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Personalized Bills as Commemorations: A Problem for House Rules?

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Essay

Personalized Bills as Commemorations: A Problem for House Rules?

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The proliferation of personalized bills in Congress has occurred despite a prohibition on commemorations in the House of Representatives. This Essay provides a close examination of the wording behind the ban, especially the definition of “commemoration.” It uses examples from the Adam Walsh Child Protection and Safety Act of 2006 and other statutes to demonstrate how many contemporary personalized bills fall underneath the prohibition, and therefore should not be introduced or considered in the House.

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Personalized Bills as Commemorations: A Problem for House Rules?

BRIAN CHRISTOPHER JONES*

I. INTRODUCTION

During oral argument at *Shelby County v. Holder*,¹ Justice Scalia stated the following in relation to the Voting Rights Act:

[I]t's a concern that this is not the kind of a question you can leave to Congress. . . . [T]hey are going to lose votes if they do not reenact the Voting Rights Act.

Even the name of it is wonderful: The Voting Rights Act. Who is going to vote against that in the future?²

While “Voting Rights Act” is not a particularly evocative short title, especially by contemporary naming standards, Justice Scalia was probably correct to acknowledge that the law has become firmly entrenched, and a vote against its reauthorization could potentially have electoral consequences.³ It was certainly interesting to find a Supreme Court justice recognizing both the power and difficulty of short titles, but the aim of Justice Scalia’s statement seems quite far from the names that are currently the biggest problem with congressional legislation: personalized short titles. While I have previously mentioned some implications and potential dangers of various types of short titles,⁴ contemporary personalized titles

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¹ 133 S. Ct. 2612 (2013).

² Transcript of Oral Argument at 47–48, *Shelby Cnty.*, 133 S. Ct. 2612 (No. 12-96), available at http://www.supremecourt.gov/oral_arguments/argument_transcripts/12-96.pdf.

³ Of course, after the Supreme Court decision in *Shelby County*, which struck down section 4(b) of the Voting Rights Act, the electoral consequences may not be as significant as they were previously. 133 S. Ct. at 2631.

⁴ Brian Christopher Jones, *The Congressional Short Title (R)Evolution: Changing the Face of America’s Public Laws*, 101 KY. L.J. ONLINE 42, 42–43 (2013) [hereinafter Jones, *Revolution*], <http://www.kentuckylawjournal.org/online-originals-2/jones-short-title-revolution/>; Brian Christopher Jones, *One Redeeming Quality About the 112th Congress: Refocusing on Descriptive Rather than Evocative Short Titles*, 112 MICH. L. REV. FIRST IMPRESSIONS 1, 1–2 (2013), <http://www.michiganlawreview.org/articles/one-redeeming-quality-about-the-112th-congress-refocusing-on-descriptive-rather-than-evocative-short-titles---part-two>; Brian Christopher Jones, Feature, *Drafting Proper Short Titles: Do States Have the Answer?*, 23 STAN. L. & POL’Y REV. 455,

are unique in that they incorporate more than the mere names of legislators—which was the historical preference.⁵ Modern titles commonly reference individuals who have deeply sympathetic victim stories, some of which have been prominently displayed in the media⁶ (e.g., Lilly Ledbetter Fair Pay Act of 2009⁷ or Megan’s Law⁸). Yet perhaps it is time that many contemporary personalized public laws, “wonderful”⁹ as they may be, are acknowledged for what they truly are: commemorations.

II. HOUSE RULE XII

A particular clause of the Rules of the House of Representatives should prove problematic for bills and laws with personalized short titles—such as the Emmett Till Unsolved Civil Rights Crime Act of 2007¹⁰ or the Stephanie Tubbs Jones Organ Transplant Authorization Act of 2008¹¹—but it is frequently overlooked. Clause 5 of Rule XII, Receipt and Referral of Measures and Matters (the “House Rule” or “Rule”),¹² states that:

(a) A bill or resolution, or an amendment thereto, may not be introduced or considered in the House if it establishes or expresses a commemoration.

