

ONE REDEEMING QUALITY ABOUT THE 112TH CONGRESS: REFOCUSING ON DESCRIPTIVE RATHER THAN EVOCATIVE SHORT TITLES

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INTRODUCTION

The consensus with regard to the 112th Congress is that it was a massive failure¹: the Congress passed fewer laws than in previous years, and the contemptuous debates over the debt ceiling and the so-called “fiscal cliff” did not win this Congress many supporters. So what redeeming qualities could have been present in such an irredeemable Congress? I believe that there was at least one: *a returning focus on descriptive short titles for laws*, rather than a perpetuation of the evocative and tendentious short titles that have been commonplace over the past couple of decades.

A recent publication of mine explored what I called the “Congressional Short Title (R)Evolution,”² for over the past few decades, short titles have become more frequently used, longer, and more likely to employ acronyms or personalization; they have also increasingly used evocative words while

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1. In fact, *The Week* put together a list of the most insulting media labels for the 112th Congress. They are as follows: (1) “most dysfunctional ever,” *Sacramento Bee*; (2) “crawling out with the soft whimper of failure,” *Politico*; (3) “the most worthless, incompetent, do-nothing gathering of lawmakers in the nation’s history,” *LA Times*; (4) “took incompetence to a higher level,” *The Daily Beast*; (5) “the do-nothing 112th Congress,” *Think Progress*; (6) “clowns,” *The Washington Times*; (7) “It achieved nothing,” *Bloomberg*; (8) “most unproductive session since the 1940s,” *The Huffington Post*; (9) “least effective and most disliked,” *Business Insider*; and (10) “least productive in recorded history,” *Allvoices*. Harold Maass, *10 Insulting Labels for the Outgoing 112th Congress*, *THE WEEK* (Jan. 3 2013), <http://theweek.com/article/index/238354/10-insulting-labels-for-the-outgoing-112th-congress>.

2. Brian Christopher Jones, *The Congressional Short Title (R)Evolution: Changing the Face of America’s Public Laws*, 101 KY. L.J. ONLINE 42–64 (2013), <http://www.kentuckylawjournal.org/jones-short-title-revolution/>.

they have decreasingly used technical, descriptive language. In fact, *CQ Weekly* recently reported on the revolution and highlighted my research, noting that short titles “often oversell what [laws] actually accomplish.”³ Nevertheless, by decreasing the frequency of evocative language and increasing the use of technical- and descriptive-language short titles, members of the “most worthless, incompetent, do-nothing” Congress⁴ brought the lawmaking body back to the brink of rationality.

I. METHODS

To determine how the 112th Congress differed from previous Congresses, I added the 283 public laws passed by that Congress into the database of public laws from the 93rd–111th Congresses that I originally used to explain the short-title revolution.⁵ After separating the resolutions and acts that only used long titles, I analyzed the short-title data of the remaining legislation.

To maintain consistency with my previous piece on the short-title revolution, I use the same words to identify evocative and technical language in the short titles of the 112th Congress.⁶ The evocative words correspond with “key action short titles,” which legislators may use to show particular goals that they hope their bill will accomplish (e.g., prevention of a particular crime) and “attribute short titles,” which legislators may use to demonstrate particular features that their legislation supposedly contains (e.g., responsibility, accountability).⁷ This Essay tracked the following words (and their derivations) in the short titles of the 112th Congress: “control,” “prevention,” “protection,” “improve,” “modernize,” “security,” “America,” “efficient,” “responsible,” “accountable,” “freedom,” and “emergency.” Moreover, the technical words that Congress chose largely correspond with the drafting of legislation, and some are even prescribed for use by the House

3. Shawn Zeller, *A Bill by Any Other Name . . . May Become Law*, *CQ WEEKLY*, Feb. 4, 2013, at 235, available at <http://library.cqpress.com/cqweekly/weeklyreport113-000004214373>.

4. David Horsey, *Derelict Congress Sets New Record Low for Achievement*, *LOS ANGELES TIMES* (January 3, 2013, 5:00 AM), <http://www.latimes.com/news/politics/topoftheticket/la-na-tt-derelict-congress-20130102,0,366752.story>.

5. Jones, *supra* note 2, at 42–64.

6. *Id.* at 57–62.

