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## Congress in Crisis: Destabilizing Events and the American Legislative Process in the Postreform Era

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## **Congress in Crisis: Destabilizing Events and the American Legislative Process in the Postreform Era**

### **Keywords**

Congress, Crisis, Legislative Process, September 11, USA PATRIOT Act, Hurricane Katrina, Social Sciences, Political Science, John S. Lapinski, Lapinski, John

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**Congress in Crisis:  
Destabilizing Events and the American Legislative Process in the Postreform Era**

by

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A thesis submitted in partial fulfillment  
of the requirements for the  
Degree of Bachelor of Arts with Honors  
in Political Science

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30 March 2009

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## Introduction

The general question that this paper aims to help answer is:

*How does the Congress of the United States make laws to address national crises and how does the lawmaking process differ during times of crisis in the Postreform Era?*

Article 1, Section 5 of the Constitution of the United States of America states that “each House may determine the rules of its proceedings.”<sup>1</sup> This clause allows for each chamber to determine its own processes for law making, and this fact sets the foundation for the study of the American legislative process. Academics and policy makers have studied how bills become law and how Congress’s ability to structure its own proceedings affects the two chambers’ processes and products. In 1885, Woodrow Wilson wrote a groundbreaking book, *Congressional Government*, in which committees are the focal institution within Congress. A century later, leading political scientists including Keith Krehbiel, Barry Weingast, and William Marshall are continuing the study of how committees are the main institutional entity that affects how laws are made. David Rohde, John Aldrich, Gary Cox, Mathew McCubbins, and other political scientists have offered their own theories of the American legislative process emphasizing political parties’ organizational effects on Congresspersons.

This paper hopes to add to this century old conversation by exploring the legislative process used to pass bills addressing national crises in the Postreform Era for two reasons. First, the United States Congress is currently in the Postreform Era, which began after a series of reforms in the early 1970’s that decentralized Congress. An analysis of the current legislative

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<sup>1</sup> Constitution of the United States, the, Article 1, Section 5

process will provide useful knowledge for understanding and, potentially, affecting future legislation. Second, although academics like David Mayhew and John Kingdon have explored the legislative process caused by major events, the most prominent theories in the literature claim to incorporate all legislation, including legislation passed during times of crisis.<sup>2</sup> These models, however, do not formally incorporate events into their frameworks. This is noteworthy because David Mayhew writes that Congressional studies do not put enough emphasis on contingent events, and these contingent events are a causal part of the lawmaking process. Mayhew's definition of events includes a variety of occurrences that lead Congress to act. He focuses on wars, depressions, and assassinations in his analysis.<sup>3</sup> Mayhew says that "a great deal of sweeping change of American history has owed to interaction between... "underlying" considerations and certain contingent events, notably depressions and wars."<sup>4</sup> In other words, events, including the crises which this paper discusses, interact with the political preferences and institutional factors used to justify all Congressional actions in the major theories of Congress in order to create political change over time. American history is littered with crises and major events which have led to surges in consequential legislation and governmental change. Legislative theories that do not account for contingencies are unable to describe a large proportion of legislative history.

Mayhew continues, "Room needs to be allowed for events and their consequences in the literature."<sup>5</sup> This paper will help heed Mayhew's request by looking at particularly significant "events" in American history and seeing how they interact with Congress's

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<sup>2</sup> "Times of crisis" refers to the period of time following a crisis before the affected areas have stabilized.

<sup>3</sup> David Mayhew, "Events as Causes: The Case of American Politics," Yale University, 2005, <http://yale.academia.edu/DavidRMayhew/Papers/7303/Events-as-Causes> and David Mayhew, "Wars and American Politics," Yale University, 2005, <http://yale.academia.edu/DavidRMayhew/Papers/7302/Wars-and-American-Politics>

<sup>4</sup> David Mayhew, "Events as Causes: The Case of American Politics," Yale University, 2005, <http://yale.academia.edu/DavidRMayhew/Papers/7303/Events-as-Causes>, Page 32

<sup>5</sup> Ibid., Page 36

“underlying considerations.” Specifically, this work aims to determine if the major theories of the legislative process apply to lawmaking during times of crisis, and, in particular, legislation aimed at dealing with crises.

In-depth exploration of specific legislation passed in order to cope with national crises in the Postreform Era is a manageable and clear approach to understand how Congress addresses crisis in general, and this approach is adopted in this essay. The paper addresses the specific question:

*Which theory/theories best account for the legislative process by which the United States Congress produced the USA PATRIOT Act of 2001 and the Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising from the Consequences of Hurricane Katrina Act of 2005?*

In essence, a look at the two landmark pieces of legislation and the bills and resolutions leading to their enactment provides strong support for the claim that the four major theories of the legislation process, *Cartel Theory*, *Conditional Party Government Theory*, *Distributive Model*, and *Informational Theory* do not adequately describe the process by which Congress addresses crisis legislatively. These theories do not incorporate contingency, and, as stated above, theories that do not account for contingency fail to describe a large proportion of lawmaking in the United States. This paper does not attempt to build a model capable of incorporating lawmaking during times of crisis; instead, it shows that contingency is an important factor to consider and helps lay the foundation of knowledge necessary for such modeling in the future. Using roll call votes and floor debate, this paper tests the assumptions of the four major theories

and discovers that the time component inherent in crises and the major shift of the status quo relative to Congressional preferences prevents the theories' models from capturing Congress's actions.

The first section in this paper provides a review of the literature covering the major theories of the legislative process. The following section presents this paper's three hypotheses and explains the research design. The third section analyzes the first case study. It describes the terrorist attacks of September 11, 2001, the make-up of the 107<sup>th</sup> Congress of the United States, and the components of the USA PATRIOT Act. Then, it proceeds by analyzing the process by which the legislation was passed. The fourth section provides an overview of Hurricane Katrina, its effects, Congress's non-legislative response, the make-up of the 109<sup>th</sup> Congress, and the Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising from the Consequences of Hurricane Katrina Act of 2005. Next, it delves into the process by which the legislation was passed. The final section is a summary of the paper's findings.

## Section I: Literature Review

The following section provides brief introductions to the major theories of the American legislative process starting with the party-centric theories (*Conditional Party Government Theory* and *Cartel Theory*) then moving to the committee-centric theories (*Distributive Model*, *Informational Theory*). It includes a description of the Keith Krehbiel's *Pivotal Model* which works in conjunction with the *Informational Theory*, and it concludes with a discussion of these theories' limitations that my work addresses.

### Conditional Party Government

One of the leading theories about the American legislative process is the *Conditional Party Government Theory* championed by political scientists like David Rohde and John Aldrich. According to the *Conditional Party Government Theory*, party is the central factor in determining which bills are passed; party leaders are more able to pass legislation when there is wide agreement amongst the party.<sup>6</sup> Therefore, party leadership gains power within the chambers when partisanship increases, when party homogeneity increases, and when the two major parties' median voters are farther apart ideologically in a policy space.<sup>7</sup> When there is party homogeneity and the two major parties have divergent ideologies, the party leadership is able to exert greater control over the rank and file members. This paper will refer to the distance in political preferences between the party's median voters in the House of

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<sup>6</sup> David W. Rohde, *Parties and Leaders in the Postreform House* (Chicago: The University of Chicago Press, 1991), Page 31

<sup>7</sup> Charles J. Finocchiaro and David W. Rohde, "War for the Floor: Partisan Theory and Agenda Control in the U.S. House of Representatives," *Legislative Studies Quarterly* 33 (2008), Page 39

Representatives as interparty distance and the homogeneity of the preferences of members within the same party as intraparty cohesiveness.<sup>8</sup>

Members of Congress must balance their personal preferences with their operative preferences.<sup>9</sup> Personal preferences refer to the policies that Congresspersons privately support and operative (or induced) preferences refers to the policies that Congresspersons support after factoring in all other factors (e.g. reelection, policy, and power within the chamber).<sup>10</sup> As intraparty cohesiveness and the interparty distance increase, members weigh their operative preferences more heavily than their personal preferences because they delegate a greater proportion of their power to the party leadership.<sup>11</sup>

On a macro level, Congress has become more partisan, and its parties have become more homogenous during the Postreform Era starting in the mid 1970s. In *Parties and Leaders in the Postreform House* (1991), David Rhode traces how the reforms that strengthened subcommittees and party leadership led to greater partisanship and intraparty cohesiveness. Therefore, proponents of *Conditional Party Government* see the Postreform Era as an era in which party leadership is strong and in which party is the central factor in the legislative process. A more micro view of *Conditional Party Government* suggests that rank-and-file members will only delegate power to party leadership on partisan issues. If party cleavages are absent, the party leadership will be weak for a given issue. Lastly, *Conditional Party*

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<sup>8</sup> Steven S. Smith, *Party Influence in Congress* (New York: Cambridge University Press, 2007), Page 119

<sup>9</sup> David W. Rohde, *Parties and Leaders in the Postreform House* (Chicago: The University of Chicago Press, 1991), Page 163

<sup>10</sup> Induced preferences are observable. They are the only preferences that can be studied because political scientists have no way of knowing a member's personal preferences.

<sup>11</sup> Steven S. Smith, *Party Influence in Congress* (New York: Cambridge University Press, 2007), Page 119

*Government Theory* predicts that most legislation that passes will reflect the preferences of the median voter in the majority party.<sup>12</sup>

### **Cartel Theory**

The other major party-based theory of the legislative process is the *Cartel Theory*. Developed by Gary Cox and Mathew McCubbins, the *Cartel Theory* argues that parties, since the adoption of Reed's rules in 1890<sup>13</sup>, are the dominant organization in Congress regardless of intraparty cohesiveness and interparty distance.<sup>14</sup> However, homogeneity still has some effect on the party leaderships' power. Because of existing chamber rules, the majority party's negative agenda power is unconditional, whereas its positive agenda power is conditional (which is hard to empirically observe).<sup>15</sup> Negative agenda control refers to the ability to prevent bills from coming to the chamber floor for a vote, and positive agenda control refers to the ability to pass legislation. Multiple committee referrals, open/closed rules (depending on circumstances), and adjustments to the legislative calendar are examples of negative agenda control. Meanwhile, a coordinated whip system, open/closed rules (depending on circumstances), and targeted committee referrals are examples of positive agenda control.

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<sup>12</sup> Steven S. Smith, *Party Influence in Congress* (New York: Cambridge University Press, 2007), Pages 119-120

<sup>13</sup> Reed's Rules were repealed by the 52<sup>nd</sup> Congress. The 53<sup>rd</sup> Congress partially restored Reed's rules, and the 54<sup>th</sup> Congress restored them in full. They have been an active component of the House of Representatives' institution since the 54<sup>th</sup> Congress. Gary W. Cox and Mathew D. McCubbins, *Setting the Agenda: Responsible Party Government in the U.S. House of Representatives* (New York: Cambridge University Press, 2005), Page 72

<sup>14</sup> Gary W. Cox and Mathew D. McCubbins, *Legislative Leviathan: Party Government in the House* (New York: Cambridge University Press, 2007)

<sup>15</sup> Charles J. Finocchiaro and David W. Rohde, "War for the Floor: Partisan Theory and Agenda Control in the U.S. House of Representatives," *Legislative Studies Quarterly* 33 (2008), Page 40 and Gary W. Cox and Matthew D. McCubbins, "Agenda Power in the U.S. House of Representatives, 1877-1986," in *Party, Process and Political Change in Congress*, eds. David W. Brady and Mathew D. McCubbins (Stanford: Stanford University Press, 2002): Page 128

*Cartel Theory* assumes that there is a unidimensional policy space on which legislators can be placed based on their (induced) preferences regarding the relevant legislation.<sup>16</sup> Bills that are not supported by the majority of the majority party will almost never make it to the House floor.<sup>17</sup> Party leadership exercises its negative agenda control to prevent divisive bills from reaching the chamber floors. Party leadership does this by referring bills to multiple committees, referring bills to committees with Chairpersons who do not favor the legislation, and/or attaching rules that work make it difficult for the chamber to agree on the final bill (e.g. by preventing or allowing amendments) just to name a few.

*Cartel Theory* only encompasses majoritarian features of Congress unlike the *Pivotal Model* which takes the filibuster and veto into consideration.<sup>18</sup> The filibuster is nonmajoritarian because it allows a minority of Senators to prevent legislation from passing, and the veto is nonmajoritarian because the President can kill legislation that is supported by a majority of Congresspersons but less than a supermajority (two-thirds of the Congresspersons). *Cartel Theory* recognizes a gridlock region, a concept integral in the *Pivotal Model* discussed later in this section. However, the gridlock region is a byproduct of party factors, unlike in the *Pivotal Model*, and it is not a significant aspect of *Cartel Theory*. In *Legislative Leviathan*, Cox and McCubbins acknowledge that “the heterogeneity of the majority party determines the size of... the “party agenda,’ defined as the set of bills on which the party leadership takes a united stand.”<sup>19</sup> This shows that the make up of the majority party still affects the legislative output.

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<sup>16</sup> Gary W. Cox and Matthew D. McCubbins, “Agenda Power in the U.S. House of Representatives, 1877-1986,” in *Party, Process and Political Change in Congress*, eds. David W. Brady and Mathew D. McCubbins (Stanford: Stanford University Press, 2002), Page 115

<sup>17</sup> *Ibid.*, Page 116

<sup>18</sup> *Ibid.*, Page 132

<sup>19</sup> *Ibid.*, Page 141

According to Cox and McCubbins, the party leadership “always obey the ‘first commandment of party leadership’- Thou shall not aid bills that will split thy party- and to sometimes obey the second commandment- Thou shall aid bills that most thy party like.”<sup>20</sup> Therefore, even in *Cartel Theory*, the cohesiveness of the majority party’s ideology still affects which bills come before the chamber because the leadership will not bring bills to the floor that do not have the support of the majority of their party. However, unlike *Conditional Party Government Theory*, new legislation is near the median voter of the chamber, not the median voter of the majority party. This theory also differs from *Conditional Party Government Theory* and nonparty-centric theories because it recognizes the majority party’s “near-monopoly of formal agenda power” as the driving force of all legislative output whereas the party’s power is conditional according to *Conditional Party Government Theory* and not relevant in the *Distributive Model* and *Informational Theory*.<sup>21</sup>

### **Distributive Model**

In Barry Weingast and William Marshall’s version of the *Distributive Model*, “legislative institutions reflect two key components: the goals and preferences of individuals... legislators seeking reelection from their constituents, and the transactions costs that are induced by imperfect information, opportunism, and other agency problems.”<sup>22</sup> Likewise, the model makes three major assumptions: (1) legislators represent their districts’ interests; (2)

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<sup>20</sup> Steven S. Smith, *Party Influence in Congress* (New York: Cambridge University Press, 2007), Page 133

<sup>21</sup> *Ibid.*, Page 133

<sup>22</sup> Barry R. Weingast and William J. Marshall, “Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized as Markets, the,” *Journal of Political Economy* 91 (1998), Page 134

party does not constrain individual behavior; and (3) the majority of congresspersons must support a bill for its passage.<sup>23</sup>

Congresspersons want to benefit from legislative output. Congresspersons are willing to vote for a bill that benefits a certain member with the expectation that the benefiting member will reciprocate in the future. While early versions of the *Distributive Model* focused on vote trading, or logrolling, Weingast and Marshall's theory describes Congresspersons as trading for influence over categories of legislation instead of specific votes. "Instead of bidding for votes, legislators bid for seats on committees associated with rights to policy areas valuable for their reelection."<sup>24</sup> The committee system, not the party, is the main institution that explains the legislative process. Therefore, new legislation will be located near the median voter of the committee from where the bill was referred.

The theory also purports that committees are composed of "high demanders" whose reelection needs can be better achieved in their given committee than another one. For this to be true, Congresspersons must be able to recognize which committees will best help them achieve reelection, and the bidding system for committees must be able to adequately assign "high demanders" to their appropriate committees.<sup>25</sup> Another significant feature of the *Distributive Model* is that the benefits of legislative decisions are identical to legislative outputs.<sup>26</sup> Congresspersons are able to accurately anticipate the benefit that legislation will provide.

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<sup>23</sup> Barry R. Weingast and William J. Marshall, "Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized as Markets, the," *Journal of Political Economy* 91 (1998), Pages 136-137

<sup>24</sup> *Ibid.*, Page 148

<sup>25</sup> *Ibid.*, Page 160

<sup>26</sup> Keith Krehbiel, *Information and Legislative Organization* (Ann Arbor: The University of Michigan Press, 1994), Page 67

### Informational Theory and the Pivotal Model

The *Informational Theory* starts with the assumptions that Congresspersons are utility maximizers; however, it departs from the *Distributive Model* by assuming that policy decisions are distinct from legislative outcomes. Policy decisions are the bills on which Congresspersons vote, and legislative outcomes are the effects of those policies once passed.<sup>27</sup> Congresspersons have incomplete information because they do not know exactly what the outcome of policies will be.

One feature of the incomplete information is that some Congresspersons have more information about particular policies and their effects than other Congresspersons. Krehbiel refers to this asymmetric information as specialization or expertise.<sup>28</sup> According to the *Informational Theory*, Congresspersons self select into committees where they become experts in their committee's area of legislation. Then, the experts signal to other legislators which policies would produce the best outcomes. Referred to as the *legislative signaling game*, the committee members are the senders of specialized information and non-committee members are the receivers. The receivers make inferences about the specialized information based on the bills reported out of committee.<sup>29</sup> According to this theory's simplest model: first, committees propose bills; then, the legislature updates its beliefs; next, the legislature chooses a policy; and, finally, outcomes are realized and utility is gained.<sup>30</sup>

This process reduces the amount of uncertainty regarding policies, and, therefore, the entire legislature benefits. The committee system and the *legislative signaling game* increase legislative efficiency and help produce better legislation than would be produced without

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<sup>27</sup> Keith Krehbiel, *Information and Legislative Organization* (Ann Arbor: The University of Michigan Press, 1994), Page 66

<sup>28</sup> *Ibid.*, Page 68

<sup>29</sup> *Ibid.*, Page 69

<sup>30</sup> *Ibid.*, Page 71

committees. “The key attribute of informative committees is that *everyone* in the legislature benefits from revelation of policy expertise, independent of the distributional properties of realized outcomes.”<sup>31</sup>

The *Informational Theory* also includes a series of principles. First, the *outlier principle* purports that the more extreme a specialist’s preferences is compared to the legislature, the less informative he/she is. Related to the *outlier principle*, the *heterogeneity principle* states that committee specialists from both sides of the political spectrum are more informative than specialists from only one side. *The informational outlier principle* is a key aspect of the theory. It states that preference outliers can be more informative than nonoutliers because the cost for their specialization is less than the cost of nonoutliers.<sup>32</sup> If a Congressperson has a background in a particular policy area, or if his/her reelection is directly tied to one kind of policy type, then his/her incentive to specialize in that particular area is less costly than a Congressperson closer to the chamber median.

Lastly, the *Informational Theory* points out that there will be times when distributional needs conflict with informational needs. In other words, Congresspersons will encounter situations in which the “best” policies and the policies that provide them with the most pork conflict. “Pork may be a lubricant for the legislative machine, but it is not the machine’s main product.”<sup>33</sup>

The Informational Theory operates within the *Pivotal Model*. The model explains the trends commonly associated with dominant party theories by emphasizing political preferences instead of party affiliation. Political preferences and party affiliations are observationally

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<sup>31</sup> Keith Krehbiel, *Information and Legislative Organization* (Ann Arbor: The University of Michigan Press, 1994), Page 74

<sup>32</sup> *Ibid.*, Pages 81, 84, and 88

<sup>33</sup> Keith Krehbiel, *Politics* (Chicago: The University of Chicago Press, 1998), Page 95

equivalent because party is strongly correlated with preferences. The *Pivotal Model* begins with the assumption that “collective choice occurs via voting over proposals or policies that can be arranged on a line.”<sup>34</sup> Therefore, like *Cartel Theory*, there exists a unidimensional policy space. Each legislator can be placed on the policy space based on his/her views about different legislation. Likewise, a status quo point that reflects existing legislation can be placed on the same unidimensional policy space. The model identifies “pivotal” actors who are influential in determining what legislation is produced. A *pivot* is “a person or thing on or around which something turns or depends.”<sup>35</sup>

In basic models, the pivotal actors are the median voters of the two chambers, the President, the veto pivots, and the filibuster pivot. The median voter of the House is the Representative who has an equal number of Representatives to the left and right of him/her on the unidimensional policy space. The median voter of the Senate is the Senator who has an equal number of Senators to the left and right of him/her on the unidimensional policy space. Were Congress to be a purely majoritarian institution, new legislation would fall between the two median voters on the policy space.

The President is a pivotal actor because he/she can veto legislation and because his/her location on the policy space determines the position of the veto pivot. Congress can override a veto with a 2/3 vote. Therefore, if the President is liberal, the veto pivots would be the Representative and Senator with 1/3 of the Representatives and Senators to their left and 2/3 to the right on the unidimensional policy space. If the President is conservative, the proportion of Congresspersons on each of the policy space reverses. The veto pivots are pivotal actors because they determine if an executive veto can be overridden.

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<sup>34</sup>Keith Krehbiel, *Politics* (Chicago: The University of Chicago Press, 1998), Page 21

<sup>35</sup> *Ibid.*, Page 23

Rule XXII, Precedence of Motions, of the Standing Rules of the Senate allows Senators to invoke cloture (end floor debate) with a 3/5 vote. Rule XXII prevents the filibuster from derailing legislation. Therefore, when the liberal party has a majority in the Senate, the Senator with 2/5 of the Senators to his/her right and 3/5 to his/her left on the policy space is the filibuster pivot.<sup>36</sup>

In order for legislation to pass, according to the *Pivotal Model*, the status quo legislation (the current enacted policies) must be more extreme than the relevant pivotal actors and the proposed legislation must be less extreme. For example, if there is a unified Republican government, then new legislation can be passed that addresses status quo policies that are to the left of the filibuster pivot or to the right of the veto pivot. However, any status quo legislation in between these two pivots could not be passed because either Congress could not override the President's veto or the Senate could not enact Rule 22 to end the filibuster.<sup>37</sup> Likewise, it is in the interest of Congresspersons to introduce new legislation until the status quo legislation does fall within the filibuster pivot and the veto pivot. This is because total utility, expressed through support for a bill, will increase as bills approach the median voter of both chambers. The area between the filibuster pivot and the veto pivot, or whichever two pivots are relevant for a given piece of legislation, is referred to as the *gridlock* region because new legislation cannot be passed if the status quo legislation is within the region.<sup>38</sup>

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<sup>36</sup> Keith Krehbiel, *Politics* (Chicago: The University of Chicago Press, 1998), Pages 20-48

<sup>37</sup> *Ibid.*, Page 35

<sup>38</sup> Keith Krehbiel, *Politics* (Chicago: The University of Chicago Press, 1998) and David W. Brady and Craig Volden, *Revolving Gridlock* (Boulder: Westview Press, 2006)

### **Problem Perception and a Jerky Timestream**

David Mayhew looks at how events affect the legislative process. He emphasizes events' interactions with underlying considerations and how they affect lawmaking. Mayhew believes that external events like wars, depressions, and assassinations, in addition to electoral change, cause Congress to pass major laws that change society. The underlying considerations, including party affiliation, reelection needs, and good policy, come into play by affecting how a Congressperson reacts to those events. Mayhew and other political scientists build on this argument, putting more emphasis on event reaction and putting significantly less emphasis on party organization and committee structure than the preceding four theories. John Kingdon concurs auguring that "the explanatory balance tilts away from a long-term interest-based determinism toward a jerky timestream of 'problem perception.'"<sup>39</sup> In other words, the long-term trends caused by party and committee structure discussed in the four theories take a back seat to the unanticipated problems faced by the United States. Kingdon uses the term "jerky" because these problems do not occur in predictable intervals nor can one anticipate them with confidence in the far future.

Kingdon uses the term "window" to describe periods in time open for legislative change caused by Mayhew's events. Mayhew champions Kingdon's concept of windows caused by war. He explains that the windows caused by acts of war allow for four effects: policy change, new issue regimes, shakeups in electoral coalitions, and major changes in party ideology. These effects are self explanatory. The shift involves new legislation at a different location on a unidimensional policy space than the former status quo legislation. The new issue

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<sup>39</sup> David Mayhew, "Wars and American Politics," Yale University, 2005, <http://yale.academia.edu/DavidRMayhew/Papers/7302/Wars-and-American-Politics>, Page 2

regime refers to new issue areas becoming long-lasting and relevant in American government. The latter two effects address changes in which groups collate to pass and/or defeat legislation and how major parties realign in response to major events.<sup>40</sup> The latter three effects are noteworthy because they catalyze the first effect, policy change. New regimes, coalitions, and ideologies are relevant the study of Congress because they are major factors in causing policy change.

A significant derivative of the view that discrete events cause most of legislation change is “the sheer non-inevitability of much of American history.”<sup>41</sup> This allows an agency-centric perspective of Congress missing in much of the literature.

