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Committee Jurisdiction and Internet Intellectual Property Protection

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John M. de Figueiredo

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John M. de Figueiredo
Massachusetts Institute of Technology
Harvard Law School and NBER

Sloan School of Management E52-546
50 Memorial Drive
Cambridge MA 02142-1347
jdefig@mit.edu

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ABSTRACT

This paper examines the impact of increasingly common congressional committee jurisdictional turf wars on policy outcomes. It develops a theoretical model that shows how legislators balance the benefits of expanded committee jurisdiction against preferred policy outcomes, yielding predictions that are different from the traditional committee-dominance theories. The theory predicts that a) senior members, and members who are in safe districts are most likely to challenge another committee's jurisdiction; b) policy proposals may be initiated off the proposer's ideal point in order to obtain jurisdiction over an issue; c) in many cases, policy outcomes will be more moderate with jurisdictional fights than they would be without these turf wars. The paper tests the implications of the theory examining proposed Internet intellectual property protection legislation to reform electronic database law in the 106th Congress.

JEL Classification: D7, K2, O3

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“There is forever a jurisdictional flare-up between the Commerce Committee and Judiciary Committee on [Internet] issues. [The Bliley bill] was very artfully drafted to invoke jurisdiction on their part.”
-- Judiciary staffer quoted in Newsbytes, 12 Oct 2000

I. INTRODUCTION

Congressional committees, as gatekeepers of policy, have enormous power to determine the shape of proposed legislation that reaches the House floor. Scholars have elucidated many reasons why the full membership of Congress might delegate its power to constituent committees. These include that committees offer advantages in cost-effectively obtaining and disseminating information (Krehbiel 1992; Gilligan and Krehbiel 1989), in avoiding cycling in voting and promoting compromise and log-rolling through the politically efficient distribution of rents to constituencies (Weingast and Marshall 1988; Krutz 2001), and encouraging legislators to engage in long-term reputation building to create better information for voters (Kroszner and Strattman 1998, 2000). All of these models, however, have an underlying assumption: all jurisdictional boundaries for committees are static and clearly defined for all issues. There is no ambiguity as to the single committee that exercises agenda-setting power over any given bill.

In practice, however, committee jurisdictional boundaries are fluid and ambiguous Baumgartner et al (2000).¹ In order to increase power, committees attempt to expand jurisdiction to issues on the periphery of other committees' jurisdiction (King 1997). In addition, new issues and technologies come about where there is no clear responsible committee (e.g. nuclear power, computing, Internet). These jurisdictional “turf wars” between committees over

¹ Baumgartner et al (2000) show a strong increasing trend toward jurisdictional ambiguity and overlap among committees.

continuing and new issues can have a profound impact on the behavior of legislators and the outcomes of policies not considered by the previous theoretical and empirical literature.² For example, while static boundaries lead to monopoly agenda-setting power and policy for the controlling committee that may lead to extreme policy, jurisdictional fights between committees introduce additional gatekeepers into the calculus that often results in more moderate policy, or no policy at all (retention of the status quo).

This paper examines how jurisdictional conflict between committees creates policy equilibria that are not predicted by previous models. By modeling legislators and committees as foresightful and strategic, the paper considers which congressional actors have incentive to challenge jurisdiction, and how these potential challenges affect the policy positions of the two committees engaged in a jurisdictional turf war. While the handful of previous papers in the area have described the phenomenon of jurisdictional conflict (Baumgartner and Jones 1993, King 1997, Hardin 1998) they have not modeled the process of jurisdictional challenge, and have not considered how such challenges actually affect policy outcomes.³ If jurisdictional turf wars result in no differences in policy outcomes than the standard committee-monopoly-power

² For a sociological account of jurisdiction in professions that mirrors this paper, see Abbott (1988).

³ A small literature has explored the jurisdictional “turf wars” that occur between committees. The first reason cited for turf wars are shocks to voter preferences, leading to pressure on committees to redefine policy in alternative ways. This leads to new committees, with ideologies more congruent with the “new world,” to encroach upon the jurisdiction of the incumbent committee (Baumgartner and Jones 1993, Jones et al 1993). The second reason for turf wars cited is informational. Hardin (1998) argues that jurisdictional encroachments are used by “challenging” committees to obtain (audit) the private information that incumbent committees might have on the policy’s effect on the challenging committee’s constituents. Finally, King (1997) argues that “turf wars” are the result of political entrepreneurs attempting to expand jurisdiction through the common law jurisdiction systems of bill referral precedent, rather than formal House rules of jurisdiction, for distributional reasons.

