

## Would You Ask Turkeys to Mandate Thanksgiving? The Dismal Politics of Legislative Transparency

J. H. Snider

**ABSTRACT.** The First Amendment of the U.S. Constitution prevents legislators from infringing on the freedom of the press. But, of necessity, legislators have been granted monopoly control of legislative information systems, including parliamentary procedure and roll call votes. New information technology is revolutionizing the economics of legislative information systems. But elected officials have a conflict of interest in using those new technologies to enhance democratic accountability when that might conflict with their own re-election interests. This article looks at the online accessibility of roll call votes by legislators in 126 legislative branches: the two branches of Congress, the 99 branches in the 50 U.S. states, and the 25 branches (city councils) in the 25 largest U.S. cities. It concludes that legislators have a conflict of interest and act on it by making roll call votes inaccessible. Moreover, this particular conflict of interest is merely the tip of the iceberg of a greater incentive problem elected officials have in designing legislative information systems to make themselves more democratically accountable. Legislative information systems are a critical foundation of democratic media systems. Strengthening them should therefore be of concern to anyone interested in strengthening the mass media and democracy.

**KEYWORDS.** Congress, Congressional Record, deliberative democracy, democratic reform, e-democracy, information policy, legislative studies, roll call votes, THOMAS

The First Amendment of the U.S. Constitution prevents legislators from infringing on the freedom of the press. But it does not prevent legislators as a group from having monopoly control of information about their own official actions, including their votes, on which the press depends to hold elected officials democratically accountable. Without voter access to such information, meaningful representative democracy is inconceivable. But such information has always been understood to be under the monopoly control of legislators—and necessarily

so. No one seriously proposes turning over the control of legislative procedure and records to a private actor such as the press; the design of legislative information systems is an intrinsically governmental process.

New information technology is revolutionizing the economics of both legislative transparency and procedure. But there is no guarantee that this technology will be used to enhance democracy.

Do the interests of incumbent legislators and the public conflict when designing legislative

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information systems whose ostensible purpose is to optimize democratic accountability? To the extent that legislators are re-election seeking, we would expect the answer to be yes—just as they would have a conflict of interest if granted monopoly power over how the press reported official actions.

Re-election seeking legislators would be expected to seek to maintain control over information about their official actions so that, at any given point in time, the public has easier access to more favorable than unfavorable information. In a well-functioning democracy, however, there should be no systematic bias; both favorable and unfavorable information should be equally accessible.

Incumbent legislators have the greatest incentive to control the unfavorable information sought after by their political opponents, most notably opposition candidates. As a rule, opposition candidates comb through the legislative record of incumbents looking for controversial votes and statements.

This article tests this conflict of interest hypothesis by focusing on just one aspect of legislative information systems: the use of the Internet to enhance the ability to search for roll call votes and the information—such as legislator statements explaining their votes—that gives meaning to those votes.<sup>1</sup>

Not all online views of roll call votes pose the same degree of conflict of interest. As legislative roll call information becomes more closely linked to a particular legislator, we would expect the accessibility of the information to decline. For example, we would expect roll call votes by each member to be less accessible than roll call votes by each bill.

Nor do all roll call votes pose the same degree of conflict of interest. Those on controversial issues pose a greater conflict of interest than those on popular issues. Thus, roll call votes on sponsored bills—the subset of bills a legislator tends to be most proud of and wants his name to be identified with—should be more accessible.<sup>2</sup>

Nor do all legislators share the re-election motive to the same degree. Legislative scholars generally agree that legislators also desire to

pass good public policies.<sup>3</sup> But it would be reasonable to expect that where it is relatively difficult to get elected and where the rewards in terms of power and money for doing so are relatively great, the re-election motive would be strongest and the desire to retain control over the accessibility of controversial roll call votes the greatest. Thus, roll call votes in legislatures from smaller political jurisdictions should be more accessible.

Nothing in this article is meant to suggest that the typical legislator is passionately opposed to providing online access to legislator roll call votes. Most legislators have probably never even thought about the matter: they have no reason to unless legislative leaders or powerful interest groups put it on the legislative agenda.

Nor does this article claim that, just because some information is relatively inaccessible, highly motivated opposition candidates and interest groups cannot access it. Indeed, the Congressional Research Service compiles a long list of prominent interest groups that collect and publicize members' voting records in specific areas (Doddrige, 1997, pp. 100, 109). The point is simply that, when provided with the option of creating a more democratically accountable legislative information system, incumbent legislators generally do not see the personal political gain in taking it—and it irks them that they would be taking an action that benefits their opponents more than themselves. Why needlessly arm a potential enemy?

Lastly, this article makes no claim that the accessibility of roll call votes is the most important or only conflict of interest legislators have when designing legislative information systems. Indeed, many roll call votes are structured to serve as public relations vehicles, designed for legislators to highlight and take credit for popular or at least uncontroversial positions. (In contrast, controversial legislation will typically be slipped inconspicuously into must-pass or popular legislation.) Even when legislators have nothing to hide, however, they may still wish to retain maximum control over how their roll call votes are made accessible, if only because

what is popular when a vote is taken may no longer be popular at election time.

Arguably, as we shall see, a far more important conflict of interest in the design of legislative information systems may be the design of parliamentary procedures. Parliamentary procedures determine what type of information about legislators is both generated and made public. For example, parliamentary procedures designed to give legislative insiders an information advantage over outsiders may violate the fundamental democratic principle of political equality. Similarly, parliamentary procedures designed to allow legislative majorities to suppress minority speech may violate fundamental democratic norms of free speech and public deliberation.

Although legislators' conflict of interest in making roll call votes easily accessible is relatively slight, two practical considerations make it a good indicator of legislators' conflict of interest in designing legislative information systems. First, empirical data on roll call accessibility is readily available via legislative Web sites. Second, as we shall see, the normative argument for making roll call voting data, especially floor votes, more publicly accessible is widely accepted.

### ***THE CONFLICT OF INTEREST HYPOTHESIS***

The literature on democratic reform is filled with observations that elected representatives have a conflict of interest in designing democratic institutions. For example, much of the literature on legislative redistricting (Issacharoff, 2002; Kubin, 1997; Lowenstein & Steinberg, 1985; Toobin, 2003), ethics (Thompson, 1995), and electoral reform (Ferejohn, 2008; Warren, 2008) focuses on the need to create independent public bodies to prevent elected officials from acting on this conflict of interest. Similarly, the literature on the First Amendment is suffused with observations about the dangers of granting elected officials excessive power over political speech (Lewis, 2007; Meiklejohn, 1960).

However, relatively little attention has been paid to elected officials' conflict of interest in designing legislative information systems, especially the use of new information technology to make elected officials more democratically accountable.<sup>4</sup>

The vast majority of the literature on the use of information technology in government focuses on issues where elected officials do not have a direct and blatant conflict of interest with citizens; for example, when they use information technology to make government run more efficiently or provide better service.<sup>5</sup>

Darrell West conducts an annual survey of state and federal e-government in the U.S., covering some 1,548 state and federal entities (e.g., see West, 2007). The great majority of these entities are not legislatures. The survey ranks some Web site features where elected officials might have a conflict of interest. But the overwhelming focus is on features—including the design of Web sites to comply with World Wide Web Consortium (W3C) disability guidelines, the disclosure of privacy policies, and the provision of foreign language translations—where such conflicts of interest do not apply.

In 2003, the Center for Digital Government conducted a "Digital Legislatures Survey." However, it did not focus on areas where legislators might have a conflict of interest. For example, no distinction was made between information only available internally (to legislators and legislative staff) and available both internally and to the general public. No methodology was publicly released, and only the winning legislatures (the top five) were mentioned in the report. Similarly, two sections of the National Conference of State Legislatures have since 2005 jointly given an "Online Democracy Award" for the best state legislative Web site. But the other 49 states are not ranked, and there is no attempt to distinguish between legislative information systems that systematically favor incumbents' re-election goals versus the public's goal of democratic accountability.<sup>6</sup>

The Center for Digital Government also conducts annual digital states and digital cities surveys.<sup>7</sup> Like the Darrell West survey, issues of legislative transparency appear to play a negligible role in the rankings. Like its Digital

Legislatures Survey, the Digital States Survey also does not release its methodology, and only the winning states are mentioned in the report.

The Congressional Management Foundation has issued a series of reports that grade Congressional Web sites. The focus of the reports is on using technology to empower legislators rather than make them more accountable to the public (e.g., see Congressional Management Foundation, 2007). In a 2002 study, the Congressional Management Foundation found that the information provided on legislators' home pages did not match what constituents were seeking.<sup>8</sup> But it did not frame this gap between what constituents wanted and what legislators provided as a conflict of interest.

Paul Ferber, Franz Foltz, and Rudy Pugliese (2003; see also 2004) have analyzed the participatory features of state legislative Web sites but raise no conflict of interest issues. They include a smorgasbord of participatory indicators, such as the availability of press releases, legislator e-mail addresses, and compatibility with old Internet browsers. They conclude that many potential forms of participation have not been implemented on legislatures' Web sites.

The Congressional Research Service regularly issues reports on new technology and legislative information systems. These reports provide useful historical background and a catalog of the technological issues Congress currently faces. But no mention is made of the possibility that Congress might have a conflict of interest with the American people in how it chooses to use information technology (e.g., see Oleszek, 2007; Seifert & Peterson, 2003).

In 2006, Jeffrey C. Griffith reported on the relative public accessibility of legislative information in the U.S. Congress and the European Parliament. He argued that there were significant omissions in the legislative information systems and speculated that "political obstacles" might help explain those omissions. But he did not elaborate on the nature of those obstacles, or even speculate that in designing legislative information systems, the interests of legislators and their constituents might conflict (Griffith, 2006, pp. 97, 114).

In 2008, the Inter-Parliamentary Union, part of the United Nations, surveyed the legislative

information systems of 108 parliaments. It concluded "that there is a substantial gap in most parliaments between what is possible with ICT [information and communication technology] to support the values and goals of parliaments and what has been accomplished" (United Nations, 2009, p. 154). But it did not entertain the possibility that the gap might result, at least in part, from legislators' conflict of interest.