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<sup>40</sup> David Mayhew, “Wars and American Politics,” Yale University, 2005, <http://yale.academia.edu/DavidRMayhew/Papers/7302/Wars-and-American-Politics>, Pages 6-7

<sup>41</sup> Ibid., Page 27

## Section II: Hypotheses and Research Design

Most of literature about Congress's lawmaking process attempt to develop encompassing theories that explain the entire process relying heavily on party or committee structure. The literature considers the following three factors in addition to the Congress's institutional factors, "the election of new politicians, the changing preferences of constituents, and the shifting of policy realization over time."<sup>42</sup> National crises do not cleanly fit into any of these predefined categories of exogenous factors. The Merriam-Webster Dictionary defines a crisis as "an unstable or crucial time or state of affairs in which a decisive change is impending; *especially*: one with the distinct possibility of a highly undesirable outcome." This paper defines a national crisis as a sudden destabilizing event that affects multiple states. Therefore, a crisis does not fall into the first category of factors because a crisis is not an election. Regarding the second category, crises may affect the preferences of constituents, but it would be difficult for Congresspersons to gauge the full extent of their constituents' preferences following national crises. Immediate reactions may differ from long-term feelings about certain issues, and constituents may not have developed fully formed thoughts to address the new set of problems created by a crisis.

Additionally, national crises cannot be treated as "the shifting of policy realization over time" because crises by definition are sudden. The suddenness of crises may affect the legislative process because Congresspersons would not have the foresight to adjust authorization bills and/or budget bills passed during the previous fiscal year. Also, the suddenness of crises and the necessity for quick legislative results limit the opportunity for information gathering that may be useful in the legislative process.

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<sup>42</sup> David W. Brady and Craig Volden, *Revolving Gridlock* (Boulder: Westview Press, 2006), Page 26

This paper hypothesizes that, due to the suddenness and magnitude of crises, none of the major theories will thoroughly account for the processes by which the laws were passed in the two case studies. As discussed above, big events are not incorporated into the major theories of lawmaking, and a large amount of consequential legislation and governmental change has occurred in the wake of crises or other major events not captured by the theories. Because of its magnitude, a crisis drastically changes the status quo of many people's lives. By altering the former state of Americans' lives, a crisis will shift the status quo location of a particular policy, shift member preferences, or shift both on a unidimensional policy space.

For example, an act of war on American soil would bring attention to a hole in security with the status quo legislation. All Congresspersons could still hold preferences for the same proportion of security relative to civil liberties and/or tax dollars, but the attack (the crisis) would have shifted the perception of the status quo from sufficiently secure to wildly vulnerable. In this scenario, no preferences would change; the perception of the status quo changing would lead Congress to action. On the other hand, a meteor striking a major city could shift members' preferences. Prior to the strike, members may have believed that active protection from objects from outer space was not an appropriate use of tax dollars, but, after the strike, their preferences would have changed even though the probability of a meteor hitting the United States would not change. The extreme shift of the status quo location relative to member preferences (regardless of which shifts) would lead Congresspersons to enact new legislation closer to the preferences of the members.

In addition to magnitude, suddenness makes crises unique. The necessity for a quick response does not allow for the time scale needed for information gathering and certain institutional procedures used by parties and/or committees to pass legislation under less severe

circumstances. One of a Congressperson's biggest priorities is reelection, and the perception that a Congressperson dealt with a crisis fairly and quickly is important in achieving that goal. If a member appears to have created a roadblock that was preventing relief, that member may be in jeopardy of fulfilling one of his/her main objectives.

There are unique factors associated with a crisis that make passing legislation to cope with a crisis different from passing legislation to deal with other issues; it is also possible that the same holds true for legislation passed during times of crisis that do not directly relate to the crisis, but that question must wait to be addressed by another research project. These unique factors include: the time scale, a limited ability to acquire information, the lack of a workable status quo, and the desire to avoid being viewed as a roadblock to relief. Because of these factors, this paper makes the three hypotheses listed below:

**Hypothesis 1:** *Current theories of lawmaking do not account/explain lawmaking in times of crisis/ related to crises.*

The prominent theories recognize reelection as one of the major goals for Congresspersons. As stated above, the magnitude and suddenness of crises limits information gathering and would make members of Congress less secure about how to assure reelection. Moreover, following a crisis or during a crisis, an elected official's reelection goals may take a backseat to other more immediate goals like producing good legislation or improving the lives of persons affected by the crisis. Combined with the need for quick action, the insecurity about how to fulfill reelection goals and/or the reprioritizing of short-term goals prevent the time-consuming institutional factors on which the major theories are based from unfolding.

Corrective action following crises is inevitable due to the significant shift in the status quo point and/or member preferences; therefore, action will be taken without the expectation or requirements of reciprocal support necessary for the *Distributive Model*.

Likewise, limited information and new or changed circumstances surrounding a crisis reduces committee members' ability to acquire adequate information and, therefore, exhibit a level of policy expertise that can be trusted by the other members. The limited ability to acquire information and the speed with which Congress must act weakens the benefit specialized expertise can provide to the chamber because non-committee members' uncertainty is not significantly reduced. The failure to considerably benefit from specialized expertise lessens the Informational Theory applicability following or during a crisis.

This paper also presumes a desire to pass effective legislation in the face of a crisis because members believe that voters will consider how their elected officials act in a times of crisis when voting. In the face of a crisis, members may have a greater desire to pass "good" legislation than during stable time, too. Therefore, good legislation would be weighed more heavily relative to party affiliation following a crisis than during stable times. Additionally, the urgency of crises causes members to be willing to sacrifice quality for speed because the status quo would be so far from member preferences following a crisis (Hypothesis 1a). The desire to appear bipartisan and the requirement for quick passage instead of perfect legislation undercuts the minority party leadership's desire to challenge the majority party even if they believe they can kill the legislation. The emphasis on good legislation and cooperation limits the applicability of *Cartel Theory* and *Conditional Party Government Theory*. Meanwhile, David Mayhew's work studying events and how Congress responds to them is extremely relevant

literature when examining crises because no legislative theory accounts for Congress's lawmaking process during times of crisis.

**Hypothesis 1a:** *Significant legislation will be passed more quickly following a crisis than it would have been passed under normal legislative conditions.*

As the explanation above demonstrates, speed is one of the major mechanisms for Hypothesis 1. Crises are destabilizing and require quick response because the status quo point is far from member preferences. Also, members believe that voters consider how candidates deal with crises when at the polls. Quickly passed legislation can prevent further harm from a crisis, and members will take the necessary steps to make sure this occurs.

**Hypothesis 2:** *Committee chairpersons and other high ranking committee members will have the greatest affect on the content of the legislation because the limited time scale prevents members from prolonged analysis of the legislation and only allows for a limited number of amendments to be added.*

Committee Chairpersons, Ranking Members, and both of their staffs will spend the greatest amount of time working with the legislation. With limited time, the final legislation will look similar to the bill reported by the main committee. Members of the committee(s) to which the bill was referred would have the ability to mark-up the bill and add amendments whereas rank-and-file members would have a limited opportunity because of the chambers' desire to produce outputs quickly. As stated above, committee member expertise is limited and,

therefore, the *legislative signaling game* does a poor job of limiting uncertainty. While Chairpersons and Ranking Members may have the greatest effect on the legislation itself, their influence within the chamber will not be as great as with legislation passed under more stable conditions for two reasons. First, their expertise during a crisis is questionable, and, second, all members will dedicate the allotted time to researching the legislation because their electoral goals will be affected by Congress's handling of the crisis.

**Hypothesis 3:** *Congresspersons desire the appearance of unity and want to avoid the risk of appearing to hinder Congress's response to a crisis; the legislation will be located near the median voter of both chambers in order to fulfill these goals.*

Once again, voters consider how elected officials perform during crises when choosing for whom to vote. The perception that Congresspersons are acting like roadblocks following a significant event could hurt their electoral goals because voters want their elected officials to concentrate on lawmaking more than politicking following a crisis. Appearing unified and bipartisan demonstrates to the electorate that members are able to put aside political differences and electoral goals in order to appropriately manage the crisis at hand.

Also, a desire to effectively address the crisis would exist whether it be for electoral purposes or a genuine desire to respond properly to a destabilizing event. The need for quick passage (Hypothesis 1a) and a regression of members' perceptions of the ideal legislation would place new legislation near the median voter of both chambers. This is because members are willing to sacrifice some of their preferences to appear unified, and legislation located near

the median voters of the chamber has the best chance of garnering support from members with extreme DW-Nom1 values on both sides of the political spectrum.

### Case Selection

In order to identify the legislative process used to address national crises during the Postreform Era, this paper will explore two pieces of legislation. By analyzing the specific processes and pivotal actors in specific pieces of legislation, this paper hopes to lay the foundation for understanding the legislative process used to address national crises in the Postreform Era in general. The two laws researched in this paper are the USA PATRIOT Act of 2001 and the Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising from the Consequences of Hurricane Katrina Act of 2005.

The aforementioned legislation was chosen because they were enacted to address the terrorist attacks of September 11, 2001 and Hurricane Katrina, respectively. These events fit this paper's definition of a crisis. The terrorist attacks of September 11 occurred with only a 26 minute warning, and Hurricane Katrina made landfall with only 3 days of warning.<sup>43</sup> Both events were destabilizing and required a legislative response. Money needed to be appropriated to handle victims of both crises, and Congress had to consider preventative measures for future, similar crises. With the terrorist attacks, Congress had to reflect on aviation security, immigration, and intelligence policies. With Hurricane Katrina, Congress had to take actions to address future natural disaster response and the rebuilding of hurricane affected areas. Both

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<sup>43</sup> Matthew L. Wald, "After the Attacks: Sky Rules; Pentagon Tracked Deadly Jet but Found No Way to Stop It," *The New York Times*, September 15, 2001 and Bradley Graham, "Military Alerted Before Attacks," *The Washington Post*, September 15, 2001, Page A18 and <sup>43</sup> Richard D. Knabb, Jamie R. Rhome, and Daniel P. Brown, "Tropical Cyclone Report Hurricane Katrina." *National Hurricane Center*, 2005, [http://www.nhc.noaa.gov/pdf/TCR-AL122005\\_Katrina.pdf](http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf), Page 14

events also affected more than one state. Hurricane Katrina severely damaged areas of Florida, Louisiana, and Mississippi; likewise, the vast number of displaced people who chose to relocate out of state had an impact on the United States as a whole. The terrorist attacks of September 11, 2001 occurred in Washington, DC, Pennsylvania, and New York and shattered America's sense of security across the country.

Moreover, the terrorist attacks were a national security related crisis while Hurricane Katrina was a natural disaster related crisis. These two events were chosen for case studies, in part, to see if there was consistency across different kinds of crises.

The reason for selecting cases that are temporally clustered needs to be addressed. One reason for this is the desire to contribute to the understanding of how the current Congress would deal with a crisis. Congress as an institution has changed overtime, and its processes have changed with it. Analyzing legislation prior to the reform era in the 1970s would not help one understand the current Congress because the reforms significantly changed the processes. Moreover, the more recent the crisis, the more similar the institutional and exogenous factors would be to the factors that would affect the current Congress. The two crises being studied are, arguably, the most significant in the Postreform Era. They solicited considerable financial attention from the federal government and caused noteworthy governmental reorganization.

Also, the pieces of legislation themselves are extremely important. The USA PATRIOT Act of 2001 restructured the United States' anti-terrorism policies and intelligence gathering laws. Likewise, it started ongoing Constitutional debates that have permanently affected the reading of the Constitution of the United States. The supplemental appropriations legislation allowed the federal government to mobilize in response to Hurricane Katrina. Without its passage, the United States government would not have had the funds to evacuate Hurricane

affected areas. The United States government's response to Hurricane Katrina has been extensively criticized and understanding the lawmaking process for the most expensive legislation in response to the disaster can help reformers better work with Congress during the next natural disaster.

### Testing Hypotheses

In order to test the paper's hypotheses, this paper will use DW-NOMINATE Variable One (DW-Nom1) values to construct a unidimensional policy space and identify pivotal actors predicted by the major theories of the legislative process. NOMINATE scores are commonly used in Congressional research to construct models.<sup>44</sup> NOMINATE values are scores given to Congresspersons relative to other Congresspersons. DW-Nom1 values are a relative measurement of a Congressperson's ideology with lower values representing more liberal beliefs and higher numbers more conservative beliefs. The values are based on past votes, and the relative values contain significance only within the same Congress and chamber. The absolute values carry no significance; hence, DW-Nom1 values cannot be compared between Congresses or chambers.

Using the DW-Nom1 values to construct a unidimensional policy space enables one to test the major theories' predictions. The values help to define the gridlock region, the party medians, and the chamber medians. Identifying the gridlock region allows for the testing of the *Pivotal Model's* predictions; identifying the party medians allows for the testing of *Cartel Theory's* and *Conditional Party Government Theory's* predications; identifying the committee

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<sup>44</sup> Refer to Keith T. Poole, "The Voteview Website," <http://voteview.com/> and Keith T. Poole, *Congress: A Political-Economic History of Roll Call Voting* (New York: Oxford University Press, 1997) for an in depth explanation of NOMINATE values.

medians and the DW-Nom1 values of committee leadership allows for testing the *Distributive Model*; and, knowing the chamber medians allows for the testing of the *Informational Theory*. The ability to test the preeminent models' predications is valuable in testing this paper's first hypothesis.

The paper will also use Roll Call data in its analysis. Roll Call data on multiple votes in conjunction with floor debate can provide descriptive information to determine which Congresspersons were reluctant supporters of a bill and which were adamant supporters. These sources will help establish where the status quo point and the new legislation should be placed on the unidimensional policy space. These data will help test the first and third hypothesis. The paper will also use the roll call vote to see if there were any majority or minority party rolls. A roll is when the majority of a party loses a vote. Rolls are relevant in determining how accurately the party-based theories predict the legislative process.

The floor debate, the dates of Congressional action, and the content of the legislation provide tests for Hypothesis 1a. The content of the legislation and floor debate offer evidence about the significance of the legislation, and the date of actions and floor debate offer evidence about the speediness with which legislation was passed.

Additionally, the paper will use the floor debates, special rules, and amendments to determine which members were influential in the bills' passages. Which members were influential will play a role in testing if any of the theories adequately describe the lawmaking process. The party-based theories predict that party leadership would be influential whereas committee-based theories predict that committee Chairpersons and Ranking Members would be influential. This provides one more test for the first hypothesis. Likewise, identifying the

influential members, both in developing policy and convincing other members to vote, will provide evidence for or against the second hypothesis.

The next section looks at the terrorist attacks of September 11, 2001. It provides a background of the event, a description of the 107<sup>th</sup> Congress, and, then, looks at how the USA PATRIOT Act was passed.

### Section III: The Terrorist Attacks of September 11, 2001

The following is an account of the terrorist attacks on September 11, 2001. In response to these attacks, the American people and their government became more concerned with international terrorism, the quality of American intelligence, and national security. This concern led to the passage of the USA PATRIOT Act of 2001.

At 8:20 AM on September 11, 2001, air traffic controllers suspected that Flight 11 from Boston to Los Angeles had been hijacked, and they notified the North American Aerospace Defense Command (NORAD) 18 minutes later.<sup>45</sup> Within six minutes, NORAD dispatched two F-15 fighter jets, but Flight 11 crashed in the World Trade Center's North Tower at 8:46 AM.<sup>46</sup>

Air traffic controllers lost communications with American Flight 77, flying from Dulles to Los Angeles, at 8:56 AM and notified NORAD at 9:24 AM. United Airlines Flight 175, heading from Boston to Los Angeles, was hijacked shortly after take off at 8:40 AM; controllers discovered the hijack when Flight 175 traveled at twice the legal speed over the Hudson Valley at 8:53 AM.<sup>47</sup> Just ten minutes later, Flight 175 crashed into the World Trade Center's South Tower.<sup>48</sup> Flight 77 crashed into the Pentagon at around 9:38 AM.<sup>49</sup>

Meanwhile, Flight 93 took off at 8:42 AM and flew silently for 45 minutes until an air traffic controller heard the hijacking taking place. The passengers of Flight 93 overpowered the hijackers, and the plane crashed in Pennsylvania shortly after 10:00 AM.<sup>50</sup>

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<sup>45</sup> Matthew L. Wald, "After the Attacks: Sky Rules; Pentagon Tracked Deadly Jet but Found No Way to Stop It," *The New York Times*, September 15, 2001 and Bradley Graham, "Military Alerted Before Attacks," *The Washington Post*, September 15, 2001, Page A18

<sup>46</sup> Bradley Graham, "Military Alerted Before Attacks," *The Washington Post*, September 15, 2001, Page A18

<sup>47</sup> Matthew L. Wald and Kevin Sack, "A Nation Challenged: The Tapes; 'We Have Some Planes,' Hijacker Said on Sept. 11," *The New York Times*, October 16, 2001

<sup>48</sup> CNN, "September 11: Chronology of Terror," *CNN.com*, September 12, 2001

<sup>49</sup> Matthew L. Wald and Kevin Sack, "A Nation Challenged: The Tapes; 'We Have Some Planes,' Hijacker Said on Sept. 11," *The New York Times*, October 16, 2001

<sup>50</sup> NBC News, "Heroes of Flight 93," *Dateline NBC*, December 8, 2003.

The South Tower collapsed at 10:05 AM followed by part of the Pentagon at 10:10 AM. The North Tower collapsed at 10:28 AM, and, lastly, Building 7 of the World Trade Center collapsed at 5:20 PM.<sup>51</sup> The terrorist attacks of September 11 took 2,819 lives in total.<sup>52</sup>

The narrative of the events leading up to the terrorist attacks of September 11, 2001 can begin at many points in time. For a more detailed summary of the events leading up to the attacks starting in 1996, refer to Appendix I. The appendix includes a description of some of the United States government's short comings related to response and preparedness.

### **The 107<sup>th</sup> Congress of the United States**

The 107<sup>th</sup> Congress convened from January 3, 2001 to January 3, 2003. It met for the last few weeks of Bill Clinton's presidency and, then, for the first two years of George W. Bush's. The 107<sup>th</sup> House of Representatives was controlled by the Republicans, and the Senate switched from Democratic control to Republican control and, then, back to Democratic control prior to September 11, 2001. For the majority of the 107<sup>th</sup> Congress, the Senate contained 49 Republicans, 50 Democrats, and one independent who caucused with the Democrats. The House had 221 Republicans, one independent who caucused with the Republicans, 211 Democrats, one independent who caucused with the Democrats, and one vacant seat.

The 107<sup>th</sup> House of Representatives' DW-Nom1 values ranged from -.0793 (Representative Jim McDermott) to 1.134 (Representative Ron Paul). The 107<sup>th</sup> Senate's DW-Nom1 values ranged from -0.895 (Senator Russ Feingold) to .811 (Senator Jesse Helms).

The members discussed below should be key players in the lawmaking process according to traditional models. When the Democrats controlled the Senate, Senator Robert Byrd served as President pro tempore and had a DW-Nom1 value of -0.352; Tom Daschle served as the

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<sup>51</sup> CNN, "September 11: Chronology of Terror," *CNN.com*, September 12, 2001

<sup>52</sup> New York Magazine, "9/11 by the Numbers," *Newyorkmagazine.com*, 2009

Majority Leader with a DW-Nom1 value of -0.3.92; and Senator Harry Reid served as Majority Whip with a DW-Nom1 value of -0.377. Senator Trent Lott served as Minority Leader with a DW-Nom1 value of 0.491, and Senator Don Nickles served as Minority Whip with a DW-Nom1 value of 0.649.

In the lower chamber, Representative Dennis Hastert was the Speaker of the House and had a DW-Nom1 value of 0.494; Dick Armey was the Majority Leader with a DW-Nom1 of 0.581; and Tom DeLay was the Majority Whip with a DW-Nom1 of 0.577. The Minority Leader was Dick Gephardt, and the Minority Whips were David Bonior until 2002 and Nancy Pelosi for the rest of the 107<sup>th</sup> Congress. Their DW-Nom1 values were -0.507, -0.546, and -0.529, respectively.

According to the *Pivotal Model*, the relevant pivotal actors in the 107<sup>th</sup> Congress were the President (the Presidential pivot), the 41<sup>st</sup> most conservative Senator (the Republican filibuster pivot), the 67<sup>th</sup> most liberal Senator (the Senatorial veto pivot), the 290<sup>th</sup> most liberal Representative (The House veto pivot), and the median voters in both chambers.

President Bush had a DW-Nom1 value of .851 in the House and .633 in the Senate, making him one of the six most conservative members of the Senate and four most conservative members of the House. The median voters in the House were Representative Amory Houghton, Representative Christopher Shays, and Representative Chris Smith with DW-Nom1 values ranging from 0.197 to 0.209. The Senate's median voters were Senator John Breaux, Senator Bill Nelson, and Senator Lincoln Chafee with DW-Nom1 values ranging from -0.117 to -.043. The three median voters in the House and Senator Chafee were Republicans whereas Senators Breaux and Nelson were Democrats.

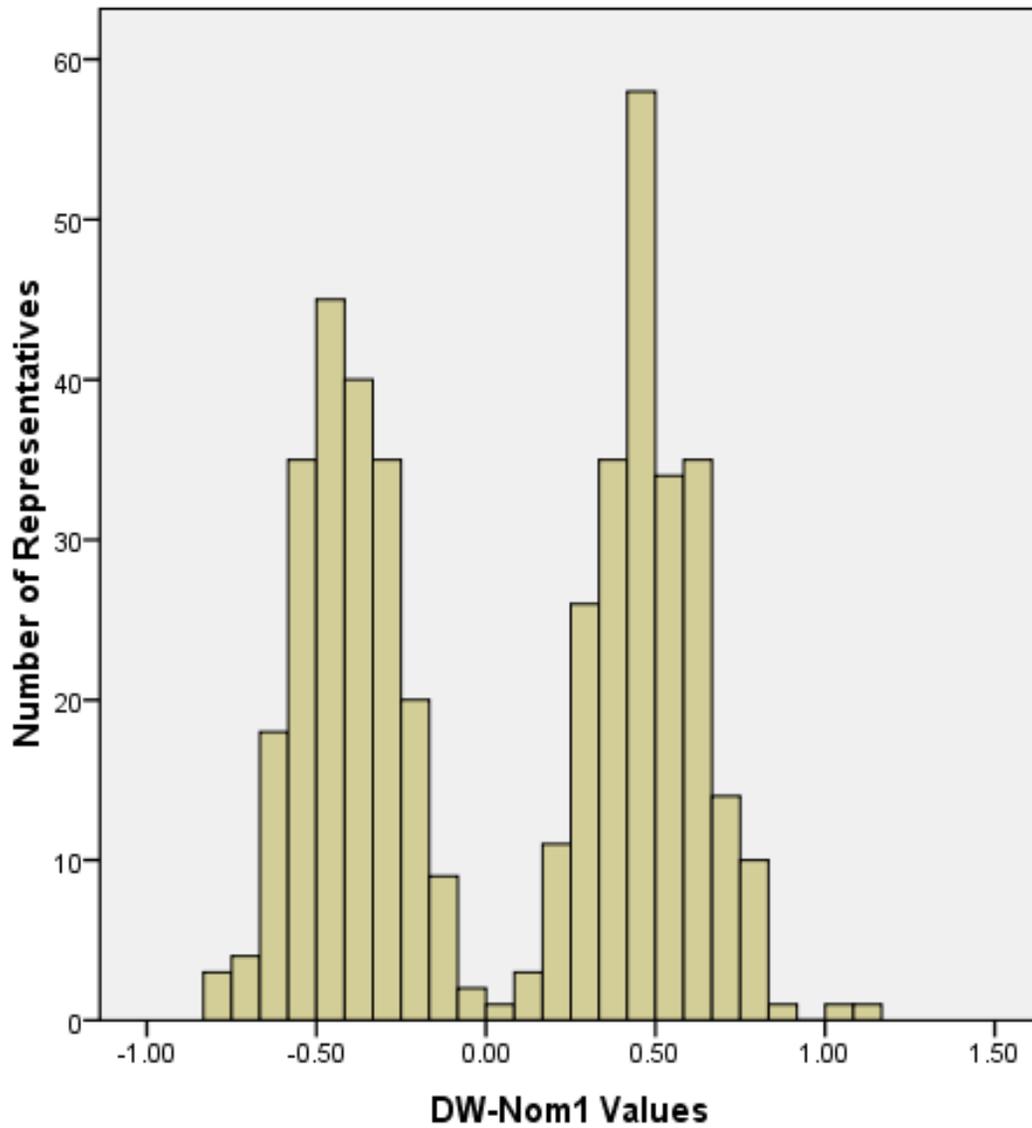
The Republican Filibuster pivots were Senator Ted Stevens and Senator John Warner with DW-Nom1 values of 0.232 and 0.257, respectively. The Senatorial veto pivots were Senator Orrin Hatch and Senator Kit Bond with DW-Nom1 values of 0.354 and 0.355, respectively. With a Republican controlled House and a Republican President, a veto override from the lower chamber is unlikely. Were there to be one, however, the pivotal actors would be Representative Mary Bono Mack, Representative Tom Latham, and Representative William Tauzin. All three have DW-Nom1 values of 0.42. The difference between the President's DW-Nom1 value and the veto override pivots, even the House's, is noteworthy.

