



Don't Be Silly: Lawmakers “Rarely” Read Legislation and Oftentimes Don't Understand It . . . But That's Okay

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I. INTRODUCTION

A frequent and cumbersome complaint about lawmakers is that they do not read legislation as it travels through the legislative process.¹ In the United States, complaints about the lack of textual reading of legislation reached a fever pitch during debate over the Patient Protection and Affordable Care Act² (“Obamacare”), as legislators were often portrayed as having a lack of specialized, or even general, knowledge on

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1. Perhaps most famously on this issue, see Hans A. Linde, *Due Process of Lawmaking*, 55 NEB. L. REV. 197, 224 (1976) (“Surely there is no place for a vote on final passage by members who have never read even a summary of the bill, let alone a committee report or a resume of the factual determination.”). For a more modern and comprehensive take on this issue, see Hanah Metchis Volokh, *A Read-the-Bill Rule for Congress*, 76 MO. L. REV. 135, 140–41 (2011).

Requiring legislators to read the text of a bill before voting on it would focus their attention on the lawmaking aspect of their jobs, which is now almost ignored in favor of policymaking and other aspects. Reading a bill may not be necessary to an understanding of the policy motivating a proposed law, but it is necessary to understand what the proposed law *is* and what effects it will have in the real world. A responsible legislator must learn both.

Id.

2. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).

the lengthy measure.³ Many respected news outlets waded into the issue: *Washington Post* (“Read Before You Vote, Congressman”);⁴ *U.S. News and World Report* (“Health Reform Demands That Lawmakers Read the Bills”);⁵ and even *Wired* (“Read the Bill, Group Tells Congress”).⁶ The *Wired* story featured the Sunlight Foundation, which started a campaign called “Read the Bill,” complete with its own website listing rushed bills and other case studies regarding lengthy legislation.⁷ Yet, the view that not reading legislation is problematic seems to be based on the mistaken belief that lawmakers are interested in and engaged with every bill that passes in front of their desk or is voted on in the chamber. To be frank, *this assertion is silly.*

Legislatures, and particularly the U.S. Congress, are composed of diverse individuals that have particular backgrounds and specializations, and legislative interest varies.⁸ Some lawmakers may be interested in agriculture, some in immigration, and others in foreign affairs. One does not become a universal legal and policy expert simply because he or she is elected to public office. Barring legislative specialization, however, members of Congress employ specialized staff whose job it is to read and write legislation,⁹ and report to their bosses on particular points of interest and other matters (not to mention the lobbyists, think tanks, and

3. In all, it was 906 pages, and the reconciliation bill, the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, was 55 pages.

4. Eva Rodriguez, *Read Before You Vote, Congressman*, WASH. POST, POSTPARTISAN (July 28, 2009, 4:31 PM), http://voices.washingtonpost.com/postpartisan/2009/07/read_before_you_vote.html.

5. Bernadine Healy, *Health Reform Demands That Lawmakers Read the Bills*, U.S. NEWS & WORLD REP. (Aug. 3, 2009), <http://health.usnews.com/health-news/articles/2009/08/03/health-reform-demands-that-lawmakers-read-the-bills>.

6. Kim Zetter, *Read the Bill, Group Tells Congress*, WIRED (Feb. 27, 2009, 9:42 AM), <http://www.wired.com/threatlevel/2009/02/read-the-bill-g/>.

7. See READ THE BILL, <http://www.readthebill.org> (last visited Oct. 9, 2013).

8. JENNIFER E. MANNING, CONG. RESEARCH SERV., R42964, MEMBERSHIP OF THE 113TH CONGRESS: A PROFILE 2–4 (2013), available at <https://www.fas.org/sgp/crs/misc/R42964.pdf>. Manning notes the diversity of professions that members of the 113th Congress had before joining, including: educators (teachers, professors, instructors, school fundraisers, counselors, administrators, or coaches), physicians, psychologists, ordained ministers, mayors, state governors, judges, Peace Corps volunteers, sheriffs, physicists, engineers, microbiologists, radio hosts, accountants, software company executives, pilots, comedians, screenwriters, professional athletes, farmers, ranchers, fisherman, military members, social workers, car dealership owners, auto workers, insurance agents, rodeo announcers, union representatives, stockbrokers, welders, venture capitalists, funeral home owners, and even almond orchard and fruit orchard owners.

9. Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 STAN. L. REV. 901, 906, 916 (2013). Also, citizens can track how many staffers a member of Congress has and those staff members’ salaries. See LEGISTORM, www.legistorm.com (last visited Oct. 9, 2013).

NGOs that produce their own summaries and analyses on particular bills).

