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SCOTUS Short Title Turmoil: Time for a Congressional Bill Naming Authority

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INTRODUCTION

The practice of congressional bill naming has reached eccentric,[2] oftentimes whimsical, proportions.[3] Recent observers have noted that short titles have gone "overboard"[4] and some are "laugh out loud" funny,[5] while others have grown so frustrated as to propose a constitutional amendment

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2. As if the tortured USA PATRIOT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) Act of 2001, Pub. L. No. 107-56, 115 Stat. 271, *available at* http://www.gpo.gov/fdsys/pkg/PLAW-107publ56/pdf/PLAW-107publ56.pdf, was not enough, Sen. Leahy and Rep. Sensenbrenner have recently introduced S. 1599, *available at* http://beta.congress.gov/113/bills/s1599/BILLS-113s1599is.pdf, and H.R. 3361, *available at* http://beta.congress.gov/113/bills/s1599/BILLS-113s1599is.pdf, respectively, the USA FREEDOM (Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-collection, and Online Monitoring) Act. 113th Cong. (2013).

3. Examples from bills introduced in the 113th Congress include: RIP Act of 2013, H.R. 2374, 113th Cong. (2013) (Retail Investment Protection), *available at* http://beta.congress.gov/113/bills/hr2374/BILLS-113hr2374ih.pdf; All-STAR Act of 2013, S. 1083, 113th Cong. (2013) (Students Achieving through Reform), *available at* http://beta.congress.gov/113/bills/s1083/BILLS-113s1083is.pdf; STOP IRS Act, H.R. 2565, 113th Cong. (2013) (Stop Targeting Our Politics), *available at* http://beta.congress.gov/113/bills/hr2565/BILLS-113hr2565ih.pdf; REINS Act of 2013, H.R. 367, 113th Cong. (2013) (Regulations From the Executive in Need of Scrutiny), *available at* http://beta.congress.gov/113/bills/hr367/BILLS-113hr367ih.pdf; and LIBERT-E Act of 2013, H.R. 2399, 113th Cong. (2013) (Limiting Internet and Blanket Electronic Review of Telecommunications and Email) available at http://beta.congress.gov/113/bills/hr2399/BILLS-113hr2399ih.pdf.

4. Emily Heil, *Immigration Legislation's Title Shows: On Capitol Hill, Bill Naming Has Gone Overboard*, WASH. POST (July 24, 2013), http://www.washingtonpost.com/lifestyle/style/immigration-legislations-title-shows-on-capitol-hill-bill-naming-has-gone-overboard/2013/07/23/7d1e4856-eefc-11e2-bed3-b9b6fe264871_story.html.

5. Emily Heil, *Bill Acronyms That Make Loop Fans LOL*, WASH. POST IN THE LOOP BLOG (Aug. 1, 2013, 11:31 AM), http://www.washingtonpost.com/blogs/in-the-loop/post/bill-acronyms-that-make-loop-fans-lol/2013/08/01/c6f47f8e-f94e-11e2-b018-5b8251f0c56e_blog.html.

banning bill title acronyms (even if tongue in cheek).[6] Even the policy wonkish Washington D.C. periodical *The Hill* noted[7] that "among the most important" issues facing immigration reform was going to be how the proposal was named, a statement unlikely to have been uttered when many current lawmakers began their careers. Yet the naming of legislation has implications not only for the legislative process[8] but also for the courts: If laws are ambiguous, short titles (along with purposes, findings, and headings), may be used as a guide to meaning when interpreting statutes.[9] This principle was fine when statutory titles were descriptive, technical accounts of a statute's contents. Such is no longer the case.[10]

6. Michael McGough, *Let 'Em Spell It Out: Congress Has Gone Acronym Crazy*, L.A. TIMES (June 6, 2013), http://articles.latimes.com/2013/jun/06/news/la-ol-bills-names-acronyms-20130606.

7. Molly K. Hooper, *First Key Fight in Immigration Battle Is What To Name Bill*, THE HILL (Apr. 4, 2013), http://thehill.com/homenews/senate/291973-first-key-fight-in-immigration-battle-is-what-to-name-bill.

8. *See* Brian Christopher Jones, *Drafting Proper Short Titles: Do States Have the Answer?*, 23 STAN. L. & POL'Y REV. 455 (2012) [hereinafter *Proper Short Titles*]; Brian Christopher Jones, *Processes, Standards, and Politics: Drafting Short Titles in the Westminster Parliament, Scottish Parliament, and U.S. Congress*, 25 FLA. J. INT'L L. 57 (2013) [hereinafter *Processes, Standards, and Politics*]; Brian Christopher Jones & Randal Shaheen, *Thought Experiment: Would Congressional Short Bill Titles Survive FTC Scrutiny?* 37 SETON HALL LEGIS. J. 91 (2012).