While these theories describe various reasons for jurisdictional encroachment from bill introduction and sponsorship, they do not consider three important areas. First, they generally considers only the actions of the challenger committees and not the incumbent committees, because the theories tend to consider incumbent committees that act without foresight of these jurisdictional challenges. That is, if jurisdictional turf wars by challengers are a part of life, then one would expect incumbent committees to take this into account when considering their responses to turf wars. Second, committees are not unitary actors, and individual legislators will have differing incentives to engage in turf wars. Thus, who within committees might have the incentive to engage in jurisdictional turf wars, and why? Finally, the literature fails to link jurisdictional fights with policy outcomes.

models, then they are of muted interest as a topic and a field. If jurisdictional turf wars result in large swings in policy outcomes, then the literature is quite sparse relative to its importance to policy.

The paper begins by developing a theory of jurisdiction with forward-looking committees and legislators. From the theory predictions are generated related to the incentives to introduce new bills and the eventual policy proposals and outcomes. We consider under what conditions compromise will be likely and under what conditions bill blocking will occur. The paper then tests the theory with multiple pieces of evidence and statistical analyses from proposed Internet intellectual property legislation. In 1999, the House of Representatives encountered one of the most clear-cut instances of jurisdictional uncertainty and encroachment with H.R. 353 and H.R. 1858 covering database copyright protection. With hundreds of interest groups acting on each side of the issue, and legislators balancing jurisdictional issues against policy outcomes, the fight between the two bills typifies how jurisdictional battles play out in Congress.

This paper has a number of findings. First, it shows that committees and legislators balance the benefits from policy outcomes with the benefits and costs associated with challenging jurisdiction over a policy domain. Seeking jurisdiction is not a cost-free exercise, and legislators may be willing to accept a sub-optimal policy in order to obtain future jurisdiction over an agenda. This is not considered in other models of committee power. Second, the paper shows those with the highest incentive to challenge an incumbent jurisdiction will be senior members, and members who are in safe districts for whom jurisdiction and the political rents that come with it is most valuable. These results stand in contrast to the current empirical literature, which assumes monopoly committee jurisdictions. Finally, policy proposals and outcomes can be greatly affected by the possibility of a challenging committee arising. In particular, the mere

threat to introduce a challenger bill can serve to moderate the content of the incumbent's proposal. This is important because it suggests that in many areas, policy outcomes may be the result of an equilibrium strategy that the incumbent committee plays in order to keep out potential challenger committees. In some cases, the addition of a new gatekeeper to the process can result in bill-blocking, and thus kill all proposals. Overall, introducing jurisdictional conflict serves to create more moderate policy positions, and perpetuate the status quo, than would occur in the standard committee power model.

In the next section, the Internet database protection legislative fight that occurred in the 106th Congress is described. Section III provides the outline of a simple theoretical model that explicates the behavior when two competing bills are introduced. This section generates five testable implications. Section IV tests each of the hypotheses using descriptive and statistical evidence. Section V explores extensions to the basic model and alternative explanations. Section VI concludes.

II. BACKGROUND

A. INTERNET DATABASE PROTECTION

In January 1999, Howard Coble (R-NC) introduced (for a second time), his bill (H.R. 353) to strengthen Internet intellectual property protection.⁴ A group of companies and interest groups, led by eBay, the Realtors Association, and Reed Elsevier, had been pressing Congress to act. The rise of the Internet made it particularly easy for pirates to extract and replicate on-line, electronic, and Internet databases. This group of firms argued current copyright protection was insufficient in balancing the incentives to accumulate and invest in these databases, with the need

⁴ Much of this section relies on interviews and Baron (2000a).

to protect to the free flow of information. Indeed, many of these companies had become subject to “attack” from “pirates.”