Hanah M. Volokh has made the case that lawmaker reading and understanding of legislation is significant to the legislative process, and that the failure to do so raises potential constitutional issues.¹⁰ Specifically, she proposes a read-the-bill rule, where legislators do not vote on legislation or vote “no” unless they have read the legislation in full.¹¹ Presumably this reading would lead to an enhanced understanding of the proposal, and fulfill the requirement of the oath that legislators take to “well and faithfully discharge the duties of the office.”¹² Volokh wishes for a focus back on the lawmaking roles of congressional lawmakers, with less focus on the policy aspects of their jobs. After all, legislatures are “place[s] for making law, and because law is a serious matter affecting the freedom and interests of all the members of the community, legislating is an activity we ought to take seriously.”¹³

But, is the reading and understanding of bills really feasible in contemporary legislatures, and especially in Congress? Interviews I conducted with legislators, staffers, and legal and political journalists from Congress, Westminster, and the Scottish Parliament suggest that both the reading of proposed legislation and the understanding of particular bills are highly overvalued. Lawmakers are extremely busy individuals, and usually get their voting cues from both in-house and out-of-house sources. Additionally, as will be covered more below, nothing in the U.S. Constitution or related documents explicitly mentions that reading and understanding legislation is necessary to the lawmaking process. Ultimately, implementing a read-the-bill norm may in fact lead to poorer quality legislation.

Analyses of this issue, such as Volokh’s, lack qualitative research on the issue with legislative insiders outside of the media spotlight. This essay provides qualitative research with a blend of unique perspectives among three different lawmaking institutions. During the summer and autumn of 2009, I interviewed legislators, staffers, government officials, and legal/parliamentary journalists from Congress, Westminster, and the Scottish Parliament about whether legislators read bills and whether they

10. Volokh, *supra* note 1, at 140–59.

11. *Id.* at 176. Of course, given the different versions of legislation that arise in the process, reading the text of bills is inherently difficult. Volokh proposes that “[i]f legislators have not had enough time to read the text of a bill that is brought for a floor vote, they should note no or not vote at all.” *Id.*

12. 5 U.S.C. § 3331 (2012).

13. Jeremy Waldron, *Principles of Legislation, in THE LEAST EXAMINED BRANCH: THE ROLE OF LEGISLATURES IN THE CONSTITUTIONAL STATE* 15, 15 (Richard W. Bauman & Tsvi Kahana eds., 2006).

understand bills before voting on them. In total, 49 individuals participated in the study:¹⁴

- Westminster: 16 interviews (7 Members of the House of Commons,¹⁵ 3 Members of the House of Lords (2 Lords and 1 Baroness), 1 Member of the Parliamentary Counsel, and 5 Journalists)
- Scottish Parliament: 15 interviews (7 Members of the Scottish Parliament,¹⁶ 2 Bill Drafters, 2 Government Employees, and 4 Journalists)
- Congress: 18 interviews (2 Congresspersons, 7 Congressional Staffers, and 9 Journalists)

The three jurisdictions provide a suitable comparative approach to the issue, as each produces differing amounts of legislation: Congress by far produces the most,¹⁷ while Westminster produces a moderate amount,¹⁸ and the Scottish Parliament produces a comparatively small amount.¹⁹ Given that the focus of this essay is primarily on Congress, including perspectives from two relatively similar legislatures that produce differing amounts of legislation can help aid in the understanding of Congressional dynamics.

With major legislation such as immigration reform, climate change, national security controversies, and future budgets and monetary policies currently being discussed and debated in Congress, the issues of reading and understanding legislation undoubtedly will arise again.²⁰ The

14. Although, not every participant was asked the questions presented below regarding reading and understanding legislation.

15. Commonly known as “MPs” and referred to below as such.

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17. Congress ordinarily passes at least a couple hundred (and usually more) laws per session, and thousands of bills and resolutions are introduced every year. *See Statistics and Historical Comparison*, GOVTRACK.US, <http://www.govtrack.us/congress/bills/statistics> (last visited Oct. 9, 2013).

18. Westminster usually passes around 20–50 public general acts per year and deals with roughly a couple thousand statutory instruments. *See UK Public General Acts*, LEGISLATION.GOV.UK, <http://www.legislation.gov.uk/ukpga> (last visited Oct. 9, 2013); *UK Statutory Instruments*, LEGISLATION.GOV.UK, <http://www.legislation.gov.uk/uksi> (last visited Oct. 9, 2013).

19. Each year, the Scottish Parliament generally passes about 10–20 acts per year and deals with a few hundred statutory instruments. *See Acts of the Scottish Parliament*, LEGISLATION.GOV.UK, <http://www.legislation.gov.uk/asp> (last visited Oct. 9, 2013); *Scottish Statutory Instruments*, LEGISLATION.GOV.UK, <http://www.legislation.gov.uk/ssi> (last visited Oct. 9, 2013).

