4-25-2012

Take the Money and Run: Business Influence in the Legislative Process

Jacob T. Silverman
University of Pennsylvania, silvj@sas.upenn.edu

Take the Money and Run: Business Influence in the Legislative Process

Abstract
This political science honors thesis investigates corporate influence on the lawmaking process, with an emphasis on financial services legislation. The research question is: "As evidenced by the Gramm-Leach Bliley Act and Dodd-Frank Act, to what extent do corporate interests influence the lawmaking process in absolute and relative terms vis-à-vis their adversaries (consumer advocates, labor, etc.)?" In assessing the absolute influence of business groups, this thesis seeks to identify their power in the lawmaking process in relation to legislators; in identifying their relative power, it compares them to adversary groups. The hypothesis of this thesis is that corporate powers have significant but not hegemonic influence in the legislative process and that they were a strong force behind the shape of Gramm-Leach-Bliley and, to a lesser extent, Dodd-Frank.

The first section of this thesis reviews relevant social science literature on the nature and influence of interest groups in governance. The next section analyzes the primary methods through which interest groups influence government: campaign finance and lobbying. This section includes information regarding the growth of such activities over time and the strong advantage business representatives have over unions, public interest groups, and consumer advocates. The third portion includes the two case studies: the Gramm-Leach-Bliley Act and Dodd-Frank financial regulatory reform. These two case studies illustrate the strong power of business interest groups in the legislative process, while also demonstrating the continuing ability of consumer advocates to influence key policies.

Keywords
Business, Congress, Financial Services, Dodd-Fran, Sock, Gramm-Leach Bliley, Glass-Steagall, Lobbying, Campaign Finance, Legislation, Social Siences, Political Science, John J. DiIulio, Jr, DiIulio, Jr., John J.

Disciplines
American Politics

Take the Money and Run:

Business Influence in the Legislative Process

Jake Silverman

Political Science Honors Thesis

Advised By Professor John DiIulio

March 28, 2012

Acknowledgements

First, I am incredibly grateful to Professor John DiIulio, Jr. for being an invaluable mentor and advisor not only throughout the thesis process, but over the past four years. Thank you to Mr. Joe Tierney for advising me during the fall semester and for helping me to hone my research design. Thanks Professor Eileen Doherty-Sil for encouraging me to find my “3 AM question” and for teaching a wonderful thesis seminar. Additional thanks go to my housemates for supporting me when I was writing my thesis. Most of all, I am grateful to my parents, Paul and Susan Silverman, and sister, Emma, for always being there for me and being a constant source of inspiration. Finally, thank you to the makers of Diet Coke for keeping me awake during the final days of the writing process.

Table of Contents

Introduction

What began as a small "Occupy Wall Street" protest in New York in September of 2011 has expanded into a movement throughout the United States and around the world. These protestors are criticizing (among other things) a society in which big business and the rich have disproportionate influence over the middle class and the poor. At the center of this outcry is the belief that government is working for wealthy special interests rather than for the country as a whole. This idea is not new. In his 1960 classic, *The Semi-Sovereign people: A Realist's View of Democracy in America,* E.E. Schattschneider argued against the pluralistic view that "the people really do decide what the government does on something like a day-to-day basis," contending that the political system is biased in favor of the wealthy and big business interests.[1]

This political science honors thesis will investigate corporate influence on the lawmaking process, with an emphasis on financial services legislation. The research question to be explored is: "As evidenced by the Gramm-Leach Bliley Act and Dodd-Frank Act, to what extent do corporate interests influence the lawmaking process in absolute and relative terms vis-à-vis their adversaries (consumer advocates, labor, etc.)?" In assessing the absolute influence of business groups, this thesis will seek to identify their power in the lawmaking process in relation to legislators; in identifying their relative power, it will compare them to adversary groups. The hypothesis of this thesis is that corporate powers have significant but not hegemonic influence in the legislative process and that they were a strong force behind the shape of Gramm-Leach-Bliley and, to a lesser extent, Dodd-Frank.

The answer to this question has implications for the U.S. and global economies as well as for the status of James Madison's vision for American democracy. The 2007-2008 financial

---

[1] E.E. Schattschneider, *The Semi-Sovereign People: A Realist's View of Democracy in America,* (New York: Holt, Reinhart, and Winston, 1960), 130.

crisis can trace many of its causes to specific government policies and de-regulation. In the aftermath of the turmoil of 2008, correcting these underlying problems was an important task for government. An inability to do so because of undue influence in the lawmaking process by wealthy groups would illustrate a government that saw certain firms not only as "too big to fail" but "too powerful to regulate," leaving the global economy vulnerable to another economic collapse.[2] On a more philosophical level, the failure of Congress to fairly weigh competing interests would reflect poorly on James Madison's vision of a legislature that could resist the impact of factions and work for the common good of the nation.

Roadmap for the Thesis

The first section of this thesis is a review of relevant social science literature on the nature and influence of interest groups in governance. The next section is an analysis of the primary methods through which interest groups influence government: campaign finance and lobbying. This section includes information regarding the growth of such activities over time and the strong advantage business representatives have over unions, public interest groups, and consumer advocates. The third portion includes the two case studies: the Gramm-Leach-Bliley Act and Dodd-Frank financial regulatory reform. These two case studies illustrate the strong power of business interest groups in the legislative process, while also demonstrating the continuing ability of consumer advocates to influence key policies.

[2] The latter of these two terms was created by Professor John DiIulio.

Part I: Literature Review

Interest Group Theory

There has been significant attention paid to groups and factions throughout American history. Norm Ornstein and Shirley Elder argue that theories about groups have centered around three questions: Are groups inherently good or bad? Do groups approximate the public interest or undermine it? Do interest groups represent numerous segments of society or are they weighted to the upper class and business?[3] Since the founding of the United States, thinking about interest groups has morphed into several schools of thought.

Madison and Interest Groups:

In the Federalist Papers, particularly numbers 10 and 51, James Madison expresses the view that factions are inherently bad and often work against the rights of others and the interests of the community. He defines such groups as "a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of citizens, or to the permanent and aggregate interests of the community."[4] Madison feared the influence of factions in the new republic. He believed that factions result from the flawed nature of humanity: "If men were angels, no government would be necessary…you must first enable the government to control the governed; and in the next place oblige it to control itself."[5] Thus, a major purpose of the Constitution

---

[3] Norman Ornstein and Shirley Elder, *Interest Groups, Lobbying and Policymaking*, (Washington: Congressional Quarterly Press, 1978), 7-8.
[4] James Madison, "Federalist No. 10."
[5] James Madison, "Federalist No. 51."

would be to deal with the negative aspects of human nature and the manifestation of those traits in factions.

Madison argues that there are two ways to mitigate the effects of such groups: to remove the cause by constricting liberty or "by controlling its effects."[6] Madison claims that the process of destroying liberty to prevent factions is "worse than the disease" and that the Constitution should thus seek to mitigate their negative effects.[7] He posits that a large and diverse republic would control the effects of factions by containing such a large number of such groups that it would be difficult for one to gain hegemony. The system of checks and balances and divided powers would further discourage the consolidation of power by one or more groups. The Constitution would limit the power of individual factions and prevent tyranny of the majority. Therefore, to Madison, factions are an inevitable and unfortunate outcome of Man's flawed nature; the Constitution should endeavor to control them and limit the effects of humanity's worst impulses, but must not forcibly eradicate liberty in order to do so.

John C. Calhoun, Interest Groups, and the Existence of the "Public Interest"

In the 1840s, South Carolina Senator John C. Calhoun rejected James Madison's notion of interest groups in his theory of "the concurrent majority." As opposed to Madison, Calhoun did not believe that interest groups were inherently selfish; instead, he appreciated them for their varying viewpoints. However, he did agree with the founding father that American society was destined to have a diverse set of organizations and viewpoints and that there was a danger of "tyranny of the majority." Calhoun believed that each of the interest groups in the country should have the power to veto any major policy that affected them. Only in the case in which there existed a "concurrent majority" of all interest groups in supporting that policy would it be

[6] Madison, "Federalist No. 10."
[7] Ibid.

able to be adopted.[8] One can clearly see an argument for the preservation of slavery and right of states and localities to nullify anti-slavery legislation in Calhoun's argument. That being said, he did raise an interesting point about the nature of the "public interest." While Madison believed that there existed a broad public interest, Calhoun rejected this notion, claiming that the so-called community interest is nothing other than the independent interests of one or more factions.

This last point is an important distinction, and one that applies to current discussions of special interest groups vs. public interest organizations. Calhoun's argument applies to the question "whose interest is special?" In his book *Government's End*, Jonathan Rauch argues that many community interest organizations, such as environmental groups, peace advocates, and consumer groups, are not simply trying to benefit society as a whole, but have self-serving agendas. For example, many of the largest environmental organizations are multimillion-dollar corporations. In 1997, the National Wildlife Federation generated more than $80 million in revenue and paid its president more than $300,000.[9] Ostensibly, public interest groups are just as interested in transferring public resources towards causes they value as business groups. For example, environmentalist groups might care more about preserving forest environments than about producing more affordable timber through logging, which is an alternate outcome that may be more valued by homebuyers and the rest of society.[10] In sum, the arguments John C. Calhoun proposed in the 1840s, ostensibly to support slavery, have important and lasting implications for the conception of the public interest.

---

[8] John C. Calhoun, "A Disquisition on Government," in *Source Book of American Political Theory*, Benjamin F. Wright, ed. (New York: Macmillan, 1929).
Also see Ornstein and Elder, 10-11.
[9] Jonathan Rauch, *Government's End: Why Washington Stopped Working*, (New York: Public Affairs, 1999), 47-48.
[10] Ibid., 48-49.

The Bentley-Truman Theory of Interest Groups

At the turn of the twentieth century, the discipline of political science entered the debate over interest groups in American politics. In 1908, Arthur Bentley published *The Process of Government*, arguing that government and policy reflected that interactions of interest groups inside and outside of the government: "We shall have to get hold of political institutions, legislatures, courts, executive officers, and get them stated as groups, and in terms of groups."[11] This pluralistic view of politics emphasizes that the only thing one needs to do to understand the nature of the various groups in society is to observe their stances and actions: "society, itself, is nothing other than the complex of the groups that compose it."[12]

Bentley's conception of politics was largely ignored for several decades, but in 1951, David B. Truman picked up on this strain of thought in his book *The Government Process*. In this work, Truman perceives individuals in light of their group identifications. He cites the tendency of people to join multiple groups, each of which has different goals and methods, ultimately mitigating the "mischiefs of faction."[13] Together, interest groups form a mosaic "of various specialized sorts" that makes up society.[14] Truman did not have as negative a view of interest groups as James Madison; instead, he saw them as "a necessary and vital component of the democratic governmental process."[15] According to political scientist George McKenna, Truman and other pluralist scholars "were satisfied with 'consensus' and 'mutual adjustment'" of group interests rather than taking Madison's more deontological drive towards the value of "justice" in government.[16]

---

[11] Arthur F. Bentley, *The Process of Government*, (San Antonio: Principia Press, 1949), 210.
[12] Ibid, 208-209.
[13] Ornstein and Elder, 12.
[14] David B. Truman, *The Government Process,* (New York: Alfred Knopf, 1958), 43-44.
[15] Ornstein and Elder, 12.
[16] George McKenna, *American Politics: Ideals and Realities,* (New York: McGraw Hill, 1976).

Throughout the 1950s and early 1960s, many other scholars adopted this positive disposition towards interest groups. Lester Milbrath's 1963 book *The Washington Lobbyists* discounted the influence of interest group lobbyists: "Lobbyist and lobbying groups have a very limited ability to control the selection of officials or to affect the likelihood that an official can keep or enhance his position. They also find it difficult and very expensive to try to manipulate public opinion."[17] While Milbrath does consent to the argument that interest groups do have considerable power in politics, he claims that this is due to the power of individual members as voters, not to the influence of the group. Another important work in this school of thought was Berelson, Lazarsfeld, and McPhee's 1954 book, *Voting*, in which the authors argue that the political system is served well by individuals participating through the mediating force of interest groups.[18] In sum, the Bentley-Truman pluralist school of thought had a positive view of interest groups in American politics and tended to emphasize the political system as a reflection of the interaction of these factions.

An Upper Class Bias of Interest Groups

Beginning in the 1930s, E.E. Schattschneider argued that groups achieve disproportionate influenced based on their resources and "inside connections," rather than due to other merits.[19] His 1935 book, entitled *Politics, Pressures and the Tariff*, contains the observation that groups able to buy more experienced and well-connected lobbyists have a leg up in influencing Congress. Notably, such groups achieve success based not on their membership size, but on these other monetary factors.[20] In his 1960 classic, *The Semi-Sovereign People,* Schattschneider claims that one of the most basic functions of government is to control conflict. This conflict

---

[17] Lester Milbrath, *The Washington Lobbyists,* (Chicago: Rand McNally, 1963), 342.
[18] Bernard Berelson, Paul Lazarsfeld, and William McPhee, *Voting*, (Chicago: University of Chicago Press, 1954).
[19] Ornstein and Elder, 14.
[20] Ibid.

plays out prominently in the "pressure system," defined as "the organized special-interest groups."[21] He distinguishes between public interests (those that are shared by all or by the vast majority of members in the community) and special interests (those shared only by a few people or by a faction that "exclude others and may be adverse to them").[22] In examining the pressure system, Schattschneider comes to the conclusion that government is overwhelmingly influenced by the upper class and, especially, by business groups. He cites lists of national associations in the U.S., which reveal a large concentration of business organizations.[23] Indeed, Schattschneider makes the claim that "the business community is by a wide margin the most highly organized segment of society."[24] This organization has profound effects: businessmen are four to five times more likely to be in contact with their representatives than manual laborers.[25] He claims that even outside the business community, organizations tend to be biased towards the upper classes, as wealthy and educated people tend to be more involved in groups.[26]

Two other scholars to adopt this view of interest groups were C. Wright Mills and Robert Paul Wolff. In his 1959 book *The Power Elite*, Mills claims that a small segment of individuals in America dominate the economic, political and military spheres of the country. In reference to group influence, he argues that, "high-level lobbying is…done within the confines of that elite."[27] In his 1965 essay "Beyond Tolerance," Robert Paul Wolff criticizes pluralist theories for failing to take into account the national interest. He claims that interest groups naturally pick their personalized interests over the public good. Like Schattschneider, Wolff argues that

[21] Schattschneider, 29.
[22] Ibid., 23-24.
[23] Ibid., 31.
[24] Ibid., 30.
[25] Ibid., 31
[26] Ibid., 33-34.
[27] C. Wright Mills, *The Power Elite*, New York: Oxford University Press, 1959), 292.

government is not merely the sum of interest group relations, but that there is an objective national interest superceding these relations.[28]

Theodore Lowi and Groups Eroding Public Authority

Since the 1960s, many scholars have supported the Schattschneider thesis about relative interest group power, although some have attributed different root causes to the thesis. In his 1969 book *The End of Liberalism*, Theodore Lowi criticizes interest groups for another reason.[29] He claims that the positive view of interest groups has created a dangerous situation for American society, one in which "government had lost its basic sense of legitimacy and authority."[30] Lowi posits that, over time, as the government expanded, it abdicated its responsibility in determining the direction of public policy to private interests in a process he called "interest-group liberalism." This had produced an impotent government that lacked clear policy goals.[31] Lowi criticizes interest-group liberalism for four reasons. First, it "corrupts democratic government" by confusing the fact that people have access to democratic rights with the conclusion that they are exercising their rights. In addition, it "renders government impotent" by delegating power to private enterprises, and thus sacrificing governmental power. Third, liberal governments demoralize government by failing to achieve justice. Finally, interest-group liberalism corrupts government by replacing clear and formal procedure with shadowy informal bargaining.[32] Lowi calls his contemporary government the Second Republic, with the First Republic having ruled through the first part of the twentieth century. In this new arrangement, interest groups had hijacked the government, forming narrow fiefdoms, in which

---

[28] Robert Paul Wolff, et al., "Beyond Tolerance," *A Critique of Pure Tolerance,* (Boston: Beacon Press, 1965).
[29] Theodore Lowi, *The End of Liberalism,* (New York: W.W. Norton, 1969).
[30] Ornstein and Elder, 16.
[31] Lowi, 287.
[32] Ibid., 295-298.

they possess significant power and resisted any attempts to upset the status quo.[33] In the Second Republic's place, Lowi suggests "juridical democracy," a system in which the government would have more authority through defined legislative delegation of authority and more power to make rules.[34] Interestingly, while Lowi critiqued the pluralist/liberal view of interest groups just as Mills and Schattschneider did, he fell on the opposite side of the political spectrum, landing closer to conservatives.

Olson and Collective Action

In addition to scholars who have focused on the specific actions taken by groups, others have emphasized the difficulty of establishing and maintaining groups. In his 1965 book *The Logic of Collective Action*, Mancur Olson focuses on the decision-making process behind individuals' decisions about whether to join a particular group. He argues that large interest groups constitute a collective action problem, in that the costs imposed on individuals by membership and participation tend to appear greater than any tangible payoff. Olson claims that individuals have a much higher tendency to join groups when such participation is compulsory or when the group is small enough that the person sees himself or herself as instrumental to its success.[35] He argues that it is relatively easy to form small organizations, but much more difficult to build medium or large groups. This theory can easily be applied to interest groups and government influence. People do not have strong incentives to join public interest groups, while trade associations only require a small number of firms with strong and specific interests to exist and thrive. Moreover, the perceived benefits of trade associations generally appear larger in relation to the cost than a similar comparison with public interest groups. In addition, Olson

[33] Rauch, 224.
[34] Ornstein and Elder, 16-17.
[35] Mancur Olson, *The Logic of Collective Action: Public Good and The Theory of Groups,* (Cambridge: Harvard University Press, 1965).

cites the fact that many trade associations provide the additional benefits of research and statistics, references on customers, advisory services, etc.[36] Thus, pluralism is inaccurate in asserting that political outcomes will reflect the interests of competing groups: "since large groups normally will not be able to [act in support of common interests], the outcome of the political struggle among the various groups in society will not be symmetrical."[37]

In his book *Government's End*, Jonathan Rauch provides a succinct illustration of Olson's theory about private vs. public interests via a fictional organization called C-MOR (The Coalition to Make Ourselves Rich). The group has the choice of fronting all the lobbying money for a job-training program that will provide $1 million of benefits to society or a $1 million tax break focused on its members. In the former option, the group will pay the lobbying costs of generating the public good, but will receive a small share of the benefits equal to that of the people who did not contribute to the lobbying effort. On the other hand, if the group pursues the second option, C-MOR's members earn a much larger bang for their buck. Likewise, in American society, interest groups have strong incentives to attempt to gain a greater slice of the economic pie, rather than try to expand the entire pie. Additionally, they will tend to fight much harder to keep their special benefits and avoid encroachment than will those organizations that are acting in the public interest.[38] As a result, trade associations tend to be much more equipped and financially prepared to influence the government than are large, diffuse public interest groups.

Salisbury and Exchange Theory

Robert Salisbury focused on the incentive frameworks for groups in "Exchange Theory." In 1969, he published an article in the *Midwest Journal of Political Science,* entitled "An

---

[36] Ibid., 145.
[37] Rauch, 25-26.
[38] Ibid., 29-30.