### **ROLL CALL VOTES AND DEMOCRATIC REPRESENTATION**

Essential to the concept of representative democracy is that voters have ready access to the information necessary to monitor their elected representatives' actions. This is reflected in the widely used phrase that "the legislature's business is the people's business" (National Conference of State Legislatures, 2002). It is also reflected in the fact that the U.S. Constitution (Article 1, Section 5) and most state constitutions require the keeping of a public journal, including votes on passed legislation.<sup>9</sup>

Perhaps a legislator's most fundamental type of action on behalf of constituents is to vote on bills, bill amendments, and bill procedures. Therefore, it enhances democratic accountability when voters have easy access to information about these votes. When such votes are linked to specific individuals, they are called roll call votes. To this author's knowledge, no incumbent legislator has ever spoken on the public record arguing that public roll call votes should not be easily accessible to the public.

Roll call votes on procedural issues ("motions") are important because they help set the legislature's agenda and the hurdles legislation will have to overcome in order to pass. Although a vote on procedure is often considered less important than a vote on the content of a bill, this is not necessarily so. A procedural vote to table a bill, for example, may be functionally equivalent to voting "nay."

Subcommittee and committee votes are as important if not more important than floor votes, because committees set the agenda for the floor. Only a small fraction of bills ever get to the floor for a vote. In bicameral legislatures,

still fewer make it through conference committee for a final vote of the House and Senate. If the executive vetoes the legislation, there might also be a revote. Without easily accessible public information about the early stages of the legislative process, elected officials, especially the majority party leaders who control the agenda, can escape accountability for how they use their agenda-setting powers.

Profiles of the roll call votes of individual legislators are widely used in the political process. Party leaders use them to assess their members' party loyalty and suitability for leadership positions; interest groups use them to devise their lobbying and campaign contribution strategy; media use them to assess the ideological and interest group leanings of legislators; and opposition candidates use them to assess their own comparative strengths and weaknesses. Legislators are thus very sensitive about their roll call votes, because they know that they can play major roles in deciding elections and winning leadership positions within legislatures (Arnold, 1990).

As legislation moves from introduction to committee to final passage, legislators' roll call votes are linked to other roll call votes by the same legislator. Linked to roll call votes, in turn, are bills, bill amendments, motions, and legislator statements. Legislation at one point in time is linked to versions of the same legislation earlier and later in the legislative process. Legislation, in turn, cites external statutes and other government documents. To the extent that all these types of information are tightly linked together, the public is better able to assess the meaning of roll call votes.

Most legislative votes are not roll call votes; that is, they are not attributed to individual legislators. Instead, they are only tallied in the aggregate, either with precise counts or by voice vote, noting that a measure did or did not pass (Oleszek, 2006). For example, a large fraction of bills passed out of Congressional committees to the floor are by voice vote. During the first week of May 2008 (May 1 to 7), Congressional committees passed 22 bills. Of those, 18 were by voice vote, three by roll call vote, and one (the defense authorization bill for FY2009) in closed session.<sup>10</sup>

The difference between roll call vote information being easily accessible and not easily accessible can have great practical consequences for democratic accountability. That is, there can be a significant difference between a document being "public" and "meaningfully public." Consider the importance of accessible versus inaccessible public information in the marketplace. The combined knowledge of the world is useless unless there is a convenient way to search for it. Google is now one of the most valuable companies in the world, because it recognized that truth: the huge value that can come from making information more readily accessible. Even something as simple as shaving a fraction of a second from search response times can be worth hundreds of millions of dollars to Google.

Consider the same principle in achieving political influence. To a large extent, lobbyists and think tanks thrive not because they have exclusive access to information, but because they know how to provide information to legislators in a timely and accessible way. Congressional Scholar Robert Bradley conducted a study of which features of information sources members of Congress find most useful. Of 13 features, the accessibility of an information source was ranked highest (Bradley, 1980, p. 400).

Consider the same principle in accessing other government documents, such as "public" court records about divorces, prostitution convictions, and traffic violations. These documents have traditionally been available to anyone willing to make a trip to the right courthouse. But there is a widely recognized qualitative difference in public accessibility when that information is made available online. A potential friend, spouse, or business partner is unlikely to make a trip to every local courthouse to search through records in hope of finding something of interest. But if that information is made easily accessible—for example, via a simple Google search across all courthouse and other records—the odds of finding and using that information are very different. The doctrine of "practical obscurity," usually applied in cases concerning privacy (e.g., see Canton, 2007; Charity, 2007; Louwagie, 2004;

Patrick, 2004; Webster, 2006), captures this idea that there can be a qualitative difference in impact when a public government record becomes easily accessible.

### **LEGISLATURES IN CONGRESS, THE 50 STATES, AND THE 25 LARGEST CITIES**

This study surveys the accessibility of roll call vote information on the publicly available Web sites of Congress, the 50 state legislatures, and the 25 largest cities in the U.S. Data for the survey were primarily derived from publicly available legislative Web sites. These data were complemented by interviews with information technology staff and legislators at the city, state, and national levels; literature on legislative information systems published by the Congressional Research Service and National Conference of State Legislatures; interviews with employees of proprietary legislative information services that belong to the National Online Legislative Associates (NOLA); and the author's direct experience working in Congress and local government.

The results reveal that information about roll call votes by legislator is not readily accessible on legislative Web sites. For example, suppose a voter (such as an opposition candidate) wants to find all of the roll call votes on bills of incumbent legislator X during legislator X's last term of office. The voter cannot do this in the most obvious and convenient way, which would be to locate the legislator by name and then click on that name for all the legislator's roll call votes. In many cases, the voter could access the roll call information by looking up individual bill histories. But if, over the last term of office, there are hundreds or thousands of roll call votes on bills, collecting that information for legislator X becomes quite cumbersome.

Table 1<sup>11</sup> presents the compiled information for Congress and the 50 states. Table 2<sup>12</sup> presents this information for the 25 largest U.S. cities. The survey in Table 1 is divided into two categories: roll call vote access and access to

the roll call vote's meaning. To reduce research costs, the survey in Table 2 was limited to roll call votes.

### **Roll Call Vote Access**

Roll call vote access is divided into two sub-categories: access by legislator and access by bill. By a wide margin, roll call information is much more likely to be available indirectly. For example, of the 99 state legislative branches in the 50 states (Nebraska has a unicameral legislature unlike the bicameral legislature in the other 49 states), 92 provided comprehensive floor roll call votes by bill, while only ten provided the same information by legislator.

The roll call access section of the table further distinguishes between different types of roll call votes by place of votes (floor or committee) and type of vote (bill, amendment, or procedure). In general, roll call votes from the floor are more accessible than roll call votes from committee, and roll call votes on bills are more accessible than roll call votes on amendments or motions.

At the committee level, not one of the 126 legislatures (including the city councils) makes comprehensive roll call votes searchable online by legislator.

At the floor level, the situation is more mixed. Neither Congress nor any of the studied cities make roll call votes searchable online by legislator.

Only ten of the 99 state legislature branches have any type of online access to floor roll call votes by legislator. These include Maine's Senate, New Hampshire's House and Senate, New Jersey's House and Senate, North Carolina's House and Senate, Vermont's House and Senate, and Washington's House. In the case of Washington's House, the roll call information was only made available for bills, but not for amendments or motions.

Even where roll call votes by legislator are available, the quality of the presentation is weak, with the roll call votes made available in an inert document with no links—like a document scanned using a photocopy machine.

When the unit of analysis changes from the complete legislature to individual legislators,

TABLE 1. Roll Call Votes (RCV) in Congress and State Legislatures Available Online

Legislatures	Direct RCV Access (By Legislator)								Indirect RCV Access (By Bill)								Access to RCV's Meaning									
	House				Senate				House				Senate				External Statutes		Member Debate							
	Floor	Comm	Floor	Comm	Floor	Comm	Floor	Comm	Floor	Comm	Floor	Comm	Floor	Comm	Floor	Comm	House	Senate	House	Senate						
B	A	P	B	A	P	B	A	P	B	A	P	B	A	P	B	A	P	F	C	F	C	F	C	F	C	
<b>Congress</b>																										
<b>States</b>																										
Alabama																										
Alaska																										
Arizona																										
Arkansas																										
California																										
Colorado																										
Connecticut																										
Delaware																										
Florida																										
Georgia																										
Hawaii																										
Idaho																										
Illinois																										
Indiana																										
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Oklahoma																										
Oregon																										
Pennsylvania																										
Rhode Island																										
South Carolina																										
South Dakota																										
Tennessee																										
Texas																										
Utah																										
Vermont																										
Virginia																										
Washington																										
West Virginia																										
Wisconsin																										
Wyoming																										

the situation is more ambiguous. For example, THOMAS (<http://thomas.loc.gov>), the congressional Web site for looking up legislative information, does not provide roll call votes by individual. However, some individual legislators,

such as Senators John Cornyn of Texas, Orrin Hatch of Utah, and Chris Dodd of Connecticut, provide this type of information about themselves on their own Web sites. Random inspections of the Web sites of several legislators in

TABLE 2. Roll Call Votes in Top 25 City Councils Available Online

City	Roll Call Votes by Member						Roll Call Votes by Bill						
	Council			Committee			Council			Committee			
	B	A	M	B	A	M	B	A	M	B	A	M	
New York city	-	-	-	-	-	-	█	-	-	-	-	-	-
Los Angeles city	-	-	-	-	-	-	-	-	-	-	-	-	-
Chicago city	-	-	-	-	-	-	-	-	-	-	-	-	-
Houston city	-	-	-	-	-	-	-	-	-	-	-	-	-
Phoenix city	-	-	-	-	-	-	█	█	█	-	-	-	-
Philadelphia city	-	-	-	-	-	-	█	█	█	-	-	-	-
San Antonio city	-	-	-	-	-	-	█	█	█	-	-	-	-
San Diego city	-	-	-	-	-	-	█	█	█	█	█	█	█
Dallas city	-	-	-	-	-	-	█	█	-	█	█	-	-
San Jose city	-	-	-	-	-	-	█	█	█	-	-	-	-
Detroit city	-	-	-	-	-	-	-	-	-	-	-	-	-
Jacksonville city	-	-	-	-	-	-	█	█	█	-	-	-	-
Indianapolis city	-	-	-	-	-	-	█	-	-	█	-	-	-
San Francisco city	-	-	-	-	-	-	█	█	█	-	-	-	-
Columbus city	-	-	-	-	-	-	-	-	-	-	-	-	-
Austin city	-	-	-	-	-	-	-	-	-	-	-	-	-
Memphis city	-	-	-	-	-	-	-	-	-	-	-	-	-
Fort Worth city	-	-	-	-	-	-	-	-	-	-	-	-	-
Baltimore city	-	-	-	-	-	-	-	-	-	-	-	-	-
Charlotte city	-	-	-	-	-	-	-	-	-	-	-	-	-
El Paso city	-	-	-	-	-	-	-	-	-	-	-	-	-
Boston city	-	-	-	-	-	-	-	-	-	-	-	-	-
Seattle city	-	-	-	-	-	-	-	-	-	-	-	-	-
Washington city	-	-	-	-	-	-	-	-	-	-	-	-	-
Milwaukee city	-	-	-	-	-	-	█	█	█	█	█	█	█

each state and city legislature did not find other examples of this discrepancy between a legislature’s general Web site and the individual Web sites of its member legislators.

