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# DRAFTING PROPER SHORT BILL TITLES: DO STATES HAVE THE ANSWER?

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## *FEATURES*

# DRAFTING PROPER SHORT BILL TITLES: DO STATES HAVE THE ANSWER?

Brian Christopher Jones\*

### INTRODUCTION

Short bill titles at the federal and state level have historically been used as legal reference points for legislation. Over the years, however, many of these titles have changed their function and now act as much more than referential designations. This has never been more apparent than on the federal level, where many titles have extensive policy implications, are politically and emotionally charged, and thus appear to be used to influence rather than explain what a law does. Many federal bills (and subsequently acts)<sup>1</sup> are now increasingly adorned with titles containing evocative language, seemingly designed to be used for political advantage and serve as benchmarks of governmental accomplishment, however transient either may be. This presents problems for federal titles, as they are not only used as political devices while shepherding a bill through Congress, but many of these titles ultimately end up in the statute book, inscribed as law. The legal aspects of short titles seem to have been lost on many recent Congresses, who unabashedly continue the evocative short bill

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1. The U.S. Congress appears to be one of the only lawmaking institutions (both in the United States and abroad) that actually designates bills that are going through the legislative process "Acts." It is unknown why this is done, as other lawmaking institutions refrain from calling proposals "Acts" until they have been designated as such and are authorized by appropriate processes. Unsurprisingly, many bills proposed, especially those that employ acronym short titles, use the "A" for act in the acronym, as if they expect the bill to be passed.

title pattern. As will be seen below, no effective constraints currently exist for federal short bill titles, but given the current situation, they are sorely needed.

In contrast, many states have short title policies in place for curtailing the practices employed at the federal level. They appear to value the inherently legal aspect of short titles, and discourage lawmakers and others from using such titles as influential devices. This Article will briefly demonstrate how the federal short title situation spiraled out of control. It will also look at some of the policy aspects of current evocative bill titles. The Article then examines the dearth of federal bill drafting policies in relation to short titles by analyzing the House Drafting Manual. Next, and most importantly, the Article examines state bill drafting manuals in order to ascertain whether or not they could provide any assistance or guidance to federal policies regarding short titles. Evidence from these state drafting manuals demonstrates that there is much Congress could learn from such practices.

Though the statute book has historically been immune to the use of overtly politicized language, such is no longer the case for the Federal Code, where overtly politicized language has entered the statute book largely through the short titles of acts. The current short title situation in Congress was not always the case. An examination of some major pieces of legislation throughout American history reveals that many of the nation's most important legislative accomplishments were graced with very bland short titles designed to do little more than summarize the bill's contents. The first-ever session of Congress passed the Judiciary Act of 1789, which constructed the entire federal court system, yet it garnered only a modest title.<sup>2</sup> Additional examples of landmark legislation with simple, descriptive titles include the 1913 Federal Reserve Act;<sup>3</sup> the 1935 Social Security Act;<sup>4</sup> the 1961 Peace Corps Act;<sup>5</sup> the 1964 Civil Rights Act;<sup>6</sup> and the Voting Rights Act of 1965.<sup>7</sup> The above acts are some of the most important and historically controversial pieces of legislation Congress has ever produced. Put simply, they are innocuously titled bills that easily inform lawmakers and the public about what the bill sets out to accomplish.

In contrast, an examination of some noteworthy laws over the past quarter century shows a drastic difference in naming style. Some bills, especially important ones, are cloaked in evocative language, seemingly designed to garner sympathy, support, and political advantage. Many of these titles appear to be crafted to provide cogent policy statements rather than offer information on what the bill entails. Prominent examples from the 1990s are the Judicial Improvements Act of 1990;<sup>8</sup> the Torture Victim Protection Act of 1991;<sup>9</sup> the

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2. Judiciary Act of 1789, ch. 20, 1 Stat. 73.

3. Federal Reserve Act, Pub. L. No. 63-43, 38 Stat. 251 (1913).

4. Social Security Act, Pub. L. No. 74-271, 49 Stat. 620 (1935).

5. Peace Corps Act, Pub. L. No. 87-293, 75 Stat. 612 (1961).

6. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

7. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437.

8. Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089.

Brady Handgun Violence Prevention Act;<sup>10</sup> the Religious Freedom Restoration Act of 1993;<sup>11</sup> the Congressional Accountability Act of 1995;<sup>12</sup> the Antiterrorism and Effective Death Penalty Act of 1996;<sup>13</sup> the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;<sup>14</sup> the Small Business Job Protection Act of 1996;<sup>15</sup> the Defense of Marriage Act;<sup>16</sup> and the Pam Lychner Sexual Offender Tracking and Identification Act of 1996.<sup>17</sup>

Yet the past decade provided perhaps the most evocatively named laws the Congress has ever bequeathed to the statute book, with such titles as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act;<sup>18</sup> the No Child Left Behind Act of 2001;<sup>19</sup> the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act;<sup>20</sup> the Unborn Victims of Violence Act 2004;<sup>21</sup> the Prison Rape Elimination Act of 2003;<sup>22</sup> the Partial-Birth Abortion Ban Act of 2003;<sup>23</sup> the Adam Walsh Child Protection and Safety Act of 2006;<sup>24</sup> and the Emergency Economic Stabilization Act of 2008.<sup>25</sup>

The 111th Congress continued the trend, providing policy-saturated names to laws such as the Lilly Ledbetter Fair Pay Act of 2009;<sup>26</sup> the American Recovery and Reinvestment Act of 2009;<sup>27</sup> the Serve America Act;<sup>28</sup> the Helping

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9. Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73.

10. Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

11. Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488.

12. Congressional Accountability Act of 1995, Pub. L. No. 104-1, 109 Stat. 3.

13. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214.

14. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

15. Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat. 1755.

16. Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996).

17. Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, 110 Stat. 3093.

18. 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.

19. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425.

20. Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. No. 108-21, 117 Stat. 650.

21. Unborn Victims of Violence Act of 2004, Pub. L. No. 108-212, 118 Stat. 568.

22. Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972.

23. Partial-Birth Abortion Ban Act of 2003, Pub. L. No. 108-105, 117 Stat. 1201.

24. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587.

25. Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765.

26. Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5.

27. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115.

Families Save Their Homes Act of 2009;<sup>29</sup> the Credit Card Accountability Responsibility and Disclosure (Credit CARD) Act of 2009;<sup>30</sup> the Patient Protection and Affordable Care Act;<sup>31</sup> and the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>32</sup> The recent trend in evocative naming is therefore not abating, and only appears to be gaining in importance at the federal level.