Exchange Theory of Interest Groups."[39] In this theory, Salisbury focuses within organizations on leaders and the various incentive structures available to them. He identifies three types of incentives: material, solidary (socialization and friendship), and purposive (ideological satisfaction). According to Salisbury, political organizations tend to rely on purposive and material incentives. While groups that rely primarily on purposive incentives do not incur high costs, they are naturally unstable, susceptible to splinter organizations and membership fluctuations. Salisbury explains: "The benefits derived from value expression are seldom of great intrinsic worth…a slight change in the member's resources or social pressures may lead to his failure to renew his membership."[40] Organizations that rely on purposive incentives risk losing significant membership if the relevant circumstances change. For example, groups that support government reform saw their memberships skyrocket and plummet during Watergate and after Nixon resigned, respectively.[41] Quite simply, in the absence of a more complicated incentive package, organizations relying on purposive rationale are unstable. In contrast, groups that rely on material (money and jobs) benefits tend to have high start-up costs but be relatively stable. Once a trade association is established, its members have a strong motivation for remaining in the group: the association works to improve the financial standing of its members. A shift in outside circumstances is less likely to hurt material-driven groups. Material-oriented groups, such as businesses, trade associations, and labor have natural advantages over public interest and ideologically motivated organizations.

[39] Robert H. Salisbury, "An Exchange Theory of Interest Groups," *Midwest Journal of Political Science,* (February, 1969), 1-32.
[40] Ornstein and Elder, 19.
[41] Ibid.

Interest Groups in Action

Interest groups influence the legislative process through two primary channels: campaign finance and lobbying. The political science literature paints a picture in which business organizations have gained a significant financial and organizational edge over consumer advocates and unions.

How Business Influences Congress: Campaign Finance

The Nature of Campaign Finance:

One of the most commonly cited ways that corporations influence Congress is through the channel of campaign finance. In his seminal work entitled *Congress*, David Mayhew cites the rise over the course of the 20th century of the "career politician." Due to the lack of power of political parties in American politics, responsibility for fundraising falls largely on individual candidates.[42] In order to be elected, representatives need money for polling, paying campaign workers, advertising, renting office space, and other purposes. Monetary resources can often tip the balance of a close race. Former Speaker of the House Tip O'Neill, Jr. (D-MA) once stated: "There are four parts to any campaign. The candidate, the issues of the candidate, the campaign organization, and the money to run the campaign with. Without money you can forget the other three."[43] Money is important both for managing the campaign and for deterring well-funded challengers from running.[44] Business-oriented groups often provide much of the cash for an election, greatly augmenting contributions from individuals and political parties.

Over time, the cost of Congressional campaigns has sharply increased: in 1972, the total spending of all House and Senate campaigns was $62.2 million; in the 2010 cycle, this figure

[42] David Mayhew, *Congress*, (New Haven: Yale University Press, 1974), 14-15, 29.
[43] James W. Lamare, *What Rules America?* (St. Paul: West Publishing Company, 1988), 106.
[44] Mayhew, 41.

rose to nearly $1.1 billion.[45] According to the Center for Responsive Politics, in 2010, the average winning House campaign spent $1,439,997.[46] In order to pay the high price tag of a winning campaign, candidates need to seek additional funding beyond individual contributions. In 2010, the winning House campaigns raised an average of more than $560,000 from PAC's; winning Senate campaigns received nearly $2 million.[47] Campaign finance rules allow each interest group to have a greater monetary impact on a given campaign than may any individual who contributes. An individual is limited to a maximum contribution of $2,500 per election cycle, while PAC's may give $5,000. Moreover, PAC's can give to as many campaigns as they want and can bundle contributions from individuals, whereas a single person can give no more than a total of $46,200 to campaigns.[48] Thus, whereas an individual's influence is limited in scope, political action committees can build reputations and donate to coalitions of candidates who reflect their views. Incumbents have a significant advantage in fundraising. This contributes to the extremely high reelection rate for members seeking reelection. In an average year, nine out of every ten incumbents who are running can expect to win their races. In no election between 1998 and 2004 did the House reelection rate dip below 96%.[49] Even in the "anti-incumbent" 2010 cycle, 85% of House members and 84% of Senators regained their seats.[50] An important factor behind the advantage of incumbents is their superior fundraising

[45] Ibid.
Also see: Center for Responsive Politics, "Price of Admission," http://www.opensecrets.org/bigpicture/stats.php?cycle=2010, Accessed March 27, 2012.
[46] Center for Responsive Politics, "Election Stats," http://www.opensecrets.org/bigpicture/elec_stats.php?cycle=2010, Accessed March 27, 2012.
[47] Ibid.
[48] Federal Election Commission, "Contribution Limits: 2011-2012," http://www.fec.gov/pages/brochures/contriblimits.shtml, Accessed March 27, 2012.
[49] Center for Responsive Politics, "Reelection Rates Over the Years," http://www.opensecrets.org/bigpicture/reelect.php?cycle=2010, Accessed March 27, 2012.
[50] Ibid.
Also see: Lamare, 105.

with PAC's. In 2010, most PAC's gave under 10% of their funds to challengers.[51] In total, the average House incumbent raised more than five times as much money as did the average challenger in 2010; in the Senate, the gap was even wider.[52]

PAC's do not only play an important role in the financing of candidates; they often recruit and train the very people who run for office. Groups such as EMILY's List on the left and the Club for Growth on the right entice potential candidates to run with promises of campaign contributions and other forms of support. In addition, others, such as the AFL-CIO and the American Medical Association's AMPAC, provide favorable polling and strategic advice to candidates.[53]

Business interests have a large advantage over labor groups when PAC funding is analyzed. In a study after the 2002 elections, Paul Herrnson found that corporate PAC's outspent labor PAC's by a nearly two-to-one margin, a figure that did not even take into account the contributions of trade associations.[54] According to The Center for Responsive Politics, in 2010, business PAC's outspent labor groups by a margin of about three-to-one. When soft money is analyzed, business groups outspend labor by the whopping margin of seventeen-to-one.[55] These figures are vastly different from the relative financial clout of business groups and unions only a few decades ago. In 1976, the first year of public financing of presidential campaigns, unions out-donated business organizations $8 million to $7 million.[56] While

---

[51] Center for Responsive Politics, "PAC Dollars to Incumbents, Challengers, and Open Seat Candidates," http://www.opensecrets.org/bigpicture/pac2cands.php?cycle=2010, Accessed March 27, 2012.
[52] Center for Responsive Politics, "Incumbent Advantage," http://www.opensecrets.org/bigpicture/incumbs.php?cycle=2010, Accessed March 27, 2012.
[53] Paul S. Herrnson, "Interest Groups and Campaigns: The Electoral Connection," in *The Interest Group Connection: Electioneering, Lobbying, and Policymaking in Washington*, *2nd Ed.,* Paul S. Herrnson, Ronald G. Shaiko, and Clyde Wilcox, ed. (Washington: CQ Press, 2005), 30.
[54] Ibid.
[55] Center for Responsive Politics, "Business-Labor-Ideology Split in PAC and Individual Donations to Candidates and Parties," http://www.opensecrets.org/bigpicture/blio.php?cycle=2010, Accessed March, 27, 2012.
[56] Ornstein and Elder, 71.

candidates may not be able to be directly "bought" by soft money, they might be influenced into supporting corporate interests in order to avoid negative independent advertising during a campaign. In 2010, the finance/insurance/real estate industries spent the most money of any sector, collectively contributing nearly $320 million.[57] Therefore, campaign contributions play a key role in the incumbency advantage enjoyed by members of Congress. Business groups, particularly the financial services sector, donate much more heavily than labor advocates.

Campaign Finance and Legislative Influence:

Campaign contributions play a key role in determining who gets access to members of Congress. Interest groups often donate to members of both parties even if their ideologies are not consistent. For example, in 2010, the finance/insurance/real estate sectors gave 45% of their PAC donations to Democrats and 50% to Republicans, even though the latter party is generally more supportive of their interests. Overall, business groups gave 49% to Democrats and 50% to Republicans.[58] Moreover, PAC's frequently give money to incumbents who are running unopposed in their general elections. For example, Senator John Thune (R-SD) raised nearly $2.5 million from PAC's between 2005 and 2010, even though he held a safe seat and ultimately faced no Democratic opponent.[59] In 2009 and 2010 alone (when it was apparent he would run unopposed), Thune raised nearly $400,000 from the finance, insurance, and real estate industries.[60] A big reason for these contributions is that organizations view their financial support as a means of buying access to representatives once they are in power. In 1974, when Fred Wertheimer, the executive of Common Cause, was asked about his group's donation to both

[57] Center for Responsive Politics, "Totals by Sector," http://www.opensecrets.org/bigpicture/sectors.php?cycle=2010, Accessed March 27, 2012.
[58] Ibid.
[59] Center for Responsive Politics, "PACs, Senator John Thune," http://www.opensecrets.org/politicians/pacs.php?cycle=2010&cid=N00004572&type=I, Accessed March 27, 2012.
[60] Ibid.

liberals and conservatives, he responded: "the ideology involved is that there is an ideology of incumbency…the money is an investment."[61] Former RNC Chairman Bill Brock commented that business groups donating heavily to incumbent Democrats reflected an attempt "to buy access to Congress."[62] The idea that interest groups view campaign spending as a means to gain access is bolstered by the trend among PAC's to donate most heavily to party leaders and committee chairs. Paul Brewer and Christopher Deering conducted a study on the Republican House committee chair battles in 2000, finding that the representatives who donated the most of their own money to the Republican Party and Republican candidates nearly always got the gavel.[63] An implication of this tendency is that money becomes an extremely important determinant in who assumes leadership positions; as a result, PAC's need to contribute in order to aid the ascendancy of representatives and ultimately earn access.

Groups that do not have the resources to form PAC's run the risk of relative exclusion from the political process compared to better-funded business organizations. Former Senator Bob Dole once quipped: "There aren't any Poor PAC's or Food Stamp PAC's or Nutrition PAC's or Medicare PAC's."[64] Paul Herrnson has noted that "many groups, such as the poor and homeless have no representation in the PAC community…figures on PAC formation and PAC spending serve to dispel pluralist notions that all societal interests are equally represented…and have a comparable impact on the financing of Congressional elections."[65] As the less advantaged do not have the money to gain influence, programs that benefit them may be at greater risk of cutbacks.

---

[61] Ornstein and Elder, 72.
[62] Ibid.
[63] Paul R. Brewer and Christopher J. Deering, "Interest Groups, Campaign Fund-Raising and Committee Chairs," in *The Interest Group Connection: Electioneering, Lobbying, and Policymaking in Washington*, *2nd Ed.,* Paul S. Herrnson, Ronald G. Shaiko, and Clyde Wilcox, ed. (Washington: CQ Press, 2005), 145.
[64] Lamare, 110.
[65] Herrnson, 31.

The political science literature has yet to reach a consensus on the degree to which campaign contributions affect the legislative process itself. According to Lee Drutman, existing studies have found the statistical impact on legislative outcomes to be minimal.[66] Nevertheless, it is possible that campaign contributions are still an important distorting factor on Congress. David Mayhew cites one such example in *Congress.* In the 1960s, Rep. Torbert H. MacDonald (D-MA), the Chairman of the House Communications and Power Subcommittee of the Interstate and Foreign Commerce Committee, was immobilized from introducing legislation regulating the industries under his jurisdiction after electric companies bankrolled his general election opponent. One former aide quipped: "Even though Torby easily defeated his opponent, the experience made him sort of paranoid. He is now reluctant to do anything that would offend the power people."[67] This story illustrates an important limitation within the existing literature: it is possible that business organizations have influenced the political process by scaring members of Congress away from attempts to regulate their industries. Former Representative Millicent Fenwick (R-NJ) recounts the impact of contributions on votes: "members have told me they received such-and-such an amount from one of these groups and could not vote with me."[68] In one small study, Amitai Etzioni tracked a 1982 House Energy Committee vote to curb auto emission standards, finding that members who voted in favor of the legislation received five-times as much money from auto manufacturer PAC's as did those representatives voting against the measure.[69] Although this is an admittedly small-scale study with other possible explanations for its results, it does hint at the impact of campaign contributions on the legislative process.

---

[66] Lee Drutman, "The Business of America is Lobbying: The Expansion of Corporate Political Activity and the Future of American Pluralism," PhD Dissertation, University of California-Berkley, 2010, 10.
[67] Mayhew, 41*n*.
[68] Lamare, 109.
[69] Amitai Etzioni, *Capital Corruption*, (San Diego: Harcourt Brace Jovanovich, 1984), 51-60.

Interest group relationships with members may strengthen over time, requiring multiple rounds of contributions for desired legislative results. For example, Thomas Stratmann explored the relationship between the financial services industry and Congress in the 1980s and the passage of Gramm-Leach-Bliley, finding that increases in contributions over time were correlated with House members switching their votes from no to yes.[70] It is possible that members cannot be "bought" for a onetime contribution, but are more receptive to the interests of organizations with whom they have an ongoing relationship. Furthermore, in the aftermath of the *Citizen's United* Supreme Court decision, representatives may be even more scared to push legislation that hurts the interests of corporations and the wealthiest citizens. With the right to spend unlimited funds on independent expenditures guaranteed, an era of even more influence may be dawning.

One final consideration in assessing the degree to which campaign contributions influence the political process is the nature of the issue being considered by Congress. Research suggests that the more controversial and visible issues tend to be acted upon largely independent of campaign contributions, as "well-publicized, contentious issues draw many groups, legislators, and committees into the policy process…PAC's must compete with a variety of sources trying to influence legislative voting."[71] On the other hand, in situations in which committees legislate on narrow interests and in which there exist long-standing relationships between members and industry advocates, PAC contributions tend to have a greater impact on voting. Examples of such behavior include defense contractors and the Armed Services Committee, deregulation of the trucking industry, and the exemption of professionals from FTC

[70] Drutman, 11.
Also See: Thomas Stratmann, "Some Talk: Money in Politics. A (Partial) Review of the Literature." *Public Choice* 124 (1/2, Policy Changes and Political response: Public Choice Perspective on the Post-9/11 World), 135-156.
[71] Lamare, 110.

regulation.[72] All this being said, there are still not studies linking PAC contributions as the one factor leading to votes.[73]

In sum, one of the primary ways that interest groups, especially business organizations, attempt to influence the political process is through campaign finance. Campaigns depend significantly on PAC's to fund their campaigns and provide other support during the electoral process. Over time, campaigns have become increasingly expensive and business groups have built a large spending advantage over labor advocates. While the exact legislative impact of campaign finance is still being debated in social science, many contributing organizations view such donations as an investment that will generate access to Congress and increased influence in the legislative process. The disproportionate representation of business and other interests relative to advocates of the poor and homeless in the political process surely raises about the degree of pluralism in the U.S.

Lobbying

The second major way that businesses influence the legislative process is through lobbying, defined as "legal activity aiming at changing existing rules or policies or procuring individual benefits."[74] As with campaign finance, the available data on government advocacy point to a decidedly pro-business slant.

<u>The Nature and Growth of Lobbying:</u>

Norm Ornstein and Shirley Elder cite one veteran political observer commenting on pressure politics: "Lobbying is as old as legislation and pressure groups are as old as politics."[75]

[72] Ibid.
[73] Ibid.
[74] Deniz Igan, Pracchi Mishra, and Thierry Tressel, "A Fistful of Dollars: Lobbying and the Financial Crisis," Paper presented at the 10th Jacques Polak Annual Research Conference on November 5-6, 2009, *The International Monetary Fund*, 5.
[75] Ornstein and Elder, 53.

Lobbying is certainly as old as American government: in 1783, a group of disgruntled soldiers threatened members of the Continental Congress into increasing their pay. By the 1850s, Washington hosted a lively lobbying industry filled with representatives of big business.[76] Throughout the 20th century, the importance of this age-old activity has grown with the size and scope of the U.S. government. While many groups lobby the executive branch and regulatory agencies, the largest target of lobbyists is Congress, with its 535 members, various committees, and thousands of staffers.[77] Groups seek to gain access to decision makers in an effort to "monitor governmental activity that might affect them, initiate governmental action to promote their interests, and block action that would work to their detriment."[78] Contact that groups have with government officials may be direct (in the form of conversations with legislators or testimony before a committee), semi-direct (through communications with legislative staff), or indirect (through advertisements or other public statements). Lobbyists place a high value on monitoring public activity, so as to be aware of any potential changes with enough time to affect the potential action.

When trying to initiate a particular policy, high-quality access is an invaluable resource for an interest group. One lobbyist noted: "I always make sure I have a friend on the subcommittee, someone who will look after my interests, who will introduce and push bills or amendments for me. If you don't have a friend on the inside, then you're really on the outside looking in."[79] Lobbyists can aid legislators by providing information and policy advice, assisting with political strategy, providing new policies and proposals, and campaign assistance. On the

---

[76] Jeffrey H. Birnbaum, *The Lobbyists: How Influence Peddlers Work Their Way in Washington*, (New York: Times Books, 1993).
[77] Ornstein and Elder, 36.
Note: Business groups typically lobby Congress just as much as the regulatory agencies. While such influence is outside of the realm of this thesis, it is an interesting factor in gauging the influence of such organizations.
[78] Ornstein and Elder, 54.
[79] Ibid., 57-58.

other hand, they can sanction lawmakers by asking party leadership to deny a particular member a committee slot or leadership role, apply political pressure both in Washington and in the home district, negatively endorse a candidate, or aid an opposing candidate.[80] Lobbyists constantly try to persuade legislators that taking particular actions will be electorally beneficial for them, transforming Washington into a "major marketing center."[81] When coupled with strong access to decision makers, lobbyists employ strategies designed for maximum influence on the legislative process.

Two authors have written compelling works on interest groups in the legislative process. In his book, *The Lobbyists: How Influence Peddlers Get Their Way in Washington,* Jeffrey Birnbaum details his interactions with a group of lobbyists in 1989 and 1990. He describes the strategies and motives of these individuals in their dealings with decision makers in Washington, arguing that lobbyists are a well-compensated underclass in Washington society, secondary to government members and staffs. Birnbaum illustrates the methods that lobbyists use to achieve their ends, ranging from appeals to constituents to express their opinions to their representatives to fundraisers and fun-filled "business trips."[82] In his books *Demosclerosis* and *Government's End,* Jonathan Rauch builds on the work of Birnbaum, referring to lobbyists and others as members of the "parasite economy." In these works, Rauch argues that David Stockman, Bill Clinton, and Newt Gingrich failed in their quests to reform Washington due to the entrenched and powerful nature of interest groups. He fears that the government will continue to experience a precipitous drop in governing ability due to special interests, and describes the logic

---

[80] Ibid., 59-62.
[81] Birnbaum, 6.
[82] Birnbaum.
Note: Another of Birnbaum's books, *Showdown at Gucci Gulch*, touches upon many of the same issues with lobbyists in his account of the passage of the 1986 tax reform bill.

underpinning the current system. Both of these books provide excellent insight into the nature of lobbying.

