>5</sup> In Bernick and Wiggins' (1984) study, the authors only classified executive orders into seven different categories.

Analyses are presented of the total number of executive orders, and then the executive orders are also examined by type.

In addition, treating the data about executive orders of New Jersey governors since 1947 as a cross-sectional sample from a theoretical population of the use of executive orders of all New Jersey governors, we utilized established hypothesis testing to look for differences between the population of Republican governors and Democratic governors in their use of executive orders. Based on the literature in reference to executive power in general and the use of executive orders in particular, eight hypotheses were developed for this study in order to test under what circumstances governors chose to utilize executive orders during their administration.

The first hypothesis examines the frequency with which different governors representing different political parties have utilized executive orders in New Jersey. We hypothesize that because New Jersey has historically been a Democratic state, Republican governors will have had to utilize executive orders more frequently in order to push their legislative agendas. Thus we start the first hypothesis as:

*H1: The number of executive orders per legislative term will be higher with Republican New Jersey governors than with Democratic New Jersey governors.*

The next three hypotheses examine the usage of executive orders in relation to the political composition of the legislature. Because of the challenges that divided government plays on the ability of governor's to successfully pass legislation that benefits their own party, we hypothesize that when the governor's political party does not hold majorities in the different houses of the legislature that they would be more inclined to use executive orders in order to more effectively influence legislative action. Thus we state the following hypotheses:

*H2: In legislative terms where New Jersey governors share the same political party as the majority held in the legislature, fewer executive orders will be used*

*on average than in terms when the governor's party differs from the majority in the legislature.*

*H3: In legislative terms where New Jersey governors share the same political party as the majority held in the Senate, fewer executive orders will be used on average than in terms when the governor's party differs from the majority in the Senate.*

*H4: In legislative terms where New Jersey governors share the same political party as the majority held in the Assembly, fewer executive orders will be used on average than in terms when the governor's party differs from the majority in the Assembly.*

Hypotheses 5-8 examine the frequency with which New Jersey governors tend to utilize executive orders in relation to the political affiliation of the governor that preceded them. We predict that when a governor is of the same party as the one that precede them that they will be less likely to revoke or repeal existing orders because they will have similar ideological stances on policy. We thus state a hypothesis regarding the use of revoke or repeal executive orders totaled over a governor's time in office, and the use of revoke and repeal executive orders in the first legislative term for that governor. Similarly, we believe that governors that succeed a governor of the same political party will have a higher average per legislative term of executive orders that extend or modify policies because they hope to continue policies that are ideologically similar to their own. We thus state the following three hypotheses:

*H5: New Jersey governors that have a political party different than the governor that precede them will have a higher number of executive orders that revoke or repeal existing executive orders than those who have the same political party as their predecessors.*

*H6: New Jersey governors that have a political party different than the governor that preceded them will have a higher number of executive orders in their first legislative term that revoke or repeal existing executive orders than those who have the same political party as their predecessors.*

*H7: New Jersey governors that have a political party that is the same as the governor that precede them will have a higher average per legislative term of*

*executive orders that extend or modify existing executive orders than those who have the same political party as their predecessors.*

We also hypothesize to observe executive orders that extend or modify existing orders will be higher in the first term of a governor that succeeds a governor of the same party in order to continue ideologically similar agendas early in their administration

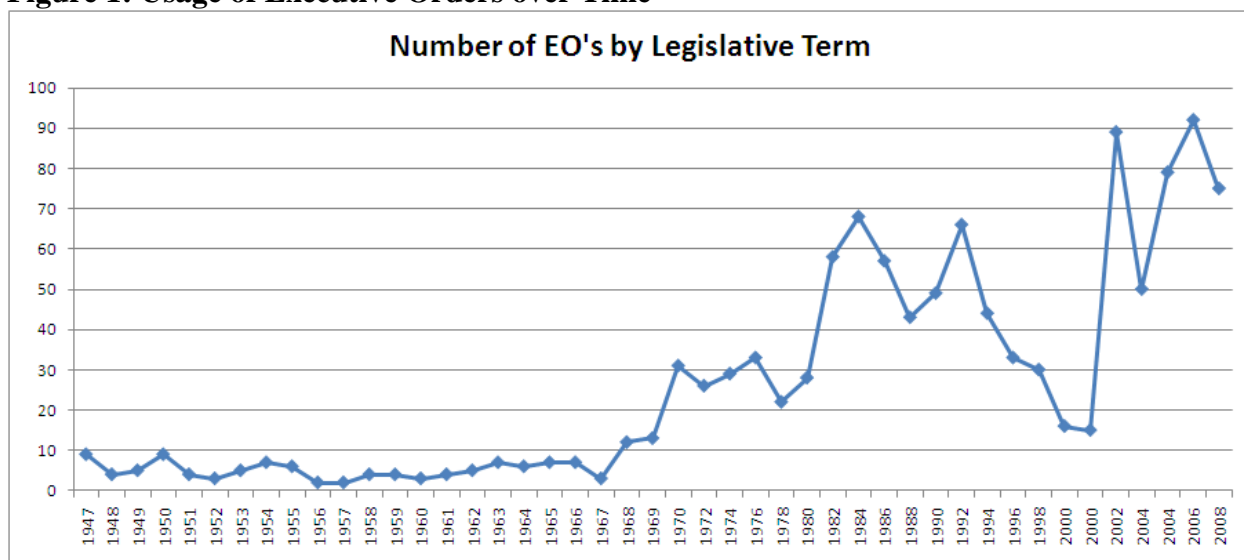
*H8: New Jersey governors that have a political party that is the same as the governor that preceded them will have a higher number of executive orders in their first term that extent or modify existing executive orders than those who have the same political party as their predecessors.*