Additionally, the median member of the majority party in the Senate is Senator Jay Rockefeller with a DW-Nom1 value of -0.390. Senator Lisa Murkowski and Senator Bill Frist were the minority party median voters for the 107<sup>th</sup> Senate with DW-Nom1 values of 0.391 and 0.394, respectively.

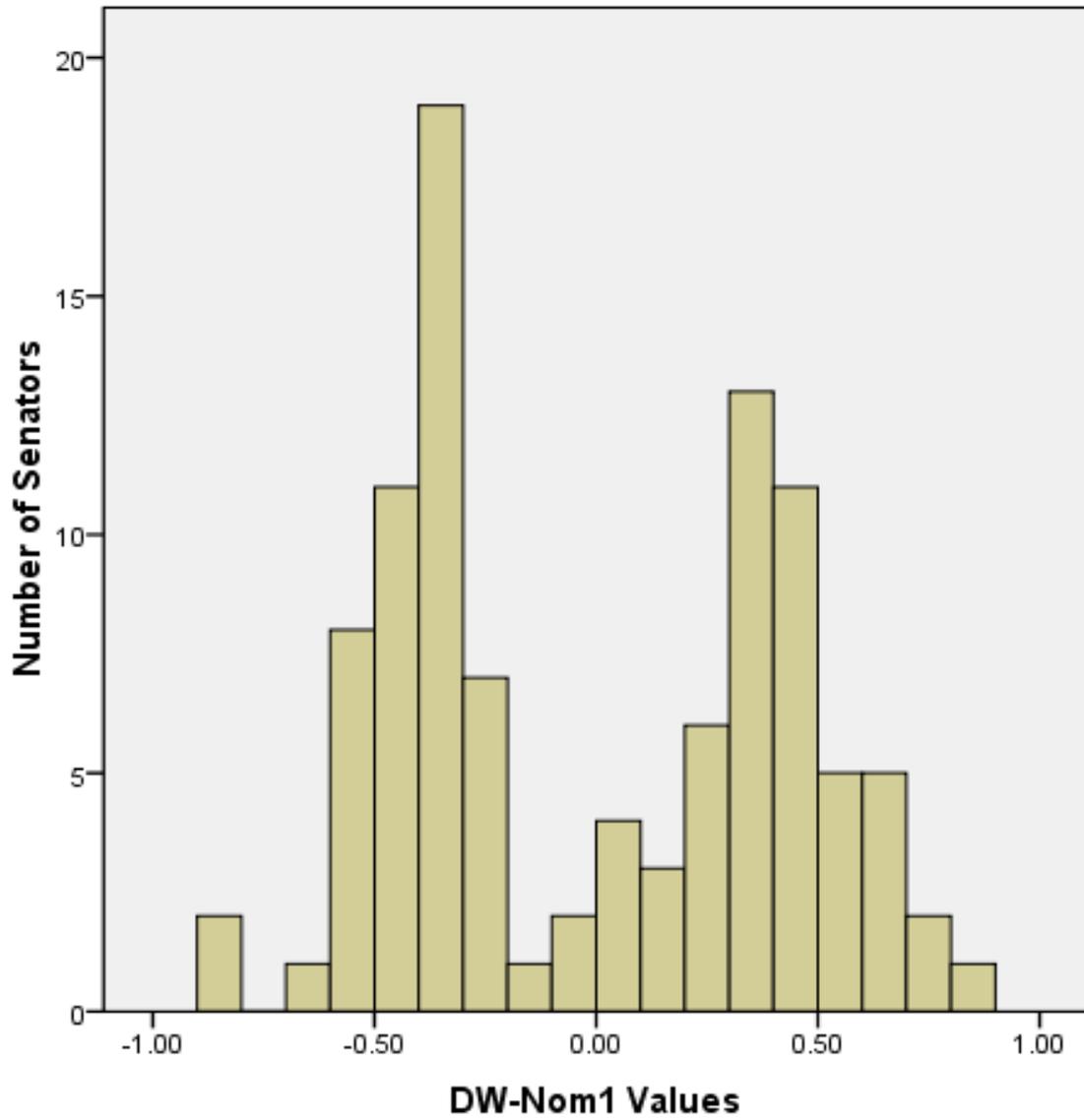
The median members of the majority party in the House were Representative Frank Lucas, Representative William Jenkins, and Representative John Boozman with DW-Nom1 values of 0.47 each. The median members of the minority party in the House were Representative Joe Moakley and Representative Tom Lantos with DW-Nom1 values of -0.417 and -.415, respectively.

Below are histograms depicting the DW-Nom1 values of the members of the 107<sup>th</sup> Congress. Notice the two clusters formed by each party around their party median voters in the two chambers.

**Graph 1: DW-Nom1 Scores of the 107th House of Representatives**



**Graph 2: DW-Nom1 Scores of the 107th Senate**



### **The USA PATRIOT Act of 2001**

House Resolution 3162, “To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes,” was introduced on October 23, 2001 by Representative James Sensenbrenner Jr. and was signed into law three days later becoming Public Law Number 107-056, the USA PATRIOT Act of 2001. Though introduced on October 23<sup>rd</sup>, House Resolution 3162 contained provisions from House Resolution 2975, House Resolution 3108, and Senate Bill 1510 which were introduced on October 2, 3, and 4, respectively. Representative Sensenbrenner, Jr. introduced House Resolution 2975, as well.

USA PATRIOT is an acronym for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.” It contains provisions that give the government more leeway in searching financial records, obtaining electronic mail, and tapping telephones. The legislation broadens and clarifies the definition of terrorism, and it amends statutes dealing with immigration and deportation to provide law enforcement with more discretion. The law contains sections dealing with intelligence gathering, surveillance, and habeas corpus rights. For a distilled explanation of the contents of the legislation, refer to Appendix II in the back of the paper. This omnibus law has changed the way the United States collects intelligence and raises significant questions about American civil liberties.<sup>53</sup>

### **The Legislative Process (The USA PATRIOT Act of 2001)**

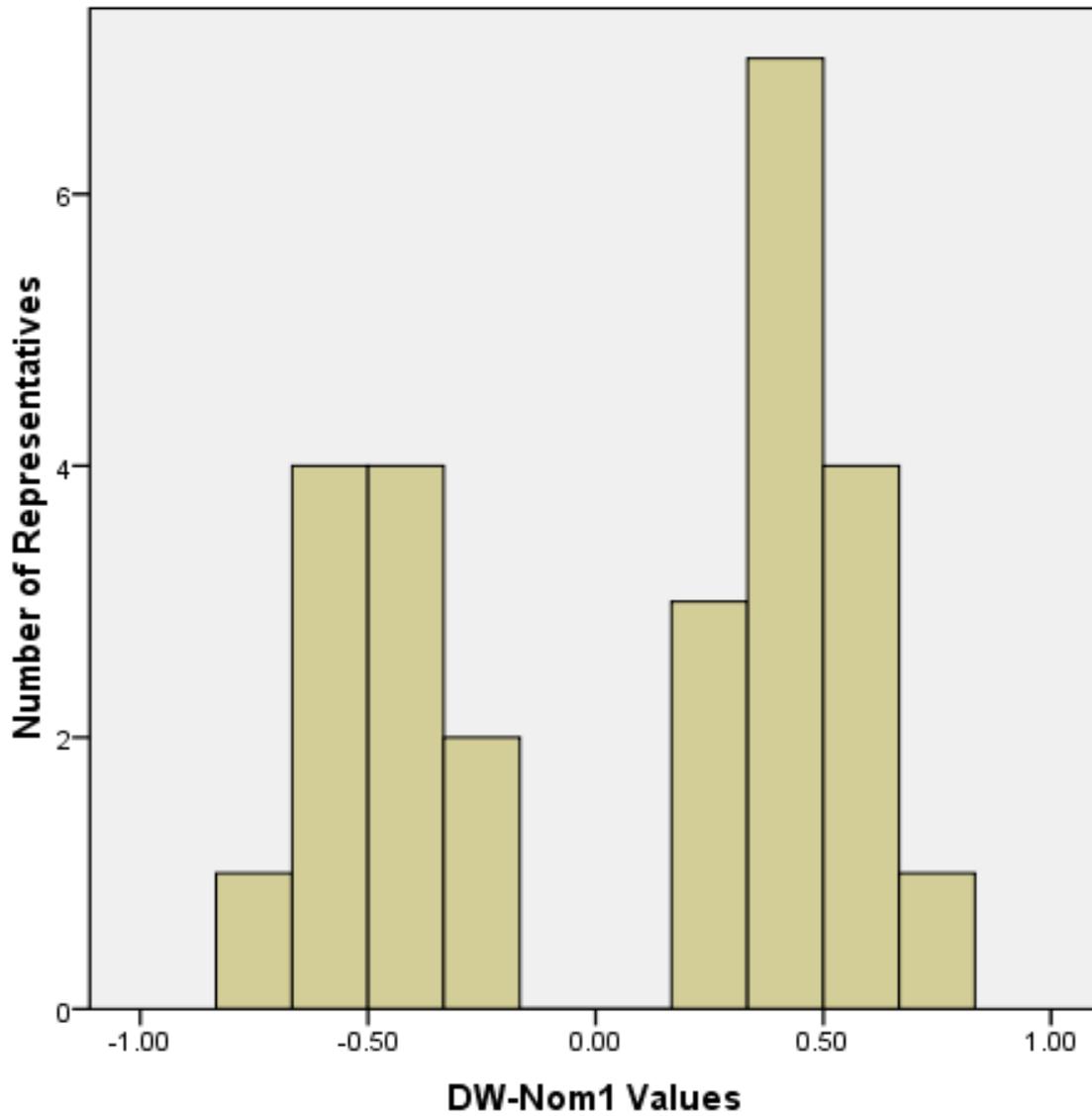
Representative James Sensenbrenner, the Chairman of the House Committee on the Judiciary, introduced House Resolution 2975, “To deter and punish terrorist acts in the United

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<sup>53</sup> Library of Congress, the, “Thomas.” The Library of Congress. <http://thomas.loc.gov/> and *Congressional Record*, first session, 2001, Pages H7159 – 7196

States and around the world, to enhance law enforcement investigatory tools, and for other purposes,” on October 2, 2001 with 26 cosponsors from both parties with DW-Nom1 scores slightly lower than the median of the chamber. Cosponsors are strong supporters of the legislation, and the graph on the following page depicts the DW-Nom1 values of the members who cosponsored House Resolution 2975. It shows that there was bipartisan support for the legislation.

**Graph 3: DW-Nom1 Scores of House Resolution 2975's Cosponsors**



The short name for this bill is the “Provide Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001,” or the PATRIOT Act. The bill was reported to five different committees, with the majority of the bill going to the House Committee on the Judiciary. The House Committee on the Judiciary considered the bill and held a mark-up session on October 3 during which they amended the bill and unanimously reported it. On October 11, the bill was discharged from the Committee on International Relations, the Committee on Resources, and the Committee on Ways and Means; the House Committee on Intelligence granted an additional day of consideration.<sup>54</sup>

The next day, Representative Lincoln Diaz-Balart introduced Rules Committee Resolution H. Res. 264 which would bring House Resolution 2975 to the floor for a vote under closed rule, meaning no amendments would be permitted. The rule provided for one hour of debate on House Resolution 2975. Additionally, the Rules Committee Resolution replaced the amendments inserted by the House Committee on the Judiciary with House Resolution 3108, a self-executing amendment pending agreement to H. Res. 264.<sup>55</sup>

According to *Cartel Theory* and *Conditional Party Government Theory*, the majority party uses closed rules as a tool to pass legislation favored by a majority of the party. By preventing controversial legislation and forcing a straight vote, Congresspersons would have to choose between having a voting record that reflects supporting national security improvements or one that does not. Were there to be another terrorist attack and the bill had not passed, members who voted against it would have to defend their vote during reelection. This provides

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<sup>54</sup> *Congressional Record*, first session, 2001, Pages H7159 – 7196 and The Library of Congress, “Thomas.” The Library of Congress. <http://thomas.loc.gov/>

<sup>55</sup> A self-executing amendment is an amendment that takes effect upon passage of a different resolution. The Library of Congress, “Thomas.” The Library of Congress. <http://thomas.loc.gov/>

support for Hypothesis 1a. Preventing amendments on a bill that it would be difficult, politically, to vote against would most likely help the legislation pass more quickly.

House Resolution 3108 incorporates most of the committee's initial amendments. Introduced by Representative Sensenbrenner, it further broadened the scope of House Resolution 2975 including provisions about the Federal Bureau of Investigation's recruitment of translators, amendments to trade sanctions for Taliban-controlled Afghanistan, sections detailing surveillance and voice mail seizure policies, and sections detailing deportation laws regarding aliens. The amendment's short title is "Uniting and Strengthening America Act of 2001," or the USA Act of 2001. House Resolution 3162 which would become the USA PATRIOT Act incorporates both of Sensenbrenner's bills, as the name would suggest.<sup>56</sup>

The vote on H. Res. 264 was not only a vote for a closed rule, it was also a vote for House Resolution 3108's inclusion in House Resolution 2975. H. Res. 264 was placed on the calendar the day of its introduction. There were two major votes on the Rules Committee Resolution. The vote on ordering the previous question passed with 215 votes to 207 votes, and the vote on agreeing to the resolution passed 214 votes to 208 votes. The votes were partisan with 212 Republicans, two Democrats, and one Independent voting Yea in the former vote, and 206 Democrats, one Independent, and zero Republicans voting Nay. The minority party was rolled by the majority party.<sup>57</sup>

Congress's treatment of the Judiciary Committee's reported bill weakens the applicability of the *Distributive Model* and the *Informational Theory*. Committee members' control over the legislation was reduced, and the party-controlled Rules Committee was able to choose the final shape of the legislation with H. Res. 264 and House Resolution 3108. House Resolution 3108 is

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<sup>56</sup> The Library of Congress, "Thomas." The Library of Congress. <http://thomas.loc.gov/>

<sup>57</sup> *Congressional Record*, first session, 2001, Pages H6712 - 6713

similar to the amendments inserted by the committee. The first hypothesis is supported because the two committee-based theories predictions fall short; the Judiciary Committee did not get to directly shape the final legislation. Meanwhile, there was inconclusive evidence regarding Hypothesis Two. The use of House Resolution 3108 instead of the Judiciary Committee's amendments suggests that committee control of the legislation's content was reduced; however, the similarities between the committee's amendments and House Resolution 3108 would imply that the committee's work influenced the final amendment.

Prior to the votes, there was an hour of floor debate that conveyed the beliefs of many of the members of Congress. Many members shared their views of the legislation. The plurality who partook in the debate mentioned a specific policy area addressed by the legislation that they believed could be strengthened including aviation security, immigration, and surveillance.

Representative Diaz-Balart summed up the tone of the debate saying:

There are some Members of this body who are displeased with the legislation before us because they consider that it goes too far. I can assure my colleagues, Mr. Speaker, that there are many Members of Congress who believe that this legislation does not go far enough... The bill reflects the essence of compromise.<sup>58</sup>

Representative James Traficant joined Diaz-Balart in expressing the need for compromise and bipartisanship because of the recent crisis. "Congress must show bipartisanship, and if we do not do it on this, this is the vehicle, when do we do it?"<sup>59</sup>

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<sup>58</sup> Representative Diaz-Balart, *Congressional Record*, first session, 2001, Page H6713

<sup>59</sup> Representative Traficant, *Congressional Record*, first session, 2001, Page H6718

Diaz-Balart and Tranfificant's desire for bipartisanship and the House Committee on the Judiciary's unanimous vote to report the bill provide support for this paper's third hypothesis that Congress desires the appearance of bipartisanship following a crisis. However, as the final vote demonstrated, this vote was noticeably partisan, ending in a minority party roll. Even though the vote was partisan, members used rhetoric to appear bipartisan and unified. Representative Louise Slaughter summed up the oppositions' attitude towards the legislation.

The bill goes too far. In the name of protecting Americans, it eats away at some of our most cherished freedoms... we must balance the need to pursue terrorists against the need to protect the civil rights of law-abiding Americans... If we are going to cut into civil rights laws, we should use a scalpel, not a scythe.<sup>60</sup>

Slaughter also specifically commented about how the legislature was acting differently than usual because of a crisis. The two sentences below are relevant in our understanding of the legislative process following a crisis.

The bill presented in the House today contains a variety of provisions that, at any other time and place, would never receive serious consideration in this Chamber. Only the current crisis is persuading Congress to throw caution and civil rights to the wind.<sup>61</sup>

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<sup>60</sup> Representative Slaughter, *Congressional Record*, first session, 2001, Pages H6713 and H6714

<sup>61</sup> *Ibid.*, Page H6713

Slaughter's remarks support the first hypothesis. She specifically states that Congress is acting differently because of the current crisis. The crisis is changing the process by which Congress normally passes legislation.

Later during floor debate, Representative William Delahunt provided an important insight into the applicability of the committee-based theories of the legislative process. He reminded the House of Representatives that the Chairman of the House Committee on the Judiciary, Representative Sensenbrenner, and its Ranking Member, Representative John Conyers, Jr., made many compromises to assure the proper balance between security and freedom; Delahunt was one of the 36 members of the committee who unanimously supported the bill. However, Delahunt voted Nay because:

“That carefully crafted bill is not the measure we are going to consider today... the Committee on Rules replaced it with a new 187-page bill which nobody had the time to even peruse.”<sup>62</sup>

First, Representative Delahunt provided evidence against Hypothesis Two by explaining that the bill being considered differs from the one on which the committee worked. His negative vote implies that the committee's reported bill and the bill presented to the floor differed enough the second hypothesis most likely does not apply. Second, he acknowledged the limited time available to examine the legislation, providing support for Hypothesis 1a.

Applying the *Informational Theory*, one would anticipate a less partisan vote because members on both sides of the aisle would rely on the expertise of committee members. However, even with the initial show of bipartisanship, the majority party chose to implement a closed rule

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<sup>62</sup> Representative Delaunt, *Congressional Record*, first session, 2001, Page H6715

against minority party opposition, leading the Ranking Member and the other minority party Committee members to vote Nay.

Ranking Member Conyers did not oppose House Resolution 3108 and H. Res. 264 for ideological reasons even though he was one of the most liberal members of Congress. Though he supported the legislation, he desired a conference and anticipated that the Senate bill, which will be discussed shortly, would go to conference. During the debate, he shared no major concerns about the legislation, but he had no qualms voting against H. Res. 264 because of his confidence in the Senate bill.<sup>63</sup> This author is left to presume that his Nay vote was due to his desire to vote with his party coupled with his faith in the Senate bill. The minority roll, the closed rule, and Conyers' alignment with his party provide support for the two party-based theories of the legislative process.

Time plays a role in this paper's definition of crisis. Delahunt and other members shared concerns that House Resolution 3108 differs from the Committee's initial amendments, and there was insufficient time for any member to meaningfully examine the new legislation. However, Representative Diaz-Balart rebuffed concerns about the time given to verify to quality of the legislation explaining:

Yesterday, the FBI issued a statement informing all Americans that the Nation is at risk of another attack at any time. The legislation before us, in effect, provides law enforcement with tools to try to prevent another attack.<sup>64</sup>

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<sup>63</sup> Representative Conyers, *Congressional Record*, first session, 2001, Page H6716

<sup>64</sup> Representative Diaz-Balart, *Congressional Record*, first session, 2001, Pages H6724 - 6725

Representative Diaz-Balart felt hurried due to potential future attacks. Conyers explained that he had no memory of his committee ever unanimously voting to report a bill before, and, despite that bipartisan effort, the majority party voted for a closed rule.<sup>65</sup> It is likely that timeliness greatly affected both of these unusual outcomes instead of the typical party considerations prominent in the two party-based theories. The comments about time made by members provide strong support for the Hypothesis 1a. Congress sacrificed research and debate for speed.

Following the debate, the House voted 215 to 207 on ordering the previous question, and the House voted 214 to 208 on agreeing to the resolution. All 212 voting Republicans voted Yea in the former vote, and all but three voting Republicans voted Yea on the latter vote. Two Democrats voted Yea on the first vote, and three voted Yea on the second. The two independents split on both votes.<sup>66</sup>

While the partisan vote would suggest that the third hypothesis is incorrect, it actually strengthens part of the hypothesis. The USA PATRIOT Act which contains many parts identical to the PATRIOT Act passed with strong bipartisan support. The vote on H. Res. 264 shows that there were contentious issues in the legislation (or surrounding the legislation) that divided members by party lines, yet many Democrats voted for the final legislation even though they voted against the closed rule. This provides evidence that, for the final legislation, members wanted to appear unified.

Shortly after H. Res. 264 was passed, the House debated House Resolution 2975 for one hour. In the debate, members from both parties praised the bipartisan nature of the bill. Representative Sensenbrenner, as well as other Republicans, used bipartisanship as a reason to

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<sup>65</sup> Representative Conyers, *Congressional Record*, first session, 2001, Page H6716

<sup>66</sup> *Congressional Record*, first session, 2001, Page H6725 – 6726

support the bill. Sensenbrenner specifically stated, “I urge my colleagues to support this bipartisan effort.”<sup>67</sup>

Moreover, Representative Zoe Lofgren and other Democrats prefaced their opposition to the bill by commending the bipartisanship:

I do have concerns about the measure before us; but before touching on those concerns, I would like to state here publicly the esteem I have for the gentleman from Wisconsin, the Chairman of the committee, as well as the gentleman from Michigan, the Ranking Member. They have really conducted themselves in the very finest manner possible, and I am proud to be serving in this House with the two of them.<sup>68</sup>

Many Congresspersons rose to support the bill, citing national security and the terrorist attacks of September, 11 as their main reasons. On the other side, there were three consistent objections. First, many members, mostly Democrats, were concerned that the bill being voted on was not the bill reported out of the House Committee on the Judiciary. The second objection was “about the threat to our freedoms from too much expansion of law enforcement powers.”<sup>69</sup> Representative Jose Serrano and other members were concerned that the bill’s limitations on civil liberties were too great a cost. The third objection was mostly procedural. Many Democrats lamented the limited time available to study the legislation. Representative Jerrold Nadler opened his remarks by saying:

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<sup>67</sup> Representative Sensenbrenner, *Congressional Record*, first session, 2001, Page H6759

<sup>68</sup> *Ibid.*, Page H6761

<sup>69</sup> Representative Serrano, *Congressional Record*, first session, 2001, Page H6769

What I am about to say I hope is accurate, but I cannot be sure, because we have only had time to glance quickly through this bill. We have not had time to properly review it, to send it out to law schools, to send it out to civil libertarians to get comments back so we can make an intelligent judgment... We cannot wait until Tuesday... we cannot wait 3 days. We must rush to judgment on this bill.<sup>70</sup>

Nadler not only wanted more time to review the bill himself; he wanted Constitutional experts to provide additional information to ensure that the bill would be productive and Constitutional. According to Nadler's statements, the House was acting quickly to pass legislation (Hypothesis 1a). However, Individual members, like Nadler, preferred a slower, more thoughtful process. Representative Jane Harman joined Nadler and provided evidence that there was insufficient time to review the legislation.

The time stamp on the text is 3:43 am this morning. Do we know what changes were made between it and the bill reported unanimously from the Judiciary Committee? We should have had an opportunity to more carefully consider its provisions.<sup>71</sup>

The third concern with the bill provides strong support for Hypothesis 1a. Members lamented about how quickly the legislation was being passed through Congress. These members are the exceptions that prove the rule. Likewise, the time concern provides support for the first hypothesis. Nadler and others were complaining because of limited time to research significant

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<sup>70</sup> Representative Nadler, *Congressional Record*, first session, 2001, Page H6764

<sup>71</sup> Representative Harman, *Congressional Record*, first session, 2001, Page H6773

legislation was not typical of Congress. Congress was acting differently following the terrorist attacks of September 11 than they normally did.

At the end of the debate, Representative Nadler moved to recommit the bill with instructions to the House Committee on the Judiciary to report the same bill with an amendment limiting the scope of Title II of the bill to only domestic terrorism and international terrorism.<sup>72</sup> Nadler's motion to recommit was an attempt to gain extra time to review the bill and have the opportunity to amend it in committee. The motion to recommit failed with 345 Nay votes and 73 Yea votes. Nadler provided the House with an opportunity for extended review of the legislation, and the House chose a quick vote over thorough study. Again, Hypothesis 1a is supported. Members wanted fast passage instead of a comprehensive study of the law.<sup>73</sup>

Party leadership was mostly silent during floor debate. In addition to Sensenbrenner and Conyers, other high ranking committee members and Chairpersons and Ranking Members from other committees took the lead in voicing their opinions to the chamber. However, both party-based theories were supported by the roll call data even though the floor debate favored a committee-centric process. The majority party was never rolled, and they were able to roll the minority party on the vote for a closed rule containing the self-executing amendment. Over 95% of the majority party voted together on each vote, and the House Committee on Rules, a tool of the majority party used for both negative and positive agenda control, was able to implement the closed rule to help funnel their legislation quickly through the House.