7. *Id.* at 47–48. Of course, the evocative words used for the study are not an exhaustive list of such terms. However, in the opinion of the author, who has studied congressional short titles for many years, they represent the most common or most influential terms over the time period studied.

Drafting Manual.⁸ This Essay tracked the following words (and their derivations): “amend,” “correct,” “authorize,” “revision,” “appropriation,” and “extension.” Using a standardized system such as this for tracking evocative and technical wording allowed me to easily compare the law-naming conventions of the 112th Congress to its predecessors.

II. WHAT CHANGED?

A. *Evocative Versus Technical Words Used*

The most significant finding regarding the 112th Congress was an increase in the technical wording and a decrease in the evocative wording used in short titles. This marks the first time that this result has occurred since the 101st–102nd Congress (1989–1993), *nearly twenty years ago*. This timing is significant because I previously surmised that the short-title revolution began around 1989–1993.⁹ During and around these years, lawmakers began applying political marketing methods, which had been rapidly increasing since the 1950s and 1960s, to the short titles of legislation, thus increasing the use of evocative and personalized titles.¹⁰ Additionally, through the passage of the Ryan White CARE Act of 1990,¹¹ lawmakers recognized that short titles could be *the* decisive factor in determining whether or not a bill becomes law.¹²

8. Brian Christopher Jones, *Drafting Proper Short Titles: Do States Have the Answer?*, 23 STAN. L. & POL'Y REV. 455, 463 (2012) (“The manual details that if an act consists mainly of amendments to another act, then it is appropriate for the short title to include ‘... Amendments of [year].’” (internal quotation marks omitted)).

9. Jones, *supra* note 2, at 44; *see also* Jones, *supra* note 8, at 456–58.

10. Jones, *supra*, note 2, at 44–45.

11. Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Pub. L. No. 101-381, 104 Stat. 576.

12. Jones, *supra* note 2, at 42–43; *see also* Henry Waxman with Joshua Green, THE WAXMAN REPORT: HOW CONGRESS REALLY WORKS 5–51 (2009); Joshua Green, *The Heroic Story of How Congress First Confronted AIDS*, THE ATLANTIC (June 8, 2011, 4:28 PM), <http://www.theatlantic.com/politics/archive/2011/06/the-heroic-story-of-how-congress-first-confronted-aids/240131/>.

FIGURE 1. EVOCATIVE VERSUS TECHNICAL WORDS USED (93RD–112TH CONGRESSES)

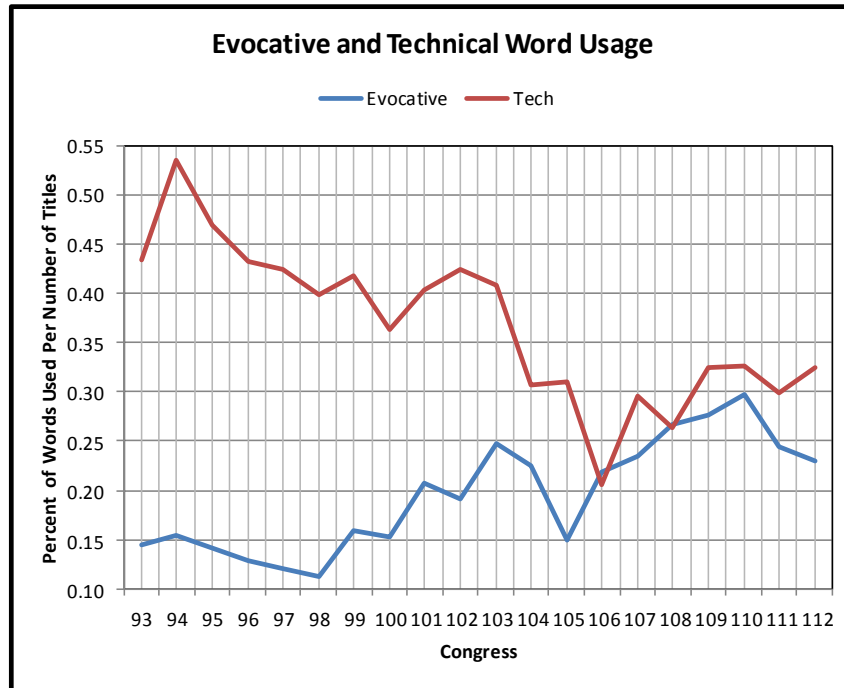


Figure 1 demonstrates the relationship between technical and evocative wording well because it takes into consideration the number of laws passed in each congressional session. Excluding personalized titles, the evocative words studied in this model were used in only 23 percent of titles, while technical words were used in 32 percent of titles. This is about where evocative terms stood when the short-title revolution began around the 101st Congress, hovering in the low 20th percentile. Additionally, without adding personalized titles into the evocative category, the results produced the largest separation between evocative and technical titles since the 103rd Congress (1993–1995).¹³