Since the 1960s, and particularly since the early 1980s, there has been a stunning rise in the size and scope of lobbying operations in Washington. Lee Drutman argues that much of the early rise in corporate lobbying had to do with the rash of new regulations in the late 1960s and early 1970s. Whereas businesses had been content to be "left alone" previously, the threats imposed by the government spurred them into action.[83] In 1988, four of every ten lobbying organizations with Washington offices were founded after 1960. In 1981, there were approximately 7,000 groups listed in the *Washington Representatives* directory; today, this number has increased to more than 14,000.[84] Such interest groups include trade associations ranging from the AARP and National Association of Homebuilders to the Bow Tie Manufacturers Association and the Post Card Manufacturers Association.[85] Between 2000 and 2009, direct lobbying expenses increased from $1.44 billion to $3.47 billion. When accounting for inflation, lobbying expenses have increased an amazing seventeen-fold from the (real) $200 million in 1983.[86] The growth of lobbying activity has outstripped the growth in government: between 1998 and 2008, the federal budget grew by 38% and the number of bills introduced increased by 43% while lobbying expenditures rose by 77%.[87]

<u>Why Groups Lobby and Why the Growth in Washington</u>:

There are two schools of thought on the question of why groups lobby. The first is that firms decide to attempt to influence the government as a response to external stimuli. Neoclassical scholars such as David Bicknell Truman and Beth Leech have argued that the

[83] Drutman, 128-129.
[84] Ibid., 1.
[85] Birnbaum, 7.
[86] Drutman, 1.
[87] Ibid., 2.

government's expansion into new areas spawns trade associations and lobbying operations relating to the new regulation.[88] They see firms as rational actors who behave predictably based on the incentives provided to them by the government and the state of politics.[89] In a 2005 paper, Beth Leech and her co-authors argue that the growth of government over time has led interest groups to mobilize around new issues in order to either maintain current programs or to oppose them. They claim that interest groups do not drive the formation of interest group ecosystems; this role is more essentially based on the political and policy climate.[90] Basically, government action serves as a magnet pulling interest groups into the Washington lobbying world: "a governmental decision to become involved in an issue area sets the agenda for existing and potential organized interests, who are thus encouraged to come to the capital to defend their interests and advocate particular solutions to perceived problems."[91]

Another group of scholars believes that lobbying is an activity that firms learn, one that builds and reinforces itself over time. The "Behavioral Theory" of firms posits that organizations tend to get in the habit of participating in politics and thus continue their involvement. The "Resource-Based Theory" conveys the idea that firms view political engagement as a "strategic asset" that should not be discarded. Finally, the "Agent-Based View" places emphasis on the principal-agent dilemma that results when an organization hires a lobbyist. Because the agent is receiving money for services provided, he or she has the strong incentive to persuade the firm to continue its Washington presence.[92]

---

[88] Ibid., 26.
[89] Ibid.
[90] Beth L. Leech, et al., "Drawing Lobbyists to Washington: Government Activity and the Demand for Advocacy," *Political Research Quarterly* 58 no. 1 (2005), 19-30.
[91] Ibid., 20.
[92] Ibid., 29.

In his doctoral thesis, Lee Drutman argues that there may be many factors underpinning the decision to lobby, but that such a decision tends to be reinforcing and that it leads to heightened political activity. Importantly, Drutman posits that groups often stay in Washington with the goal of changing the status quo, rather than reacting to external stimuli. He analyzes the "stickiness" of lobbying, finding that approximately 97% of organizations with lobbying activities stay in Washington from year to year. For those companies that do not have internal lobbyists, but use "hired guns," the rate of renewal is still around 90%.[93] Drutman identifies a general process by which organizations learn to lobby. First, the Washington representatives pick issues for lobbying that will generate high value to the firm, illustrating the profitability of a lobbying operation. Over time, they look for new issues on which to work and thus the organization becomes more entrenched in Washington.[94]

A central aspect of the decision to lobby is the perception of the high profits that can be gained through government advocacy. A relatively small change to a large piece of legislation can have huge financial effects on particular industries, so targeted lobbying influence can prove an excellent investment for firms. Interest groups rightly see lobbying as a tremendously efficient way to improve business. For example, Matt Miller explores Lockheed Martin's lobbying activities between 1999 and 2006, finding that the company spent $55 million on lobbying and received $90 *billion* in governmental contracts.[95] Jeffrey Birnbaum analyzes the rate of return on a broader range of issues and estimated the payoff to be closer to 28-1, which is still quite a hefty sum.[96] Thus, while the issues that bring firms to Washington can vary,

[93] Ibid.,93.
[94] Ibid., 111-112.
[95] Matt Miller, "Make 150,000% Today!" *Fortune*, January 27, 2006.
Cited in Drutman, 28*n*.
[96] Jeffrey Birnbuam, "Clients' Rewards Keep K Street Lobbyists Thriving," *Washington Post*, February 14, 2006.
Cited in Drutman, 28*n*.

lobbying tends to be an activity that firms learn to do, and one that the organizations perceive to be exceedingly profitable.

The Bias and Influence of Lobbying:

Since the 1960s, political scientists have noted the bias towards business in the makeup of interest groups in Washington. Lee Drutman observes that between 1981 and the present, the *Washington Representatives* directory classifies 34% and 46% of its listings as individual companies and 11% to 15% as trade associations.[97] Between 1981 and 2006, as the number of business listings grew from 7,059 to 12,785, the number of union listings only increased from 369 to 403. Over the same time period, the ratio between business groups and "countervailing power" (unions and public interest) increased from 11.65 to 15.82.[98] When lobbying expenditures are analyzed, the gap between business and non-business groups looms even larger. A 2001 study by Frank Baumgartner and Beth Leech found that in 1996, individual companies accounted for 56% of lobbying costs and businesses, trade associations, and professional groups comprised 85% of total spending. In contrast, citizen groups and non-profits comprised merely 10% of total lobbying expenditures.[99]

According to the Center for Responsive Politics, between 1998 and 2010, the top industries engaging in lobbying were health, miscellaneous business, and finance/insurance/real estate; labor placed twelfth. In this time period, miscellaneous businesses and the finance/insurance/real estate industries each spent nearly ten times as much money on lobbying

---

[97] Ibid., 3.
[98] Ibid., 5.
Drutman is citing data taken from Kay Lehman Schlozman et al., "Who Sings in the Heavenly Chorus: The Shape of the Organized Interest System," *Paper Given at the 2008 Midwest Political Science Association Annual Meeting*.
[99] Frank R. Baumgartner and Beth L. Leech, "Interest Niches and Policy Bandwagons: Patterns of Interest Group Involvement in National Politics," *The Journal of Politics* 63 no. 4, (2001), 1191-1213.

as did labor organizations.[100] Baumgartner and Leech conclude: "the extent of business predominance in the group system is greater than previously reported...Not only do businesses constitute the largest category of lobbying organizations in Washington...but they are by far the best endowed and most active."[101] Part of this imbalance may be a result of the structural difference between corporations and public interest groups. Corporations that engage in lobbying have the advantage of being able to use their general revenues towards political advocacy. In contrast, membership-based public interest groups often have trouble raising the necessary funds for a large-scale campaign.[102]

More importantly, the disproportionate presence of business groups (both numerically and monetarily) has a distorting influence on the legislative process because resources tend to translate into outcomes. In *The Lobbyists*, Jeffrey Birnbaum concludes that corporations have gained significant strength in Washington, becoming "so suffused [in] the culture of the city that at times they seem to be part of the government itself."[103] Birnbaum writes that over time, corporate interests have transitioned from a "perennial sacrificial lamb" to a "sacred cow" in cases of government crackdowns. Indeed, in the 1990 deficit reduction bill signed into law by President Bush, merely 11% of revenue increases came from the corporate tax code, while the remaining burden came from individuals.[104] Presently, there is simply not much competition between corporate and union/public interest lobbyists. In a survey conducted for his doctoral thesis, Lee Drutman interviewed corporate lobbyists and asked them whom they viewed as their biggest adversaries. Not once did they list unions or public interest organizations as their biggest

---

[100] Center for Responsive Politics, "Lobbying Ranked Sectors," http://www.opensecrets.org/lobby/top.php?indexType=c, Accessed March 27, 2012.
[101] Ibid., 1195.
Quoted in Drutman, 3.
[102] Drutman, 8.
[103] Birnbaum, 3.
[104] Ibid.

rival. Indeed, on 37% of the issues, they claimed not to have any challengers.[105] Clearly, corporations have a significant relative advantage over their union and public interest counterparts with regards to lobbying.

Lobbying is a practice as old as the American government, one that is based on access to and a close relationship with members of Congress and their staffs. Lobbyists have significant power with members of Congress in several important areas, including providing information, campaigning, messaging, and developing proposals. The past three decades' stunning growth of firms with a Washington presence is likely due to both the expansion of the federal government (the government putting more issues on the table) and the educational process of lobbying (organizations learning to utilize advocacy and thus remaining in Washington). There is a large gap between business organizations and unions/public interest groups in the number of groups present in the political process and the amount of those groups money spend, and this gap has been expanding over time. The political science literature suggests that such a disparity in lobbying presence illustrates an advantage in both absolute and relative terms for corporate interests.

[105] Drutman, 140.

Part II: Case Studies

Introduction and Methodology

The thesis now turns to a case study analyzing the impact that competing interest groups had on two key pieces of financial services legislation between 1999 and 2010. First, the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 repealed the 1933 Glass-Steagall Act, removing the barriers between commercial and investment banks and insurance companies. Many people have criticized this legislation, claiming that it enabled firms to become "too big to fail," contributing to the 2008 Financial Crisis. Indeed, economist and columnist Paul Krugman called Senator Phil Gramm the "father of the financial crisis" because of this bill.[106] Next, this case study explores the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. This legislation attempted to fix many of the problems that led to the 2007-2008 Financial Crisis and to remove causes of systemic risk from the U.S. finance, banking, and insurance sectors. Of particular importance in this last piece of legislation is the strength of new regulations that were opposed by corporate and financial interests and supported by consumer advocates and unions.

This thesis draws conclusions about the relative influence of interest groups from several sources. First, the Congressional hearings held during the legislative process are instructive as a means to identify the issues about which various interest groups care and about which they disagree. In addition, by observing the different iterations of a given bill prior to and after a set

[106] Paul Krugman, "The Gramm Connection," *The New York Times Online*, March 29, 2008, http://krugman.blogs.nytimes.com/2008/03/29/the-gramm-connection/, Accessed March 27, 2012.

of hearings, one can spot a correlation between changes suggested and changes enacted. If a pattern emerges in which one type of group consistently achieves its desired changes vis-à-vis those of its rivals, disproportionate influence is suggested. In addition, this case study utilizes policy papers, press releases, and statements by various interest groups about these pieces of legislation. Finally, the Dodd-Frank section of the case study relies considerably on the Financial Crisis Inquiry Commission Report to explain the causes of the Financial Crisis and issues that needed to be reformed. If these groups were able to block a significant portion of these proposals, then excessive influence would be suggested.

These two pieces of legislation are selected as case studies for several reasons. First, they are important laws attracting significant attention from many interest groups. As such, the possibility of groups failing to take stock of the legislation and mobilize accordingly is low. In addition, Gramm-Leach-Bliley and Dodd-Frank embody intense fights between business interests and consumer advocates, allowing one to better gauge the relative influence of both types of organizations. Finally, these cases affect the same industries, yet were passed in two decidedly different political climates for business groups. If financial services and banking representatives were able to succeed in 2010, their absolute and relative superiority would be strongly suggested.

A Note on Gauging Influence

It is admittedly difficult to establish a causal relationship between legislative outcomes and interest group positions. The external political environment has a considerable impact on the ease with which an interest group achieves its policy objectives. In *The Governmental Process*, David Bicknell Truman notes, “As conditions change... [some] influences become more and others less potent, the fortunes of group claims upon the legislature will rise or decline."[107] For example, it could be argued that the era of economic prosperity and rapid stock market growth in the mid and late 1990s boosted the chances of legislation favored by the financial services industry. Later, in the wake of the 2007-2008 Financial Crisis, it is possible that the momentum for financial reform and large Democratic Congressional majorities were headwinds that banking advocates had little chance of overcoming. A largely pro-consumer and anti-banking piece of legislation would not establish the causal relationship that consumer advocates had much more influence than financial services groups. If, however, the financial services industry managed to consistently beat back attempts at regulation in 2009 and 2010, one could more reasonably infer a causational relationship. In sum, when attempting to gauge the relative and absolute influence of business groups, it is important to consider the external environment in which legislation is being drafted.

It is also important to consider the numerous counter-factuals and alternate explanations for the outcomes of these bills. It is possible that interest groups had little effect on the direction of these pieces of legislation and that the policies enacted were simply those favored by members of Congress. The decision to change a piece of legislation in a more pro-consumer or pro-business direction may have nothing to do with the efforts of interest groups, but reflect, instead, an effort on behalf of party leaders to pick up votes for the proposal. In addition, one set of interest groups might be energized on a particular issue and not face any opposition from other organizations. As a result, one might be able to infer a certain degree of absolute power on behalf of the active groups, but no relative power vis-à-vis their competitors. The effects of successful lobbying may be policies that never make it into legislation. Finally, without detailed

[107] David Bicknell Truman, *The Governmental Process: Political Interests and Public Opinion*, (New York: Knopf, 1951), 350.

information regarding the exact activities of interest groups lobbying against particular measures, it is possible that one can miss their successes in preventing the policies' presence in any forms of a particular piece of legislation. With all these reservations in mind, this thesis will nonetheless attempt to gauge the absolute and relative power of interest groups in the legislative process.

The Financial Services Modernization Act of 1999

Introduction and Background

The Gramm-Leach-Bliley Financial Services Modernization Act repealed much of the 1933 Banking Act, known as Glass-Steagall. It removed market barriers to firms acting as a combination of a commercial bank, investment bank, and insurance company. The consideration of this bill was triggered by Citicorp's merger with Travelers Group in 1998. The firms took advantage of previous financial services legislation that granted firms a two-year period following a merger or acquisition to divest of offending activities.[108] Following announcement of the merger, Congress was spurred into action to update financial services law to deal with the brewing legal implications of this deal. It was given the choice of repealing sections of Glass-Steagall or breaking up what was the nation's largest financial firm.

Financial services modernization was not an issue that arose in the late 1990s: the banking and insurance industries had been working since the1980s to repeal Glass-Steagall. In 1983, President Reagan proposed allowing commercial and investment banks, securities firms, and insurance companies to enter each other's markets, but the proposal gained little traction. In 1991, a bill similar to Gramm-Leach-Bliley failed to pass the House.[109] Throughout the mid-to-late 1990s, these industries worked hard to pass banking reform: between 1996 and 2000, the number of financial services lobbyists increased from around 150 to just under 250.[110] The financial services industry placed considerable pressure on Congress to pass financial services modernization. In 1999 alone, the financial service industry spent $187 million on lobbying and

---

[108] Lissa Lamkin Broome and Jerry Markham, "The Gramm-Leach-Bliley Act: An Overview," University of North Carolina School of Law, Available at http://www.symtrex.com/pdfdocs/glb_paper.pdf, 2001, Accessed March 27, 2912.
[109] Drutman, 11.
[110] Ibid., 50.

donated \$202 million to campaigns.[111] Ed Yingling, the chief lobbyist for the American Bankers Association, called GLB '"the most heavily lobbied, most expensive issue' to come before Congress in a generation."[112] According to the *New York Times*, after the bill was signed into law, Citigroup CEO Sandy Weill placed on his wall "a hunk of wood-at least 4 feet wide-etched with his portrait and the words 'The Shatterer of Glass-Steagall.'"[113]

Advocates of the legislation argued that it would add efficiency to the financial system: people put more money in investment accounts when the economy is doing well and more into savings accounts when it is performing poorly. If commercial and investment banks were not separated, people could more easily place money in both savings and investment accounts at the same time. In doing so, firms engaging in investment and commercial banking would perform better in both good and bad economic times. In addition, industry advocates claimed that the proposed legislation would help consumers by spurring on the growth of myriad new products by firms offering expanded services and competition, giving them the opportunity to have multiple needs met by the same institution. With the development of the Internet and other electronic banking services, the past model of regional banks was seen as outdated; financial services law should be updated to reflect these changes.[114] In addition, the proposed legislation would make U.S. institutions more competitive with foreign banks that already offered diverse products.[115] Some advocates of deregulation claimed that larger institutions would pose fewer systemic risks: "Bigger would be safer…and more diversified, innovative, efficient, and better able to serve the

---

[111] *The Financial Crisis Inquiry Report*, (Washington: U.S. Government Printing Office, 2011), 55. Note: The \$202 million figure includes both individual and PAC contributions.
[112] Joel Brinkley, "Behind the Banking Bill, Years of Intense Lobbying," *New York Times*, October 23, 1999.
[113] Katrina Brooker, "Citi's Creator, Alone with His Regrets," *New York Times*, January 2, 2010.
[114] John A. Tatom, "Financial Legislation: The Promise and Record of the Financial Modernization Act of 1999," in *Financial Market Regulation: Legislation and Implications*, John A. Tatom, ed., (New York: Networks Financial Institute), 6.
[115] *The Financial Crisis Inquiry Report*, 55

needs of an expanding economy."[116] At the same time, however, some people worried that ever-growing institutions would create entities that were "too big to fail," posing large risks to the entire financial system and economy.[117]

House and Senate Hearings on the Bill

From February 10-12, 1999, the House Committee on Banking and Financial Services held hearings about the proposed financial services modernization legislation. A Senate draft bill was released in February of 1999, and was followed by hearings in front of the Committee on Banking from February 23-25. During the hearing process for GLB, four broad sets of interests developed: those of large banks and financial institutions, those of smaller banks and businesses, those of consumer advocates, and those of the Clinton Administration. In general, the large businesses supported the bill strongly, small banks approved tepidly or opposed it, and consumer advocates criticized the legislation for failing to protect individuals. The Clinton Administration accepted the need for financial modernization, but had serious reservations about the lack of consumer protections.

<u>Big Financial Institutions</u>:

In general, the banking and securities industries had favorable views towards draft versions of GLB. On February 25, Michael Patterson, the Vice Chairman of JP Morgan and Chairman of the Financial Services Council, testified before the Senate Banking Committee. He spoke in strong support of removing barriers between banks and insurance companies, claiming that a failure to do so would leave U.S. companies at a disadvantage to their foreign counterparts. He claimed that Glass-Steagall represented a different era in finance and was no longer applicable, and that banks should be allowed to participate in more commerce. Overall,

[116] Ibid., 52.
[117] Ibid.

