Federalism and Policy Learning:  
Congress, the States, and the Shifting Politics of Electronic Commerce

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Abstract

Since the late 1990s, Congress and the states have debated how to treat electronic commerce for purposes of sales taxation. Recent developments at the state and national levels offer two broad lessons for the study of policy diffusion. First, the most relevant political factors for the adoption decision depend on the specific policy tool under review. The spread of the Streamlined Sales and Use Tax Agreement, a more collaborative policy approach, was affected by institutional capacity and interest group politics. In contrast, the spread of state click through laws, a more individualistic approach, was influenced by fiscal concerns, partisanship, and policies in neighboring states. Second, a close analysis of the Marketplace Fairness Act of 2013 suggests that policy change at the state level can affect the agenda and terms of the congressional debate even if individual lawmakers do not necessarily learn from what occurs in the “laboratories of democracy.”

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On May 6, 2013, the United States Senate endorsed the Marketplace Fairness Act in a 69-27 vote. The bill would have allowed state governments to collect sales taxes on goods and services purchased over the Internet, a major policy shift that had been sought for more than a decade both by those governments and by traditional “brick-and-mortar” retailers who believe they operate at a competitive disadvantage. Even though the House of Representatives has yet to take action on the proposal, its Senate passage nonetheless constitutes an important legislative landmark. Up until the 2013 vote, the congressional debate over electronic commerce and sales taxes had focused mainly on the Internet Tax Freedom Act (ITFA). The ITFA imposed a moratorium on state governments, preventing them from taxing consumers specifically for making purchases over the Internet and from imposing any new taxes on Internet access services. It received overwhelming bipartisan support when it originally passed in 1998, and the moratorium was renewed three times with virtually no congressional controversy. It is likely to be renewed again, or perhaps made permanent, before it expires on November 1, 2014.

Although the Marketplace Fairness Act and the Internet Tax Freedom Act are not necessarily incompatible, Senate passage of the former is suggestive of a new direction in congressional policymaking. At the very least, the idea that state governments should be permitted to collect sales taxes on electronic commerce has received a warmer reception recently than it did when the issue first emerged on the political agenda in the late 1990s. What had changed in the intervening fifteen years? The most obvious answer is that the significance of electronic commerce in the American economy grew substantially, giving state governments a stronger financial stake in the issue. At the same time, the states did not wait for Congress to act before launching their own response to this seismic economic
shift. State leaders and the organizations representing them continued to lobby Congress (Herian 2012; Swain and Hellerstein 2005), and they also took independent action.

This paper examines the shifting politics of electronic commerce, focusing on the interaction between state-level policymaking and congressional activity. Specifically, it examines the emergence of two state-level policies—the Streamlined Sales and Use Tax Agreement (SSUTA) and “click through” laws—and their effect on Congress. The state policies, in combination with the 2013 Senate vote, offer an unusual analytic opportunity to investigate the horizontal and vertical dynamics of American federalism. In terms of horizontal dynamics, or interactions among the states, the SSUTA and click through laws represent two distinct approaches to policy innovation. The former is a collective policy endeavor, whereas the latter is a more conventional approach that does not require state collaboration. Variation across the states in both whether and when they adopted these innovative policies therefore permits an assessment of whether and how the choice of a particular policy tool affects state adoption patterns.

In terms of vertical dynamics, or the federal relationship between the states and the national government, the relative timing of state and congressional policymaking on electronic commerce permits an assessment of whether and how the former affected the latter. The fact that the SSUTA and click through laws emerged after Congress adopted its initial policy on electronic commerce but before the apparent shift that occurred with the 2013 Senate vote makes it possible to examine whether and how state policymaking endeavors affected national developments. In short, it represents a possible example of vertical diffusion or learning wherein the existence of a policy in one jurisdiction affected the likelihood that it would be adopted elsewhere. Most accounts of diffusion rely on the
logic of individual decision-making, treating existing policies as an information shortcut, yet they tend to assess this logic with aggregated data that treats countries or states as the unit of analysis (Karch 2007; Walker 1969; Weyland 2006). By treating the Senate vote as an “opportunity to learn” (Shipan and Volden 2008), this paper provides an individual-based approach to the study of vertical diffusion.

The combination of qualitative and quantitative evidence presented in this paper offers valuable lessons about horizontal and vertical diffusion. First, despite responding to the same societal challenge, state decision-making about the SSUTA and click through laws were affected by different factors. Institutional capacity and interest group activity influenced states’ decisions to join the SSUTA, whereas fiscal concerns, partisanship, and policies in neighboring states shaped the adoption of click through laws. These patterns suggest that different policy tools, even within the same policy arena, produce different political dynamics. Second, state policymaking influenced the content of congressional proposals and the tenor of congressional debates. A quantitative analysis of the Senate vote suggests that, while national lawmakers were aware of state-level developments and attentive to the fiscal environment in their home jurisdictions, the policies themselves did not have a material effect on their vote choice. Senators appear to be very attentive to the laboratories of democracy, but they do not necessarily learn from them.

**Policy Diffusion: Policy Content and Vertical Dynamics**

Policy diffusion is a process of learning or emulation in which decision-makers look to other cities, states, or countries as models to be followed or avoided. In sum, it
occurs when extant versions of a public policy affect the likelihood that it will be enacted in other jurisdictions. Political scientists in multiple subfields have devoted heightened attention to the diffusion process in recent years (Graham, Shipan, and Volden 2013), and it has long been a central topic in the study of American state politics. This paper builds on two constructive turns in the study of policy diffusion. The first is an emerging focus on policy content or the substance of what is spreading from one jurisdiction to another. The second is a growing appreciation for the complex ways in which interactions among governments at different levels affects the spread of new policies, a phenomenon known as vertical diffusion.

Policy Content

A long-standing complaint about diffusion research, particularly in the context of the American states, is that it pays insufficient attention to how the diffusing policy varies across the jurisdictions in which it gains enactment. State officials adopting a policy that exists elsewhere are not obligated to copy it exactly; they can make adjustments based on earlier adopters’ experiences or the social, economic, and political circumstances of their own state. Sometimes officials adopt the same general template but with provisions that vary so significantly that the programs share little more than a label (Mossberger 2000). In recent years, an increasing number of diffusion studies have attempted to explain why adopted policies take on various forms. By treating policy content as an outcome to be explained, these studies of policy stringency or complexity mark a promising turn in research on state policymaking (Carley and Miller 2012; Taylor et al. 2012).
This paper focuses on a second and equally important dimension of policy content and its impact. Policy content is not simply an outcome that needs to be explained. It is also a factor that can affect the diffusion process by influencing which actors mobilize for action. Technical administrative policies may encourage the engagement of professional associations, while interest groups may be more likely to influence debates about publicly salient programs. Even minor differences in policy content can affect the mobilization of specific constituencies, as when religious fundamentalists had a significant impact on the adoption of general funds lotteries but not on the enactment of education funds lotteries (Pierce and Miller 1999).

Recently scholars have devoted greater attention to the effects of policy content on the diffusion process. Their analyses often attempt to explain the varying speed with which policies diffuse among the states, recognizing that some policies spread extremely rapidly while others do not. High-salience policies tend to diffuse more rapidly than do low-salience policies, whereas complex policies that require technocratic analysis tend to diffuse more slowly than do policies that require little policy expertise (Nicholson-Crotty 2009). Thus morality policies characterized by elevated issue attention, low complexity, and high emotional appeal are more prone to rapid diffusion episodes than are regulatory policies of high technical complexity and low salience (Boushey 2010). These studies tend to examine a relatively large number of policies, dividing them into categories based either on the substantive topics they address or even broader typologies that incorporate multiple substantive arenas. An alternative approach is to examine whether and how the most influential factors in the diffusion process depend on the specific attributes of the policies being considered. A recent examination of criminal justice policy innovations
found that state officials were particularly likely to learn from their peers when policies produced results that could be easily observed, but that they were less likely to learn from their peers when they could conduct their own limited experiments and when the policies were too complex for such learning to be of much use (Makse and Volden 2011).