Two-hundred and ten Republicans and 133 Democrats voted against the motion, and one Republican and 72 Democrats voted for it. All but one of the Republicans voted together, but the Democrats were split; around one third voted against the majority of their party. The histograms

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<sup>72</sup> Refer to Appendix II for a discussion of Title II of the USA PATRIOT Act of 2001's content

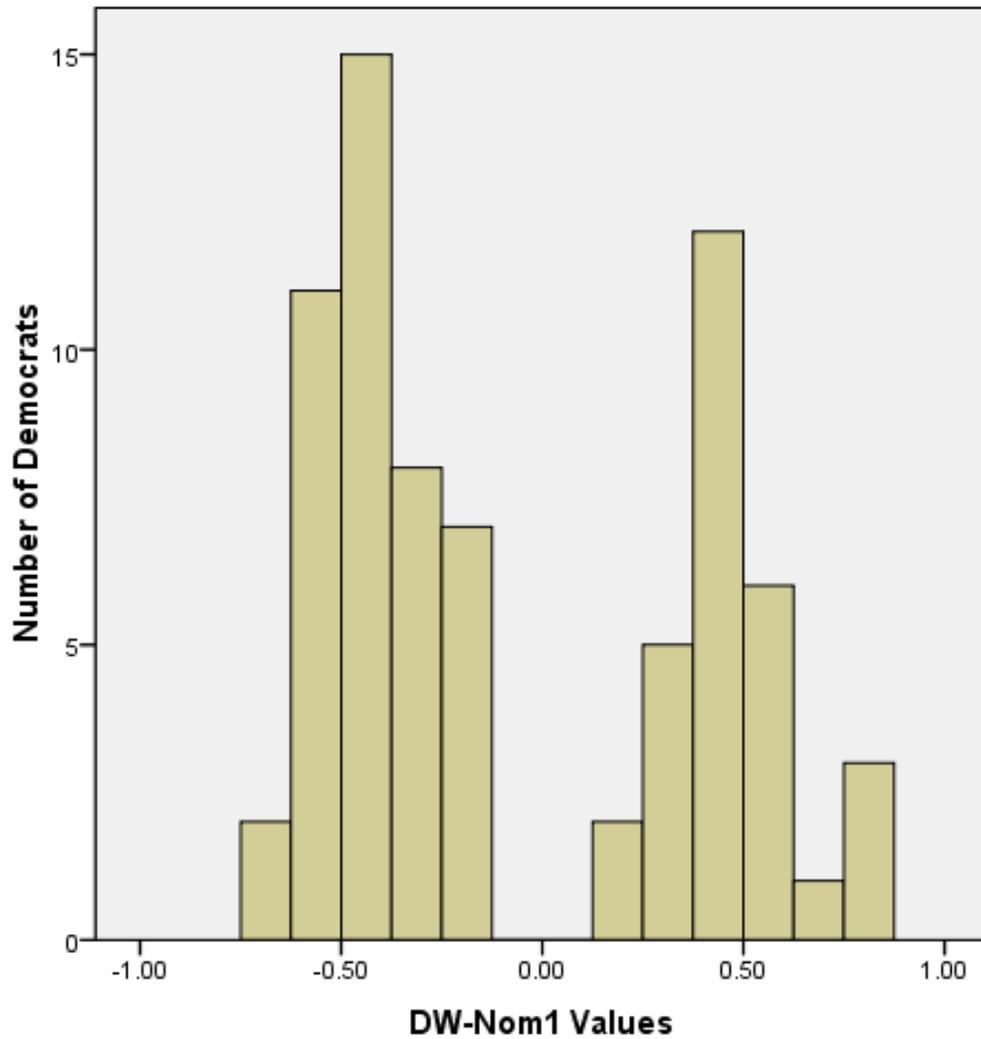
<sup>73</sup> *Congressional Record*, first session, 2001, Page H6773 - 6776

below depict the DW-Nom1 scores of the Democrats separated by how they voted. Both mean DW-Nom1 values of Democrats who voted Yea and Democrats who voted Nay are the same (0.06). Moreover, the standard deviations are identical, as well (0.472). This clearly demonstrates that DW-Nom1 values were not a good predictor of how Democrats voted on the motion to recommit House Resolution 2975.<sup>74</sup>

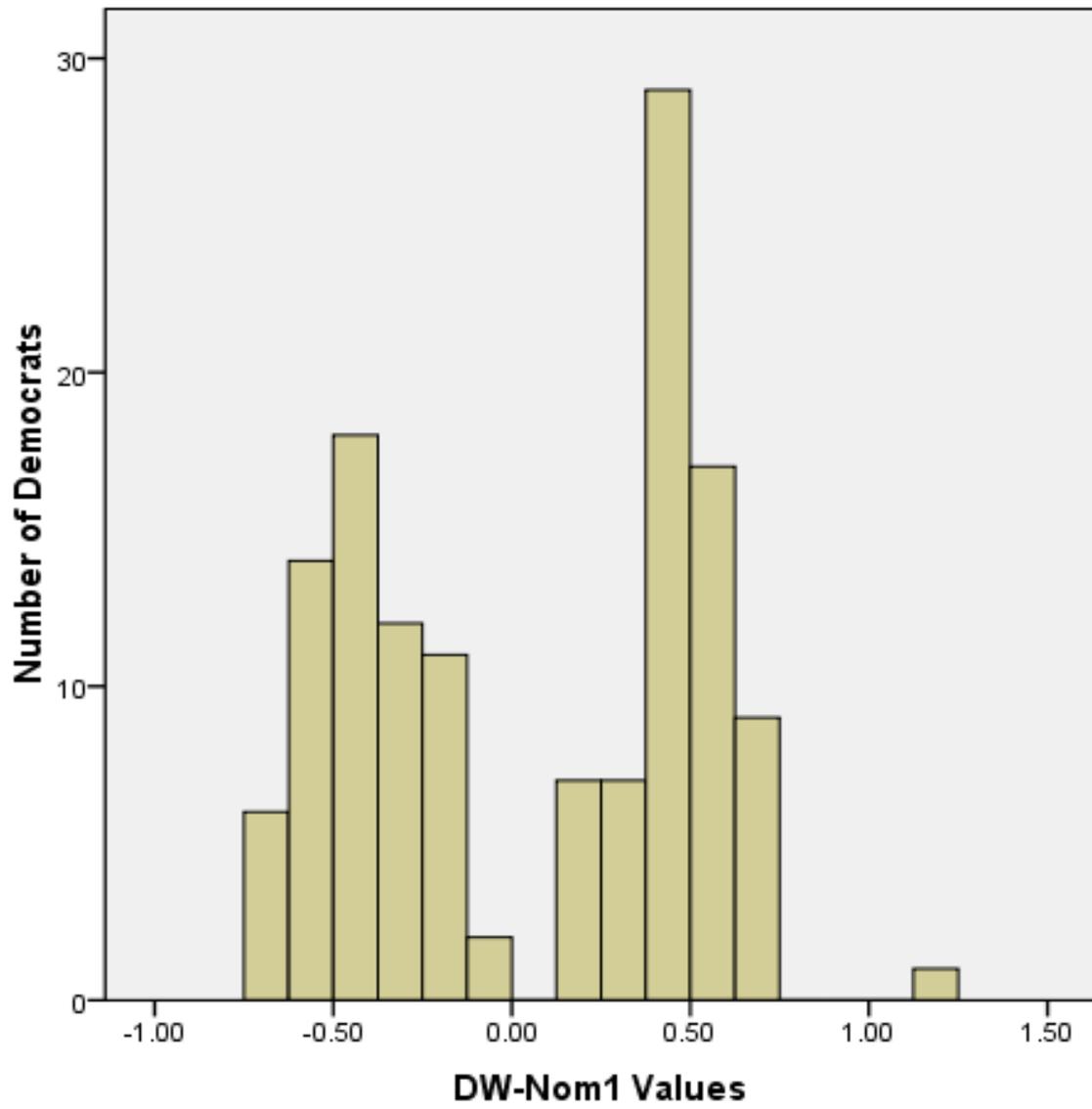
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<sup>74</sup> *Congressional Record*, first session, 2001, Page H6775 - 6776

**Graph 4: DW-Nom1 Scores of Democrats Who Voted Yea on the Motion to Recommit House Resolution 2975**



**Graph 5: DW-Nom1 Scores of Democrats Who Voted Nay on the Motion to Recommit House Resolution 2975**



Immediately after the motion to recommit failed, the House voted with 337 yeas, 79 nays, and one present to pass House Resolution 2975. For this vote, 207 Republicans voted Yea, Three Republicans voted Nay, 129 Democrats voted Yea, and 75 Democrats voted Nay. One Democrat voted Present, and the independents split. Again, the one-third of Democrats who voted Nay shared similar DW-Nom1 values with the Democrats who voted Yea. The mean of the Democrats who voted Nay is 0.03, and the mean of the Democrats who voted Yea is 0.05.<sup>75</sup>

For Democrats, ideology was not the deciding factor in the votes to recommit and, then, pass House Resolution 2975. The floor debate demonstrates that much of the bill's opposition was due to the procedure used for its passage. One can infer that the Democratic Party split because of issues regarding the time allotted to study the bill and the closed rule.

Another possibility is that the crisis did not shift member preferences equally; this would imply that the DW-Nom1 values are irrelevant because they do not correlate to member preferences following the crisis.

While the Democratic Party split, the Republican Party remained united. If members were voting on more than just party affiliation, then, the argument that DW-Nom1 values are irrelevant is weakened. Republicans have higher DW-Nom1 values in general, and, because the vast majority of Republicans voted together, there is still a correlation between DW-Nom1 values and how members voted. The final votes support *Cartel Theory* and *Conditional Party Government Theory* because the majority of the majority party voted together. This paper is unable to place the legislation on a unidimensional policy space because, as stated above, much of the opposition was for procedural reasons, not substantive.

Substantive reasons relate to the actual content of the legislation. Procedural reasons relates to issues besides the content of the legislation like the rule under which the legislation

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<sup>75</sup> *Congressional Record*, first session, 2001, Page H6775 - 6776

was brought to the floor, the treatment of the bill in committee, and the amount of time allotted for debate.

The failure of the vote to recommit provides additional evidence for Hypothesis 1a; members noted that the bill was not perfect, but they chose speed over better legislation. Additionally, the third hypothesis is supported because over three-fourths of Congress voted together, passing the bill with bipartisan support and allowing for the appearance of unity. The roll call data and closed rule provide support for the party-based theories, and, therefore, provide some evidence against the first amendment. Lastly, the House votes on House Resolution 2975 do not provide any evidence to support the second hypothesis.

Three days after the final vote, the Senate received the bill, read it twice, placed it on their calendar, and, then, took no further official actions on the bill. Before looking at the USA PATRIOT Act of 2001, this paper will look at the other chamber's lawmaking process leading up to the passage of the landmark legislation. Parallel to the House of Representatives' efforts, the Senate passed an anti-terrorism bill as well.

Senate Bill 150, "A bill to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes," was introduced by Senator John Daschle on October 4<sup>th</sup>. The bill is very similar to House Resolution 2975, and House Bill 3162 is based, in part, on Senate Bill 150. In fact, the bill's short name is the "Uniting and Strengthening America Act of 2001" or the USA Act of 2001. Moreover, Title I through Title IX of Senate Bill 150 and the USA PATRIOT Act of 2001 have identical names and nearly identical sections. The Senate bill does not contain the USA PATRIOT Act of 2001's Title X, Miscellaneous. The missing section restates that the federal government does not condone discrimination against any American, clarifies the definition of the term "transaction,"

authorizes appropriations to states in order for them to improve first responder assistance, changes immigration law to deny entry to any alien convicted of money laundering, and authorizes appropriations for a series of unrelated provisions to improve national security.<sup>76</sup>

Senate Bill 150 was never referred to a committee; instead it came before the upper chamber on October 11<sup>th</sup> under an open rule. Three amendments were offered, and all were eventually tabled. Senator Russ Feingold, one of the most liberal Senators in the 107<sup>th</sup> Congress, offered all three amendments. The first amendment, Senate Amendment Number 1899, would narrow and clarify the section of Senate Bill 150 containing provisions relating to interception of computer trespasser communications. Feingold says that his amendment “more accurately reflects the intent of the provision, as frequently expressed by the administration.”<sup>77</sup> The amendment would prevent the inceptions of communications from applying to minor violations committed at universities or public libraries by persons who were not given permission to use computers, according to Feingold.<sup>78</sup> Likewise, the amendment would allow for surveillance of a computer for up to 96 hours without a warrant.<sup>79</sup>

After a period of floor debate in which Feingold answered questions about the amendment’s effects, Senator Tom Daschle made a motion to table the amendment. He explained:

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<sup>76</sup> The Library of Congress, “Thomas,” The Library of Congress. <http://thomas.loc.gov/> and *Congressional Record*, first session, 2001, Page S10307 - 10333

<sup>77</sup> Senator Feingold, *Congressional Record*, first session, 2001, Page S10570

<sup>78</sup> *Ibid.*, Page S10570

<sup>79</sup> Senator Durbin, *Congressional Record*, first session, 2001, Page S10573

My argument is not substantive, it is procedural. We have a job to do. The clock is ticking. The work needs to get done. We have to make our best judgment about what is possible, and that process goes on.<sup>80</sup>

Daschle's justification for his motion to table provides strong support for the Hypothesis 1a. During floor debate, many Senators noted how significant this legislation was, and Daschle noted that "the clock is ticking." No member disagreed with Feingold's amendment during the entire floor debate; the motion to table was an attempt to prevent further amendments in order to pass the bill more quickly, even though members recognized that the bill could be improved upon. This is definitive evidence that Hypothesis 1a is accurate with regards to Senate Bill 150.

Feingold responded to the motion to table by saying:

On this bill there was not a single moment of markup or vote in the Judiciary Committee. I accepted that because of the crisis our Nation faces. This is the first substantive amendment in the Senate on this entire issue, one of the most important civil liberties bills of our time, and the majority leader has asked Senators to not vote on the merits of the issue. I understand the difficult task he has, but I must object to the idea that not one single amendment on this issue will be voted on the merits on the floor of the Senate. What have we come to when we don't have either committee or Senate deliberation on amendments on an issue of this importance?<sup>81</sup>

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<sup>80</sup> Senator Durbin, *Congressional Record*, first session, 2001, Page S10574

<sup>81</sup> Senator Feingold, *Congressional Record*, first session, 2001, Page S10575

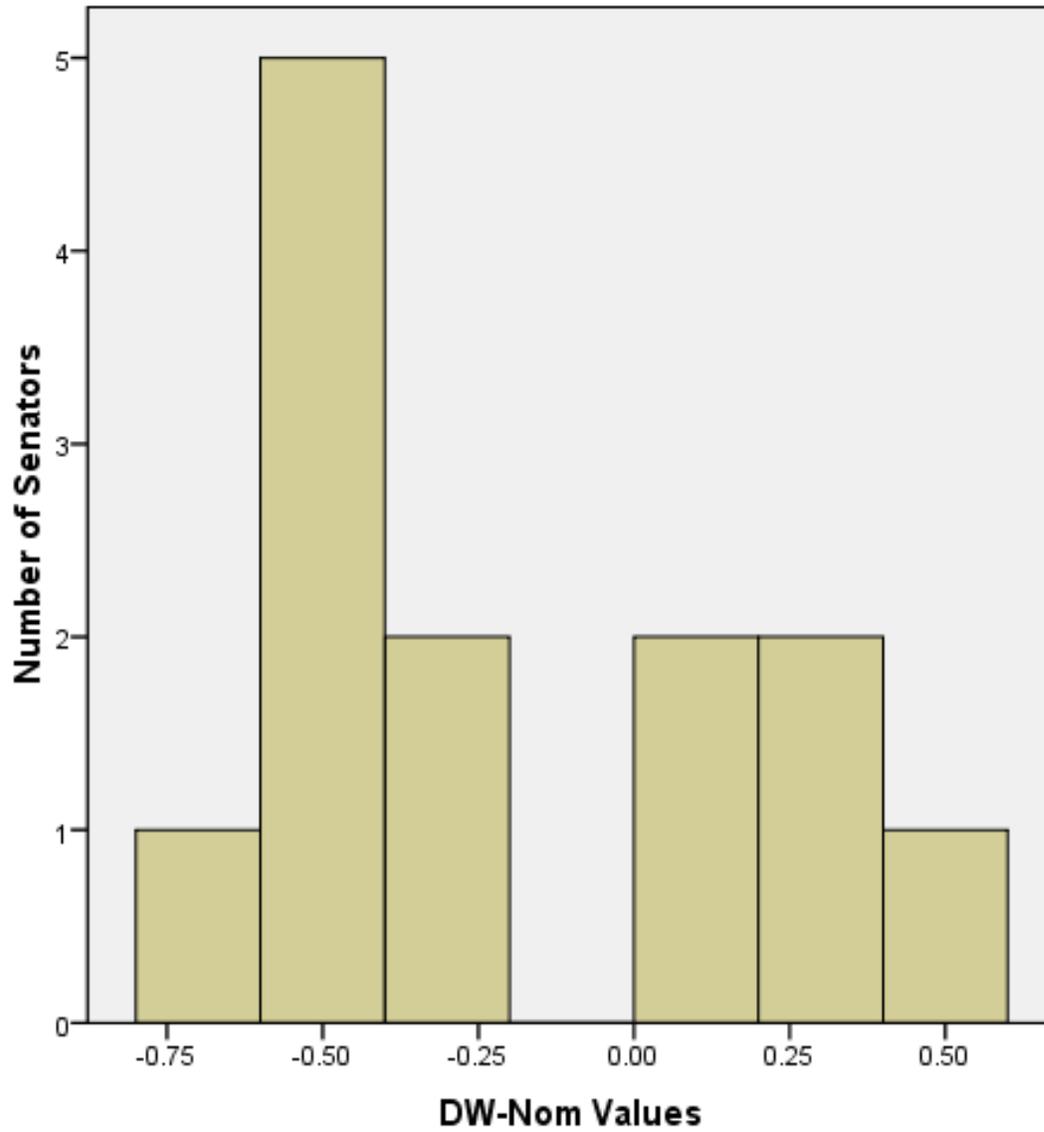
Feingold's response is very telling. It provides support for the first hypothesis because the committees did not take part in shaping the legislation. This prevents the committee-based theories from applying to Senate Bill 150. Likewise, he accepts that the Senate is not following normal protocol by sending the bill to a committee; he does so because "of the crisis our Nation faces." Feingold's statement also provides evidence against the second hypothesis. Without committee involvement, committees are unable to be particularly influential regarding the content of the legislation. Senator Patrick Leahy, the Chairman of the Senate Judiciary Committee, was active during the floor debate, but there is no evidence that he, in particular, affected the bill's content. Lastly, Feingold's comments support Hypothesis 1a. He notes the significance of the bill and the procedural short cuts being taken to speed up the bill's passage.

Eighty-three members voted to table the amendment, and 13 voted against tabling. Eleven of the Nay voters were Democrats, and the other two were Republicans.<sup>82</sup> There is a histogram of the DW-Nom1 values of the members who voted against tabling the amendment on the following page. The members are clustered slightly right of the median DW-Nom1 value in the chamber, and they clustered around the median DW-Nom1 of the majority party. The majority of Senators opposed to tabling the amendment are located around the minority party median. As seen in Graph 2, however, there are ample members who voted to table the amendment who share similar DW-Nom1 values with those who voted against tabling.

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<sup>82</sup> *Congressional Record*, first session, 2001, Page S10575

**Graph 6: DW-Nom1 Values of Senators  
Voting Against Tabling Amendment Number 1899**



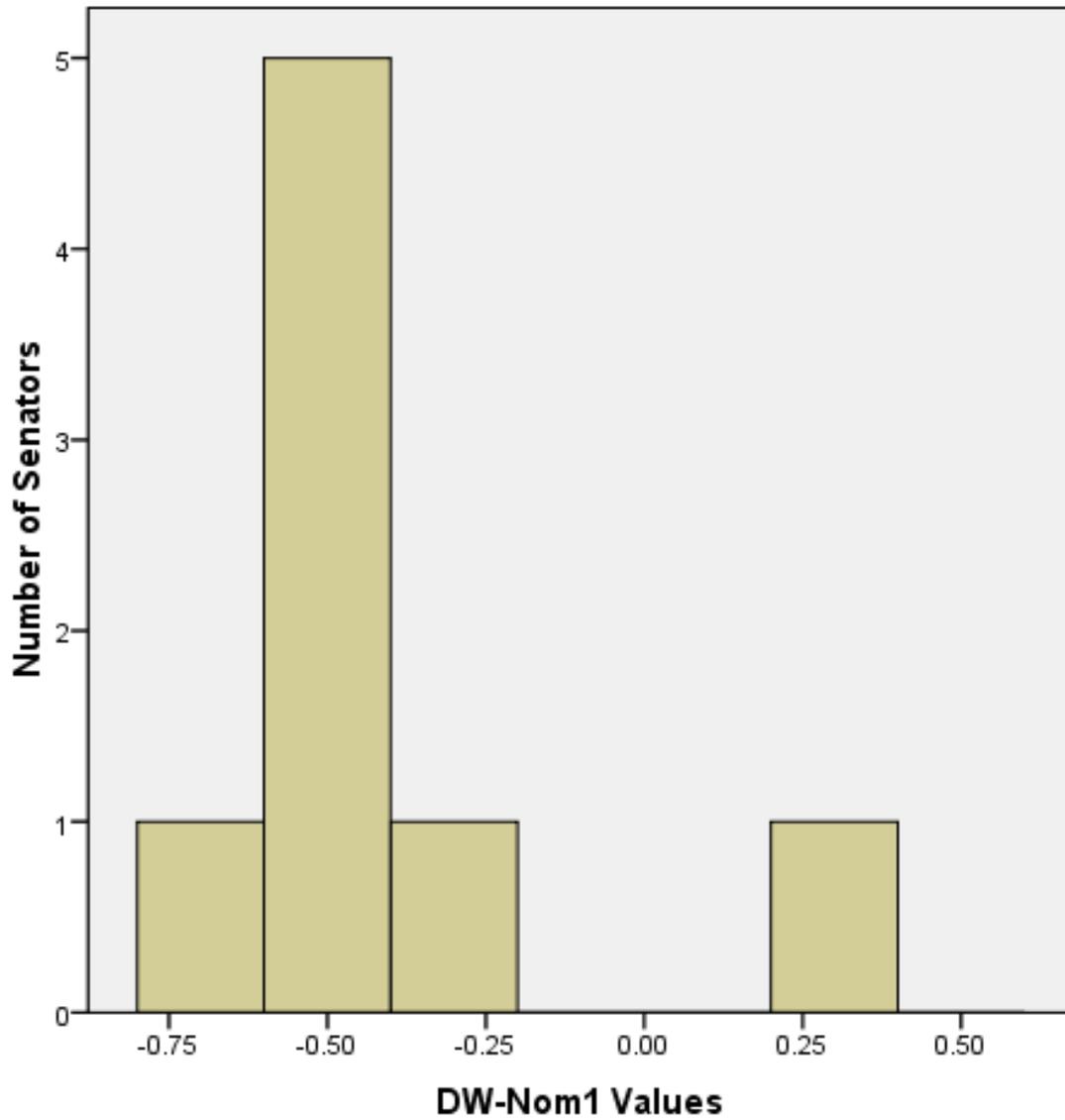
Feingold's second amendment addresses roving wiretap authority, and his third deals with the government's access to businesses' records relevant to an investigation of terrorism or espionage. These amendments faced some substantive opposition in the floor debate; however, once again, Senators desired speedy passage and wanted to discourage other amendments from being offered; therefore, the Senate voted to table the amendments.<sup>83</sup> The vote to table Senate Amendment Number 1900 had 90 Yea votes and seven Nay votes, and the vote to table Senate Amendment Number 1901 had 89 Yea votes and eight Nay votes.<sup>84</sup> Those who voted to table Senate Amendment Number 1900 clustered similarly to how members clustered for the first amendment. With the exception of one voter, all Nay voters for tabling Senate Amendment Number 1901 clustered only around the median voter of the majority party, as seen on the next page.

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<sup>83</sup> *Congressional Record*, first session, 2001, Pages S10575 and S10583

<sup>84</sup> *Ibid.*, Pages S10577 and S10586

**Graph 7: DW-Nom1 Values of Senators  
Voting Against Tabling Amendment Number 1901**



Keith Poole and Howard Rosenthal argue that coalitions formed by more extreme legislators against less extreme legislators should not happen if members are voting strictly on their preferences for the specific resolution being voted upon. In other words, there should not be two distinct clusters of Senators voting for the same amendment (against tabling) if all the members are voting for their policy preferences. However, they acknowledge that members do not always vote their preferences; sometimes members partake in strategic voting, or sophisticated voting.<sup>85</sup> This paper's analysis of the three amendments assumes that certain members voted for strategic reasons instead of solely based on preferences.