(b) In this clause the term “commemoration” means a remembrance, celebration, or recognition for any purpose through the designation of a specified period of time.¹³

A personalized bill could certainly be regarded as a “remembrance,” “celebration,” or “recognition” of the legislation that is being proposed in the person’s name, so long as some individual is mentioned in the bill’s title. Paragraph (b) of this Rule, however, limits the extent to which personalized bills could be classified as commemorations, noting that the

455 (2012); Brian C. Jones, *Transatlantic Perspectives on Humanised Public Law Campaigns: Personalising and Depersonalising the Legislative Process*, 6 LEGISPRUDENCE 57, 73–76 (2012); Brian Christopher Jones & Randal Shaheen, *Thought Experiment: Would Congressional Short Bill Titles Pass FTC Scrutiny?*, 37 SETON HALL LEGIS. J. 91, 92–93 (2012).

⁵ Renata E.B. Strause et al., *How Federal Statutes Are Named*, 105 LAW LIBR. J. 7, 10–12 (2013).

⁶ Jones, *Revolution*, *supra* note 4, at 56; Mary Whisner, *Practicing Reference, What’s in a Statute Name?*, 97 LAW LIBR. J. 169, 178–79 (2005); *see also* Jennifer K. Wood, *In Whose Name? Crime Victim Policy and the Punishing Power of Protection*, NWSA J., Autumn 2005, at 1, 7 (critiquing policymakers and the media for “control[ling] the terms of debate” about crime policies enacted on behalf of named victims).

⁷ Pub. L. No. 111-2, 123 Stat. 5.

⁸ Pub. L. No. 104-145, 110 Stat. 1345 (1996).

⁹ Transcript of Oral Argument, *supra* note 2, at 48.

¹⁰ Pub. L. No. 110-344, 122 Stat. 3934 (2008).

¹¹ Pub. L. No. 110-426, 122 Stat. 4835.

¹² RULES OF THE HOUSE OF REPRESENTATIVES, 113th Cong., r. XII, cl. 5 (2013) [hereinafter HOUSE RULES], available at <http://clerk.house.gov/legislative/house-rules.pdf>.

¹³ *Id.* r. XII, cl. 5(a)–(b).

commemoration must be “through the designation of a specified period of time.”¹⁴ Since the ban on commemorations began in 1995,¹⁵ legislators and drafters have found ways to draft around it. William McKay and Charles Johnson note that once this ban came into place, “[d]rafting techniques rapidly developed which avoided the strict proscriptions of the rule, while still commemorating or acknowledging the importance of a matter in a more general time-unspecific sense.”¹⁶ But a persisting problem lies in the wording of paragraph (b).

While many personalized bills express remembrances, celebrations, or recognitions, they do not necessarily establish periods of time for doing so per se (i.e., no specific calendar day, week, or month). Yet the actual meaning of the phrase “specified periods of time” in the House Rule is what *should* be under scrutiny. Depending on whether a person interprets this language strictly or openly, many personalized bills designate “specific periods of time” for various purposes. For example, bills establish, among other things, dates for reports due to Congress on the progress of bills or issues,¹⁷ appropriation figures for a specified number of years,¹⁸ prison terms,¹⁹ the length of copyrights,²⁰ or the periods of time that a person must register on a sex offender registry.²¹ Although the original intent behind the Rule may have been specifying particular calendar days, weeks, or months as commemorations, the definition of commemoration the House currently uses does not expressly state that a “specified period of time” relates to a calendar date.²² The Rule explicitly states that a commemoration refers to a “specified period of time”;²³ a broad statement that could be interpreted in a number of ways.

¹⁴ *Id.* r. XII, cl. 5(b).

¹⁵ WILLIAM MCKAY & CHARLES W. JOHNSON, *PARLIAMENT AND CONGRESS: REPRESENTATION AND SCRUTINY IN THE TWENTY-FIRST CENTURY* 418 (paperback ed. 2012).

¹⁶ *Id.* at 419.

¹⁷ *E.g.*, Ryan White HIV/AIDS Treatment Extension Act of 2009, Pub. L. No. 111-87, § 2(g), 123 Stat. 2885, 2887–88; Stephanie Tubbs Jones Organ Transplant Authorization Act of 2008, Pub. L. No. 110-426, § 3(a), 122 Stat. 4835, 4835; Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, §§ 604, 635, 120 Stat. 587, 631–32, 644.

¹⁸ *E.g.*, Ryan White HIV/AIDS Treatment Extension Act § 2(b)–(f); Emmett Till Unsolved Civil Rights Crime Act of 2007, Pub. L. No. 110-344, § 5(b), 122 Stat. 3934, 3935 (2008).