Building on the insights of recent studies, this paper examines whether and how the factors that influence the adoption of innovative policies vary across different types of policy instruments. Once they decide that a given trend or societal condition deserves a governmental response, officials can choose from a menu of options. Scholarly accounts of the American welfare state, for example, have noted that contemporary social policy in the United States is a complicated combination of direct spending, regulation, guaranteed rights, and tax expenditures (Pierson 2007). This variation extends to other policy arenas, and an analysis of the changing politics of electronic commerce reveals that the selection of a particular policy tool affects which political and economic factors are relevant to the diffusion process.

*Vertical Diffusion*

Interactions among governments at different levels can affect the spread of new policies. In the United States, this vertical diffusion process most commonly refers to the relationship between the national government and the fifty states.¹ Most research on this phenomenon examines the impact of national developments on state policymaking. This influence extends across various stages of the policymaking process. By increasing the salience of certain public policies, national controversies and congressional hearings can affect both the content of state political agendas and the mobilization of state lobbying
organizations (Baumgartner, Gray, and Lowery 2009; Karch 2012). National activity can also make state-level policy adoption more or less likely by altering the strength of the obstacles that prevent policy innovation or by providing resources to help overcome these obstacles (Karch 2006). Indeed, national officials have a variety of tools at their disposal through which they can affect state policymaking. They can provide financial incentives that encourage public policies to diffuse more widely and more rapidly and send signals to the states concerning their preferences and the potential for future national government action (Allen, Pettus, and Haider-Markel 2004; Welch and Thompson 1980). National activity is therefore an important diffusion mechanism that can simultaneously influence policymaking in multiple states.

Less scholarly attention has been devoted to the ways in which developments in the states can affect national policymaking, but existing research on both agenda setting and policy adoption suggests that their impact is limited. One of the earliest studies of the states’ impact concluded “that in most cases the state laboratories did not influence federal government action, even if federal action did follow state efforts chronologically” (Boeckelman 1992, 371). More recent studies, both of aggregate patterns and of specific policies, support this initial assessment. An aggregated analysis of changes in state and congressional policy agendas “find[s] little evidence that changes in state policy agendas in the aggregate influence national patterns of policy attention,” at least over the short term (Lowery, Gray, and Baumgartner 2011, 304, emphasis in original). A study of state-level witnesses during congressional hearings on the Medicaid program concludes that, in most situations, “the public good that comes from sharing state-level expertise is not realized in national policymaking” (Esterling 2009, 18).
The consensus that state-level developments have only a minor effect on national policymaking is surprising given the common portrayal of the fifty states as “laboratories of democracy” in which innovative policy ideas are developed and evaluated. The well-known laboratories metaphor implies that public policies can percolate upward from the states to the national government, but existing research suggests that this type of vertical diffusion rarely occurs. The politics of electronic commerce invoke intergovernmental dynamics in a way that permits a reassessment of this conclusion. Moreover, the Senate vote on the Marketplace Fairness Act offers an analytic opportunity to incorporate a new form of evidence into the study of vertical diffusion. By combining a systematic analysis of the Senate vote with other documentary sources, the following analysis suggests that it is possible to isolate the impact of state-level developments even if national officials do not necessarily “learn” from them.

The Shifting Politics of E-Commerce

Electronic commerce, often called e-commerce, is the buying and selling of goods and services over the Internet or other computer networks. According to the U.S. Census Bureau, e-commerce has grown very rapidly in recent years. In 1999, online retail sales totaled $15 billion, accounting for 0.5 percent of all retail sales in the United States. By 2011, those figures had increased to $194 billion and 4.7 percent, respectively. On the one hand, the vast potential of e-commerce and Internet retailing has been described by public officials and investors as an engine of innovation and economic growth. On the other hand, some state tax authorities and traditional “brick-and-mortar” retailers see the
ongoing “surge in remote selling as an imminent and possibly mortal threat” (Swain and Hellerstein 2005, 605).

The chief policy issue, which has been the source of near-constant debate at both the national and state levels since the late 1990s, has been whether and how e-commerce transactions should be treated for purposes of sales tax collection. The resolution of this issue has profound implications for state governments and the retail sector. According to the U.S. Census Bureau, state governments collected $242.7 billion in general sales and gross receipts tax revenue in 2012. These funds represented 30.5 percent of the average state’s total tax collections (O’Sullivan et al. 2013).³ If e-commerce continues to grow, then exempting the transactions from sales tax collection implies that state governments will effectively forego a major potential revenue source. The main issue for traditional retailers is one of equity. Local vendors must collect sales taxes for the state at the point of sale, but Internet retailers currently are not subject to this administrative burden. As a result, potential consumers have a financial incentive to purchase goods from out-of-state vendors, especially in states with high tax rates (Maguire 2013, 18). Traditional retailers therefore contend that failing to collect sales taxes on online purchases creates a playing field that is not level.⁴

The potential taxation of e-commerce raises several constitutional questions that further complicate the issue.⁵ There are constitutional restrictions on the power of a state government to require out-of-state sellers, such as mail order retailers and online vendors, to collect sales taxes on its behalf. In 1967, the Supreme Court ruled that a state can only impose liability if there is some sort of “nexus” between the state and the remote vendor.⁶ The Court later upheld this physical presence requirement in *Quill Corporation v. North*
Dakota, but its 1992 ruling included a subtle change with significant ramifications for congressional policymaking. The earlier decision was grounded in both the Due Process and Commerce Clauses, but the Quill ruling relied exclusively on the Commerce Clause. This legal shift is crucial to understanding the ongoing debate over e-commerce and sales taxes, because Congress has “the power to authorize state action that would otherwise be an unconstitutional burden on interstate commerce, so long as it is consistent with other provisions in the Constitution” (Lunder and Pettit 2013, 5). Supporters and opponents of policy change have therefore sparred both over the legal definition of “physical presence” and over several proposals through which Congress would exercise its authority to allow states to collect sales taxes on online transactions.

The complex constitutional relationship between congressional policymaking and state tax policy in the context of e-commerce provides an unusual opportunity to examine both the horizontal and vertical dynamics of policy diffusion among the American states. Over the past fifteen years, state policymakers have taken action independent of Congress and lobbied their national counterparts on behalf of policy change, often pointing to state-level developments as models to be emulated. The following analysis, which proceeds chronologically, combines quantitative and qualitative evidence to illuminate the shifting politics of e-commerce in the United States.

The Internet Tax Freedom Act (ITFA)

The emergence of electronic commerce in the late 1990s highlighted what had long been recognized as a structural flaw in the state sales tax regime. The complexity of complying with a multiplicity of non-uniform state (and local) policies is breathtaking. It
is not simply that tax rates vary across jurisdictions. Some goods and services are taxable only in certain states due to profound variation in how the states define their respective tax bases. The rise of the Internet highlighted this variability. By the end of the 1990s, for instance, only nine states applied taxes to payments for Internet access but twenty-seven states imposed sales taxes on downloaded products without a physical counterpart, such as computer software (Best and Teske 2002, 39). While important, these decisions about tax base definitions were only one part of a much more wide-ranging discussion of sales tax simplification and reform that took place in nongovernmental and governmental settings alike.

In early 1997, the National Tax Association (NTA) launched its Communications and Electronic Commerce Project, which brought together representatives of the business community, state and local governments, and academia. Participants sought to identify possible solutions to the state and local tax issues raised by e-commerce. After more than two years of work, however, the group was unable to reach a comprehensive agreement. Its business and government representatives disagreed on the issue of expanding the duty to collect sales taxes beyond the physical presence test. In addition, participants were not able to reach a consensus on the best way to implement reforms. They debated the merits of federal legislation, cooperative state action, and a hybrid of the two approaches (Swain and Hellerstein 2005, 606-7). Although the project did not generate a formal agreement, it highlighted some of the thorniest tax-related issues related to electronic commerce and foreshadowed subsequent efforts to surmount them.

At around the same time, Congress took its initial foray into Internet-related tax policy. The Internet Tax Freedom Act (ITFA), which became law in October 1998 and
has since been extended three times, is a crucial legislative landmark. It established the
general contours of the subsequent congressional agenda, in terms of both the rhetorical
arguments advanced on each side of the issue and the policy alternatives considered by
lawmakers. In many ways, the contemporary congressional and state-level politics of e-
commerce are a reaction to the baseline established by the ITFA. The law established a
three-year moratorium on state and local governments, which were not allowed to impose
“multiple or discriminatory taxes on electronic commerce.” In other words, they could
not tax consumers specifically for purchasing goods over the Internet. Any tax imposed
on an Internet purchase had to apply to analogous transactions conducted through other
means, such as at a local retailer. State and local governments could still impose sales
taxes if they were “administered equally without regard to whether the sale was face-to-
face, mail order, or Internet” (Lunder and Pettit 2013, 1). In addition, the ITFA forbade
state and local governments from establishing any new taxes on Internet access services.