A couple of individuals in the popular press have noticed the stylistic transition that Congressional bill titles have experienced in recent years. Former *New York Times* wordsmith William Safire has deemed the titling of bills in Congress “acronymia,” and he uses the USA PATRIOT Act as the most prominent example.<sup>33</sup> Jess Bravin from the *Wall Street Journal* recently penned an article complimenting Safire’s hypothesis, and further notes that “[e]ven when they can’t coin an acronym, legislators use loaded language that raises the stakes for voting no.”<sup>34</sup> It appears that some are irritated with the practice, though. Bravin cites a couple of lawmakers who are against such practices. He also notes that former President George W. Bush has acknowledged, and regretted, that the name of the USA PATRIOT Act implied that those who voted against the measure were unpatriotic.<sup>35</sup>

As can be seen from the contemporary examples above, problems with the language of federal short bill titles stem from the fact that many are overtly political messages which usually include overly aspirational and/or tendentious language. This language is exceptionally problematic for bills, as many short titles imply that measures will be successful (for example, that they will “prevent” certain actions or “protect” certain populations) or contain various subjective characteristics (such as “responsibility” or “accountability”). While this type of language makes for effective political posturing, while putting undue pressure on lawmakers, its use in regard to law is both misleading and deceptive, as it is nearly impossible to predict how effective particular laws may be at accomplishing what they set out to do.<sup>36</sup> Additionally, inscribing laws with in-

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28. Serve America Act, Pub. L. No. 111-13, 123 Stat. 1460 (2009).

29. Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, 123 Stat. 1632.

30. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734.

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

32. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

33. WILLIAM SAFIRE, *THE RIGHT WORD IN THE RIGHT PLACE AT THE RIGHT TIME* 5 (2004).

34. Jess Bravin, *Congress Finds, in Passing Bills, That Names Can Never Hurt You*, WALL ST. J., Jan. 14 2011, at A1, available at <http://online.wsj.com/article/SB10001424052748703820904576057900030169850.html>.

35. *Id.* (citing GEORGE W. BUSH, *DECISION POINTS* 162 (2010)).

36. However, this has not prevented lawmakers from labeling their bills “effective,” see, for example, Effective Child Pornography Prosecution Act of 2007, Pub. L. No. 110-358, 122 Stat. 4001, or “efficient,” see, for example, Safe, Accountable, Flexible, Efficient

herently subjective characteristics, such as “responsibility” or “accountability” is intrinsically misleading and deceptive, as these words mean different things to different people.<sup>37</sup> While some states have policies against misleading and deceptive language in short titles, the federal government has no such standard.

#### I. POLICY IMPLICATIONS: SOME RATIONALES FOR REFORM

Barring the couple of media articles mentioned above, both the academic and legal communities have neglected short bill titles and the legal and political consequences of employing evocative language in titles. A combination of my own research and evidence gathered from interviews with legislators, staffers, and journalists points to a number of policy implications and concerns that lawmakers need to take into consideration when constructing short bill titles. My research primarily focused on the importance of short bill titles to those who frequently interact with legislation. Thus, those on the legislative side (legislators and staffers) and those who write about legislation (journalists) were consulted. Four major findings from my research are enlightening and somewhat disconcerting, and explain why legislators may want to consider reforming current titling practices. The four findings are: (1) that short titles no longer serve merely as referential points; (2) that short titles could be affecting whether or not a measure becomes law; (3) that some insiders are not content with the language being used in short titles; and (4) that short titles are believed to be an important aspect of the lawmaking process.

First, there was a consensus among my interviewees that *short bill titles are no longer merely used for referential purposes, but have multiple purposes*. An overwhelming number of interviewees stated this to be the case. This perception was supported by a Congressman who stated that with “almost every bill, they try to come up with some type of motherhood or apple pie title to it, so that everybody will vote for it.”<sup>38</sup> And many other interviewees seemingly agreed with him. Some were concerned that some titles gave the wrong impression of what was inside the bill, while others noted that such titles were concocted to play well in media circles, serve branding or marketing purposes, or were sometimes used to gain a political advantage.<sup>39</sup>

A variety of perspectives were displayed from media interviewees, with some suggesting bill titles were primarily propaganda tools or framing devices

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Transportation Equity Act of 2005, Pub. L. No. 109-59, 119 Stat. 1144, or using other similarly subjective language.

37. See, e.g., Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734; Judicial Disclosure Responsibility Act of 2007, Pub. L. No. 110-24, 121 Stat. 100; Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282, 120 Stat. 1186.

38. Interview with Member of Cong. 2, in Wash., D.C. (Oct. 21, 2009).

39. *Id.*; see also Interview with House Staffer 2, in Wash., D.C. (Oct. 21, 2009); Interview with House Staffer 3, in Wash., D.C. (Oct. 26, 2009); Interview with House Staffer 4, in Wash., D.C. (Oct. 26, 2009).

employed to gain political advantage. The titles are written not just to affect legislators, but to also affect the general public. Some insiders have referred to them as spin devices, and connected them to Orwellian techniques. Others noted that their inherent propaganda purposes could in some instances distort the process, as some labels do not “have anything to do with the content of the legislation.”<sup>40</sup> Short titles are used as framing devices for legislation, and many titles are crafted to show the bills in the most favorable light possible.<sup>41</sup>

Thus, whether the new trend of evocative bill names are branding devices, political devices, blatant spin, or propaganda tools, the variety of insider responses acknowledged that bill names in the U.S. are seen as not just referential in nature.<sup>42</sup> These titles have blossomed into something more than descriptive legal devices, and many people, including members of Congress, believe this to be the case.

The second major finding is that *bill titles may be affecting whether or not a measure becomes law*. A majority of my interviewees took this viewpoint. Even lawmakers stated without hesitation that bill names do indeed influence legislative outcomes, including voting tallies.<sup>43</sup>

Staffers appeared a bit more guarded when answering this question, as there seemed to be a discrepancy between upholding the integrity of their office and admitting that naming is taken into consideration at some point. The most insightful and eloquent answer came from a staffer who declared that:

[I]t all goes back to the court of public opinion if you will. And, when you have a bill, the PATRIOT Act, for example . . . the United States had come through some challenging times, obviously, with 9/11 and so forth and the War on Terrorism, and when the President can come to Congress and say . . . “I challenge you to pass the PATRIOT Act so it can be sent to my desk and I sign it,” I mean, yeah, it’s a powerful thing, when you have that message going across the TV to millions and millions of people throughout the United States. I mean that sends a clear message to those folks who are on the ground, the advocates on the ground doing grassroots work. And they can get their constituencies fired up and say ‘call your Congressman and tell them to sponsor the PATRIOT Act.’ That’s kind of a made for TV moment.<sup>44</sup>

This attraction of political currency was paramount in other answers as well; and even those who were reluctant to say that bill titles affected passage

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

41. *Id.*

42. Interview with House Staffer 3, *supra* note 39; Interview with House Staffer 4, *supra* note 39; Interview with Member of Cong. 2, *supra* note 38; Interview with U.S. Media Member 6, in Wash., D.C. (Oct. 29, 2009); Interview with U.S. Media Member 7, in Wash., D.C. (Oct. 28, 2009).

43. Interview with Member of Cong. 1, in Wash., D.C. (Oct. 29, 2009); Interview with Member of Cong. 2, *supra* note 38.

44. Interview with House Staffer 2, *supra* note 39.

later admitted that compelling names have implications.<sup>45</sup> Additionally, journalists acknowledged that politicians do not want to easily give fodder to political opponents or vote against something they believe is popular, noting that lawmakers are sensitive to these issues.<sup>46</sup>

It is important to remember that the above finding does not surmise that an effective short title with faulty substance is going to succeed and become law. However, it does call into question the disappointing notion that bills with more evocative or effective short titles are believed to travel further in the legislative process than those with non-evocative short titles. Whether this is truly the case or not, the prospect of congressional members, staffers and journalists believing that a moniker affects federal bill passage is a remarkably distressing thought concerning the state of congressional legislation, and lends legitimacy to the state policy efforts on bill titling, as detailed below.