20. As Volokh points out, many groups cropped up during the health care debate: READ TO VOTE, www.readtovote.org (last visited Oct. 9, 2013); READ THE BILL, *supra* note 7; and LET FREEDOM RING, www.letfreedomringusa.com (last visited Oct. 9, 2013). Volokh, *supra* note 1, at 137 n.9.

perspectives of these lawmaking insiders from all three jurisdictions reveal modern legislative process realities, and counter the arguments for legislative omniscience that sometimes arise in academia, the media, and other outlets, however quirky they may be.²¹

In this piece I first reveal the interview data for each jurisdiction regarding reading legislation, and then do the same for lawmaker understanding of bills. In light of this data, I then further discuss some legislative process, constitutional, and practical issues mentioned at the beginning of this essay. Finally, I offer a candid assessment regarding the institutional mechanics of modern legislatures, and how they affect the reading and understanding of legislation.

II. READING LEGISLATION²²

Although Westminster does not pass as much legislation as Congress,²³ its contemporary statutes are of considerable length and a strong majority of interviewees²⁴ acknowledged that lawmakers cannot manage to read all bills before voting on them. Legislative insiders decisively challenged the notion that they have the time or inclination to read all bills. One MP said that he would “defy anyone to read all the bills,” further stating that he read those in which he was interested, “[a]nd I think, candidly actually, that puts me ahead of a lot of my colleagues.”²⁵ In fact, many of his equals agreed: a Labour MP replied

21. For a quirky example of “other outlets,” see *State Rights*, SWEETLIBERTY.ORG, <http://www.sweetliberty.org/issues/staterights/draft.htm> (last visited Oct. 9, 2013), which has a draft bill for state legislatures that contains the following provisions:

Part 4. “Consideration” of a bill or any other legislative action shall consist of the *reading of the entire legislative proposal* before open active session of the House of Representatives and Senate, respectively, before any vote can be taken. This reading shall be performed by one person who shall read the document aloud, from beginning to end without interruption.

Part 5. Voting on legislation shall require that:

a. No legislator shall vote on any proposed legislation until he or she has signed a sworn verification that *he or she has personally read, knows, and understands the entire attached proposed legislation*, and,
b. If said proposed legislation amends a previous act, the legislator must sign a sworn verification that *he or she has read and understands the law which is being amended*. . . .

Id. (emphasis added).

22. The exact questions that I asked in every jurisdiction were: to legislators, “Do you have time to read all bills before you vote on them?”; and to others, “Do legislators have time to read all bills before they vote on them?”

23. See *supra* notes 17–18.

24. 14 of 16.

25. Interview with House of Commons Member 1 (HC1) in London, U.K. (Oct. 12, 2009). This lawmaker also exclaimed that the text of many bills is “increasingly impenetrable,” in terms of reading them. *Id.*

“certainly not”²⁶ when asked this question,²⁷ while others responded “of course not,”²⁸ “not conceivably,”²⁹ and that it “is not expected of people” inside Westminster.³⁰

Legislative expertise also came into focus. A member of the House of Lords, Westminster’s upper chamber, fittingly stated: “It’s impossible for everyone in the Lords to become an expert in and comment upon every piece of legislation. It’s just too wide to do that. You have to focus in on areas of expertise and knowledge.”³¹ A Conservative MP noted that he would not read all the bills, but would “read the briefing on the bill” and “talk to various frontbench colleagues” who were better versed in such matters.³² Westminster legislators therefore openly acknowledged that they are not experts on many pieces of legislation, and often look to their colleagues for guidance.

Westminster journalists provided more disparaging views. One reporter suggested that he “suppose[s] they have lawyers that do it for them,” but added that, on certain legislation, “the key people should have read it.”³³ The “key people” usually involve ministers responsible for the legislation, committee members, and others that are highly involved. Another journalist mockingly said, “Well, having time and actually doing it are two different things. Do they do it? No, of course they don’t do it;”³⁴ while another added “I know they don’t,” and then said that “most legislators in Britain, I mean they’ll probably read the title.”³⁵

Although the Scottish Parliament passes less legislation than Westminster or Congress,³⁶ the same holds true regarding its legislators’ time: a majority of interviewees³⁷ stated that lawmakers do not have time

26. Interview with House of Commons Member 2 (HC2) in London, U.K. (Oct. 15, 2009).

27. See *supra* note 22.

28. Interview with House of Commons Member 6 (HC6) in London, U.K. (Oct. 14, 2009).

29. Interview with House of Commons Member 7 (HC7) in London, U.K. (Oct. 14, 2009).

30. Interview with House of Commons Member 3 (HC3) in London, U.K. (Oct. 13, 2009).

31. Interview with House of Lords Member 2 (HL2) in London, U.K. (Oct. 13, 2009).

32. Interview with House of Commons Member 4 (HC4) in London, U.K. (Oct. 14, 2009).

33. Interview with U.K. Media Member 1 (UKMM1) in London, U.K. (Oct. 12, 2009).

34. Interview with U.K. Media Member 3 (UKMM3) in London, U.K. (Oct. 14, 2009).

35. Interview with U.K. Media Member 2 (UKMM2) in London, U.K. (Oct. 15, 2009).

36. For official statistics, see *supra* notes 17–19.

37. 9 of 14.

to read all bills before they vote on them, nor do many consider this a significant problem, let alone a problem of constitutional importance.