The claims made during congressional hearings on the ITFA illustrate the general
contours of the debate over taxation and the Internet. Supporters of the bill portrayed the
Internet as a vehicle for the free flow of information and commerce. They fretted that the
nation’s 30,000 state and local taxing authorities might impose taxes that, in the words of
Representative Rich White (R-WA), would “make a mockery of this national market.” Testifying before a Senate subcommittee, Deputy Treasury Secretary Lawrence Summers
extolled the economic virtues of information technology and the Internet and portrayed
potential tax rules as impediments to economic growth. He also pressed Congress to act
immediately through legislation like the ITFA, claiming that “at this stage it will be much
easier to influence the kind of regulatory and tax environment we have with respect to the
Internet or electronic commerce than it will be sometime later." At the same hearing, a witness appearing on behalf of the Direct Marketing Association, echoing a claim made by Deputy Secretary Summers, said that uncoordinated state and local taxation amounted to a very real threat to electronic commerce. Subnational governments would act in their own interest, without thinking about how their actions would affect national policies or the economy as a whole. In short, the ITFA was characterized as a measure that would preserve the economic potential of a technological breakthrough by preventing unwise, counterproductive intrusions into the marketplace.

Opponents of the legislation responded that the moratorium was a preemption of state and local taxing authority that would be harmful to localities and local businesses. Testifying on behalf of the National League of Cities, Richmond (VA) City Councilman Timothy Kaine noted that the continued growth of electronic commerce would reduce the local revenue base. Absent clear evidence that state and local taxation was “confiscatory or overly contradictory, we do not think the Federal Government should step in and tell local governments what local activities they should tax to raise local revenues for local projects.” Another state official raised several similar points at the same hearing and added, “These taxes that we are concerned about preserving are not new taxes. Many of these taxes have been around for decades.” These arguments, which would reappear in future debates about the taxation of electronic commerce, failed to slow the momentum behind the ITFA.

The ITFA was part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, which was backed 333-95 in the House and 65-29 in the Senate. For purposes of the current study, it is important to recognize that the ITFA was
not a controversial measure. The House version of the bill, sponsored by Representative Christopher Cox (R-CA), had been endorsed by voice vote in June; an earlier version of the legislation had been cosponsored by a bipartisan group of 115 representatives. The Senate version of the bill was sponsored by Democrat Ron Wyden of Oregon. It also had a bipartisan group of cosponsors (six Democrats, four Republicans). The upper chamber voted 96-2 in favor of the bill. Thus the ITFA’s inclusion in an omnibus appropriations measure should not be interpreted as an effort to sidestep controversy. In fact, the ITFA received strong bipartisan support in both chambers.

The ITFA was uncontroversial, in part, because it set aside some of the thorniest issues surrounding the taxation of e-commerce. It created the Advisory Commission on Electronic Commerce (ACEC) to study them and then report back to Congress. Chaired by Virginia Governor James S. Gilmore, III, the ACEC consisted of eight state and local officials, three federal officials, and eight members representing the business community. After two years of contentious deliberations, the ACEC delivered its report to Congress in April 2000. However, deep political and philosophical divisions amongst its members meant the commission could not secure the necessary two-thirds majority to produce a formal recommendation to Congress. The priorities and preferences of business leaders and government officials were too deeply divided to be resolved easily. As a result, the ACEC’s “most important legacy was the spate of proposals it stimulated,” including one around which state governments coalesced. It called for a streamlined sales tax system and established the foundation for the Streamlined Sales and Use Tax Agreement (Swain and Hellerstein 2005, 608).
In March 2000, just before the ACEC issued its final report, forty-three states and the District of Columbia launched the Streamlined Sales Tax Project (SSTP). The project responded to one of the concerns voiced by opponents of collecting state sales taxes on e-commerce transactions. Critics argued that the disparate tax rates and tax base provisions of state laws were especially burdensome for retailers operating in multiple jurisdictions. Indeed, the Supreme Court had cited this variation in its rulings on the physical presence requirement. In response, the SSTP was an effort to simplify and better synchronize state sales tax laws. Its primary goal was “to create a simplified sales tax system so all types of vendors—from traditional retailers to those conducting trade over the Internet—could easily collect and remit sales taxes” (Maguire 2013, 9). The participating states worked together to devise a blueprint for tax simplification and reform, adopting the Streamlined Sales and Use Tax Agreement (SSUTA) in November 2002.  

The SSUTA represents a commitment to the simplification and modernization of state sales tax systems. However, it is only “a blueprint whose basic requirements need to be implemented by more detailed legislation” (Swain and Hellerstein 2005, 610). If a state wants to be a “full member” of the SSUTA, it must endorse the definitions, sourcing rules, and administrative requirements outlined in the agreement. Although the SSUTA is often associated specifically with electronic commerce, making these changes can have a very broad effect on state sales tax regimes. As of January 1, 2014, twenty-three states were full members of the SSUTA. Another state, Tennessee, was an “associate member” of the SSUTA; it needed to make small technical changes in its tax laws in order to be in full compliance.  

Eighteen other states were participating in the streamlining effort but
had not made the necessary tax law changes to be considered for either full or associate status (Maguire 2013, 5).

The emergence of the SSUTA altered the congressional politics of e-commerce taxation, mainly because it provided state leaders and the organizations representing them with another item for their rhetorical tool kit as they lobbied Congress on behalf of policy change. In September 2003, the National Governors Association sent Congress a letter stating that the governors were “interested in congressional action that would allow the interstate compact to move forward” (Herian 2012, 9). Other professional associations like the National Conference of State Legislatures, the Federation of Tax Administrators, and the Multistate Tax Commission also support the SSUTA (Maguire 2013, 12). State and local officials argue that the synchronization achieved by the agreement ameliorates the administrative difficulty faced by remote vendors who are asked to collect state sales taxes. As a result, they believe that requiring online retailers and other non-local sellers to do so is not an unconstitutional burden on interstate commerce and is likely to survive any legal challenges. The existence of the SSUTA, they claim, is a reason for Congress to exercise its authority to allow states to collect sales taxes on online transactions. Thus state and local officials have pressed Congress to change national policy in response to state-level developments, a potential example of vertical diffusion. While virtually every state is participating in this synchronization effort, however, only about half of them have taken the necessary steps to become full or associate members. Some observers posit that the limited reach of the SSUTA has hampered the congressional lobbying efforts of state officials (Herian 2012). The vertical dynamics of the SSUTA will be examined in more detail in the context of the Marketplace Fairness Act.
It is equally important to understand the horizontal dynamics of the SSUTA, and they will be the focus of the rest of this section. The states vary not only in whether or not they are full or associate members. Those who joined the agreement have done so at different times. Thirteen states have been full members of the SSUTA since it became operational in October 2005. Ten additional states have become full members since then, with Georgia (2011), Utah (2012), and Ohio (2014) serving as the most recent examples. This variation represents an analytical opportunity to examine the political and economic factors that affect whether and when states have joined the SSUTA, because it “leads to questions about why relatively few states have chosen to become part of the [SSUTA]” (Herian 2012, 14, emphasis in original).