For example, Bidder’s Edge, a rival to eBay, had built its business model upon auction aggregation. The company designed algorithms to search across 120 online auction sites, and then download the information of these target auction sites onto its own site. The “spiders” copied and downloaded about 80,000 web pages from eBay onto the Bidder’s Edge site daily. eBay estimated that Bidder’s Edge alone accounted for between 1% and 1.5% of the queries received by eBay. This imposed a heavy load eBay’s servers and made its computers operate slower for customers accessing the site. Moreover, eBay could no longer control the experience of the consumer once the information was transmitted, and could not control the quality of potentially old and stale information.

Reed Elsvier encountered a similar problem with its Lexis unit. Lexis provided the full text of court cases, regulations, and decisions. A small start-up Internet company, Jurisline.com, purchased the Lexis databases on CD, and copied the CDs to a web server. It then permitted free access to its website containing the legal and regulatory information.

These “attacker” companies sought legal protection under a 1991 U.S Supreme Court decision known popularly as the “Feist” decision (*Feist Publications, Inc. v. Rural Telephone Service Company*, 499 US 340). The key question before the Supreme Court was the scope of copyright protection. What in databases could be protected? The Feist Court ruled, “...all facts—scientific, historical, biographical and news of the day . . . are part of the public domain available to every person.” They continued:

“This inevitably means that the copyright in a factual compilation is thin. Notwithstanding a valid copyright, a subsequent compiler remains free to use the facts contained in another's publication to aid in preparing a competing work, so long as the competing work does not feature the same selection and arrangement...Facts, whether alone or as part of a

compilation, are not original and therefore may not be copyrighted. A factual compilation is eligible for copyright if it features an original selection or arrangement of facts, but the copyright is limited to [*351] the particular selection or arrangement. In no event may copyright extend to the facts themselves. . . .the facts contained in existing works may be freely copied because copyright protects only the elements that owe their origin to the compiler -- the selection, coordination, and arrangement of facts.” *[emphasis added]*

Given that Bidder’s Edge and jurisline.com were using publicly available facts about auctions and court cases, it stood to reason, they argued, that the facts in the online databases were not protected by copyright, and thus could be copied, provided their selection, coordination, and arrangement were not.

Against this backdrop, these database companies sought a re-write of the copyright law, and turned to the chair of the House Judiciary Committee, Subcommittee on Courts and Intellectual Property, Howard Coble (R-NC). eBay, the realtors, and the publishers prevailed upon Mr. Coble, in keeping with a long-held Republican belief that property rights should be preserved, to introduce a bill to strengthen the copyright protection afforded to electronic and online databases. In January 1999, Rep. Coble introduced a bill into the House of Representatives to increase intellectual property protection for electronic databases. Interest groups soon lined up behind the Coble bill, as did 75 co-sponsors.

The Collections of Information Antipiracy Act (H.R. 353) introduced by Coble, did not copyright facts per se, but it did seek to protect databases and thus overturn Feist. It made illegal for any person to:

“(a) . . .make available to others, or extract to make available to others, all or a substantial part of a collection of information gathered, organized, or maintained by another person through the investment of substantial monetary or other resources, so as to cause material harm to the primary market or a related market of that other person, or a successor in interest of that other person, for a product or service that incorporates that collection of information and is offered or intended to be offered in commerce by that other person, or a successor in interest of that person....

(b) ...to extract all or a substantial part of a collection of information gathered, organized, or maintained by another person”

Any person who was harmed under the terms of the Act could bring a civil court case against the alleged infringer, and ask for the profits attributable to the violation, treble actual damages, and a fine and/or imprisonment.

The Act was well received by database producers. Well-known companies such as Monster.com, NASDAQ, and the New York Stock Exchange all supported and lobbied for the bill. A sample list of supporters is provided in Figure 1. As head of the Intellectual Property Subcommittee that had traditionally overseen legislation regarding copyright, Coble was well-positioned to shepherd his bill through the 106th House of Representatives to a final, and expected winning vote in the Republican-majority floor.