13. The 103rd Congress used technical language in 41 percent of short titles and evocative language in 25 percent of short titles—a 16 percent spread.

TABLE 1.1. TRACKING EVOCATIVE WORDS USED (93RD–112TH CONGRESSES)

Congress	Control	Prevention	Protection	Improve	Modernize	Secure(ity)
93	4	4	5	1	0	2
94	4	1	3	5	0	1
95	6	2	3	7	0	4
96	3	3	3	5	0	7
97	2	0	5	3	0	2
98	2	2	4	4	0	4
99	3	1	6	5	0	4
100	4	2	11	12	0	1
101	7	6	12	13	0	2
102	1	4	12	10	1	1
103	3	4	9	13	0	3
104	1	4	7	7	0	1
105	1	3	14	5	1	0
106	2	8	13	20	0	7
107	1	1	5	7	1	9
108	6	6	9	12	2	8
109	3	6	12	10	2	6
110	0	6	9	15	2	5
111	2	5	6	8	7	8
112	1	3	8	8	2	3
Total	55	68	148	162	16	75

TABLE 1.2. TRACKING EVOCATIVE WORDS USED (93RD–112TH CONGRESSES)

Congress	America	Efficient	Responsible	Accountable	Freedom	Emergency	Total
93	1	0	0	0	0	7	24
94	1	0	0	1	0	8	24
95	2	0	0	0	0	6	30
96	1	2	0	0	0	2	26
97	1	0	1	0	0	2	16
98	1	0	0	0	0	3	20
99	3	1	0	0	0	4	27
100	1	0	0	0	0	5	36
101	7	2	0	0	0	3	52
102	7	2	0	0	1	10	49
103	10	1	0	1	3	4	51
104	3	0	2	6	1	4	36
105	1	0	0	1	2	4	32
106	8	0	0	2	3	3	66
107	9	1	1	2	2	4	43
108	10	2	1	4	1	6	67
109	9	4	0	6	2	10	70
110	11	1	1	6	2	3	61
111	5	1	2	2	1	1	48
112	5	3	1	1	1	0	36
Total	91	17	8	31	18	89	778

TABLE 2. TRACKING TECHNICAL WORDS USED (93RD–112TH CONGRESSES)

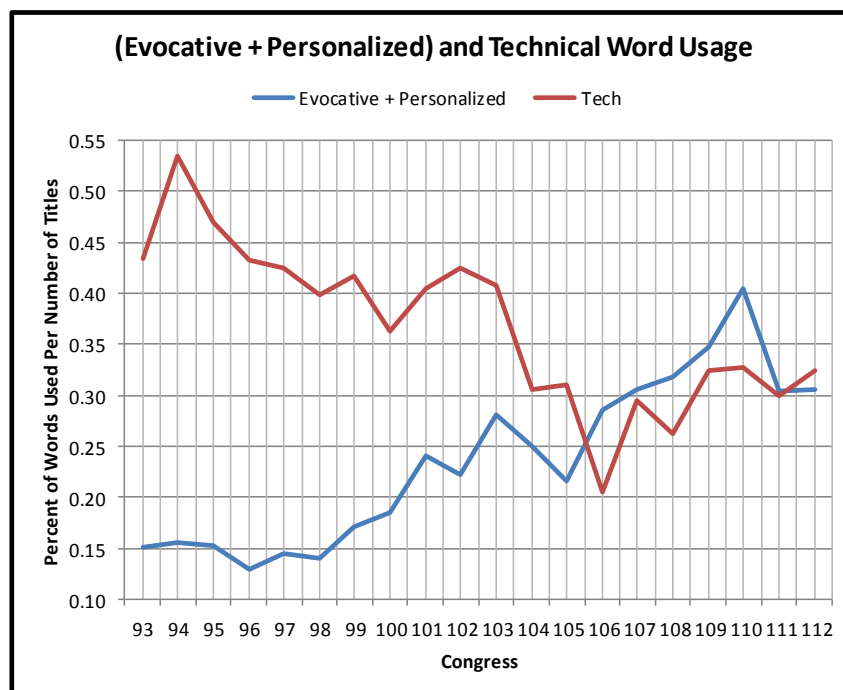
Congress	Amend	Correct	Authorize	Revision	Appropriation	Extension	Total
93	20	0	13	2	35	2	72
94	32	0	16	0	32	3	83
95	39	0	25	0	29	6	99
96	38	2	23	3	20	1	87
97	24	2	14	1	13	2	56
98	40	1	15	0	15	0	71
99	38	2	19	1	8	3	71
100	47	4	17	2	13	3	86
101	41	3	26	1	26	4	101
102	51	2	24	0	28	4	109
103	38	2	12	0	28	4	84
104	14	4	11	0	18	2	49
105	15	2	23	0	21	5	66
106	18	6	15	0	20	3	62
107	14	0	17	2	19	2	54
108	8	6	21	4	16	11	66
109	10	5	29	2	17	19	82
110	14	3	25	1	5	19	67
111	4	5	13	0	13	24	59
112	3	4	15	1	7	21	51
Total	505	49	358	19	376	117	1424