Patterson agreed with the general outline for the Senate draft of GLB and offered minor suggestions to improve the legislation.[118] Robert Gillespie of KeyCorp and the Bankers Roundtable and Hjalma Johnson, Chairman and CEO of East Coast Bank Corp the American Bankers Association, both spoke in strong support of the Senate draft bill. Gillespie and Johnson both made it a point to mention their support of sections of the bill relating to the treatment of the Community Reinvestment Act (CRA). The CRA, which was enacted in 1977, sought to curtail the practice of "redlining," whereby banks would draw boundaries around neighborhoods to which they extended credit. Johnson claimed that the CRA hurt banks in relation to their competition and burdened them with significant paperwork. He also argued in favor of allowing banks to engage in "a limited basket" of commercial activities, claiming that this would lead to community development in some cases. However, Johnson claimed that such co-mingling should only be allowed to occur on a limited basis so as to protect the independence of banking and commercial industries.[119] One of his major complaints about the bill was its unequal regulatory treatment of thrifts and banks. Johnson urged the Banking Committee to equalize the regulations on holding companies of banks and thrifts in order to prevent the flow of capital into the industry with less regulation. On the whole, both of these witnesses spoke in strong support of the measures in GLB.

Jeff Tassey of the American Financial Services Association and Marc Lackritz of the Securities Industry Association also addressed the panel on February 25. These two representatives of the securities industry strongly supported the framework for financial

[118] Michael Patterson, "Prepared Testimony of Michael Patterson, JP Morgan and The Financial Services Council," Senate Housing, Banking, and Urban Affairs Committee, February 25, 1999. Available through Proquest Congressional.

[119] Robert Gillespie, "Prepared Testimony of Robert Gillespie, KeyCorp and the Bankers Roundtable," Senate Housing, Banking, and Urban Affairs Committee, February 25, 1999. Available through Proquest Congressional. Also See: Hjalma Johnson, "Prepared Testimony of Hjalma Johnson, East Coast Bank Corp. and the American Bankers Association," Senate Housing, Banking, and Urban Affairs Committee, February 25, 1999. Available through Proquest Congressional.

modernization. However, Lackritz opposed language that would allow banks to engage in securities trading, proposing that the banks would instead have to engage in securities trading through separate affiliates owned by the larger institutions. In addition, he urged the committee to put all firms that traded securities under the jurisdiction of the SEC, so as to make regulation fairer.[120] Similarly, speaking before the House Banking Committee earlier that month, Roy Zuckerberg of the Securities Industry Association heaped nearly unqualified praise on the House version of the bill.[121] Therefore, representatives of the banking and securities industries reacted very favorably to the draft versions of GLB and tended to advocate for relatively minor tweaks to the legislation.

Small and Community Banks/Independent Insurance Agents:

Representatives of small and community banks had mixed reactions to the draft versions of GLB. William McQuillan of the Independent Bankers Association of America appeared before the House on February 10 before the Senate Committee on February 25. At the Senate hearing, he criticized the legislation for disproportionately favoring large financial institutions, creating the possibility of “too big to fail” institutions and endangering the Federal Deposit Insurance Fund in the event of the collapse of a financial conglomerate.[122] He cited the recent collapse of Long Term Capital Management and claimed that GLB would have the effect of increasing systemic risk and leading to future bailouts. In addition, he argued that the recent trend of mergers in the banking and financial service industries had anti-competitive effects, especially in the credit and debit card markets, to the detriment of small and community

---

[120] Marc Lackritz, “Marc Lackritz, “Prepared Testimony of Marc Lackritz, Securities Industry Association,” Senate Housing, Banking, and Urban Affairs Committee, February 25, 1999. Available through Proquest Congressional.
[121] Roy Zuckerberg, “Prepared Testimony of Roy Zuckerberg, Chairman of the Securities Industry Association,” House Banking and Financial Services Committee, February 10, 1999.
[122] William McQuillan, “Prepared Testimony of William McQuillan, Independent Bankers Association of America,” Senate Housing, Banking, and Urban Affairs Committee, February 25, 1999. Available through Proquest Congressional.

banks.[123] McQuillan criticized the Senate draft for allowing too much mingling between banks and commercial firms, a policy that would "encourage financial institutions to engage in the kind of crony capitalism" that had recently undermined the economies of several foreign countries.[124] Finally, he asked the Senate to enforce consumer protection and CRA regulations more uniformly across all depository institutions. McQuillan claimed that community banks were much more burdened than less regulated entities such as credit unions.[125] In his House testimony, McQuillan was more in favor of the legislation proposed, but dedicated a significant amount of his testimony to opposing the removal of barriers between banks and commercial firms.[126]

Scott Sinder of the Independent Insurance Agents of America (IIAA) delivered powerful testimony to the Senate on February 25. He said that while the IIAA had recently come around to the idea of financial modernization, it was disappointed with the Senate draft bill and was unprepared to support it. Sinder claimed that the legislation failed to apply equal regulations to all issuers of insurance and did not adequately address concerns over consumer protections. He urged the committee to insert language into the bill affirming the rights of states to regulate insurance companies. This would ensure that national entities would not be exempt from regulation, as "no comparable regulations exist at the federal level and no federal regulator has expertise in this arena."[127] The preemption of state regulations would be dangerous to consumers, as it would lead to the loss of state regulatory safety nets that were stronger than that of the federal government. In addition, Sinder argued that states should have the right to

---

[123] Ibid.
[124] Ibid.
[125] Ibid.
[126] William McQuillan, "Prepared Testimony of William McQuillan, Independent Bankers Association of America," House Banking and Financial Services Committee, February 10, 1999.
[127] Scott Sinder, "Prepared Testimony of Scott Sinder, Independent Insurance Agents of America," Senate Housing, Banking, and Urban Affairs Committee, February 25, 1999. Available through Proquest Congressional.

discriminate more between banks and non-banks in cases where consumer protections were at stake. Finally, he claimed that consumers would ultimately be harmed if the policies he suggested were not inserted into the bill.[128] Thus, while representatives of community banks and independent insurance agents were amenable to financial modernization, they had significant concerns about the Senate and House draft bills.

Consumer Advocates:

Consumer advocates were in strong opposition to many of the policies contained within the House and Senate draft versions of GLB. On February 25, advocates from the Consumer Federation of America (CFA) and Center for Community Change criticized the Senate draft bill for targeting programs that benefited low income Americans, such as provisions in the CRA. Mary Griffin of the CFA lampooned the legislation for being weighted in favor of the wealthy and financial sector: "Thus far, we have been disappointed that the balance has been tipped too much in favor of industry and regulators' interests, and not the consumer interest…we believe the current proposal is a big step backwards for consumers."[129] She urged the committee to strengthen protections for consumers purchasing insurance and was dismayed by the lack of any protections in the realm of securities. In addition, she worried about the risk of private information being shared between entities and supported stronger non-disclosure requirements in the law.[130] While Griffin accepted the likelihood of financial modernization, she implored the committee to "ensure the market serves the needs of *all* consumers and does not simply cater to the wealthiest."[131]

---

[128] Ibid.
[129] Mary Griffin, "Prepared Testimony of Mary Griffin, Consumers Union and Consumer Federation of America," Senate Housing, Banking, and Urban Affairs Committee, February 25, 1999. Available through Proquest Congressional.
[130] Ibid.
[131] Ibid.

F. Barton Harvey, the Chairman and CEO of the Enterprise Foundation, a group dedicated to rebuilding neighborhoods and helping people to "take control of their lives and communities," appeared before the Senate Banking Community on February 25.[132] He focused his testimony on provisions in the draft version affecting the CRA. Harvey cited the good that the CRA did for inner-city neighborhoods and how it also happened to be profitable for banks. He wanted the Senate draft's language insinuating that CRA groups extort banks into lending to underserved areas removed. Finally, Harvey supported the House bill's precondition that any financial institution wishing to engage in new lending activities must have a "satisfactory" or better CRA rating, which proved an easy bar to clear, as 97% of banks met that standard.[133] In his testimony before the committee, John Taylor of the National Community Reinvestment Coalition addressed many of the same concerns as F. Barton Harvey, but also expressed his worry about the disclosure requirements in the bill. He claimed that the legislation would lead to many new financial products, yet acknowledged that, "worrisome evidence abounds that the banking industry is not properly disclosing the risk associated with [existing] non-deposit investment products."[134] Taylor advocated clear rules dictating that consumers have the right to decide when and under what circumstances their personal information is shared.

On February 11, George Reider, the Connecticut Commissioner of Insurance and Commissioner of the National Association of Insurance Commissioners, testified before the House Banking and Financial Services Committee. He criticized the House draft of GLB for preempting State Insurance Commissioners' rights to enforce consumer protections within their

[132] F. Barton Harvey, "Prepared Testimony of F. Barton Harvey, Chairman and CEO of the Enterprise Foundation," Senate Housing, Banking, and Urban Affairs Committee, February 25, 1999. Available through Proquest Congressional.
[133] Ibid.
[134] John Taylor, ""Prepared Testimony of John Taylor, President and CEO of the National Community Reinvestment Coalition," Senate Housing, Banking, and Urban Affairs Committee, February 25, 1999. Available through Proquest Congressional.

jurisdictions. It would also harm efforts to streamline existing regulations and develop uniformity and eliminate redundancy between states, injecting uncertainty into the regulation of consumer protections in insurance. He asked the committee to restore the rights of state regulators to ensure consumer protections within their territories.[135] The same day, Edmund Mierzwinski, the Consumer Program Director of the U.S. Public Interest Research Group, appeared before the House Committee. He implied that the present legislation did not taking into account the needs of consumers nearly as much as it attempted to mediate issues between regulators and business groups: "It is critical that the Congress balance this bill, not only between the regulators and the special interest, but also in the public interest."[136]

Finally, on February 11, Ralph Nader, appearing as a consumer advocate, lampooned the House draft legislation for ignoring the interests of consumers: "A charitable reading of H.R. 10, Mr. Chairman, would be that it is complicated incitement to consumer riot."[137] He criticized the bill for failing to strengthen the current regulatory framework and for making the Federal Reserve, an institution he characterized as "an indentured big bank agency," the lead regulator.[138] Finally, Nader worried about the possibility of taxpayer deposit insurance dollars being used to bail out a bank that has been brought down by one of its sub-entities, like insurance. In sum, consumer advocates appearing before the Senate and House Banking Committees during February of 1999 criticized the draft legislation for failing to protect individual privacy, weakening the regulatory framework, hurting the CRA, and catering to the interests of big business over consumers.

---

[135] George Reider, "Prepared Testimony of George Reider, Commissioner of the National Association of Insurance Commissioners," House Banking and Financial Services Committee, February 11, 1999.
[136] Edmund Mierzwinski, "Prepared Testimony of Edmund Mierzwinski, Consumer Program Director of the U.S. Public Interest Research Group," House Banking and Financial Services Committee, February 11, 1999.
[137] Ralph Nader, "Prepared Testimony of Ralph Nader, Consumer Advocate," House Banking and Financial Services Committee, February 11, 1999.
[138] Ibid.

The Clinton Administration:

The Clinton Administration supported financial modernization, but placed a strong emphasis on protecting consumers. On February 23, Chairman of the Federal Reserve Alan Greenspan spoke in strong support of the GLB framework. He claimed that if Congress did not act, then "developments will undermine the competitiveness and innovative edge of major segments of our financial services industry."[139] On February 24, Treasury Secretary Robert Rubin addressed the committee. While he did acknowledge that legislation could streamline the natural process of financial modernization, he also claimed that the draft contained "significant provisions that are unacceptable to the Administration, and we would oppose the bill in its current form."[140] Primarily, Rubin worried about the buildup of systemic risk and economic concentration. In addition, he was concerned about several provisions that would weaken the Community Reinvestment Act's support for lending to low and moderate-income individuals. Finally, he worried that the bill did not offer proper disclosure requirements and protections for consumers, given the wide range of new financial products that financial modernization allowed.[141]

Ellen Seidman, the Director of the Office of Thrift Supervision, spoke to the Senate Banking Committee on February 24. She applauded the general idea of financial modernization, so long as it ensured the continued safety of the banking system and maintained much of the current regulatory structure over savings and loan institutions. However, Seidman opposed portions of the bill that reduced consumer protections and coverage by the CRA, claiming that

[139] Alan Greenspan, "Prepared Testimony of Alan Greenspan, Chairman of the Federal Reserve," Senate Housing, Banking, and Urban Affairs Committee, February 23, 1999, http://www.federalreserve.gov/boarddocs/testimony/current/19990223.htm, Accessed March 27, 2012.
[140] Robert Rubin, "Prepared Testimony of Robert Rubin, Secretary of the United States Treasury," Senate Housing, Banking, and Urban Affairs Committee, February 24, 1999. Available through Proquest Congressional.
[141] Ibid.

existing regulations ensure that thrift institutions expand their operations to previously underserved communities: "the CRA stimulates insured depository institutions to pursue creative and profitable financing endeavors they might not have otherwise explored."[142]

In his testimony to the Senate Banking Committee, Securities and Exchange Commission Chairman Arthur Levitt opposed the wide gaps in securities regulation left by the draft version of the GLB Act. In particular, he was concerned about leaving banking exemptions to securities law, even as banks would be allowed to engage in investment banking activities, leaving a "dangerously bifurcated system of regulation."[143] The SEC believed that a financial system with such a loophole intact would undermine the rights of investors and impede the SEC in its mission to "safeguard the integrity, fairness, transparency, and liquidity of U.S. securities markets."[144] He claimed that loss of fairness and transparency in the market would hurt both investors and the economy. Similarly, on February 12, Harvey Goldschmid, the General Counsel of the SEC, argued before the House Banking Committee that the House version of the legislation would provide very different forms of investor protection at securities firms and banks, a situation of which the individual may not even be aware. He described this problem of legislation in no uncertain terms: "At best, the state of affairs is inconsistent. At worst, which may very well be the case, it is dangerous."[145] In sum, members of the Clinton Administration supported the idea of financial services modernization, but had strong misgivings about the nature of early House and Senate drafts of the legislation.

---

[142] Ellen Seidman, "Prepared Testimony of Ellen Seidman, Director of the Office of Thrift Supervsion," Senate Housing, Banking, and Urban Affairs Committee, February 24, 1999. Available through Proquest Congressional.
[143] Arthur Levitt, "Prepared Testimony of Arthur Levitt, Chairman of the Securities and Exchange Commission," Senate Housing, Banking, and Urban Affairs Committee, February 24, 1999. Available through Proquest Congressional.
[144] Ibid.
[145] Harvey Goldschmid, "Prepared Testimony of Harvey Goldschmid, General Counsel of the Securities and Exchange Commission," House Banking and Financial Services Committee, February 12, 1999.

The Senate Version

On May 6, 1999, the Senate passed S. 900, the upper chamber's version of financial modernization, by the margin of 54-44.[146] Of the 54 Senators voting in favor of the bill, 53 were Republicans; the 44 voting against it were all Democrats. The Senate bill differed from the final GLB legislation in two important ways. First, it contained no sections covering consumer protections. While other versions of the legislation would address the issue of the rights of individuals to not have their private information disclosed, S. 900 did not touch the subject.[147] In addition, the Senate bill attempted to roll back the CRA. In Section 303, the legislation considered any bank that had been rated "satisfactory" in its previous CRA inspection to be so until its next examination, making it difficult for consumer complaints to overturn such ratings. The CRS describes this part of the legislation as placing "the burden of proving the substantial verifiable nature of information alleging CRA noncompliance upon the party filing such information," rather than upon the accused bank. In addition, S. 900 granted a huge exemption from the CRA to community banks, waving the regulation for any bank not located in a metropolitan area and not exceeding $100 million in assets.[148]

The Senate version of GLB took a decidedly pro-bank and anti-consumer stance. This legislation barely reflected the views of consumer advocates that came before the panel. By failing to contain a consumer protection section and placing the burden of proof on individuals in reporting CRA violations, this bill clearly favored business interests. Interestingly, the Senate's exemption of small banks from the CRA illustrates the influence of those small banks in the legislative process, relieving that industry of a potentially large cost. The Senate's near party-

---

[146] "U.S. Congress Votes Database," *Washington Post*, http://projects.washingtonpost.com/congress/106/senate/1/votes/105/, Accessed March 27, 2012.

[147] "Bill Summary and Status, 106th Congress, S. 900 (As of 4/28/1999), CRS Summary" *Congressional Research Service*, http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN00900:@@@D&summ2=1&, Accessed March 27, 2012.

[148] Ibid.

line vote (with the more pro-consumer Democratic Party voting against) provides significant evidence to support the hypothesis that S.900 demonstrates a strong relative advantage of banking interests over consumer advocates.

House Version

On July 1, 1999, H.R. 10 passed the House by the wide margin of 343-86. The House bill was decidedly more consumer-friendly than the Senate one. Section 110 was meant to ensure that the CRA was fulfilling its mission: this clause required a report from the Treasury Secretary analyzing whether the CRA was succeeding in providing credit to low and middle income Americans, as well as to small businesses and farms.[149] In addition, the entirely of Title V in the bill was dedicated to consumer protection and privacy rights.[150] Apart from the bill's treatment of consumers and the CRA, H.R. 10 was quite similar to S. 900 and the final version of GLB.

Ironically, a Victoria's Secret catalog had a significant influence on the addition of consumer privacy protections in the House version of the GLB Act. During markups of the bill in the Commerce Committee, Rep. Ed Markey (D-MA) introduced an Amendment providing privacy protections to consumers, called "Title V." Conservative Republican Rep. Joe Barton (R-TX) provided crucial support for this amendment, relating the story of his own experience of having his personal information sold to firms. Barton's credit union sold his address to Victoria's Secret, which began sending catalogs to his Washington house. He worried that his wife would find the magazines and think he was buying lingerie for other women. According to a later statement by consumer advocate Ed Mierzwinski, banking industry lobbyists were caught

---

[149] "Bill Summary and Status, 106th Congress, H.R. 10 (As of 7/01/1999), CRS Summary" *Congressional Research Service*, http://thomas.loc.gov/cgi-bin/bdquery/z?d106:HR00010:@@@D&summ2=m&, Accessed March 27, 2012.
[150] Note: the details of Title V will be explained below in the section on the "Final Legislation."

off guard by Barton's support and were unable to react in time to stall the amendment's passage.[151]

One important proposal that was not accepted in the House version of GLB was a clause allowing bank holding companies to merge with commercial institutions. For example, if such inter-mingling was allowed, Citigroup might try to merge with Wal-Mart or G.E. While many lobbyists from the financial services industry advocated this policy and while the bipartisan Congressional leadership, the Treasury, and some people in the Federal Reserve agreed, Rep. Jim Leach (R-IA) succeeded in preventing its inclusion in any legislation.[152] He feared that the removal of barriers between commercial enterprises and bank holding companies would produce incentives to control commercial firms, rather than lend to families and entrepreneurs. As a result, "the mission of banking would have been transformed from stimulating innovation and entrepreneurship to precipitating asset conglomeration," concentrating wealth in the hands of very few people.[153] Interestingly, Leach argued against this provision by asserting to the banking industry that there was a good chance that their parent firms would be bought by commercial enterprises, rather than the other way around.[154] The defeat of this provision represents the limits of the absolute power of the banking industry in influencing the legislative process: even when the banking industry had the support of party leadership and parts of the Administration, its initiatives were still thwarted largely by one member of Congress. Therefore, H.R. 10 was a much more consumer-friendly bill than the Senate version, a characteristic which is likely reflected in its overwhelmingly strong margin of passage and bipartisan support.

---

[151] Chris Jay Hoofnagle and Emily Honig, "Victoria's Secret and Financial Privacy," *Electronic Privacy Information Center,* 2005, http://epic.org/privacy/glba/victoriassecret.html, Accessed March 27, 2012.