H.R. 353, however, resulted in the organization of a competing interest group coalition of old-economy and new economy firms and associations that opposed the bill, spearheaded by Yahoo!, NetCoalition (a consortium of ten large Internet companies, including AOL, Amazon),⁵ Bloomberg, the U.S. Chamber of Commerce, and the American Research Libraries Association. These database users were concerned about how an increase in copyright protection might affect their business and their constituents. A large number of universities, including MIT, Harvard, Chicago, and Stanford, (and their associated research libraries) argued if database companies were able to compile and copyright the facts from their databases, scientific research of all types would be greatly hindered and might even be slowed to a snail’s pace.

In addition, many Internet companies were concerned that H.R. 353 would create “database monopolies,” and thus destroy their business models. Bloomberg was extremely concerned that it would not be able to complete stock price analyses if the Coble bill passed,

because the price information would become the domain of the exchanges. NetCoalition argued that the H.R. 353 was too wide ranging, and should be narrowly crafted to meet the needs of a specific problem. Yahoo! was somewhat uniquely positioned to speak on the issue. It maintained its own auction site in competition with eBay and was being scraped and spidered by auction aggregators just as eBay. Unlike eBay, though, it was an aggregator of information as well. Yahoo! vociferously opposed H.R. 353 because it felt the constriction of the flow of information would ultimately destroy many of the advantages of the Internet, and create a host of unintended consequences. These groups supported the status quo, or Feist decision, as the governing rule over database protection. However, during the Spring of 1999, they saw their support erode. As a number of people on this side of the issue noted, “We came off as quite negative. It is easier to be ‘for something’, rather than ‘against everything.’”

Thus, in May 1999, as H.R. 353 was working its way through the Judiciary Committee, this coalition persuaded Thomas Bliley (R-VA), chairman of the Commerce Committee, to introduce a competing bill into Congress that had the effect of codifying into proposed legislation the Feist decision with some small additional protections. This bill, the Consumer and Investor Access to Information Act of 1999 (H.R. 1858) was referred to the Commerce Committee, Subcommittee on Telecommunications, Trade, and Consumer Protection. H.R. 1858 made it:

“... unlawful for any person or entity...to sell or distribute to the public a database that--
(1) is a duplicate of another database that was collected and organized by another person or entity; and
(2) is sold or distributed in commerce in competition with that other database”

Enforcement of the Act rested with the Federal Trade Commission (FTC), and violators of the Act were punished under the rules respecting unfair or deceptive acts or practices under

⁵ eBay was a member of the NetCoalition until late 2000.

section 5 of the Federal Trade Commission Act, a much more lenient punishment than H. R. 353 prescribed. Supporters of the H.R. 1858 believed that Rep. Bliley, as a relatively powerful House member, could insure that the status quo, or an approximate thereof, was retained. There were now two competing bills in Congress in two separate committees.

In Figure 2, we outline in a one-dimensional spatial model, the positions of the players. Feist (F) was the most lenient possible outcome, offering very low protection to databases. The Judiciary Committee had preferences for very strong protection, which it manifested in the introduction of the H.R. 353 (C). (In later sections of this paper, we discuss why we believe that the Coble bill was likely close to the preferences of the Judiciary committee, and this was an equilibrium outcome.) We place C opposite F , but closer to the median voter, M , than F is to the median voter. Thus, an unopposed Coble bill would likely become law. Finally, the Commerce Committee introduced the H.R. 1858 (B), such that it was on the interval $[F, C]$. We place it to the right of Feist, and closer to the median voter than J . (Again, in the next two sections, we discuss why we believe this is an equilibrium outcome.)

B. THE BILL REFERRAL PROCESS

While the previous section described the bill introduction process in the context of database protection, this section describes the bill referral process more generally. Potential legislation in the House is proposed by representatives in the form of bills. Bills are introduced onto the House floor, and then forwarded to the House Parliamentarian who must, within 24 hours, refer the bill to a House committee for review, modification, or termination. The House Parliamentarian is an appointee of the Speaker of the House and for now is described as an

unbiased referrer of bills, referring bills probabilistically on the merits, to committees. We relax this assumption in Section V.