## Analysis and Discussion

### Exploratory Analysis Using Time Series

Figure 1 plots the total number of executive orders used in each legislative session over time.

**Figure 1: Usage of Executive Orders over Time**

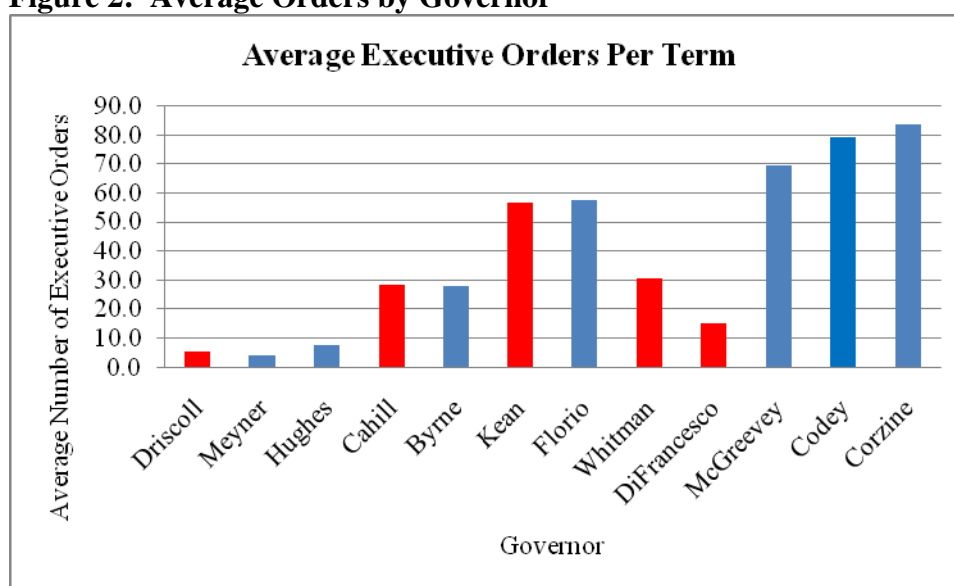


From this figure we observe that since 1947 there has been a marked increase in the number of executive orders used by governors of New Jersey. We see that executive orders were infrequently used up until the administration of Governor William Cahill, who took office in

1970 and that since Cahill's administration, the use of executive orders increased. The relative decrease seen from 1994 – 2000 occurs during the gubernatorial term of Governor Whitman followed by Acting Governor DiFrancesco, who replaced Governor Whitman.

Figure 2 shows the average number of executive orders per term used by the New Jersey governors from 1947 to 2009, with the political party noted by color (red for Republicans and blue for Democrats).

**Figure 2: Average Orders by Governor**



The usage patterns of executive orders differ by political party in this dataset. Republican governors from 1947 to Governor Thomas Kean's administration in 1982 steadily increased their usage of executive orders, and after that it steadily declined. Over the time of this dataset, Democratic governors have steadily and consistently increase their use of executive orders.

Generally, governors issue executive orders in order to affect the state policymaking process. In New Jersey, we found governors utilize executive orders most frequently to make or implement policy (see Table 2). The choice to use executive orders in this way illustrates the way in which governor's are able to actively play a role in the policymaking process. Policy

oriented executive orders allow governors to directly affect the development and implementation of a host of different policy initiatives throughout the state. Governors routinely use executive orders in reference to making and implementing policy by announcing the closing of state offices for the observation of some holiday and the lowering of the flag of the United States in memory of someone that has passed away. More significantly, New Jersey governors use executive orders to guide public policy, such as Governor Alfred Driscoll's seizure of New Jersey Bell Telephone Company (Driscoll 1947) or his decision to enforce travel regulations for state employees (Driscoll 1950). Additionally, Governor Jon Corzine used executive orders in this way to ensure that various state departments continually review their performance standards in an effort to make government more efficient.