9. WILLIAM N. ESKRIDGE JR., ABBE R. GLUCK & VICTORIA F. NOURSE, INTRODUCTION TO THE REGULATORY STATE (forthcoming 2014) (draft teaching materials Chapter 5 at 14) (on file with authors) ("According to the Sutherland treatise, the 'title cannot control the plain words of the statute' but '[i]n case of ambiguity the court may consider the title to resolve uncertainty in the purview [the body] of the act or for the correction of obvious errors.' The Supreme Court in *Holy Trinity Church* (Chapter 7, § 1) considered the statute's long title as cogent evidence of its purpose and indeed reworked the statutory provision to be consistent with it. But see Scalia & Garner, *Reading Law*, 222-23 (endorsing the title canon but rejecting its invocation in *Holy Trinity* because the statutory text, read without reference to the title, was not ambiguous). Generally, today's Supreme Court does not rely on statutory titles as decisive evidence of statutory meaning, though Justices will sometimes quote the title as relevant context. E.g., *Porter v. Nussle*, 534 U.S. 516, 524 (2002)."); *See also* TOBIAS DORSEY, LEGISLATIVE DRAFTER'S DESKBOOK: A PRACTICAL GUIDE 86-87 (2006) ("These parts of the text are considered lesser evidence because they are not used primarily to make the law. Instead, they are used primarily as a convenience to the reader. Essentially, they are indirect evidence rather than direct evidence. That said, the Court does, on rare occasions, resort to these parts of the text to glean what it can about legislative intent. . . . Regardless, it is fair to say that anything that a drafter might consider a title or heading will be used by the Court as a guide to meaning when the meaning is in doubt."); *see also* Caminetti v. United States, 242 U.S. 470, 489-490 (1917).

10. *See* Brian Christopher Jones, *The Congressional Short Title (R)Evolution: Changing the Face of America's Public Laws*, 101 KY. L.J. ONLINE 42-64 (2013); Jones, *Proper Short Titles*, *supra* note 8, at 455-462; Jones, *Processes, Standards, and Politics*, *supra* note 8, at 104-09; Strause, et al., *How Federal Statutes Are Named*, 105 LAW LIBR. J., 7, 14-20 (2013); Mary Whisner, *What's in a Statute Name?*, 97 LAW LIBR. J. 169, 176-180 (2005); Chris Sagers, *A Statute by Any Other (Non-Acronomial) Name Might Smell Less Like S.P.A.M., or, The Congress of the United States Grows Increasingly D.U.M.B.* (Cleveland State University Working Paper, 2010), *available at* http://works.bepress.com/chris_sagers/3.

Contemporary titles are often capriciously worded, employing a range of colorful language that may or may not relate to a law's substance.[11] Thus, in order to ensure accuracy for all those who encounter bill names (e.g. legislators, judges, the general public, etc.), the time has come to introduce one or more congressional bill naming authorities.

Over the past few decades lawmakers have taken what used to be a descriptive and informative statutory tool and transformed it into an overtly political and manipulative device, which "unfortunately … [has] too much influence."[12] In addition to taking the focus off the substantive nature of legislation and placing increased emphasis on the presentational aspects of bills and laws,[13] contemporary short titles could also be affecting whether or not bills become laws.[14] Short titles are used as framing and marketing devices,[15] and indeed, these few words are now viewed by lawmakers and others as an important aspect of the legislative process.[16] These are just some of the fragmentary implications of modern short titles. If more far-reaching effects are taken into consideration, tendentious and promotional names may be "hasten[ing] a decline in respect for democratic governance."[17]

While the legislative process is inherently complex and competition in Congress remains fierce, at the very least elected officials should not mislead citizens through the titles of legislation. This Remark seeks to remedy the situation, proposing that House and Senate offices or other appointed bill naming authorities take responsibility for short titles. First, however, in order to demonstrate how this issue has implications beyond the halls of Congress, this Remark analyzes the recent Supreme Court tussle over a particular short title: the Defense of Marriage Act (DOMA).