A Scottish National Party member declared that even in the Scottish Parliament, “it would be impossible for every MSP to read every single bill its entirety,”³⁸ while a bill drafter stated that they “absolutely” do not have enough time to read all the bills.³⁹ Others concurred that it is impossible to read them all.⁴⁰ Thus, if this is not possible in smaller legislatures such as the Scottish Parliament, then it seems unlikely that it would be possible in larger forums, such as Congress.

A Scottish House authority focused on the systematic nature of their parliament, stating that, “by and large, those that have to [read] certainly do,” and further noted: “[I]t may not be the case that all 129 members are familiar with every aspect of a bill. But, they know as a party that their views are being represented by the party spokesperson who will definitely have a detailed understanding of the legislation.”⁴¹

A Scottish parliamentary journalist noted that “it probably comes down to the diligence of the individual politicians . . . whether they actually take the trouble or not.”⁴² A more practical magazine journalist declared that “it’s not that they don’t have time, it’s that it’s barely worth it when the whips have already told them how they’re going to vote.”⁴³ Finally, a columnist put things in proper perspective, stating: “I may be doing them a disservice, but if someone sits . . . [and] wades through every single word of a published bill, that would almost be beyond the call of duty.”⁴⁴

In Congress, reading legislation also presented many difficulties. A majority of Congressional insiders⁴⁵ stated, and some emphatically so, that politicians do not have enough time to read all bills before they vote

38. Email Interview with Member of the Scottish Parliament 1 (MSP1) (Jan. 1, 2010).

39. Interview with Scottish Parliament Bill Drafter 2 (SCTBD2) in Edinburgh, U.K. (July 28, 2009).

40. Interview with Member of the Scottish Parliament 2 (MSP2) in Edinburgh, U.K. (Sept. 19, 2009); Interview with Member of the Scottish Parliament 3 (MSP3) in Edinburgh, U.K. (Sept. 16, 2009); Interview with Member of the Scottish Parliament 5 (MSP5) in Edinburgh, U.K. (Sept. 9, 2009); Interview with Member of the Scottish Parliament 6 (MSP6) in Edinburgh, U.K. (Sept. 16, 2009).

41. Interview with Scottish Gov’t Employee 1 (SCTGOV1) in Edinburgh, U.K. (Oct. 8, 2009).

42. Interview with Scottish Media Member 1 (SCTMM1) in Edinburgh, U.K. (July 21, 2009).

43. Interview with Scottish Media Member 4 (SCTMM4) in Edinburgh, U.K. (July 21, 2009).

44. Interview with Scottish Media Member 2 (SCTMM2) in Edinburgh, U.K. (Aug. 4, 2009).

45. 9 of 10.

on them. One Congresswoman unflinchingly declared: “[M]ost legislators *rarely* read the entirety of a bill.”⁴⁶

Naturally, congressional staff was often mentioned. One chief of staff said his boss would read some legislation, but that it was “mostly a staff thing,” and went on to declare that “any member of Congress that tells you they read every bill before it comes to the floor is lying right to your face.”⁴⁷ Another Legislative Director said it was “predominantly staff’s job” to read all the legislation, but also reinforced that he was “aware of every bill that’s being voted on in a day.”⁴⁸

Even given substantial time commitments, some lawmakers commit themselves to making as informed decisions as possible. Another Congressman told me:

I’ve always been a big reader, and I spent my whole career reading, you know, you have to read a lot as a law student, and you have to read a lot as a lawyer and as a judge, and I still read a lot and I try to read as much as I can about every one of these bills. . . . [I]f it’s something significant, I try to find very good reasons to vote for or against something. And so, you know, I try to look below the surface.⁴⁹

Some journalists were a bit cautious on this question. Distancing himself, one responded, “I’m told the answer is no,”⁵⁰ while a colleague said, “I don’t think it’s physically possible to read all of the bills.”⁵¹ Others were more decisive. One stated, “Oh . . . absolutely not, no. Not in the United States Congress,”⁵² and went on to say that the large amount and length of bills makes it virtually impossible. A magazine journalist agreed, stating, “In terms of having read it, clearly not. I mean, in some ways that’s what they have staff for. If they spent all their time reading legislation they would never get anything done.”⁵³

The consensus for the three legislatures was clear: no matter the size, lawmakers do not have enough time to read legislation, and members, staffers, and many journalists did not consider this a significant problem.