The next major finding legitimizing state efforts is that *some legislators and staffers are not content with the language being used in short titles*. This finding is not altogether novel, as Bravin's article from the *Wall Street Journal* pointed this out.<sup>47</sup> However, my data compliments his finding that some close to the legislative process have problems with the language being used in short titles. Insiders considered it unjustified, disingenuous, and premature to label these legal devices with overly aspirational and tendentious language.<sup>48</sup> Yet, as evidenced earlier in this Article, it is common contemporary practice to use evocative language for Congressional short titles, even though such titles suggest premature outcomes (e.g., Prison Rape Elimination Act of 2003).<sup>49</sup>

A few journalists also called such bill language into question, calling it "silly,"<sup>50</sup> and labeling such titles "marketing strateg[ies]"<sup>51</sup> and "political ploy[s]."<sup>52</sup> Additionally, one wise journalist finished his answer by providing lawmakers with a relatively radical piece of advice, stating that bill titles do not have to "have a funny acronym that goes with it to persuade you that it's a good idea."<sup>53</sup> After all, Congress is indeed a national law-making institution with a rich and distinguished history, not an advertising firm. The practice of evocative bill titling could even backfire on some members in terms of media attention, as a few journalists mentioned how they shy away from printing such in-

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45. See Interview with House Staffer 6, in Wash., D.C. (Oct. 21, 2009); Interview with Senate Staffer 1, in Wash., D.C. (Oct. 27, 2009).

46. Interview with U.S. Media Member 2, *supra* note 40; Interview with U.S. Media Member 4, in Wash., D.C. (Oct. 21, 2009); Interview with U.S. Media Member 8, in Wash., D.C. (Oct. 29, 2009).

47. Bravin, *supra* note 34.

48. Interview with House Staffer 3, *supra* note 39; Interview with House Staffer 6, *supra* note 45; Interview with Member of Cong. 2, *supra* note 38.

49. Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972.

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

51. Interview with U.S. Media Member 2, *supra* note 40.

52. Interview with U.S. Media Member 6, *supra* note 42.

53. *Id.*



flammatory language, and at times use the official bill titles as a guide of *what not to print*.<sup>54</sup>

Finally, most insiders agreed on what the three previous findings also demonstrate: that *naming is an important part of the lawmaking process*. Given the findings above, this was to be expected. What was not expected was how adamant many interviewees were about bill title importance. One Congresswoman stated that titles were “definitely” important to bills, while a staffer declared, “Yes...100%.”<sup>55</sup> Peeking people’s interest, whether they were lawmakers, citizens or others, is one of the main functions of an effective short title. Some even claimed that short bill titles had implications for getting bill co-sponsors and organizational support.<sup>56</sup> Journalists acknowledged the effectiveness of evocative short titles as a legislative and political tool, noting how they can influence how an issue is talked about, and reiterating that they could influence final voting tallies in controversial pieces of legislation.<sup>57</sup>

As will be seen below, many states regard short bill titles as important from an informational perspective, as, at the most basic level, they provide information to lawmakers and others as to what is transpiring on the legislative calendar. One reporter called this to mind, noting that encapsulating the essence of a bill in a short title is difficult.<sup>58</sup> It was even suggested that journalists should watchdog such titles, and exploit them when necessary.<sup>59</sup>

## II. THE HOUSE OF REPRESENTATIVES DRAFTING MANUAL

Given the current state of federal short titles, at this point it is appropriate to review the House of Representatives Drafting Manual in order to examine whether or not any rules or regulations exist in relation to such titles. It comes as little surprise that the official House Drafting Manual provides sparse guidance on such matters. Interestingly, short titles for bills are not compulsory.<sup>60</sup> The manual notes that short titles are usually only needed for: (a) major legisla-

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54. Interview with U.S. Media Member 8, *supra* note 46. Interview with U.S. Media Member 9, in Wash., D.C. (Oct. 26, 2009).

55. Interview with House Staffer 6, *supra* note 45; Interview with Member of Cong. 1, *supra* note 43.

56. Interview with House Staffer 2, *supra* note 39. Interview with House Staffer 5, in Wash., D.C. (Oct. 22, 2009).

57. Interview with U.S. Media Member 2, *supra* note 40; Interview with U.S. Media Member 6, *supra* note 42. This journalist noted that the original Ryan White Act’s name was changed in the Senate in order to gain the approval of Dan Coats, a Senator for Indiana. The original name of the Act was changed to the Ryan White Act, who happened to be a constituent of Mr. Coats’, in order to pressure him into voting for the legislation. The practice worked, as Mr. Coats was the deciding vote on the controversial measure.

58. Interview with U.S. Media Member 4, *supra* note 46.

59. Interview with U.S. Media Member 7, *supra* note 42.

60. HOUSE LEGISLATIVE COUNSEL, 104TH CONG., MANUAL ON DRAFTING STYLE (1995).

tion; and (b) cross-references.<sup>61</sup> However, it does not precisely define what “major” legislation is.

The manual details that if an act consists mainly of amendments to another act, then it is “appropriate for the short title to include ‘. . . Amendments of [year].’”<sup>62</sup> When examining contemporary bill titles, it appears quite variable as to whether or not this advice is taken into consideration. For example, the No Child Left Behind Act (NCLB) is largely an amendment to the Elementary and Secondary Education Act of 1965.<sup>63</sup> NCLB obviously does not mention this in its short title. However, one of the most contentious pieces of legislation in the 110th Congress was the FISA Amendments Act of 2008, which did indeed follow the advice of the House manual.<sup>64</sup>

The House Drafting Manual recommends avoiding multiple short titles for each title or subtitle. However there are some exceptions to this, such as in aggregate legislation, where short titles can substitute for titles and subsections of an act. There are also egregious examples in federal legislation that disregard the House Drafting Manual’s recommendations entirely. For example, consider the Adam Walsh Child Protection and Safety Act of 2006.<sup>65</sup> There is a plethora of smaller acts, and thus short titles, inside this large Act. Some mentioned throughout the text of the Act are: TITLE I—Sex Offender Registration and Notification Act; Subtitle C, Section 153—Safe Schools Act; TITLE VI, Subtitle A, Mentoring Matches for Youth Act; and Subtitle B—National Police Athletic League Youth Enrichment Act.<sup>66</sup> But smaller short titles inside the Adam Walsh Act are present beyond these, as many of the other sections are named after prominent crime victims. Section 103 states that “[t]his Act establishes the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program”;<sup>67</sup> Section 111 includes the “Amie Zyla Expansion of Sex Offender Definition and Expanded Inclusion of Child Predators”;<sup>68</sup> Section 120 is the “Dru Sjodin National Sex Offender Public Website”;<sup>69</sup> and Section 121 is the “Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program.”<sup>70</sup>

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61. *Id.* at 26.

62. *Id.* at 27.

63. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002).

64. FISA Amendments Act of 2008, Pub. L. No. 110-261, 122 Stat. 2436.

65. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587.

66. There are more of these inside the Act, such as: TITLE VI, Subsection C, § 639—The Justice for Crime Victims Family Act; and TITLE VII—Internet Safety Act.

67. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 103, 120 Stat. 587, 588.