[152] James A. Leach, "The Lure of Leveraging: Wall Street, Congress, and the Invisible Government," in *Financial Market Regulation: Legislation and Implications*, John A. Tatom, ed., (New York: Networks Financial Institute), 188-189.

[153] Ibid., 189.

[154] Ibid., 189*n.*

Final Legislation

Following passages of H.R. 10, the House and Senate were unable to come to terms on a joint version of the bill. When a conference committee was established at the end of July, its members were instructed to craft a pro-consumer compromise: "Consumers enjoy the benefits of comprehensive financial modernization legislation that provides robust competition and equal and non-discriminatory access to financial services and economic opportunities in their communities"[155] Following tense negotiations between the Clinton Administration and Senate Republicans, Gramm-Leach-Bliley passed the House and Senate on November 4, 1999 by the wide margins of 90-8 in the Senate and 362-57 in the House.[156]

Title I in the bill repealed elements of Glass-Steagall and the Bank Holdings Act that prohibited banks from engaging in financial services activities and insurance. On the issue of insurance regulation, the bill partially preempted state laws that "impede or restrict" insurance issuance from insured depositary institutions and enumerated the state regulations that are permitted.[157] Still, Section 111 explicitly gave the regulatory jurisdiction of insurance subsidiaries of banks to the state governments. Section 108 of Title I addressed concerns about "too big to fail," ordering a study and report to Congress about the possibilities for too big to fail institutions and ways to minimize systemic risk.[158] Subtitle C of Title II gave certain investment bank holding companies the option of picking the SEC as their lead regulator, while also giving them the right to voluntarily withdraw from such supervision.[159] The legislation instructed the

---

155 "H.Res 355, H.R. 10," 106th Congress, Library of Congress, http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN00900:@@@X, Accessed March 27, 2012.
156 "Bill Summary and Status, 106th Congress, S. 900 (As of 11/2/1999), Major Congressional Actions," http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN00900:@@@R, Accessed March 27, 2012.
157 "Bill Summary and Status, 106th Congress, S. 900 (As of 11/2/1999), CRS Summary" *Congressional Research Service*, http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN00900:@@@D&summ2=1&, Accessed March 27, 2012.
158 Ibid.
159 Ibid.

Federal Reserve to observe companies with both insurance and banking subsidiaries, keeping an eye on the sharing of business operations information.

The final version of GLB changed the way institutions were regulated, giving the financial services industry greater leeway. For example, banks regulated by the Federal Reserve could own securities affiliates regulated by the SEC that were required to hold significantly less collateral. In addition, securities firms were allowed to own thrifts and industrial loan companies, entities with accessed to FDIC-insured deposits and free of regulation by the Fed.[160] Investment banks quickly took advantage of this rule: between 1999 and 2007, Merrill Lynch expanded its industrial loan company from less than $1 billion to $4 billion. Similarly, Lehman Brothers increased its thrift from $88 million in 1998 to $24 billion in 2005.[161] Such measures were not contested by any major interest groups, even though the deregulation posed the danger of building systemic risk. Thus, the deregulation of financial institution supervision demonstrates the absolute power of business interests in gaining favorable measures from Congress.

<u>GLB and Consumer Rights</u>:

The GLB Act created some questions about privacy and consumer rights. If different types of banking firms engaged in insurance activities, there would be greater risk of the unwanted use of personal information. As such, the amount of information sharing allowed and the disclosure of companies' privacy policies was an important issue for consumer advocates. The negotiation of these consumer privacy rights was an important sticking point in the legislation, particularly for Democrats, the resolution of which helped to ensure its ultimate

[160] *The Financial Crisis Inquiry Report,* 55.
[161] Ibid.

bipartisan passage. The final bill contained three important rules--the Financial Privacy Rule, the Safeguards Rule, and pretexting provisions--that sought to mitigate these privacy concerns.

GLB contained relatively significant explicit consumer protections. Section 305 of the bill directed federal banking agencies to issue regulations prohibiting insurance companies from conditioning the extension of consumer credit on purchasing other products, requiring the physical separation of banking and insurance activities, and outlawing discrimination against victims of domestic violence. In addition, Section 305 mandated that federal banking regulators establish an expedited mechanism for consumers to lodge complaints and allege violations of the bill.[162] Section 324 required the National Association of Registered Agents and Brokers to create an office for consumer complaints.

The entirely of Title V was devoted to privacy and the appropriate use of consumer information, and its language was virtually identical to the Title V language in H.R. 10. The act clearly stated that it is the duty of financial institutions to protect consumers: "Each financial institution has an affirmative, continuing obligation to respect the privacy and to protect the confidentiality of customer nonpublic personal information."[163] The GLB Act required firms to provide an account of their privacy policies to customers, defined as individuals who are engaged in continuous relationships with the financial institutions. Such statements had to include the details of "what information the company collects about its consumers and customers, with whom it shares the information, and how it protects or safeguards the information."[164]

[162] Ibid.
[163] Ibid.
[164] Federal Trade Commission, "In Brief: The Financial Privacy Requirements of the Gramm-Leach-Bliley Act," July 2002, http://business.ftc.gov/documents/bus53-brief-financial-privacy-requirements-gramm-leach-bliley-act, Accessed March, 27, 2012.

In contrast, consumers were defined as individuals who have used a product of service from a particular financial institution. The distinction between customers and consumers is important because consumers were not entitled to a privacy notice unless the firm would be sharing his or her information with non-affiliated firms.[165] In addition, customers and consumers had the right to opt out of information sharing, and firms' privacy statements must clearly state the means by which they may do so. Such opt-out rights were not limited to outside firms, but also included the affiliates of the financial institution.[166] Title V gave enforcement power to the FTC, banking, and securities agencies and required the FTC and Attorney General to report annually to Congress on the status of these consumer protections.[167] The opt-out provisions are important because they allow customers and consumers to avoid having their personal information shared with other firms (like insurance companies) that could ultimately prove detrimental to their interests.

Finally, Subtitle B of Title VII reflected a compromise between the Clinton Administration and Senator Gramm on the Community Reinvestment Act. In late October of 1999, the bill was in danger of being killed over disputes between the Administration and Gramm about the nature of the CRA. Gramm wanted to exempt thousands of smaller banks from the regulation, claiming that it placed a huge burden on them; meanwhile, the White House wanted to outlaw the right of banks with an unsatisfactory CRA lending record to expand into new businesses. In the end, Chris Dodd (D-CT) and Chuck Schumer (D-NY) managed to forge a compromise between the two sides, allowing the bill to move forward.[168] Section 712 set up a schedule for small bank exemptions to CRA exams, provided they had met standards for

[165] Ibid.
[166] Ibid.
[167] *CRS*, S. 900 (As of 11/2/1999).
[168] Stephen Labaton, "Agreement Reached on Overhaul of U.S. Financial System," *New York Times*, October 23, 1999.

community lending. The large margin of passage reflects pro-consumer measures such as expanded individual privacy rights and a protected CRA.[169]

Despite the importance of Title V to consumers, there are several business-friendly aspects of the privacy rules in GLB. First, the onus of deciding whether to opt out of information sharing falls on consumers, rather than the burden to request and receive permission to disseminate such data falling on financial institutions. When companies provide the opt-out wavers to consumers, they may be difficult to decipher and filled jargon. As a result, people who do not want their personal information to be shared may be unable to understand how to prevent firms from sharing it. Despite these concerns, according to John Tatom, the privacy protections in GLB have proven to be effective in preventing the wide dissemination of personal information across subsidiaries of larger institutions. Interestingly, Citigroup provided significant leadership in crafting privacy restrictions contained within GLB.[170]

Conclusions and Reflections

The Financial Services Modernization Act of 1999 represents the culmination of years of lobbying on behalf of the banking, financial services, and insurance sectors to overturn Glass-Steagall. On the whole, interest groups representing big business appear to have been quite successful in getting Congress to pass legislation in accordance with their preferences. However, business influence was not hegemonic vis-à-vis consumer advocates. Representatives of consumers were successful in attaining privacy requirements in resisting attempts to undermine the CRA. It is probable that, when these provisions were changed or added, more pro-consumer representatives and Senators switched their votes in favor of the bill, allowing the final legislation to pass by such a wide margin.

[169] *The Financial Crisis Inquiry Report, 55.*
[170] Tatom, 8.

It should be noted that, since it possessed the power to veto unfavorable legislation, the Clinton Administration had significant power as an advocate for groups other than the financial services sector. In late October of 1999, financial modernization legislation was nearly dead, as the Administration threatened to veto anything that did not protect consumers and maintain the CRA. Given the split between the more pro-consumer House legislation and very pro-business Senate bill, it is difficult to assess the exact degree to which consumer advocates influenced this legislation. In particular, three main counter-factual questions emerge. First, what would the fate of Title V have been had Rep. Joe Barton not strongly supported it? In addition, how would consumer protections and the CRA have been affected if the Clinton Administration were not so active in their favor? Finally, when pressure mounted, did banking and financial services interest groups cave on issues of lesser importance to them (consumer protection and the CRA) in order to gain passage of the rest of GLB (a strong interest)?

This case fits well into the current literature that emphasizes the strong advantage that business groups have throughout the legislative process, but also demonstrates the durability of consumer advocacy. Thus, while the Gramm-Leach-Bliley Act did reward the financial services industry for years of lobbying, consumer advocates were ultimately able (with the help of the Clinton Administration) to influence lawmakers on some key issues.

The Wall Street Reform and Consumer Protection Act

Introduction and Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law by President Obama on July 21, 2010.[171] It represented the largest single overhaul of banking and financial services regulation since Glass-Steagall was passed in 1933. Dodd-Frank was largely a response to the 2007-2008 Financial Crisis. In June of 2009, President Obama called for a "new foundation" to the financial system through legislation that would be a "sweeping overhaul of the financial regulatory system, a transformation on a scale not seen since the reforms that followed the Great Depression."[172] The bill, which spanned nearly 1000 pages, was broken up into sixteen titles, required regulatory agencies to write 243 rules, and called for 67 one-time studies and 22 new periodicals.[173] Dodd-Frank coincided with a rash of spending and campaign contributions by business interest groups. According to 2010 numbers from the Center for Responsive Politics, the finance/insurance/real estate sectors spent more than $475 million in lobbying expenditures and gave nearly $63 million to Congressional candidates through PAC's from 2008-2010.[174]

---

[171] "Bill Summary and Status, 111th Congress, H.R. 4173 (As of 7/21/2010), CRS Summary" *Congressional Research Service*, http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04173:@@@L&summ2=m&#major%20actions, Accessed March 27, 2012.
[172] Barack Obama, "Remarks by the President on 21st Century Financial Regulatory Reform," June 17, 2009, http://www.whitehouse.gov/the_press_office/Remarks-of-the-President-on-Regulatory-Reform/, Accessed March 27, 2012.
[173] Congress, House & Senate, 111th Congress, 2nd Session, H.R. 4173, http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf. Accessed March 27, 2012.
Also see Davis Polk & Wardwell, "Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Enacted into Law on July 21, 2010," July 21, 2010, http://www.davispolk.com/files/Publication/7084f9fe-6580-413b-b870-b7c025ed2ecf/Presentation/PublicationAttachment/1d4495c7-0be0-4e9a-ba77-f786fb90464a/070910_Financial_Reform_Summary.pdf, Accessed March 27, 2012.
[174] Center for Responsive Politics, "Finance, Insurance, and Real Estate," http://www.opensecrets.org/pacs/sector.php?cycle=2010&txt=F01, Accessed March 27, 2012.

<u>Causes of the Financial Crisis</u>:

In 2007 and 2008, the U.S. economy was hit with the largest financial meltdown since the Great Depression. During the crisis, two of the country's largest investment banks--Bear Stearns and Lehman Brothers--either filed for bankruptcy or were sold for a fraction of their recent worth. In addition, Congress passed the Troubled Asset Relief Program (TARP) to stabilize the financial system and keep the economic downturn from spiraling out of control. In 2011, the Financial Crisis Inquiry Board submitted an illuminating report on the causes of the crisis. The report concluded that the calamity was avoidable and that there had been strong warning signs of the crisis that went either ignored or discounted.[175]

The people responsible for the crisis included banks, securities firms, mortgage originators, government regulators, credit rating agencies, and consumers. On Wall Street, the constant pursuit of risk and increased leverage fueled the Financial Crisis. Firms continually sought new ways to reduce the amount of collateral they were required to own, thus giving them an opportunity to earn higher profits. Banks sought risky loans on which they could earn high rates of return and sell to risk-seeking investors. At Merrill Lynch, CEO Stan O'Neil pushed the firm to take on more risk, hiring "aggressive young turks while getting rid of those who didn't have the risk appetite he was looking for."[176] Such actions led to the mortgage machine, through which Wall Street firms needed to fill a seemingly insatiable appetite for investments with higher yields. This mentality created a system that was in serious danger of creating a financial crisis.

The inflation of the mortgage bubble was greatly aided by poor and predatory mortgage origination, led by originating companies that competed for market share and sought to sell off their mortgages to Wall Street banks as quickly possible. In 2003, approximately 8% of

---

[175] *The Financial Crisis Inquiry Report*, xvii.
[176] Nocera and McLean, 163.

originated loans were "subprime," lent to borrowers without ideal credit. By 2005, this number had more than doubled to 20% and was still rising. [177] Most subprime loans were not classic 30-year fixed interest rate mortgages, but hybrid, adjustable-rate mortgages with a low teaser rates. For example, a 2/28 loan would have a low set rate for the first two years and then would reset to a higher, adjustable interest rate during the third year.[178] In some cases, people were sold 80/20 piggyback loans, in which the homebuyer would take out two loans: one for the mortgage and one for the down payment.[179] Possibly the most dangerous type of subprime loan was the "Pay Option ARM." These products let consumers choose whatever interest rate they wanted from the start, beginning at a teaser rate so low that it did not even cover the accumulation of interest. Once the money owed by the consumer increased to a certain level, a trigger would kick in, forcing the borrower to suddenly begin paying the full interest rate.[180] Compounding the risk of the existence such mortgages on a large scale was their sheer profitability: Pay Option ARM's were five-times more profitable for mortgage originators than a prime fixed-rate loan.[181] Between 2003 and 2006, the market volume of such loans increased from $65 billion to $255 billion.[182] The continuation of the system was built on the proposition that the housing market would continue to go up indefinitely; in order to prevent defaulting on loans, subprime borrowers would frequently refinance and receive new teaser rates. If the housing market either crested or fell, borrowers would be unable to refinance and default rates would skyrocket.

In order to meet the constant Wall Street demand for loans, originators had to drop lending standards. One solution was to decrease the amount of documentation required to

[177] *The Financial Crisis Inquiry Report*, 104.
[178] Ibid.
[179] Ibid., 110.
[180] Nocera and McLean, 135.
[181] Ibid.
[182] *The Financial Crisis Inquiry Report,* 108.

receive a loan. Between 2000 and 2007, the percentage of all loans that were low-and no-doc increased from 2% to 9%. In 2006, 80% of nonprime Alt-A loans had limited or no documentation.[183] The mortgage origination market was fraught with examples of fraud and predatory lending. In many cases, employees of originators would falsify documents to approve customers for loans that they would never be able to repay. In *All the Devils Are Here*, Joe Nocera and Bethany McLean tell stories of loan originators forging signatures and entire documents in order to get loans approved. One former Ameriquest loan officer named Lisa Taylor alleged in court documents that management "cordoned, encouraged, and participated in extensive document alteration, manipulation, and forging in order to sell more loans."[184] Without the actions of subprime mortgage originators, the housing bubble would not have been able to grow nearly as large as it did.

The credit rating agencies--Moody's, Standard & Poor's, and Fitch--were faced with perverse business incentives and consistently overrated mortgage-backed securities right up to the start of the crisis. These agencies were essential to the operation of the mortgage securitization process: they rated tranches of mortgage-backed securities and other derivatives, and provided information critical for banks in determining how much collateral to hold.[185] Unfortunately, their business model created large and destructive conflicts of interest. The ratings agencies were paid for every deal they rated. In addition, the existence of three institutions allowed Wall Street firms to "shop ratings," playing them against each other and creating incentives to give favorable ratings.[186] After Moody's went public in 2000, its drive for market share increased and it began to care less about issuing accurate ratings than it did about

---

[183] Ibid., 110.
[184] Nocera and McLean, 130.
[185] *The Financial Crisis Inquiry Report,* 118.
[186] Nocera and McLean, 117.

gaining business.[187] Adding to the problem, the share of Moody's revenue contributed by structured financial products (of which mortgage backed securities were a part) more than quadrupled between 2000 and 2007. According to the Financial Crisis Inquiry Report, the credit agencies' financial risk models for mortgage-backed securities were based on faulty assumptions and failed to take into account negative trends in loan underwriting standards.[188] As a result, the credit ratings agencies rated thousands of mortgage-backed securities as being much less risky than they actually were, thereby subjecting the entire financial system to unknown risks.

One of the largest factors underlying the eventual size and severity of the Financial Crisis was the influence of credit derivatives, especially collateralized debt obligations (CDO's), synthetic collateralized debt obligations (synthetic CDO's), and credit default swaps (CDS's). A CDO is a bundle of tranches (sections, rated by risk-level) of other securities that is repackaged in its own security. Prior to the Financial Crisis, investment banks were having a difficult time selling the riskier tranches of mortgage-backed securities, so they "created the investor" for them.[189] Because of faulty ratings models (and often a lack of will to be more accurate), the ratings agencies classified 80% of these CDO's as AAA, as safe as U.S. Treasury bonds.[190] Then, the banks were able to sell these new securities relatively easily. Adding to the risk were credit default swaps. Essentially, a credit default swap is an insurance policy on a security or securities: the buyer pays a fee to the insurer, but is covered in the event of any losses in the underlying security. CDS's were the vehicle that nearly brought down AIG: the firm's financial services practice ultimately insured $533 billion of securities by 2007.[191]

---

[187] Ibid., 116-117.
[188] *The Financial Crisis Inquiry Report,* 118.
[189] Ibid., 127.
[190] Ibid.
[191] Ibid., 143.

However, what turned the proverbial "keg of dynamite" into a "nuclear bomb" was the addition of the synthetic CDO.[192] Synthetic CDO's are collections of CDS's referencing existing CDO's. They contained no asset-backed tranches and essentially served no purpose other than to bet on the performance of the underlying securities. As such, every synthetic was a zero-sum game: one party went long and one went short; one made money and one lost it.[193] Synthetic CDO's allowed the replication of risky securities many times over: there was no limit to the number of side-bets that could be made on other securities, so long as there were people willing to take both sides of the wager. For example, one tranche in a CDO called Glacier Funding CDO 2006 4-A had the original worth of $15 million, but was referenced in $85 million of synthetic CDO's.[194] Tranches used by Goldman Sachs in these derivatives were replicated as many as 9 times.[195] Thus, CDO's, CDS's, and synthetic CDO's were powerful contributors to the buildup of risk in the financial system.