**Table 2: Executive Order Functions by Governor**

Function of Executive Orders <sup>a</sup>													
Governor	Policy Making			Federal Compliance	Management of State Government			Change Previous Executive Order		Declaration of Emergency	Cancel Declaration of Emergency	Miscellaneous	
	Total Number of Orders Issued	Creation of Committees/Taskforces	Policymaking/ Implementation		Transfer of Organizational Units	Creation of a Department/ Office	Appointments <sup>b</sup>	Extend/ Modify	Revoke/ Repeal				
Driscoll	39	4	16	0	3	3	3	0	10	0	0	0	
Meyner	32	0	20	1	6	0	5	1	0	0	0	0	
Hughes	60	12	36	3	7	3	3	0	2	0	1	2	
Cahill	57	20	23	3	4	4	0	5	2	0	0	1	
Byrne	112	28	43	5	11	5	0	14	3	11	1	1	
Kean	226	79	36	2	7	1	1	71	8	23	9	0	
Florio	115	29	46	1	8	3	0	13	3	10	5	0	
Whitman	123	38	38	2	8	5	0	13	9	12	8	0	
DiFrancesco	15	3	7	0	0	1	0	0	0	3	1	0	
Bennett	1	1	0	0	0	0	0	0	0	0	0	0	
Codey	3	1	1	0	0	0	1	0	0	0	0	0	
McGreevey	139	32	74	2	1	2	1	11	4	10	4	0	
Codey	79	7	57	2	2	2	0	4	1	3	2	0	
Corzine	167	22	119	0	2	5	0	12	5	4	1	2	

<sup>a</sup> The number of functions given in the table exceed the actual number of orders issued, since a single order may have more than one function.

<sup>b</sup> Appointments made by the governor.

Bernick and Wiggins' (1984) study of the usage of executive orders found that orders were most frequently used in order to create study commissions or taskforces. In New Jersey, however, we find this to be the second most frequent function of executive orders. The creation of commissions and taskforces has the ability to provide publicity to specific policy issues; thereby, informing the legislature and the public that an issue is important to the governor. Although the creation of these bodies can be purely symbolic – a public gesture illustrating that a particular issue is important enough to warrant investigation and response – they have the ability to shape public policy and advise state programs (Ferguson and Bowling 2008). Moreover, the findings and recommendations that are developed under these bodies can contribute to supporting a governor's stance on a specific political issue. For example, Governor Cahill, in an effort to meet the economic difficulties of the 1970s, ordered the creation of several different taskforces and investigation commissions, such as the Governor's Management Commission (Cahill 1970) and the New Jersey Tax Policy Committee (Cahill 1970), to make recommendations to reform New Jersey's tax system and bureaucratic administration (Connors 1982). Moreover, Governor Thomas Kean, who used more executive orders to create commissions and taskforces than any other governor in this study's sample, ordered the creation of a large variety of investigation commissions and committees, a significant number of which dealing with public health (Kean 1982a, 1982b, 1983b) and the welfare of children (Kean 1983a, 1983c, 1985).<sup>6</sup>

Besides issuing executive orders to make or implement policy or to create taskforces and committees, orders are also used to make changes to already existing orders. In New Jersey, this appears to be the third most utilized function of executive orders. Sometimes these types of

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<sup>6</sup> For a complete listing of Governor Kean's executive orders refer to NJDLL (2010a).