Another major finding is that, for the first time since the 105th Congress (1997–1999), even when personalized titles were added to the evocative word total, more technical words were used per act than evocative words.¹⁴ Regarding evocative words, the number of times words such as “security,” “prevention,” “improve,” and “emergency” were used in short titles noticeably dropped in the 112th Congress. As for technical words, Congress continued to use the words “extend” and “authorize” frequently; however, it continued to use the words “amend,” “appropriation,” and “revision” relatively infrequently. In fact, the 112th Congress marked only the third time that both “amend” and “appropriation” were used in the single digits.¹⁵

14. *See infra* Figure 2.

15. However, the raw numbers are deceiving due to the low amount of legislation passed by the 112th Congress. A more accurate portrayal of the numbers is shown in Figures 1

FIGURE 2. (EVOCATIVE + PERSONALIZED) VERSUS TECHNICAL WORDS USED
(93RD–112TH
CONGRESSES)



B. Laws on Name Changing Decreased

Laws on name changing¹⁶ dropped markedly in terms of the overall percentage of total bills passed.¹⁷ While the percentage had climbed into the twenties and low thirties during the previous four Congresses, it decreased into the mid-teens (14.1 percent) with the 112th Congress. This essentially means that although lawmakers were not as prolific in terms of enacting

and 2, which compare the amount of evocative and technical wording used to the amount of legislation passed in each congressional session.

16. Every session, Congress passes numerous bills relating to the names of post offices, federal buildings, lakes, and parks, among other things. These measures are usually passed in clustered votes or wrap-up sessions that take very little time and involve virtually no debate. Additionally, such bills always use long titles. Separating them from the other, more substantive legislation allows me to analyze the use of short and long titles more accurately.

17. See *infra* Table 3.

legislation, they were more focused on substantive measures rather than on naming (or renaming) post offices, parks, and federal buildings. This is not a finding that is likely to change anybody's opinion of the 112th Congress, but it is significant nonetheless, and hopefully this practice will continue in future sessions.

TABLE 3. LAWS ON NAME CHANGING (93RD–112TH CONGRESSES)

Congress	Total Bills	Naming Bills	Percent of Total
93	649	17	2.6%
94	588	20	3.4%
95	633	32	5.1%
96	613	37	6.0%
97	473	22	4.7%
98	623	33	5.3%
99	663	19	2.9%
100	713	40	5.6%
101	650	27	4.2%
102	590	36	6.1%
103	465	45	9.7%
104	333	34	10.2%
105	394	27	6.9%
106	580	88	15.2%
107	377	66	17.5%
108	498	106	21.3%
109	482	118	24.5%
110	460	146	31.7%
111	383	85	22.2%
112	283	54	14.1%