The financial crisis was also a profound and spectacular failure of government policy. In the late 1990s, the Clinton Administration had an internal debate regarding the proper way to regulate derivatives. Brooksley Born, the head of the Commodity Futures Trading Commission (CFTC) proposed regulating Over the Counter derivatives as futures under the authority of CFTC, but was ultimately rebuffed by others in the Administration. The Commodity Futures Modernization Act of 2000 solidified the deregulation of derivatives, banning CFTC from claiming oversight authority.[196] The power to regulate derivatives would have been extremely important to the government's having a better idea of the buildup of risk from mortgage-backed derivatives. The Financial Crisis Inquiry Report blames the Treasury, Fed, and other agencies

---

[192] Nocera and McLean, 263.
[193] *The Financial Crisis Inquiry Report,* 142-145.
[194] Ibid., 145.
[195] Ibid.
[196] Nocera and McLean, 104-109.

for failing to realize that risk was being concentrated in the financial system, rather than diversified. In addition, it claims that the federal regulators' response amounted to "programs to put fingers in the dike." It continues to argue that such regulars had no unified plan to contain the crisis, leading to confused and inconsistent actions.[197] Therefore, the Financial Crisis was largely caused and exacerbated by the excessive pursuit of risk and leverage, poor and predatory lending standards, credit derivatives, and ineffective government action. Dodd-Frank sought to correct these and other problems.

Committee Hearings

Between the fall of 2008 and the final passage of Dodd-Frank in the summer of 2010, the Senate Committee on Banking, Housing, and Urban Affairs and Committee on Agriculture and House Committee on Oversight and Regulation, Committee on Financial Services, Committee on Energy and Commerce, and Committee on Agriculture held dozens of hearings on the financial crisis and policies being considered for regulatory reform. A few broad trends have presented themselves throughout these panels.

<u>Banking Industry Advocates</u>:

Representatives of the banking industry opposed many of the new proposed regulations that were being considered for financial regulatory reform. This sentiment is embodied in a November, 2009 quote by Ed Yingling, the President of the American Bankers Association, to the *Washington Post*: "To some degree, it looks like they're just blowing up everything for the sake of change…If this were to happen, the regulatory system would be in chaos for years. You have to look at the real-world impact of this."[198]

---

[197] *The Financial Crisis Inquiry Report,* xxi-xxii.
[198] Binyamin Appelbaum and Brady Dennis, "Legislation by Senator Dodd Would Overhaul Banking Regulators," *Washington Post,* November 11, 2009.

On September 30, 2009, the House Financial Services Committee held a hearing on proposed consumer protection reform. Michael Menzies of the Eastern Community Bank and Trust and the Independent Community Bankers of America (ICBA) was concerned that the CFPB would harm small and community banks, while leaving large institutions both "too big to fail" and "too big to regulate."[199] He claimed that since the CFPB was not concerned with the safety and soundness of community banks, it would tend to release rules that would ''promulgate unnecessarily burdensome or contrary rules to those issued by the prudential regulator.''[200] Instead, the ICBA requested that the CFPB be given separate guidelines in dealing with smaller entities. Finally, Ed Yingling of the American Bankers Association testified before the House Financial Services Committee. While he commended the panel for adding more nuance to consumer protection rules, he also asked it to consider the interests of community banks, "the great majority of which had nothing to do with causing the financial crisis, which are struggling with a growing mountain of regulatory burdens."[201] Yingling claimed that the CFPB was given powers well beyond what were needed to correct the wrongs of the Financial Crisis. In particular, he criticized the use of "vague terms" in establishing guidelines for the agency, arguing that they will lead to "uncertainty" in credit markets, causing a reduction in credit extension.[202]

On February 4, 2010, E. Gerald Corrigan, a Managing Director at Goldman Sachs, appeared before the Senate Banking, Housing, and Urban Affairs Committee. He opposed several aspects of the Volcker rule then being proposed by President Obama and considered by the Senate. First, he argued that the proposal would lead to difficult questions about what

---

[199] Michael Menzies, "Prepared Testimony of Michael Menzies, Eastern Community Bank and Trust and the Independent Community Bankers of America," House Financial Services Committee, September 30 2009, p. 44-45.
[200] Ibid., 45.
[201] Edward Yingling, "Prepared Testimony of Ed Yingling, American Bankers Association," House Financial Services Committee, September 30 2009, p. 47.
[202] Ibid., 48.

constitutes proprietary trading and what is normal "market making by banks." In addition, Corrigan claimed that the risks associated with the ownership of hedge funds and private equity firms could be "effectively managed and limited by means short of outright prohibition."[203] He argued that such subsidiaries are essential in creating best practices in new markets, such as energy, and would too bluntly deal with the conflicts of interest associated with modern finance.[204]

The same day, Barry Zubrow of JP Morgan Chase resisted the Volcker Rule. He flatly claimed that, "the activities the Administration proposes to restrict did not cause the financial crisis," and in many cases actually helped financial firms to diversify risk and weather the economic storm.[205] He argued that the current regulatory framework was a sound basis for controlling proprietary trading risk and that the new regulatory regime should be expanded to non-deposit holding institutions that are connected with the financial system.[206] Zubrow also strongly criticized the Administration's proposal to limit the size of financial firms, claiming that the concentration of institutions had little to do with worsening the crisis and noting that the U.S. is less concentrated than other highly developed countries.[207] In sum, representatives of the banking industry recognized the need for additional consumer protection, but opposed significant parts of the CFPB and Volcker Rule.

<u>Financial Services Industry Advocates</u>:

Representatives of financial services were generally complementary when discussing potential proposals for Dodd-Frank. At a July 2009 hearing in front of the House Finance

[203] E. Gerald Corrigan, "Prepared Testimony of E. Gerald Corrigan, Goldman Sachs," Senate Banking, Housing, and Urban Development Committee," February 4, 2010.
[204] Ibid.
[205] Barry Zubrow, "Prepared Testimony of Barry Zubrow, JP Morgan Chase," Senate Banking, Housing, and Urban Development Committee," February 4, 2010.
[206] Ibid.
[207] Ibid.

Committee, representatives of the banking and securities industries expressed their opinions on President Obama's proposed reform legislation. Richard Baker, the CEO of the Managed Funds Association, a trade association for hedge funds, began his testimony by emphasizing the small role that hedge funds played in the Financial Crisis.[208] While he agreed to the proposal to require hedge funds to register with the SEC and the creation of clearinghouses for Over the Counter (OTC) derivatives, he emphasized the need to allow hedge funds to enter into customized derivatives contracts. Randolph Snook, the Executive Vice President of the Securities Industry Financial Markets Association supported many of the policies designed to prevent the buildup of systemic risk, including the creation of a Financial Services Oversight Council, and the clearinghouses to regulate OTC derivatives.[209] Douglas Lowenstein, the President and CEO of the Private Equity Council, was largely complementary of the Obama proposal. He supported many new forms of regulation, but sought an exemption for private equity firms from certain regulations to prevent systemic risk.[210] These witnesses viewed additional regulation as a means to improve market transparency and efficiency.

On October 7, 2009, the House Financial Services Committee held a hearing specifically on limiting risk in the OTC derivatives market. Scott Sleyster, representing the American Council of Life Insurers, supported federal regulation of the OTC derivatives market, especially through a central clearing house for trades. While he had some concerns that certain insurance products would be misconstrued to apply to derivative regulation, Sleyster was pleased with the

---

[208] Richard Baker, "Prepared Testimony of Richard Baker, Managed Funds Association," House Financial Services Committee, February July 17, 2009, http://financialservices.house.gov/media/file/hearings/111/62.pdf, p. 8-11, Accessed March 27, 2012.
[209] Randolph Snook, "Prepared Testimony of Randolph Snook, Securities Industry Financial Markets Association," House Financial Services Committee, July 17, 2009, http://financialservices.house.gov/media/file/hearings/111/62.pdf, p. 12, Accessed March 27, 2012.
[210] Douglas Lowenstein, "Prepared Testimony of Douglas Lowenstein, Private Equity Council," House Financial Services Committee, July 17, 2009, http://financialservices.house.gov/media/file/hearings/111/62.pdf, p. 15, Accessed March 27, 2012.

proposals in the Dodd-Frank draft.[211] Like other representatives of the financial services industry, James Hill of Morgan Stanley and the Securities Industry and Financial Markets Association spoke highly of the House draft legislation to increase "oversight of the derivatives markets and the activities of individual market participants."[212] He had relatively minor concerns with the legislation, mainly concerning the treatment of different types of swaps and the desire for more authority by the SEC and CFTC.[213] Finally, Stuart Kaswell, the General Counsel for the Managed Funds Association, a trade group for hedge funds, addressed the committee. Citing the need to prevent another catastrophe like the one that befell AIG and Lehman Brothers, Kaswell applauded the committee's work to push sound regulatory reform legislation. In particular, he praised clearinghouses for OTC derivatives and further regulation of counterparty risk.[214]

On December 2, 2009, the Senate Agriculture Committee held a hearing about proposed legislation to reform regulation of the financial derivatives market. Blythe Masters of JP Morgan Chase supported the general idea of having OTC derivatives pass through central clearing houses, but cautioned the Senators that not all OTC market participants would be capable of going through such institutions and that not all derivatives could be regulated on such exchanges. She advised the committee to focus more on reducing counterparty exposure to risk than on simply clearing as many deals as possible.[215] In addition, Masters supported requiring markets to

---

[211] Scott Sleyster, "Prepared Testimony of Scott Sleyster, American Council of Life Insurers," House Financial Services Committee, October 7, 2009, p. 47-48.
[212] James Hill, "Prepared Testimony of James Hill, Morgan Stanley and the Securities Industry and Financial Markets Association," House Financial Services Committee, October 7, 2009, p. 51.
[213] Ibid.
[214] Stuart Kaswell, "Prepared Testimony of Stuart Kaswell, Managed Funds Association," House Financial Services Committee, October 7, 2009, p. 53-54.
[215] Blythe Masters, "Prepared Testimony of Blythe Masters, JP Morgan Chase," Senate Agriculture Committee," December 2, 2009.

incorporate more information sharing and the guaranteed right of regulators to attain "any information at any time and in any form."

Finally, on September 30, 2009, Bill Himpler of the American Financial Services Association (AFSA) addressed the House Financial Services Committee on consumer protection policies in the proposed regulatory reform bill. Himpler supported the idea of greater consumer protection, but had serious reservations about the nature of the House proposal. First, he questioned the CFPB's approach to regulation, claiming that it would "try to fix what is still working and use a one-size-fits-all approach…to financial service products."[216] For example, trying to compare terms on a 30-year fixed-rate mortgage to a loan for a washing machine would be both inflexible and unhelpful. Himpler claimed that the CFPB would lead to a reduction of credit available to consumers and that the increased regulatory costs associated with the regulation would be passed on to consumers as a sort of "tax."[217] He argued that the CFPB would ultimately not serve the needs of consumers and that these people would be better served in an improved version of the current regulatory framework. In sum, members of the financial services industry were largely supportive of House and Senate financial regulatory reform proposals for derivatives reform; they were less in favor of existing consumer protection reform plans.

Consumer Advocates:

Consumer advocates saw financial regulatory reform as an opportunity for important legislation guaranteeing the rights of consumers to be passed. In particular, they supported the creation of a consumer financial protection bureau, new regulations to prevent predatory lending, and whistleblower protections. On September 30, 2009, the House Finance Committee held a

[216] Bill Himpler, "Prepared Testimony of Bill Himpler, American Financial Services Association," House Financial Services Committee, September 30 2009, p. 49.
[217] Ibid., 50.

hearing specifically on the proposed Consumer Financial Protection Bureau. Hilary Shelton of the National Association for the Advancement of Colored People (NAACP) supported the creation of the CFPB as a means to help end the targeting of minorities, the elderly, and others by "unscrupulous lenders" and the underserving of these people by traditional financial firms.[218] Shelton blamed inconsistencies in the current set of rules and lax enforcement standards for the "financial stagnation, and, in too many cases, the economic ruin of people's lives, families, and entire communities."[219] She believed that the CFPB would help to prevent many of the abuses that led to the Financial Crisis and that it would ease the lives of many people who struggle to deal with financial institutions. Shelton did request that the regulation of the CRA be placed under the CFPB and that requirements in the CRA be strengthened and expanded.[220]

Similarly, Michael Calhoun of the Center for Responsible Lending supported the creation of the CFPB, claiming that, had it existed, it would have prevented many of the worst abuses prior to the Financial Crisis.[221] He blasted federal preemption of state laws aimed to prevent consumers from being exploited and beseeched Congress not to preempt stronger state laws when implementing the CFPB. Instead, Calhoun proposed that the CFPB exist in addition to state consumer protection laws, allowing localities to "detect problems and test solutions."[222] Janis Bowdler of the National Council of La Raza (NCLR) emphasized the importance of new consumer protections for minorities: "Subprime creditors frequently targeted minority communities as fertile ground for expansion."[223] She cited a HUD study from 2000, finding that

---

[218] Hilary Shelton, "Prepared Testimony of Hilary Shelton, National Association for the Advancement of Colored People," House Financial Services Committee, September 30 2009, p. 9.
[219] Ibid.
[220] Ibid., 10.
[221] Michael Calhoun, "Prepared Testimony of Michael Calhoun, Center for Responsible Lending," House Financial Services Committee, September 30 2009, p. 11.
[222] Ibid., 13.
[223] Janis Bowdler, "Prepared Testimony of Janis Bowdler, National Council of La Raza," House Financial Services Committee, September 30 2009, p. 14.

low-income black individuals were three times more likely to receive subprime loans than were white people of similar incomes.[224] Bowdler commended the proposal for the CPFB, particularly the Office for Fair and Equal Opportunity and the draft bill's refusal to preempt stronger state laws. She proposed eliminating loopholes for credit unions, real estate brokers, and auto-lenders and supported bringing the CRA under CPFB jurisdiction.[225] Finally, Anna Burger of the Service Employees International Union testified in favor of consumer protections in the House draft bill. In particular, Burger commended the presence of whistleblower protections-- measures that would provide bank employees with a voice in calling attention to harmful and deceptive practices--in the legislation.[226] Thus, consumer advocates strongly supported measures in Dodd-Frank aimed at protecting consumers and preventing deceptive and abusive practices.

Discrepancies in House and Senate Forms of Financial Regulatory Reform Legislation

In June of 2009, President Obama released a report detailing his goals for financial regulatory reform.[227] His outline provided an important blueprint for both the House and Senate versions of Dodd-Frank. Indeed, as he prepared to sign the final legislation, President Obama remarked that the final agreement "represents 90 percent of what I proposed when I took up this fight."[228] Financial regulatory reform legislation was introduced into the House on December 2,

[224] Ibid.
[225] Ibid., 15.
[226] Anna Burger, "Prepared Testimony of Anna Burger, Service Employees International Union," House Financial Services Committee, September 30 2009, p. 16-17.
[227] Barack Obama, "Remarks by the President on 21st Century Financial Regulatory Reform."
[228] Barack Obama, "Remarks by the President on Wall Street Reform," June 25, 2010, http://www.whitehouse.gov/the-press-office/remarks-president-wall-street-reform-1, Accessed March 27, 2012.

2009.[229] It passed on December 11 by the margin of 223-202. No Republicans supported the bill and 27 Democrats voted against it.[230]

Following the passage of H.R. 4173 from the House, the Senate received the legislative baton on financial regulatory reform. On May 20, 2010, the Senate Banking, Housing, and Urban Affairs Committee and the entire Senate passed the upper chamber's version of H.R. 4173. The bill passed by the margin of 59-39, with 56 Democrats in favor and 2 Democrats voting against. On the Republican side, Senators Brown (R-MA), Snowe (R-ME), and Collins (R-ME) supported the legislation; Senators Feingod (D-WI) and Cantwell (D-WA) opposed it.[231] Much of the legislation is similar to the House and conference reports, though there are some major differences.

The Senate legislation, unlike the House version, contained a prohibition on proprietary trading by any insured depositary institution or entity that controls an insured depositary institution, known as "The Volcker Rule."[232] The existence of this policy in the Senate bill is a reflection of President Obama's endorsement of a proprietary trading ban on January 21, after the passage of the House legislation.[233] Unlike the Volcker Rule in the final Dodd-Frank, the Senate's legislation included an outright ban on investment banks "sponsoring or investing in hedge funds or private equity funds," rather than the partial ban in the final legislation.[234]

---

229 "Bill Summary and Status, 111th Congress, H.R. 4173, Major Congressional Actions," *Congressional Research Service*, http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04173:@@@R, Accessed March 27, 2012

230 House Clerk, "Final Vote Results for Roll Call 968," 111th Congress, http://clerk.house.gov/evs/2009/roll968.xml, Accessed March 27, 2012.

231 "On Passage of H.R. 4173, U.S. Senate Roll Call Votes, 111th Congress, 2nd Session," *United States Senate*, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=2&vote=00162, March 27, 2012.

232 Congress, Senate, 111th Congress, 2nd Session, H.R. 4173, Section 619, 485.

233 Matt Taibbi, "Wall Street's Big Win," *Rolling Stone*, August 4, 2010, http://www.rollingstone.com/politics/news/wall-streets-big-win-20100804, Accessed March 27, 2012.

234 Davis Polk & Wardwell, "Side By Side Comparison Chart: Key Senate and House Bill Issues," June 2, 2010, 76-77, June 2, 2010, http://www.davispolk.com/files/Publication/d243b01a-324f-4ccd-85a5-e9bb42d70920/Presentation/PublicationAttachment/c56258f4-0e4e-479e-8632-ea9b08fc2b82/060210_SenateHouseComparisonChart.pdf, Accessed March 27, 2012.

Senators Merkley (D-OR) and Carl Levin (D-MI) drafted an even stronger version of the Volcker Rule and were building a coalition of Senators to support it as an amendment to the bill. However, Republican senators invoked the "unanimous consent" rule, by which all members would have to agree to bring an amendment to the floor for a vote. After this failure, Merkley and Levin managed to attach their amendment to an unrelated one by Senator Sam Brownback (R-KS) that exempted auto-dealers from the Consumer Financial Protection Bureau. However, just before the measure came to the floor for a vote, Senator Brownback withdrew his amendment, killing Merkley-Levin simultaneously.[235]

Like the House and final bills, the Senate established clearinghouses through which derivatives had to be cleared. Unlike both the House and conference reports, however, the upper chamber banned banks from derivatives trading. It voted down an amendment to ban the use of naked CDS's (buying a CDS without also owning the underlying CDO).[236] Like the other two bills, the Senate established the CFPB, but did so in a manner more consistent with the final legislation. Like the conference report, this legislation created the CFPB as a stand-alone body, independent of the Fed. It also had broader regulatory authority, including over auto-loans, a provision that was ultimately removed in the conference committee.[237] In sections relating to predatory lending, unlike the Senate and final bills, the House version did not require mortgage originators to verify that consumers have a "reasonable ability to repay" their loans.[238]

On the issue of "too big to fail," the House, Senate, and final bills were largely consistent. One notable amendment that would have placed a limit on the size of financial institutions failed

---

[235] Taibbi.
[236] "Major Parts of the Financial R," *New York Times*, May 20, 2011, http://www.nytimes.com/interactive/2010/05/20/business/20100520-regulation-graphic.html, Accessed March 27, 2012.
[237] Ibid.
[238] Davis Polk & Wardwell, "Side By Side Comparison Chart," 144.

in the Senate.[239] Investor protections were also slightly different in the Senate form of the bill, excluding provisions requiring banks to retain a certain percentage of simple products like mortgages and inserting language mandating that investment brokers act in the interest of their clients.[240] The Senate bill also contained the "Durbin Amendment," named after Illinois Democratic Senator Richard Durbin. This policy was not included in the House bill, but was maintained in final legislation. The Durbin Amendment gave the Federal Reserve the power to regulate the fees that credit and debit card issuers charge consumers, requiring that such transaction fees be "reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction."[241] Finally, Title XI of the House bill was much more limited in scope than the final bill, not including major restructuring of the Federal Reserve and failing to create a new Vice Chairman position.[242] In sum, despite containing some different provisions and rules, the House and Senate bills are largely similar, tending to favor strong regulatory power and consumer interests over the interests of financial services firms.