The analysis that follows assesses the explanatory power of several factors that might account for this geographic and temporal variation. Some of these factors relate specifically to electronic commerce and its impact, whereas others appear frequently in the expansive scholarly literature on policy diffusion among the American states. Many studies have linked the ability to innovate to resource availability. Slack resources can enable potential innovators to overcome the hurdles they will inevitably confront (Mohr 1969; Rogers 1995). In the context of state politics, the institutional and fiscal capacity of state governments can serve as proxies for resource availability. A common measure of institutional capacity is legislative professionalism, which is associated with higher salaries, longer sessions, and more staff resources (King 2000; Squire 2012). States with more professional legislatures “benefit from larger staff and professional representatives who are able to engage in complex problem analysis and policy design” (Boushey 2010, 125). They may therefore be better able to identify and evaluate emerging innovations
than are states with less professionalized legislatures. The analyses that follow therefore include an index of legislative professionalism (Squire 2012). Similarly, wealthier states may be more likely to adopt innovative policies because they can invest in policy design and implementation. Scholars have consistently found that fiscal capacity facilitates the early adoption of policy innovations (Boehmke and Skinner 2012; Gray 1973; Kousser 2005; Walker 1969). Consequently, the analyses that follow include an annual measure of state government fiscal health.¹⁸

In many contexts, resource availability can be expected to facilitate the adoption of innovative public policies. For multilateral institutional arrangements like the SSUTA, however, institutional and fiscal capacity may have the opposite effect. The agreement is functionally equivalent to an interstate compact even though it has not yet received the congressional endorsement necessary for it to take effect. Previous research on interstate compacts suggests that compact membership allows states to implement new policies at a lower cost or of higher quality than they could achieve individually (Bowman and Woods 2007; Nice 1987). Whereas the absence of institutional or fiscal capacity generally might impede innovation in other contexts, states with weaker policymaking institutions and less affluent states might be more receptive to multilateral institutional arrangements like the SSUTA (Nicholson-Crotty et al. 2014). Through these agreements, they can leverage the capabilities of their peers to mitigate deficiencies in their own capacity. In contrast, states with relatively strong policymaking institutions and more affluent states might be more prone to act unilaterally.

State governments’ overall fiscal health might influence their ability to adopt new policies, but it is equally important to think about fiscal capacity and the specific goals of
the SSUTA. Despite its broad implications for state tax policy, the agreement clearly was
designed with an eye toward the collection of sales taxes on online purchases. Nearly all
states would generate additional revenue if the SSUTA were to go into effect, but the size
of this infusion would vary considerably depending on residents’ affluence and spending
patterns in addition to the states’ differential tax bases and tax rates. In other words, state
governments currently “forego” different amounts of revenue. The Center for Business
and Economic Research at the University of Tennessee has produced annual estimates of
this foregone revenue. The analyses that follow include these estimates as a proportion
of state expenditures (CanagaRetna 2012).19 If the SSUTA is a step toward “solving” the
“problem” of uncollected tax revenue, then there may be a positive relationship between
this measure and the likelihood that a state will become a full member of the agreement.

The state political environment might affect decisions about SSUTA membership.
Partisan control of government institutions has been linked to the enactment of various
public policies (Roh and Haider-Markel 2003; Spill, Licari, and Ray 2001). Democrats
and Republicans tend to possess distinct policy priorities. The dividing lines between the
two major parties are not as clear in this specific context as they are in other policy areas,
but online retailers and anti-tax organizations have described the streamlining effort and
related policies as a “tax increase.” Republicans tend to prefer public policies that reduce
the scope of government and lower taxes, so this portrayal seems likely to resonate more
strongly with them. As a result, state governments controlled by the Democratic Party
might be more likely to become full members of the SSUTA. The analysis that follows
therefore includes the proportion of state political institutions (governorship, state house,
and state senate) that are in Democratic hands.20
Interest group activity is another factor that might affect states’ willingness to join the SSUTA. Organized interests in the business community have been involved on both sides of the debate over whether and how to treat e-commerce since the late 1990s (Best and Teske 2002). An early study of the SSUTA concluded that “the progress, contours, and detours of streamlining can be explained largely by traditional interest group politics” (Swain and Hellerstein 2005, 612). Traditional retailers have a vested interest in policies like the SSUTA, since many of them feel that the status quo places them at a competitive disadvantage. In recent years, the collection of sales taxes on online purchases has been portrayed as issue of equity or “e-fairness.” Professional associations such as the Retail Industry Leaders Association (RILA) and groups of retailers including the Marketplace Fairness Coalition have lobbied for policy change at the state and national levels. As a state-level proxy for this political activity, the following analysis includes a dichotomous variable that indicates whether a retailer from the state was a member of the RILA Board of Directors. Those who play an active role in professional associations can serve as a source of policy-relevant information, updating both public officials and their colleagues in the private sector about policy and political developments (Balla 2001). There might therefore be a positive relationship between RILA board membership and the likelihood that a state will join the SSUTA.

All the potential influences discussed thus far operate within individual states. It is also essential to investigate the potential impact of external political forces. Diffusion occurs, after all, when extant versions of a public policy affect the likelihood that it will be adopted in other jurisdictions. One potential influence is the neighboring state effect, which in this context implies that a state will be more likely to become a full member of
the SSUTA when neighboring jurisdictions have already done so. This effect may be due to strong communications networks, overlapping media markets, cultural or demographic similarities, or shifts in public opinion (Pacheco 2012). The neighboring state effect is a standard component of diffusion research, and the analysis that follows therefore includes the percentage of a state’s neighbors that were members of the SSUTA prior to the year of measurement.

Table 1 displays the results of an event history analysis of SSUTA membership from 2005 to 2013. The dependent variable is the hazard rate, the probability that a state will join the SSUTA in a specific year given that it has not already done so. Hazard rates are probabilities and cannot be directly observed, so the model employs a dichotomous dependent variable (coded 1 if yes and 0 if no) to indicate whether the state joined the agreement during that year. Beginning in 2005, every state is included in the risk set for SSUTA membership, but states fall out of the risk set once they join the agreement. The size of the risk set varies according to the number of states that have joined the SSUTA, and standard logistic regression methods are used on the culled data set to evaluate the determinants of membership. The model includes a nonlinear trend variable in order to hold constant the probability of adopting the policy for the states not already having done so, conditional on the values of the independent variables (Mooney 2001). Stabilizing the hazard rate prevents biased estimates for independent variables that are correlated with the hazard rate.

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The results in Table 1 are predicted probabilities for SSUTA membership, not the coefficients of the initial analysis. The first differences were derived by manipulating the
quantity of interest and setting all other variables to their means or modes. For the only
dichotomous variable in the model, interest group activity, the values in the table display
the change in the predicted probability of membership when the quantity of interest shifts
from zero to one. For the other variables, the values in the table display the change in the
predicted probability when the quantity of interest shifts from one standard deviation
below its mean to one standard deviation above its mean. Below the point estimates are
“confidence intervals” that are [2.5%, 97.5%] of the posterior distribution. The estimates
in Table 1 were derived using the statistical simulation technique and computer software
described in King et al. (2000).

Table 1 is organized into four columns that correspond to four models of SSUTA
membership. In the first two columns, the dependent variable indicates whether a state
became a full member of the SSUTA in a specific year, given that it had not already done
so. The first column presents a model in which all states are eligible for full membership.
However, the five states that do not impose a sales tax may be especially unlikely to join
the agreement, so the second column presents the results of a model that excludes those
five states. In the third and fourth columns, the dependent variable indicates whether a
state became either a full or an associate member of the SSUTA in a specific year, given
that it had not already done so. States fall out of the risk set upon becoming either a full
or associate member. The third column presents a model in which all states are eligible
for membership, and the fourth column presents the results of a model that excludes the
five states that do not impose a statewide sales tax.

The results in Table 1 are strikingly consistent across all four models of SSUTA
membership. In every case, they highlight the significant impact of the same two factors.
States with more professional state legislatures are less likely to join the SSUTA, all else being equal. While this result is moderately surprising in light of the emphasis placed on slack resources in existing research, it is very much in line with the smaller literature on membership in interstate compacts (Bowman and Woods 2007; Nice 1987; Nicholson-Crotty et al. 2014). It appears that multilateral institutional arrangements like the SSUTA appeal especially strongly to states with limited institutional capacity, because through these collective endeavors they can leverage the resources of their peers to mitigate their own deficiencies. This opportunity may be particularly enticing when the primary policy objective is something as technically complex as sales tax reform and synchronization.

The second factor that seems to influence SSUTA membership is interest group activity. States where the retail sector is politically engaged, operationalized here as having a retailer from the state on the Board of Directors of the Retail Industry Leaders Association (RILA), are more likely to join the SSUTA, all else being equal. Retailers have prioritized “e-fairness” as one of their main policy goals, and state officials seem to be responsive to this constituency. Thus the horizontal dynamics of the SSUTA appear to have been driven by a combination of institutional capacity and interest group politics.