68. *Id.* at § 111.

69. *Id.* at § 120.

70. *Id.* at § 121. However, there are more of these examples inside this Act as well, such as: Section 202 is the “Jetseta Gage Assured Punishment For Violent Crimes Against Children”; Section 301 is the “Jimmy Ryce State Civil Commitment Programs For Sexually

Subsection (4) on short bill titles is concise, and declares “(4) LENGTH.—Keep it *short*.”<sup>71</sup> Yet, as with “major legislation,” the manual does not specify what “short” means. Is “short” a few words, a sentence, a particular number of characters, an acronym? There is no clarification provided here, and many contemporary titles are, on the surface, long titles. The USA PATRIOT Act’s full short title is: “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001,” which is four words shorter than its long title: “To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.”<sup>72</sup> Another problematic title under this instruction would be the PROTECT Act, whose short title is: “Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003,” which is only *one word* shorter than its long title: “An Act to prevent child abduction and the sexual exploitation of children, and for other purposes.”<sup>73</sup> It is not too difficult to find other pieces of contemporary legislation that employ short titles which are almost as long as their long titles, and many of these have acronym short titles.

Another interesting point about the House Drafting Manual is that there is no mention of accuracy in relation to short titles. It mentions accuracy for long titles, as the document states in subsection (a) that a “title should accurately and briefly describe what a bill does.”<sup>74</sup> Is the failure to mention short title accuracy intentional, or is one to assume that the accuracy standards in relation to long titles apply to short titles as well? There is no mention of such a standard throughout section 323 of the document that deals with short titles, and it is separate from section 321 that deals with long titles.<sup>75</sup> Neither is there mention of accuracy in the only drafting manual the Government Printing Office makes available on its website.<sup>76</sup> This document, however, does provide two recommendations to those who use short titles. First, it states that the year should not be used in the short title, noting that, “trying to remember, and having to restate, that year will be a nuisance to everyone who has to cite the law.”<sup>77</sup> Second, and more importantly, he states that the drafter should “not lose sight of

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Dangerous Persons”; Section 631 is the “Jessica Lunsford Address Verification Grant Program”; and Section 707 is known as “Masha’s Law.” *Id.*

71. HOUSE LEGISLATIVE COUNSEL, *supra* note 60 (emphasis in original).

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

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

74. HOUSE LEGISLATIVE COUNSEL, *supra* note 60.

75. *Id.*

76. DONALD HIRSCH, HOUSE LEGISLATIVE COUNSEL, DRAFTING FEDERAL LAW (2d ed. 1989).

77. *Id.* at 29.

the objective of a short title, which is to make it easy to refer to the bill.”<sup>78</sup> This is perhaps the closest thing Donald Hirsch says in relation to short title accuracy without explicitly mentioning it. It is unknown why the House Drafting Manual and the only manual provided by the Government Printing Office fail to mention accuracy in relation to short titles.

### III. STATE LEGISLATURE RULES AND RECOMMENDATIONS

Evocative bill naming for federal legislation currently enjoys limited policies in regard to proper short title form, and these regulations are arbitrarily followed. But if drafters, lawmakers, parliamentarians or others do decide that short titles need more guidance (especially in light of the above findings), such individuals should look to state drafting manuals, which provide useful advice on the drafting of short bill titles.

Examining the abundance of federal laws with evocative bill names, one can sometimes overlook that fifty states draft their own legislation and subsequently have their own drafting policies. It is important to note that a significantly large number of Congressional members matriculate to Washington D.C. from these statehouses. For example, the 111th Congress had 229, or close to half, of lawmakers that described themselves as former state or territorial legislators.<sup>79</sup> Thus, if states do have policies related to short title drafting, then these could potentially serve as examples for federal legislation. It is not uncommon for the federal government to use laws or policies first enacted by states, and vice versa (for example, Megan’s Law<sup>80</sup> and Three Strikes Legislation<sup>81</sup> both started out as state laws); and it also is not uncommon for the Supreme Court to look to how many States have abolished or enacted a law when determining whether or not it is constitutional.<sup>82</sup> Therefore, the rest of this Part examines state legislation drafting manuals and state constitutions to ascertain (1) if there are rules and/or policies related to short titles of bills; (2) whether these policies deal with bill title accuracy and/or clarity; and (3) who the intended audience is that titles are written for.

The dearth of policies at the federal level contrasts sharply with some state policies, many of which are very thorough and detailed. In fact, bill titles have

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78. *Id.*

79. JENNIFER E. MANNING, CONG. RESEARCH SERV., R40086, MEMBERSHIP OF THE 111TH CONGRESS: A PROFILE 2 (2010), available at [http://assets.opencrs.com/rpts/R40086\\_20101227.pdf](http://assets.opencrs.com/rpts/R40086_20101227.pdf).

80. Robert J. Martin, *Pursuing Public Protection Through Mandatory Community Notification of Convicted Sex Offenders: The Trials and Tribulations of Megan’s Law*, 6 B.U. PUB. INT. L.J. 29 (1996).

81. *Recent Legislation*, 107 HARV. L. REV. 2123, 2128 (1994).

82. See *Gregg v. Georgia*, 428 U.S. 153 (1976); *Furman v. Georgia*, 408 U.S. 238 (1972).

specific provisions or mentions in at least forty-one state constitutions.<sup>83</sup> Most of these provisions relate to “one-subject” clauses in constitutions, which usually express that a specific bill of the state legislature should contain only one subject, and this subject should be clearly enumerated in the title of the bill. Other states mention that the title of a bill must meet certain requirements, and if these are not met, then the whole bill or parts of a bill may be deemed invalid.<sup>84</sup> An example of such a provision is provided by the Colorado Constitution, which states:

No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.<sup>85</sup>

The use of long titles in statutes is mandated by many states, while the use of short titles is less frequent and even discouraged by some states (such as North Dakota<sup>86</sup> and Kentucky<sup>87</sup>). Others, such as Massachusetts, either do not expressly differentiate between short titles and long titles, or do so in an arbitrary fashion.<sup>88</sup> The next Part commences with provisions or recommendations specifically related to short titles and then moves on to general provisions related to bill titles that are relevant to this Article.

#### A. *Provisions Specifically Related to Short Titles*

The State of Arizona employs “reference titles” on all its bills, which are a collection of words in the upper right-hand corner of the bill to ease indexing.<sup>89</sup> They are called “short titles” by the Arizona Legislature, but they are more similar to running headers or indexing terms. The Arizona Legislative Council adopted Council Rule 22 in 1996, which specifies that “the reference title must be an accurate and inclusive description of the contents of the measure and

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83. See NORMAN J. SINGER & J.D. SHAMBIE SINGER, 1A STATUTES AND STATUTORY CONSTRUCTION, § 17:1 (7th ed. 2009).

84. These statements are usually found in state Legislative Drafting Manuals or from state court decisions. Please see links to the manuals in the footnotes of this document for details on electronic access.

85. COLO. CONST. art. V, § 21.

86. N.D. LEGIS. COUNCIL, LEGISLATIVE DRAFTING MANUAL 20 (2011), available at <http://legis.nd.gov/information/bills/docs/pdf/2010draftingmanual.pdf>.