¹⁹ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 222, 122 Stat. 5044, 5067–71; Adam Walsh Child Protection and Safety Act §§ 201–09.

²⁰ Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, § 102, 112 Stat. 2827, 2827–28 (1998).

²¹ Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, § 3, 110 Stat. 3093, 3096–97 (repealed 2006).

²² HOUSE RULES, *supra* note 12, r. XII, cl. 5(b).

²³ *Id.*

III. THE ADAM WALSH ACT: A PROMINENT PUBLIC LAW COMMEMORATION

A more concrete example of the problematic nature of drafting personalized commemorations into bills is the 109th Congress's passing of the Adam Walsh Child Protection and Safety Act of 2006²⁴—which occurred when clause 5 of the House Rule was in place. This personalized law, named after the son of America's Most Wanted host John Walsh, established dates for reports due to Congress,²⁵ appropriated funds for particular years,²⁶ designated prison terms,²⁷ specified how long particular criminals had to remain on a sex offender registry,²⁸ and also specified how long states had to implement a sex offender registry.²⁹ Besides all these date specifications, the official printing of the Act is replete with memorials and commemorations. For example, section 2 of Act reads:

In recognition of John and Revé Walsh on the occasion of the 25th anniversary of Adam Walsh's abduction and murder.

(a) Adam Walsh's Abduction and Murder.—On July 27, 1981, in Hollywood, Florida, 6-year-old Adam Walsh was abducted at a mall. Two weeks later, some of Adam's remains were discovered in a canal more than 100 miles from his home.

(b) John and Revé Walsh's Commitment to the Safety of Children.—Since the abduction and murder of their son Adam, both John and Revé Walsh have dedicated themselves to protecting children from child predators, preventing attacks on our children, and bringing child predators to justice. Their commitment has saved the lives of numerous children. Congress, and the American people, honor John and Revé Walsh for their dedication to the well-being and safety of America's children.³⁰

The above explicitly declares that the Act is “[i]n recognition of . . . the 25th anniversary of Adam Walsh's abduction and murder.”³¹ This seems to be the very definition of a commemorative piece of legislation. Yet this is not the only bothersome point of the Adam Walsh Act in relation to the

²⁴ Pub. L. No. 109-248, 120 Stat. 587.

²⁵ *Id.* §§ 145(c), 301(d), 503, 621(c)(2), 631(e)(2), 634(c), 635, 638(b), 639(b)–(c).

²⁶ *Id.* §§ 126(d), 142(b), 143(d), 145(d), 301(f), 605, 621(c), 623, 625(d), 626, 627(e), 628(d), 629(c), 630(c), 632(e)(1), 632(c), 633(g)(3), 704(c), 705(c), 706(b).

²⁷ *Id.* § 141.

²⁸ *Id.* § 115.

²⁹ *Id.* § 124.

³⁰ *Id.* § 2.

³¹ *Id.* (emphasis added).

House Rule. Title I of the Act is known as the “Sex Offender Registration and Notification Act” and the declaration of purpose reads as a list of remembrances for crime victims:

In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below, Congress in this Act establishes a comprehensive national system for the registration of those offenders:

- (1) Jacob Wetterling, who was 11 years old, was abducted in 1989 in Minnesota, and remains missing.
- (2) Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted, and murdered in 1994, in New Jersey.
- (3) Pam Lychner, who was 31 years old, was attacked by a career offender in Houston, Texas.
- (4) Jetseta Gage, who was 10 years old, was kidnapped, sexually assaulted, and murdered in 2005, in Cedar Rapids, Iowa.
- (5) Dru Sjodin, who was 22 years old, was sexually assaulted and murdered in 2003, in North Dakota.
- (6) Jessica Lunsford, who was 9 years old, was abducted, sexually assaulted, buried alive, and murdered in 2005, in Homosassa, Florida.
- (7) Sarah Lunde, who was 13 years old, was strangled and murdered in 2005, in Ruskin, Florida.
- (8) Amie Zyla, who was 8 years old, was sexually assaulted in 1996 by a juvenile offender in Waukesha, Wisconsin, and has become an advocate for child victims and protection of children from juvenile sex offenders.
- (9) Christy Ann Fornoff, who was 13 years old, was abducted, sexually assaulted, and murdered in 1984, in Tempe, Arizona.
- (10) Alexandra Nicole Zapp, who was 30 years old, was brutally attacked and murdered in a public restroom by a repeat sex offender in 2002, in Bridgewater, Massachusetts.
- (11) Polly Klaas, who was 12 years old, was abducted, sexually assaulted, and murdered in 1993 by a career offender in California.
- (12) Jimmy Ryce, who was 9 years old, was kidnapped and

murdered in Florida on September 11, 1995.