“Click Through” Laws

The development and spread of the SSUTA had a limited effect on congressional politics, at least initially. The Internet Tax Freedom Act (ITFA) continued to be the main object of congressional attention. The moratorium in the 1998 statute was scheduled to last for three years, and Congress enacted temporary extensions in 2001, 2004, and 2007. The 2007 extension was for seven years, and the ITFA is currently scheduled to expire on
November 1, 2014. Thus far, the renewals have been characterized by similar trajectories and bipartisan support. Supporters typically offered proposals that would make the initial moratorium permanent but settled for a temporary expansion.\textsuperscript{23} In 2007, the most recent extension of the ITFA was approved by unanimous consent in the Senate and by a 402-0 vote in the House before being signed into law by President George W. Bush.\textsuperscript{24}

Moreover, the mere existence of the moratorium provided an advantage to those who hoped to preserve the status quo. Indeed, a recent study concludes that “one of the best single predictors of success in the lobbying game is…simply whether [the group] is attempting to protect the policy that is already in place” (Baumgartner et al. 2009, 6). A 2007 hearing in the House of Representatives, while Congress weighed whether to extend the moratorium for the third time, is illustrative. It featured a parade of witnesses who, in addition to revisiting the general themes of earlier congressional hearings, described the potential negative impact on small businesses of allowing the moratorium to expire. For example, one online retailer said, “Letting [the moratorium] expire now would be a new tax on our small business and one we cannot afford.”\textsuperscript{25} At this particular hearing, not a single witness testified in opposition to extending the moratorium.

Continued strong congressional support for the ITFA spurred state policymakers and the organizations representing them on Capitol Hill to adopt different approaches to achieving their policy objectives. One change concerned their lobbying strategy. During the first extension debate in 2001, the National Governors Association (NGA) sent three letters to Congress stating its preference for a state-based solution, arguing that the recent passage of uniform streamlined sales tax laws made such a solution possible. During the second extension debate two years later, the NGA sent Congress a letter that “represented
a move from outright opposition to the moratorium to a more pronounced support for the interstate compact” (Herian 2012, 9). The organization continued to attempt to influence national policy, but it also sought to divorce the popular ITFA from state-centered efforts to resolve the thorny issue of e-commerce and sales tax collection.

Shortly after Congress endorsed a seven-year extension of the ITFA, the adoption of the nation’s first “Click Through” or “Amazon” law in New York in 2008 opened up a new front in the ongoing battle over the taxation of online purchases. Click through laws represent a second, and seemingly more aggressive, state-level approach to the collection of foregone revenue. They respond to the practice where “an individual or business that operates a website places a link on that website that directs Internet users to a different website that offers products or services from an online retailer such as Amazon” (Lunder and Pettit 2013, 8). In exchange for these online referrals, the individuals or businesses typically receive a fee or a percentage of the income realized by the online retailer. Click through laws require the local affiliates to collect sales taxes on these transactions. The financial implications of the laws are potentially profound, as evidenced by the fact that Amazon terminated its affiliate programs in Arkansas, Colorado, Illinois, North Carolina, and Rhode Island after those states enacted click through legislation (CanagaRetna 2013, 413). Supporters of the laws argue that they are constitutionally permissible because the affiliate relationship is sufficient to create a physical presence in the state. Opponents, in contrast, question whether a link on a website merits the same treatment, and tax liability, as a seller with property or employees in the taxing state (Lunder and Pettit 2013, 9).

Click through laws were enacted in thirteen states from 2009 through 2013. The adopters are geographically and politically diverse, including Arkansas, Vermont, Iowa,
and California. The emergence of this policy innovation provides another opportunity to examine the horizontal dynamics of state policymaking, which will be the focus of the rest of this section. It is important to acknowledge key differences between click through laws and the SSUTA, however. Although the two approaches respond to the same basic policy dilemma, namely, the emergence of e-commerce and its potential ramifications for state government revenues, they differ in important ways.

For the purposes of this analysis, perhaps the most fundamental distinction is that the SSUTA and click through laws represent different policy approaches. The SSUTA is an example of cooperative state action. It is a collective policy instrument or multilateral institutional arrangement through which states work together to achieve the shared goal of revenue enhancement. In contrast, click through laws represent an approach through which states pursue the same goal individually. They exemplify a more common form of policy innovation that has received extensive attention from diffusion scholars, including in the specific arena of tax policy (Berry and Berry 1992). Whereas the SSUTA relies on synchronization and an agreement that is similar to an interstate compact, states can adopt click through laws on their own. State officials might consider whether this policy is a “new tax” that puts their jurisdiction at a competitive disadvantage, but any action they choose to take does not depend on other states following suit or on the approval of the national government.

Table 2 displays the results of an event history analysis of state click through law adoption from 2008 to 2013. The analysis relies on the same general strategy as did the models of SSUTA membership. The unit of analysis is the state-year, the dichotomous dependent variable indicates whether a state enacted a click through law in that year, and
the results are presented as predicted probabilities for SSUTA membership rather than as the coefficients of the initial analysis. The models in Table 2 also examine the potential impact of the same set of political and economic factors as were evaluated earlier. Table 2 is organized into two columns. The first column presents a model that treats all states as possible adopters of click through laws. Since states that do not levy a sales tax may be especially unlikely to enact a click through law, the second column presents the results of a model that excludes those five states.

[Insert Table 2 about here]

The results in Table 2 imply that the adoption of conventional policy innovations like click through laws is driven by different factors than those which affect the adoption of multilateral institutional arrangements like the SSUTA. Neither institutional capacity nor fiscal health significantly affects the likelihood that a state will adopt a click through law. In contrast, adoption is more likely in states where the “revenue foregone” from not collecting sales taxes on e-commerce is relatively high, where Democrats exercise control of the state’s political institutions, and where a larger proportion of the state’s neighbors have put the policy in place. Interest group activity has a marginally significant effect on the adoption of click through laws, but its impact is not as strong as in the context of the SSUTA. While one must be careful about making generalizations on the basis of a single case, these results may offer broader lessons. The positive relationship between revenue losses and click through laws suggests that there is a link between problem severity and policy adoption, a common theme in the expansive diffusion literature (Nice 1994; Sapat 2004). The impact of partisanship, while also resonating with prior research, implies that click through laws may have been vulnerable to charges that they represent a “new tax,” a
vulnerability that might have affected policymaking in the states. Finally, the impact of developments in neighboring states is intriguing. The data on which the models rely are not sufficiently fine-grained to explain the origins of this effect. However, the results in Table 2 suggest that state policymakers do not believe that click through laws place their jurisdiction at a competitive disadvantage or that the absence of such a law provides them with a potential competitive advantage. In other words, economic competition does not appear to be an influential diffusion mechanism in this specific context.

The Marketplace Fairness Act of 2013

State leaders and organizations like the National Governors Association (NGA) have long lobbied for national legislation that would allow the states to collect sales taxes on e-commerce. Their efforts have gained more traction in recent sessions, largely under the rhetorical banner of “e-fairness” or “marketplace fairness.” A breakthrough occurred in 2011, when the Marketplace Equity Act was introduced in both chambers of Congress. The bill would have established a system for states and localities to collect sales taxes on online purchases. Similar legislation had been introduced in prior sessions, but the 2011 version represented a breakthrough for two primary reasons. First, it received bipartisan support. The House version of the legislation had 56 cosponsors (29 Democrats and 27 Republicans), and the Senate version had 21 (17 Democrats and 4 Republicans). Second, Amazon offered its support for the proposal, a “transformational move” which seemed to suggest that the online retailer preferred a national solution over a series of legal wrangles with individual states (CanagaRetna 2012, 414).
The Marketplace Equity Act died in committee in both chambers of Congress, but it nevertheless marked a significant moment in the “softening up” process through which policy entrepreneurs attempt to spur policy change (Kingdon 1995). For purposes of this study, the provisions of the 2011 bill and related legislation offer insight into the vertical dynamics of American federalism. Under the Marketplace Equity Act, states would have been authorized to impose tax collection responsibilities on large remote sellers once they implemented a simplified tax administration system that met the minimum requirements outlined in the bill. While this requirement resonated with the SSUTA, the proposal was not linked specifically to the state-level agreement (Lunder and Pettit 2013, 7). However, during the same session of Congress, another bill was introduced in both chambers that “would have granted SSUTA member states the authority to compel out-of-state vendors in member states to collect sales and use taxes” (Maguire 2013, 14). Interestingly, all 17 sponsors and cosponsors of the SSUTA-related proposal, officially called the Main Street Fairness Act, were Democrats.