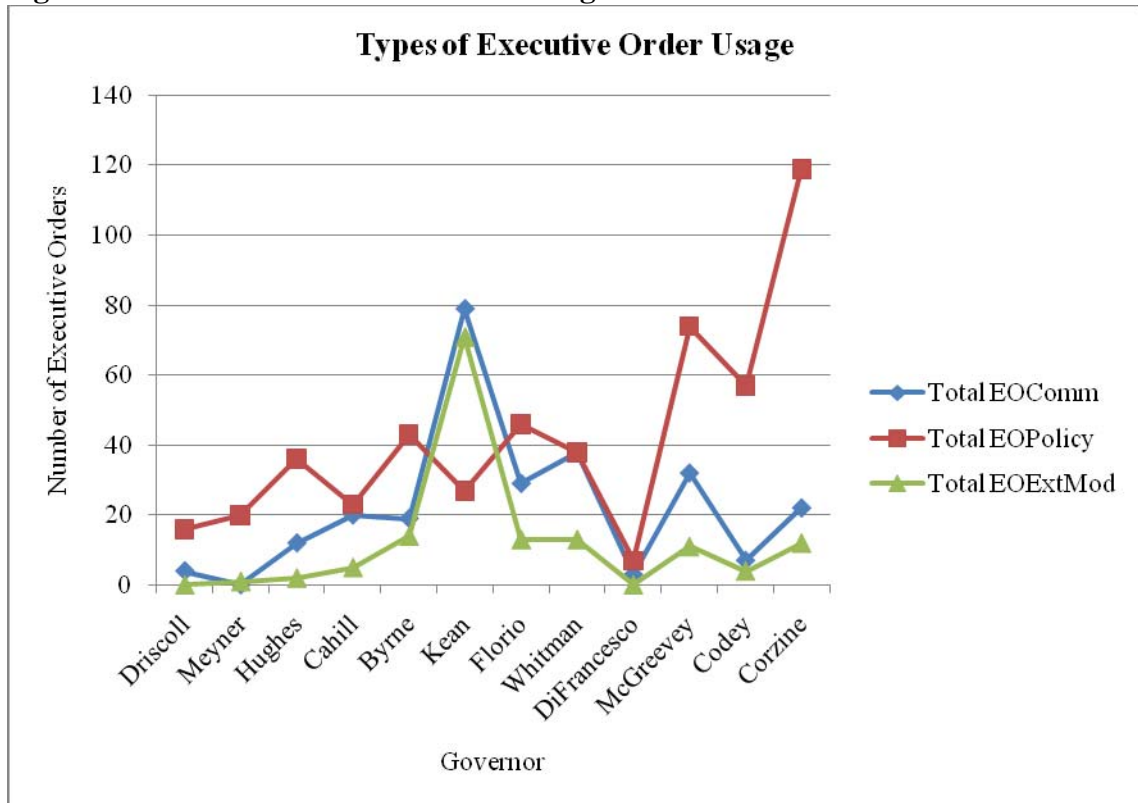
orders were used to modify orders issued by preceding governors, such as in the case of Governor James Florio who used a majority of orders in this classification to extend executive orders issued by Governor Kean;<sup>7</sup> however, they are also frequently used to change an order that is issued by the same governor that issued the original order. This is illustrated in Governor Christine Todd Whitman's usage of executive orders that for the most part extended or modified her own orders.<sup>8</sup> In contrast to using executive orders to modify or change existing orders, governors have the power to issue orders that repeal and/or revoke existing ones. In New Jersey, governors do not directly tend to repeal or revoke existing orders very often. From the cases observed, a majority of governors issued less than five executive orders throughout their entire administration that repealed or revoked standing orders. Governor Alfred Driscoll had the most frequent usage of executive orders that directly repealed or revoked standing orders; however, the majority of the orders that were revoked by Driscoll were his own.

Figure 3 compares the ways in which New Jersey governors have functionally used executive orders over time. As one observes the trend with which executive orders are functionally used throughout the time frame included in this study, the issuing of executive orders that creates taskforces and commissions, represented by TotalEOComm, and those that extend or modify existing orders, represented by TotalEOExtMod, stays relatively consistent from one governor to another. The only exception to this is Governor Kean who decided to utilize executive orders to perform these two functions a great deal more than anyone else in this sample.

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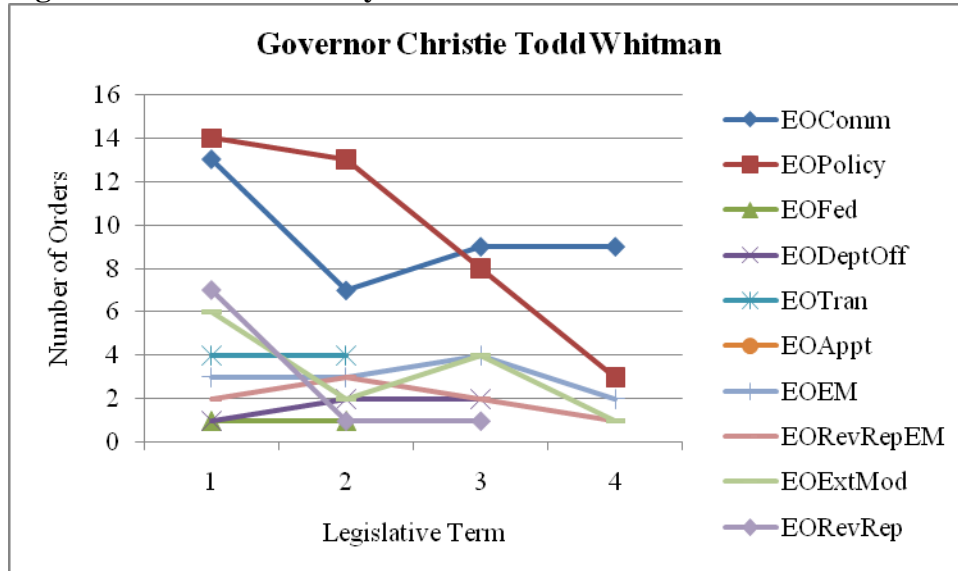
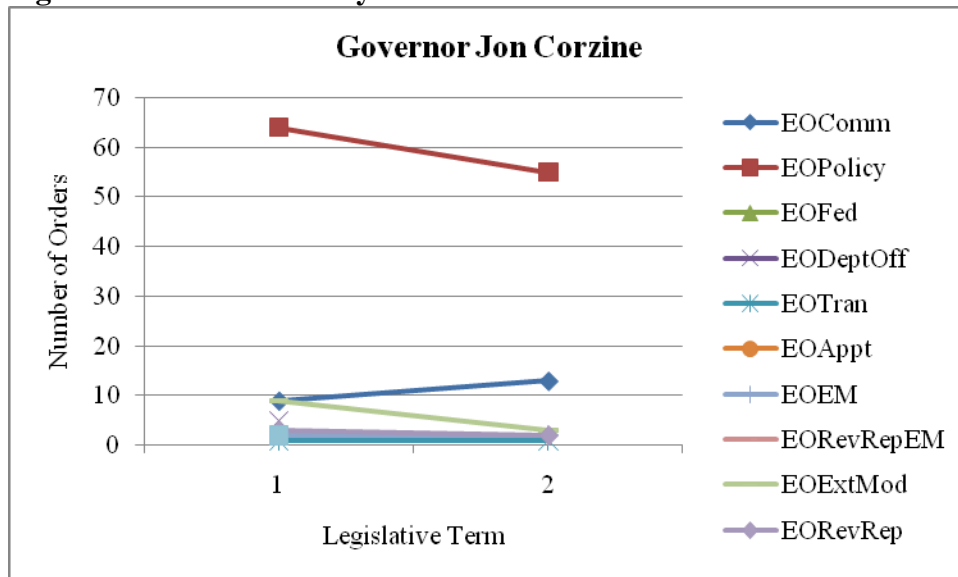
<sup>7</sup> To view a complete listing of Governor Florio's executive orders please refer to State of New Jersey (2010).

