

# MANIPULATING PUBLIC LAW FAVORABILITY: IS IT REALLY THIS EASY?

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## ABSTRACT

*Can favorability for public laws be manipulated merely by changing the short title of the bill or act? Based on an exploratory survey of undergraduate students from the University of Stirling, the results suggest that naming may indeed play a small but significant part of the assessment. Employing five different types of short titles, it was found that “evocative” titles attracted higher favorability ratings than the “descriptive/technical” titles. Additionally, the survey found that most participants were satisfied with a short vignette of information on the bill or law rather than further explanation, and a notable number of participants supported legislation because they liked the “sound of it.” While also describing the structural context in which short titles are used and providing some political and psychological evidence that naming could be of significance to public law favorability, I ultimately advocate deliberative caution when drafting the short titles of bills and acts in order to ensure accuracy.*

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## I. INTRODUCTION

*It is not society that lives, it is people, and it is to people the law must be communicated.*<sup>1</sup>

In our increasingly complex world it is difficult to discern why some laws resonate well with the public and others acquire a cloud of insignificance or even contempt. Ideally, the most influential factor in regard to favorability arises from the substance of the law itself; especially in regard to whether it benefits those who are assessing it. Perhaps some support is also due to particular incidents surrounding a law, such as: news coverage, governmental support, lobbying efforts, and laws passed after highly publicized events, among other things. Yet other subtle factors may be at work as well when assessing law, which have largely been neglected in the literature. In light of some exploratory evidence, this article proposes that even presentational aspects of laws, such as short titles, can influence reactions to a law's favorability.

The short titles of laws are first and foremost a legal phenomenon, in that they are formally used to label and refer to statutes and proposed bills. However, the examination of how they operate in society and their effects on public law favorability involves thinking beyond the legal pragmatics and into the sociological and psychological; and doing this makes the analysis significantly more insightful. As Cotterrell states, “[d]isciplinary boundaries should be viewed pragmatically; indeed, with healthy suspicion. They should not be prisons of understanding.”<sup>2</sup> Furthermore, he notes that the “sociology of law is otherwise *inclusive* rather than exclusive,” and is “found in many disciplinary fields of knowledge and practice.”<sup>3</sup> It is no secret that interdisciplinary legal research is still

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<sup>1</sup> C. THORNTON, LEGISLATIVE DRAFTING (4th ed. 1996).

<sup>2</sup> Roger Cotterrell, *Why Must Legal Ideas Be Interpreted Sociologically?*, 25(2) J.L. SOC'Y 177 (1998).

<sup>3</sup> *Id.* at 187.

regarded as a highly contentious endeavor.<sup>4</sup> In an attempt to find common ground through an ‘intermediate’ interdisciplinary approach, this piece “appl[ies] the method or theoretical constructs of a different discipline to legal materials or aspects of a legal system in order to study social phenomena related to or affected by the law.”<sup>5</sup> For, as Vick and other scholars have expressed, “current interdisciplinary legal research too rarely involves meaningful encounters with other disciplines.”<sup>6</sup> This is an attempt to help remedy that.

The article is composed of three main parts. First, I provide a descriptive juxtaposition of where short titles fit in regard to their legal and political significance. Then, I discuss the survey methods and how they were performed, including the different types of short titles and further survey details. Next, the results are presented, followed by a discussion of the major findings. The article ends with concluding thoughts.

## II. THE STRUCTURAL CONTEXT OF SHORT TITLES

Short titles for bills and laws are used in legislatures throughout the world. Though many law-making bodies now use them in differing ways, the main historical function of such titles has been their use as referential points for legislation.<sup>7</sup> In essence they serve as the face of bills or laws, because such titles are often the first words that individuals may encounter in regard to such legislation. While this article focuses primarily on Westminster, the Scottish Parliament, and Congress, the substance and findings located within the piece may contain value for any legislature that employs short titles, and also have implications for individuals that frequently encounter legislation through their work or other means. In order to demonstrate how short titles fit into the larger theoretical picture regarding the interaction of law and politics, discussion of symbolic politics, agenda setting, framing and problem definition is provided below.

Murray Edelman penned his classic text, *The Symbolic Uses of Politics*, in the mid-1960s, and regarded language as paramount to his theory.<sup>8</sup>

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<sup>4</sup> D.W. Vick, *Interdisciplinarity and the Discipline of Law*, 31(2) J.L. SOC’Y 163, 193 (2004).

<sup>5</sup> *Id.* at 184-185.

<sup>6</sup> *Id.* at 192 (quoting Chris Tomlins, *Framing the Field of Law’s Disciplinary Encounters: A Historical Narrative*, 34 LAW & SOC’Y REV. 911, at 964 (2000)).

<sup>7</sup> See SIR MALCOLM JACK, *ERSKINE MAY’S PARLIAMENTARY PRACTICE: THE LAW, PRIVILEGES, PROCEEDINGS AND USAGE OF PARLIAMENT* (24th ed. 2011); DANIEL GREENBERG, *CRAIES ON LEGISLATION* (9th ed. 2008); Brian Christopher Jones, *Drafting Proper Short Titles: Do States Have the Answer?*, 23(2) STAN. L. & POL’Y REV. 455 (2012) (hereinafter Jones, *Drafting Proper Short Titles*); Brian Christopher Jones, *Do Short Titles Matter? Surprising Insights from Westminster and Holyrood*, 65(2) PARLIAMENTARY AFFAIRS 448 (2012) (hereinafter Jones, *Do Short Titles Matter?*); Brian Christopher Jones, *Westminster’s Impending Short Title Quandary: And How to Fix it*, PUBLIC LAW, April 2013, at 223 (hereinafter Jones, *Westminster’s Impending Short Title Quandary*).

<sup>8</sup> MURRAY EDELMAN, *THE SYMBOLIC USES OF POLITICS* (2d ed. 1985).

Writing later in 2001, Edelman declared that “language is a tool that creates worlds and versions of worlds,”<sup>9</sup> and this statement is no more true than in legislatures, where competing ideas about proposals battle for supremacy. Others have noted this importance on a more general scale, maintaining that “language as symbol is the instrument and tool for human action and expression and the means of sharing social, political, and cultural values,”<sup>10</sup> and that it “acts as the agent for social integration, the means of cultural socialization, the vehicle for social interaction, the channel for the transmission of values, and the glue that bonds people, ideas, and society.”<sup>11</sup> When examining subjects closely related to Edelman’s theory of symbolic politics, such as agenda setting, framing and problem definition, his research could not have been more prescient.