87. LEGIS. RESEARCH COMM'N, BILL DRAFTING MANUAL FOR THE KENTUCKY GENERAL ASSEMBLY 23 (2004), available at <http://www.lrc.ky.gov/lrcpubs/IB117.pdf>.

88. MASS. GEN. COURT, LEGISLATIVE RESEARCH AND DRAFTING MANUAL 5 (2010), available at <http://www.malegislature.gov/Legislation/DraftingManual>.

89. ARIZ. LEGIS. COUNCIL, THE ARIZONA LEGISLATIVE BILL DRAFTING MANUAL 9 (2009), available at <http://www.azleg.gov/alisPDFs/council/2010%20Bill%20Drafting%20Manual.pdf>.

shall not reflect political, promotional or advocacy considerations. Legislative council staff shall make the final determination of the contents of the reference title of each measure that is introduced.”<sup>90</sup> This rule specifically addresses the fact that the Arizona Legislature does not want its statute book to appear overtly political or promotional of certain laws, and therefore strives for accuracy.

Colorado provides short titles on all bills, resolutions, and memorials, and the Office of Legal Services has been responsible for drafting these since 1995.<sup>91</sup> It classifies such titles as “unofficial” because the names, unlike federal short titles, do not appear on the bill itself, but they are used on the voting machines of the House chambers and on bill status reports and other legislative records.<sup>92</sup> While these unofficial aspects of Colorado law do not carry much legal weight, they are significant enough to warrant thirteen short title recommendations provided in its Drafting Manual.

Many of Colorado’s short title drafting recommendations are prescriptive, such as: the titles should be restricted to forty characters (including punctuation, spaces, and numerals); the short title should identify the primary topic of the bill; the use of abbreviations is discouraged; the creation of abbreviations is discouraged; the title should focus on the subject matter; drafters should consider who the bill affects when drafting the title; and short titles should use the same words as are used in similar pieces of legislation, as this groups together similar acts in the statute book making them easier to find.<sup>93</sup> However, one of the most significant recommendations the Drafting Manual makes regarding short titles is the following: “Apply this TEST: Separate out the words from the proposed short title and think about whether the average subject index user would think of that individual word to try to find this bill. If the answer is no, then the short title needs modification.”<sup>94</sup>

This basic, but meaningful, test would likely solve many short title problems. As mentioned previously, short titles originally served as reference points. If a person indexing a measure cannot reasonably place it from among the language contained in the short title, then the “Colorado Test” should be applied. If these recommendations were applied to federal legislation, some short titles would likely have to be changed (e.g. the No Child Left Behind Act, USA PATRIOT Act, and PROTECT Act); though it is unclear how such a test would apply to federal legislation that uses acronyms. Although the words an acronym uses sometimes describes what the bill does or hopes to accomplish (for example, The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001), the word

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90. *Id.*

91. OFFICE OF LEGIS. LEGAL SERVS., COLORADO LEGISLATIVE DRAFTING MANUAL 2-26 (2009), available at [http://www.state.co.us/gov\\_dir/leg\\_dir/olls/LDM/OLLS\\_Drafting\\_Manual.pdf](http://www.state.co.us/gov_dir/leg_dir/olls/LDM/OLLS_Drafting_Manual.pdf).

92. *Id.*

93. *Id.* at 2, 26.

94. *Id.*

or phrase that the acronym spells might not give any indication of the bill's subject (for example, USA PATRIOT Act).

Montana limits the short titles of its bills to eighty characters (including spacing, punctuation, and numerals).<sup>95</sup> This is twice as long as Colorado allows, and the eighty-character limit would seem to incorporate most federal short titles. New Mexico does not impose a character limit, but believes short titles should be just that—short—and expresses its views on the subject by declaring:

A short title defines a specific, discrete, cohesive body of law. If a draft of original legislation meets that description, it is useful to give it a short title for reference purposes. A short title is a drafter's tool and must be short to be worthwhile. It is a reference, not an exhaustive description of what the act does. Since the New Mexico legislature can legislate only for New Mexico, there is no reason to put "New Mexico" as part of a short title.<sup>96</sup>

Other states have similar regulations. The Texas Legislative Drafting Manual also discourages use of the word "Texas" in the short title, considering such use "superfluous."<sup>97</sup> Conversely, federal legislation frequently uses the words "America" or "American" in its short titles, especially recently (for example, American Recovery and Reinvestment Act of 2009,<sup>98</sup> Serve America Act,<sup>99</sup> and Protect America Act of 2007),<sup>100</sup> although doing so seems especially redundant given the fact that Congress cannot legislate for any other country.

Texas drafting recommendations also suggest that in most cases short titles should be used for ease of citation with major acts. However, the legislature notes that short titles "should *not* be used to make otherwise routine bills look important."<sup>101</sup> This is another provision that dissuades drafters, politicians, and others from using short titles for political advantage or policy promotion.

Illinois takes a firm but humorous position on short titles, as its recommendations state:

Every new Act should have a short title for ease of reference. A short title should be short, accurate, and unique. The "Village Library Act," 75 ILCS

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95. MONT. LEGIS. SERVS. DIV., BILL DRAFTING MANUAL 49 (2008), available at [http://leg.mt.gov/content/publications/2008\\_bill\\_drafting\\_manual.pdf](http://leg.mt.gov/content/publications/2008_bill_drafting_manual.pdf).

96. N.M. LEGIS. COUNCIL SERV., LEGISLATIVE DRAFTING MANUAL 26-27 (2004), available at <http://www.nmlegis.gov/lcs/lcsdocs/draftman.pdf>.

97. TEX. LEGIS. COUNCIL, DRAFTING MANUAL 10 (2008), available at <http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf>.

98. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-15, 123 Stat. 115.

99. Serve America Act, Pub. L. No. 111-13, 123 Stat. 1460 (2009).

100. Protect America Act of 2009, Pub. L. No. 110-55, 121 Stat. 552 (2009).

101. TEX. LEGIS. COUNCIL, DRAFTING MANUAL 10 (2008) (emphasis in original), available at <http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf>.

40/, is a good short title. The “Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act,” 320 ILCS 25/, is an awful short title; no wonder most people refer to it colloquially as the Circuit Breaker Act.<sup>102</sup>

### B. *General Bill Title Provisions*

Many of the state manuals have general provisions related to titles that could be applied to short titles. These statements usually make reference to or recommendations on clarity, accuracy, and/or an ease of understanding the bill’s contents for those looking at or interacting with the measures in question. In fact a number of states include accuracy and non-misleading titles as their top priorities. Indiana declares that “[t]he title should not state what the bill does but should provide a short, general statement of the subject matter of the bill;<sup>103</sup> Oregon suggests that “the title should express the subject of the bill, not what the bill does or how the bill accomplishes its purpose”;<sup>104</sup> the Florida House Manual declares a “properly prepared title is essential to the validity of the law to be enacted”;<sup>105</sup> and Kentucky proclaims that “[i]ndeed, the cardinal sin in preparing titles is to use language that misleads about the contents of the bill. The highest degree of care, therefore, must be exercised to make certain that the subject of the bill is embraced plainly in the title.”<sup>106</sup>

Recommendations also stress the informational and notification aspects for those interacting with legislation: Montana states that “[t]he main purpose of the constitutional provision is to ensure that the title of a bill gives reasonable

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102. RICHARD C. EDWARDS, ILL. LEGIS. REFERENCE BUREAU, GUIDE TO DRAFTING LEGISLATIVE DOCUMENTS (2008), available at <http://www.ilga.gov/commission/lrb/lrbguide.htm>.