Members could have voted against tabling these three amendments for substantive and/or procedural reasons. Members who voted because of procedural reasons were voting strategically. The disappearance of the second cluster that was slightly right of the median voter of the chamber suggests that Senate Amendment Number 1899 and Senate Amendment 1900 were located nearer to the median voter of the chamber than Amendment 1901 was located. The members who clustered around the median voter of the chamber voted against tabling because of the substance of the amendments. The members who clustered around the median voter of the majority party also supported the amendments' substance; however, they were also most likely voting for strategic reasons according to Poole and Rosenthal's logic. Unlike the majority of members with similar DW-Nom1 values, these Senators probably voted against tabling the amendments because of their opposition to the procedure by which most members wanted Senate Bill 150 to pass. This cluster joined Feingold in strongly preferring members to have the option to make amendments to the Senate bill.

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<sup>85</sup> Keith T. Poole and Howard Rosenthal, *Ideology and Congress*, (New Brunswick: Transaction Publishers, 2007), Page 19

This provides support for Hypothesis 1, Hypothesis 1a, and Hypothesis 3. The first amendment was located close enough to the median voter of the chamber to solicit votes from members near the median even though the vast majority of the chamber supported tabling (Hypothesis 3). Members chose to vote for tabling even though they supported the amendments' substance in order to pass the legislation more quickly (Hypothesis 1a). The members who voted against tabling were not outliers. The Yea and Nay voters were clustered around the same DW-Nom1 scores which suggests that non-substantive factors played a major role in determining how Senators voted. None of the major theories predict that members would vote against their policy preferences in order to pass legislation more quickly.

After the amendments were tabled, there was more floor debate. The bill was voted upon and it passed with 96 votes.<sup>86</sup> Feingold was the only member to vote against the bill because he believed that amendments could considerably improve the bill. The other seven members who consistently voted against tabling the bills still supported the legislation in the end even though they believed the amendments were valuable. This observation provides additional support for the claim that those who voted against tabling the amendments and clustered around the median voter in the majority party did so, in part, because of procedural concerns. This vote also supports the third hypothesis by demonstrating bipartisanship and unity.

This paper is unable to thoroughly test Hypothesis 3 because there is not enough information to place Senate Bill 150 along a unidimensional policy space. The status quo was so extreme compared to legislative preferences that the Senate passed it with an overwhelming majority. In this case, member preferences most likely shifted due to the crisis. Prior to the terrorist attacks of September 11, 2001, Senators perceived American intelligence and national security policy to be sufficient for the United States' safety. However, the crisis shifted their

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<sup>86</sup> *Congressional Record*, first session, 2001, Page S10604

views about how effective the current policies were at protecting the United States. The status quo legislation shifted slightly, as well, but not to the extent that member preferences shifted. The attack on American soil identified weaknesses in security and inspired other terrorists by confirming that successful attacks are possible. The terrorist attack changes the threat to national security by potentially fueling more attacks and informing enemies how they could go about attacking the United States successfully. Therefore, the status quo legislation was interacting with world conditions differently before and after the events of September 11, 2001. This suggests a shift in the location of the status quo legislation too. Still, the shift in Congressional preferences is the major mechanism, and this shift prevents the paper from being able to sufficiently test the latter part of the third hypothesis.

House Resolution 2975 was passed on October 12, and Senate Bill 150 was passed on October 11; however, neither bill came to a vote in the other chamber. Instead, language from both bills was used to create House Resolution 3162, the USA PATRIOT Act of 2001. Representative Sensenbrenner and leadership from both chambers held a preconference in which they discussed the content of the two initial bills for the purpose of creating a new resolution which could easily pass both chambers.<sup>87</sup> One member explained that the preconference improved the legislation and gave an example how the legislation was improved. “The bill that passed the House was improved upon by the conference. Court supervision was added to the grand jury provisions.”<sup>88</sup> After the conference, Representative James Sensenbrenner introduced the bill on October 23, 2001 with Representative Michael Oxley as the sole cosponsor. The bill was referred to the House Committees on the Judiciary, Intelligence, Financial Services, International Relations, Energy and Commerce, Education and the Workforce, Transportation

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<sup>87</sup> Representative Sensenbrenner, *Congressional Record*, first session, 2001, Page H7206

<sup>88</sup> Representative Udall, *Congressional Record*, first session, 2001, Page H7206

and Infrastructure, and Armed Services. That night, Sensenbrenner made a motion to suspend the rules and pass House Resolution 3162.<sup>89</sup>

Before the vote to suspend the rules, the House had an hour of debate. During much of the debate, members discussed the content of specific sections; however, a noticeable proportion of the debate addressed process. Just like with the USA PATRIOT Act of 2001's predecessors, members noticed that the process for the bill's passage differed from the normal legislative process, providing support for Hypothesis 1.

Representative Robert Scott remarked:

I think it is appropriate to comment on the process by which the bill is coming to us. This is not the bill that was reported and deliberated on in the Committee on the Judiciary. It came to us late on the floor. No one has really had an opportunity to look at the bill to see what is in it since we have been out of our offices.<sup>90</sup>

The Ranking Member of the House Committee on the Judiciary concurred with Representative Scott. Representative Conyers asks, "Why should I put my name down in history for all time that I went for this ridiculous procedure which has been outlined?"<sup>91</sup>

Representative Barney Frank was one of the most vocal members who was upset with the procedure. He said:

We now, for the second time, are debating on the floor a bill of very profound significance for the constitutional structure and security of our country. In neither case

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<sup>89</sup> Library of Congress, the, "Thomas." The Library of Congress. <http://thomas.loc.gov/>

<sup>90</sup> Representative Scott, *Congressional Record*, first session, 2001, Page H7200

<sup>91</sup> Representative Conyers, *Congressional Record*, first session, 2001, Page H7206

has any Member been allowed to offer a single amendment. At no point in the debate in this very profound set of issues have we had a procedure whereby the most democratic institution in our government, the House of Representatives, engages in democracy.<sup>92</sup>

In response to procedural concerns, Representative Sensenbrenner tried justifying the lack of an official conference with the Senate by arguing that “the issues that would have been debated in the conference were debated in the preconference.”<sup>93</sup> He urged members to pass the bill unamended and without a conference. “I think a conference would merely delay passing powers that law enforcement vitally needs.”<sup>94</sup>

These excerpts support the first hypothesis; members used a large proportion of the debate discussing procedure because it was noticeably different than typical procedure. The bypassing of an official conference, the replacement of the House Committee on the Judiciary’s amendments, and the limited time available to study the legislation made the process passing the bill special. None of these occurrences are explained by the prominent theories of the legislative process.

Comments made by Representative Sheila Jackson-Lee provide evidence for one of the assumptions on which the hypotheses were based. This paper assumed that members’ believe that voters consider how well elected officials handle times of crisis when choosing for whom they will vote. This is one of the reasons why significant legislation is passed more quickly. Representative Jackson-Lee supports this assumption by saying, “I think Americans know very

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<sup>92</sup> Representative Frank, *Congressional Record*, first session, 2001, Page H7206

<sup>93</sup> Representative Sensenbrenner, *Congressional Record*, first session, 2001, Page H7207

<sup>94</sup> *Ibid.*, Page H7207

well that character is judged not so much on how a man or woman acts in the good times, but how we act in the face of adversity.”<sup>95</sup>

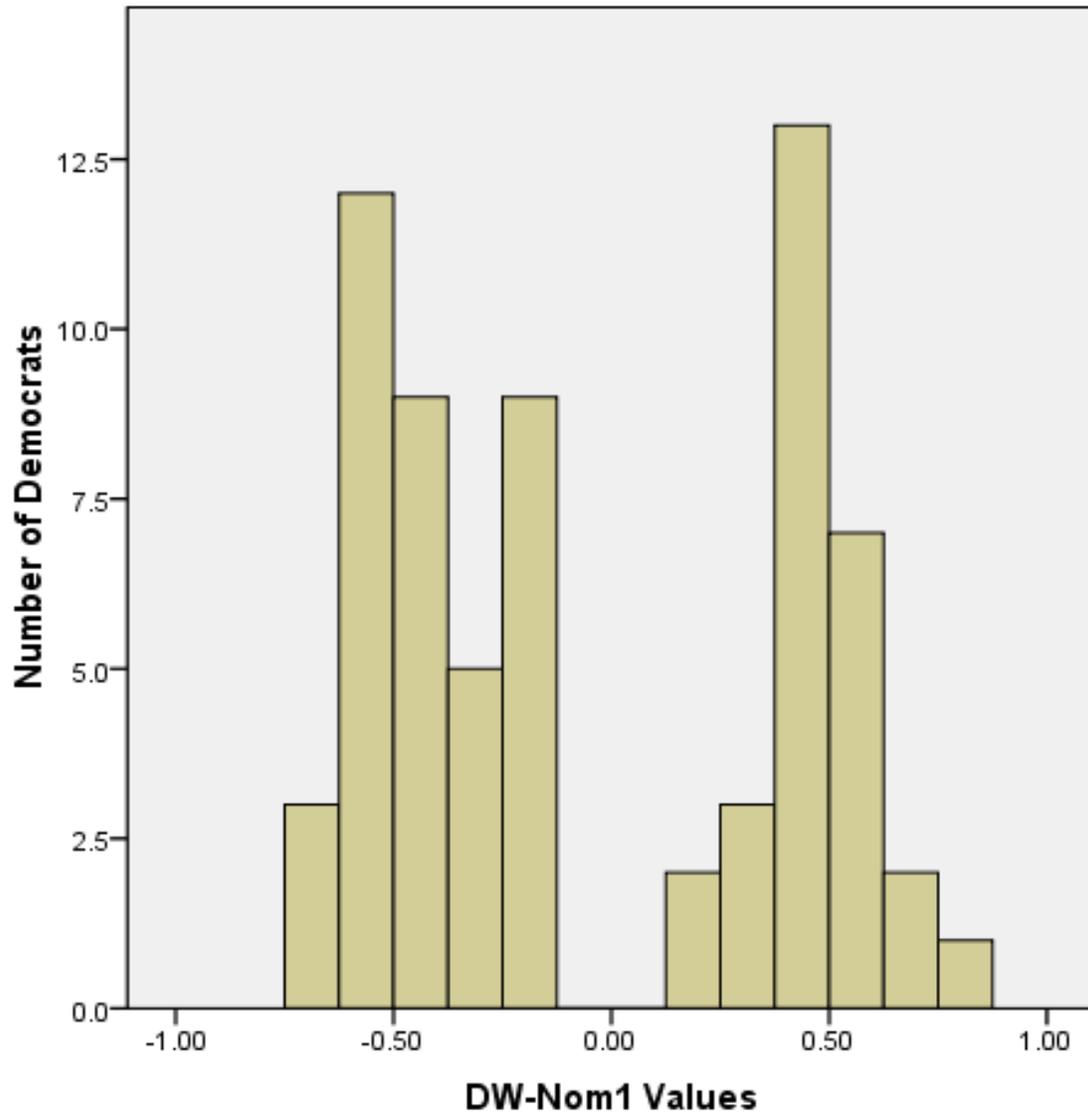
After the floor debate, Representative Sensenbrenner offered a motion to suspend the rules and pass House Resolution 3162. Due to the late hour, the Speaker pro tempore postponed the vote on the motion until the next day. The next morning the bill passed with 357 Yeas to 65 Nays. Two-thirds voting in the affirmative were required for passage because of the motion to suspend the rules. Two-hundred and eleven Republicans voted Yea; three Republicans voted Nay; 145 Democrats voted Yea; 66 Democrats voted Nay; and the Independents split. The mean DW-Nom1 value of the Democrats who voted Nay is 0.04, and the mean is 0.05 for Democrats who voted Yea.<sup>96</sup>

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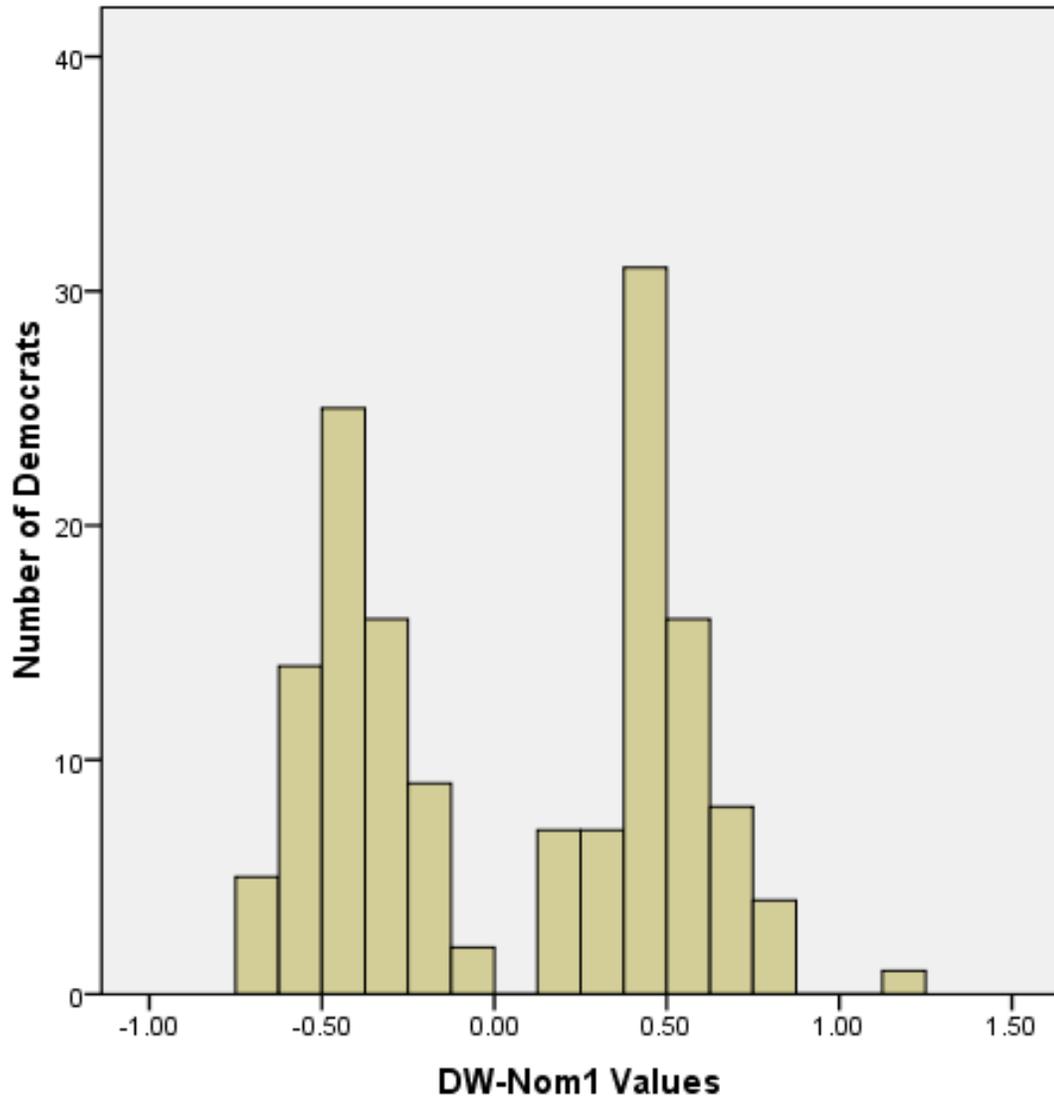
<sup>95</sup> Representative Jackson-Lee, *Congressional Record*, first session, 2001, Page H7202

<sup>96</sup> *Congressional Record*, first session, 2001, Pages H7207 and H7224

**Graph 8: DW-Nom1 Values of Democratic Representatives Voting Against the Motion to Suspend the Rules and Pass House Resolution 3162**



**Graph 9: DW-Nom1 Values of Democratic Representatives Voting for the Motion to Suspend the Rules and Pass House Resolution 3162**



Similarly to the analysis of the Senate amendments, one can infer that some of the members who voted against the bill did so because of the content and others did so because of the procedure. The DW-Nom1 values were not good predictors of how Democrats would vote. Over 98% of Republicans voted together, and there is no evidence to suggest that they did so because of ideology or party affiliation. One possibility is that they trusted the members who developed the legislation and those who partook in the preconference because of party affiliation. Another possibility is that Republicans would pay a higher cost for a slower reaction to the crisis because their party was in the majority.

Regardless, none of the major theories are capable of explaining the process by which the House passed House Resolution 3162. The lack of correlation between DW-Nom1 values and Democratic roll call votes, the bypassing of an official conference, the replacement of the House Committee on the Judiciary's amendments, and the limited time available to study the legislation weaken the applicability of the prominent theories of the legislative process. The closed rule and unity of the Republican Party support the party-based theories; however, Representative Sensenbrenner, the Chairman of the House Committee on the Judiciary, was the most vocal proponent of the legislation on the House floor, sponsored the legislation, and partook in the preconference. He had the greatest influence on the bill and its predecessor, and he vocally rallied support. This supports the two committee-based theories. On the other hand, the Rules Committee bypassed the House Judiciary Committee's amendments. The roll call analysis in conjunction with member testimony that the process was unique provides ample support for Hypothesis 1.

On October 25, 2001, the Senate debated House Resolution 3162 and passed it with 98 affirmative votes to one negative vote.<sup>97</sup> During the debate, Senator John Kerry thanked Senator Daschle (Majority Leader), Senator Leahy (Chairman of the Senate Committee on the Judiciary), Senator Paul Sarbanes (Chairman of the Senate Committee on Banking), Senator Orrin Hatch (former Chairman of the Senate Committee on the Judiciary), and Senator Carl Levin (Chairman of the Senate Committee on Armed Services) for their hard work in crafting the bill, in particular.<sup>98</sup> Kerry's gratitude suggests that the committee chairmen listed above and the Majority Leader were the main contributors from the Senate to the language of the legislation. This supports the paper's second hypothesis directly. Moreover, Senators Leahy and Hatch were the most vocal Senators during floor debate. Leahy presented the legislation and answered a series of substantive questions to help other members better understand the legislation.<sup>99</sup>

Senator Feingold, the sponsor of Senate Bill 150's three amendments, shared his view that the legislation was too large an infringement on civil liberties.<sup>100</sup> He was the only Senator to vote against the bill.

The near unanimous passage of the bill supports the third hypothesis. The Senate appeared unified, and the legislation passed in a bipartisan fashion. One day after the Senate passed the bill, President Bush signed it into law. House Resolution 3162 became Public Law Number 107-56, the USA-PATRIOT Act of 2001, on October 26, 2001, six weeks after the terrorist attacks of September 11, 2001.

The USA PATRIOT Act of 2001 is a significant piece of legislation; it was passed quickly; none of the theories of the legislative process account for the process by which it was

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<sup>97</sup> *Congressional Record*, first session, 2001, Pages S11059 - 11060

<sup>98</sup> Senator Kerry, *Congressional Record*, first session, 2001, Page S11027

<sup>99</sup> Senator Leahy, *Congressional Record*, first session, 2001, Page S11052

<sup>100</sup> Senator Feingold, *Congressional Record*, first session, 2001, Page S11019

passed; and, members of Congress appeared unified to their constituents. However, there is not enough evidence to place the legislation on a unidimensional policy space, and there is inconclusive evidence regarding the claim that committee members had the most influence on the content of the legislation (Hypothesis Two). Representative Sensenbrenner and Senator Leahy, the chairmen of their respective chambers' judiciary committees, were clearly major contributors to the legislation. With that said, Hypothesis 2 cannot be confirmed because the House Rules Committee bypassed the House Judiciary Committee's amendments, and the Senate Majority Leader was also mentioned as a major contributor to the bill's language.

In sum, this case study provides support for Hypothesis 1, Hypothesis 1a, and the first part of Hypothesis 3 which addresses members' desire to appear unified. There is not enough information to conclusively test Hypothesis 2 or the latter part of Hypothesis 3 which addresses the location of the legislation on a unidimensional policy space.

## Section IV: Hurricane Katrina

On August 29, 2005, Hurricane Katrina hit Louisiana with winds of 110 knots. Though it weakened from a Category 5 hurricane to a Category 3 before making landfall, Hurricane Katrina was the costliest and one of the deadliest hurricanes in United States history.<sup>101</sup> One-thousand-eight-hundred-thirty-three total deaths were reported with 1577 in Louisiana, 238 in Mississippi, 14 in Florida, two in Georgia, and two in Alabama.<sup>102</sup> Three days before Hurricane Katrina reached Louisiana, forecasts correctly predicted that Katrina would be a major hurricane (Category 3 or higher).<sup>103</sup>

The legacy of Hurricane Katrina is not the force of nature; instead, it is the United States' inability to quickly and effectively respond to a natural disaster in the 21<sup>st</sup> century. Governor Kathleen Blanco declared a State of Emergency for Louisiana on August 26, 2005, and Governor Haley Barbour did the same for Mississippi the next day. Later that day, President Bush declared a Federal Emergency giving the Department of Homeland Security (DHS) and the Federal Emergency Management Agency (FEMA) authority to mobilize for the emergency. On August 28, 2005, New Orleans Mayor Nagin ordered a mandatory evacuation of his city, and water began overflowing the Lake Pontchartrain levee within 24 hours. Thirty-thousand Louisianans entered the Superdome for safety with around a day and a half worth of food. The Louisiana National Guard requested 700 buses and FEMA sent 100. Hurricane Katrina reached land the next day (August 29, 2005) at 7:00 AM, and the New Orleans levee was breached within the hour. Four hours after initial landfall, Michael Brown, the Director of FEMA, requested that Secretary of Homeland Security Michael Chertoff send 1000 DHS employees to the hurricane

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<sup>101</sup> Richard D. Knabb, Jamie R. Rhome, and Daniel P. Brown, "Tropical Cyclone Report Hurricane Katrina." *National Hurricane Center*, 2005, [http://www.nhc.noaa.gov/pdf/TCR-AL122005\\_Katrina.pdf](http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf), Page 1

<sup>102</sup> *Ibid.*, Page 11

<sup>103</sup> *Ibid.*, Page 14

disaster area with two days to arrive. Shortly after, the 17<sup>th</sup> Street Canal levee was breached.<sup>104</sup>

That evening, Governor Blanco requested additional assistance from President Bush saying, "We need your help. We need everything you've got."<sup>105</sup>

Although the levees were breached the morning of August 29, the Secretary of the Department of Homeland Security told Tim Russet of Meet the Press that he did not find out until midday on August 30<sup>th</sup>:

It was on Tuesday that the levee--may have been overnight Monday to Tuesday--that the levee started to break. And it was midday Tuesday that I became aware of the fact that there was no possibility of plugging the gap and that essentially the lake was going to start to drain into the city. I think that second catastrophe really caught everybody by surprise.<sup>106</sup>

The next day, FEMA requested 300 ambulances from the Department of Transportation only to cancel the request 18 hours later because FEMA learned that the Department of Transportation did not have ambulances.<sup>107</sup> National Guard troops arrived the following day on August 31, two days after they were requested and two days after the levees had failed.<sup>108</sup>

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<sup>104</sup> Think Progress, "Katrina Timeline." *Center for American Progress*. <http://thinkprogress.org/katrina-timeline/#>

<sup>105</sup> Evan Thomas, "How Bush Blew It." *Newsweek*. September 19, 2005. <http://www.newsweek.com/id/104464/page/1>, Page 3

<sup>106</sup> Meet the Press, "Transcript for September 4." *NBC News*. September 4, 2005. <http://www.msnbc.msn.com/id/9179790/>

<sup>107</sup> Robert Block, "Documents Reveal Extent of Fumbles on Storm Relief." *The Wall Street Journal*. September 13, 2005. [http://online.wsj.com/article/0,,SB112658472240639074,00.html?mod=todays\\_us\\_page\\_one](http://online.wsj.com/article/0,,SB112658472240639074,00.html?mod=todays_us_page_one), Page 1

<sup>108</sup> Keith O'Brien and Bryan Bender, "Chronology of errors: How a Disaster Spread." *The Boston Globe*. September 11, 2005. [http://www.boston.com/news/weather/articles/2005/09/11/chronology\\_of\\_errors\\_how\\_a\\_disaster\\_spread/](http://www.boston.com/news/weather/articles/2005/09/11/chronology_of_errors_how_a_disaster_spread/), Page 1

Additionally, President Bush announced that he would end his vacation and fly to Washington to lead a task force of 14 federal agencies to handle Katrina relief.<sup>109</sup>

While FEMA, DHS, and the White House were trying to determine how to alleviate the situation, the conditions in the Superdome worsened. With very limited food and water, Louisianans trapped in the Superdome complained about the odor and poor living conditions. The *Los Angeles Times* reported:

“We pee on the floor. We are like animals,” said Taffany Smith, 25, as she cradled her 3-week-old son, Terry. In her right hand she carried a half-full bottle of formula provided by rescuers. Baby supplies are running low; one mother said she was given two diapers and told to scrape them off when they got dirty and use them again.”<sup>110</sup>

On August 31, 2005, the day that Bush announced his task force and the National Guard arrived, Governor Blanco called the White House twice in order to contact President Bush to ask for more help. She requested 40,000 troops.<sup>111</sup> Complaints about the governments’ relief efforts and command and control continued the next day. Terry Ebbert, the head of New Orleans’ emergency operations explained:

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<sup>109</sup> Eric Lipton and Eric Schmitt, “Pentagon Rescue Teams and Sent to Region.” *The New York Times*. August 31, 2005.