46. Interview with Member of Congress 1 (MCON1) in Wash., D.C. (Oct. 29, 2009) (emphasis added).

47. Interview with Congressional Staffer 3 (CONSF3) in Wash., D.C. (Oct. 26, 2009).

48. Interview with Congressional Staffer 4 (CONSF4) in Wash., D.C. (Oct. 26, 2009).

49. Interview with Member of Congress 2 (MCON2) in Wash., D.C. (Oct. 21, 2009).

50. Interview with U.S. Media Member 1 (USMM1) in Wash., D.C. (Oct. 23, 2009).

51. Interview with U.S. Media Member 9 (USMM9) in Wash., D.C. (Oct. 26, 2009).

52. Interview with U.S. Media Member 2 (USMM2) in Wash., D.C. (Oct. 22, 2009).

53. Interview with U.S. Media Member 7 (USMM7) in Wash., D.C. (Oct. 28, 2009).

III. UNDERSTANDING LEGISLATION⁵⁴

Given the forthcoming answers in regard to reading legislation, I wanted to know whether understanding legislation was more valued in these legislatures. With the myriad of reports and summaries that proposed bills usually garner, perhaps a decent understanding of legislation is more easily attained or at least more appreciated among lawmakers than the textual reading of bills.

Westminster legislative insiders unabashedly admitted that they and their colleagues do not always fully understand legislation before voting on it. In fact, half⁵⁵ said they usually do not understand legislation, and others⁵⁶ said they only understand it sometimes. But this was not a cause of concern among the group, considering that lawmakers often receive their voting cues from a variety of places.

When asked whether legislators understand bills before voting on them, one MP replied, “all the time, no . . . some of the time, yes . . . most of the time, a little.”⁵⁷ Others responded that there is just “far too much legislation to go through,”⁵⁸ while another emphatically stated “absolutely not . . . no way, and anyone who told you so is not telling you the truth . . . we cannot.”⁵⁹ While some mentioned a lack of qualified lawyers in Parliament,⁶⁰ time constraints again proved the major culprit. One Lords member amusingly cited a piece of legislation and exclaimed: “I have no understanding of any of those areas of public policy. It would be a travesty, in terms of the use of my time, for me to read that.”⁶¹ Another Lords member stated, “I’m sure they’re capable of understanding it, but it’s a question of time and interest . . . most members of Parliament will not have a detailed awareness of most bills that are going through.”⁶² Commenting on the institutional mechanics of legislative bodies, one MP stated that he does not “think the system expects them to” fully understand legislation.⁶³

Westminster journalists were more divided on this issue. One declared, “MPs don’t, no. They probably know less than me, half of

54. The exact question I asked in every jurisdiction was: “Do you believe that most legislators fully understand the bills that they are voting on? If no, why?”

55. 5 of 10.

56. 3 of 10.

57. Interview with HC1, *supra* note 25.

58. Interview with HC2, *supra* note 26.

59. Interview with House of Lords Interviewee 1 (HL1) in London, U.K. (Oct. 14, 2009).

60. Interview with HC4, *supra* note 32.

61. Interview with HL1, *supra* note 59.

62. Interview with House of Lords Interviewee 3 (HL3) in London, U.K. (Oct. 14, 2009).

63. Interview with HC3, *supra* note 30.

them,” and added, “I’m not saying all of them, but a significant minority of them would not know what they are doing at all.”⁶⁴ Another agreed, stating that “most of the time I think they probably don’t,” but added, “these things change quite quickly. If you have something that becomes very politically contentious, then lots of MPs that wouldn’t know or care about it, would suddenly start to know or care about it.”⁶⁵ Deemphasizing individual legislative comprehension and focusing on where MPs get their information and voting cues, another journalist claimed: “[Y]ou don’t have to read it to understand it . . . I mean that’s what the media and lobby groups do. They identify the key issues and those are the ones that actually matter.”⁶⁶

Scottish legislative insiders varied on this issue, but most suggested that lawmakers do have a good understanding of bills before they vote on them. Some mentioned the robust committee system, noting that members will have a detailed knowledge of each bill that passes through their respective committees.⁶⁷ Others focused on lawmaker interest. One Conservative MSP explained that “some members are extremely busy. Others find it difficult to apply themselves to something that’s not particularly interesting . . . because some legislation is worthy, but dull.”⁶⁸ A Scottish House authority tended “to think they do” understand legislation, and added that by

the time we get to stage three, which is a debate in the entire chamber with all 129 members, we’re quite often surprised at the depth of that debate, and understanding of the bill. It’s not just the people who are familiar with the bill through the committee stages that contribute to those debates.⁶⁹

Providing a blistering indictment of lawmakers’ understanding of bills, however, a bill drafter declared, “Not at all, no. The dangerous ones are the ones that think they do. They can’t possibly. Not with a bill of any substance.”⁷⁰ The drafter went on to cite the more thorough amendment and debating process in Westminster, and a lack of such a process in the Scottish Parliament.