103. IND. OFFICE OF CODE REVISION LEGIS. SERVS. AGENCY, FORM AND STYLE MANUAL FOR LEGISLATIVE MEASURES 24 (1999), available at <http://www.in.gov/legislative/session/manual/PDF/PART1.PDF>.

104. OREGON DRAFTING MANUAL § 5.2, available at <http://www.lc.state.or.us/pdfs/BillDraftingManual/dmchp5.pdf>.

105. FLA. HOUSE OF REPRESENTATIVES, FLORIDA GUIDELINES FOR BILL DRAFTING 27, available at [http://www.myfloridahouse.com/FileStores/Web/HouseContent/Approved/Public%20Guide/Uploads/Documents/bill-drafting-guidelines/full\\_document.pdf](http://www.myfloridahouse.com/FileStores/Web/HouseContent/Approved/Public%20Guide/Uploads/Documents/bill-drafting-guidelines/full_document.pdf).

106. LEGIS. RESEARCH COMM’N, BILL DRAFTING MANUAL FOR THE KENTUCKY GENERAL ASSEMBLY Ch. 2, § 202 (2004), available at <http://www.lrc.ky.gov/lrcpubs/IB117.pdf>. Other states have declared this important as well. See, e.g., H.R.J. Rule 2.01, 87th Sess. (Minn. 2011) (“The title of each bill shall clearly state its subject and briefly state its purpose.”); DEP’T LEGIS. SERVS., MARYLAND LEGISLATIVE DRAFTING MANUAL 28 (2011) available at [http://dls.state.md.us/data/legandana/legandana\\_bildra/legandana\\_bildra\\_bildraman/2012LegislativeDraftingManual.pdf](http://dls.state.md.us/data/legandana/legandana_bildra/legandana_bildra_bildraman/2012LegislativeDraftingManual.pdf) (“Titles that are misleading or deceptive must be avoided.”); N.M. LEGIS. COUNSEL SERV., NEW MEXICO LEGISLATIVE DRAFTING MANUAL 20 (2004), available at <http://legis.state.nm.us/lcs/lcsdocs/draftman.pdf> (“[A] properly prepared title is essential to the constitutionality of any bill that becomes law, the title should be carefully reviewed to determine that it covers everything in the bill.”).



notice of the content to legislators and the public”;<sup>107</sup> the Florida House Manual exclaims, “the title must give notice sufficient to reasonably lead an interested person to inquire as to the contents of the bill”;<sup>108</sup> New Mexico states that “[d]rafters should keep in mind that titles are used by legislative staff and others as quick references and the titles should contain as much information as possible within the confines of the request. Everything from committee referrals to subject and bill indexing is made easier with an informative title”;<sup>109</sup> and South Dakota proclaims that, “[t]he title should be written so that the reader can understand what the enactment of the bill will accomplish without reading the body of the bill.”<sup>110</sup>

A few drafting manuals were very thorough when it came to the issues of accuracy and clarity. In fact, West Virginia’s bill title section is twenty-eight pages long.<sup>111</sup> However the manuscript is more technically oriented, and does not get into many of the accuracy and notification issues that this Article is centered around.<sup>112</sup> The length is worth noting, however, as they certainly take their legislative bill titles seriously.

As noted above, many states have constitutional clauses that mention bill titles in some form or fashion, but not all provide justification as to why this is so. Oregon’s manual, however, provides detailed information as to why they include the constitutional provision, stating the following:

By reading the title, a person should be able to determine whether the bill deals with a subject in which the person is interested. The purpose of the constitutional title requirement is to prevent the concealment of the true nature of the provisions of the bill from the legislature and the public.<sup>113</sup>

It also notes that “[t]he courts construe this requirement liberally”<sup>114</sup> and “will

107. LEGIS. SERVS. DIV., MONTANA BILL DRAFTING MANUAL 45 (2008), available at [http://leg.mt.gov/content/publications/2008\\_bill\\_drafting\\_manual.pdf](http://leg.mt.gov/content/publications/2008_bill_drafting_manual.pdf).

108. FLA. HOUSE OF REPRESENTATIVES, FLORIDA GUIDELINES FOR BILL DRAFTING 28 (2011), available at [http://www.myfloridahouse.com/FileStores/Web/HouseContent/Approved/Public%20Guide/Uploads/Documents/bill-drafting-guidelines/full\\_document.pdf](http://www.myfloridahouse.com/FileStores/Web/HouseContent/Approved/Public%20Guide/Uploads/Documents/bill-drafting-guidelines/full_document.pdf).

109. N.M. LEGIS. COUNSEL SERV., NEW MEXICO LEGISLATIVE DRAFTING MANUAL 26 (2004), available at <http://legis.state.nm.us/lcs/lcsdocs/draftman.pdf>.

110. S.D. LEGIS. SERVS., SOUTH DAKOTA LEGISLATIVE DRAFTING MANUAL 8, available at <http://legis.state.sd.us/general/DraftingManual.pdf>.

111. W. VA. LEGIS. SERVS., WEST VIRGINIA LEGISLATURE BILL DRAFTING MANUAL, PART III: BILL TITLES AND ENACTING SECTIONS 51-79 (2006), available at [http://www.legis.state.wv.us/Joint/Bill\\_Drafting/Drafting\\_Manual.pdf](http://www.legis.state.wv.us/Joint/Bill_Drafting/Drafting_Manual.pdf).

112. On the whole, the section relates to amendments, and how to deal with this as a drafter.

113. OR. LEGIS. SERVS., OREGON DRAFTING MANUAL § 5.2 (citing *N. Wasco Cnty. PUD v. Wasco Cnty.*, 210 Or. 1 (1957)), available at <http://www.lc.state.or.us/pdfs/BillDraftingManual/dmchp5.pdf>.

114. OR. LEGIS. SERVS., OREGON DRAFTING MANUAL § 5.2 (citing *Anthony v. Veatch*, 189 Or. 462, 502 (1950)), available at <http://www.lc.state.or.us/pdfs/BillDraftingManual/>

not hold an Act to be in violation unless the insufficiency of the title is ‘plain and manifest’ or ‘palpable and clear.’”<sup>115</sup>

Similar constitutional provisions are noticeable in other states. Article 3, section 35(b) of the Texas Constitution reads: “The rules of procedure of each house shall require that the subject of each bill be expressed in its title *in a manner that gives the legislature and the public reasonable notice of that subject*. The legislature is solely responsible for determining compliance with the rule.”<sup>116</sup> It is interesting to note that both the legislature and the general public were mentioned in this statement, as it clearly establishes that the laws of Texas are not written just for lawmakers or authorities, but for the citizens of the state as well. And, in doing so, the statement puts responsibility on the legislature to be sure that these rules are complied with.