[http://www.nytimes.com/2005/08/31/national/nationalspecial/31response.html?\\_r=1&scp=1&sq=fly%20to%20Washington%20to%20begin%20work&st=cse](http://www.nytimes.com/2005/08/31/national/nationalspecial/31response.html?_r=1&scp=1&sq=fly%20to%20Washington%20to%20begin%20work&st=cse)

<sup>110</sup> Scott Gold, “Trapped in an Arena of Suffering.” *Los Angeles Times*. September 01, 2005.

<http://articles.latimes.com/2005/sep/01/nation/na-superdome1>, Page 1

<sup>111</sup> Evan Thomas, “How Bush Blew It.” *Newsweek*. September 19, 2005.

<http://www.newsweek.com/id/104464/page/1>, Page 4

This is a national emergency. This is a national disgrace... FEMA has been here three days, yet there is no command and control. We can send massive amounts of aid to tsunami victims, but we can't bail out the city of New Orleans.<sup>112</sup>

Likewise, Mayor Nagin announced on *CNN*:

This is a desperate SOS... Right now we are out of resources at the convention centre and don't anticipate enough buses. We need buses. Currently the convention centre is unsanitary and unsafe and we're running out of supplies.<sup>113</sup>

Public opinion worsened as the media reported occurrences of violence in addition to flood damage and poor conditions in the Superdome:

Storm victims were raped and beaten, fights and fires broke out, corpses lay out in the open, and rescue helicopters and law enforcement officers were shot at as hurricane-flooded New Orleans descended into anarchy Thursday [September 1, 2005].<sup>114</sup>

### **Congress's Response to Hurricane Katrina**

September 2, 2005, Congress took its first step in addressing the national crisis. Congress passed House Resolution 3645 by voice vote making it Public Law 109-61. Introduced by

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<sup>112</sup> Fox News, "Official: Astrodome Can't Take More Refugees." *Foxnews.com*. September 2, 2005. <http://www.foxnews.com/story/0,2933,168112,00.html>

<sup>113</sup> Julian Borger. 2005. "Mayor Issues SOS as Chaos Tightens Its Grip." *Guardian.co.uk*. September 2, 2005. <http://www.guardian.co.uk/world/2005/sep/02/hurricanekatrina.usa>

<sup>114</sup> Joel Roberts. 2005. "Mayor Issues 'SOS' Amid Turmoil." *CBS News*. September 1, 2005. <http://www.cbsnews.com/stories/2005/09/01/katrina/main812538.shtml>, Page 1

Representative Jerry Lewis on the day of its passage, the law appropriates \$10 billion to DHS for disaster relief and \$500 million to the Department of Defense (DoD) for the operation and maintenance of the evacuation, repairs, and personnel for the month of September.<sup>115</sup>

One day later, the Superdome was fully evacuated.<sup>116</sup> DHS, DoD, FEMA and local authorities continued their relief work in the hurricane disaster zone, and the executive and legislative branches took more action on September 8, 2005. Bush suspended the Davis-Bacon Act removing the minimum pay scale for workers under government contract, and Congress passed three more bills addressing the crisis.<sup>117</sup> Introduced one day earlier, House Resolution 3673, “Making further emergency supplemental appropriations to meet immediate needs arising from the consequences of Hurricane Katrina, for the fiscal year ending September 30, 2005, and for other purposes” became Public Law 109-62 appropriating \$51.8 billion in hurricane disaster relief for the remainder of September.<sup>118</sup> The House of Representatives passed the bill 410 votes to 11 votes, and the Senate unanimously voted 97 to 0 for passage later that day.<sup>119</sup> Combined, Public Law 109-61 and Public Law 109-62 appropriated \$62.3 billion for immediate disaster relief.

Congress also passed House Resolution 3668, “To provide the Secretary of Education with waiver authority for students who are eligible for Federal student grant assistance who are adversely affected by a major disaster,” which became Public Law 109-67. Introduced on

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<sup>115</sup> Library of Congress, the, “Thomas.” The Library of Congress. <http://thomas.loc.gov/> and *Congressional Record*, first session, 2005, Page H7618

<sup>116</sup> Associated Press. 2005. “Superdome Evacuation Completed.” *MSNBC*. September 3, 2005. <http://www.msnbc.msn.com/id/9175611/>, Page 1

<sup>117</sup> Thomas B. Edsall. 2005. “Bush Suspends Pay Act in Areas Hit by Storm.” *The Washington Post*. September 9, 2005. <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/08/AR2005090802037.html>, Page D03

<sup>118</sup> Library of Congress, the, “Thomas.” The Library of Congress. <http://thomas.loc.gov/> and *Congressional Record*, first session, 2005, Page H7777

<sup>119</sup> Peter Baker and Amy Goldstein. 2005. “Congress Approves \$51.8 Billion for Victims.” *The Washington Post*. September 9, 2005. <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/08/AR2005090801081.html>, Page A01 and *Congressional Record*, first session, 2005, Pages H7778 and S9813

September 7, 2005, as well, the House of Representatives unanimously passed this bill with 414 votes, and the Senate passed it by voice vote.<sup>120</sup> This law amends the Higher Education Act of 1965 to include educational grants to students affected by the hurricane.

Lastly, Congress passed House Resolution 3669, “To temporarily increase the borrowing authority of the Federal Emergency Management Agency for carrying out the national flood insurance program” on October 8, turning it into Public Law 109-65. This law amends The Flood Insurance Act of 1968 to increase the borrowing authority of FEMA from \$1.5 billion to \$3.5 billion through September 30, 2008. Again, the bill unanimously passed the House with 426 votes and passed the Senate with a voice vote.<sup>121</sup>

Dismayed by the hurricane’s fatalities, the public’s opinion of the government soured as the media reported poor conditions for survivors and an aura of ignorance surrounding the government officials in charge of facilitating relief. The *Los Angeles Times* reported on the director of FEMA’s manner and lack of awareness:

At first, there was a hint of swagger in the attitude of Brown, the FEMA director, toward Hurricane Katrina. The day the storm tore into the Gulf Coast, Brown told a television interviewer: “We were so ready for this.”<sup>122</sup>

All day Thursday, CNN had broadcast horrifying images of the New Orleans Convention Center; that afternoon, both Brown and Chertoff admitted publicly that they didn’t know about the problem.<sup>123</sup>

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<sup>120</sup> *Congressional Record*, first session, 2005, Pages H7763 and S10149

<sup>121</sup> *Congressional Record*, first session, 2005, Pages H7759 and S9942

<sup>122</sup> Nicole Gaouette, Alan C. Miller, Mark Mazzetti, Doyle Mcmanus, Josh Meyer, and Kevin Sack, “Put to Katrina’s Test.” *Los Angeles Times*. <http://articles.latimes.com/2005/sep/11/nation/na-plan11>, Page 1

On September 9, 2005, Admiral Thad Allen, the Chief of Staff of the United States Coast Guard overtook Michael Brown's duties for overseeing disaster relief, and Brown resigned as Director of FEMA early the following week.<sup>124</sup> Additionally, in response to the media and public's frustration with Brown and the government's overall handling of Hurricane Katrina and its aftermath, Congress established the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina which held nine hearings in the months following Katrina. Congressman Tom Davis, a Republican from Virginia, was appointed Chairman. As the Chairman of the House Committee on Oversight and Government Reform and a relatively moderate conservative respected by members of both major parties, Davis had ample investigative experience and the interpersonal relationships to effectively investigate the governments' handling of Katrina. Representative Tom Davis stated that Brown's comments, reported by the *Los Angeles Times*, denying his knowledge of the problem made his select committee's hearings inevitable.<sup>125</sup>

The Select Committee's first hearing, entitled *Predicting Hurricanes: What We Knew About Katrina and When*, set out to identify what actually occurred. This hearing uncovered that the Hurricane Center predicted the intensity of the hurricane within ten miles per hour just two days before landfall, and the National Weather Service office in Slidell, Louisiana issued the

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<sup>123</sup> Nicole Gaouette et al, "Put to Katrina's Test." *Los Angeles Times*. <http://articles.latimes.com/2005/sep/11/nation/na-plan11>, Page 1

<sup>124</sup> Think Progress, "Katrina Timeline." Center for American Progress. <http://thinkprogress.org/katrina-timeline/#> and CNN, "FEMA Director Brown Resigns." *CNN.com*. September 12, 2005. <http://www.cnn.com/2005/POLITICS/09/12/brown.resigns/index.html>

<sup>125</sup> U.S. House of Representatives Select Bipartisan Committee to Investigate the Preparation for and Response to Katrina, *Hurricane Katrina the Role of the Federal Emergency Management Agency, 109<sup>th</sup> Congress, 2005*, [http://katrina.house.gov/hearings/09\\_27\\_05/witness\\_list092705.html](http://katrina.house.gov/hearings/09_27_05/witness_list092705.html) and U.S. House of Representatives Select Bipartisan Committee to Investigate the Preparation for and Response to Katrina, 2005, *A Failure of Initiative: The Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*, 109<sup>th</sup> Congress, First session, [http://katrina.house.gov/full\\_katrina\\_report.htm](http://katrina.house.gov/full_katrina_report.htm), Page 1

following warning the day before the hurricane hit, “Most of the Area will be uninhabitable for weeks...perhaps longer...human suffering [will be] incredible by modern standards.”<sup>126</sup>

The *Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina* states that “the preparation for and response to Hurricane Katrina show we are still an analog government in a digital age. We must recognize that we are woefully incapable of – especially in times of crisis, storing, moving, and accessing information.”<sup>127</sup> The report continues by noting that Katrina was a failure of *initiative* due in large part to limited information which caused poor leadership. A uniform failure on all levels of government to prepare for an event as catastrophic as Katrina, poor execution of existing evacuation and medical procedures, poor coordination with the military, and levees ill-suited for the intensity of Katrina led to the high death toll and property damage.<sup>128</sup>

Congress passed one other noteworthy statute a few weeks after Congress passed its initial legislation in response to Hurricane Katrina. Representative Michael Fitzpatrick introduced House Resolution 4133, “To temporarily increase the borrowing authority of the Federal Emergency Management Agency for carrying out the national flood insurance program,” on October 25, 2005. The House and Senate passed the bill on November 16, 2005 and November 18, 2005, respectively, turning it into Public Law 109-106. Public Law 109-106 amended the National Flood Insurance Act of 1968 by increasing the government’s borrowing from \$3.5 billion (set by Public Law 109-65 which was discussed above) to \$18.5 billion.<sup>129</sup>

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<sup>126</sup> U.S. House of Representatives Select Bipartisan Committee to Investigate the Preparation for and Response to Katrina, *Predicting Hurricanes: What We Knew About Katrina and When*, 109<sup>th</sup> Congress, First session, 2005, [http://katrina.house.gov/hearings/09\\_22\\_05/witness\\_list092205.html](http://katrina.house.gov/hearings/09_22_05/witness_list092205.html), Page 3

<sup>127</sup> U.S. House of Representatives Select Bipartisan Committee to Investigate the Preparation for and Response to Katrina, 2005, *A Failure of Initiative: The Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*, 109<sup>th</sup> Congress, First session, [http://katrina.house.gov/full\\_katrina\\_report.htm](http://katrina.house.gov/full_katrina_report.htm), Page 16

<sup>128</sup> Ibid. p. 16-17

<sup>129</sup> Library of Congress, the, “Thomas.” The Library of Congress. <http://thomas.loc.gov/>

This paper will take a deeper look at the most expensive and impacting bill, House Resolution 3673, following a brief description of the 109<sup>th</sup> Congress.

### **The 109<sup>th</sup> Congress of the United States**

The 109<sup>th</sup> Congress met from January 3, 2005 to January 3, 2007. The Senate was made up of 55 Republicans, 44 Democrats, and one independent who caucused with the Democrats. The House was also controlled by the Republicans; there were between 229 and 232 Republican Representatives, 201 to 202 Democrats, and one Independent who caucused with the Democrats through the 109<sup>th</sup> Congress. The Republicans had a unified government with George Bush serving his 5<sup>th</sup> and 6<sup>th</sup> years as President.<sup>130</sup>

The 109<sup>th</sup> Senate's DW-Nom1 values range from -1.027 (Senator Russ Feingold) to 0.89 (Senator Tom Coburn). The President pro tempore was Ted Stevens with a DW-Nom1 value of 0.247. The Senate Majority Leader and Majority Whip were Senator Bill Frist and Senator Mitch McConnell with DW-Nom1 values of 0.442 and 0.482, respectively. The minority leadership consisted of Minority Leader Harry Reid whose DW-Nom1 value was -0.425 and Minority Whip Richard Durbin whose DW-Nom1 score was -0.578.

The 109<sup>th</sup> House of Representatives' DW-Nom1 scores range from -0.875 (Representative Jim McDermott) to 1.327 (Representative Ron Paul). These two Representatives had the most extreme DW-Nom1 scores in the 107<sup>th</sup> Congress, too. The Speaker of the House, Representative Dennis Hastert, had a DW-Nom1 value of 0.528. While there were three different Majority Leaders during the 109<sup>th</sup> Congress, Representative Tom DeLay was the Majority Leader when Hurricane Katrina made landfall and when House Resolution 3673 was passed; his

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<sup>130</sup> Library of Congress, the, "Thomas." The Library of Congress. <http://thomas.loc.gov/>

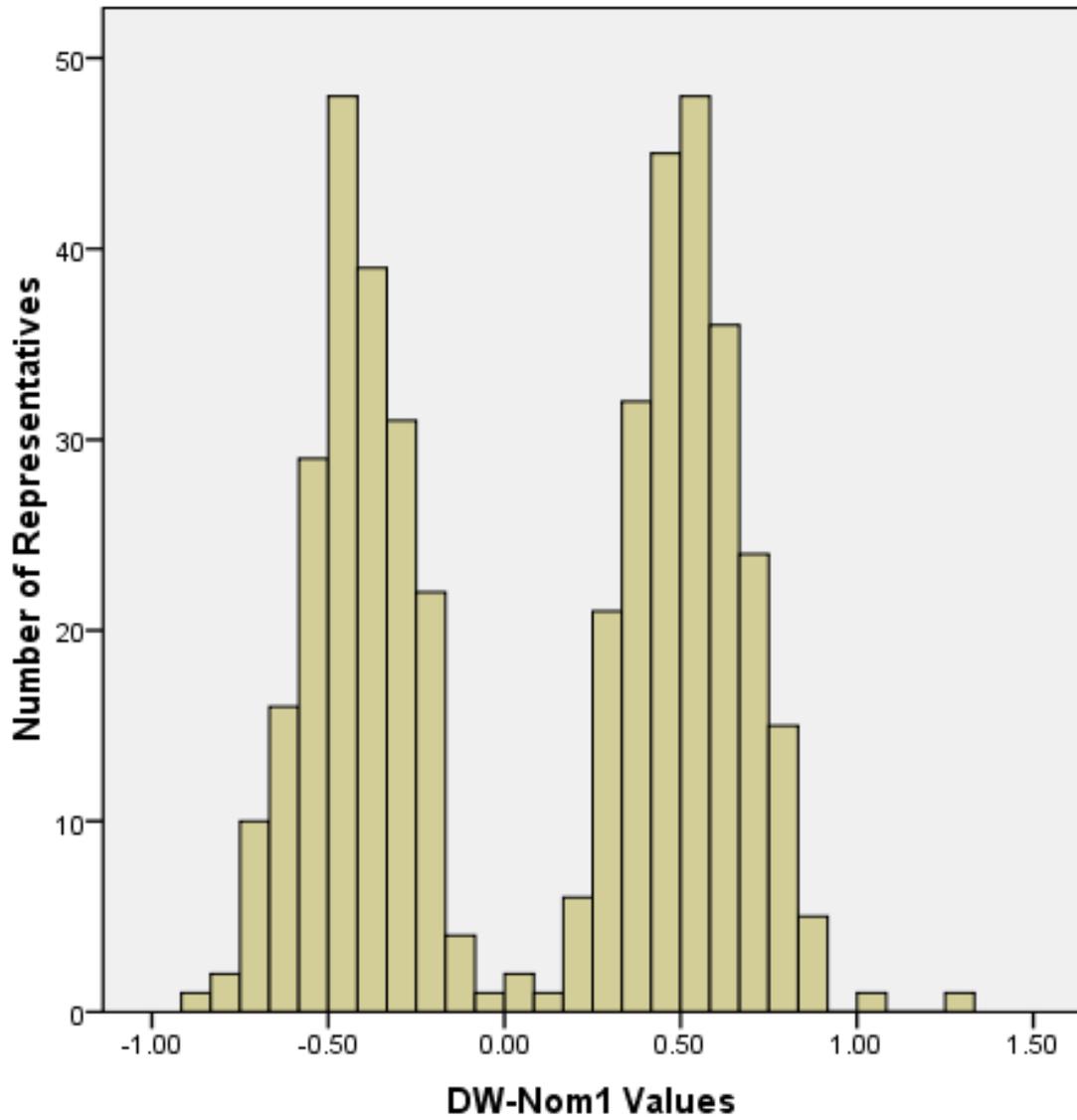
DW-Nom1 value was 0.555. Representative Roy Blunt was the Majority Whip and his DW-Nom1 score was 0.59. Their counterparts were Minority Leader Nancy Pelosi whose DW-Nom1 was -0.513 and Minority Whip Steny Hoyer whose DW-Nom1 score was -0.345.

Looking at parties, the median voter of the majority party of the Senate was Senator George Allen with a DW-Nom1 score of 0.418. The House had five Representatives at the majority party median DW-Nom1 value of 0.514 (Representatives Dave Camp, Randy Forbes, Cathy McMorris, Lamar Smith, and Mark Souder).

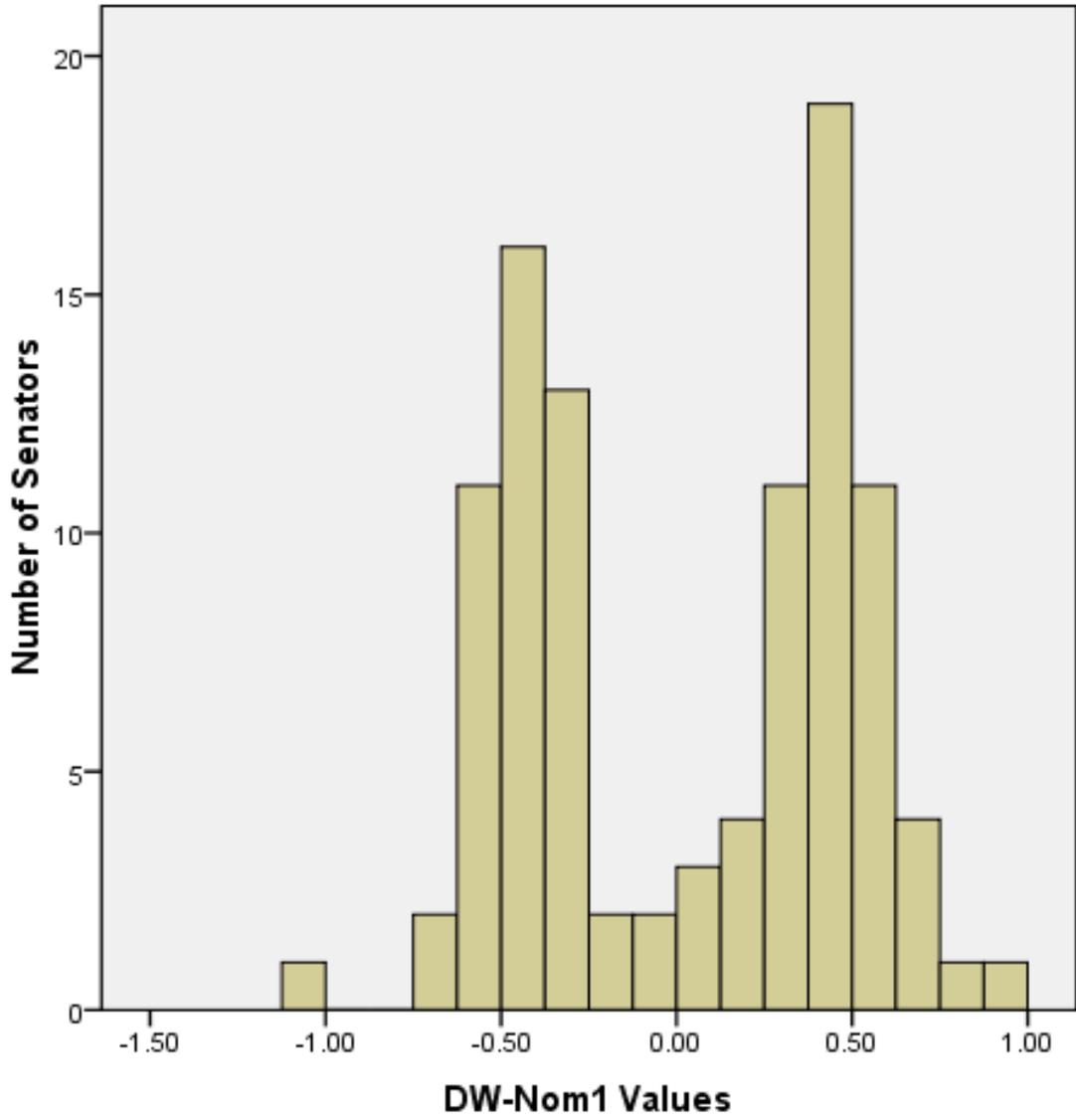
The median voter of the minority party in the Senate was Senator Barbara Mikulski with a DW-Nom1 value of -0.440, and the median voters of the minority party in the House were Representatives Loretta Sanchez and Bart Stupak with DW-Nom1 values of -0.424.

The pivotal actors in the 109<sup>th</sup> Congress, according to the *Pivotal Model*, were the Presidential pivot, the Democratic filibuster pivot, and the two veto pivots. The veto pivots are somewhat less significant in a unified government. The Democratic filibuster pivot was the 41<sup>st</sup> most liberal Senator, and the 67<sup>th</sup> most conservative Senator and the 290<sup>th</sup> most liberal Representatives were the veto pivots. The 41<sup>st</sup> most liberal Senator was Senator Mark Pryor with a DW-Nom1 value of -0.276; the 67<sup>th</sup> most conservative Senator was Senator Robert Byrd with a DW-Nom1 value of -.0375; and, the 290<sup>th</sup> most liberal Representative was Mike Rogers with a DW-Nom1 value of 0.463. The following pages contain histograms of the member's DW-Nom1 values.

**Graph 10: DW-Nom1 Scores of the 109th House of Representatives**



**Graph 11: DW-Nom1 Scores of the 109th Senate**



### **Hurricane Katrina Emergency Supplemental Appropriations**

House Resolution 3673, “Making further emergency supplemental appropriations to meet immediate needs arising from the consequences of Hurricane Katrina, for the fiscal year ending September 30, 2005, and for other purposes,” was the most expensive bill passed to address the aftermath of Hurricane Katrina. Representative Jerry Lewis introduced the bill on September 7, 2003, shortly after the hurricane made landfall, and it was signed into law the next day becoming Public Law 109-62. To address a national crisis, the legislative body, famous for its slow process and lagged response to American priorities, was able to pass a \$51.8 billion bill in 24 hours.

More specifically, Public Law 109-62 appropriates \$1.4 billion to the DoD for evacuation costs, emergency repair, personnel, and miscellaneous relief costs through 2006. The law also permits DoD to transfer \$6 million to the Armed Forces Retirement Home for other hurricane related expenses. The law also appropriates \$400 million to the Department of the Army split evenly between “Operation and Maintenance” and “Flood Control and Coastal Emergencies.” This money was appropriated mostly for storm damage repair and to mitigate the flooding.

The bulk of the money appropriated by the law went to the Department of Homeland Security. Fifty billion dollars were allocated for disaster relief of Hurricane Katrina affected areas. One-hundred million dollars were allowed to be transferred to the National Disaster Medical System for medical care. Fifteen million dollars had to be transferred to the Office of Inspector General for audits, investigations, and recovery activities. Additionally, the statute increases the threshold for federal agents to make purchases without obtaining competitive quotations from \$2,500 to \$250,000.<sup>131</sup>

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<sup>131</sup> Library of Congress, the, “Thomas.” The Library of Congress. <http://thomas.loc.gov/>

In order to understand the process by which House Resolution 3673 passed, one must first look at its predecessor, House Resolution 3645, “Making emergency supplemental appropriations to meet immediate needs arising from the consequences of Hurricane Katrina, for the fiscal year ending September 30, 2005, and for other purposes.” As stated above, House Resolution 3645 appropriated \$10.5 billion to the Department of Homeland Security and the Department of Defense.