Congress, most state legislatures, and just under half of the studied cities do make roll call votes available by bill. But there is a qualitative difference in accessibility between making roll call votes available by bill versus legislator. When investigating the roll call voting record of a legislator, looking up roll call votes by bill is significantly more time consuming than by legislator. Since legislators in Congress and the states usually vote on more than 500 bills over a single term in office (with a high of 9,000 in New York State), compiling these votes by legislator is very time consuming if the votes on bills must be manually compiled into votes by legislator. Some members of the U.S. Senate, including Edward Kennedy, Robert Byrd, and

Daniel Inouye, have cast more than 15,000 roll call votes on the Senate floor during their careers, so doing this type of roll call analysis over a legislative career is even more daunting (Secretary of the U.S. Senate, 2009). Only the most motivated citizens, such as an opposition candidate, will likely undergo the effort. When this author ran for the House of Delegates in Maryland, scrutinized other candidates’ literature, and attended more than 20 community forums with other candidates, he was surprised that even this most motivated class of citizens often did no more research on an incumbent’s record than had been published in the local newspaper and touted by the incumbent.

An important distinction is between roll call votes made available via a downloadable structured database and via a predesigned Web interface. None of the legislatures provided roll call votes and related information in a downloadable



structured database. In contrast, various federal agencies such as the Environmental Protection Agency, Census Bureau, and Securities & Exchange Commission provide such downloadable information via their public Web sites. About a half dozen states do provide downloadable, structured information about bill status, legislators, public laws, and other legislative information—but they exclude roll call votes.<sup>13</sup>

Many legislatures provide convenient access to roll call votes for legislators' sponsored legislation. But, from a political standpoint, this is qualitatively different from providing convenient *comprehensive* access to roll call votes by legislator. The reason is that legislators do not believe that their sponsored legislation will be controversial with their re-election constituency; that is why they sponsor it and may even send out press releases touting their sponsorship.

Note that Tables 1 and 2 only include the availability of the most barebones view of roll call votes, even giving credit when the list of roll call votes consists of a scanned printed page of roll call votes. More sophisticated views of roll call votes, such as the percentage of times a legislator voted with other members of the same committee he or she is on, the committee leadership, the party leadership, and various powerful special interest groups were not considered, even though they are standard fare provided by nongovernment legislative information services.

### ***Access to Roll Call Votes' Meaning***

The second major category is roll call votes linked to their meaning. A roll call vote gets its meaning by the document (bill, amendment, or motion) to which it refers and legislators' statements, if any, explaining their votes. These other documents, in turn, get their meaning by the documents they cite. By law, bills that are passed must be publicly linked to the votes on them. But this level of disclosure is not necessarily mandated for amendments, motions, and the documents, such as statutes, to which the legislation refers. Nor do member statements need to be linked to the bills to which they refer. In general, the links to roll call votes necessary to give them meaning are very poor, with

the exception of links to the final versions of bills that come to a vote on the floor of a legislature. Table 1 indicates that links to member statements and external statutes are almost non-existent.

### ***MORE EVIDENCE OF A CONFLICT OF INTEREST***

Experts on the electoral process generally agree that improving access to roll call votes is not in an incumbent's self-interest. Jim Leach, a former 15-term member of the U.S. House of Representatives and the Director of Harvard University's Institute of Politics, explains:

From an incumbent's point of view, issues are liabilities. If a member votes with 80% of his constituents on each of 20 bills, he will have offended 100% of his constituents on one or two of the bills. Members argue for transparency on just about every issue except themselves. It's in the interests of incumbents to have opaque reporting requirements and to maintain control over how votes are disclosed. (Leach, 2008)

Karl Kurtz, the National Conference of State Legislatures' expert on state legislatures as an institution and its Director of the Trust for Representative Democracy, explains:

[R]oll call voting by legislator is highly political information, subject to misinterpretation and campaign demagoguery. That's the main reason why most legislatures don't make the information easy to obtain. It's inherently anti-incumbent information, and since incumbents run the system, they don't make a practice of releasing it. (Kurtz, 2008)

Bart Peterson, the former Mayor of Indianapolis and two-term Indianapolis City Council member, also explains:

A lot of the concern revolves around the troublemaker idea. Elected officials worry about how the information can be manipulated. A vote is not a vote is not a vote. In

legislatures, there is a lot of strategic voting that goes on.

Let's say the opposition is playing a strategy to expose your strategy before you want it exposed. You may be forced to vote against Y now to be more successful in getting Y later. Or maybe you want X and the opposition wants you to settle for X light. So you may vote against X light even though you support X.

My personal view is that I wouldn't mind giving away all my vote information—provided I could give a book length explanation explaining why I voted the way I did. But this isn't going to happen. From a politician's perspective, there is no upside. (Peterson, 2008).

The literature on Congress contains many assertions that incumbent members of Congress are strongly driven by the re-election motive, and that this motive can conflict with the pursuit of democratically desirable policies (e.g., Arnold, 1990; Mayhew, 1974). A subset of this literature focuses on Congressional reform and goes one step further—asserting that when the re-election motive conflicts with Congressional reform, the re-election motive will often win out. For example, in *Congressional Reform*, Leroy N. Rieselbach concludes:

[E]xperience shows that when Congress reaches the fork in the road and must make a choice between reform (particularly to promote responsible policy making) and personal prerogative, the outcome is seldom in doubt. Unless there are compelling reasons to follow the reform path—and there have been few since the mid-1970s—reform will be the “road not taken.” (Rieselbach, 1994, p. 79; see also Adler, 2002, p. 220)

Table 3<sup>14</sup> provides additional evidence supporting a conflict of interest explanation. It ranks legislatures by the economic and political rewards that come with winning office. Presumably, the greater the rewards from office, the greater the re-election motive will be.

One indicator of the economic and political rewards from winning office is the degree of a

legislature's professionalization. The index of professionalization, developed by the National Conference of State Legislatures (2008), is a composite score directly proportional to a legislator's staff size, compensation, and time in session. Time in session is correlated with the amount of legislation passed, the size of a legislature's budget, and the political power wielded by a legislator. A large scholarly literature uses legislative professionalization as a variable to test a diverse array of hypotheses concerning legislatures, such as whether more professional legislatures are more or less likely to act in the public interest (e.g., Ehrenhalt, 1991; Martorano, 2007; Mooney, 1994).

A simpler indicator of the rewards from office is the ratio of constituents to representatives, which is derived by dividing a legislative branch's population coverage by the number of its members.

The results indicate that a legislature is less likely to provide roll call votes by legislator as the economic and political rewards of winning elective office increase. The ten of the 99 legislative branches that provided roll call votes by legislator ranked, on average, significantly lower on the professionalization scale than the other 89 legislative branches. The National Conference of State Legislatures divides state legislatures into five groups depending on their degree of professionalization. Using a scale of 1.0–5.0, with five representing the most professional and one the least professional, the mean professionalization score of legislative branches with and without online roll call votes by legislator was 2.5 and 2.9, respectively.

Similarly, the number of constituents per legislator was fewer in the ten legislative branches with online roll call votes by legislator. The mean ratio of constituents to legislators for legislatures with and without roll call votes by legislator was 76,906 and 108,123, respectively.

Contrast California, with a professionalization score of 5.0 (including the highest annual legislator salary, \$110,880) and the highest ratio of constituents to legislator (913,830 in the Senate), with New Hampshire, with a professionalization score of 1.0 (including the lowest annual legislator salary, \$100/year) and the lowest ratio of constituents to legislators (3,290