<sup>8</sup> It must be acknowledged that although these orders did modify previously issued orders by Governor Whitman, they also had a dual affect of modifying orders issued by previous governors as well. To view a complete listing of Governor Whitman's executive orders please refer to State of New Jersey (2010).

**Figure 3: Functional Executive Order Usage over Time**

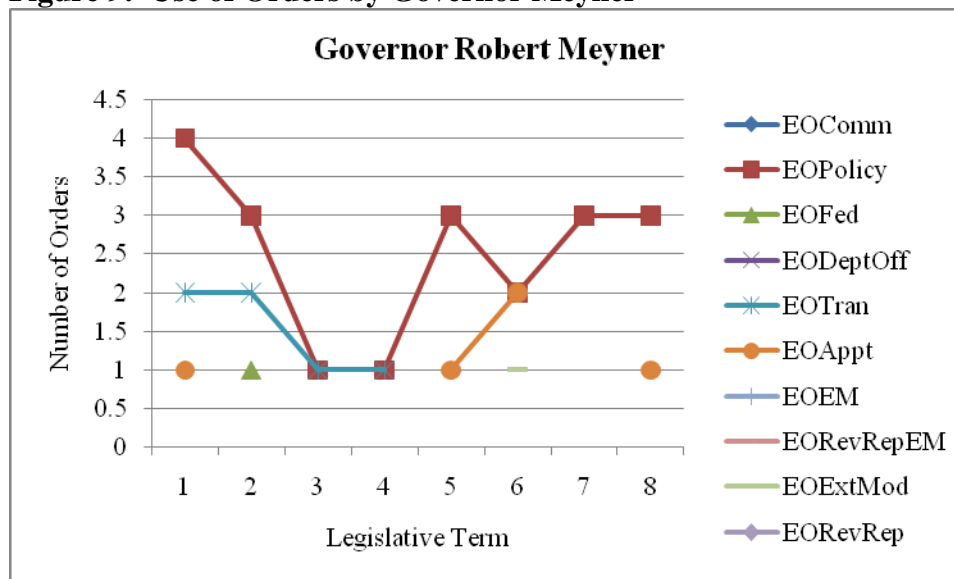
The interesting trend that is discerned from comparing the usage of executive orders by function over time is the usage of executive orders for making and implementing policy as time progresses, represented by TotalEOPolicy in Figure 3. Similar to the total number of executive orders issued over time increasing, the total number of executive orders designed to make or implement policy has also increased. Governor Whitman, although she issued less executive orders over time, stayed relatively consistent with prior governors when it came to issuing orders of the purpose of making or implementing policy. Acting Governor DiFrancesco is the only governor within this analysis that is contrary to the trend; however, after his administration the number of executive orders used to make or implement policy significantly increases. When the usage of executive orders is observed by each individual governor over the period of time they were in office other trends emerge.