I. SUPREME COURT SHORT TITLE DRAMA - SAME SEX MARRIAGE

United States v. Windsor[18] has spawned copious amounts of commentary, but little has focused on the significance of DOMA's short title in the Court's reasoning. As noted below, both the majority and minority opinions discussed the name and its implications at length, but came to differing conclusions on its importance. Debate over the title partly

11. *See* Whisner, *supra* note 10.

12. Interview with Member of Congress, in Wash., D.C. (Oct. 21, 2009).

13. *See* Brian Christopher Jones, *Personalized Bills as Commemorations: A Problem for House Rules?*, 46 CONN. L. REV. CONNTEMPLATIONS 9 (2013); Brian Christopher Jones, *Transatlantic Perspectives on Humanised Public Law Campaigns: Personalising and Depersonalising the Legislative Process*, 6 LEGISPRUDENCE 57 (2012) [hereinafter *Transatlantic Perspectives*]; Strause et al., *How Federal Statutes Are Named*, *supra* note 10, at 26-30.

14. *See* Jones, *Proper Short Titles*, *supra* note 8, at 460-461; Jones, *Processes, Standards, and Politics*, *supra* note 8, at 92-93; *See also* Brian Christopher Jones, *Do Short Titles Matter? Surprising Insights From Westminster and Holyrood*, 65 PARLIAMENTARY AFFAIRS 448, 455-456 (2012).

15. Jones & Shaheen, *supra* note 8, at 94-95.

16. Jones, *Proper Short Titles*, *supra* note 8, at 462.

17. Graeme Orr, *Names Without Frontiers: Legislative Titles and Sloganeering*, 21 STATUTE L. REV. 188, 189 (2000).

18. United States v. Windsor, 570 U. S. ____, 133 S.Ct. 2675 (June 26, 2013). Slip opinion available at http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf.

stemmed from advocate concerns articulated during oral argument.[19] Here, the attorney for respondent Windsor stated: "[r]ather, as the title of the statute makes clear, DOMA [Defense of Marriage Act] was enacted to defend against the marriages of gay people. This discriminatory purpose was rooted in moral disapproval as Justice Kagan pointed out."[20] Solicitor General Verrilli also touched on the law's name in relation to its position against same-sex marriage, noting: "this statute is not called the Federal Uniform Marriage Benefits Act; it's called the Defense of Marriage Act. And the reason for that is because the statute is not directed at uniformity in the administration of Federal benefits."[21]

At the time of oral argument it appeared none of the justices wished to pursue a discussion of the title's implications regarding moral disapproval. It therefore came as a shock that Justice Kennedy's landmark opinion[22] used the short title as one of its primary arguments regarding the moral purposes of the legislation, and therefore, its unconstitutionality. In fact, Justice Kennedy mentions the name multiple times while justifying the legislation's purpose, stating:

> The House Report announced its conclusion that "it is both appropriate and necessary for Congress to do what it can to defend the institution of traditional heterosexual marriage. . . . H. R. 3396 is appropriately entitled the 'Defense of Marriage Act.' The effort to redefine 'marriage' to extend to homosexual couples is a truly radical proposal that would fundamentally alter the institution of marriage." H. R. Rep. No. 104–664, pp. 12–13 (1996). The House concluded that DOMA expresses "both moral disapproval of homosexuality, and a moral conviction that heterosexuality better comports with traditional (especially Judeo-Christian) morality." Id., at 16 (footnote deleted). The stated purpose of the law was to promote an "interest in protecting the traditional moral teachings reflected in heterosexual-only marriage laws." Ibid. *Were there any doubt of this far-reaching purpose, the title of the Act confirms it: The Defense of Marriage* [emphasis added].[23]

He continues by noting:

> The arguments put forward by BLAG [Bipartisan Legal Advisory Group] are just as candid about the congressional purpose to influence or interfere with state sovereign choices about who may be married. As the title and dynamics of the bill indicate, its purpose is to discourage enactment of state same-sex marriage laws and to restrict the freedom and choice of couples married under those laws if they are enacted.[24]

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19. Transcript of Oral Argument at 102, United States v. Windsor, 133 S.Ct. 2675 (2013) (No. 12-307), *available at* http://www.supremecourt.gov/oral_arguments/argument_transcripts/12-307_jnt1.pdf.

20. *Id.*

21. *Id.* at 88.

22. 570 U. S. ____, 133 S. Ct. 2675, 2682.

23. *Id.* at 2693.