TABLE 3. Re-Election Incentive Indicators

Legislature	Population of political district	Number of representatives		Population to representative ratio		Professionalization score	
		H	S	H	S	H	S
<b>Without Roll Call Votes by Legislator</b>							
Alabama	4,627,851	105	35	44,075	132,224	3	3
Alaska	683,478	40	20	17,087	34,174	3	3
Arizona	6,338,755	60	30	105,646	211,292	3	3
Arkansas	2,834,797	100	35	28,348	80,994	3	3
California	36,553,215	80	40	456,915	913,830	5	5
Colorado	4,861,515	65	35	74,793	138,900	3	3
Connecticut	3,502,309	151	36	23,194	97,286	3	3
Delaware	864,764	41	21	21,092	41,179	3	3
Florida	18,251,243	120	40	152,094	456,281	4	4
Georgia	9,544,750	180	56	53,026	170,442	2	2
Hawaii	1,283,388	51	25	25,164	51,336	3	3
Idaho	1,499,402	70	35	21,420	42,840	2	2
Illinois	12,852,548	118	59	108,920	217,840	4	4
Indiana	6,345,289	100	50	63,453	126,906	2	2
Iowa	2,988,046	100	50	29,880	59,761	3	3
Kansas	2,775,997	125	40	22,208	69,400	2	2
Kentucky	4,241,474	100	38	42,415	111,618	3	3
Louisiana	4,293,204	105	39	40,888	110,082	3	3
Maine	1,317,207	151	NA	8,723	NA	2	NA
Maryland	5,618,344	141	47	39,846	119,539	3	3
Massachusetts	6,449,755	160	40	40,311	161,244	4	4
Michigan	10,071,822	110	38	91,562	265,048	5	5
Minnesota	5,197,621	134	67	38,788	77,576	3	3
Mississippi	2,918,785	122	52	23,924	56,130	2	2
Missouri	5,878,415	163	34	36,064	172,895	3	3
Montana	957,861	100	50	9,579	19,157	1	1
Nebraska	1,774,571	N/A	49	N/A	36,216	3	NA
Nevada	2,565,382	42	21	61,081	122,161	2	2
New Mexico	1,969,915	70	42	28,142	46,903	2	2
New York	19,297,729	150	62	128,652	311,254	5	5
North Dakota	639,715	94	47	6,805	13,611	1	1
Ohio	11,466,917	99	33	115,827	347,482	4	4
Oklahoma	3,617,316	101	48	35,815	75,361	3	3
Oregon	3,747,455	60	30	62,458	124,915	3	3
Pennsylvania	12,432,792	203	50	61,245	248,656	5	5
Rhode Island	1,057,832	75	38	14,104	27,838	2	2
South Carolina	4,407,709	124	46	35,546	95,820	3	3
South Dakota	796,214	70	35	11,374	22,749	1	1
Tennessee	6,156,719	99	33	62,189	186,567	3	3
Texas	23,904,380	150	31	159,363	771,109	3	3
Utah	2,645,330	75	29	35,271	91,218	1	1
Virginia	7,712,091	100	40	77,121	192,802	3	3
Washington	6,468,424		49		132,009	NA	3
West Virginia	1,812,035	100	34	18,120	53,295	2	2
Wisconsin	5,601,640	99	33	56,582	169,747	4	4
Wyoming	522,830	60	30	8,714	17,428	1	1
<b>With Roll Call Votes by Legislator</b>							
Maine	1,317,207	NA	35	NA	37,634	NA	2
New Hampshire	1,315,828	400	24	3,290	54,826	1	1
New Jersey	8,685,920	80	40	108,574	217,148	4	4

(Continued)

TABLE 3. (Continued)

Legislature	Population of political district	Number of representatives		Population to representative ratio		Professionalization score		
		H	S	H	S	H	S	
North Carolina	9,061,032	120	50	75,509	181,221	3	3	
Vermont	621,254	150	30	4,142	20,708	2	2	
Washington	6,468,424	98	NA	66,004	NA	3	NA	
<b>Legislatures Without Roll Call Votes by Legislator</b>								
Mean Population to Representative Ratio:						108,123	Mean Professionalization Score:	2.9
<b>Legislatures With Roll Call Votes by Legislator</b>								
Mean Population to Representative Ratio:						76,906	Mean Professionalization Score:	2.5

in the House) of any of the 126 legislatures studied (for the compensation information, see Keiderman, 2007). Vermont, with a professionalization score of 2.0 and the second lowest ratio of constituents to legislators (4,142 in the House), also did much better than California.

The major outlier to this pattern is New Jersey, with a professionalization score of 4. New Jersey Senator Robert Martin, a 22-year veteran of the New Jersey legislature, championed legislation<sup>15</sup> to make roll call votes available by legislator and then retired from office to his position as Law Professor at Seton Hall Law School. He explains his reasoning for introducing the legislation and the lack of opposition:

My inspiration was “old school.” An individual (not in my legislative district) wrote to me (because I had a history of sponsoring “goo-goo”—good government—legislation) and suggested that we change the law in New Jersey. . . . When I found out that the proposal would have very minimal costs for the state and that the Office of Legislative Services was not opposed, I pursued the legislation. . . . There was not much opposition by the leadership in either party to this bill. It was posted in the latter part of an election year and there were bigger good-government bills that were drawing attention and opposition (namely the drive to end dual office-holding and pay to play in New Jersey). (As cited in Kurtz, 2008)

Perhaps New Jersey illustrates the limitations of social science type explanations of legislative behavior. In New Jersey, a strong leader with good timing and a distracted opposition overcame whatever limited conflict of interest legislators might have in making roll call votes by legislator more accessible. On the other hand, if the conflict of interest was greater—for example, if Martin had attempted to add more meaning to the roll call votes by copying the search functionality of the leading proprietary legislative information service in New Jersey—he might have failed.

### COMPETING EXPLANATIONS

Elected legislators’ conflict of interest is not the only possible explanation for why they have not made roll call votes by legislator more accessible. Five competing explanations, some of which overlap, are: 1) the novelty of the idea, 2) the inertia of the legislative process, 3) the high cost of implementing more accessible roll call votes, 4) the lack of demand for improved access, and 5) the likelihood that opponents will misuse the information by taking it out of context. From a democratic theory perspective, this last explanation is the most compelling of the five. Nevertheless, as I will argue, it is not compelling enough to justify making roll call votes by legislator inaccessible.

Note that incumbent elected officials rarely argue publicly against greater public access to

roll call votes. My research uncovered no cases in which a legislator made such an argument on the public record. I am also not aware of any public vote on this subject that has ever failed to pass. The one vote I am aware of, the New Jersey case mentioned above, passed the Senate 39–0 and the Assembly 79–0.<sup>16</sup> To my knowledge, none of the 12 legislative branches that launched Web sites with roll call votes by legislator appears to have done so with any public opposition in the legislature. These five arguments, then, come from the academic literature on deliberative democracy, private conversations with legislators, and the general arsenal of arguments that legislators publicly use when they want to avoid politically popular transparency reforms.

It is noteworthy that staff members working on state legislative information systems were unwilling to speak with me on-the-record about the possibility that their legislator bosses had a conflict of interest with their constituents in deploying new information technology to make themselves more democratically accountable. On October 10 and 11, 2006, I served as a speaker and attended the annual convention of the National Association of Legislative Information Technology (NALIT), which represents senior information technology staff working for state legislatures and is a section of the National Conference of State Legislatures. I do not recall hearing a single speaker argue that legislative information technology staff had any duty other than what their legislator bosses wanted.

### *Novelty*

The idea of making roll call votes available online by legislator is hardly new. At the national level, three companies—Congressional Quarterly, National Journal, and Gallery Watch (owned by the publisher of *Roll Call*)—provide online roll call votes by legislator as part of expensive packages of legislative information. In addition, OpenCongress.org, GovTrack.us, and WashingtonPost.org have recently started providing such information without charge. At the state level, at least 22 state legislatures have companies that provide such information for a fee, usually thousands of dollars per year per subscription.

Parties, interest groups, and opposition candidates routinely compile roll call votes by legislator, and they seek to use the most convenient online tools to do so.<sup>17</sup> One member of the National Online Legislative Association (NOLA), who requested anonymity, reported that legislative party leaders occasionally use such services to provide free opposition research to candidates from their own party during election season, and that incumbent legislators use such services to do their own opposition research. Other users include former legislators turned lobbyists and government agencies who want to track agency-related legislation. In the U.S. Senate, the Republican and Democratic policy committees collect this information for the exclusive benefit of their own members (Peterson, 2007, p. 8).

On November 11, 1994, the newly elected Speaker of the U.S. House, Newt Gingrich, promised that, as part of the Republican Party's Contract With America, "We will change the rules of the House to require that information will be available to every citizen in the country at the same moment that it is available to the highest paid Washington lobbyist" (as cited in Corn, 2000). Only days before this statement, the Republicans had overturned longtime Democratic majorities in the House and Senate. After the Republicans took office the following January, Gingrich introduced THOMAS, the online Congressional information system for the public. While THOMAS provided roll call votes by bill, it conspicuously lacked roll call votes by legislator.

Ralph Nader has campaigned for improved online access to congressional votes since the mid-1990s. In 1994, he set up the Congressional Accountability Project, directed by Gary Ruskin. On August 22, 1995, the Congressional Accountability Project sent a letter to the Speaker of the House that was signed by dozens of senior executives at nonprofit institutions such as Common Cause, the Natural Resources Defense Council, the Project on Government Oversight, Yale University Library, and Harvard University Library. The letter requested that voting records of members of Congress be made more accessible online (Gingrich, 1995). This was followed up with another letter on

July 1, 1996, to both the Speaker and Representative David Dreier, who chaired the House's 21st Century Congress Project.

On July 29, 1998, Gary Ruskin testified to this effect before the U.S. Senate Committee on Rules and Administration. In an op-ed in the *Los Angeles Times* in 1999, Nader and Ruskin observed: "Congress has yet to place on the Internet a searchable database of congressional votes, indexed by . . . member name" (Nader & Ruskin, 1999). In an article in *Wired* magazine on this issue, Ruskin was quoted as saying "You can get a senator's favorite recipe on his Web site, but you can't search how he voted" (as cited in Corn, 2000). In 2004, Nader put together the Congressional Voting Record Project, a coalition of 14 conservative and liberal groups, including conservative groups such as Americans for Tax Reform and Judicial Watch, and liberal groups such as the National Association for the Advancement of Colored People and National Resources Defense Council. Nothing came of it (Jacobson, 2004, p. 113).

On November 18, 1996, Kenneth Weinstein, Director of Government Reform at the Heritage Foundation, a think tank closely allied with Speaker Gingrich and arguably the most influential conservative think tank in the U.S. at that time, published an issue paper titled "Needed: A Congressional Freedom of Information Act." Among its many recommendations to improve Congressional transparency was a recommendation to enhance THOMAS to provide roll call votes by members of the House and Senate.

On February 16, 1996, the Library of Congress issued its report to Congress, "A Plan for a New Legislative Information System for the U.S. Congress." It stated as a guiding principle that the legislative information available to Congress and the public should be the same:

A fundamental tenet of democracy is the importance of an informed electorate. . . . Implicit in this principle is the need to ensure that the legislative information available to the public is as accurate and timely as the information available to the Congress through this system. (Library of Congress, 1996, p. 20)

Elsewhere in the report, however, the Library of Congress proposed an implementation plan inconsistent with this principle:

The Library recommends that the new legislative information system be designed to make it possible for Members to retrieve a comprehensive record of their own recorded votes as easily as possible, so that each office does not have to duplicate this information on its own. (Library of Congress, 1996, p. 28)

The Library of Congress did not explicitly acknowledge a tension between its democratic design principles and its implementation plan, but it did preface its implementation plan with the observation that "[i]nformation about votes, while extremely important, is also extremely sensitive" (1996, p. 28).