Conference Committee and The Final Bill

On June 9, 2010, the House rejected the Senate version of financial regulatory reform and appointed members to a conference committee.[243] The Senate version of financial regulatory reform served as the model for much of the conference committee's work.[244] By June 29, the conference issued a unified version of Dodd-Frank; it was passed in the House on June 30 by the

---

[239] Ibid.
[240] Ibid.
[241] Congress, Senate, 111th Congress, 2nd Session, S. 3217, Section 920.
[242] Davis Polk & Wardwell, "Side By Side Comparison Chart," 151.
[243] "2010 Bill Tracking H.R. 4173; 111 Bill Tracking H.R. 4173," *Congressional Research Service*. Available through Proquest Congressional.
[244] Sewell Chan, "Congressional Negotiators Start Effort to Merge Versions of Financial Reform Bills," *New York Times*, June 10, 2010.

margin of 327-192 and in the Senate on July 15 by the vote of 60-39.[245] In the House, three Republicans voted in favor of the bill and 19 Democrats voted against it; otherwise, this was a partisan roll call (Democrats voting in favor). On the Senate side, 59 Democrats and Scott Brown (R-MA) voted for Dodd-Frank and 39 Republicans opposed it.[246]

Title I of the bill focused on maintaining financial stability and preventing the buildup of systemic risk. This section created two offices within the Treasury Department: the Financial Stability Oversight Council (FSOC) and the Office of Financial Research. The Financial Stability Oversight Council is headed by the Treasury Secretary and consists of the heads of various regulator agencies, including the Federal Reserve, Office of the Comptroller of the Currency (OCC), and the SEC. This body was required to meet at least four times a year and was instructed to "identify risks to U.S. financial stability…promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure, [and] respond to emerging threats to the stability of the financial system."[247] The FSOC was given the power to bring domestic and foreign non-bank financial companies under supervision and require them to register with the Fed. In addition, it had the authority to collect information from any state or federal financial regulatory agency and may require any bank or non-bank financial institution with assets in excess of $50 billion to submit reports on its financial condition, risk management practices, and transactions. Moreover, it had the power to take actions to mitigate risk among such large institutions, including ordering them to terminate activities, restrict the

[245] "Bill Summary and Status, 111th Congress, H.R. 4173, CRS Summary" *Congressional Research Service*, Available at http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04173:@@@R, Accessed March 27, 2012.
[246] Ibid.
[247] "Bill Summary and Status, 111th Congress, H.R. 4173, CRS Summary (As of 7/21/2010)," *Congressional Research Service*, Available at http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04173:@@@D&summ2=m&, Accessed March 27, 2012.

sale or use of financial products, or order them to move assets to an unaffiliated entity.[248] The Office of Financial Research was tasked with supporting the FSOC and subpoena power over any financial institution.[249] Other important rules in Title I include subjecting non-bank financial companies supervised by the Fed to the same enforcement procedures in the Federal Deposit Insurance Act to which banks are subjected, giving the Fed the power to order stress tests, and requiring large institutions to minimize credit exposures to the failure of one institution to 25% of the company's stock.[250]

Title II detailed the process by which financial entities may be liquidated in an orderly fashion. Dodd-Frank allowed the FDIC and Securities Investor Protection Corporation to liquidate insurance companies and non-bank financial institutions if they meet the legal standards for such action, subject to appeal by a bank's board to federal district court.[251] This section of the legislation was meant to minimize the possibility of future bailouts of financial institutions. Title III abolished the Office of Thrift Supervision (OTS), splitting the agency's duties and power among other regulators. In particular, the OCC received the power to regulate federal savings associations and was given chief rule-making power over these organizations. The legislation provided the Fed with significant power in the interim between the abolition of the OTC and when the OCC would assume control. Finally, Dodd-Frank replaced the OTC Director's place on the FDIC board with the head of the new Consumer Financial Protection Bureau.[252]

Title IV, also known as the "Private Fund Investment Advisers Registration Act of 2010," introduced significant regulation over hedge funds. The act required hedge funds to keep

---

[248] Ibid.
[249] Congress, House & Senate, 111th Congress, 2nd Session, H.R. 4173, Section 153.
[250] *CRS* Summary, H.R. 4173 (As of 7/21/2010).
[251] Ibid.
[252] Ibid.

certain records, including the amount of assets under management, leverage, and counterparty exposure and to provide these records to the SEC if the agency makes a reasonable request for them.[253] Interestingly, these regulations of hedge funds came even as most observers agreed that such financial institutions had little to do with causing the financial crisis.[254] Title V, containing the "Federal Insurance Office Act of 2010," created the Federal Insurance Office (FIO) within the Treasury. This office was ordered to "monitor the insurance industry, identify issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the U.S. financial system, [and] monitor the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable insurance products."[255] The FIO was given subpoena power and the authority to enforce regulations. This portion of Dodd-Frank is explicitly pro-consumer in its emphasis on the rights and interests of underserved communities.

Title VI is also known as the "Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010." It contained the important and controversial measure known as the Volcker Rule. Named for former Chairman of the Federal Reserve Paul Volcker, the Volcker rule banned banking entities from engaging in proprietary trading and from owning more than 3% of any hedge fund or private equity firm.[256] Additionally, Section 621 contained a conflict of interest provision banning banks from engaging in any deal that would produce a conflict of interest with their clients. The 3% allowance was weaker than the original Senate version of the policy, which issued a blanket ban. This policy

[253] Davis Polk & Wardwell, "Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act" 66.
[254] Ibid., 64.
[255] *CRS* Summary, H.R. 4173 (As of 7/21/2010).
[256] David Indiviglio, "Congress's Conference Committee Completed for Financial Reform," *The Atlantic,* June 25, 2010, http://www.theatlantic.com/business/archive/2010/06/congress-conference-committee-completed-for-financial-reform/58718/, Accessed March 27, 2012.

was designed, in part, to prevent some of the conflicts of interest that had developed in the lead-up to the Financial Crisis. In many cases, investment banks secretly took the short side of deals on which their clients went long. In the famous Abacus Deals, Goldman Sachs packaged risky mortgage-backed securities into synthetic CDO's and sold them to investors while it took the short side of the deal. When many of these securities became worthless in the wake of rising foreclosures, Goldman reaped billions in profits while its investors lost considerable sums.[257] The legislation ordered the CFTC and SEC to develop the exact regulatory framework that will be used to enforce the Volcker Rule.[258] This regulation is quite controversial, as it greatly curtails a significant stream of revenue for investment banks. However, the degree to which financial services interests are able to influence the result of this legislation will become clearer when the SEC and CFTC fill in the remaining gaps in the bill.

Title VII of Dodd-Frank, the "Wall Street Transparency and Accountability Act of 2010," concerned itself with the regulation of financial derivatives.[259] This is an extremely important portion of the bill, as it overturned much of the Commodity Futures Modernization Act of 2000, expanding the regulatory power of the CFTC and SEC vis-à-vis the securities industry.[260] Section 712 granted regulatory oversight responsibility for swaps to the CFTC and for security-based swaps to the SEC. Derivatives that are a mixture between these two types of swaps were regulated by both agencies.[261] This portion of Dodd-Frank also contained language explicitly banning the use of taxpayer funds to bail out swaps institutions that need funds as a result of their derivative trading activities.[262] Section 748 contained the consumer-friendly provisions of a

[257] *The Financial Crisis Inquiry Report,* 143.
[258] *CRS* Summary, H.R. 4173 (As of 7/21/2010).
[259] Ibid.
[260] Davis Polk & Wardwell, "Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act" 52.
[261] *CRS* Summary, H.R. 4173 (As of 7/21/2010).
[262] Ibid.

CFTC Consumer Protection Fund to reward whistleblowers and finance education programs so that consumers can spot violations of securities law.[263] Section 763 created "a clearing agency to submit and the SEC to review each security-based swap…to determine whether it should be required to be cleared."[264] For the first time, "Over the Counter" (OTC) swaps would be cleared through exchanges. Importantly, many of the rules in this section were not enumerated in the act and were left to the discretion of relevant agencies, providing business groups with an opportunity to bend the regulatory regime to their wills.[265]

Title VIII of the bill, called the "Payment, Clearing, and Settlement Supervision Act of 2010," sought to reduce the likelihood of systemic risk by ordering the Fed to prescribe risk management standards and giving it the power to request risk information from member companies.[266] Title IX, the "Investor Protection and Securities Reform Act of 2010," created the Investor Advisory Committee within the SEC to advise the agency on, among other things, "initiatives to protect investor interest [and] initiatives to promote investor confidence and the integrity of the securities marketplace."[267] Section 922 authorized the creation of a whistleblower bounty program, by which any person who provides original information that leads to a successful SEC enforcement resulting in sanctions of $1 million or more is entitled to between 10% and 30% of sanctions collected.[268] Subtitle C concerned itself with the regulation of the credit ratings agencies, increasing regulation of nationally recognized statistical rating organizations (NRSRO's) via the newly created Office of Credit Ratings in the SEC.[269] Subtitle

[263] Ibid.
[264] Ibid.
[265] Davis Polk & Wardwell, "Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act" 53.
[266] *CRS* Summary, H.R. 4173 (As of 7/21/2010).
[267] Ibid.
[268] Ibid.
[269] Ibid.

D augmented regulation of asset-backed securities, requiring mortgage securitizers to hold a minimum percentage of the security on its books, among other requirements.[270]

Title X, also known as the "Consumer Financial Protection Act of 2010," was one of the highest-profile portions of Dodd-Frank. This portion of the legislation created the Consumer Financial Protection Bureau, housed within the Federal Reserve System. Section 1021 assigned the bureau the following mission: to "implement and enforce federal consumer financial law to ensure that all consumers have access to fair, transparent, and competitive markets for consumer financial products and services."[271] The bureau was supposed to watch for risks to consumers posed by financial products or services. Under Subtitle C, the CFPB was provided the authority to ban "unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for, or the offering of, a consumer financial product or service; and (2) promulgate regulations to prevent such practices."[272] In addition, it was tasked with ensuring that consumers are provided proper disclosure about the nature and risks associated with financial products and services. Finally, Subtitle E granted the CFPB the enforcement powers to investigate, adjudicate, and litigate potential offenders.[273]

Title XI concerned the Federal Reserve System and amended the Federal Reserve Act. Section 1102 granted the Comptroller General the authority to audit the Fed and Section 1108 created a second Vice Chairman position.[274] Title XII attempts to expand access to the financial system by encouraging people of low and moderate incomes to participate in mainstream finance. It established programs for these individuals to open accounts at FDIC insured

---

[270] Congress, House & Senate, 111th Congress, 2nd Session, H.R. 4173, Section 941.
[271] *CRS* Summary, H.R. 4173 (As of 7/21/2010).
[272] Ibid.
[273] Ibid.
[274] Ibid.

depositary institutions and provided funding for financial literacy programs.[275] Section XIII, the "Pay it Back Act of 2010," related to TARP. This portion of the legislation reduced the amount of money the Treasury is allowed to spend on troubled assets by more than $200 billion and required biannual reports from the Treasury Secretary to Congress on the status of TARP.[276]

Title XIV, the "Mortgage Reform and Ant-Predatory Lending Act," is one of the most important consumer protection sections in Dodd-Frank. Four of the subtitles--A, B, C, and E--serve as "enumerated consumer law" to be administered by the CFPB.[277] Section 1403 banned all forms of compensation for mortgage originators that vary based on any terms other than the amount of principal. In addition, it prohibited a mortgage originator from predatory lending practices such as steering a consumer to purchase a loan he or she is not reasonably able to repay; steering a qualified consumer into an unqualified loan; administering variable lending practices among consumers with equal credit that are based on age, race, ethnicity, or gender; and mischaracterizing a consumer's credit history to qualify for a loan.[278] These measures were intended to end many of the predatory lending practices that grew and perpetuated the housing bubble and therein led to spikes in foreclosures. Subtitle B established minimum lending standards for issuing mortgages. Moreover, Section 1413 allowed consumers facing foreclosure to use as a defense the fact that the mortgage creditor either steered the consumer into bad loan terms or did not conduct due diligence on his or her ability to repay.[279] Title XIV also established tougher regulations for high-cost mortgages and created an office of Housing Counseling.

[275] Ibid.
[276] Ibid.
[277] Congress, House & Senate, 111th Congress, 2nd Session, H.R. 4173, Section 1400.
[278] Ibid.
[279] *CRS* Summary, H.R. 4173 (As of 7/21/2010).

Finally, Subtitle F established more stringent guidelines for the appraisal process, requiring multiple physical visits for high-risk mortgages.[280]

Conclusion and Considerations

Dodd-Frank demonstrates significant consumer protection and additional regulation on the banking, insurance, and financial services industries. At face value, this legislation seems to be pro-consumer and largely impervious to business interest group positions. Policies such as the creation of the Federal Insurance Office and Titles IX, X, XII, and XIV were significant pro-consumer measures. Dodd-Frank contains numerous new rules, regulatory responsibilities, and sources of agency authority. The fact that the bill remained strong in regulating business throughout the legislative process hints at less than absolute influence by financial interest groups. Indeed, some important rules, such as the Volcker Rule, were actually added later in the process.

However, the legislation is not nearly as "anti-business" as it might appear. Business groups were quite successful in ensuring that the task of writing of many of the rules was given to regulatory agencies. This gives interest groups the opportunity to lobby for favorable regulations while outside of the public eye. Even when regulations are fully recorded, they will only be as strong as the wills of the regulators. Indeed, "it was often said in the aftermath of the crisis that agencies like the Fed and the SEC and the OCC had plenty of tools to curb the abuses that were taking place in the banking system. They just lacked the will."[281] History will ultimately record whether these Dodd-Frank regulations have a real effect on preventing future financial crises. In addition, banking advocates succeeded in weakening the Volcker rule in the conference report, garnering banks the right to have a limited stake in hedge funds and private

[280] Ibid.
[281] Nocera and McLean, 363.

equity firms. Banking advocates also succeeded in defeating an Administration proposal to limit the size of financial firms. Finally, one must consider the fact that business groups supported certain pro-consumer parts of the legislation. For example, the financial services industry backed derivatives clearinghouses and further investor protections. Provisions that may appear to be pro-consumer at the expense of business might well be supported by industry advocates.

When assessing the relative degrees of influence within the legislative process between business groups and consumer advocates, it is important to consider both the makeup of Congress and the larger political trends. In the wake of the Financial Crisis, regulatory reform was almost inevitable, putting financial services advocates at a disadvantage and consumer advocates in better position. After the near collapse of the financial system, business groups had less clout, both in the media and among members of Congress. In addition, the strong Democratic majorities in both chambers of Congress made life more difficult for industry advocates, as many of these members were more pre-disposed to the interests of consumer advocates and potentially hostile to the financial sector. Democrats tend to be more amenable to the interests of consumers than they are to those of big business, so odds were further stacked against financial services industry lobbyists.

Finally, it is important to consider the impact of the Obama Administration in the shaping of Dodd-Frank. The President's early draft had a powerful effect in influencing the overall structure of this legislation, making significant changes more challenging for industry groups to secure. With the Administration's stance often very clear (and the President's power to veto), writers of the bills were likely more cautious in making sweeping alterations. Also, when it is considered as a consumer advocate group, the Obama Administration greatly amplified the relative power of consumer groups in relation to businesses. In sum, Dodd-Frank is largely inconclusive on the relative power of interest groups. Given the very anti-Wall Street climate, large Democratic majorities, and a Democratic President, odds were stacked against corporate interest groups. Once all of the unwritten rules are enumerated, it will be easier to assess the relative and absolute power of business groups and consumer advocates with regards to Dodd-Frank.

Conclusion

Through case studies of the Gramm-Leach-Bliley and Dodd-Frank Acts, this thesis has sought to determine the extent to which corporate interests influence the lawmaking process in absolute and relative terms vis-à-vis their adversaries. The dominant view in social science research is that business organizations have the upper hand in legislative influence. They deftly utilize the tools of campaign finance and lobbying to achieve their policy goals. The case studies of Gramm-Leach-Bliley and Dodd-Frank demonstrate mixed findings with regards to the influence of business groups and consumer advocates. On the one hand, Gramm-Leach-Bliley represented the culmination of more than a decade of lobbying pressure by the banking and financial services industries. However, the bill established robust consumer privacy standards and maintained the CRA. Meanwhile, Dodd-Frank appears on the surface to be very pro-consumer at the expense of business. However, many unwritten rules may ultimately favor the banking and financial services industries. In addition, business groups were often in support of certain regulations in the bill, stances that yield little information about their relative and absolute influence. Finally, business groups succeeded in weakening the Volcker rule and several other proposed policies prior to the passage of the final bill.

In general, it is clear that business interest groups have significant legislative influence in both an absolute and a relative sense. When considering these cases, one gets the sense that, while Madison's view of American interest group politics is not dead, neither is it thriving. Still, business organizations do not have hegemonic control over the legislative process. Consumer advocates, especially when backed with a Democratic presidential administration, clearly have the strength to achieve their policy ends. In general, this thesis shows the importance of considering the external political environment in which a bill is written: the relative and absolute strength of interest groups is highly dependent on the environment, as seen in the case of Dodd-Frank. Therefore, the case studies in this thesis demonstrate the high absolute and relative strength of business interest groups, subject to constraints by the external political environment.

Suggestions for Further Research

Going forward, more research could be conducted on financial services legislation, particularly to determine the effect of the partisan composition of Congress and the Presidency. Case studies should be conducted on bills passed under a Republican president and both Democratic and Republican Congresses. In addition, a study could be conducted comparing members' voting habits over time in relation to varying amounts of PAC money or lobbying time they receive from business and consumer/public interest groups. Research could analyze the relative and absolute power of business organizations and consumer advocates in interactions with the federal bureaucracy. Future studies could incorporate more interviews with policymakers and lobbyists in order to better understand the decision processes behind the policies incorporated in bills. Finally, there should be research on specific issue areas on which business and consumer advocates, respectively, have clear and opposing viewpoints. Such legislation includes recent bills relating to credit cards, bankruptcy, and mortgage origination.

Bibliography

"2010 Bill Tracking H.R. 4173; 111 Bill Tracking H.R. 4173." Congressional Research Service. Available through Proquest Congressional.