24. *Id.*

The dissent was less easily swayed by the title's implications, however. Obviously concerned with the prominence in which the title was used, the Chief Justice mentions the issue early on, stating:

> [T]he snippets of legislative history and the banal title of the Act to which the majority points [do not] suffice to make such a showing [that the purpose of the Act was a bare desire to harm]. At least without some more convincing evidence that the Act's principal purpose was to codify malice, and that it furthered *no* legitimate government interests, I would not tar the political branches with the brush of bigotry.[25]

This demonstrates a significant departure in regard to the title's relevance. The majority found it to be indicative of moral disapproval, while Roberts classifies the title as "banal" and unconvincing. The Chief Justice again addresses this issue, declaring:

> It is not just this central feature of the majority's analysis that is unique to DOMA, but many considerations on the periphery as well. For example, the majority focuses on the legislative history and title of this particular Act, *ante*, at 2693; those statute-specific considerations will, of course, be irrelevant in future cases about different statutes.[26]

The Chief Justice's point may indeed stand for DOMA, but the statutory titles of future laws, especially those in relation to gay marriage, could easily be relevant in future cases. Contemporary names overflow with outlandish rhetoric and value judgments – features that will hardly be irrelevant when examining future cases and statutes on this topic and others. Additionally, it is intriguing to wonder whether the majority's argument would have been weakened if the statute was named differently. Would the "Federal Marriage Act" or the "Marriage Act of 1996" have been provided as evidence of animus? Probably not. Nevertheless, the fact that the Supreme Court engaged in such high-profile bickering over a law's short title demonstrates the need for accuracy and impartiality in statutory naming.

II. NONPARTISAN BILL NAMING AUTHORITY

Acknowledging both the building resentment towards short titles and that discussion surrounding them has produced significant effects in the highest court in the land (bearing much significance in *Windsor*), the time has come to implement a nonpartisan bill naming authority. In fact, current House and Senate institutional structures may already be well-prepared for such a change, given that multiple positions in each chamber could potentially take on the job of short title regulation.

25. *Id.* at 2696 (Roberts, C.J., dissenting).

26. *Id.* at 2697.

Unbeknownst to many, the House[27] and Senate[28] retain their own respective Parliamentarians, who provide "nonpartisan guidance on parliamentary rules and procedures" in the respective chambers.[29] Yet the naming of legislation currently does not fall under their authority,[30] as this responsibility is solely in the purview of the lawmakers proposing legislation. In practice, this often means that junior level staffers are charged with creating an outlandish pun or acronym rather than creating a title that accurately describes a law's contents to the wider legal and political communities.[31] This aspect of federal lawmaking should undoubtedly change.

Yet given the mountain of legislation introduced in every Congressional session, it is unknown whether the respective parliamentarian offices have enough time to devote to bill title accuracy. According to a Congressional Research Service (CRS) report, the "House parliamentarian is assisted by a deputy, four assistants, and three clerks," while the Senate Parliamentarian is assisted by "two senior assistant parliamentarians, the assistant parliamentarian, and the parliamentary assistant."[32] That may or may not be enough staff to confront the issue.[33] The report also notes that none of the advice or decisions by the

27. *Parliamentarian of the House*, U.S. HOUSE OF REPRESENTATIVES, http://www.house.gov/content/learn/officers_and_organizations/parliamentarian.php (last visited Nov. 6, 2013).

28. *Glossary: "Parliamentarian"*, U.S. SENATE, http://www.senate.gov/reference/glossary_term/parliamentarian.htm (last visited Nov. 6, 2013).

29. *Parliamentarian of the House, supra* note 27.

30. VALERIE HEITSHUSEN, CONG. RESEARCH SERV., THE OFFICE OF THE PARLIAMENTARIAN IN THE HOUSE AND SENATE (2012), *available at* http://www.senate.gov/CRSReports/crs-publish.cfm?pid='0DP%2BPLO%3F%23P%20%20%0A (providing an exhaustive list of the duties of House and Senate Parliamentarians and not including bill naming among these duties).

31. *See, e.g.*, Jess Bravin, *Congress Finds, in Passing Bills, That Names Can Never Hurt You* (video), WALL. ST. J. (Jan. 12, 2011), http://online.wsj.com/article/SB10001424052748703820904576057900030169850.html#articleTabs%3Dvideo (last visited Nov. 6, 2013). The accompanying video explains that when the USA PATRIOT Act of 2001 was traveling through the legislative process, a junior level staffer was given the job of titling the bill. However, this does not mean that senior level staffers and even lawmakers themselves are more responsible in terms of naming legislation with descriptive and accurate titles, or that they do not engage in tendentious and misleading practices. They do. Bravin's video notes that Rep. Thaddeus McCotter was the impetus behind the HAPPY Act. The fact that lawmakers and their staff engage in drafting bill titles is also noted in Jones, *Processes, Standards, and Politics*, *supra* note 8, at 68-71.