The Library of Congress Report also cites a March 11, 1993, amendment introduced by Senator Nickles. The amendment said that legislative documents should link to all related documents, including links between amendments and the bills/sections of bills they would amend; links between original amendments and any revised versions; links between first degree and second degree amendments and other procedurally related amendments; and links between amendment records and Congressional Record pages containing the text, debates, votes, etc. on that amendment. Although the Senate passed the amendment 53-43, it was subsequently tabled (Library of Congress, 1996, p. 39). Many of those links still have not been implemented today.

In 2006, Democrats won control of the House just as Republicans had done 12 years before. Newly elected House Speaker Nancy Pelosi promised to create "the most honest and open Congress in American History" ("Democratic House Leader Nancy Pelosi," 2006). On February 8, 2007, the Sunlight Foundation, following in the tradition of Nader's now defunct Congressional Accountability Project, launched the Open House Project. The Project was backed by a bipartisan coalition of more than two dozen nonprofit groups, including the Center for Democracy and Technology, OMB

Watch, and the Heritage Foundation. Speaker Pelosi endorsed the Project: “The Internet is an incredible vehicle for transparency. . . . I’m encouraged by this working group and look forward to recommendations on how the House can be as open and accessible to citizens as possible” (Open House Project, 2007).

On May 8, 2007, the Open House Project released its report, which, among a long list of reforms, called on Congress to post online all legislative information, including roll call votes, in a downloadable, structured database format (Sunlight Foundation, 2007, pp. 12, 23). The politically shrewd report did not explicitly call for Congress to make roll call votes accessible by legislator, but it was implicit in its recommendations. Speaker Pelosi applauded the effort and released a letter endorsing it (Bogardus, 2007). The report received wide publicity in *The Hill*, *Roll Call*, and *Washington Examiner*, which cover Congress and are closely read by Congressional staff (Brotherton, 2007; Tauberer, 2007; Wonderlich, 2007). A two-year term of Congress has now passed, and THOMAS still does not provide roll call votes by legislator, although a beta version of THOMAS has been created to search for bills by sponsor.

On November 14, 2008, Maplight and the California First Amendment Coalition sued the Office of the Legislative Counsel of California because of its repeated refusal to provide a copy of the “underlying database, both structure and content, that is used to produce the ‘Bill Information’ section of the Official California Legislative Information website” (Heisey & Scheer, 2008).

In short, making roll call votes available by legislator is an obvious, highly publicized idea, not an esoteric, new information age idea.

### ***Inertia***

Legislatures are slow-moving institutions. For example, it is not unusual for them to take many years to copy efficiency enhancing innovations already adopted in the private sector. Delay between the introduction of the Internet and a legislature’s use of it to maximize democratic accountability would not be unexpected.

However, legislatures are accomplished users of the Internet, with in-house staff skilled in routine database and Web development, including the use of structured computer databases to store roll call votes. Every legislature studied in this survey provided Internet access to bill information and legislator home pages. To the extent that providing roll call votes by legislator is an obvious and trivial task, the inertia argument is weak.

Incumbent legislators are sophisticated users of the Internet in their re-election campaigns. Many incumbent Web sites now use sleek, easily accessible interfaces with a large array of diverse content and tools. For example, on presidential candidate Barack Obama’s Web site (BarackObama.com) during spring 2008, one could find multimedia content (campaign videos, speech transcripts, and campaign music), applications (supporter blogs, widgets, and desktop themes), how-to-help (fill-in-the-blank campaign literature), transactions (online contributions and a store with campaign paraphernalia), and notifications (via e-mail, find-nearby-events Web site, chats, and RSS feeds).

Templates for creating sophisticated access to roll call votes are readily available in the private sector, given that dozens of proprietary services, such as Arizona’s LOLA, Massachusetts’ Instatrac, and New Jersey’s GovNetNJ.com, already provide such information and actively market their services to government agencies and legislators.

Moreover, the necessary data to provide such access are already collected and often stored in a flexible, structured relational database. For example, International Roll Call, which provides roll call systems to 44 of the 99 state legislative branches, uses Oracle as the database engine for its LawMaker System. Oracle is arguably the most sophisticated database program available in the world today. Making the Oracle database of roll call votes available by legislator would be a trivial programming task.

Given that party leaders keep close track of the roll call votes of their members, it is likely that many legislatures have already developed such software using taxpayer money. From this perspective, online public access to roll call information can be viewed as a stripped down version of in-house systems.

If so, roll call votes would not be the only case where democratically useful information is stripped from legislative information systems when the information is posted online. For example, bill drafting systems may include historical information about revisions and links to external documents that are used internally but stripped out when the bills are made public.

Providing online access to roll call votes by legislator seemed such an obvious and trivial feature that the information technology staffs in Vermont and North Carolina, two of the six states that provide online access to roll call votes by legislator, took advantage of the new technology to post roll call votes online without consulting the legislature's leadership. Says Gerry Cohen, the Director of Bill Drafting for North Carolina's General Assembly, "Our IT [information technology] folks were unaware that not providing votes by member was ever even a topic for discussion, and they never got any pushback" (Kurtz, 2008). Vermont's Duncan Gross adds, "In Vermont it was similar to the North Carolina situation: when we added the roll call detail functionality to our internal database, we just naturally went ahead and put it on the Web site. No discussion, we just did it" (Kurtz, 2008).

Future scholars interested in this line of research might want to investigate the extent to which the degree of civil service protection of legislative information technology staff explains such autonomous behavior.

### **Cost**

Closely related to the inertia argument is the cost argument. In a general report on legislative technology in the 50 states, the National Conference of State Legislatures uses this type of argument to explain the apparent technological backwardness of legislatures (while also ignoring the possibility that legislators might have a conflict of interest in deploying new information technologies):

State legislatures have been seen by some as less than innovative in the use of technology, especially in comparison with the private sector and even the executive

branch of government. It would not be surprising if the generalization is true, though, in light of the constant and close scrutiny given to legislative expenditures in the media, legislatures often are reluctant to pay for computer equipment or consulting equipment for their own benefit, especially when most are seeking ways to reduce government spending overall. (Greenberg, 1995, p. 4)

However, as applied to the online accessibility of roll call votes by legislator, cost arguments do not withstand scrutiny. The marginal cost of making roll call votes accessible online by legislator is now essentially zero.

How large is the one-time fixed cost of providing such information? I have spoken to a variety of programmers about the one-time cost of writing an online search query for roll call information stored in any major commercial database program. None think it is a difficult or especially time consuming programming task. For example, Greg Elin, Chief Data Architect at the Sunlight Foundation, wrote to me:

If the public Web site of bills exists, and legislator's roll call votes are tracked in any structured way, it's technically easy to put online pages of each legislator's roll call vote on each bill. . . . In the age of free Facebook pages and free gigabytes of storage, the legislature can afford to publish on a page how each representative voted. (Elin, 2008)

I also could not find a legislator who thought cost was a significant barrier to providing this type of information.

GovTrack.us provides congressional roll call votes by member of Congress—along with many other sophisticated features. It has been programmed and maintained by a single graduate student working without compensation and on a part-time basis. Moreover, GovTrack.us has had to gather the legislative information the hard way: by scraping and parsing legislative Web pages rather than having direct access to the structured database of information that Congress uses to generate its Web pages.



It is also possible that providing a decent search interface to legislative information could result in a net cost savings to governments, since in many states a dozen or more state agencies may each spend thousands of dollars per year to subscribe to commercial legislative information services that primarily make existing public legislative information more accessible.

Common sense would also suggest that if small states such as Vermont, New Hampshire, and Maine can afford to provide this information, then more populated states such as California, New York, and Massachusetts should be able to do so, too. California, for example, has a hundred times the population of Vermont, and whereas Vermont is known for its tourism and dairy industries, California is the high-tech capital of the world.

### *Demand*

There is an economic demand for convenient access to legislative information, as evidenced by the annual subscription fees intermediaries are willing to pay to commercial services for improved access to this information. However, such access to legislative information should not be justified in terms of economic laws of supply and demand. It should be justified, because without an affordable way to monitor elected officials, democracy is impossible.

In terms of the democratic need for roll call votes by legislator, it is true that the general public would make very little direct use of it. This is the type of information most useful to intermediaries such as political parties, press, interest groups, and opposition candidates. But this could be said of access to all public meeting information. Nevertheless, we have open meeting and public records laws because citizens in a democracy generally accept that it is vital for intermediaries to have convenient access to such information—since only through such access can the public hold its elected officials accountable.

One striking piece of evidence for popular interest in roll call vote information by legislator comes from THOMAS. On the home page of THOMAS—the highest profile page in THOMAS—is a link labeled “Roll Call Votes.”

When the link is clicked, a page comes up offering a chronological list of floor roll call votes by bill. At the top of this page is a link to a page called “Compiling a Member Voting Record.” It starts:

Users of the THOMAS system often ask where they can get voting records for their members of Congress. By “voting record,” they may mean all the votes cast by a specific member of Congress over a length of time, or only votes by a member of Congress on a specific issue or set of issues, such as affirmative action or environmental protection. (Library of Congress, 2008)

One might think that if there was such a well-recognized demand for roll call votes by legislators that THOMAS’s programmers would have provided it, like the legislative programmer in New Hampshire did. Instead, THOMAS provides advice on how to manually compile this information: “You can begin to compile your own records for individual members of Congress by searching the THOMAS system—either through the Bill Summary and Status files, or the Bill Text files” (Library of Congress, 2008).

This advice section then closes with a disclaimer, explaining that the roll call information THOMAS did not compile could be misleading in the hands of the public:

Although you may compile a voting record for your Representative and Senators, roll call and recorded votes on the House and Senate floors, despite their high visibility, are imperfect and imprecise measurements of a member’s views. A fuller assessment can be made by considering the member’s statements during debate, in speeches on the House or Senate floor, books, newspaper or periodical articles they may have written, press releases and briefings, committee deliberations, and the time a member spends in gathering information on and gaining expertise on issues. (Library of Congress, 2008)

The catch is that THOMAS makes this other legislative information, notably legislators' floor and committee statements explaining their roll call votes, as inaccessible as it makes roll call votes by legislator. Since Congress collects all this information in electronic form and makes it publicly available in other contexts—for example, through committee Web sites and through the chronologically organized Congressional Record—it would be a relatively simple and obvious programming task to link this information to roll call votes to help solve the problem THOMAS itself has identified. Yet Thomas does not do so.