(13) Carlie Brucia, who was 11 years old, was abducted and murdered in Florida in February, 2004.

(14) Amanda Brown, who was 7 years old, was abducted and murdered in Florida in 1998.

(15) Elizabeth Smart, who was 14 years old, was abducted in Salt Lake City, Utah in June 2002.

(16) Molly Bish, who was 16 years old, was abducted in 2000 while working as a lifeguard in Warren, Massachusetts, where her remains were found 3 years later.

(17) Samantha Runnion, who was 5 years old, was abducted, sexually assaulted, and murdered in California on July 15, 2002.³²

Some of these individuals should appear familiar, as most of the names and incidents were widely reported throughout the press, and many have other significant pieces of legislation attached to them. Jacob Wetterling,³³ Megan Kanka,³⁴ and Pam Lyncher³⁵ all have federal legislation passed under their names. Jessica Lunsford and Sarah Lunde had a federal bill introduced in both their names in 2005,³⁶ and Jessica had a law passed in her honor by the State of Florida.³⁷ The murder of Polly Klass sparked national outrage and led to a smattering of Three Strikes Legislation on both a state and national level, leaving California's version of the law to become the "the fastest qualifying initiative in California history."³⁸ Elizabeth Smart's story was widely publicized as she was kidnapped and held for nine months before being released.³⁹ In 2003, Elizabeth was present at the presidential signing statement for the PROTECT Act⁴⁰ with George W. Bush.⁴¹

³² *Id.* § 102.

³³ Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, tit. XVII, 108 Stat. 2038 (1994).

³⁴ Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996).

³⁵ Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, 110 Stat. 3093 (repealed 2006).

³⁶ Jessica Lunsford and Sarah Lunde Act, S. 1407, 109th Cong. § 1 (2005).

³⁷ Jessica Lunsford Act, 2005 Fla. Laws 3.

³⁸ *Ewing v. California*, 538 U.S. 11, 15 (2003).

³⁹ *Elizabeth Smart Found Alive*, ABC NEWS, <http://abcnews.go.com/US/story?id=90791&page=1&singlePage=true> (last visited Sept. 5, 2013).

⁴⁰ Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650.

⁴¹ *See President George Bush Speaks Before Signing a Wide-Ranging Package of Child Safety Measures at White House on April 30, 2003*, ABC NEWS, <http://abcnews.go.com/widgets/mediaViewer>

It is unknown why the twenty-fifth anniversary of Adam's death and the names of crime victims, which already have their own federal statutes or were the impetus behind other federal or state proposals, were inscribed into the text of the Adam Walsh Act—especially considering the House's ban on commemorations. In general terms, it seems possible that using such sympathetic figures in the titles of legislation would significantly divert attention from the substance of the law and unnecessarily politicize both the bill as it travels through Congress and the federal statute book.

IV. CONCLUSION

There is nothing inherently wrong with permitting or restricting legislative bodies to express commemorations. However, if a legislative body decides to eliminate them, then they should enforce the rules through which their institution operates and not attempt to draft commemorations into the titles and texts of their laws. Clause 5 of House Rule XII does not state that a commemoration has to be specified by particular calendar days; it only declares that a commemoration comes about through the designation of “a specified period of time.”⁴² Many personalized public laws establish such time periods in their statutory text, thus commemorating the individuals who are inscribed on the face of the statute. This presents a problem for the House of Representatives, whose rules specifically state that such proposals “may not be introduced or considered.”⁴³ Nevertheless, the House routinely introduces and considers personalized bills, and certainly has no trouble passing them.

[/image?id=4431534](#) (last visited Aug. 22, 2013) (displaying a photo of President George W. Bush and Elizabeth Smart).

⁴² HOUSE RULES, *supra* note 12, r. XII, cl. 5(b).

⁴³ *Id.* r. XII, cl. 5(a).