32. HEITSHUSEN, *supra* note 30, at 1 (footnote omitted).

33. Of course, it depends on when the authority (or authorities) would be charged with enforcing their duties. If they had to regulate every bill that was introduced in either chamber, such a task might prove onerous. However, if they only regulated titles at certain procedural points, such as when bills passed committee or when they were being voted on by the full chamber, then such regulation might prove more manageable. Another idea could be to regulate only the short titles of bills that have been passed by both chambers. That way, courts might be further relieved of the burden of deciphering legislative purpose from an evocative or politically charged title. However, this idea also encounters complications, as the legislative process would still be subject to manipulation by particular short titles.

Parliamentarians is binding on their respective chambers.[34] This would have to change if they were to confront the bill naming issue. Nevertheless, if lawmakers remain unwilling to place accurate labels on their proposals, then the nonpartisan Parliamentarians and their staff should be given some type of official role in remedying inaccurate or tendentious titles. Should the parliamentarian offices be too busy to take on the extra responsibility, other chamber offices may suffice. The Secretary of the Senate[35] and her staff would be the most likely candidate in that chamber, while the House Clerk[36] or the House Inspector General[37] may also be competent to perform these duties.

Perhaps the best places to look for implementing official bill naming authorities, however, would be to the House and Senate offices that are already experienced in drafting legislation and have a thorough knowledge of the US Code: the House[38] and Senate[39] Legislative Counsels. These offices are comprised of lawyers that serve nonpartisan interests, and their experience and knowledge regarding the legislative process, drafting, and existing law may be equal to or better than the parliamentarians or the other offices listed above. Additionally, it is not the case that one office must take sole responsibility over short titles—such responsibilities could be shared between offices. In fact, this may be optimal, as a larger number of individuals could enhance short title accuracy by providing additional checks and balances in the bill naming procedure. This is currently the way short titles are regulated in Scotland, where the Parliamentary Counsel has initial control over the titles, and any questions that may arise over such names are passed to Parliamentary authorities and further adjudicated by the Presiding Officer.[40] This system works extremely well in terms of emphasizing accuracy. In fact, of the three legislatures I have studied in significant detail,[41] Scotland undoubtedly has the most accurate titles.[42]

Other options in regard to a bill naming authority remain elusive. In the face of populist budget-cutting, it seems highly unlikely that a new "Short Title Ombudsman" or a hypothetical "Office of Statutory Standards" would be established, even if current conditions demand it. Any unofficial "watchdog" or NGO dedicated to the cause would be just that, "unofficial," and would not have the power to change titles that may be overly tendentious or misleading.

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34. HEITSHUSEN, *supra* note 30, at 1.

35. *Secretary of the Senate*, U.S. SENATE, http://www.senate.gov/reference/office/secretary_of_senate.htm (last visited Nov. 6, 2013).

36. *Office of the Clerk*, HOUSE OF REPRESENTATIVES, http://clerk.house.gov/ (last visited Nov. 6, 2013).

37. *Office of Inspector General*, HOUSE OF REPRESENTATIVES, http://www.house.gov/IG/ (last visited Nov. 6, 2013).

38. OFFICE OF THE LEGISLATIVE COUNSEL: US HOUSE OF REPRESENTATIVES, http://www.house.gov/legcoun/ (last visited Nov. 6, 2013).

39. OFFICE OF THE LEGISLATIVE COUNSEL: UNITED STATES SENATE, http://www.slc.senate.gov/ (last visited Nov. 6, 2013).

40. Jones, *Process, Standards and Politics*, *supra* note 8, at 68-76.

41. These three legislatures are the U.S. Congress, Westminster Parliament, and Scottish Parliament.

42. Jones, *Process, Standards and Politics*, *supra* note 8, at 99-104. *See also* Jones, *Transatlantic Perspectives, supra* note 13, at 69-70.