Recognizing the importance of language as symbol is essential to understanding the potential implications of short titles for bills and laws. Such names assist in setting the agenda for a government or legislature, and on a broader scale, they apprise the general public of the laws being proposed and enacted in their respective countries. In his seminal work on agenda-setting, Kingdon defines agenda as “the list of subjects or problems to which government officials, and people outside of government closely associated with those officials, are paying some serious attention at any given time.”<sup>12</sup> Inherently, almost all legislation aims to alleviate particular problems. Language itself is “an important component of the social construction of public problems ... [as it] analyzes the interaction among the media, the public, and policymakers as different political issues compete for the limited resource of attention.”<sup>13</sup> Indeed, Lukes suggests that the power of agenda setting in politics may be the most influential aspect of such power.<sup>14</sup>

Problem definition, on the other hand, occurs within agenda setting, and applies to how the government, legislators and the media succeed in defining a particular issue or policy. Rochefort and Cobb refer to it as the “process of characterizing problems,”<sup>15</sup> while others note that “in more

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<sup>9</sup> MURRAY EDELMAN, *THE POLITICS OF MISINFORMATION*, 82 (2001).

<sup>10</sup> CHARLES J. STEWART, CRAIG ALLEN SMITH, & ROBERT E. DENTON JR., *PERSUASION AND SOCIAL MOVEMENTS*, 155 (5th ed. 2006).

<sup>11</sup> *Id.* at 155.

<sup>12</sup> JOHN W. KINGDON, *AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES*, 3 (2d ed. 2003).

<sup>13</sup> Regina Lawrence, *Defining Events: Problem Definition in the Media Arena*, in *POLITICS, DISCOURSE, AND AMERICAN SOCIETY*, 92-93 (Roderick P. Hart & Bartholomew H. Sparrow, eds., 2001).

<sup>14</sup> STEVEN LUKES, *POWER: A RADICAL VIEW*, 24 (1974) (“[I]s it not the supreme and most insidious exercise of power to prevent people, to whatever degree, from having grievances by shaping their perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable, or because they value it as divinely ordained and beneficial?”).

<sup>15</sup> DAVID A. ROCHEFORT & ROGER W. COBB, *THE POLITICS OF PROBLEM DEFINITION: SHAPING THE POLICY AGENDA*, 3-4 (1994).

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formal political arenas such as legislatures and bureaucracies, particular problem definitions are enshrined in the very act of policymaking.”<sup>16</sup> Baumgartner and Jones believe that problem definitions contribute to an overall policy image, which is ultimately “how a policy is understood and discussed.”<sup>17</sup>

Central to problem definition is the act of “framing,” based partly on the insight that problems exist in perception as much as they do in reality,<sup>18</sup> and that the selective focus of chosen language, or “framing,” is the vehicle that fuels this perception. It is acknowledged that other elements (i.e. auditory and/or graphic cues) also contribute to these perceptions. Nevertheless, it is language which is critical to defining such concepts and problems.<sup>19</sup> Lawrence notes that the “fundamental premise of framing is that people generally cannot process information without (consciously or unconsciously) using conceptual lenses that bring certain aspects of reality into sharper focus while relegating others to the background. Frames are the basic building blocks through which public problems are socially constructed.”<sup>20</sup> Thus, frames are not specific informational devices but competing perspectives that use conceptual lenses to construct (or deconstruct) problems. It is not uncommon for there to be two competing images for a particular policy, as “every public policy problem is usually understood, even by the politically sophisticated, in simplified and symbolic terms.”<sup>21</sup> It has been observed by researchers that these frames, especially ones provided by elites, “may have a significant effect on interpretation and public opinion.”<sup>22</sup> The short titles of bills are part of these building blocks when considering legislative proposals and also established law.

Therefore located in the arena of agenda setting and problem definition lies the short titles of bills and laws, because these names are essential in constructing and defining the problems that pieces of legislation are attempting to alleviate. This language contributes to the frame in which individuals encounter legislation, and could affect the way they understand or view the proposal. These few words often may be the only aspects of a bill or law that the public ever sees, and choosing words that convey the proper meaning or symbolic meaning of a bill or law is an important part of this process.<sup>23</sup>

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<sup>16</sup> Lawrence, *supra* note 13, at 105.

<sup>17</sup> FRANK R. BAUMGARTNER & BRYAN D. JONES, *AGENDAS AND INSTABILITY IN AMERICAN POLITICS* (2d ed. 2009).

<sup>18</sup> Lawrence, *supra* note 14.

<sup>19</sup> STEWART ET AL., *supra* note 10.

<sup>20</sup> Lawrence, *supra* note 13, at 93.

<sup>21</sup> BAUMGARTNER & JONES, *supra* note 17, at 26.

<sup>22</sup> PAUL A. CHILTON & CHRISTINA SCHAFFNER, *POLITICS AS TALK AND TEXT: ANALYTIC APPROACHES TO POLITICAL DISCOURSE*, 229 (2002).

<sup>23</sup> Of course, there are different constraints on legislators in each of the jurisdictions studied. In Congress, the contents of short titles are in the privy of legislators and they are given wide latitude as to the wording, while in the Scottish Parliament short titles are regulated by standing orders that outlaw ‘promotional’ language in short or long titles. In

While evidence exists that frames have certain effects, there remains very little empirical evidence in the way of research on short titles, something this article attempts to address. Some anecdotal evidence from other works seem to suggest that policy names can be important in particular instances,<sup>24</sup> but none of these materials are specifically about short titles, and therefore do not elaborate on their significance or potential effects.

### A. *Practical concerns*

A common technique for naming legislative proposals is to provide titles that lack definition about what the particular policy has set out to accomplish.<sup>25</sup> These are often applied to omnibus bills that are given very “amorphous sounding” names. The vagueness of the name appears to give the bill legitimacy, as individuals would actually have to read the text of the bill, or at least sort through relevant summaries, to ascertain how it will accomplish its goals, something which inattentive publics rarely do.<sup>26</sup> Thus, those who encounter such legislation may be left with a positive notion of the supposed achievements.