The Marketplace Fairness Act of 2013 marks another important landmark in this policy domain, and not only because of the Senate vote with which this paper began. The proposal built on the earlier initiatives described in the preceding paragraph. It doubled the remote sales threshold that triggers the tax collection requirement from $500,000 to $1 million, for example. More importantly, it essentially combined the approaches of the Marketplace Equity Act and the Main Street Fairness Act by granting states the authority to require remote vendors to collect sales taxes if they were a member of the SSUTA or if they adopted minimum simplification requirements. The Senate version of the proposal, sponsored by Republican Mike Enzi of Wyoming, had 29 cosponsors (22 Democrats, six
Republicans, and one Independent). The House version, sponsored by Republican Steve Womack of Arkansas, had 42 Democratic and 24 Republican cosponsors.

The prominence of the SSUTA in recent congressional proposals suggests that, at minimum, the existence of the state-level agreement has influenced the specific options under consideration at the national level. There is also bipartisan support for building on what state officials have already accomplished in terms of synchronizing and simplifying their respective sales tax laws. Another striking feature of recent congressional debates is that actors who are not affiliated with state governments have advanced arguments that echo the claims made by state and local officials since the late 1990s. During an August 2012 hearing on the Marketplace Fairness Act, for example, Senator Richard Durbin (D-IL) explained, “This bill says no new tax. We’re just collecting the tax already owed.” The senator’s language was remarkably similar to the aforementioned testimony given by a state-level official in the late 1990s. An even more striking example was delivered by Amazon’s Vice President for Global Public Policy, who said that “by inaction, Congress continues to deny the states’ rights to make policy choices, like low income tax rates or no income tax at all. Only by passing this legislation would sales tax decision-making devolve to the states.”

The CEO and co-owner of an independent bookstore in Austin, Texas used similar language: “The Act allows states to decide whether or not to collect sales and use taxes already owed under state law.” Developments at the state level did not fundamentally alter the arguments made in favor of policy change, but the heightened prominence of states’ rights claims is quite striking.

Influencing the content of legislative proposals and the arguments used to support them are not the same as affecting congressional decision-making. The 2013 Senate vote
makes it possible to assess whether and how the existence of the SSUTA and state click through laws have influenced the positions taken by individual senators. The existence of a policy in one jurisdiction provides officials in other jurisdictions or at different levels of government with the “opportunity to learn” (Shipan and Volden 2008), and at its core the study of diffusion is about understanding the conditions under which policymakers avail themselves of these opportunities. Even though existing diffusion research tends to rely on the logic of individual decision-making, citing information shortcuts and heuristics as reasons existing policies might be copied (Karch 2007; Walker 1969; Weyland 2006), it tends to assess this logic with aggregated data that treats countries or states as the unit of analysis. A major analytic advantage of examining the Senate vote is that it looks more closely at the individual choices that are the subjects of diffusion theorizing. The United States Senate is an especially propitious context in which to make this analytic turn since its members represent states. Of course senators are not limited to drawing lessons from their home states, but the geographic basis of representation gives them good reason to be attentive to the jurisdictions they serve. Inattention can lead to charges that senators have lost touch with their state, hindering their hopes of reelection.

The rest of this section focuses on the May 2013 Senate vote, using it to assess the potential impact of state policies on Senate decision-making. Table 3 offers an overview of this possible relationship. States appear in one of the first three rows of the table based on the partisan make-up of their delegation. For each delegation type (two Republicans, one Republican and one Democrat, and two Democrats), the states appear in one of three columns based on how their senators voted (both senators voted for the bill, there was a split vote, or both senators voted against it). The bottom two rows of the table combine
information about how state delegations voted with information about whether the state is a member of the SSUTA or had adopted a click through law, respectively. Four states—Alaska, Kansas, New Jersey, and Texas—do not appear in the table because one of their senators did not vote.  

Table 3 reveals two notable patterns. First, Republicans and Democrats did not vote exclusively along party lines, but there are clear partisan differences in support for the Marketplace Fairness Act. Of the 53 members of the Democratic caucus who voted, 48 supported the bill. In contrast, only 21 of 43 Republicans voted for it. Moreover, all seven split Senate delegations that divided their votes consisted of a Democratic “yes” and a Republican “no.” The importance of this partisan split should not be overstated, however, because nine split delegations offered a unified stance on the legislation, with eight of them offering two votes of support, and three pairs of Republicans representing the same states split their votes. The second notable pattern in Table 3 is the appearance of a general correlation between state policies and the Senate vote. The pattern is clearest among Democrats, since all five Democratic “no” votes came from senators representing states without a statewide sales tax. The lone split delegation to provide two “no” votes also came from such a state. The patterns in the bottom two rows of the table suggest a general correlation between senate votes and the two specific policies that have been the subject of this analysis. Of the 22 SSUTA members whose senators both participated in the May 2013 vote, 15 offered a unified “yes” vote and only three offered a unified “no” vote. The pattern is even starker in the context of click through laws, where 10 of the 14 Senate delegations offered a unified “yes” vote and there were no unified “no” votes. Of
the eight split Senate delegations to offer unified “yes” votes, six represented states that either were members of the SSUTA or had adopted a click through law.

Table 4 displays the results of a more systematic analysis of the Senate vote. The models use logistic regression to assess the potential impacts of certain factors associated with individual senators and others associated with the states they represent in the upper chamber. For each senator, the outcome of interest is their vote, coded “1” if “yes” and “0” if no. Building on the discussion in the preceding paragraph, the first individual-level factor in the models is a dichotomous variable that indicates whether the senator belongs to the Republican Party. All else being equal, Republicans are expected to be less likely to support the bill. The second individual-level factor in the models is a dichotomous variable that indicates whether the senator is a woman. Although there is strong support for the idea that male and female legislators have different policy priorities and positions (Cammisa and Reingold 2004), the nature of this relationship is less clear in the context of a relatively new issue like e-commerce. The final individual-level factor in the models is the total amount that the Retail Industry Leaders Association (RILA) contributed to the senator in the previous six years. It is a proxy for the relationship between a senator and “traditional” retailers, and it is expected to have a positive effect on the likelihood that a senator will support the Marketplace Fairness Act.32

[Insert Table 4 about here]

The models also include three state-level characteristics. The first is an estimate of the “revenue foregone” by the state the senator represents in 2012, the year prior to the Senate vote. The second is a dichotomous variable indicating whether the state is either a full or associate member of the SSUTA. The third is a dichotomous variable indicating
whether the state has adopted a click through law. All three state-level measures can be interpreted as proxies for senators’ responsiveness to conditions in the states they serve, with the two policy-related variables assessing whether policy changes at the state level had a systematic impact on congressional decision-making. A significant effect might imply that senators exploited the “opportunity to learn” that the state policies provided. Table 3 displays the results of three models. The two state policies appear separately in the first model, the second model includes the total number of state policies adopted (0, 1, or 2), and the third model includes a dichotomous variable indicating whether the state adopted at least one of the policies.

The results in Table 4, which are presented as predicted probabilities rather than as the coefficients of the original analysis, reveal three important patterns. First, although support for the Marketplace Fairness Act crossed party lines, partisanship still had a very strong effect on the Senate vote. All else being equal, Republicans were significantly less likely to support the bill. The substantive impact of this relationship appears to be quite large, but the estimates are somewhat imprecise due to the small number of observations (i.e., senators) in the dataset. Second, senators representing states where the amount of “revenue foregone” was relatively high were significantly more likely to support the bill, all else being equal. If one thinks of the Marketplace Fairness Act as a “solution” to the “problem” of uncollected sales tax revenue on electronic commerce, then this pattern can be viewed as a response to problem severity. It is worth reiterating that partisanship and revenue foregone also affected the adoption of state click through laws.