### *Misuse*

Legislators worry that roll call votes and other legislative information could be used out of context by their opponents. In the U.S. House of Representatives hearing on creating a "21st Century Congress," for example, Representative Porter Goss said:

Everybody knows there is a silent partner involved in this town called politics. . . . And it seems to me that if every word that we write or speak is always going to be available . . . seems to me opponent research is going to take on new meanings, and . . . it is going to be a very interesting world. . . . And I wonder how we are going to handle that because people are sometimes so willing to take things out of context in order to score a political point. (21st Century Congress, 1996, p. 34)

Using roll call votes out-of-context could not only hurt incumbents unfairly but also damage the institutional capacity of legislatures. Legislators would anticipate this misuse and thus be forced to spend their time trying to justify votes, which would divert their attention from more important matters of public concern.

Such fears are legitimate, because there is abundant evidence that opponents frequently use information out of context to score political points. But acting on such fears is nevertheless profoundly anti-democratic, because if the public cannot be trusted to know how their elected

representatives voted on their behalf, then a fundamental premise of representative democracy—that citizens are competent to judge the actions of their rulers—is undercut.

An analogy to this type of problem is that of free speech. The traditional remedy for deceitful political speech is not to give political elites the right to ban the speech but to encourage diverse voices so the public can ascertain the truth for itself. In Supreme Court Justice Oliver Wendell Holmes's famous words: "The best test of truth is the power of the thought to get itself accepted in the competition of the market" (as cited in Lewis, 2007, p. 185).

The preferable cure, then, to the problem of opponents using votes out of context is not to try to hide the votes but to make information about their context more accessible. If legislators find they need to make a non-intuitive vote—such as a vote against an amendment they support because they view it as a poison pill that would kill the larger bill they want to pass—then they should have an opportunity to explain their vote in the public record, and opponents who use that vote without providing the context should be taken to task by the press. In today's Internet world, where links from a vote to its context in the public record are easy to provide, it should be the accepted norm that any reference to a legislator's vote will be linked via the legislative Web site to the legislator's explanation of that vote.

Should the additional time allocated to explaining votes be viewed as a waste or a benefit? On the one hand, time spent justifying legislation means that legislators have less time to do other desirable things, such as craft needed legislation. On the other hand, passing and justifying legislation is their job. As deliberative democratic theorists argue, when legislators provide public reasons for their actions rather than merely bargain among interested parties in secret, the democratic process is strengthened (e.g., see Gutmann & Thompson, 2004). Congressional scholars Thomas Mann and Norman Ornstein argue that "More genuine debate needs to occur at every level of the legislative process" (Mann & Ornstein, 2006a, p. 2). Among legislators' many distractions from pursuing their representative function, including

the huge amount of time spent raising campaign contributions, explaining their votes is likely to be relatively minor.

Bolstering the deliberative democratic argument is that information technology has greatly reduced the cost of providing public reasons for actions. In the past, when effective legislative speech was necessarily restricted to face-to-face group environments such as committee meetings and floor debates, colleagues had to listen to explanations intended for the public record and this unduly slowed down the legislative process. But with modern information technology, such statements do not have to consume the time of colleagues. They can be inserted into the public record electronically and then linked to the relevant roll call vote.

Still, the problem of opponents misusing legislative information is real. To the extent that the press is weak or irresponsible, the problem is aggravated. It is ultimately the press's job to alert the public when an opposition candidate, interest group, or other intermediary is misusing an incumbent candidate's public record. Thus, fostering a strong press—a topic beyond the scope of this article—must go hand-in-hand with improving legislative information systems.

Perhaps the best argument for improving the accessibility of roll call votes is fairness for opposition candidates. It is true that opponents can use roll call votes out of context and with harmful consequences—but so can incumbents. When incumbents take credit for votes, they can put the best possible spin on them in a way that is highly misleading to the public. Incumbents are also likely to spin the meaning of their votes depending on the audience to which they are speaking. Congressional scholars Gary Mucciaroni and Paul J. Quirk conclude the following about how incumbents spin the meaning of their votes: “Anyone listening to debate in Congress will be treated to a stream of half-truths, exaggeration, selective use of facts, and, in a few instances, outright falsehoods” (Mucciaroni & Quirk, 2006, p. 200).

Why should incumbents be given privileged rights to spin their votes? The appropriate question, then, is not whether opposition candidates will misuse legislative information—they will. It is whether the opportunity to misuse

information is reasonably balanced between incumbents and challengers.

### **LEGISLATIVE PROCEDURE FOR THE INFORMATION AGE**

If the problem of democratically unaccountable legislative information systems were restricted to needlessly costly access to roll call votes, the problem would be relatively minor. However, the inaccessibility of roll call votes is only a symptom of a much larger failure of legislative information systems to take advantage of the opportunities created by new information technology. These failures can be divided into two broad categories: 1) access to information that is already public and 2) access to information that should be public but is not.

The problem discussed in this article—the difficulty in accessing roll call votes and documents related to those roll call votes—belongs in the first category. More generally, there are more than 80,000 public bodies in the U.S. (such as school boards, town councils, and special commissions), each of which holds public meetings and functions like a legislature. The great majority of these public bodies holds public meetings that are recorded with a set of written minutes that do little more than identify who spoke and what laws were passed. With today's technology, there is no good reason not to create a high-fidelity public meeting record (such as a video record), integrate that record with the public meeting's agenda and documents cited in the agenda (e.g., a budget), and make the record permanently accessible on a public Web site (Snider, 2003). Yet this is very rarely done, despite the fact that the technology necessary to do so is now readily available.<sup>18</sup>

To address the second category of failure, the legislative process needs to be rethought in light of the new possibilities created by new information technology. The question is: Using new information technologies and the types of institutions they make possible, how can the information possessed by legislative insiders be unlocked so that the gap between legislative insiders and outsiders is reduced, the “wisdom of crowds” incorporated into the legislative

process, and legislators held more democratically accountable for their actions?

To answer this question, let us distinguish between four levels of legislative information systems. I call these “levels” because the information at each higher level builds on the information below it. The first two layers are public (i.e., government controlled), and the second two layers private. The various attributes of these four levels are summarized in Table 4.

The first level, the primary public legislative information system (“Primary Legislature”), is what we have been discussing in this article. It is the formal procedures controlled by the majority party, where the ability to speak and vote largely depends on the consent of the legislative leadership, and only one action can be taken at a time.

The second level, the shadow public legislative information system (“Shadow Legislature”), allows rank-and-file legislators to speak and vote on the public record, at any time, without seeking the leadership’s permission and recognition. Speaking and voting in the first type of legislature is costly, because only one person can hold the floor at a time. The first “may-I-speak” legislature is called primary, because it includes the official record of passed legislation and Congressional intent; the second “free speech” legislature sheds light on the quality of the work done in the primary legislature. It contributes to democratic deliberation and accountability but is not legally binding. The Primary

Legislature emphasizes majority rights; the Shadow Legislature minority rights, with minority defined as any group of legislators, not just a minority political party, whose views and votes the majority party would not voluntarily allow or make easily accessible in the official legislative record.

In its discussion of procedure in the U.S. House of Representatives, the Congressional Research Service begins its analysis with the critical assumption that high cost minority speech drives the current structure of legislative procedure: “Underlying the complicated legislative procedures of the House of Representatives is the general principle that the majority should be able to prevail without undue delay by the minority” (Rybacki & Bach, 2003, p. 1). In smaller legislatures such as the U.S. Senate, minorities can be granted more power, because their ability to delay and obstruct is lessened. But the underlying constraint of costly minority speech is assumed to remain valid.

The purpose of a Shadow Legislature is to monitor and hold accountable the Primary Legislature. This is consistent with Reference.com’s dictionary definitions of a shadow as “a person who follows another in order to keep watch upon that person,” and a government “without official authority,” as in a “shadow government” (Reference.com).

The creation of a Shadow Legislature is facilitated by new asynchronous information technologies, which undercut the assumption of

TABLE 4. Characteristics of the Four Levels of Legislative Media

Level	Name	Function	Control of speech rights	Speech rights regime	Speech technology	Target audience	Example
4th Level	Thin Legislative Media	Design interface and annotate official record	Private organizations	Varies	Varies	Mass public	<i>New York Times</i>
3rd Level	Fat Legislative Media	Design interface and annotate official record	Private organizations	Varies	Varies	Opinion leaders	OpenCongress.org
2nd Level	Shadow Legislature	Record official actions	Public officials (rank-and-file legislators)	Minority rights	Synchronous	Opinion leaders	Not Available
1st Level	Primary Legislature	Record official actions	Public officials (legislative leaders)	Majority rights	Asynchronous	Opinion leaders	thomas.loc.gov

costly minority speech. In a conventional synchronous public body, only one legislator can speak at a time. This makes speech costly, because everybody else has to listen, and the important work of the democratically elected majority can be brought to a halt by an obstructionist minority.

With today's information technology, it is easy to give all legislators enhanced speech rights—because nobody else has to listen to a speaker, and the cost of storage and distribution is negligible. This means that, for the first time, First Amendment values of free speech can regulate legislative speech, arguably the most important type of political speech in a representative democracy. Majorities will presumably continue to find it in their self-interest to restrict minority speech (Binder, 1997; Mann & Ornstein, 2006b), but their legitimate excuse for doing so is becoming weaker.