Scottish journalists also challenged lawmaker understanding. Acknowledging it would be quite difficult to assess this issue, one

64. Interview with UKMM1, *supra* note 33.

65. Interview with UKMM2, *supra* note 35.

66. Interview with UKMM3, *supra* note 34.

67. Interview with MSP1, *supra* note 38; Interview with MSP3, *supra* note 40; Interview with MSP5, *supra* note 40.

68. Interview with Member of the Scottish Parliament 4 (MSP4) in Edinburgh, U.K. (July 20, 2009).

69. Interview with SCTGOV1, *supra* note 41.

70. Interview with SCTBD2, *supra* note 39.

newspaper reporter said he suspected “that they’re mostly intelligent enough to be able to do that. I mean . . . it’s their business after all. So, yes, they should.”⁷¹ A columnist suggested that not “everybody would be interested in every aspect of the legislation,” but “if you took a hundred . . . say, only seventy might be interested in a bill”⁷²—which is still quite a lot of interest. And focusing on the larger picture, a magazine journalist stated that “the simple answer is no. But that doesn’t really matter too much. Good legislative consultation means that external organizations can look and find problems with legislation and draw the attention of legislators.”⁷³ He further argued that “no one” is going to have a line-by-line comprehension of any bill.⁷⁴

Congressional insiders seemed a bit more positive on lawmaker understanding. One Congresswoman diplomatically stated that she thought lawmakers understood them, but that there were certain issues in which they had more understanding than others,⁷⁵ while a staffer thought that her boss (a Congressman) had a pretty good understanding of bills before voting on them.⁷⁶

U.S. journalists differed on the matter but provided insightful answers. Many seemed wary of supplying answers without having first-hand knowledge of whether they understood or not. One reporter replied, “My strong suspicion is no,”⁷⁷ while another said, “[A] lot of times legislators cast votes on measures they don’t understand, absolutely. But lots of times . . . it’s just hard to tell.”⁷⁸ One journalist cynically declared:

I would also say that many members of Congress don’t. They don’t take the time to understand what the bill actually is . . . they probably have a staff member who does, but they don’t understand it, and they don’t need to understand it until they go on a TV show.⁷⁹

It does seem quite odd that the example the latter interviewee used was a need for understanding on a television show, rather than in the voting chamber.

However, other respondents put more faith in lawmakers and acknowledged staff expertise. One said, “[M]ost people, generally, have

71. Interview with SCTMM1, *supra* note 42.

72. Interview with SCTMM2, *supra* note 44.

73. Interview with SCTMM4, *supra* note 43.

74. *Id.*

75. Interview with MCON1, *supra* note 46.

76. Interview with Congressional Staffer 5 (CONSF5) in Wash., D.C. (Oct. 22, 2009).

77. Interview with USMM1, *supra* note 50.

78. Interview with USMM2, *supra* note 52.

79. Interview with USMM7, *supra* note 53.

a good idea of what they're voting for," and went on to say that "the reason that it seems that they don't sometimes is that small provisions which they didn't understand and didn't know about get picked up by the media."⁸⁰ Another agreed, stating that "they have staff that are experts on the legislation, because . . . it would become very onerous for all legislators to understand every piece of legislation they are voting on, which is why you have committees."⁸¹ Finally, one discerning journalist boldly declared:

[O]ne of the most bogus attacks you can make is [to] say, "[W]ell, did you read all 1,500 pages of the bill?" I mean, the fact is most of it is just legalese and legislative language, and any politician with a staff worth its salt will have been briefed on what the significant issues are, often in quite some detail.⁸²

IV. FURTHER PRACTICAL AND CONSTITUTIONAL REALITIES

While the ideal of reading and understanding each bill as it is traveling through the legislative process appeals to citizens, journalists, and academics, the practicalities of contemporary legislatures do not allow such fantasies to come to fruition. The antiquated *Schoolhouse Rock!* "I'm Just a Bill" notion⁸³ of the federal legislative process has been excoriated by Barbara Sinclair⁸⁴ and other academics.⁸⁵ Modern legislatures, and Congress in particular, are complex lawmaking arenas in which legislators have a finite amount of time from one issue to the next, and in which legislation does not neatly travel from one stage to the next. The reading and understanding of legislation by all members of a legislative body is not now, and has never been, an essential part of lawmaking.

80. Interview with U.S. Media Member 3 (USMM3) in Wash., D.C. (Oct. 28, 2009).

81. Interview with U.S. Media Member 8 (USMM8) in Wash., D.C. (Oct. 29, 2009).

82. Interview with U.S. Media Member 6 (USMM6) in Wash., D.C. (Oct. 29, 2009).

83. This is in reference the *Schoolhouse Rock!* Segment, "I'm Just a Bill," that aired in 1975. The piece is about a how federal legislation originates and its travels in Congress when proceeding from bills to laws. Understandably, the segment simplifies the process to make it easier to understand. However, in reality, and especially in contemporary times, the process for congressional legislation is inherently more complicated than it is displayed on the segment.