C. Acronym Prevalence in Short Titles Increased

Even though the 112th Congress produced the least amount of short titles since the 97th Congress, it still created the *highest* number and percentage of acronym titles in the past twenty Congresses.¹⁸ In fact, the percentage of short titles employing acronyms jumped to over 10 percent¹⁹ for the first time ever, producing such intriguing titles as USA (Uninterrupted Scholars Act),²⁰ the STOCK (Stop Trading on Congressional Knowledge) Act,²¹ the HEARTH (Helping Expedite and Advance Responsible Tribal Home Ownership) Act of 2012,²² and the SAFE DOSES (Strengthening and Focusing Enforcement to Deter Organized Stealing and Enhance Safety) Act.²³

18. See *infra* Table 4.

19. These figures include every short title that employed an acronym in some form. Thus, titles were included that were predominantly acronyms, such as the STOCK Act, Pub. L. No. 112-105, 126 Stat. 291, as well as those titles that simply included acronyms, such as the FISA Sunsets Extension Act, Pub. L. No. 112-3, 125 Stat. 5.

20. Uninterrupted Scholars Act (“USA”), Pub. L. No. 112-278, 124 Stat. 2480 (2013).

21. Stop Trading on Congressional Knowledge (“STOCK”) Act of 2012, Pub. L. No. 112-105, 126 Stat. 291.

22. Helping Expedite and Advance Responsible Tribal Home Ownership (“HEARTH”) Act of 2012, Pub. L. No. 112-151, 126 Stat. 1150.

23. Strengthening and Focusing Enforcement to Deter Organized Stealing and Enhance Safety (“SAFE DOSES”) Act of 2012, Pub. L. No. 112-186, 126 Stat. 1427.

TABLE 4. ACRONYM SHORT TITLES USED AND PERCENT OF TOTAL (93RD–112TH CONGRESS)

Congress	Short Titles	Acronyms	Percent of Total
93	166	1	0.60%
94	155	0	0.00%
95	211	3	1.42%
96	201	0	0.00%
97	132	0	0.00%
98	178	0	0.00%
99	170	3	1.76%
100	237	2	0.84%
101	250	2	0.80%
102	257	5	1.95%
103	206	1	0.49%
104	160	2	1.25%
105	213	3	1.41%
106	302	7	2.32%
107	183	6	3.28%
108	251	9	3.59%
109	253	11	4.35%
110	205	16	7.80%
111	197	17	8.63%
112	157	19	12.10%

III. WHAT STAYED THE SAME?

A. *Short-to-Long Title Ratio—Naming Laws Eliminated*

The short-to-long-title ratio with naming laws eliminated shows a clear picture of where the relationship between the use of short titles and long titles stands.²⁴ The 112th Congress produced the second highest ratio of short-to-long titles of the past twenty Congresses, measuring 2.62 short titles for every one long title. However, although Congress used short titles slightly more frequently, short titles were not as evocative as in previous years.

TABLE 5. SHORT-TO-LONG TITLE RATIO—NAMING LAWS ELIMINATED

Congress	Short Titles	Long Titles	Short-to-Long Ratio
93	166	383	.43/1
94	155	352	.44/1
95	211	321	.66/1
96	201	290	.69/1
97	132	202	.65/1
98	178	213	.84/1
99	170	174	.98/1
100	237	190	1.25/1
101	250	142	1.76/1
102	257	122	2.11/1
103	206	110	1.87/1
104	160	113	1.42/1
105	213	121	1.76/1
106	302	144	2.10/1
107	183	95	1.93/1
108	251	113	2.22/1
109	253	93	2.72/1
110	205	92	2.23/1
111	197	82	2.40/1
112	157	60	2.62/1

24. For more information on naming laws, see *supra* note 16.

B. Short Title Length

In the 112th Congress, short-title length stayed about the same as in previous years. Since the 100th Congress, when the average length reached over seven words per title, the average has not fallen below this mark. Yet, since it peaked at the mid-to-upper seven-word range, short-title length appears to be holding steady. The only threat of short titles exceeding seven words occurred during the 109th Congress, and since then, it has fallen back to the pre-109th range.