The Shadow Legislature does everything the Primary Legislature does, but without the majority-controlled speech and voting restrictions. In a Shadow Legislature, a member can speak, introduce amendments, and vote on legislation without seeking the permission of the legislative leadership. All this communication is inserted into the formal, public legislative information system where it would belong if it did not need to seek the approval of the majority leadership of the Primary Legislature. For example, let's say the leadership has decided it will not allow any amendments to bill X. However, legislator A wants to introduce an amendment to X. In the Primary Legislature, legislator A could not get his amendment voted on, but in the Shadow Legislature, he could. Although the amendment would have no chance of passing, important information about the bill's politics and policy would likely have been revealed. The Shadow Legislature would also force the majority into an implicit vote on legislation that it would prefer not to vote on. For example, let's say the majority in the U.S. House of Representatives would not allow amendment Y to come up for a vote, but in the Shadow Legislature the amendment got 217 of 435 votes; that is, just one vote shy of the majority. The minority could then credibly claim that the other 218 members had effectively cast

a "pocket no vote" just like a president can pocket veto a bill by not signing it when Congress is in recess.

The basic mechanics of a Shadow Legislature are simple. As in a Primary Legislature, members could take at least three basic types of official actions: propose legislation at any point in the legislative process (e.g., introduce an amendment when a bill is introduced to the Floor of the U.S. House of Representatives under a closed rule allowing no Floor amendments), make a statement, and vote. Statements could be thought of as akin to blog entries but with their links much richer than those found in the typical blog. For example, they would be tagged by key attributes of official legislative acts such as date, type of legislation (bill or amendment), place (floor, committee, conference committee, caucus), and type of event (hearing, markup). The entries would then be automatically linked to all these elements in the legislative information system. Thus, it would be easily accessible for different types of purposes. For example, a journalist or other intermediary could easily find all the Shadow Legislature documents associated with a Primary Legislature bill he or she was researching. And an opposition candidate could point to an amendment introduced in the Shadow Legislature that his or her opponent, a candidate in the majority, refused to vote on. Once a Shadow Legislature entry was time stamped and entered into the legislative information database, it would be authoritative in the same way as official public acts within the Primary Legislature.

Current legislative procedure protects many minority rights, especially for the leadership of the minority party. For example, as a matter of internally agreed upon Congressional procedure, minority members can often speak at committee hearings, and leaders of minority parties are often allocated time to speak in Floor debates preceding a vote. And as a matter of U.S. Constitutional law, minorities can demand a roll call vote on Floor votes with the support of only one-fifth of the members. Nevertheless, control of what can be said and voted upon, especially the agenda, tends to be tightly controlled by the majority leadership (e.g., see Mann & Ornstein, 2006b). In a

Shadow Legislature, the minority would be much less dependent on the goodwill of the majority to speak, vote, and make their actions readily accessible as part of an authoritative public record.

Many components of a Shadow Legislature already exist in primitive form. One example is the system of “Dear Colleague” letters used in legislatures. These letters are part of the official legislative information system and are “primarily used to encourage others to cosponsor or oppose a bill” (Peterson, 2005, p. 1). According to the U.S. House Committee on Administration, legislative staff members often receive more than 70 Dear Colleague letters per day (U.S. House Administration Committee, 2008). The catch is that these letters are neither published nor linked to the public legislative information system.

Those most dependent on the Shadow Legislature would primarily be those in the minority, because in the Primary Legislature, those in the minority are not given the same speech and voting rights as those in the majority. Minority rights are essential to democratic accountability, because it is minorities that force majorities to give public reasons and take responsibility for their actions. Constitutional scholar Adrian Vermeule describes this democratic logic:

[S]ub-majority rules are best understood in procedural terms, as devices that empower minorities to force public accountability and transparency on the majority. . . . Accountability forcing is accomplished by empowering minorities, through sub-majority rules, to force the majority to make a highly visible, ultimate substantive decision on a given question, rather than disposing of the issue in some less prominent fashion, including simple inaction. (Vermeule, 2007, pp. 90–91).<sup>19</sup>

To strengthen the Shadow Legislature and the other higher levels of the legislative information system, two changes need to be made in the Primary legislature. The first change has been sought since at least the late 1960s during the Congressional debate over what would become the Legislative Reorganization Act of

1970 (Hearings on Legislative Reorganization Act of 1970, 1969).<sup>20</sup> It calls for making all legislation, except under extraordinary circumstances, publicly available for at least 72 hours before it is voted on. When legislative leaders have already set their minds on a particular course of action, they like to provide as little notice as possible on potentially controversial issues, because such notice, from their perspective, simply provides information and time for the opposition to mobilize. Today, organizations such as ReadTheBill.org, The Reform Institute, and the Open House Project continue to advocate for such advance notice of legislation.

Without the opportunity to have a proactive discussion of legislation, the democratic value of free speech in a Shadow Legislature would be significantly reduced. One reason is that the incentive to engage in vigorous democratic deliberation is greatest before legislation is passed, because such deliberation offers the prospect of having an immediate, tangible impact on the development and passage of public policies. This free marketplace of information, in turn, tends to improve the quality of decision-making. A second reason is that such proactive deliberation enhances democratic accountability. At the next election, voters will want to know if their elected representative exercised good judgment in passing legislation. To make this evaluation, voters need to know what information was readily available to their elected representatives when they made their key decisions. Such retrospective democratic accountability, arguably the most important type of legislative accountability (Arnold, 1990), is lost when bills are released and voted upon at the last minute.

The second change has been debated since at least the Constitutional Convention more than 200 years ago. This is the voting threshold at which minorities can require the majority to take a roll call vote. The framers of the Constitution set this requirement at one-fifth of the members of the legislature. The dominant concern then was that roll call votes were much more time consuming than voice and division votes, and thus could be used to slow down the work of the majority and the efficiency of Congress as an institution (Vermeule, 2007, pp. 100, 109).

With today's electronic and portable roll call voting technology, this objection is eliminated: roll call votes take no longer than voice votes, and, since they do not generate uncertainty and the need to redo votes, should even be viewed as timesavers. Thus, the hurdle for minorities to call for roll call votes should be reduced at every level of legislative decision-making, from subcommittees to the floor. Indeed, eliminating all types of votes but roll call votes should be carefully considered. This last step may be too extreme. Many votes are on truly trivial issues, such as "Without objection, this meeting is adjourned." In other cases, the time necessary to justify a trivial vote may dwarf the time necessary to actually vote. Nevertheless, the balance should be shifted in the direction of more roll call votes, because too many important and potentially controversial issues are decided without roll call votes when incumbents have a common interest in avoiding accountability for their actions.

Given the problem that both minority and majority legislators will have common interests adverse to the public, it is vital that the public legislature be supplemented by private legislative media. Private legislative media, by annotating and creating a user-friendly interface to the official public record created by the public legislature, force the public legislature to account for its actions.

Private legislative media take on important functions that governmental legislative information systems cannot reasonably take on because of First Amendment considerations. For example, moderating discussion forums providing citizen feedback would appear to be an essential function of a modern legislative information system. But elected officials are hesitant to take on such a role, in part because they recognize that the public will not trust them to moderate such discussions impartially.

Private legislative media fall into two categories and represent the third and fourth levels of legislative information systems: fat and thin. The fat legislative media are niche media focused on serving opinion leaders. Given the small audience and public goods attributes of fat legislative media, they are likely, as has been the case to date, to be dominated by

nonprofits.<sup>21</sup> The thin legislative media serve the mass audience and rely on the information generated by the lower three levels of the legislative information system.

The word "fat" is used because fat legislative media are a superset of the Primary and Shadow Legislatures and thus incorporate a huge amount of highly specialized information. In contrast, "thin" legislative media skim only the tiny fraction of that information of interest to a mass audience.

Many attempts are currently being made to create fat legislative media, including OpenCongress.org, GovTrack.us, and Maplight.org at the U.S. national level; Richmond-Sunlight.com (Virginia), KnowledgeAsPower.org (Washington), and OpenMass.org (Massachusetts) at the U.S. state level; and TheyWorkForUs.com (the United Kingdom), OpenAustralia.org (Australia), and HowdTheyVote.ca (Canada) overseas.

Fat legislative media are arguably a paradigmatic example of the new social, user-generated media. They are a distinctive, innovative mash-up of government information, citizen participation, and professional journalism.

Fat legislative media are attempting to take on three functions: integrating the information in the Primary and Shadow Legislatures with other relevant government and nongovernment databases; inviting citizen feedback on the legislature's actions; and synthesizing all that information in a way that allows the public to monitor legislatures and legislators with less effort than ever before. The key stumbling blocks to the development of powerful fat legislative media are parliamentary procedures and disclosure policies that serve to hide rather than reveal potentially controversial information.

Fat legislative media presume that the current chronological and news-driven structure of the thin legislative media (the mass media) is inadequate to the information and deliberative needs of a modern, complex democracy. They are not a substitute for mass media, but an intermediary type of media between the raw information of legislatures and the highly compressed information that emerges from popular media. Unlike interest groups, which collect much of the same information, fat legislative

media aggregate all information in an objective format without regard to a lobbying agenda.

To encourage the development of vigorous private legislative media, technology staff in legislatures should focus not on the development of their own public Web site interfaces but on the development of structured databases of legislative information made freely available on their public Web sites (e.g., see Robinson, Yu, Zeller, & Felton, 2009). Regardless of the conflict of interest problem, it is unreasonable to expect that governments have the imagination and marketing sensitivity to dream up all useful views of legislative information, including links to nongovernment data, that voters would find useful. For example, suppose that legislatures made roll call votes by legislator easily accessible on their public Web sites. This would still constitute an absurdly primitive interface to do roll call vote analysis when compared to what is currently available on private legislative information systems, which, for example, offer roll call statistics on the percentage of times a legislator voted with each other member of the committee he or she is on, the committee leadership, the party leadership, various powerful special interest groups, and any user's own preferences.

The hierarchical relationship between the different components of the legislative information system is depicted in Figure 1.