The bill referral process is made up of two parts: a codified component and a discretionary component. Rule X of the House Rules allots jurisdiction covering pre-specified topics to certain committees. So, the Financial Services Committee has formal jurisdiction over “banks and banking, insurance generally, and international finance,” the Judiciary Committee has formal jurisdiction over “patents, the Patent and Trademark Office, copyrights, and trademarks,” and the Commerce Committee has formal jurisdiction over “consumer affairs and consumer protection, interstate and foreign commerce generally, and regulation of interstate and foreign communications.” Bills that fit squarely into one of the subject areas identified by Rule X are then allocated by the Parliamentarian to the committee with formal, codified jurisdiction over the issue.

Many bills, however, may not fit cleanly into the subject areas identified in Rule X. Some topics may be at the fringe of the jurisdiction of one committee, other bills may not fit into any jurisdiction. Figure 3 illustrates this with a diagram. Imagine two committees, 1 and 2, which have jurisdiction over some set of issue areas. The span of issues is represented by the box. There are issues such as A that are at the fringe of one committee’s jurisdiction (such as Internet intellectual property protection), there are other issues such as B that reside in no committee’s jurisdiction (such as regulation of the accounting industry). It is in these types of cases that the Parliamentarian may exercise discretion in bill referral.

When there is jurisdictional ambiguity, the Parliamentarian turns to other factors in determining the recipient committee for the bill (King 1997). The first factor is whether the current bill amends a public law over which a committee already has jurisdiction. The second

factor is previous bill referral precedents, in a common law sense, to find guidance for the current bill. The third factor is committee expertise in the policy area, evidenced by oversight hearings (Talbert et al 1995), the strategic selection of committee staffers, and joining of special issue caucuses (King 1997). The fourth factor is bill titles and preambles and matching these subject indicators to committees. The Parliamentarian takes these factors into account when deciding where the “weight of the bill” resides, and which committee should receive the bill. It is for these reasons that legislators adjust their behavior and the language in their bills, to enhance the probability that a bill will be referred to their committee. We model this in the next section.

III. THEORY

To understand jurisdiction, we start with individual actors. We assume that legislators’ primary goal is be re-elected (Mayhew 1974). They reach this goal through delivering policy favored by constituents and through obtaining political rents, such as campaign contributions and information (Peltzman 1976). Subsets of legislators make up committees. Any bill proposed by a legislator has three components of benefit that help the legislator become re-elected and that help the committee gain power. The first component is the benefit from the policy outcome. The second benefit is from legislative jurisdiction. The third is the benefit from oversight jurisdiction. However, policy creation is not free; it comes at a cost to the legislator. We consider each of these factors below.

The first benefit, policy outcomes, has been well-modeled in spatial location models (Snyder 1990 and Baron 2000b, for example). In these models, legislators or committees choose policies that are on or close to the ideal points of the median voter in their constituency. The

closer the policy outcome is to the ideal policy of the median voter in the district, the more utility the legislator obtains.

The second benefit is from legislative jurisdiction. Legislative jurisdiction is the right of a given committee to create, review, modify, and refer legislation on a given issue to the floor of the House or Senate. The codified and common-law processes of obtaining legislative jurisdiction are described in the previous section. There are multiple benefits conveyed through legislative jurisdiction. First, with legislative jurisdiction, committees can craft legislation close to their own likings, thus obtaining policy benefits. Second, committee members have control over bills they can use to logroll issues with other committees. Third, committee members can extract information and financial rents from the constituencies they regulate. The benefit to the committee is monotonically increasing in its jurisdiction.

A final type of benefit is oversight jurisdiction. Enacted laws are normally delegated to a surrogate for implementation and interpretation. For example, telecommunications policy is frequently delegated to the Federal Communications Commission (FCC). Pollution control policy is often delegated to the Environmental Protection Agency (EPA). Intellectual property rules are sometimes delegated to the US Patent Office (USPTO), or are sometimes left directly to the federal district courts and the Federal Circuit Court of Appeals. With each policy that is delegated, there is normally a congressional committee that provides oversight of the agency charged with implementation. So the Commerce Committee oversees the FCC, the Resources Committee oversees the EPA, and the Judiciary Committee oversees the federal courts. In most cases, the legislative jurisdiction is coupled with the oversight jurisdiction, but this does not necessarily have to be the case. Some industry specific antitrust issues are likely to be referred to

both the Commerce and Judiciary Committees, even though only the Department of Justice will oversee implementation.⁶

The benefits obtained through this form of jurisdiction can yield both policy and political rents. To the extent that the agency can promulgate regulations affecting industry and interest groups, congressional committees with oversight can place pressure (hearings, budgetary) on agencies to administratively create policy that might have been difficult to implement within the legislative branch. Moreover, members of such committees can also obtain information and financial rents from interest groups that are regulated by the agency the committee oversees.