Florida’s House Manual explains that “if a bill contains less than the title indicates, it will be held to be defective if, in the opinion of the court, the title is so misleading as to motivate passage on the basis of features which are not, in fact, in the bill.”<sup>117</sup> The Florida Senate details something similar, acknowledging that the “if the title fails to give adequate notice or misleads or deceives the reader, the act is unconstitutional.”<sup>118</sup> The manual further notes that “[t]he test of whether a title misleads or deceives is whether it would deceive the mind of an ordinary person who understands the common meaning of language, not the mind of a precisionist who knows the technical refinements of terms.”<sup>119</sup> If a court finds that a title is deficient, the Florida courts may invalidate the entire act or certain parts for which fair notice was not given.

Washington also incorporates a one-subject clause in its constitution, and in 1952 a Washington State Court of Appeals decided that “the purposes of the constitutional provision are to: (A) Protect and enlighten members of the legislature; (B) apprise the people generally concerning the subjects of legislation being considered.”<sup>120</sup> Kentucky has had similar issues arise before their courts, noting that, “[n]o question of the form of legislation comes before the courts more persistently than the validity of titles to acts. The constitutional provision for titles is mandatory, and failure to comply with it will invalidate a measure.”<sup>121</sup> Further, it states that “the title of a bill should be broad and general be-

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dmchp5.pdf.

115. *Id.* (citing *Warren v. Marion Cnty.*, 222 Or. 307, 322 (1960)).

116. TEX. CONST. art. III, § 35(b) (emphasis added).

117. FLA. HOUSE OF REPRESENTATIVES, FLORIDA GUIDELINES FOR BILL DRAFTING 32 (2011).

118. *Id.* at 35.

119. *Id.*

120. OFFICE OF THE CODE REVISER, WASH. STATE LEGISLATURE, WASHINGTON BILL DRAFTING GUIDE—BILL TITLES, pt. II, § 7 (citing *Rourke v. Dep’t of Labor & Indus.*, 41 Wash. 2d 310, 312 (1952)), available at [http://www.leg.wa.gov/CodeReviser/Pages/bill\\_drafting\\_guide.aspx](http://www.leg.wa.gov/CodeReviser/Pages/bill_drafting_guide.aspx).

121. LEGIS. RESEARCH COMM’N, BILL DRAFTING MANUAL FOR THE KENTUCKY GENERAL ASSEMBLY pt. 2 § 202 at 5 (2004), available at <http://www.lrc.ky.gov/lrcpubs/IB117.pdf>.

cause any provision of a bill that has a natural connection with the subject expressed in the title is valid,” but also notes that “[i]t must not be so broad, however, as to be misleading. Any title that misleads makes the act void.”<sup>122</sup>

But these states are not alone in their concern for promotional language in bill titles. Maine declares that:

The title of a bill should state the subject of the bill in an objective manner. Avoid using inflammatory or biased language in the title, such as ‘An Act To Improve the Moral Character and Health of the Citizens of Maine by Prohibiting the Drinking of Liquor on Sunday.’ The Revisor of Statutes has authority under the joint rules to correct inaccurate, generalized or misleading bill titles.<sup>123</sup>

This again contrasts with federal legislation, which often uses morally descriptive words (for example, “responsibility” or “accountability”), or overtly moral phrases (for example, Helping Families Save Their Homes Act).

Thus, while bill titles may look as if they are easily constructed, important constitutional clauses and other provisions implemented by various states make drafting them more difficult than expected. The art of drafting bill titles is perhaps summed up best by a statement from the Alaska drafting manual, which states that “[t]he title looks like a simple label. It is not, however, an inconsequential part of the draft. There are many requirements it must meet. If they are not met, the entire bill may be invalid.”<sup>124</sup>

At this point many readers may be wondering if the state drafting policies are at all effective. This is a perfectly legitimate question to ask, as the inadequate federal short title guidelines are routinely broken, and there does not seem to be any recourse for doing so. There is some indication that state short title policies are indeed effective. Scan bills from the Colorado Legislature, and one finds that their titles are not more than forty characters.<sup>125</sup> Similarly, the Montana State Legislature appears to adhere to its eighty-character limit for short titles.<sup>126</sup> Examine bills from the Texas Legislature and one will see that they mostly go by descriptive long titles, and they seem to hold to their standard of not using short titles “to make routine bills look important.”<sup>127</sup> States

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122. *Id.*

123. LEGIS. COUNSEL, ME. STATE LEGIS., MAINE LEGISLATIVE DRAFTING MANUAL 13 (rev. ed. 2009), available at <http://www.maine.gov/legis/ros/manual/Draftman2009.pdf>.

124. ALASKA LEGIS. AFFAIRS AGENCY, MANUAL OF LEGISLATIVE DRAFTING 10 (2007), available at <http://w3.legis.state.ak.us/docs/pdf/DraftingManual2007.pdf>.

125. *All Bills by Bill Number*, COLORADO GENERAL ASSEMBLY, <http://www.leg.state.co.us/CLICS/CLICS2011A/csl.nsf/BillFoldersAll?OpenFrameSet> (last visited Jan. 16, 2012).

126. *List of 2011 Bills, Introduced and Unintroduced*, MONTANA LEGISLATURE, [http://laws.leg.mt.gov/laws11/LAW0217W\\$BAIV.return\\_all\\_bills](http://laws.leg.mt.gov/laws11/LAW0217W$BAIV.return_all_bills) (last visited Jan. 16, 2012).

127. TEX. LEGIS. COUNSEL, TEXAS LEGISLATIVE COUNSEL DRAFTING MANUAL 10 (2011), available at <http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf>. See also *House Bills 82nd Regular Session 1-200*, TEXAS SECRETARY OF STATE: HOPE ANDRADE <http://www>

that have policies on clarity or accuracy in short titles, such as Indiana,<sup>128</sup> Oregon,<sup>129</sup> and Florida<sup>130</sup> have corresponding short titles that are clear and accurate. And in states that have constitutional clauses in relation to bill titles, such as Washington<sup>131</sup> and Kentucky,<sup>132</sup> bill titles are generally accurate and sometimes only go by descriptive titles. And Maine, whose drafting manual notes that they should “[a]void using inflammatory or biased language in the title,”<sup>133</sup> has little such language in its bill titles.<sup>134</sup> This is evidence that such policies can be effective, if the enacting legislature and the courts desire them to be.

#### IV. FURTHER DISCUSSION OF FEDERAL TITLES

It is apparent from the analysis of state legislative drafting manuals that, similar to many of those close to the legislative process, many state legislatures take the manuals very seriously. Essentially they must, as such titles may have constitutional or other implications. If not properly drafted, an entire bill, or parts of it, may be rendered void by the courts. Conversely, the federal bill title situation is quite different, as official bill titles are now drafted, enacted, and inscribed in the U.S. Code as overt policy statements, with very few, if any, litigation remedies for improper short titles.

Some of the states featured above appear to have arrived at their short title rules and regulations because of litigation, or at least the litigation has provided a deeper understanding of the original policies. Oregon<sup>135</sup> and Washington<sup>136</sup> are two such examples. And while some federal courts have examined the topic

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.sos.state.tx.us/statdoc/bills/hb.shtml (last visited Jan. 16, 2012); *Senate Bills 82nd Regular Session 1-200*, TEXAS SECRETARY OF STATE: HOPE ANDRADE, <http://www.sos.state.tx.us/statdoc/bills/sb.shtml> (last visited Jan. 16, 2012).

128. *Introduced Bills, 2011 1st Regular Session*, INDIANA GENERAL ASSEMBLY, <http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2011&request=all> (last visited Jan. 16, 2012).