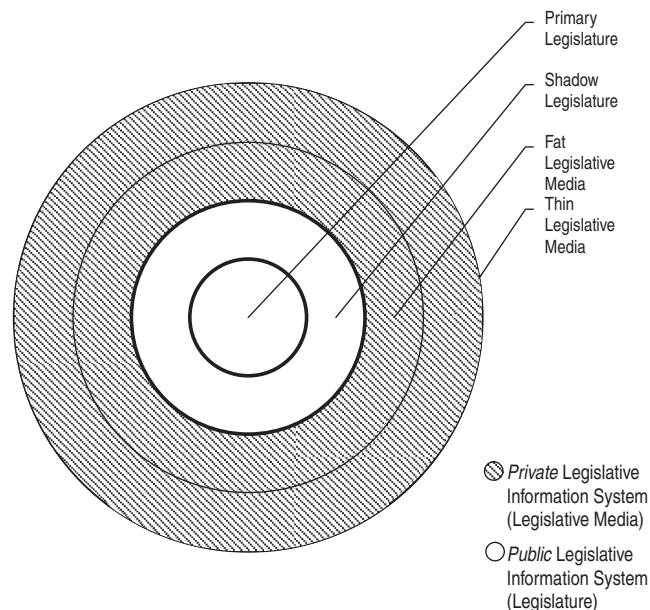
### WHY LEGISLATIVE INFORMATION MATTERS

Raw legislative information is not of general interest to the public and never will be. With rare exceptions, only a tiny percentage of the general population will ever look at it. By conventional benchmarks of mass media impact, such as the size of the direct viewing audience, its impact is trivial. However, legislative information provides the raw information on which democratic accountability is based. Its impact on the democratic process is therefore anything but trivial.

What is the mechanism of this influence? It is a multistep information flow, where the raw information generated by legislators' actions is synthesized and condensed by information agents such as the press, interest groups, and political candidates and then transmitted to the general public.

This multistep information flow greatly increases the efficiency of democratic accountability. Just as delegating decision-making to

FIGURE 1. The four levels of legislative information systems.





elected representatives greatly increases the efficiency of democracy, delegating the monitoring of those representatives to information agents greatly increases the efficiency with which such monitoring can be done.

In a modern, complex democracy, it is unrealistic to expect that the general public will directly monitor their elected representatives. If every citizen needed to pay attention to what their representatives did, modern civilization would collapse under the burden.

The critical importance of having a good legislative information system, then, is that it empowers information agents to do a better job of informing the public. Since information agents are often extremely sensitive to the costs of accessing legislative information, even a slight change in these costs can have a big impact on the extent to which they monitor elected officials on behalf of the public.

The reduced information costs from improved legislative information systems have three major impacts on journalism. The first and most direct impact is how informed journalists are. High legislative information costs lead to less monitoring of elected officials, which results in less informed reporting and analysis of their behavior. For example, the cost of viewing public hearings, identifying useful sources, and discovering discrepancies between what elected officials say and do could all plummet from improved legislative information systems.

The second impact is how biased journalists are. High legislative information costs create conflicts of interest for journalists. Today's journalists must ask legislators for much of their information. This gives legislators the power to trade information for favorable coverage. A local school reporter, for example, who is expected to generate three school system stories a week, cannot afford to alienate the school superintendent and handful of school board members. If she did, her sources of information would dry up and she might be out of a job. The result is that journalists are co-opted by those in power.

The third impact is who becomes a journalist. High legislative information costs change the type of person who can become a journalist.

Consider what happened when the Supreme Court began to release same-day transcripts of its proceedings. The number and nature of journalists covering the Supreme Court radically changed. Suddenly law school professors and practicing lawyers all over the country could compete with the professional journalists, and they could enrich their reporting with analysis that was often missing in the work of the professional journalists. A secondary consequence was that, to compete, the professional journalists could no longer get away with summarizing the Court's decision. Now they were expected to provide some analysis themselves—and, in doing so, they could improve their own work by reading the work of all those “amateur” law professor journalists (Lithwick, 2008).<sup>22</sup>

Similarly, if citizen journalists interested in legislatures no longer needed to be physically present in legislatures and no longer needed to cultivate the trust of legislators and their staffs in order to secure inside legislative information, then the barriers to entry for citizen journalists who want to cover legislatures would be greatly reduced.

Perhaps improved online access to legislative information could even make the media galleries in legislatures obsolete or at least much less important. If so, then the bloggers and citizen journalists who have been seeking “online media gallery” credentials should shift their focus to push for improved legislative information systems to eliminate the advantage that traditional journalists with privileged physical access to legislatures currently have.

## CONCLUSION

The evidence supports the hypothesis that elected officials have a conflict of interest in using new information technology to provide convenient public access to roll call votes and related information directly linked to specific legislators. Moreover, this conflict of interest may be only the tip of the iceberg of a much larger and more important conflict of interest that legislators have in using new information technology to make themselves more democratically accountable.

Future work should study the many other ways incumbent legislators might have a conflict of interest with their constituents in designing legislative information systems. More work should also be done to assess the power of competing hypotheses to explain the slow pace of development of democratically accountable legislative information systems. Encouraging the National Conference of State Legislatures and the Inter-Parliamentary Union to release their confidential survey data on legislative information systems could greatly facilitate this type of research.

Improving public legislative systems would have a significant salutary effect on the overall quality of media coverage of legislatures at the national, state, and local levels of government. Thus, media and democratic reformers should place a high priority on reforming these systems.<sup>23</sup>

## NOTES

1. All legislative data for this article were obtained from publicly available legislative Web sites.

2. On the strategic importance of traceability, including accessible records, in legislators' decision-making, see Arnold (1990, p. 28)

3. Most legislative scholars agree that legislators have personal motives, such as policy influence and prestige, other than re-election (e.g., see Fenno, 1973). However, they also agree that the assumption of a re-election motive is reasonable and can be useful for generating hypotheses (e.g., see Mayhew, 1974). It is in that spirit that this assumption is being made.

4. For my earlier work on this subject, see Snider (1995, 1999, 2001a, 2001b, 2003, 2005a).

5. For example, see the trade publications *Government Technology* (local and state government) and *Federal Computer Week*; the reports of the Center for Digital Government and IBM's Center for the Business of Government; and academic journals such as *Government Information Technology* and the *International Journal of Electronic Government Research*.

6. The two sections are the Legislative Information and Communications Staff Section (LINCS) and National Association of Legislative Information Technology (NALIT). See <http://ncsl.org/programs/press/webawardhome.htm>.

7. See [www.centerdigitalgov.com](http://www.centerdigitalgov.com).

8. Here is the text: "There is a gap between what Web audiences want and what most Capitol Hill offices are providing on their Web sites. Constituents, special interest groups, and reporters are seeking basic legislative

information such as position statements, rationales for key votes, status of pending legislation, and educational material about Congress. However, offices are using Web sites primarily as promotional tools—posting press releases, descriptions of the Member's accomplishments, and photos of the Member at events" (Congressional Management Foundation, 2002, p. 4).

9. The relevant section of the Constitution reads: "Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal."

10. The data were compiled from Markup Reports at [NationalJournal.com](http://NationalJournal.com).

11. *Dates*: Data collected from February through May 2008. *Source*: Search of state legislature Web sites, compiled by Aram Hur. *Explanation*: B: Bill Votes, A: Amendment Votes, P:Procedural Motion Votes, F: Floor Votes C: Committee Votes; ■: Item of interest is available online and fully meets standard, ■: Item of interest is available online, but only partially meets standard, \_: Item of interest is not available online, #: Only roll call final tallies listed, no by-member breakdown, V: Voice votes.

12. *Dates*: Data collected from February through May 2008. *Source*: Search of state legislature Web sites, compiled by Aram Hur. *Explanation*: B: Bill Votes, A: Amendment Votes, P:Procedural Motion Votes, F: Floor Votes C: Committee Votes; ■: Item of interest is available online and fully meets standard, ■: Item of interest is available online, but only partially meets standard, \_: Item of interest is not available online, #: Only roll call final tallies listed, no by-member breakdown, V: Voice votes.

13. Examples of such states include Virginia, Connecticut, Illinois, Minnesota, and Texas. Some legislatures, most notably the U.S. House of Representatives, now display legislative information in their public Web sites in a structured database format such as XML. But this requires a software programmer to write a program to parse the data to pull out the relevant fields. Then the Web pages must be periodically scanned for changes. Most noteworthy, although THOMAS is applying XML tags to many legislative data components, roll call votes tagged by legislator are not one of those components. Given the widespread use of XML in the private sector to display structured database information on the Web, the tendency of legislative Web sites not to fully deploy this technology is a striking omission.

14. *Dates*: As of April 2008. *Source*: Population data from most recent U.S. Census Bureau Data, Professionalization data from National Conference of State Legislatures, compiled by J. H. Snider and Aram Hur. *Explanation*: H: House, S: Senate, NA: Not applicable because of either a unicameral legislature (Nebraska) or a bicameral legislature with different roll call accessibility.

15. S1662, passed on May 18, 2006.
16. New Jersey Assembly vote on A3252 on March 15, 2007, and Senate vote on S1662 on May 18, 2006. The final Senate vote, which came after an amendment to the Senate version of the bill, passed 37–0 on June 18, 2007. In early May 2008, I interviewed an information technology staffer in the New Jersey legislature. Speaking off-the-record, he said the staff never thought the bill had a chance of passage because legislators in the past had not gone for this type of openness.
17. Just because private Web sites recognize the importance of online roll call access by legislator does not mean that the quality of their data is necessarily high. These Web sites tend to be only as good as the raw information provided on the government Web sites. For example, if committee roll call votes are not available on the government Web sites, they are also unlikely to be available on the private Web sites.
18. For a company that provides an integrated solution, see [www.granicus.com](http://www.granicus.com). Even Microsoft's \$45 program, OneNote, marketed for students taking class notes, seamlessly integrates text and streaming video.
19. Vermeule also cites a minority member of Congress making this argument in more colorful prose: "I believe the minority party has the right to smoke out the majority and make them face issues, make them vote on great public questions" (2007, p. 94).
20. E.g., see statement of Representative Lawrence Coughlin (Hearings, 1969, p. 161).
21. If fat legislative media are to be dominated by nonprofits funded as a result of tax breaks, it might be a good idea to make them a special class of nonprofit distinguished from special interest groups by openness requirements, such as an obligation to create a well-structured, verifiable, public record of their enhancements of the Public Legislature. In such a way, a giant, well-structured, integrated database of public and private legislative information would be created.
22. For an example of the new Supreme Court journalism, see [scotusblog.com](http://scotusblog.com), a compendium of posts by different authors and including reader comments.
23. One mechanism to do so is a citizens' assembly-based democratic reform. For details, see [iSolon.org](http://isolon.org) and J. H. Snider (2005b, 2008a, 2008b).

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