Schneier and Gross acknowledge that many Congressional titles attempt to conceal information rather than provide it, and point to an act titled “An Act to Reduce Taxation,” which ultimately raised taxes on every item in the bill.<sup>27</sup> Schram also touches on the subject in an article about the Family Support Act of 1988 in Congress, stating that the title was inherently misleading, because the Act was “almost exclusively about welfare rather than families.”<sup>28</sup> Westminster is not immune to such difficulties. Willett has noted how adding the word “safety” to the Food Safety Act of 1990’s title leads “us to believe that these new proposals have in some substantive sense given ‘safety’ a higher priority.”<sup>29</sup> Further he states that “the legislative process—from White Paper to statute book—manifests a

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Westminster such titles are subject to informal constraints by House Authorities, and especially the Speaker of the House. Also, in the Scottish Parliament and in Westminster short titles are mandatory, while in Congress short titles are optional, but used frequently. See Brian Christopher Jones, *Processes, Standards and Politics: Drafting Short Titles in the Westminster Parliament, Scottish Parliament and U.S. Congress*, 25(1) *FLA. J. INT’L L.* 57 (2013) (hereinafter Jones, *Processes, Standards, and Politics*).

<sup>24</sup> Rochefort & Cobb, *supra* note 15; ERIC REDMAN, *THE DANCE OF LEGISLATION* (2001); WILLIAM SAFIRE, *THE RIGHT WORD IN THE RIGHT PLACE AT THE RIGHT TIME: WIT AND WISDOM FROM THE POPULAR LANGUAGE COLUMN IN THE NEW YORK TIMES MAGAZINE* (2004); FRANK LUNTZ, *WORDS THAT WORK: IT’S NOT WHAT YOU SAY, IT’S WHAT PEOPLE HEAR* (2008).

<sup>25</sup> R. DOUGLAS ARNOLD, *THE LOGIC OF CONGRESSIONAL ACTION*, 102 (1990).

<sup>26</sup> *Id.* at 68-71.

<sup>27</sup> EDWARD V. SCHNEIER & BERTRAM GROSS, *CONGRESS TODAY*, 370 (1993).

<sup>28</sup> Sanford F. Schram, *Post-Positivistic Policy Analysis and the Family Support Act of 1988: Symbols at the Expense of Substance*, 24(4) *POLITY* 633, 645 (1992).

<sup>29</sup> Chris Willett, *The Food Safety Act of 1990: Substance or Symbolism*, 12 *STATUTE L. REV.* 146 (1991).

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significant degree of symbolism.”<sup>30</sup> Additionally, I previously noted that the Protection of Freedoms Act was curiously named, as it could have easily been labeled under “rights” or “freedoms” or even under “Statute Law Repeals” legislation, which is quite common.<sup>31</sup>

Arnold states that many constituents may support a proposal simply because they “like the sound of it.”<sup>32</sup> Lawmakers are likely aware of this assertion, and may be already taking advantage of it in particular legislatures (i.e. Congress). Given that voting on these measures could affect their future political careers, legislators could also be susceptible to the pull of evocative short titles.<sup>33</sup> Ministers or other lawmakers may believe that because of the time constraints on their colleagues, providing such titles may be one way to enhance the favorability of particular bills, making them more likeable and therefore more enactable.

### *B. Evidence of naming effects*

I have previously documented that legislators and other insiders in Westminster, the Scottish Parliament and Congress believe that short titles affect the legislative process, and also potentially affect enactment.<sup>34</sup> However, while the interviews in those jurisdictions provided credible evidence that short titles do indeed matter to those interacting with legislation, they did not empirically demonstrate that such titles can affect the favorability of bills or acts.

Although researchers in law and politics have touched on naming and how various policies have been framed, no systematic academic research seems to have been conducted into how short titles for bills and laws may affect members of the general public. It seems clear from the research presented above that framing issues can present certain advantages and that researchers and practitioners could be aware of the benefits of an evocative short title. Yet overall these findings remain unsubstantiated, something that this article seeks to remedy.

## III. PSYCHOLOGICAL INSIGHTS

From the perspective of social and cognitive psychology, naming is highly valued in various situations. Research into semantic language pro-

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<sup>30</sup> *Id.* at 155.

<sup>31</sup> Jones, *Westminster’s Impending Short Title Quandary*, *supra* note 7, at 223.

<sup>32</sup> Arnold, *supra* note 25, at 119.

<sup>33</sup> Jones, *Drafting Proper Short Titles*, *supra* note 7; Jones, *Do Short Titles Matter*, *supra* note 7; Jones, *Processes, Standards and Politics*, *supra* note 23. The explanation of what makes a short title ‘evocative’ is supplied below. However, in order to provide the reader with a sense of what this means, such titles usually include unnecessary proper nouns, adjectives and/or verbs in the short titles of the bill or act; such unnecessary use is classified in this article as ‘evocative’.

<sup>34</sup> Jones, *Drafting Proper Short Titles*, *supra* note 7; Jones, *Do Short Titles Matter*, *supra* note 7; Jones, *Processes, Standards, and Politics*, *supra* note 23; Jones, *Westminster’s Impending Short Title Quandary*, *supra* note 7.

cessing and the effects of language on the human brain is critical to understanding the potential implications of short titles. Though expanding rapidly, relatively little is known in the field of neuroscience about the neural systems that support communication in regard to morality, valuation and emotion.<sup>35</sup> While some believe that individuals may read a statement and then decide how they feel about the text,<sup>36</sup> others have demonstrated that the initial valuation of a statement is processed as the reading of a sentence unfolds, and such processes are computed in a matter of a few hundred milliseconds.<sup>37</sup> Researchers have evidence that individuals making value judgments on a statement tend to do this on a word-by-word basis, as any word that clashes with a person's value-system triggers an immediate negative neural response.<sup>38</sup> This may be why some short titles are often cloaked in words with positive connotations: because our neural pathways respond better to positive language. Short titles provide positive and at times emotionally arousing descriptions of bills and laws that implicitly subjects individuals to make value judgments. Therefore, the more positive words located in the short title the more likely a positive value judgment will occur.