Another fundamental question is whether lawmakers would willingly relinquish their bill naming responsibilities,[43] and this appears extremely unlikely without a significant public campaign or explicit disapproval/rejection of the practice from other governmental branches.[44] While some members think[45] that outlandish and tendentious titles do not belong in statutory law, others believe their ability to use such language is a positive aspect of the lawmaking process.[46] Some lawmakers believe that from a branding perspective, short titles carry significant weight;[47] others conclude that a strong, memorable title can ease bills through the legislative process and draw more attention to their proposals.[48] These assertions may be true.[49]

Such political considerations, however, should not trump the obligations governments have of presenting bills and laws in a descriptive, non-misleading manner. Accurately named bills and laws comprise one of the most basic foundations of a legal system: informing the citizenry about

43. Currently, no restrictions exist on how members can title bills. Lawmakers may be unwilling to give up this privilege. At least initially, the easiest way to curb misleading, overtly political, or defective bill titles would probably be through the respective rules of each chamber. The chambers would have to write a prohibition on such language into their rules, and then vote those into effect. Additionally, they would have to assign an authority or authorities to regulate such language. Much of the material above discusses the authority regulation options. More significant measures could be taken in regard to titles, however. An earlier piece of mine demonstrates that some states have short title stipulations written into their constitutions. Jones, *Proper Short Titles*, *supra* note 8, at 465-73. This could certainly be attempted on the federal level, but the herculean effort it takes to amend the U.S. Constitution makes this possibility very slim. Unofficial efforts could also be tried. The President could proclaim that he will not sign bills that carry misleading, overtly political, or tendentious titles. But, this option also seems unlikely. Another option could be implementing a custom, or self-regulation, by members themselves. Bravin, *infra*, notes that when former Congressman Barney Frank was head of the House Financial Services Committee, he did not allow bills with acronyms to be introduced. However, this option would probably do a poor job of regulating questionable titles, given that many legislators value contemporary practices in regard to naming.

44. *See* WILLIAM N. ESKRIDGE, JR., PHILIP P. FRICKEY &ELIZABETH GARRETT, LEGISLATION AND STATUTORY INTERPRETATION 178 (2d ed. 2006). The authors note that internal congressional rules can be waived. Thus, even if both chambers implemented rules and authorities in regard to short titles, it still may not be enough to stop tendentious or promotional language in titles. It therefore may come down to other governmental branches to express disapproval or rejection of the practice.

45. Jess Bravin, *Congress Finds, in Passing Bills, That Names Can Never Hurt You*, WALL. ST. J. (Jan. 12, 2011), http://online.wsj.com/article/SB10001424052748703820904576057900030169850.html; *see also* Jones, *Proper Short Titles*, *supra* note 8, at 461-62.

46. Jones, *Process, Standards and Politics*, *supra* note 8, at 104-09.

47. Jones & Shaheen, *supra* note 8, at 94-95 (2012).

48. Jones, *Proper Short Titles*, *supra* note 8, at 459-61

49. *See*, *e.g.*, Brian Christopher Jones, *Manipulating Public Law Favorability: Is It Really This Easy?*, 2 BRIT. J. AM. LEGAL STUD. 509 (2013). Among the article's findings is that more evocative names produce higher favorability ratings than bills with technical or descriptive names. However, compared with technical titles, evocative names did not lead to an increase in participants wanting more information about proposals.

what proposals are currently being considered and what laws are already on the books. If there are any problems with this basic function, and clearly there are many, then the procedures for naming statutes need to be rethought. Additionally, even if naming was taken away from lawmakers, the "popular naming" of bills and laws that representatives desire would still be possible, at least informally;[50] it would just be that official titles of bills and laws would not bear rhetorical names that may cloud the legislative and further legal processes.

CONCLUSION

If short titles are used by the Supreme Court when determining legislative purpose, then they should be written in accurate, neutral language like that used for other substantive aspects of statutes. All citizens, including legislators and judges, should be able to examine a law without being influenced by overtly partisan and misleading language. The essence of government is to inform and benefit the citizenry, not mislead; statutes, being the preeminent outcome of the democratic process, should be held to this foundational standard. Legislative process complexity, political considerations, and fierce legislative competition are not valid justifications for improperly labeled legislation. Indeed, the converse is true: they are reasons to ensure short title accuracy. Whether it is a group of citizens attempting to understand a particular law or Supreme Court Justices discussing moral disapproval, accuracy should be the at the forefront of the titling process. Currently, the only plausible way to establish such precision is to remove lawmakers' privilege of naming bills and laws, and assign this feature solely under the remit of non-partisan House and Senate authorities. Until this happens, less "banal" short titles will play an enhanced and problematic role in the legislature and the courtroom.

50. Jones, *Proper Short Titles*, *supra* note 8, at 473-75.