TABLE 6. SHORT TITLE LENGTH (93RD–112TH CONGRESSES)

Congress	Short Titles	Words	Word Average
93	166	912	5.49
94	155	820	5.29
95	211	1101	5.22
96	201	1365	6.79
97	132	871	6.60
98	178	1174	6.60
99	170	1183	6.96
100	237	1724	7.27
101	250	1876	7.50
102	257	1979	7.70
103	206	1556	7.55
104	160	1149	7.18
105	213	1596	7.49
106	302	2207	7.31
107	183	1423	7.78
108	251	1812	7.22
109	253	2011	7.95
110	205	1544	7.53
111	197	1456	7.39
112	157	1164	7.41

C. Personalized Short Titles

Although the 112th Congress passed less legislation than previous Congresses, personalized titles during the lawmaking session comprised a similar percentage of total short titles as during preceding Congresses.²⁵ Similar to acronym short titling, this appears to be a congressional-short-titling trend that is not abating; for the time being, however, it seems to have leveled off.

TABLE 7. PERSONALIZED TITLES AND PERCENT OF TOTAL SHORT TITLES

Congress	Short Titles	Personalized Titles	Percent of Total
93	166	1	0.60%
94	155	0	0.00%
95	211	2	0.95%
96	201	0	0.00%
97	132	3	2.27%
98	178	5	2.81%
99	170	2	1.18%
100	237	8	3.38%
101	250	8	3.20%
102	257	8	3.11%
103	206	7	3.40%
104	160	4	2.50%
105	213	14	6.57%
106	302	20	6.62%
107	183	13	7.10%
108	251	13	5.18%
109	253	18	7.11%
110	205	22	10.73%
111	197	12	6.09%
112	157	12	7.64%

CONCLUSION

The short-title statistics from the 112th Congress, taken in conjunction with those from other recent Congresses, show signs of an evocative-title stagnation and a technical-title increase. Evocative wording peaked in the 110th Congress but has noticeably dropped in the last two sessions.²⁶ Additionally, while technical language bottomed out in the 106th Congress,

25. See *infra* Table 7.

26. See *supra* Figure 1 and Figure 2.

Congress has gradually been reintroducing such language in short titles ever since.²⁷ This could mean that lawmakers are finally wising to the fact that, through short titles, their laws are promising much that rarely, if ever, materializes. The electorate may indeed be taking note of such discrepancies.²⁸ Or, it could simply be that fewer bills were passed in the 112th compared to other Congresses, and those laws with descriptive and less-controversial titles were more easily passed. Either way, the short-title phenomenon in the United States needs to remain under close examination.

There is no hiding the fact that many despised the 112th Congress, and it seems that public perception of the 113th is already following suit.²⁹ Countless commentators perpetuated the view that the 112th Congress had no redeeming qualities. This Essay, however, challenges that notion. The polarizing rhetoric in Congress has become overly burdensome, not only for the institution itself in terms of lawmaking and other official business but also for the American people in terms of the lack of approval and trust that they have for their elected representatives. Thus, the fact that short titles in the 112th Congress employed more technical than evocative words is significant. Providing public laws with rational, technical titles is a small step toward taming outlandish rhetoric and may perhaps be a small step toward regaining the trust and approval of the citizenry.

27. See *supra* Figure 1 and Figure 2.

28. See, e.g., Dina ElBoghdady, *The JOBS Act Falls Short*, WASH. POST, Mar. 29, 2013, at A09, available at http://www.washingtonpost.com/business/economy/jobs-act-falls-short-of-grand-promises/2013/03/28/5a660a14-8675-11e2-98a3-b3db6b9ac586_story.html; Molly K. Hooper, *First Key Fight in Immigration Battle Is What to Name Bill*, THE HILL (Apr. 4, 2013, 07:23 PM), <http://thehill.com/homenews/senate/291973-first-key-fight-in-immigration-battle-is-what-to-name-bill>; Geoff Pender, *Name That Law—New Site Focuses on Misleading Names for Bills/Acts*, MISSISSIPPI POLITICS (Apr. 11, 2013), <http://blogs.clarionledger.com/politics/2013/04/11/name-that-law-new-site-focuses-on-misleading-names-for-billsacts/>.

29. At the beginning of the 113th Congress, a *New York Times* poll showed that 82 percent of people disapproved of the new Congress while only 12 percent approved. Jackie Calmes & Megan Thee-Brenan, *Poll Finds Most Back Obama, with a Split on Party Lines*, N.Y. TIMES, Jan. 19, 2013, at A10, available at <http://www.nytimes.com/2013/01/19/us/politics/entering-2nd-term-obama-has-51-percent-approval-rating.html?pagewanted=all&r=0>.