Such findings could also have implications for short titles that incorporate "negative" or "unmoral" sounding words, such as the Westminster Parliament's Corporate Manslaughter and Corporate Homicide Act 2007<sup>39</sup> or the Female Genital Mutilation Act 2003.<sup>40</sup> This could be why the Scottish Parliament instead passed the Prohibition of Female Genital Mutilation (Scotland) Act 2005,<sup>41</sup> as the title is seen as doing something positive; both Acts pursued a similar outcome, but the Scottish Parliament acknowledged the prohibition aspect in the title of the Act.

The rationalist conception that moral judgment is based on thoughtful calculation has also been discredited. Evidence has demonstrated that such judgments are based on "quick, automatic feelings of approval or disapproval," and this is true for both complex and simple stimuli.<sup>42</sup> Therefore merely because something is more complicated (i.e. larger societal problems) and could be solved through legislative means, we cannot infer that individuals who encounter these problems are necessarily giving their judgments more than cursory thought. This has significant implications for short titles, as a perfunctory glance at many such titles may invoke positive feelings. Van Berkum, *et al.* surmise that "the evolutionary signif-

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<sup>35</sup> Jos J.A. Van Berkum *et al.*, *Right or Wrong: The Brain's Fast Response to Morally Objectionable Statements*, 20(9) *PSYCHOL. SCI.* 1092 (2009).

<sup>36</sup> *Id.* at 1093.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 1095.

<sup>39</sup> Corporate Manslaughter and Corporate Homicide Act, 2007, c.19.

<sup>40</sup> Female Genital Mutilation Act, 2003, c.31.

<sup>41</sup> Prohibition of Female Genital Mutilation (Scotland) Act, 2005, A.S.P. 8.

<sup>42</sup> Van Berkum *et al.*, *supra* note 35, at 1093.

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icance of being able to rapidly tell good from bad suggests that valuations might be among the first bits of information to be computed.”<sup>43</sup>

Nonetheless, responses to evocative names will vary, especially in terms of which short title classification (see classifications below) is proffered. Some researchers note that proper names can be richly suggestive, and can invoke strong emotional empathy at times, even if one does not know the person.<sup>44</sup> Other findings are relevant to “overt action” titles, which employ the use of action verbs. Speer et al. note that

neuroimaging studies of single-word reading have also provided initial support for the hypothesis that readers’ representations of word meaning are grounded in visual and motor representations. These studies have demonstrated that brain regions involved in reading action words are some of the same regions involved in performing analogous actions in the real world.<sup>45</sup>

The authors go on to state that “readers dynamically activate specific visual, motor, and conceptual features of activities while reading about analogous changes in activities in the context of a narrative.”<sup>46</sup> A useful example the authors employ to demonstrate this is when somebody watches a goal kick or performs the act of kicking a football; the same brain regions are activated when reading about such an activity. Therefore people who encounter legislation that discusses “taking back our streets,” “helping families save their homes,” or “protecting children” may activate the same neural pathways that they would be if they were actually engaged in performing the action. This article proposes that by supporting such legislation individuals may be predisposed to develop a narrative in which government, lawmakers, law-making bodies, or even themselves are assisting in the action represented in the title of the Act.

Most persuasion researchers believe that for a message to be effective it must be attended to at some level.<sup>47</sup> Individuals must therefore be willing to be persuaded by messages in order for them to be effective. Employing the use of evocative naming produces likely advantages to those who desire the bill’s success, but these advantages are probably limited. Those who are not willing or are unlikely to be persuaded on a bill or law probably will not respond positively or negatively to evocatively-named legislation, as they will not attend to the message. Thus, the positive image of the proposal will likely have no effect on those who have already made up

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<sup>43</sup> *Id.*

<sup>44</sup> G. English, *On the Psychological Response to Unknown Proper Names*, 27(3) AM. J. PSYCHOL., 430 (1916).

<sup>45</sup> Nicole K. Speer et al., *Reading Stories Activates Neural Representations of Visual and Motor Experiences*, 20(8) PSYCHOL. SCI. 989 (2009).

<sup>46</sup> *Id.* at 995-96.

<sup>47</sup> David R. Roskos-Ewoldson et al., *Attitude Accessibility and Persuasion: The Quick and the Strong*, in *THE PERSUASION HANDBOOK: DEVELOPMENTS IN THEORY AND PRACTICE* 39, 40-42 (James Dillard & Michael W. Pfau eds., 2002).

their minds on an issue. The individuals that such methods may affect are those who are willing to be persuaded in some respect, and are attentive to the message being delivered.

Conversely, it has also been demonstrated that when people are more accessible in their attitudes towards an issue, they tend to expend more cognitive effort when interpreting that issue.<sup>48</sup> These accessible attitudes may bias and also motivate the critical processing of information towards these messages.<sup>49</sup> These findings are directly relevant to short titles: expanding cognitive effort while interpreting persuasive messages could increase or decrease a person's favorability reaction to evocatively-named legislation. Expending more cognitive energy and effort interpreting these messages may only enhance the favorability of an evocative short title. However, the reverse may be true as well; findings suggest that individuals become more critical of messages when their attitudes are more accessible.<sup>50</sup>

Expectation must also be taken into consideration when evaluating response to various messages. When individuals know that they need to evaluate something in the future, they usually develop an attitude towards the stimulus in question beforehand.<sup>51</sup> This suggests individuals may already have certain attitudes towards various bills or types of laws before they ever encounter them. Experienced political figures and followers may have highly developed attitudes towards bills proposed by certain members, parties, issues, etc., and could react favorably or unfavorably based on these initial qualities. It is unclear whether or not peripheral issues, such as short titles, would affect those predetermined attitudes.

Fear appeals have long been used as persuasion techniques,<sup>52</sup> and also appear in short titles. Such names often employ overly positive language that endears the measure to those who encounter it, which appears harmless until one considers how an opponent of the bill or law will be perceived. A vote against certain bills implies the opposite of what is being inscribed in its title, (i.e. if a bill is deemed "responsible," those who oppose such measures appear irresponsible; if a bill is mentions "protection," those in opposition appear against protecting whatever it is the bill is in reference to (i.e. children, consumers, etc.)).

Therefore, psychological insights have many implications for how short titles may affect favorability of bills and laws.

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<sup>48</sup> Leandre R. Fabrigar et al., *The Impact of Attitude Accessibility on Elaboration of Persuasive Messages*, 24 *PERSONALITY & SOC. PSYCHOL. BULL.* 339, 342 (1998).