129. *Bills and Laws*, OREGON STATE LEGISLATURE, [http://www.leg.state.or.us/bills\\_laws](http://www.leg.state.or.us/bills_laws) (last visited Jan. 16, 2012).

130. *Short Titles of General Laws for 2010*, ONLINE SUNSHINE, [http://www.leg.state.fl.us/data/statutes/digest2010/Short\\_Titles\\_2010.htm#2009B](http://www.leg.state.fl.us/data/statutes/digest2010/Short_Titles_2010.htm#2009B) (last visited Jan. 16, 2012). Online Sunshine is the website of the Florida State Legislature.

131. *Bills Status Report: 1000 to 9999 (2011-12)*, WASHINGTON STATE LEGISLATURE, <http://dlr.leg.wa.gov/searchresults/default.aspxcb=1&id=5&params=21,1000,9999,12/1/2010&desc=SQkn3vo7oXn7D0kuxVi7YnJFcyWvsej7z57YXtJ7YmTpEB6cNDRNOgXHBvUTDu%2bA&bienString=2011-12> (last visited Jan. 16, 2012).

132. *Legislative Record Online 11RS*, KENTUCKY LEGISLATURE, <http://www.lrc.ky.gov/record/11RS/record.htm> (last visited Jan. 16, 2012).

133. LEGIS. COUNSEL OF THE ME. STATE LEGIS., MAINE LEGISLATIVE DRAFTING MANUAL 13 (rev. ed. 2009).

134. *Directory of Bills for the 125th Legislature*, MAINE STATE LEGISLATURE, [http://www.mainelegislature.org/legis/bills/bills\\_125th/billtexts](http://www.mainelegislature.org/legis/bills/bills_125th/billtexts) (last visited Jan. 16, 2012).

135. OREGON DRAFTING MANUAL § 5.2 (citing *Anthony v. Veatch*, 189 Or. 462, 502 (1950), and *Warren v. Marion Cnty.*, 222 Or. 307, 322 (1960)).

136. *Rourke v. Dep't of Labor & Indus.*, 41 Wash. 2d 310, 312 (1952).

of bill titles, the instances have been extremely rare throughout the years. The lack of federal litigation stems from the absence of a federal standard for short titles (such as a one-subject title clause in the U.S. Constitution), or any specific mention of bill titles in the respective House and Senate rules. Therefore even though such titles have radically changed throughout the past few decades, both the legal and political establishments have not responded by setting guidelines for what is and is not a proper short bill title; an aspect that must be taken into consideration in the near future.

Senate historian Donald Ritchie describes the change to evocative language in short titles as lawmakers “scrambling for attention” for their bills, as many measures are proposed every year, and only a fraction pass.<sup>137</sup> This is an important point when analyzing the complex federal legislative process, as lawmakers will likely want to present their bills in the most favorable light possible, and this usually begins with the short title. Yet the major problem with using evocative short titles, as mentioned above, is that these titles are ultimately used as official legal instruments. But what if lawmakers could still express the policy aspects of their bill, yet have official, proper bill titles when their laws are inscribed in the statute book? The means to do this are readily available.

Most bills usually attain colloquial names at some point in the process, be they given by congresspersons, the media, or others (for example, McCain/Feingold is officially titled the Bipartisan Campaign Reform Act of 2002).<sup>138</sup> Inevitably, this is as much a part of the policy process as inscribing official short titles, as supporters, opponents, and others like to frame the issue from the most beneficial perspectives possible. These colloquial, or “popular,” names are tracked just as official titles are tracked. In fact, many of the popular legislative websites that provide information on congressional bills and federal law also include a section in which browsers can search by “popular name.”

The House of Representatives maintains a searchable database of thousands of popular names for laws in the Federal Code.<sup>139</sup> The Cornell Legal Information Institute is another influential website that has a database of popular names corresponding to statutes in the US Code.<sup>140</sup> It provides certain rationales as to why and how bills develop popular names:

Sometimes these names say something about the substance of the law (as with the ‘2002 Winter Olympic Commemorative Coin Act’). Sometimes they are a way of recognizing or honoring the sponsor or creator of a particular law (as with the ‘Taft-Hartley Act’). And sometimes they are meant to garner political

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137. Bravin, *supra* note 34.

138. Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81.

139. *Popular Name Tool*, OFFICE OF THE LAW REVISION COUNSEL, <http://uscode.house.gov/popularnames/popularnames.htm> (last visited Jan. 16, 2012).

140. *Popular Names of Acts in the US Code*, LEGAL INFORMATION INST., <http://www.law.cornell.edu/uscode/topn/index.html> (last visited Jan. 16, 2012).

support for a law by giving it a catchy name (as with the ‘USA Patriot Act’ or the ‘Take Pride in America Act’) or by invoking public outrage or sympathy (as with any number of laws named for victims of crimes).<sup>141</sup>

Even the official Library of Congress website for legislation, THOMAS, usually provides popular names when describing particular measures.<sup>142</sup>

Therefore, if individuals only know the popular name of a bill as it moves through the legislative process, they are still able to find it on many prominent legislative websites. This includes websites that will give them a bevy of information about the bill, including major congressional actions, a full text of the legislation, and a link to the statute in the Federal Code, complete with the official short title. With tools such as these at public and lawmaker disposal, it seems wholly unnecessary for Congress to continue to permit overly political, aspirational, and/or tendentious names to enter the U.S. Code en masse.

#### CONCLUSION

This Article has explored how many federal short bill titles have come to serve as explicit policy statements, therefore inscribing overt political rhetoric into official law. Many titles and/or their accompanying acronyms are overly aspirational and do not properly describe a bill’s contents. Furthermore, many members of Congress who are sponsoring these bills matriculate from statehouses that have proper bill titling regulations,<sup>143</sup> yet they seem to abandon these practices at the federal level. It has also been shown that individuals close to the federal legislative process have serious concerns about the contemporary state of short titles in Congress, as it appears these titles have morphed into political tools designed to persuade rather than inform.

In contrast, numerous states take bill titling seriously, and have constitutional clauses or detailed policies in their drafting manuals regarding how to construct such titles. States such as Colorado and Florida provide practical and innovative tests to determine whether or not a bill title is proper. Other values stressed throughout state constitutions and drafting manuals were short title accuracy, the informational value of titles, and the elimination of promotional and misleading language. In stressing such values, it appears these states view titles not as a way for politicians or political parties to champion and further promote their legislative accomplishments, but as informational devices for citizens, fellow legislators, and others regarding what laws are being considered or have passed through their respective legislatures. In doing so, these states uphold a

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141. *Making Sense of Popular Names*, LEGAL INFORMATION INST., [http://www.law.cornell.edu/uscode/topn\\_explained.html](http://www.law.cornell.edu/uscode/topn_explained.html) (last visited Jan. 16, 2012).

142. *See generally* LIBRARY OF CONGRESS THOMAS, <http://thomas.loc.gov> (providing popular names for bill titles).

143. MANNING, *supra* note 79, at 2 (noting that 269 of the members of the 111th Congress list their profession as state or territorial legislators).

considerable amount of respect for the legislative process and the statute books in which these laws ultimately rest. Imagine if the federal government did the same.