All of these benefits are not cost free to the committees. In order to engage in policy-making and jurisdictional policy and oversight, members must exert some amount of effort and time, which is related to how much expertise the legislator has in the policy area, and the ease with which she has in crafting legislation.

Committees and legislators are constantly trading off different kinds of benefits. We can characterize the utility functions for the committees as:

$$U_t^J = -|J - x_t^*| + F^J(o) + G^J(l) + \delta E[-|J - x_{t+1}^*|, F_{t+1}^J(o), G_{t+1}^J(l)] - C^J(e) \quad \text{eq (1)}$$

$$U_t^T = -|T - x_t^*| + F^T(o) + G^T(l) + \delta E[-|T - x_{t+1}^*|, F_{t+1}^T(o), G_{t+1}^T(l)] - C^T(e) \quad \text{eq (2)}$$

where U_t^i is the utility to committee $i, i \in \{J, T\}$ in period t , x_t^* is the equilibrium policy generated in period t , $F^i(o)$ is the benefit to oversight jurisdiction, o , $G^i(l)$ is the benefit to legislative jurisdiction, l , δ is the discount rate, and $C^i(e)$ is the cost, C , of effort, e , committee i exerts in writing a bill.

⁶ For example, antitrust enforcement of entertainment firms is largely left to the Department of Justice.

The first term of this utility function is the benefit that the committee obtains from the equilibrium policy that will be passed. Legislators receive positive benefit the closer the policy outcome is to their ideal point. The second term is the discounted benefit obtained by the committee from oversight jurisdiction, $\partial U_i^i(\cdot)/\partial o > 0$. The third term is the legislative jurisdiction a committee has. Note that the benefits to the two committees are zero-sum—any gain in jurisdiction by one committee is a loss by a second committee. We begin by assuming that the incumbent committee, J , has all the jurisdictional power, while the challenger committee, T , has none. This maps into policy A in Figure 3. Normalizing this, we say that $G^J(l) = 1, G^T(l) = 0$ at the outset and create a bound for all time periods such that $G^i(l) \in [0,1]$. So if the challenger bill is referred to J , there is no change in utility to either committee. However, if the challenger bill is referred to T , then J loses utility and T gains that same amount of utility, so that $-\partial U_i^T(\cdot)/\partial l = \partial U_i^J(\cdot)/\partial l < 0$. The fourth term is the discounted expected payoff to the committee of waiting until the next congress to enact policy, and is a function of the policy outcome in the next period and both jurisdictional outcomes. Finally, there is a cost to bill introduction, and that is encapsulated in $C^i(e)$, such that the incumbent committee has lower marginal cost in writing a bill than the challenger $\partial C^T(e)/\partial e > \partial C^J(e)/\partial e$. This will induce the incumbent committee to introduce bills before the challenger committee will, *ceteris paribus*.

The moves of the game are shown in Figure 4. In the model, an incumbent committee, J , proposes a bill that is referred to that committee. An incumbent committee is the committee that would normally have jurisdiction over the issue. This would be equivalent an issue in the position A in Figure 3. There is a challenger committee, T , which can choose either to introduce

a bill at cost, $C^T(e)$, or not introduce a bill. If there is no bill introduction, then the bill the incumbent committee chooses to deliver to the floor that is closer to the median voter, M , than the status quo, F , is to M , will become policy. If the challenger does introduce a bill, there is a probability, p , that this bill will be referred by the Parliamentarian to the challenger committee, and a probability $(1-p)$ that it will be referred to the incumbent committee. This probability will be pivotal in the behavior of committees. Again, if the bill is introduced to the incumbent committee, the incumbent committee can choose any policy it wishes which is closer to the median voter than the status quo. This will become law because it has agenda-setting power.