<sup>49</sup> Roskos-Ewoldson, *supra* note 47, at 49.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 47.

<sup>52</sup> *Id.* at 49.

#### IV. METHODS

As noted above, there is presently little quantitative research available in the academic community related to short titles for bills and acts.<sup>53</sup> Because of this dearth of evidence and lack of established methods towards the issue, the focus of this study was largely exploratory.

This article incorporates a quantitative study participated in by university students from Scotland. This study was not a traditional survey, but adopted a technique more familiar in social psychology, in which participants were required to read and compare several texts and then provide answers to closed questions.

The surveys were five-condition randomized experiments.<sup>54</sup> The five conditions represented the types of bills: humanized, overt action, desirable characteristic, combination and descriptive/technical.<sup>55</sup> The main dependent construct the survey attempted to establish was the participant's attitude toward the bill or law – that is, how favorably the participant felt about the measure. I wanted to determine if people looked more favorably on bills or laws with evocative (personalized, overt action, combination or desirable characteristic) names, compared to non-evocative names. Two other dependent constructs were present within the surveys as well: why the participants favored or opposed the measure, and whether or not the participants desired more information on the bill. Thus, every survey included four vignettes of bills containing four questions about each bill, and then a page of descriptive characteristic questions.

Before a more precise description of the quantitative sample populations and procedures are provided, an explanation of the bill naming classifications found in this article must be specified.

##### *A. Five Classifications of Short Titles*

After researching legislation from Westminster, the Scottish Parliament and Congress, I have identified five particular styles of naming: personalized, desirable characteristic, overt action, combination and bland

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<sup>53</sup> Much of my qualitative research on the topic is cited above.

<sup>54</sup> Samples of the survey are available upon request. Twenty different versions of the surveys were composed based on a modified Latin Square Design. (Though this was based on such a design, a true Latin square design must have equal parts, such as 4X4 or 5X5, and my study was a 4X5 design (5 types of names for 4 bills)). It was determined that adding another bill would have made the surveys too protracted. Using this method counterbalances the order of media stories and the order of titles. This technique allows the researcher to have each story appear in each position an equal number of times, and also have each title condition appear an equal number of times. The bland titles were considered the control measures in the experiment. Randomizing the survey versions and the names in the questionnaires using this method increases the reliability and validity of the experiment.

<sup>55</sup> These are described in more detail below.

naming.<sup>56</sup> In this study, the first four naming types are classified as “evocative,” while the descriptive/technical naming style is classified as “un-evocative.” It may seem tautological to acknowledge, but the “evocative” naming types all use nouns, proper nouns, verbs, adjectives, or a combination of such terms to present legislation in the most favorable light possible.

i. Personalized titles

These are most commonly used in Congress (e.g. Megan’s Law,<sup>57</sup> Laci and Connor’s Law<sup>58</sup>) and usually present public bills and laws in a personalized context;<sup>59</sup> however they are sometimes seen in other legislatures (e.g. The Scottish Parliament) in regard to private law (e.g. the William Simpson’s Home (Transfer of Property etc.) (Scotland) Act 2010<sup>60</sup> or the Ure Elder Fund Transfer and Dissolution Act 2010<sup>61</sup>). Personalized titles can incorporate anybody’s name in the title, but often the sponsors of the legislation or whom the legislation is being passed in honor of are the individuals who adorn such titles.

ii. *Desirable characteristic titles.*

These titles employ language in which particular characteristics may be applied to parties who propose such legislation and/or legislators who vote for or against the measure, such as: responsibility, accountability, etc. Most of the additions to desirable characteristic naming are adjectival. Examples from this genre are: Fair Sentencing Act of 2010,<sup>62</sup> and, in acronym form, the USA PATRIOT Act of 2001.<sup>63</sup>

iii. *Overt action titles.*

These names include language that explicitly states an action will take place, and are perhaps the most tendentious of the different styles. Frequent words used inside are “prevention” and “protection,” and this is the most common form of “evocative” naming employed by Westminster

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<sup>56</sup> Acronyms are encompassed in this list. The fact that acronyms spell certain words or phrases makes them a part of the above lists. Usually the word or phrase spelled is how the title is classified.

<sup>57</sup> Megan’s Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996).

<sup>58</sup> Laci and Conner’s Law, Pub. L. No. 108-212, 118 Stat. 568 (2004).

<sup>59</sup> See generally, Brian Christopher Jones, *Transatlantic Perspectives on Humanised Public Law Campaigns: Personalising and Depersonalising the Legislative Process*, 6 LEGISPRUDENCE 57 (2012).

<sup>60</sup> William Simpson’s Home (Transfer of Property etc.) (Scotland) Act, 2010, (A.S.P. 12).

<sup>61</sup> Ure Elder Fund Transfer and Dissolution Act, 2010, (A.S.P. 7).

<sup>62</sup> Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372.

<sup>63</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

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and the Scottish Parliament. The title of the Violent Crime Reduction Act,<sup>64</sup> for example, implies that this particular Act will reduce violent crime. Opponents of such measures can be portrayed as aloof or unsympathetic to the reduction of such crime. Conversely, proponents may be deemed more assertive or effective, and willing to take action on various matters. More examples from Westminster are: the Protection of Freedoms Act 2012;<sup>65</sup> the Counter-Terrorism Act 2008;<sup>66</sup> the Safeguarding Vulnerable Groups Act 2006;<sup>67</sup> and the Prevention of Terrorism Act 2005.<sup>68</sup> Examples from the Scottish Parliament are: the Protection from Abuse (Scotland) Act 2001;<sup>69</sup> the Protection of Children (Scotland) Act 2003;<sup>70</sup> the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;<sup>71</sup> and the Protection of Vulnerable Groups (Scotland) Act 2007.<sup>72</sup>

### *iv. Combination titles.*

Many Congressional names employ a combination of the tactics mentioned above, seemingly designed to garner as much support as possible through the use of multiple tactics. Therefore, bills or laws may employ both personalized and desirable characteristic qualities (i.e. the Daniel Pearl Freedom of the Press Act of 2009),<sup>73</sup> personalized and overt action qualities (i.e. the Adam Walsh Child Protection and Safety Act of 2006),<sup>74</sup> or overt action and desirable characteristic qualities (i.e. Patient Protection and Affordable Care Act).<sup>75</sup> This type of naming could heighten the political consequences of voting against the measure: the more tactics used, the more positive policy statements that reside in the title. However it could also raise the stakes for politicians who vote for the law, as should the statute not fulfill its intended aspiration(s), the increase in tendentious language located in the title could potentially be an accountability problem.