Congressman Jerry Lewis, the Chairman of the House Appropriations Committee, introduced House Resolution 3645 on September 2, 2005, and it was signed into law later that day. The bill was referred to the House Committee on Appropriations and the House Committee on the Budget. During an emergency session in the early afternoon, Representative Lewis asked for unanimous consent to consider House Resolution 3645, for the previous question be considered as ordered on final passage, and for no intervening motions be made except for ten minutes of debate and one motion to recommit.<sup>132</sup> Regarding the limited time for debate, Lewis explained:

The limited debate of 10 minutes is designed to have us expedite the paperwork and otherwise from this process. In the meantime, we know the Members want to be heard so there will be a Special Order following the passage of the bill so that we can move forward with the paperwork and make sure the President gets this on his desk as quickly as possible.<sup>133</sup>

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<sup>132</sup> Representative Lewis, *Congressional Record*, first session, 2005, Page H7616

<sup>133</sup> *Ibid.*, P. H7616

The deteriorating conditions in hurricane affected areas caused Lewis' urgency. The legislation is less than a page and a half; its purpose was to mobilize the federal government as quickly as possible in order to help those affected by the crisis. The typical hour-long debate was cut short, the committee did not mark-up the legislation, and there was no time for members to gather information that would help them determine the most suitable amount of money that should be appropriated and to which organizations the money should be appropriated. Considering House Resolution 3673 appropriated substantially more funds than House Resolution 3645 for the same purposes, one can assume that House Resolution 3645's goal was not to appropriate all of the funds needed; instead, it was meant to provide a small amount of funds to which no member would object in order to start government mobilization. Representative Lewis clarified this point, "Let me simply say that I hope that we recognize this is just the initial downpayment in the costs that are going to be associated with this incredible disaster."<sup>134</sup>

The debate being limited to ten minutes, the inaction by the committees, the speed with which the bill was brought to the floor, and the small amount of funds appropriated compared to the amount needed supports Hypothesis 1a. Congress bypassed the bill's consideration in order to address an immediate concern as quickly as possible.

Following Representative Lewis' request, Representative David Obey, the Ranking Member of the House Appropriations Committee, shared his reservations. Obey explained:

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<sup>134</sup> Representative Lewis, *Congressional Record*, first session, 2005, Page H7618

“Every time that we have a disaster, Congress responds by tossing together an appropriation bill for an emergency appropriation... we should have a more regularized approach to the problem.”<sup>135</sup>

Specifically, Obey said that he would re-introduce legislation to establish “an experience-rated insurance fund from which all States can purchase insurance coverage against future disasters.”<sup>136</sup> Although Obey shared his reservations, he concluded by saying, “This legislation obviously has to pass.”<sup>137</sup>

Obey punctuated his sentence with the word “obvious” because he presumed that all members would recognize the necessity for Congress to pass this legislation in order to save American lives. Moreover, in order to speed up the process, Obey announced that “any Member who wishes to comment will have an opportunity on a Special Order, which immediately follows, to do so.”<sup>138</sup> This reaffirms that Hypothesis 1a is supported by the process by which House Resolution 3645 was passed.

While members wanted to pass the legislation quickly, some members preferred to slightly slow down the process in order to allow for debate. Representative Eliot Engel did not object to Lewis’ request; however, he did share his frustrations with the process requested by Lewis.

I think that there should be substantial debate on this bill itself, not that we want to slow down any kind of funding, but frankly we fiddled and faddled for days and days, and now

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<sup>135</sup> Representative Obey, *Congressional Record*, first session, 2005, Page H7617

<sup>136</sup> *Ibid.*, Page H7617

<sup>137</sup> *Ibid.*, P. H7617

<sup>138</sup> *Ibid.*, Page H7616

we are told that we can only have 5 minutes per side to debate this bill. I think it is wrong. I think Members of Congress who have rushed back here, who want to help, who want to make sure that the people of the Gulf are given their due and the moneys, we should have the right to debate this bill now... I do not object because I want to get the money there as quickly as possible.<sup>139</sup>

Engel's comments provide additional support for the Hypothesis 1a. Even though he is upset about the process, he does not insist on forcing an hour long debate. Engel's comments also raise the question, why did Congress not act sooner? State governments and the press had been complaining about the government's response since August, the National Guard had already been deployed, and there had been reports of the poor conditions in the superdome for days.<sup>140</sup>

Representative Obey inserted comments into the Congressional Record which partially address this question:

At the beginning of this week, FEMA had roughly \$2.6 billion in its Disaster Relief Fund and \$1.5 billion in the Flood Insurance Program. In recent days, FEMA and OMB concluded that these funds were being utilized at a rate of between \$500 and \$750 million per day. President Bush and our leadership made the decision to convene the Congress in

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<sup>139</sup> Representative Engel, *Congressional Record*, first session, 2005, Page H7617

<sup>140</sup> Evan Thomas, "How Bush Blew It." *Newsweek*. September 19, 2005.

<http://www.newsweek.com/id/104464/page/1>, Page 4 and Keith O'Brien and Bryan Bender, "Chronology of errors: How a Disaster Spread." *The Boston Globe*. September 11, 2005.

[http://www.boston.com/news/weather/articles/2005/09/11/chronology\\_of\\_errors\\_how\\_a\\_disaster\\_spread/](http://www.boston.com/news/weather/articles/2005/09/11/chronology_of_errors_how_a_disaster_spread/), Page 1 and Scott Gold, "Trapped in an Arena of Suffering." *Los Angeles Times*. September 01, 2005.

<http://articles.latimes.com/2005/sep/01/nation/na-superdome1>, Page 1

an emergency session and move this supplemental to the President for his signature today.<sup>141</sup>

This comment explains why Congress did not immediately appropriate more funds, but there is no sufficient explanation for why Congress would wait days to pass legislation after the executive branch concluded that it needed more funds. With that said, once introduced, Congress changed its normal procedures in order to pass the bill more quickly. The bill was signed into law the day of its passage; although there is no sufficient explanation to explain the days with inaction, Hypothesis 1a is still strongly supported by this piece of legislation.

Additionally, even though the committees did not mark-up the legislation, the Chairman of the House Appropriations Committee sponsored the bill and requested its quick passage on the floor. Likewise, the Ranking Member of the committee took the lead in sharing his reservations about how Congress was dealing with the crisis. Hypothesis 2 states that committee leadership would have the most influence on legislation's content. One could assume that Chairman Lewis had the most influence on the bill's content because he was the sponsor, no amendments were offered, and the committees did not mark-up the bill. This assumption would support the second hypothesis. Likewise, though not specifically addressed by Hypothesis 2, Obey's active involvement in floor debate demonstrates further involvement by committee leadership in the legislative process. With that said, Lewis' quotation acknowledges President Bush and the party leadership's decision for Congress's emergency session, the legislation itself, and the speedy passage of the legislation. While it is possible that Lewis and his staff crafted the actual content of the legislation, his acknowledgement of party leadership and the face of his party, President Bush, provides evidence against this paper's second hypothesis.

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<sup>141</sup> Representative Lewis, *Congressional Record*, first session, 2005, Page H7618

The House passed the bill by voice vote. Based on the obvious need for passage mentioned by Obey, it is very likely that the vote was unanimous. No member spoke up against the legislation which would insinuate that there was an overwhelming majority who voted for the bill. This supports the first part of Hypothesis 3 which addresses the appearance of unity. With no roll call data, the bill cannot be placed on the unidimensional policy space. None of the major legislative theories describe a process which takes place in one day, so none help explain the process by which this bill passed the House.<sup>142</sup>

House Resolution 3645 was received and read in the Senate, and it passed by voice vote after a very short discussion on the chamber floor. During the short discussion, Minority Leader Reid made a point of saying:

The Ranking Member of the Appropriations Committee, Senator Robert Byrd, has indicated he fully supports the action tonight and stands arm-in-arm with the Chairman of the committee, Senator Cochran, to move forward any other requests that would come down from the administration.<sup>143</sup>

The party leadership in the Senate told his chamber that the leadership of the most relevant committee supported the bill's passage. One may assume that Reid made this comment to reassure Senators in order that they feel comfortable voting for a bill for which there was little time to examine. This suggests that rank-and-file members consider the committee leadership's thoughts when choosing how to vote. However, the message was delivered by the party leadership; party leadership, not the committee Chairman or Ranking Member, was making an

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<sup>142</sup> Library of Congress, the, "Thomas." The Library of Congress. <http://thomas.loc.gov/>

<sup>143</sup> Senator Reid, *Congressional Record*, first session, 2005, Page S9597

argument in favor of passage. Likewise, he noted that President Bush's administration's requests were a driving force of the legislation. Minority Leader Reid's comments do not provide enough evidence to make a judgment about Hypothesis 2 because they can be interpreted to support claims about either committee leadership's or party leadership's influence over legislation. His comments are worth keeping in consideration when future research of crisis-related legislation is conducted.

Again, the legislation cannot be placed on a unidimensional policy space because there is no roll call data. The voice vote insinuates that the bill passed with an overwhelming majority. The Senate's treatment of the bill coincides with the House's. The fast uncritical treatment of the bill supports Hypothesis 1 and its sub hypothesis; the chamber's unity supports the first part of Hypothesis 3; and, there is not enough information evaluate Hypothesis 2 or the second part of Hypothesis 3.

Five days after House Resolution 3645 was signed into law, making it Public Law 109-61, Representative Lewis introduced House Resolution 3673. During floor debate for House Resolution 3645, Lewis said that more money would need to be appropriated, and House Resolution 3673 appropriates the additional funds.

Upon the bill's introduction, House Resolution 3673 was referred to the House Committee on Appropriations and the House Committee on the Budget. The bill went to the House floor the next day on September 8, 2003, and Representative Lewis immediately moved to suspend the rules for House Resolution 3673's immediate passage. Following the reading of the bill, the Speaker pro tempore gave Representative Lewis and Representative David Obey, the Ranking Member on the House Committee on Appropriations, 20 minutes each for debate.<sup>144</sup>

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<sup>144</sup> Library of Congress, the, "Thomas." The Library of Congress. <http://thomas.loc.gov/>

Based on the final vote on the bill, 410 Yeas to 11 Nays, it appears that the process by which the bill became law was bipartisan and cooperative, but the floor debate suggests otherwise. Representative Obey lamented that the Republican Party refused the Democratic Party's three requests regarding the bill. First, the Democrats asked for the bill to come to the floor under open rule so that amendments could be proposed. The bill was brought to the floor under suspension, and Obey suggested that this even violated the Republican caucus' own rules. Secondly, according to Obey, the Democrats asked that each party be given one hour to discuss the bill so that members with questions and comments could voice them. Finally, the Democrats asked if they would at least offer one amendment to address issues regarding FEMA and patronage.<sup>145</sup> Obey's comments demonstrate a lack of cooperation between the parties and the following excerpt reveals the surly relationship between members of both parties.

So I simply want to put the gentleman from California [Mr. Lewis] on notice. He need not bother me asking me for any further procedural considerations for the rest of the session. If the gentleman wants to stick to the rules, we are going to stick to the rules... I think the gentleman needs to expect to receive the same kind of cooperation which he has extended.<sup>146</sup>

Meanwhile, Representative Charles Boustany tells the chamber that:

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<sup>145</sup> Representative Obey, *Congressional Record*, first session, 2005, Page H7777

<sup>146</sup> *Ibid.*, Page H7777

We have an enormous amount of work to do in front of us, and it has to be done in a bipartisan fashion. I ask Members on both sides to use restraint in the debate.

Accountability will come as we move forward.<sup>147</sup>

Boustany and other members desire bipartisanship, and the final vote conveys unity; however, Obey's frustrations come from a lack of bipartisanship. The third hypothesis states that Congresspersons desire the appearance of unity, not unity itself; the appearance of unity is the relevant variable, not actual unity. The overwhelming majority that passed the bill provide the perception of bipartisanship and unity.

The debate continued for a short time with a handful of Representatives on both sides of the aisle sharing their support for the bill. Representative Lewis spoke 17 separate times, more than any other member. He answered questions about the bill and urged his colleagues to pass the legislation. As the sponsor of the bill and its most vocal champion, this paper infers that Representative Lewis was a pivotal actor in its passage.<sup>148</sup> With that said, Representative Steny Hoyer's comments during floor debate question Lewis' influence over the bill's content:

No hearings, no oversight, no questions. No examination of when and how and where and who will spend the money and who will get it. As I understand it, neither the Chairman nor the Ranking Member of the Committee on Appropriations was consulted in the drafting of this legislation. The unfortunate truth is, Mr. Speaker, this compliant

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<sup>147</sup> Representative Boustany, *Congressional Record*, first session, 2005, Page H7779

<sup>148</sup> *Congressional Record*, first session, 2005, Pages H7777 - 7786

Congress has acted more like an adjunct to this administration than the co-equal branch that the Constitution demands we be.<sup>149</sup>

Hoyer pointed out that normal procedures were not followed and that committee leadership did not take part in crafting the bill's language. If Hoyer's comments are accurate, he has provided strong evidence against this paper's second hypothesis. Hoyer suggested that the Bush administration had the greatest impact on the legislation's content, not members of the House Appropriations Committee.

The lack of committee involvement weakens the applicability of the *Distributive Model* and the *Informational Theory*. Likewise, The Republican Party and the Democratic Party were convergent on the substantive issues addressed in the legislation. One of the factors that strengthens party control according to *Conditional Party Government Theory* is how divergent the two major parties are on an issue. Because the parties were overwhelmingly convergent, *Conditional Party Government Theory* would predict that party leadership would have less control of the rank-and-file members. Even though Chairman Lewis seems to be the most influential member on the floor, this does not lessen the applicability of *Conditional Party Government Theory* because the conditions are not met for the party to have ample power in the House.

Lastly, there is minor evidence to support the applicability of *Cartel Theory*. Obey's complaints that the majority party was ignoring the minority party's requests suggests that the party leadership may have been attempting to unify their party while ignoring the minority party's influence. However, the speediness of the process makes any of these theories hard

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<sup>149</sup> Representative Hoyer, *Congressional Record*, first session, 2005, Page H7781

pressed to fully account for the legislative process. Because of this, there is more evidence supporting Hypothesis 1.

Regarding Hypothesis 1a, the bill was passed within one day and appropriated billions of funds. Representative Martin Sabo's comments during floor debate clarify that the crisis is responsible for the time scale.

I think it is appropriate that we deal with this bill quickly and as a supplemental appropriation today and do it quickly so we can meet real urgent, current needs. However, at some point, as this need and the need for a supplemental grows, at some point we should follow regular order and have the administration respond to our committees and respond to questions and to build their case for what their plans are on what I expect will be a significantly larger amount of money that is being spent.<sup>150</sup>

Sabo acknowledges that the speediness of the process is because of the crisis as stated in Hypothesis 1a. Likewise, he points out that the House of Representatives is not following regular order, which provides additional support for Hypothesis 1.

At the end of the 40 minutes of debate, 410 Representatives voted to suspend the rules and pass the bill, and 11 voted against the suspension and passage. All members who voted Nay were members of the majority party, and all but one were in the top 5% of members with the most conservative DW-Nom1 values for the 109<sup>th</sup> House of Representatives.<sup>151</sup> The members who voted against the bill included: Representatives Ron Paul (DW-Nom1, 1.327), Jeff Flake (DW-Nom1, 1.000), James Sensenbrenner (DW-Nom1, 0.888), Tom Tancredo (DW-Nom1,

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<sup>150</sup> Representative Sabo, *Congressional Record*, first session, 2005, Pages H7779 and H7780

<sup>151</sup> *Congressional Record*, first session, 2005, Page H7785

0.884), Lynn Westmoreland (DW-Nom1, 0.795), Butch Otter (DW-Nom1, 0.776), Scott Garrett (DW-Nom1, 0.775), Peter King (DW-Nom1, 0.762), John Hostettler (DW-Nom1, 0.760), Virginia Foxx, (DW-Nom1, 0.751), and Joe Barton (DW-Nom1, 0.610). Paul, Flake, Sensenbrenner, and Tancredo were four of the five most conservative Representatives in Congress. The others were all within the 25 most conservative except for Barton who was the 59<sup>th</sup> most conservative member. None of the members who voted Nay spoke during the floor debate.

Without floor debate to justify their votes, this paper will assume that those who voted against the bill did so for substantive reasons. Paul, Flake, Sensenbrenner, and Tancredo are all clustered at the most conservative end of the policy space. This suggests that they are located closer to the status quo point and the new legislation. Members who favor the “status quo” prefer the \$10.5 billion that was already appropriated and the reliance on state funds to pay for hurricane relief instead of the federal government appropriating over \$50 billion more for relief. The next twenty most conservative members contain a mixture of those who voted for the bill and those who voted against it. Therefore, one can deduce that the sixth most conservative member through the 25<sup>th</sup> most conservative member are in a range that is equal distance from the status quo point on their right and the new legislation on their left. Those members have DW-Nom1 values ranging from 0.74 to 0.88.

There is no liberal constraint, so it is difficult to place the new legislation on the policy space. One might assume that it would be near the sponsor of the bill; Representative Lewis has a DW-Nom1 value of 0.432 making him the 271<sup>st</sup> most liberal Representative. Lewis is located slightly left of the aforementioned veto pivot, Representative Rogers, the 290<sup>th</sup> most liberal Representative with a DW-Nom1 value of 0.463. With that said, Representative Hoyer’s

comments during floor debate imply that the Bush administration was the main crafter of the legislation. There are only seven Representatives with more conservative DW-Nom1 values than Bush. Due to this, it would be premature to place the new legislation near Representative Lewis and the veto pivot. Lewis may have introduced the legislation because he was Chairman of the House Appropriations Committee, not because he was particularly passionate about the bill. Moreover, if the Bush administration crafted the bill's content, there is no reason to believe that Lewis would have chosen the same amount of funds to be appropriated were he to craft legislation only based on his preferences.

Although House Resolution 3673 cannot be placed on a unidimensional policy space, the roll call data provides valuable information. The roll call data for the USA PATRIOT Act made the use of DW-Nom1 values questionable in post-crisis Congressional analysis. DW-Nom1 was a strong predictor for this vote because all but one of the members who voted Nay were clustered around the extreme conservative end of the policy space.

This paper was able to identify a relative relationship between the status quo point and the new legislation using the 25 most conservative members of the House as a reference. The new legislation was located closer to the median voter than the status quo legislation. The *Pivotal Model* says that new legislation will be introduced until the legislation is located within the gridlock region. Refer to Section II for an explanation of the gridlock region. The status quo point prior to the enactment of House Resolution 3645 was outside of the gridlock region. The status quo after House Resolution 3645's enactment was still outside of the gridlock region because House Resolution 3673 was able to pass. Applying the *Pivotal Model*, House Resolution 3673 would be located within the gridlock zone because there were no further supplemental bills

appropriating additional funds to address the needs arising from the consequences of Hurricane Katrina.

House Resolution 3673 was read in the Senate shortly after the House voted on it. The Senate debated the bill, and no member shared any substantive or procedural concerns. The chamber was unified in support of the legislation. Their unified support became more evident upon a 90 to zero vote for passage of the bill without amendment.<sup>152</sup> President Bush signed the bill into law that day, making it Public Law Number 109-62.

To recap, the process by which House Resolution 3673 became Public Law 109-62 provides evidence in support of Hypothesis 1 and Hypothesis 1a. The speed with which the legislation was passed, the lack of committee hearings, and the shortened floor debate demonstrate that the legislative process for the bill was special.<sup>153</sup> The Bush administration's input into the bill and the lack of committee activity make it difficult to apply the committee-based theories to the legislative process. The process by which House Resolution 3673 was passed is perfectly compatible with *Conditional Party Government Theory*, but the lack of interparty divergence on the issue makes *Conditional Party Government Theory* irrelevant.

The process by which House Resolution 3673 was passed is also compatible with *Cartel Theory*. Congress upheld the first and second commandments of party leadership with regard to its treatment of House Resolution 3673. To refresh, the two commandments are, "Thou shall not aid bills that will split thy party- and... Thou shall aid bills that most thy party like."<sup>154</sup> The majority of the Republican Party in the House voted to pass the legislation.<sup>155</sup> However, while

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<sup>152</sup> *Congressional Record*, first session, 2005, S9813

<sup>153</sup> House Resolution 3673 was passed the day after its introduction and its predecessor, House Resolution 3645, was passed in only one day.

<sup>154</sup> Steven S. Smith, *Party Influence in Congress* (New York: Cambridge University Press, 2007), Page 133

<sup>155</sup> Literature about *Cartel Theory* focuses on the House, so, even though the commandments were followed by the Senate in this case, it is insignificant for the analysis.

95% of the majority party voting together meets the party goals according to *Cartel Theory*, the minority party voted together unanimously. The majority party should have been able to tweak the bill in order to get a larger majority of Republicans voting together while still having more than enough votes for the bill to pass. This is inconsistent with *Cartel Theory*. Even though the lawmaking process technically falls within *Cartel Theory*'s predictions, using the theory to account for the process ignores a more complex interpretation of party goals suggested by the theory.<sup>156</sup>

The lawmaking process also presented strong evidence against Hypothesis 2. Hoyer's acknowledgement of the Bush administration's involvement in crafting the legislation and the limited involvement of the House Appropriation Committee's Chairman and Ranking Member suggest that committee leadership did not play a particularly influential role in forming the content of the legislation. Still, the Chairman was vocal during debate which was the case in the other four bills analyzed by this paper. Future research regarding the American legislative process following crisis should still consider this hypothesis even though this paper has found little evidence in support of it.

The process supports the first part of Hypothesis 3 and does not provide enough evidence to make judgments about the second part. The final votes leave a legacy of unity and bipartisanship even though the floor debate was contentious and surly. House members desired a model of unity. One Representative explained that "it would be nice if we could follow on the model of 9/11 when we had bipartisan consideration of these matters."<sup>157</sup> In the end, while actual unity was lacking, the appearance held up. Regarding the second part of the hypothesis, this

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<sup>156</sup> The majority party wants to stay unified in order to reinforce party strength and to strengthen their identity for future elections. By allowing the minority party to be more unified than the majority party when reworking the legislation in the majority party's favor (or just against the minority party's favor) would be simple, the majority party leadership is not adequately pursuing these goals.

<sup>157</sup> Representative Obey, *Congressional Record*, first session, 2005, Pages H7777

paper was only able to locate House Resolution 3673 on a policy space relative to the Public Law 109-61. Though the resolution was located closer to the median voter of the House of Representatives than its predecessor, there is not enough evidence to deduce how close to the median voter it is located.

## Section V: Conclusion

A model of the American legislative process that does not include the impact of major events fails to explain a large amount of American history.<sup>158</sup> Wars, depressions, natural disasters, assassinations, and epidemics shift the preferences of Congresspersons relative to the status quo location. These are crucial factors that contribute to legislative productivity. The drastic misalignment between Congressional preferences and the status quo opens the door for significant legislation and consequential changes to the United States' government.

The terrorist attacks of September 11, 2001 revealed weaknesses in national security and demonstrated that attacks on American soil were still possible in the 21<sup>st</sup> century. The attack itself shifted the status quo simply by inspiring other terrorists and identifying areas of security weakness; however, the major mechanism for change was the major shift in Congressional preferences. The attacks showed members of Congress that terrorism is a concern in the 21<sup>st</sup> century. Members' preferences regarding the balance of civil liberties to national security shifted along with their preferences regarding the balance of national security to tax dollars. The misalignment between preferences and the status quo regarding intelligence, anti-terrorism, and national security led Congress to pass consequential legislation, quickly in order to correct for the lack of correlation.

On the other hand, Hurricane Katrina may have shifted the preferences of members of Congress, but the natural disaster's effect on the status quo was the major cause for the untypical legislative process. Congressional willingness to spend money to establish a suitable quality of life in hurricane-affected areas may have stayed constant from before the hurricane to after it.

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<sup>158</sup> David Mayhew, "Events as Causes: The Case of American Politics," Yale University, 2005, <http://yale.academia.edu/DavidRMayhew/Papers/7303/Events-as-Causes> and David Mayhew, "Wars and American Politics," Yale University, 2005, <http://yale.academia.edu/DavidRMayhew/Papers/7302/Wars-and-American-Politics>

Likewise, their willingness to use federal tax dollars to build levees of a particular quality may have stayed constant (although this preference most likely changed). However, even if their preferences did not change, New Orleans and parts of Florida and Mississippi were underwater, American citizens were trapped in the Superdome, and many levees were destroyed (making them unable to protect against future hurricanes). The drastic change in the status quo would have led Congress to take swift, meaningful action regardless of a shift in member preferences.