84. See generally BARBARA SINCLAIR, UNORTHODOX LAWMAKING: NEW LEGISLATIVE PROCESSES IN THE U.S. CONGRESS (4th ed. 2012).

85. See generally SARAH BINDER, MINORITY RIGHTS, MAJORITY RULE: PARTISANSHIP AND THE DEVELOPMENT OF CONGRESS (1997); R. DOUGLAS ARNOLD: THE LOGIC OF CONGRESSIONAL ACTION, (1990); Stanley Bach, *Legislating: Floor and Conference Procedures in Congress*, in 2 ENCYCLOPEDIA OF THE AMERICAN LEGISLATIVE SYSTEM (Joel H. Sibley ed., 1994); Joseph Cooper, *Organization and Innovation in the House of Representatives*, in THE HOUSE AT WORK (Joseph Cooper & G. Calvin Mackenzie eds., 1981).

None of the revelations above, however, should take away from the fact that the text of statutes a legislature enacts should remain of utmost importance and constitutional concern. I believe this to be true even for the presentational matters of legislation, and have previously argued to eliminate the more political and promotional aspects of legislative text.⁸⁶ In fact, I believe that enshrining overt political matter into the text of enacted statutes is more of a constitutional dilemma than whether legislators should be required to read or understand legislation before voting on it. Ensuring the statute book remains a (real or perceived) neutral vestige of governmental operations provides the legitimacy laws require to be used as governing devices; any unnecessary political or promotional language located inside statutes may threaten this legitimacy. Though Volokh does mention the symbolic and political aspects of legislative text, she does not seem to consider the overt political material located in some statutes to be as important as reading and understanding.⁸⁷

In my view, the proposed read-the-bill rule, while idealistic, is simply unnecessary. Nowhere in the Constitution does it say that lawmakers must read and understand the full text of legislation before voting on it.⁸⁸ This standard is currently not (and never was) mentioned in Jefferson's Manual,⁸⁹ the Senate Manual,⁹⁰ or in the current House⁹¹ or Senate Rules.⁹² That is not to say that introducing new constitutional norms into the legislative process is a negative thing—quite the contrary. However, implementing changes that facilitate good lawmaking based on

86. Brian Christopher Jones, *Drafting Proper Short Bill Titles: Do States Have the Answer?*, 23 STAN. L. & POL'Y REV. 455 (2012) [hereinafter Jones, *Drafting Proper Short Bill Titles*]; 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*]; Brian Christopher Jones & Randal Shaheen, *Thought Experiment: Would Congressional Short Bill Titles Survive FTC Scrutiny?*, 37 SETON HALL LEGIS. J. 91 (2012); Brian Christopher Jones, *The Congressional Short Title (R)Evolution: Changing the Face of America's Public Laws*, 101 KY. L.J. ONLINE 42 (2013), <http://128.163.19.153/wordpress/wp-content/uploads/2013/01/KLJO-Jones-Article.pdf>.

87. See Volokh, *supra* note 1, at 169–70.

88. U.S. CONST. art. I.

89. THOMAS JEFFERSON, A MANUAL OF PARLIAMENTARY PRACTICE (1801), reprinted in H.R. DOC. NO. 112-161, at 127 (2013), available at www.gpo.gov/fdsys/pkg/HMAN-113/pdf/HMAN-113.pdf.

90. SENATE MANUAL, S. DOC. NO. 112-1 (2011), available at <http://www.gpo.gov/fdsys/pkg/SMAN-112/pdf/SMAN-112.pdf>.

91. RULES OF THE HOUSE OF REPRESENTATIVES, H.R. DOC. NO. 112-161, at 335 (2013), available at www.gpo.gov/fdsys/pkg/HMAN-113/pdf/HMAN-113.pdf.

92. STANDING RULES OF THE SENATE, S. DOC. NO. 112-1, at 1 (2011), available at <http://www.gpo.gov/fdsys/pkg/SMAN-112/pdf/SMAN-112.pdf>.

contemporary standards, rather than hindering the process through antiquated procedures, would be more beneficial.

On a more practical level, having legislators read the entire text of all bills would be an utter nightmare for Congressional lawmaking, which already operates in quite an unorthodox manner.⁹³ For one, it would leave them little time to do anything else. Given the breadth of legislation that is presented in contemporary Congresses, in addition to the different versions of legislation that accumulate during a bill's travel throughout the process, incorporating a read-the-bill rule would be a severe hindrance. Additionally, and perhaps most importantly, it would divert legislators from the bills and issues in which they are interested and specialized to the bills and issues of which they may have little interest or understanding. This could easily result in poorer quality legislation.