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<sup>64</sup> Violent Crime Reduction Act, 2006, c. 38 (U.K.).

<sup>65</sup> Protection of Freedoms Act, 2012, c. 9 (U.K.).

<sup>66</sup> Counter-Terrorism Act, 2008, c. 28 (U.K.).

<sup>67</sup> Safeguarding Vulnerable Groups Act, 2006, c. 47 (U.K.).

<sup>68</sup> Prevention of Terrorism Act, 2005, c. 2 (U.K.).

<sup>69</sup> Protection from Abuse (Scotland) Act, 2001, (A.S.P. 14).

<sup>70</sup> Protection of Children (Scotland) Act, 2003, (A.S.P. 5).

<sup>71</sup> Protection of Children and Prevention of Sexual Offences (Scotland) Act, 2005 (A.S.P. 9).

<sup>72</sup> Protection of Vulnerable Groups (Scotland) Act, 2007 (A.S.P. 14).

<sup>73</sup> Daniel Pearl Freedom of the Press Act of 2009, Pub. L. No. 111-166, 124 Stat. 1186, (2010).

<sup>74</sup> Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587, (2006).

<sup>75</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, (2010).

*v. Descriptive/technical titles.*

These do not employ any of the naming methods mentioned above. Westminster and the Scottish Parliament employ this type of style more than any other (i.e. the Energy Act 2010;<sup>76</sup> the Banking Act 2009;<sup>77</sup> and the Policing and Crime Act 2009).<sup>78</sup> Given the literature mentioned above it is hypothesized that these particular bills and acts, which do not come accompanied with evocative language, would get lower ratings on favorability scales.

*B. Further methodological details*

In total 258 undergraduate students from the University of Stirling were recruited for the survey. Each survey consisted of four different bill vignettes (the real-life bills used in the study are in bold below).<sup>79</sup> All of the bills or acts used were from Westminster or the Scottish Parliament. For every original bill name, four other types of names were contrived. For example, the Standards in Scotland's Schools Act,<sup>80</sup> since its original name is classified as desirable characteristic, had a personalized, overt action, combination, and bland name contrived for use in additional surveys. Every survey had an almost identical vignette of each real-life bill or law. Only the bill proposal names varied, drawing on the following five types of names in the survey:

UK Bills/Acts:

- *Personalized Titles* – Kim Rogers Violent Crime Act, Tim Hopkins Bill, Ron Jones Torture Damages Bill, Lindsay New-some Scotland's Schools Bill
- *Desirable Characteristic Titles* – Ethical Standards in Public Life Bill, Standard's in Scotland's School's Bill etc., Common Sense Violent Crime Act, Rational Torture Damages Bill
- *Overt Action Titles* – Violent Crime Reduction Act of 2006, Improving Public Life Bill, Restoring Scotland's Schools Bill, Providing Torture Damages Bill
- *Combination Evocative Titles* – Enhancing Ethical Standards in Public Life Bill, Restoring Standard's in Scotland's Schools Bill, Common Sense Violent Crime Reduction Act, Rational Providing of Torture Damages Bill
- *Control/Bland Titles* – Torture Damages Bill, Violent Crime Act, Public Life Bill, Scotland's Schools Bill

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<sup>76</sup> Energy Act, 2010, c. 27 (UK).

<sup>77</sup> Banking Act, 2009, c. 1 (UK).

<sup>78</sup> Policing and Crime Act, 2009, c. 26 (UK).

<sup>79</sup> Thus, since there were 258 participants in the study, a total of 1,032 bill vignettes were responded to in the study.

<sup>80</sup> Standards in Scotland's Schools etc. (Scotland) Act, 2000, (A.S.P. 3).

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The articles used were all actual news stories on the bills and acts, and contained (by substitution when necessary) the contrived bill name, a brief synopsis of what the bill entails, and other relevant information regarding the bill. The articles were taken from the *Guardian*, the *Times*, and the *Scotsman*. The vignettes used in the study were only altered slightly for research purposes.<sup>81</sup> Participants were asked to read the article and then asked how familiar they were with the issues presented in the articles. Next, they were asked whether or not they would support the bill given the information provided, or be unsure, or have no opinion. This question was the main dependent variable for the questionnaire, as the participant's support for each naming type was compared with the others.

If the participant favored or opposed the measure, they were instructed to go to question three (3). If they chose the unsure/have no opinion option, they were instructed to go to question four (4). Question three (3) asked why the participant favored or opposed the measure, and had three options: (1) they liked/disliked the sound of it; (2) they favored/opposed the description or policies of the legislation; or (3) Other. This question attempted to ascertain the separation between actual bill policies and short titles, and was another major dependent variable present in the questionnaire. The fourth and final question on the survey asked the participants whether or not, if offered, they would like more information on the bill. Here the participants were merely given a yes – no option. This question attempted to explore whether or not people desire more information about bills, other than the small vignette that is provided with the questionnaire.

## V. Results

The results of survey are included below, and the data is presented according to hypotheses.

*Hypothesis 1: Bills with evocative titles (personalized, desirable characteristic, combination, and overt action) will receive higher favorability rates than bills with non-evocative (technical/descriptive) titles. This will be true at the aggregate-level.*

In terms of overall favorability, the hypothesis was confirmed; all evocative titles produced higher favorability ratings than the descriptive names at the aggregate-level. The results were as follows:

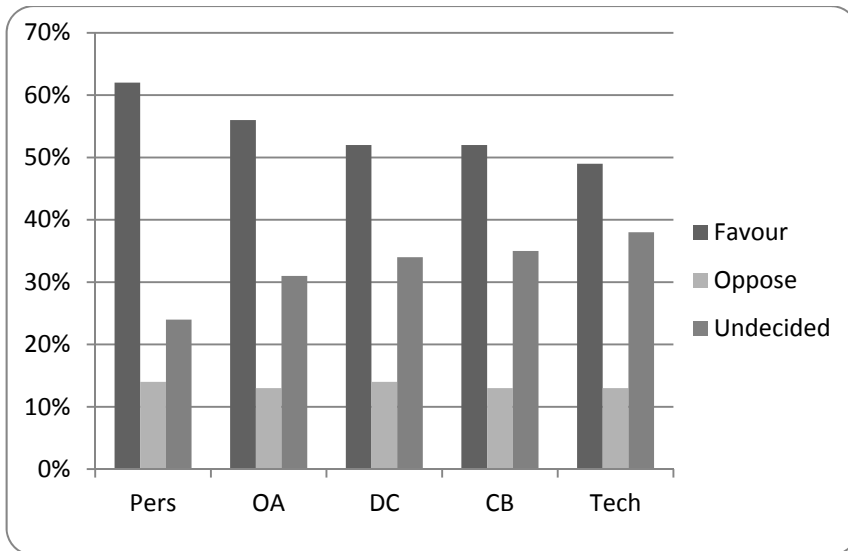
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<sup>81</sup> The only articles that were altered were the “personalized” vignettes. Since personalized names needed to be contrived for all of the bills and acts used, there was a line added to the vignettes that explained why the Act was named as such. Also, as regards to the personalized names used in these bills, most of them were contrived completely at random, and the names used are fictional. However, there are instances, such as in the U.K. Torture Damages Bill, where the name of the personalized bill is drawn from the actual article, and thus the name is an actual person involved in the issue.

Table 1. Overall favorability for naming types<sup>82</sup>

	<u>Favor</u>	<u>Oppose</u>	<u>Undecided</u>
Personalized	62%	14%	24%
Overt Action	56%	13%	31%
Desirable Ch.	52%	14%	34%
Combination	52%	13%	35%
Technical	49%	13%	38%

Figure 1. Favorability for Naming Types



This is the most significant finding. As the above figure shows, personalized titles were the most popular overall (62%), followed in succession by overt action (56%), desirable characteristic (52%), combination (52%), and technical (49%). The results of note for this outcome are the ‘Favor’ and ‘Undecided’ bars, since opposition stood quite firm at 13-14% for all naming types. Thus, the undecided category was the main differ-

<sup>82</sup> The 258 respondents each had four bills included in their surveys. A total of 1,026 bills had valid responses. When compared to bland naming in a multinomial logistic regression, personalised naming was significant on both the favour (.002) and oppose (.083) sides, at the .01 level and .1 level, respectively. However, the aggregate results were not significant in a chi-square test for significance (.207), and naming itself was not significant in a logistic regression (.174).

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ence among title types. In Figure 1, notice how the favor bar decreases across the graph as it approaches technical titles, while the undecided bar increases as it approaches technical titles. Additionally, for disclosure sake,<sup>83</sup> below is a breakdown of the favorability rates by type of legislation and type of short title:

Table 2. Type of Legislation and Type of Title – Favorability

<u>Public Life</u>	<u>Favor</u>	<u>Oppose</u>	<u>Undecided</u>
Pers	51%	19%	30%
OA	58%	8%	35%
DC	54%	12%	35%
CB	57%	14%	29%
Tech	49%	13%	38%
<u>Schools</u>	<u>Favor</u>	<u>Oppose</u>	<u>Undecided</u>
Pers	67%	5%	28%
OA	57%	5%	38%
DC	47%	8%	45%
CB	41%	2%	57%
Tech	47%	6%	48%
<u>Torture</u>	<u>Favor</u>	<u>Oppose</u>	<u>Undecided</u>
Pers	65%	15%	21%
OA	61%	24%	15%
DC	52%	23%	25%
CB	50%	22%	28%
Tech	45%	10%	45%
<u>Violent Crime</u>	<u>Favor</u>	<u>Oppose</u>	<u>Undecided</u>
Pers	68%	14%	19%
OA	48%	18%	35%
DC	59%	14%	27%
CB	58%	16%	25%
Tech	57%	22%	21%

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<sup>83</sup> Any other data that is not present in the article is available upon request.

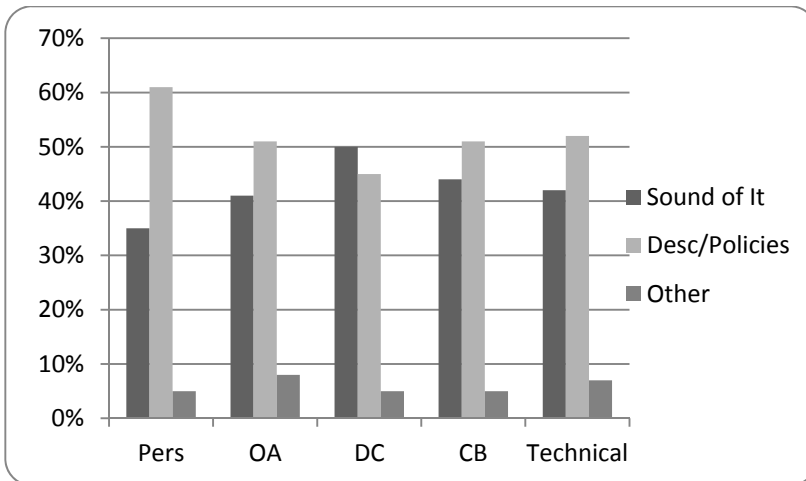
*Hypothesis 2: For those participants that favored or opposed the measure, a majority of them will have done so because they favored or opposed the description or policies of the legislation.*

This hypothesis was supported for all title types except for one, desirable characteristic, where 50% of the participants said that they supported the legislation because they liked the “sound of it,” while only 45% supported it because of the description/policies of the legislation. Personalized titles produced interesting results in terms of why the measures were supported; they had the highest measure on the description or policies of the legislation with 61%, and the lowest in terms of participants liking the “sound of it” (35%). The “Other” category remained within a similar range for all naming types (5-8%).

Table 3. Why the Measure Was Supported, by Short Title<sup>84</sup>

	<u>Sound of It</u>	<u>Desc./Policies</u>	<u>Other</u>
Personalized	35%	61%	5%
Overt Action	41%	51%	8%
Desirable Ch.	50%	45%	5%
Combination	44%	51%	5%
Technical	42%	52%	7%

Figure 2. Why the Measure Was Supported, by Short Title



<sup>84</sup> These results were not significant in a chi-squared test for significance (.329), and they were not significant in a multinomial logistic regression either (.419); title types were not significant in the regression (.323).