In response to these destabilizing events, Congress's legislative process differed compared to the process used to pass legislation during stable times. The two case studies look at legislation meant to address the consequences of national crises; however, the unique processes Congress used to pass Public Law 107-56 and Public Law 109-62 may apply to legislation that addresses topics unrelated to the crisis following a major, destabilizing event. Future research can test this possibility.

This paper does not create a model to explain the process used following a national crisis. The description of the processes used to pass Public Law 107-56 and Public Law 109-62 provides evidence that lawmaking during times of crisis differs from lawmaking under normal conditions. Moreover, this paper is meant to help fill the void of knowledge surrounding Congressional activity in response to major events mentioned by David Mayhew.<sup>159</sup> The information gathered in this paper along with future research can be used to eventually develop a working model that incorporates this important category of legislation activity.

To summarize the information this paper contributes to building a model, below is a recap of the hypotheses and this paper's finding regarding each of them.

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<sup>159</sup> David Mayhew, "Events as Causes: The Case of American Politics," Yale University, 2005, <http://yale.academia.edu/DavidRMayhew/Papers/7303/Events-as-Causes>, Page 36

**Hypothesis 1:** *Current theories of lawmaking do not account/explain lawmaking in times of crisis/ related to crises.*

David Mayhew and John Kingdon discuss events that open windows for significant legislation to pass.<sup>160</sup> Following large events, Congress can pass legislation that it otherwise could not because the legislative process is different than during normal times. *Cartel Theory*, *Conditional Party Government Theory*, *Distributive Model*, and *Informational Theory* do not account for contingencies, and, therefore, do not describe the legislative process following crises. The two case studies demonstrated that the time scale for a bill's passage is reduced, leaving little room for amendments, hearings, mark-ups, and research. House Resolution 3108 replaced the amendments made by the House Judiciary Committee following the terrorist attacks of September 11, 2001, and President Bush's administration was largely responsible for the content of the second supplemental appropriations bill following Hurricane Katrina. These are the two strongest pieces of evidence in this paper against the applicability of *Informational Theory* and *Distributive Model*. The committees' control over the content of the legislation was reduced, weakening the theories' relevance.

The majority parties stayed unified during each of the votes discussed in this paper. The majority party in the House was even able to roll the minority party on the vote to adopt H. Res 264. However, the party-based theories are not very useful in understanding the legislative process. First, the second supplemental appropriations bill following Hurricane Katrina was passed by a majority of the majority party in the House, but the minority party had greater unification. Party leadership could have crafted a passable bill that would have garnered even

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<sup>160</sup> David Mayhew, "Events as Causes: The Case of American Politics," Yale University, 2005, <http://yale.academia.edu/DavidRMayhew/Papers/7303/Events-as-Causes>, Page 2

greater support from their party. Likewise, the legislation passed in the wake of Hurricane Katrina gave rise to little interparty distance. This makes *Conditional Party Government* irrelevant because one of the conditions for strong leadership control of the rank-and-file members was not met. Moreover, much of the literature about party-based legislative theories concentrates on negative agenda controls. Crises require legislative action, a component of positive agenda control, because of the major shift of the status quo relative to member preferences.<sup>161</sup> The party-based theories focus on party leadership's goal to kill legislation that divides the majority party; however, this goal becomes unimportant in times of crisis because members collectively benefit from legislative productivity. Therefore, the focus on negative agenda control makes the two party-based theories become inadequate.

Lastly, the *Pivotal Model* became largely irrelevant because of the extreme position of the status quo relative to member preferences. The status quo following a crisis is almost always an outlier far from the gridlock region, so most new legislation would be able to pass and would move the status quo closer to the gridlock region. This paper was unable to use the roll call data to pinpoint the location of the bills on a unidimensional policy space for a few reasons. First, procedure, not substance, inspired many of the Nay votes for the USA PATRIOT Act bills. Second, the overwhelming support of some of the legislation made it impossible to locate the bills' positions because there were no parameters by which to measure where they should be placed. Third, when the threshold of Nay voters for House Resolution 2975 was met for roll call analysis, there was no significant difference between the bill's supporters' and its opposition's DW-Nom1 values.

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<sup>161</sup> Charles J. Finocchiaro and David W. Rohde, "War for the Floor: Partisan Theory and Agenda Control in the U.S. House of Representatives," *Legislative Studies Quarterly* 33 (2008), Page 36

Hypothesis 1 encompasses the major finding of this piece. The existing legislative models do not account for national crises, and a new model is needed to do so.

**Hypothesis 1a:** *Significant legislation will be passed more quickly than it would have been passed under normal legislative conditions.*

The two case studies provided the strong evidence in support of Hypothesis 1a. The House of Representatives passed House Resolution 2975 13 days after its introduction; the Senate passed Senate Bill 150 seven days after its introduction; and, most significantly, House Resolution 3162 passed the House one day after its introduction, passed the Senate the following day, and was signed into law on the third day following its introduction. House Resolution 3645 was signed into law the day of its introduction, and House Resolution 3673 was signed into law a day after its introduction.

Both chambers of Congress skirted some of their normal procedure in order to secure quick passage of these significant pieces of legislation. The House debated the anti-terrorism bills under closed rule, and the Senate tabled the only three amendments offered to their anti-terrorism bill that were all offered by the only member who voted against the bill. No amendments were offered to the supplemental appropriation bills in the 109<sup>th</sup> Congress, and the House debated both bills for a shorter amount of time than usual for consequential legislation. House Resolution 3645 was debated for only ten minutes, and the chamber granted a Special

Order so that members could discuss the bill after its passage.<sup>162</sup> House Resolution 3673 was debated for 40 minutes.<sup>163</sup>

**Hypothesis 2:** *Committee chairpersons and other high ranking committee members will have the greatest affect on the content of the legislation because the limited time scale prevents members from prolonged analysis of the legislation and only allows for a limited number of amendments to be added.*

Hypothesis 2 was not supported by the two case studies. The House Committee on Rules did not incorporate the House Committee on Judiciary's amendments into the version of House Resolution 2975 that was debated on the floor. Instead, H. Res. 264 contained a self executing amendment which incorporated House Resolution 2108 into House Resolution 2975, and much of House Resolution 3162's content came directly from House Resolution 2975.

The 109<sup>th</sup> Congress's committee leadership had no more input in the content of the crisis-induced legislation than the 107<sup>th</sup> Congress's committee leadership. There were no committee hearings in the 109<sup>th</sup> Congress's case either. In fact, Representative Hoyer doubted that the Chairman and Ranking Member of the House Appropriations Committee had any input in House Resolution 3673's content at all.<sup>164</sup>

Committee leadership took the lead during floor debate, and each bill analyzed was sponsored by the Chairman of the most relevant committee. Moreover, Senator Kerry credited committee chairmen for helping craft the content of House Resolution 3162 even though a large

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<sup>162</sup> Representative Lewis, *Congressional Record*, first session, 2005, Page H7616 and Representative Obey, *Congressional Record*, first session, 2005, Page H7616

<sup>163</sup> Speaker pro tempore, *Congressional Record*, first session, 2005, Page H7778

<sup>164</sup> Representative Hoyer, *Congressional Record*, first session, 2005, Page H7781

amount of the bill's language came from House Resolution 2975 and House Resolution 3108.<sup>165</sup> However, there is sufficient evidence to demonstrate that committee leadership had less input in the legislation than the committee-based theories would have predicted.

While there is more evidence rejecting Hypothesis 2 than supporting it, more research needs to be done before conclusively ruling out its validity.

**Hypothesis 3:** *Congresspersons desire the appearance of unity and want to avoid the risk of appearing to hinder Congress's response to the crisis; the legislation will be located near the median voter of both chambers in order to fulfill these goals.*

There is evidence in support of the first part of Hypothesis 3, but there is no conclusive evidence to test the second part of Hypothesis 3. House Resolution 2975 passed the 107<sup>th</sup> House with 337 votes; Senate Bill 150 passed the 107<sup>th</sup> Senate with 96 votes; House Resolution 3162 passed the House with 357 votes and passed the Senate with 98 votes. Four years later, the 109<sup>th</sup> House and Senate passed House Resolution 3645 by voice vote which suggests an overwhelming majority supported the legislation. The House passed House Resolution 3673 with 410 votes, and the Senate passed it unanimously with 97 votes.<sup>166</sup>

The voting coalitions were all supermajorities with bipartisan support. During floor debate, some members commended the bipartisan, unified efforts made by Congress while others lamented that the majority party was overstepping its authorities.<sup>167</sup> However, the

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<sup>165</sup> Senator Kerry, *Congressional Record*, first session, 2001, Page S11027

<sup>166</sup> *Congressional Record*, first session, 2001, Pages H6775 – 6776, H7207, H7224, H7778, S9813, S11059 – 11060, and S10604

<sup>167</sup> Representative Obey, *Congressional Record*, first session, 2005, Page H7777

hypothesis does not consider actual bipartisanship and unity; it addresses the desire for the appearance of unity.

This paper is an attempt to add to the century old discussion about the American legislative process. By better understanding the legislative process during times of crisis, elected officials can more effectively pass good legislation. Further research in this area is needed to develop a working model, and the information provided by this paper can serve as a basis of knowledge for developing a working model.

One of the major finding in this paper is Congress's willingness to sacrifice "quality" for speed with regards to legislation passed during times of crisis in the Postreform Era. The claim that Congress is willing to sacrifice quality is based on the limited time to research bills, the lack of committee activity (e.g. hearings), and the choice of members to vote against amendments even when they supported the amendments' content. Were there to be time for research, critical committee activity, and thoughtful consideration of amendments, this author believes higher quality legislation would be passed.

The need for a quick response following crises has been noted, but what is the trade-off? Significant events have given rise to a large proportion of landmark legislation and governmental change. Congress should be weary about rushing the passage of such consequential legislation.

"When written in Chinese, the word 'crisis' is composed of two characters -- one represents danger and one represents opportunity."<sup>168</sup> If Congress spends a little more time

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<sup>168</sup> John F. Kennedy, "Remarks at the Convocation of the United Negro Fund, Draft 3," Speech, Indianapolis, Indiana, April 12, 1959, <http://www.jfklibrary.org/Asset+Tree/Asset+Viewers/Image+Asset+Viewer.htm?guid={2F5D293B-83E5-469D-A8F0-01E02D51A0E8}&type=mpd&num=4>, Page 3

critically crafting legislation during times of crisis, it may discover truly significant opportunities to improve the United States of America.

## **Appendix I: Continued Summary of the Events Leading up to and Including the Terrorist Attacks of September 11, 2009**

As far back as 1996, federal authorities had evidence that terrorists linked to Osama bin Laden were receiving flight training in the United States.<sup>169</sup> In 1998, United States intelligence uncovered information suggesting that Osama bin Laden was considering attacks on Washington, DC and New York. Later that year, the intelligence community obtained information about a group of terrorists who planned on flying planes from foreign countries into the World Trade Center. A month later, the intelligence community told the United States government that Osama bin Laden's next attack may involve an explosive-laden aircraft detonating in a United States airport.<sup>170</sup> Moreover, a memorandum written in September of 1999 warned that bin Laden's terrorist network may hijack a plane in order to crash it into the Pentagon, the CIA headquarters, or the White House.<sup>171</sup> In 2000 and 2001, the North American Aerospace Defense Command ran simulations in which hijackers used airplanes as weapons; one of the simulations involved the World Trade Center as the target.<sup>172</sup>

On August 16, 2001, the Immigration and Naturalization Service (INS) detained Zacarias Moussaoui after he "had aroused suspicions" at his flight school in Minnesota.<sup>173</sup> Authorities detained Moussaoui because they were concerned that he was related to an imminent terrorist attack. Likewise, an Arizona flight school contacted the Federal Aviation Administration (FAA)

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<sup>169</sup> Steve Fainaru and James V. Grimaldi, "FBI Knew Terrorists Were Using Flight Schools," *The Washington Post*, September 23, 2001, <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A10840-2001Sep22>, Page A24.

<sup>170</sup> Eleanor Hill, *Joint Inquiry Staff Statement, Part I*, Joint Inquiry Staff, September 18, 2002. [http://www.fas.org/irp/congress/2002\\_hr/091802hill.html](http://www.fas.org/irp/congress/2002_hr/091802hill.html), Page 15

<sup>171</sup> Ed Vulliamy, "A Bad Call?" *guardian.co.uk*. May 19, 2002.

<http://www.guardian.co.uk/world/2002/may/19/september11.usa>

<sup>172</sup> Steven Komarow and Tom Squitieri, "NORAD Had Drills of Jets as Weapons." *USA Today*. April 18, 2004.

[http://www.usatoday.com/news/washington/2004-04-18-norad\\_x.htm](http://www.usatoday.com/news/washington/2004-04-18-norad_x.htm)

<sup>173</sup> Eleanor Hill, *Joint Inquiry Staff Statement, Part I*, Joint Inquiry Staff, September 18, 2002.

[http://www.fas.org/irp/congress/2002\\_hr/091802hill.html](http://www.fas.org/irp/congress/2002_hr/091802hill.html), Page 21

because of its concern about future September 11<sup>th</sup> terrorist Hani Hanjour. Marilyn Ladner, Vice President of the company that ran the flight school explained that the school had concerns about Hanjour's English and flight abilities. One of the school's employees said, "I couldn't believe he had a commercial license of any kind with the skills that he had."<sup>174</sup>

An FAA employee sat next to Hanjour for the remainder of the course to assist him with English among other things. Additionally, the Federal Bureau of Investigation (FBI) received a memorandum from an agent in Phoenix specifically warning that Osama bin Laden followers may be training in American flight schools.<sup>175</sup>

There was also concern about an imminent terrorist attack just months before September 11<sup>th</sup>. The Washington Post reported:

Director of Central Intelligence George J. Tenet had been 'nearly frantic' with concern since June 22 [2001], according to one frequent interlocutor, and a written intelligence summary for national security adviser Condoleezza Rice said on June 28: 'It is highly likely that a significant al Qaeda attack is in the near future, within several weeks.' By late summer, one senior political appointee said, Tenet had 'repeated this so often that people got tired of hearing it.'<sup>176</sup>

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<sup>174</sup> David Hancock, "FAA Was Alerted to September ii Hijacker," *CBS News*, May 10, 2002.

<http://www.cbsnews.com/stories/2002/05/10/attack/main508656.shtml>

<sup>175</sup> Don Johnson and Don Van Natta, Jr., "Traces of Terror: The FBI Memo; Ashcroft Learned of Agent's Alert Just After 9/11," *The New York Times*, May 21, 2002,

<http://query.nytimes.com/gst/fullpage.html?res=9C0CEFD71238F932A15756C0A9649C8B63>, Page 1

<sup>176</sup> Gellman, Barton, "Before Sept. 11, Unshared Clues and Unshaped Policy," *The Washington Post*, May 17, 2002.

<http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A30176-2002May16>, Page

Between Tenet's concerns and the buzz around United States flight schools, President Bush was informed that "Osama bin Laden was seeking to hijack [an] aircraft but the warnings did not contemplate the possibility that the hijackers would turn the planes into guided missiles for a terrorist attack."<sup>177</sup>

Additionally, three of the September 11<sup>th</sup> hijackers entered the United States with visas obtained in Saudi Arabia under the Visa Express Program. Under this program, persons could obtain a visa from a commercial travel agent; this allowed them to bypass United States consular officers. The Visa Express Program was implemented four months before September 11<sup>th</sup>, and it was canceled because of the terrorist attacks on September 11<sup>th</sup>.<sup>178</sup>

There were other problems leading up to the terrorist attacks as well. On September 10, 2001, one day before the terrorist attacks, Secretary of Defense Donald Rumsfeld lamented:

According to some estimates, we [the Department of Defense] cannot track \$2.3 trillion in transactions. We cannot share information from floor to floor in this building because it's stored on dozens of technological systems that are inaccessible or incompatible... We maintain 20 to 25 percent more base infrastructure than we need to support our forces, at an annual waste to taxpayers of some \$3 billion to \$4 billion. Fully half of our resources go to infrastructure and overhead, and in addition to draining resources from warfighting, these costly and outdated systems, procedures and programs stifle innovation as well. A new idea must often survive the gauntlet of some 17 levels of bureaucracy to make it from a line officer's to my desk. I have too much respect for a line officer to believe that we need 17 layers between us.<sup>179</sup>

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<sup>177</sup> Sanger, David E, "Bush Was Warned Bin Laden Wanted to Hijack Planes," *The New York Times*. May 16, 2002. <http://query.nytimes.com/gst/fullpage.html?res=9C03E2DB1139F935A25756C0A9649C8B63>, Page 1

<sup>178</sup> Pound, Edward T., "The Easy Path to the United States for Three of the 9/11 Hijackers," *U.S. News & World Report*, December 12, 2001. <http://www.usnews.com/usnews/news/terror/articles/visa011212.htm>

<sup>179</sup> Rumsfeld, Donald, "DOD Acquisition and Logistics Excellence Weeks Kickoff—Bureaucracy to Battlefield," *U.S. Department of Defense: Office of the Assistant Secretary of Defense (Public Affairs)*, September 10, 2001. <http://www.defenselink.mil/speeches/speech.aspx?speechid=430>

Moreover, there were problems with the immediate response to the attacks too. *Newsday* reported that communication on September 11<sup>th</sup> was subpar and that no attempt of evacuation was made by the Department of Defense:

Although the military's air defense command got word from the FAA about 13 minutes before Flight 77's crash that a hijacked airliner was streaking toward Washington, Defense Secretary Donald Rumsfeld and his top aides remained unaware of any danger up to the moment of impact, officials said. After learning of the World Trade Center attacks, Rumsfeld remained in his office, and Pentagon security officials took no steps to alert or evacuate the building's 20,000 employees.<sup>180</sup>

The problems associated with preparedness, communication, and financing alarmed many Americans, journalists, and elected officials. This concern gave the 107<sup>th</sup> Congress the responsibility to pass legislation to address America's shortcoming regarding the detection, prevention, and response to the terrorists attacks.

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<sup>180</sup> Sylvia Adcock, Brian Donovan, and Craig Gordon, "Air Attack on Pentagon Indicates Weaknesses," *Newsday*, September 23, 2001. <http://www.wanttoknow.info/010923newsday>

## **Appendix II: Summary of the Contents of the USA PATRIOT Act of 2001**

Title I of the USA PATRIOT Act of 2001 creates a counterterrorism fund, reiterates America's objection to the discrimination of Muslims and Arabs, appropriates funds to the Federal Bureau of Investigations, authorizes the Attorney General to request military assistance from the Department of Defense (DoD) during an emergency involving weapons of mass destruction, and establishes an "electronic crime task force"<sup>181</sup> within the United States Secret Service. Most significantly, when the United States has been attacked or is involved in armed conflict, Title I gives the President the authority to "confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States."<sup>182</sup>

Title II increases the federal governments intelligence gathering abilities by amending the federal criminal code to permit the government "to intercept wire, oral, and electronic communications"<sup>183</sup> relating to computer fraud and abuse offenses, foreign intelligence, and/or counterintelligence. It also permits the sharing of grand jury information that involves foreign intelligence and/or counterintelligence between certain federal officers. Title II authorizes the FBI to expedite its hiring of translators for counterterrorism operations. It increases the governments roving surveillance authorities by amending the Foreign Intelligence Surveillance Act of 1978 to permit roving surveillance under a greater number of circumstances for a greater amount of time. Moreover, Title II increases the number of district judges hearing requests for

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<sup>181</sup> *USA PATRIOT Act of 2001*, Public Law 107-56, Title I, Section 105, 107<sup>th</sup> Congress, first session (October 26, 2001)

<sup>182</sup> *Ibid.*, Title I, Section 106 (C)

<sup>183</sup> *Ibid.*, Title II, Section 201

electronic surveillance, allows for warrants that grant the seizure of voice-mail, increases the scope of subpoenas for electronic communications, permits communications companies to share a greater amount of their clients' information with the government "to protect life and limb,"<sup>184</sup> and extends trade sanctions to Taliban-controlled Afghanistan. This title only applies until December 21, 2005.

Title III of the USA Patriot Act incorporates most of House Resolution 3108 and is more specifically referred to as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001. This title reshuffles procedural guidelines and jurisdictions relating to money laundering. Specifically, the Secretary of the Treasury is granted "broad discretion"<sup>185</sup> to take tailored measures to address laundering issues that may arise domestically, provide guidance when dealing with foreign jurisdictions, and ensure the forfeit of assets related to terrorist activities. The title requires "due diligence" for private banking accounts with regard to detecting money laundering and prohibits "correspondent accounts with foreign shell banks."<sup>186</sup> The International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 also amends the federal criminal code to include crimes of foreign corruption as money laundering even though the crimes are not inherently related to laundering (e.g. bribery, misappropriation of public funds, theft of public funds, importation of firearms, and embezzlement). Title III continues by listing a plethora of other authorities granted to the United States government that deal with investigating money laundering, seizing funds, and granting federal jurisdiction.

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<sup>184</sup> *USA PATRIOT Act of 2001*, Public Law 107-56, Title II, Section 212, 107<sup>th</sup> Congress, first session (October 26, 2001)

<sup>185</sup> *Ibid.*, Title III, Section 301(b)(5)

<sup>186</sup> *Ibid.*, Title III, Section 312(a)(i)

Title IV of the USA PATRIOT Act is a legislative attempt to protect the United States' physical borders. Subtitle A addresses the northern border, and Subtitles B and D amend immigration legislation. This section authorizes the Attorney General to waive salary caps for Immigration and Naturalization Service personnel and removes certain overtime limitations. It also authorizes the appropriation of funds for the purpose of tripling the number of border control, customs service, and Immigration and Naturalization Service personnel. The section allows border personnel to obtain criminal histories more easily and directs the Attorney General and Secretary of State to develop technology for visa identifications and enhance the Integrated Automated Fingerprint Identification System. This bill encourages a shift towards a greater reliance on technology for border control and inspections.

Regarding immigration, Subtitle B decreases the number of aliens eligible for immigration and increases those eligible for deportation. Any alien who is a representative of “a foreign terrorist organization... [or] a political, social or other similar group whose public endorsement of acts of terrorist activity the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities” may be deported.<sup>187</sup> An alien who has openly supported terrorist activities or is a child or spouse of an alien who falls under an aforementioned category may be deported, as well. The title defines “engage[ing] in terrorist activity” as partaking in any of the following actions: committing or inciting to commit death or serious bodily harm, preparing or planning a terrorist activity, gathering information for a potential terrorist activity, soliciting funds and/or individuals for terrorist activities, and aiding a terrorist with materials, transportation, funds, or housing.<sup>188</sup>

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<sup>187</sup> *USA PATRIOT Act of 2001*, Public Law 107-56, Title IV, Section 411(a)(1)(A)(i), 107<sup>th</sup> Congress, first session (October 26, 2001)

<sup>188</sup> *Ibid.*, Title IV, Section 411(a)(1)(F)

Section 412 of Subtitle B of Title IV of the USA PATRIOT Act of 2001 has proven to be one of the most controversial provisions in the 160-plus paged law. First, Section 412 amends the Immigration and Nationality Act to mandate the detention of any alien deemed by the Attorney General to be a suspected terrorist or threat to national security. An alien is to be released after seven days if deportation hearings have not begun or if no charge has been issued. The section provides for an exception; one of the aforementioned detained aliens “whose removal is unlikely in the reasonably foreseeable future, may be detained for additional periods of up to six months only if the release of the alien will threaten the national security of the United States or the safety of the community or any person.”<sup>189</sup>

This section, then, limits judicial review regarding habeas corpus petitions; only the Supreme Court, the United States Court of Appeals for the District of Columbia Circuit, and district courts with pre-existing jurisdiction are allowed to hear habeas corpus proceedings relating to this law. Likewise, the District Court of Appeals for the District of Columbia is the only court that will hear habeas corpus related appeals from district courts.

Title IV continues by authorizing the Secretary of State to share visa information with foreign governments and by providing for the implementation of an integrated entry and exit data system. Title IV accommodates aliens affected by the terrorist attacks on September 11 by extending immigration-related deadlines and requirements, too.

Next, Title V permits the issuing of rewards to persons with information about terrorist activities, allows the FBI to have access to phone records and transactional records related to terrorism and clandestine intelligence, and gives the FBI primary authority for computer related crimes related to intelligence. Title VI provides financial compensation to officers and families

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<sup>189</sup> *USA PATRIOT Act of 2001*, Public Law 107-56, Title IV, Section 412 (a)(6), 107<sup>th</sup> Congress, first session (October 26, 2001)

affected by terrorist attacks; Title VII authorizes appropriations for infrastructure protection; Title VIII strengthens the federal criminal code against terrorism; Title IX improves intelligence coordination within the federal government; and, Title X deals with minor operational aspects of the law.

The USA PATRIOT Act of 2001 is a profound piece of legislation that, as shown above, reworked the United States preparation and response to terrorist activities. The bill touches on many issues that have traditionally been supported by both parties and many that have been opposed by either party. The law's treatment of the writ of habeas corpus and increased government surveillance became major political issues in the years following the law's passage, particularly in the wake of Guantanamo Bay Detention Camp's ample media attention later that decade.

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