The third important pattern in Table 3 has to do with the factors that did not have a significant effect on the Senate vote. Senators who received more funds from the RILA
were more likely to support the Marketplace Fairness Act, as expected, but this effect did not achieve conventional levels of statistical significance. The same finding holds for the state policies associated with policy learning or vertical federalism. The policies also had the expected positive effect on senatorial support, but the results in all three models were not statistically distinguishable from zero. As a result, it seems appropriate to draw the following conclusion about the shifting politics of e-commerce: state-level policy choices affected the content of the congressional agenda, and members of the Senate responded to economic conditions in the states they represented, yet senators did not necessarily avail themselves of the “opportunity to learn” provided by the existence of relevant policies in their home states. The story of the Marketplace Fairness Act, and the shifting politics of e-commerce more broadly, cannot be told without acknowledging the critical role played by federalism. However, there is insufficient empirical support for the claim that national officials “learned” from developments at the state level.

**Conclusion**

The growing importance of electronic commerce in the American economy means that the issues raised by the Streamlined Sales and Use Tax Agreement (SSUTA), state click through laws, and congressional initiatives like the Marketplace Fairness Act will likely remain on the political agenda for the foreseeable future. The preceding analysis suggests that the politics of e-commerce have subtly changed since online purchases first became widespread in the late 1990s. There appears to be greater openness among state and national officials, and even among some Internet retailers, to the prospect of applying
sales taxes to online purchases. The impact of greater state government “revenue losses” on the adoption of click through laws and on the Senate vote on the Marketplace Fairness Act might imply that this openness will continue to grow if e-commerce continues on its present upward trajectory.

Although it is inappropriate to make broad generalizations on the basis of a single policy, the shifting trajectory of the politics of e-commerce seems to offer insight into the horizontal and vertical dynamics of American federalism. The divergent politics of the SSUTA and click through laws suggest that diffusion scholars must be more attentive to how the choice of a particular policy tool affects adoption patterns. Institutional capacity and interest group activity influenced states’ decisions to join the SSUTA, whereas fiscal concerns, partisanship, and policies in neighboring states influenced the adoption of click through laws. This finding builds constructively on the recent turn toward policy content in the study of diffusion. The shifting politics of e-commerce also offers insight into the relationship between state policymaking and congressional activity. Existing research is generally skeptical about the states’ impact on national policy, but the preceding analysis suggests that national lawmakers were aware of state-level developments and attentive to the fiscal environment in their home jurisdictions. By examining an array of evidentiary sources, it becomes possible to appreciate the relatively subtle effects of the laboratories of democracy.
Notes

1 Vertical diffusion is not limited to the interaction between the national government and the states. Other intergovernmental relationships, such as those between cities and states, have also influenced the diffusion process (Shipan and Volden 2006).


3 Alaska, Delaware, Montana, New Hampshire, and Oregon do not collect a general sales and gross receipts tax.

4 Purchasers remain responsible for paying the relevant tax, but the rate of purchaser compliance is low and enforcement is virtually nonexistent (Lunder and Pettit 2013, 1).

5 The summary in this paragraph relies heavily on the analysis in Lunder and Pettit (2013).


8 There is a common misperception that the Internet Tax Freedom Act prevents state and local governments from taxing Internet sales. As has already been explained, the constitutional restriction applies only to their ability to compel out-of-state sellers to collect sales taxes on their behalf (Lunder and Pettit 2013, 1).


10 Ibid., p. 20.

11 Ibid., p. 43.

12 Ibid., p. 27.

13 Ibid., p. 34.


15 See Swain and Hellerstein (2005) for a more detailed account of the Streamlined Sales Tax Project.

16 Two states, Ohio and Utah, were associate members of the SSUTA before making the necessary changes to be in full compliance. Ohio became a full member of the SSUTA on January 1, 2014.

17 The courts have generally found that the Constitution gives Congress the power to nullify an interstate compact if it conflicts with national aims. Not every interstate compact has received formal congressional sanction, but it is believed that the SSUTA requires congressional approval due to its implications for the regulation of interstate commerce.

18 The measure of state government fiscal health is the state budget surplus (revenues minus expenditures) as a percentage of expenditures. The revenue and expenditure data come from the Annual Survey of State Government Finances published by the U.S. Census Bureau. Information for 2013 has not been published yet, so the values for 2012 are applied to the 2013 state-years.

19 CanagaRetna (2012) includes annual revenue loss estimates from 2007 through 2012. Estimates for 2006 are available but were calculated using a slightly different method. The values for 2006 are applied to the 2005 state-years, and the values for 2012 are applied to the 2013 state-years to account for the missing data.

20 The measure is an additive scale of Democratic control of the governorship, state senate, and state house in which the three institutions are weighted equally. Unified Democratic control receives a score of “1,” Democratic control of two institutions receives a score of “.67,” and so on. Annual estimates are available at http://www.indstate.edu/polisci/klarnerpolitics.htm.

21 In February 2014, e-fairness was listed as the first of three “top priorities” in the public policy section of the RILA website. The board membership variable is lagged one year.

22 This change affects the three states (Ohio, Tennessee, and Utah) that became associate members of the SSUTA when it went into effect on October 1, 2005. Utah became a full member on October 1, 2012, and Ohio became a full member on January 1, 2014. Tennessee is still an associate member. Georgia became an associate member on January 1, 2011 and a full member on August 1, 2011.

23 The imminent expiration of the current moratorium has spurred the introduction of at least four virtually identical bills to make it permanent.

24 The original House version of the Internet Tax Freedom Act Amendments of 2007 was approved by a 405-2 vote, with one of the “no” votes coming from a representative who favored a permanent extension.
27 Ibid., p. 12.
28 Ibid., p. 18.
29 For purposes of this analysis, Senators Angus King of Maine and Bernie Sanders of Vermont are treated as Democrats since they caucus with the Democratic Party.
30 Senators Mark Begich (D-AK), John Cornyn (R-TX), Jerry Moran (R-KS), and Frank Lautenberg (D-NJ) did not vote.
31 The only “yes” votes among senators serving states without a statewide sales tax came from Democrats Thomas Carper and Chris Coons of Delaware.
32 Due to the length of Senate terms and the staggered nature of Senate elections, the six-year timeframe was chosen to ensure that each senator had been eligible for election at least once during the period under study.
33 The results of the analysis do not change if SSUTA membership and the adoption of a click through law appear individually.
34 The estimate for SSUTA membership in Model 1 could be considered significant if a lenient standard ($P < .1$, one-tailed test) were employed.
References


*American Politics Research* 34:403-36.


### Table 1: Explaining the Timing of SSUTA Membership, 2005-2013

<table>
<thead>
<tr>
<th>Variable (Expected Direction)</th>
<th>Full Membership (All States)</th>
<th>Full Membership (Sales Tax States Only)</th>
<th>Any Membership (All States)</th>
<th>Any Membership (Sales Tax States Only)</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Institutional Capacity (+/-)</em></td>
<td>-3.57* [-7.75, -0.76]</td>
<td>-6.74** [-14.62, -1.81]</td>
<td>-5.54** [-11.99, -1.57]</td>
<td>-7.42** [-15.62, -2.34]</td>
</tr>
<tr>
<td><em>Fiscal Health (+/-)</em></td>
<td>-2.29 [-6.71, 0.83]</td>
<td>-1.82 [-6.07, 1.20]</td>
<td>-2.07 [-6.51, 0.86]</td>
<td>-1.57 [-5.34, 1.11]</td>
</tr>
<tr>
<td><em>Revenue Loss (+)</em></td>
<td>0.25 [-2.18, 3.12]</td>
<td>-2.10 [-6.52, 0.99]</td>
<td>0.52 [-1.59, 3.20]</td>
<td>-1.48 [-4.67, 0.94]</td>
</tr>
<tr>
<td><em>Democratic Control (+)</em></td>
<td>-0.18 [-2.93, 2.62]</td>
<td>-0.29 [-3.30, 2.60]</td>
<td>-0.54 [-3.14, 1.63]</td>
<td>-0.80 [-3.63, 1.35]</td>
</tr>
<tr>
<td><em>Interest Group Activity (+)</em></td>
<td>7.21* [0.91, 17.65]</td>
<td>6.38* [0.49, 16.72]</td>
<td>14.06** [4.48, 30.54]</td>
<td>12.25** [3.53, 26.94]</td>
</tr>
<tr>
<td><em>Neighboring States (+)</em></td>
<td>-3.39 [-10.27, 1.33]</td>
<td>-2.51 [-9.36, 2.14]</td>
<td>-3.14 [-10.04, 0.82]</td>
<td>-2.80 [-9.73, 0.89]</td>
</tr>
<tr>
<td><em>Trend</em></td>
<td>-3.87* [-9.80, -0.65]</td>
<td>-6.55** [-15.54, -1.86]</td>
<td>-3.65* [-9.73, -0.51]</td>
<td>-5.52** [-14.28, -1.29]</td>
</tr>
<tr>
<td>Observations</td>
<td>306</td>
<td>261</td>
<td>283</td>
<td>238</td>
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<tr>
<td>Log Likelihood</td>
<td>-60.67</td>
<td>-56.31</td>
<td>-55.86</td>
<td>-51.23</td>
</tr>
<tr>
<td>P &gt; Chi-Squared</td>
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<td>0.0000</td>
<td>0.0000</td>
<td>0.0000</td>
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<tr>
<td>Pseudo R-Squared</td>
<td>0.2072</td>
<td>0.2292</td>
<td>0.2997</td>
<td>0.3224</td>
</tr>
</tbody>
</table>