The implementation of a read-the-bill rule could also affect congressional debate and have significant rhetorical implications. Returning to the example used at the beginning of this article, the Affordable Care Act,⁹⁴ a funny thing happened when all the rhetoric over the length, complexity, and reading of the legislation came to a halt: many Republican lawmakers⁹⁵ and citizens⁹⁶ admitted that they supported some of the key provisions of the law. Yet this was rarely

93. See generally SINCLAIR, *supra* note 84.

94. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).

95. See, e.g., Igor Volsky, *Republican Senate Candidate Says He Supports Key Obamacare Provisions*, THINK PROGRESS (Oct. 18, 2012, 11:35 AM), <http://www.thinkprogress.org/health/2012/10/18/1039001/republican-senate-candidate-says-he-supports-key-obamacare-provisions>. In fact, Rep. Rick Berg's statement on some of the key provisions was a very common complaint among Republicans. According to the article, Rep. Berg said the following:

I agree with the Frontier Amendment [increasing Medicare reimbursements to rural states], we need to deal with that. Pre-existing conditions, I think that should be done at the state level. The doughnut hole and covering kids till they're 26. But you know what, Obamacare is 2,700 pages long. You know what those 5 things are? They are 10 pages long.

Id.; see also Tom Howell Jr., *GOP-Led States That Held Out on Medicaid Giving In*, WASH. TIMES, Aug. 28, 2013, <http://www.washingtontimes.com/news/2013/aug/28/gop-led-states-that-held-out-on-medicaid-giving-in>; Sahil Kapur, *Senate Republicans Signal Big Shift On 'Obamacare'*, TALKING POINTS MEMO (May 30, 2012, 9:02 AM), <http://talkingpointsmemo.com/2012/05/senate-republicans-mirror-house-gop-shift-on-obamacare.php?ref=fpa>.

96. Maggie Fox, *Even Republican Young Adults Want Health Insurance, Poll Finds*, NBC NEWS (Aug. 21, 2013, 12:06 AM), www.nbcnews.com/health/even-republican-young-adults-want-health-insurance-poll-finds-6C10963044; Greg Sargeant, *Republicans Support Obama's Health Reforms—As Long as His Name Isn't on Them*, WASH. POST, THE PLUM LINE (June 25, 2012, 1:09 PM), http://www.washingtonpost.com/blogs/plum-line/post/republicans-support-obamas-health-reforms--as-long-as-his-name-isnt-on-them/2012/06/25/gJQAq7E51V_blog.html.

mentioned throughout the legislative process, because the debate (at least on the opposition side) was unyieldingly centered on the length and complexity of the legislation. Injecting a read-the-bill rule (or norm) into Congress would only further the focus on rhetoric and lessen the prospects for substantive debate.

The contemporary realities regarding lawmaker reading and understanding of legislation must be embraced, not disparaged. Modern lawmaking does not expect lawmakers to read and understand all bills, and furthermore, many members are plainly not interested in particular issues or pieces of legislation and by choice will not apply themselves to understanding them. *This is not and should not be cause for concern.* Lawmakers have areas of specialization, and these should be cultivated, not generalized into oblivion. Ignoring this contemporary truth allows journalists, academics, and other talking heads to place blame on lawmakers for not being the impossible: universal legal and policy experts.

What should be more cause for concern, however, is where lawmakers are getting their voting cues. Are they relying on staff, colleague, and/or party expertise? Do they trust particular non-governmental organizations or lobbyists to provide them with information on bills? Is constituent opinion an important factor in lawmaker voting? Or, are lawmakers swayed by presentational legislative matters that may sound positive or damaging to constituents?⁹⁷ These and other information-gathering aspects are more important and should receive more scrutiny than the current unreasonable standards regarding lawmakers' reading and understanding of bills. Thus, while the read-the-bill rule and many of the accompanying features proposed by Volokh certainly have merit,⁹⁸ the practical and constitutional effects of implementing such a proposal are not desirable in contemporary legislatures, especially not in Congress.

97. For an example of how the titles of bills can affect bill passage and legislator reaction to various proposals, see Jones, *Drafting Proper Short Bill Titles*, *supra* note 86; Jones, *Processes, Standards and Politics*, *supra* note 86.

98. Volokh, *supra* note 1, at 163 (proposing making a "redline" version of the bill available to lawmakers before voting); *id.* at 171 ("[T]he legislative process would be more democratically open and responsive if bills were introduced with language that could plausibly become the basis of the final text."); *id.* at 170.

As difficult as it may be, they must do their best to craft good rules of law (preferably during the negotiation stage rather than allowing a terrible but good-sounding bill to come to the floor for a final vote). And they must be able to explain to voters why they made politically unpopular decisions that they felt were in the public interest.

Id.