**Figure 6: Use of Orders by Governor Whitman****Figure 7: Use of Orders by Governor Corzine**

Figures 4, 5, 6, and 7 depict the ways in which different governors issued executive orders by the function of the order. In reference to orders that make or implement policy, New Jersey governors seem to issue orders that provide this function more in their first legislative term, and increasingly less as time passes. Again, when comparing executive order usage over time, Governor Kean stands out in the way he issued orders that created commissions and



**Figure 9: Use of Orders by Governor Meyner**

This is particularly the case in reference to Governors Driscoll and Meyner, whose use of executive orders over time appears erratic.

Other important uses of executive orders are to ensure that states are in compliance with federal mandates and to create new departments and/or offices within the state government bureaucracy. Under some circumstances, the federal government may require a state to create a special council, office, or an entire department before a state can receive federal funds (Bernick and Wiggins 1984). The governor's decision to enact executive orders that speed up the process of receiving federal funding in order to implement programs across the state usually goes uncontested in the legislature because contestation would prevent the state from receiving millions of dollars (Bernick and Wiggins 1984). In New Jersey, we observed that using executive orders in these two ways does not occur often in comparison to other more popularly used orders, such as those used for policy making and implementation or the creation of taskforces and committees. Governor Brendan Byrne used executive orders to enforce compliance of federal mandates in New Jersey most frequently. In addition to three other orders



that enforced federal mandates,<sup>9</sup> Governor Byrne order that the New Jersey Division of Water Resources implement regulations established under the Federal Insurance Administration (Byrne 1978) and the U.S. Geological Survey (Byrne 1979) to reduce risks of losses that could be incurred by natural disasters, specifically flooding.

Finally, similar to what Bernick and Wiggins (1984) found, executive orders are infrequently used to make appointments in New Jersey. This may be a result of a governor's ability to appoint people to office without using executive orders, as Bernick and Wiggins suggest. Although used only five different times, Governor Robert Meyner used his power of appointment through executive orders to appoint individuals to the Division of Employment Security (Meyner 1958; 1961), the Department of Labor and Industry (Meyner 1959a; 1959b), and give other individuals the ability to approve construction plans (Myner 1956). According to Lemmey (1982), Meyner issued these appointments, with the disapproval of his own party, in an effort to make New Jersey government more transparent and supportive of a less corrupt government. In Meyner's own words, he wanted to staff his "administration with men and women who see government as a great challenge to imagination and enterprise" and "get people into politics who aren't out to make a buck, who aren't out to take advantage of everything" (as cited in Lemmey 1982:221).

### **Analysis Using Hypothesis Testing**

Our sample involved small numbers: 12 total governors and 47 total legislative terms (within the time period studied there were actually a total of 14 governors; however, two of these governors were left out of this analysis because they were in office for less than a week). The

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<sup>9</sup> To view other orders issued by Governor Byrne to enforce federal mandates see NJDLL (2010b).

data were sufficiently skewed that we could not make the assumption that the underlying populations were normally distributed. Hence, we had to use non-parametric tests.

For the purposes of this study the Wilcoxon rank-sum test was used, which is a non-parametric alternative to the two-sample t-test. The Mann-Whitney test is another possibility for this data; Wilcoxon can be shown to be equivalent to the Mann-Whitney test. The Wilcoxon test involves calculating the ranks of the observations in each subgroup and then comparing the rank sums from each group. If the underlying populations were the same, one would expect the subgroup rank sums to be very close. The larger the difference in the rank sums, the more likely it is that the underlying populations are truly different. For datasets with small numbers of observations (12 or less items in each subgroup) the probabilities of a given set of rank sums is determined from a table. For larger data sets, the probabilities can be determined from a normal approximation. For more details about this method see Corder and Foreman (2009). Below we detail the calculations for hypothesis 1; other calculations were done in a similar manner.

For this research we used a significance level (alpha) of 0.05. Our sample has 5 Republicans and 7 Democrats (see Table 3), so from published Wilcoxon tables to be viewed as significantly different, the rank sum of the Republican group needs to be 44 or more.

**Table 3: Sample Data with Ranks for H1**

Governor	Political Party	Average Number of EO's per legislative term	Rank
Meyner	D	4.0	12
Hughes	D	7.5	10
Byrne	D	28.0	8
Florio	D	57.5	4
McGreevey	D	69.5	3
Codey	D	79.0	2
Corzine	D	83.5	1
Driscoll	R	5.6	11
Cahill	R	28.5	7

Kean	R	56.5	5
Whitman	R	30.8	6
DiFrancesco	R	15.0	9

**Table 4: Calculations for H1**

Group	N	Rank	
		Sum	Average
D	7	40	47.0
R	5	38	27.3

From Table 4, it is observed that the Republican rank sum is not greater than 44, so we cannot conclude that Republicans use more executive orders than Democrats. In fact, looking at the averages we see that in this sample Republican governors used on average fewer executive orders per legislative term than Democratic governors. Although the difference was not statistically significant, the data does show a trend in the usage of orders by governors of specific political parties. The large usage of executive orders by Democratic governors directly contradicts our first hypothesis (see Table 5).<sup>10</sup>

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<sup>10</sup> As mentioned above, calculations used to test the other hypotheses were done in a similar manner as H1. We provide the calculations for H1 as an example of how the other hypotheses were tested.