"Bill Summary and Status, 106th Congress, H.R. 10 (As of 7/01/1999), CRS Summary." Congressional Research Service. http://thomas.loc.gov/cgi-bin/bdquery/z?d106:HR00010:@@@D&summ2=m&. Accessed March 27, 2012.

"Bill Summary and Status, 106th Congress, S. 900 (As of 11/2/1999), CRS Summary." Congressional Research Service. http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN00900:@@@D&summ2=3&. Accessed March 27, 2012.

"Bill Summary and Status, 106th Congress, S. 900 (As of 11/2/1999), Major Congressional Actions." Congressional Research Service. http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN00900:@@@R. Accessed March 27, 2012.

"Bill Summary and Status, 106th Congress, S. 900 (As of 5/06/1999), CRS Summary." Congressional Research Service. http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN00900:@@@D&summ2=1&. Accessed March 27, 2012.

"Bill Summary and Status, 111th Congress, H.R. 4173 (As of 7/21/2010), CRS Summary." Congressional Research Service. http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04173:@@@L&summ2=m&#major%20actions. Accessed March 27, 2012.

"Bill Summary and Status, 111th Congress, H.R. 4173, CRS Summary (As of 7/21/2010)." Congressional Research Service. http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04173:@@@D&summ2=m&. Accessed March 27, 2012.

"Bill Summary and Status, 111th Congress, H.R. 4173, CRS Summary." Congressional Research Service. http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04173:@@@R. Accessed March 27, 2012.

"Bill Summary and Status, 111th Congress, H.R. 4173, Major Congressional Actions." Congressional Research Service. http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04173:@@@R. Accessed March 27, 2012.

"H.Res 355, H.R. 10." 106th Congress. Library of Congress. http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN00900:@@@X. Accessed March 27, 2012.

"Major Parts of the Financial Regulation Overhaul." New York Times, May 20, 2011. http://www.nytimes.com/interactive/2010/05/20/business/20100520-regulation-graphic.html. Accessed March 27, 2012.

"On Passage of H.R. 4173, U.S. Senate Roll Call Votes, 111th Congress, 2nd Session." United States Senate. http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=2&vote=00162. Accessed March 27, 2012.

"U.S. Congress Votes Database." Washington Post. http://projects.washingtonpost.com/congress/106/senate/1/votes/105/. Accessed March 27, 2012.

Appelbaum, Binyamin and Dennis, Brady. "Legislation by Senator Dodd Would Overhaul Banking Regulators." Washington Post, November 11, 2009.

Baker, Richard. "Prepared Testimony of Richard Baker, Managed Funds Association." House Financial Services Committee. February July 17, 2009. http://financialservices.house.gov/media/file/hearings/111/62.pdf. Accessed March 27, 2012.

Baumgartner, Frank R. and Leech, Beth L. "Interest Niches and Policy Bandwagons: Patterns of Interest Group Involvement in National Politics." The Journal of Politics 63 no. 4, (2001): 1191-1213.

Bentley, Arthur F. The Process of Government. San Antonio: Principia Press, 1949.

Berelson, Bernard, Lazarsfeld, Paul, and McPhee, William. Voting. Chicago: University of Chicago Press, 1954.

Birnbaum, Jeffrey H. The Lobbyists: How Influence Peddlers Work Their Way in Washington. New York: Times Books, 1993.

________________. "Clients' Rewards Keep K Street Lobbyists Thriving." Washington Post, February 14, 2006.

Bowdler, Janis. "Prepared Testimony of Janis Bowdler, National Council of La Raza." House Financial Services Committee. September 30 2009.

Brewer, Paul R. and Deering, Christopher J. "Interest Groups, Campaign Fund-Raising and Committee Chairs." In The Interest Group Connection: Electioneering, Lobbying, and Policymaking in Washington, 2nd Ed. Herrnson, Paul S., Shaiko, Ronald G. and Wilcox, Clyde, ed. Washington: CQ Press, 2005.

Brinkley, Joel. "Behind the Banking Bill, Years of Intense Lobbying." New York Times, October 23, 1999.

Brooker, Katrina. "Citi's Creator, Alone with His Regrets." New York Times, January 2, 2010.

Broome, Lissa Lamkin and Markham, Jerry. "The Gramm-Leach-Bliley Act: An Overview." University of North Carolina School of Law. http://www.symtrex.com/pdfdocs/glb_paper.pdf. Accessed March 27, 2012.

Burger, Anna. "Prepared Testimony of Anna Burger, Service Employees International Union." House Financial Services Committee. September 30 2009.

Calhoun, John C. "A Disquisition on Government." In Source Book of American Political Theory. Wright, Benjamin F., ed. New York: Macmillan, 1929.

Calhoun, Michael. "Prepared Testimony of Michael Calhoun, Center for Responsible Lending." House Financial Services Committee. September 30 2009.

Center for Responsive Politics. "Business-Labor-Ideology Split in PAC and Individual Donations to Candidates and Parties." http://www.opensecrets.org/bigpicture/blio.php?cycle=2010. Accessed March, 27, 2012.

___________________________. "Election Stats." http://www.opensecrets.org/bigpicture/elec_stats.php?cycle=2010. Accessed March 27, 2012.

___________________________. "Finance, Insurance, and Real Estate." http://www.opensecrets.org/pacs/sector.php?cycle=2010&txt=F01. Accessed March 27, 2012.

___________________________. "Incumbent Advantage." http://www.opensecrets.org/bigpicture/incumbs.php?cycle=2010. Accessed March 27, 2012.

___________________________. "Lobbying Ranked Sectors." http://www.opensecrets.org/lobby/top.php?indexType=c. Accessed March 27, 2012.

___________________________. "PAC Dollars to Incumbents, Challengers, and Open Seat Candidates." http://www.opensecrets.org/bigpicture/pac2cands.php?cycle=2010. Accessed March 27, 2012.

___________________________. "PACs, Senator John Thune." http://www.opensecrets.org/politicians/pacs.php?cycle=2010&cid=N00004572&type=I. Accessed March 27, 2012.

___________________________. "Price of Admission." http://www.opensecrets.org/bigpicture/stats.php?cycle=2010. Accessed March 27, 2012.

___________________________. "Totals by Sector." http://www.opensecrets.org/bigpicture/sectors.php?cycle=2010. Accessed March 27, 2012.

___________________________. "Reelection Rates Over the Years." http://www.opensecrets.org/bigpicture/reelect.php?cycle=2010. Accessed March 27, 2012.

Chan, Sewell. "Congressional Negotiators Start Effort to Merge Versions of Financial Reform Bills." New York Times, June 10, 2010.

Congress. House & Senate. 111th Congress, 2nd Session. H.R. 4173. http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf. Accessed March 27, 2012.

Congress. Senate. 111th Congress, 2nd Session. S. 3217.

Congress. Senate. 111th Congress, 2nd Session. H.R. 4173.

Corrigan, E. Gerald. "Prepared Testimony of E. Gerald Corrigan, Goldman Sachs." Senate Banking, Housing, and Urban Development Committee. February 4, 2010.

Davis Polk & Wardwell. "Side By Side Comparison Chart: Key Senate and House Bill Issues." June 2, 2010. http://www.davispolk.com/files/Publication/d243b01a-324f-4ccd-85a5-e9bb42d70920/Presentation/PublicationAttachment/c56258f4-0e4e-479e-8632-ea9b08fc2b82/060210_SenateHouseComparisonChart.pdf. Accessed March 27, 2012.

___________________. "Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Enacted into Law on July 21, 2010." July 21, 2010. http://www.davispolk.com/files/Publication/7084f9fe-6580-413b-b870-b7c025ed2ecf/Presentation/PublicationAttachment/1d4495c7-0be0-4e9a-ba77-f786fb90464a/070910_Financial_Reform_Summary.pdf. Accessed March 27, 2012.

Drutman, Lee. "The Business of America is Lobbying: The Expansion of Corporate Political Activity and the Future of American Pluralism." PhD Dissertation, University of California-Berkley. 2010.

Etzioni, Amitai. Capital Corruption. San Diego: Harcourt Brace Jovanovich, 1984.

Federal Election Commission. "Contribution Limits: 2011-2012." http://www.fec.gov/pages/brochures/contriblimits.shtml. Accessed March 27, 2012.

Federal Trade Commission. "In Brief: The Financial Privacy Requirements of the Gramm-Leach-Bliley Act." July 2002. http://business.ftc.gov/documents/bus53-brief-financial-privacy-requirements-gramm-leach-bliley-act. Accessed March 27, 2012.

Gillespie, Robert. "Prepared Testimony of Robert Gillespie, KeyCorp and the Bankers Roundtable." Senate Housing, Banking, and Urban Affairs Committee. February 25, 1999. Available through Proquest Congressional.

Goldschmid, Harvey. "Prepared Testimony of Harvey Goldschmid, General Counsel of the Securities and Exchange Commission." House Banking and Financial Services Committee. February 12, 1999.

Greenspan, Alan. "Prepared Testimony of Alan Greenspan, Chairman of the Federal Reserve." Senate Housing, Banking, and Urban Affairs Committee. February 23, 1999. http://www.federalreserve.gov/boarddocs/testimony/current/19990223.htm. Accessed March 27, 2012.

Griffin, Mary. "Prepared Testimony of Mary Griffin, Consumers Union and Consumer Federation of America." Senate Housing, Banking, and Urban Affairs Committee. February 25, 1999. Available through Proquest Congressional.

Harvey, F. Barton. "Prepared Testimony of F. Barton Harvey, Chairman and CEO of the Enterprise Foundation." Senate Housing, Banking, and Urban Affairs Committee. February 25, 1999. Available through Proquest Congressional.

Herrnson, Paul S. "Interest Groups and Campaigns: The Electoral Connection." In The Interest Group Connection: Electioneering, Lobbying, and Policymaking in Washington, 2nd Ed. Herrnson, Paul S., Shaiko, Ronald G. and Wilcox, Clyde, ed. Washington: CQ Press, 2005.

Hill, James. "Prepared Testimony of James Hill, Morgan Stanley and the Securities Industry and Financial Markets Association." House Financial Services Committee. October 7, 2009.

Himpler, Bill. "Prepared Testimony of Bill Himpler, American Financial Services Association." House Financial Services Committee. September 30 2009.

Hoofnagle, Chris Jay and Honig, Emily. "Victoria's Secret and Financial Privacy." Electronic Privacy Information Center. 2005. http://epic.org/privacy/glba/victoriassecret.html. Accessed March 27, 2012.

House Clerk. "Final Vote Results for Roll Call 968." 111th Congress. http://clerk.house.gov/evs/2009/roll968.xml. Accessed March 27, 2012.

Igan, Deniz, Mishra, Pracchi, and Tressel, Thierry. "A Fistful of Dollars: Lobbying and the Financial Crisis." Paper presented at the 10th Jacques Polak Annual Research Conference on November 5-6, 2009. The International Monetary Fund.

Indiviglio, David. "Congress's Conference Committee Completed for Financial Reform." The Atlantic, June 25, 2010. http://www.theatlantic.com/business/archive/2010/06/congress-conference-committee-completed-for-financial-reform/58718/. Accessed March 27, 2012.

Johnson, Hjalma. "Prepared Testimony of Hjalma Johnson, East Coast Bank Corp. and the American Bankers Association." Senate Housing, Banking, and Urban Affairs Committee. February 25, 1999. Available through Proquest Congressional.

Kaswell, Stuart. "Prepared Testimony of Stuart Kaswell, Managed Funds Association." House Financial Services Committee. October 7, 2009.

Krugman, Paul. "The Gramm Connection," The New York Times Online, March 29, 2008, http://krugman.blogs.nytimes.com/2008/03/29/the-gramm-connection/. Accessed March 27, 2012.

Labaton, Stephen. "Agreement Reached on Overhaul of U.S. Financial System." New York Times, October 23, 1999.

Lackritz, Marc. "Prepared Testimony of Marc Lackritz, Securities Industry Association." Senate Housing, Banking, and Urban Affairs Committee. February 25, 1999. Available through Proquest Congressional.

Lamare, James W. What Rules America? St. Paul: West Publishing Company, 1988.

Leach, James A. "The Lure of Leveraging: Wall Street, Congress, and the Invisible Government." In Financial Market Regulation: Legislation and Implications. Tatom, John A., ed. New York: Networks Financial Institute, 2011.

Leech, Beth L., et al. "Drawing Lobbyists to Washington: Government Activity and the Demand for Advocacy." Political Research Quarterly 58 no. 1 (2005).

Levitt, Arthur. "Prepared Testimony of Arthur Levitt, Chairman of the Securities and Exchange Commission." Senate Housing, Banking, and Urban Affairs Committee. February 24, 1999. Available through Proquest Congressional.

Lowenstein, Douglas. "Prepared Testimony of Douglas Lowenstein, Private Equity Council." House Financial Services Committee. July 17, 2009. http://financialservices.house.gov/media/file/hearings/111/62.pdf. Accessed March 27, 2012.

Lowi, Theodore. The End of Liberalism. New York: W.W. Norton, 1969.

Madison, James. "Federalist No. 10."

_____________. "Federalist No. 51."

Masters, Blythe. "Prepared Testimony of Blythe Masters, JP Morgan Chase." Senate Agriculture Committee." December 2, 2009.

Mayhew, David. Congress. New Haven: Yale University Press, 1974.

McKenna, George. American Politics: Ideals and Realities. New York: McGraw Hill, 1976.

McQuillan, William. "Prepared Testimony of William McQuillan, Independent Bankers Association of America." House Banking and Financial Services Committee. February 10, 1999.

________________. "Prepared Testimony of William McQuillan, Independent Bankers Association of America." Senate Housing, Banking, and Urban Affairs Committee. February 25, 1999. Available through Proquest Congressional.

Menzies, Michael. "Prepared Testimony of Michael Menzies, Eastern Community Bank and Trust and the Independent Community Bankers of America." House Financial Services Committee. September 30 2009.

Mierzwinski, Edmund. "Prepared Testimony of Edmund Mierzwinski, Consumer Program Director of the U.S. Public Interest Research Group." House Banking and Financial Services Committee. February 11, 1999.

Milbrath, Lester. The Washington Lobbyists. Chicago: Rand McNally, 1963.

Miller, Matt. "Make 150,000% Today!" Fortune, January 27, 2006.

Mills, C. Wright. *The Power Elite*. New York: Oxford University Press, 1959.

Nader, Ralph. "Prepared Testimony of Ralph Nader, Consumer Advocate." House Banking and Financial Services Committee. February 11, 1999.

Obama, Barack. "Remarks by the President on 21st Century Financial Regulatory Reform." June 17, 2009. http://www.whitehouse.gov/the_press_office/Remarks-of-the-President-on-Regulatory-Reform/. Accessed March 27, 2012.

____________. "Remarks by the President on Wall Street Reform," June 25, 2010. http://www.whitehouse.gov/the-press-office/remarks-president-wall-street-reform-1. Accessed March 27, 2012.

Olson, Mancur. The Logic of Collective Action: Public Good and The Theory of Groups. Cambridge: Harvard University Press, 1965.

Ornstein, Norman and Elder, Shirley. Interest Groups, Lobbying and Policymaking. Washington: Congressional Quarterly Press, 1978.

Patterson, Michael. "Prepared Testimony of Michael Patterson, JP Morgan and The Financial Services Council." Senate Housing, Banking, and Urban Affairs Committee. February 25, 1999. Available through Proquest Congressional.

Rauch, Jonathan. Government's End: Why Washington Stopped Working. New York: Public Affairs, 1999.

Reider, George. "Prepared Testimony of George Reider, Commissioner of the National Association of Insurance Commissioners." House Banking and Financial Services Committee. February 11, 1999.

Rubin, Robert. “Prepared Testimony of Robert Rubin, Secretary of the United States Treasury.” Senate Housing, Banking, and Urban Affairs Committee. February 24, 1999. Available through Proquest Congressional.

Salisbury, Robert H. “An Exchange Theory of Interest Groups.” Midwest Journal of Political Science (February, 1969): 1-32.

Schattschneider, E.E. The Semi-Sovereign People: A Realist’s View of Democracy in America, New York: Holt, Reinhart, and Winston, 1960.

Schlozman, Kay Lehman, et al. “Who Sings in the Heavenly Chorus: The Shape of the Organized Interest System.” Paper Given at the 2008 Midwest Political Science Association Annual Meeting.

Seidman, Ellen. “Prepared Testimony of Ellen Seidman, Director of the Office of Thrift Supervsion.” Senate Housing, Banking, and Urban Affairs Committee. February 24, 1999. Available through Proquest Congressional.

Shelton, Hilary. “Prepared Testimony of Hilary Shelton, National Association for the Advancement of Colored People.” House Financial Services Committee. September 30 2009.

Sinder, Scott. “Prepared Testimony of Scott Sinder, Independent Insurance Agents of America.” Senate Housing, Banking, and Urban Affairs Committee. February 25, 1999. Available through Proquest Congressional.

Sleyster, Scott. “Prepared Testimony of Scott Sleyster, American Council of Life Insurers.” House Financial Services Committee. October 7, 2009.

Snook, Randolph. “Prepared Testimony of Randolph Snook, Securities Industry Financial Markets Association.” House Financial Services Committee. July 17, 2009. http://financialservices.house.gov/media/file/hearings/111/62.pdf. Accessed March 27, 2012.

Stratmann, Thomas. “Some Talk: Money in Politics. A (Partial) Review of the Literature.” Public Choice 124 (1/2, Policy Changes and Political response: Public Choice Perspective on the Post-9/11 World): 135-136.

Taibbi, Matt. “Wall Street’s Big Win.” Rolling Stone, August 4, 2010. http://www.rollingstone.com/politics/news/wall-streets-big-win-20100804. Accessed March 27, 2012.

Tatom, John A. “Financial Legislation: The Promise and Record of the Financial Modernization Act of 1999.” In Financial Market Regulation: Legislation and Implications. Tatom, John A., ed. New York: Networks Financial Institute, 2011.

Taylor, John. “Prepared Testimony of John Taylor, President and CEO of the National Community Reinvestment Coalition.” Senate Housing, Banking, and Urban Affairs Committee. February 25, 1999. Available through Proquest Congressional.

The Financial Crisis Inquiry Report. Washington: U.S. Government Printing Office, 2011.

Truman, David B. The Government Process. New York: Alfred Knopf, 1958.

Truman, David Bicknell. The Governmental Process: Political Interests and Public Opinion. New York: Knopf, 1951.

Wolff, Robert Paul, et al. “Beyond Tolerance.” A Critique of Pure Tolerance. Boston: Beacon Press, 1965.

Yingling, Edward. “Prepared Testimony of Ed Yingling, American Bankers Association.” House Financial Services Committee. September 30 2009.

Zubrow, Barry. “Prepared Testimony of Barry Zubrow, JP Morgan Chase.” Senate Banking, Housing, and Urban Development Committee. February 4, 2010.

Zuckerberg, Roy. “Prepared Testimony of Roy Zuckerberg, Chairman of the Securities Industry Association.” House Banking and Financial Services Committee. February 10, 1999. Available through Proquest Congressional.