Note: All tests of statistical significance are two-tailed. The values in the table are predicted probabilities rather than the coefficients of the initial analyses. They are accompanied by [2.5%, 97.5%] of the posterior distributions.

* Significant at the .05 level  ** Significant at the .01 level
Table 2: Explaining the Timing of “Click Through” Law Adoption, 2008-2013

<table>
<thead>
<tr>
<th>Variable (Expected Direction)</th>
<th>All States</th>
<th>Sales Tax States Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional Capacity (+)</td>
<td>0.51</td>
<td>0.67</td>
</tr>
<tr>
<td></td>
<td>[-1.51, 3.52]</td>
<td>[-1.97, 4.59]</td>
</tr>
<tr>
<td>Fiscal Health (+)</td>
<td>-1.12</td>
<td>-1.39</td>
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<tr>
<td></td>
<td>[-5.61, 3.05]</td>
<td>[-7.15, 3.69]</td>
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<tr>
<td>Revenue Loss (+)</td>
<td>3.82*</td>
<td>3.22*</td>
</tr>
<tr>
<td></td>
<td>[0.88, 9.06]</td>
<td>[0.35, 8.14]</td>
</tr>
<tr>
<td>Democratic Control (+)</td>
<td>2.77*</td>
<td>3.57*</td>
</tr>
<tr>
<td></td>
<td>[0.23, 7.69]</td>
<td>[0.27, 9.22]</td>
</tr>
<tr>
<td>Interest Group Activity (+)</td>
<td>3.76^</td>
<td>4.67^</td>
</tr>
<tr>
<td></td>
<td>[-0.46, 10.89]</td>
<td>[-0.65, 13.65]</td>
</tr>
<tr>
<td>Neighboring States (+)</td>
<td>1.22*</td>
<td>1.64*</td>
</tr>
<tr>
<td></td>
<td>[0.10, 3.43]</td>
<td>[0.11, 4.27]</td>
</tr>
<tr>
<td>Trend</td>
<td>-2.27</td>
<td>-2.94</td>
</tr>
<tr>
<td></td>
<td>[-7.36, 0.56]</td>
<td>[-9.17, 0.65]</td>
</tr>
<tr>
<td>Observations</td>
<td>267</td>
<td>237</td>
</tr>
<tr>
<td>Log Likelihood</td>
<td>-42.47</td>
<td>-42.36</td>
</tr>
<tr>
<td>P &gt; Chi-Squared</td>
<td>0.0008</td>
<td>0.0029</td>
</tr>
<tr>
<td>Pseudo R-Squared</td>
<td>0.2265</td>
<td>0.2035</td>
</tr>
</tbody>
</table>

Note: All tests of statistical significance are two-tailed. The values in the table are predicted probabilities rather than the coefficients of the initial analyses. They are accompanied by [2.5%, 97.5%] of the posterior distributions. ^ Significant at the .10 level  * Significant at the .05 level
Table 3: Summary of Senate Vote on the Marketplace Fairness Act, 2013

<table>
<thead>
<tr>
<th></th>
<th>Unified Yes Vote</th>
<th>Split Vote</th>
<th>Unified No Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Both Republicans</strong></td>
<td>AL, GA, MS, NE, TN</td>
<td>AZ, SC, WY</td>
<td>ID, KY, OK, UT</td>
</tr>
<tr>
<td><strong>Split Delegation</strong></td>
<td>AR, IN, ME, MO, NC, ND, OH, SD</td>
<td>FL, IA, IL, LA, NV, PA, WI</td>
<td>NH</td>
</tr>
<tr>
<td><strong>Both Democrats</strong></td>
<td>CA, CO, CT, DE, HI, MA, MD, MI, MN, NM, NY, RI, VA, VT, WA, WV</td>
<td></td>
<td>MT, OR</td>
</tr>
<tr>
<td><strong>SSUTA Full (Associate) Member</strong></td>
<td>AR, GA, IN, MI, MN, NE, NC, ND, (OH), RI, SD, (TN), VT, WA, WV</td>
<td>IA, NV, WI, WY</td>
<td>KY, OK, UT</td>
</tr>
<tr>
<td><strong>Click Through Law</strong></td>
<td>AR, CA, CT, GA, MN, NY, NC, RI, VT, WV</td>
<td>IL, IA, PA, SC</td>
<td></td>
</tr>
</tbody>
</table>
Table 4: U.S. Senate Vote on the Marketplace Fairness Act, 2013

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republican (-)</td>
<td>-67.33**</td>
<td>-57.38**</td>
<td>-54.48**</td>
</tr>
<tr>
<td></td>
<td>[-85.99, -41.18]</td>
<td>[-74.00, -36.10]</td>
<td>[-72.49, -32.88]</td>
</tr>
<tr>
<td>Female Senator (+)</td>
<td>3.69</td>
<td>2.08</td>
<td>1.86</td>
</tr>
<tr>
<td></td>
<td>[-7.82, 16.84]</td>
<td>[-6.13, 10.09]</td>
<td>[-6.44, 10.16]</td>
</tr>
<tr>
<td>RILA Contributions (+)</td>
<td>2.13</td>
<td>1.44</td>
<td>1.55</td>
</tr>
<tr>
<td></td>
<td>[-5.59, 11.55]</td>
<td>[-3.23, 7.84]</td>
<td>[-2.88, 7.52]</td>
</tr>
<tr>
<td>Revenue Loss (+)</td>
<td>14.50**</td>
<td>10.07**</td>
<td>10.14**</td>
</tr>
<tr>
<td></td>
<td>[4.43, 31.30]</td>
<td>[2.57, 23.67]</td>
<td>[1.95, 26.24]</td>
</tr>
<tr>
<td>SSUTA Member (+)</td>
<td>3.99</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>[-0.94, 15.15]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Click Through Law (+)</td>
<td>2.55</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>[-9.23, 14.57]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Policies (+)</td>
<td></td>
<td>3.14</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>[-2.62, 12.48]</td>
<td></td>
</tr>
<tr>
<td>Either Policy Adopted (+)</td>
<td></td>
<td></td>
<td>1.33</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>[-5.50, 9.47]</td>
</tr>
<tr>
<td>Observations</td>
<td>96</td>
<td>96</td>
<td>96</td>
</tr>
<tr>
<td>Log Likelihood</td>
<td>-37.6274</td>
<td>-38.4216</td>
<td>-39.049</td>
</tr>
<tr>
<td>P &gt; Chi-Squared</td>
<td>0.0000</td>
<td>0.0000</td>
<td>0.0000</td>
</tr>
<tr>
<td>Pseudo R-Squared</td>
<td>0.3403</td>
<td>0.3264</td>
<td>0.3154</td>
</tr>
</tbody>
</table>

Note: All tests of statistical significance are two-tailed. The values in the table are predicted probabilities rather than the coefficients of the initial analyses. They are accompanied by [2.5%, 97.5%] of the posterior distributions. ** Significant at the .01 level