**Table 5: Summary of Hypothesis Tests**

Test Number	Hypothesis	Group 1 Measure	Group 2 Measure	Conclusion	Group 1 Rank Sum	Group 2 Rank Sum	Result
1	<i>The number of executive orders per legislative term will be higher with Republican New Jersey governors than with Democratic New Jersey governors.</i>	47.0 average EO's per legislative term	27.3 average EO's per legislative term	In fact, Democratic governors used <u>more</u> EO's on average	40	38	Difference not statistically significant
2	<i>In legislative terms where New Jersey governors share the same political party as the majority held in the legislature, fewer executive orders will be used on average than in terms when the governor's party differs from the majority in the legislature.</i>	27.0 EO's on average in terms where governor and legislative majority are the same	20.8 EO's on average in terms where governor and legislative majority are the same	In fact, in terms where the governor and the legislative majority are the same <u>more</u> EO's are used on average	506	197	Difference not statistically significant
3	<i>In legislative terms where New Jersey governors share the same political party as the majority held in the Senate, fewer executive orders will be used on average than in terms when the governor's party differs from the majority in the Senate.</i>	27.0 EO's on average in terms where governor and Senate majority are the same	18.9 EO's on average in terms where governor and Senate majority are the same	In fact, in terms where the governor and the Senate majority are the same <u>more</u> EO's are used on average	678.5	402.5	Difference was weakly significant (p = 0.067)
4	<i>In legislative terms where New Jersey governors share the same political party as the majority held in the Assembly, fewer executive orders will be used on average than in terms when the governor's party differs from the majority in the Assembly.</i>	26.2 EO's on average in terms where governor and Assembly majority are the same	21.2 EO's on average in terms where governor and Assembly majority are the same	In fact, in terms where the governor and the Assembly majority are the same <u>more</u> EO's are used on average	841.5	286.5	Difference not statistically significant
5	<i>New Jersey governors that have a political party different than the governor that precede them will have a higher number of executive orders that revoke or repeal existing executive orders than those who have the same political party as their predecessors.</i>	1.03 revoke or repeal EO's on average per legislative term for governors who are of the same political party as their predecessors	1.07 revoke or repeal EO's on average per legislative term for governors who are of a different political party as their predecessors	The average number per legislative term of revoke/repeal EOs are very similar in both groups	52	53	Difference not statistically significant
6	<i>New Jersey governors that have a political party different than the governor that preceded them will have a higher number of executive orders in their first legislative term that revoke or repeal existing executive orders than those who have the same political party as their predecessors.</i>	2.25 revoke or repeal EO's in their first legislative term for governors who are of the same political party as their predecessors	4.80 revoke or repeal EO's on average per legislative term for governors who are of the same political party as their predecessors	Indeed, we do see a higher use in their first term of revoke/repeal EOs for governors who are of the same political party as their predecessors	46.5	58.5	Difference not statistically significant
7	<i>New Jersey governors that have a political party that is the same as the governor that precede them will have a higher average per legislative term of executive orders that extend or modify existing executive orders than those who have the same political party as their predecessors.</i>	1.57 extend or modify EO's on average per legislative term for governors who are of the same political party as their predecessors	2.14 extend or modify EO's on average per legislative term for governors who are of a different political party as their predecessors	In fact, we see a <u>lower</u> average use of extend/modify EOs for governors who are of the same political party as their predecessors	49.5	55.5	Difference not statistically significant
8	<i>New Jersey governors that have a political party that is the same as the governor that preceded them will have a higher number of executive orders in their first term that extend or modify existing executive orders than those who have the same political party as their predecessors.</i>	3.14 extend or modify EO's on average in their first legislative term for governors who are of the same political party as their predecessors	3.86 extend or modify EO's on average in their first legislative term for governors who are of a different political party as their predecessors	In fact, we see a <u>lower</u> average use in the first term of extend/modify EOs for governors who are of the same political party as their predecessors	48	57	Difference not statistically significant

When the number of executive orders issued was observed in relation to whether the governor shared the same political party as the majority of individuals in the legislature, the senate, and the assembly, hypotheses 2 and 4 were not supported by the data. The data illustrated that when the governor was of the same party as the majority held in the legislature, more executive orders were issued than when the governor's party differed from the legislature. Similarly, when the governor's political party was the same as the majority held in the assembly, more executive orders were issued than when the governor's party and the majority held in the assembly differed. In both cases, the differences between the average number of orders issued per legislative term when there is divided government and when the political party of the governor is similar to the majorities held in these two bodies is statistically insignificant (see Table 5).