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*Hypothesis 3: After they have read the short vignette of the bill, participants will not desire more information on the legislation in question.*

Surprisingly, this hypothesis was largely supported; three title types (personalized, overt action, and technical) did not desire more information regarding the bills/laws in question.<sup>85</sup> Additionally, short title style did not seem to play a factor in whether people desired more information on the legislation. The style that garnered the largest percentage wanting more information was Combination (53%), while Desirable Characteristic followed closely behind at 50%. Most of the reactions, however, clustered around 50%.

Table 4. Percentage that Wanted More Information, by Short Title

	<u>Yes</u>	<u>No</u>
Personalized	48%	52%
Overt Action	46%	54%
Desirable Ch.	50%	50%
Combination	53%	47%
Technical	46%	54%

## VI. DISCUSSION

The survey data produced three notable findings in regard to: (1) the results for overall favorability; (2) that many people just like the “sound of it”; and (3) that many are satisfied with a small vignette of information.

The most fascinating result from the survey was the distribution of the aggregate favorability results, which supports the proposition that short titles may affect the favorability of bills and laws. The continuous drop in favorability and the increase in undecided outcomes were readily transparent, and correlated almost perfectly. Opposition averages for all short title types held constant at 13-14%. This is an important finding, which indicates that technical titles could produce more indecision, while more evocative titles could produce a more decisive response. In fact the results were statistically significant when analyzing Personalized v. Technical names, which is a noteworthy finding in regard to potential short title effects, especially in regard to Congress. Future studies should incorporate these methods on a much larger scale, and test whether the effects of different short title types influence favorability to the same extent.

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<sup>85</sup> The results, however, were not statistically significant either in a chi-square test for significance (.706) or a multinomial regression (.764).

The second noteworthy finding was that a significant amount of individuals supported policies because they liked the sound of them, as opposed to supporting the description or policies of the legislation. While this result cannot be directly linked to the short titles of the legislation, it is consistent with Arnold's assertion that many people support legislation simply because they like the "sound of it."<sup>86</sup> In fact, the lowest total for this category was personalized titles at 35%, while the highest was desirable characteristic titles at 50%. These numbers suggest that, for this population, a cursory examination of bills when determining favorability is quite common (and, it should be noted that the participants in this study were highly educated, as most were in years 1-3 of university).

In regard to participants desiring more information about bills, title type did not make a difference to any statistically significant degree. This result runs contrary to individuals who argue that evocative short titles could potentially be effective attention-getting devices for legislation.<sup>87</sup> There could be multiple explanations for these findings (i.e. because respondents had previously made up their minds on the proposal or because the vignettes supplied an adequate amount of information, etc.); whatever the explanation, many participants were content with the small vignette of information about the legislation.

## VII. CONCLUSIONS

The article asks if it is easy to manipulate public law favorability based on the presentational aspects of statutes. Policymakers may be disappointed to learn that such a proposition remains inherently complicated. However, these exploratory survey results suggest that at some level the short titles of bills and laws do matter in terms of public law favorability. Such evidence may have political or procedural implications, as it could provide lawmakers more incentive to employ evocative short titles, especially for contentious legislation that may be difficult to get through a chamber. And the fact that many participants claimed to favor legislation because they liked the "sound of it" and felt adequately supplied with an explanatory vignette of legislation, rather than acquiring more information on it, are certainly distressing findings for public law. Ultimately, the results suggest that the sometimes subtle language located within a few words can produce very real outcomes. Yet this phenomenon should be studied much more in order to ascertain just how short titles affect the favorability of bills and laws.

Using evocative or promotional language in bills and laws, however, should be done with caution. When Orr wrote about the sloganeering efforts of Australian legislative bills, he noted that using such titles for formal, government sponsored legislation may indeed be hastening "a decline

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<sup>86</sup> Arnold, *supra* note 25, at 119.

<sup>87</sup> WALTER J. OLESZEK, CONGRESSIONAL PROCEDURES AND THE POLICY PROCESS, 93 (8th ed., 2011); Jones, *Processes, Standards, and Politics*, *supra* note 24, at 88-91.

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in respect for democratic governance.”<sup>88</sup> Others have expressed similar notions. Samuels concludes that evocative political imagery not only misleads, but “promotes conflict, engenders emotion and infects institutions,”<sup>89</sup> and Perloff maintains that “the fact that citizens of the United States hold their elected representatives and the institution that houses them in low esteem is a serious problem for representative democracy.”<sup>90</sup>

While lawmakers and other legal and political insiders may feel that they are immune to the effects of such language, they should probably heed many of these warnings. Brader has carried out extensive research on emotive political advertising, and found that those more familiar with politics, issues and politicians are *more* affected by these types of advertisements than those less familiar.<sup>91</sup> Therefore many tactics aimed at uninformed or inattentive individuals may affect those that are more involved or knowledgeable about such issues (i.e. lawmakers and other legislative insiders). This is especially relevant in regard to evocative short titles, because sometimes “an occasional memorable or quotable phrase seems to be more persuasive than an argument that is empirically and logically impeccable and thorough.”<sup>92</sup> Taken on their face many short titles sound like panaceas for some of the most important and highly sophisticated problems and issues of our times, but in reality: “[i]t can rarely be known what concrete future effects public laws and acts will bring.”<sup>93</sup> Lawmakers in all jurisdictions should take note of such wise statements when providing short titles to legislation.

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<sup>88</sup> Graeme D. Orr, *Names without Frontiers: Legislative Titles and Sloganeering*, 21(3) STAT. L. REV. 188, 189 (2000).

<sup>89</sup> Andrew Samuels, THE POLITICAL PSYCHE 61 (1993).

<sup>90</sup> Richard Perloff, POLITICAL COMMUNICATION: POLITICS, PRESS AND PUBLIC IN AMERICA, 140 (1998).

<sup>91</sup> Ted Brader, CAMPAIGNING FOR HEARTS AND MINDS: HOW EMOTIONAL APPEALS IN POLITICAL ADS WORK, 147-176 (2006).

<sup>92</sup> Edelman, *supra* note 9, at 97.

<sup>93</sup> Edelman, *supra* note 8, at 193.