In reference to hypothesis 3 that observed the number of executive orders issued by governors that were from the same political party that composed the majority of the New Jersey senate, the data shows that when a governor is from the same party as the majority in the senate more executive orders are issued than when the political parties differ. Figure 10 illustrates the frequency with which governors that are of the same (indicated by 1) and differing (indicated by 2) party as the majority in the senate issued executive orders.

**Figure 10: Executive Order usage in Relation to Governor and Senate Political Affiliation**



When the governor is from the same party as the majority in the senate an average of 27.0 executive orders were issued per legislative term, while when the political parties differed there was an average of 18.9 executive orders issued per legislative term. The difference between these averages is weakly significant ( $p=0.0674$ ), which indicates that there may be a relationship between the similarity or difference in political affiliation of governors and their respective senate composition and its affect on a governor's choice to use executive orders. In order to test this theory, however, the dataset must be expanded to include more governors.

When we went to observe if governors that have a political party different than the governor that preceded them had a higher average per legislative term of executive orders that revoked or repealed existing orders than those who had the same political party as their predecessors we found that the averages were essentially the same, 1.07 and 1.03 respectively. This means that throughout a governor's entire administration, governors tend to revoke or repeal existing executive orders independently of the political affiliation of a predecessor, which is contrary to our hypothesis, H5. However, when we observed whether the political affiliation

of a preceding governor had an affect on the number of executive orders that repealed or revoked existing orders in the first term of a governor's administration, H6, we found a small difference in the average number issued. When governors were of a different party than their predecessor, they issued an average of 2.14 orders in their first term that repealed or revoked existing orders, whereas those governors that were of the same party as their predecessor only issued an average of 1.57 in their first term. This fact supports our hypothesis, H6, that governors that have a different political party as their predecessor tend issue more orders in their first term than those that are of the same party as their predecessor; however, the difference is statistically insignificant (see Table 5).

Finally, when we observed if governors that have the same political party as the governor that preceded them had a higher number of executive orders that extended or modified existing orders than those who had a different political party than their predecessor we found that our hypothesis, H7, was incorrect. In practice, New Jersey governors have issued less executive orders that extended or modified existing orders when a governor's predecessor was of the same party – an average of 2.25 per term when they are from the same political party and 4.80 when they are different. Moreover, when governors were of the same political party as their predecessor we found, similarly, that governors issued a lower number of executive orders in their first legislative term that extended or modified already existing orders, which is also contrary to our hypothesis, H8. In both cases, the differences between the averages were statistically insignificant (see Table 5).

## **Conclusion**

This study set out to examine the interplay between the office of the governor and state legislatures in reference to setting policy agendas. To this end, we sought to observe the ways in

which governors exercise their executive powers in an effort to guide state policy. After studying the various dynamics at play within state legislatures that have the ability to influence a governor's success in advancing policy initiatives, such as the presence of divided government, fractured parties, and governors' constitutionally given authorities, and observing a governor's ability to utilize vetoes, we chose to observe the way in which governors use executive orders to push policy agendas in state government. In particular, we studied the manner in which New Jersey governors have utilized executive orders between 1947 and 2009 in an effort to shed some light on the usage of executive orders in strong governor states.

Through time series analysis the data showed that there has been growth in the number of executive orders issued over time in New Jersey. Additionally, in New Jersey executive orders are functionally used most frequently to make or implement policy, create commissions/taskforces, and extend or modify preexisting executive orders. Time series analysis also showed that there are real differences in the pattern in which individual New Jersey governors use executive orders. A number of hypothesis tests were run; however, many of the results were statistically insignificant. Overall, we found, in most cases, the direction of the sample results were opposite of what we predicted in our hypotheses based on prior research on the subject. We would like to pursue these intriguing results further by looking more deeply into the specifics of the executive orders.

In the future, we recommend that a new classification structure be developed when observing the functions of executive orders. For example, although making and implementing policy was the most frequent function of executive orders in New Jersey, a large proportion of these orders were used for lowering the flag of the United States in memory of someone that had passed away or declaring state offices closed for a holiday. These executive orders are more



administrative in nature as opposed to making or implementing policy as this and past studies have classified them. Moreover, when observing the use of executive orders in New Jersey, more cases should be included in the dataset in an effort to more reliably pick up if there are indeed true differences in the underlying groups. Finally, on a larger scale, future studies may want to compare and/or contrast the ways in which executive orders are used in other strong governor states in an effort to discern larger political party patterns.

About half way through his first legislative term when this paper was written, Governor Chris Christie has issued a total of forty-three orders. The frequency with which certain types of executive orders are used fits the trends we observed with past New Jersey governors – with Christie primarily favoring the usage of executive orders that make or implement policy followed by orders that create commissions/taskforces.

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