Once the second bill is referred to the challenger committee, the challenger committee has obtained some amount of jurisdictional benefit because the Parliamentarian now recognizes T as a legitimate source of legislative jurisdiction over the issue. Conversely, J loses some jurisdictional benefit, because formerly its legislative jurisdiction was unchallenged.

With two bills in two committees, there are three possible outcomes. First, both bills could come to the floor and a floor fight would ensue. Although theoretically this is a possibility, the costs to the majority party are very high. The majority party retains control and chairmanship of both committees, thus there would be an intra-party floor fight. While behind closed-doors disagreements are sometimes acceptable to the party leadership, an all-out floor fight between committees is viewed as prohibitively costly to the party, except in most extreme circumstances (e.g. campaign finance reform). The reputation capital the party has built with the electorate is substantially diminished with floor fights and fights between senior members of the same party (committee chairs). Thus, while theoretically possible, a floor fight has extremely high cost to the party and is thus practically disallowed. The Speaker, through his gatekeeping capabilities, will kill both bills.

The second possible outcome is a compromise between the committees. If a compromise cannot be reached, the final outcome will occur—the leadership will kill both bills and the status quo will persist until the next year, when there is a possibility to introduce bills again. Thus, jurisdictional conflict is one way in which the Speaker is able to use his ex post gatekeeping authority of scheduling bills for floor votes to create compromise.

To consider the effects of jurisdictional outcomes on policy, let us consider extreme effects of the bill referral process. Let us assume the probability of a second bill referral to the challenger committee, T , is zero ($p = 0$), in this framework. In this case, only one bill is introduced, C , that is closer to the median voter than F . This bill goes to committee J and becomes law. This is the underlying assumption of the bill referral process in most of the committee-dominance literature and C becomes the equilibrium. Now let us assume that T receives the second bill with $p = 1$. First, recognize that that even if no policy passes, T is better off and J is worse off, for reasonable bill introduction costs $C^T(e)$. This is because by merely having the second bill referred to T , T gains some legislative jurisdiction over the issue and J loses some legislative jurisdiction over the issue. Second, on the policy-making front, J will introduce a bill so as to maximize its expected utility. In order to do this, J must introduce bill C so that T is no worse off than the compromise policy solution plus the expected jurisdictional gains it would make (minus the costs of bill introduction) from introducing another bill. As the probability that T receives a second bill increases, J is willing to introduce a bill closer to T 's ideal point. That is, as the threat of a challenger committee encroaching on the policy space increases, the more the incumbent committee is willing to attenuate its initial policy position to prevent this encroachment. It can be shown that the equilibrium policy when there is jurisdictional conflict will be on the interval $[T, F']$ where F' is the same distance from F to T ,

but positioned on the opposite side of T than is F . This is a form of compromise—offering a more moderate policy position to induce no challenge from a potential competitor. This result is quite different from the previous committee dominance literature with static, unambiguous, and monopoly committee jurisdiction. We now generate the first hypothesis.

H1: The higher the probability a challenger bill will be referred to another committee, the more moderate the incumbent committee's policy position will be to prevent jurisdictional encroachment.

If bill introduction is a cost free exercise, then the expected utility to introducing a bill is strictly positive for all members of congress for any $p > 0$. This is because even with very, very tiny probabilities of a challenger committee receiving a bill referral of a second bill, there is a positive payoff to the challenger committee. However, the cost is not zero. In fact, different committees may have different costs in writing a bill in a given area because of their experience and expertise. Committees that have experience in the focal policy issue or related policy issues will have lower costs of formulating policy in the focal area. That is, it is very expensive for the Agriculture Committee to write a bill regarding copyright, but it is less expensive for the Commerce Committee. This leads directly to our second prediction.

H2: Committees close in expertise to the focal committee are more likely to introduce challenger bills.

As Eq (1) and (2) indicate, legislators can engage in trade-offs. There are two prototypical types of models of legislator utility functions. The first, is a spatial model in policy space, where legislators are trying to obtain their highest utility policy outcome. The second is a jurisdictional encroachment model, where legislators are trying to obtain the most legislative and oversight

jurisdiction feasible. In this paper, we consider that both factors are important, and legislators will be willing to trade one for the other. For example, if the Judiciary Committee introduces a bill that is right on the ideal point of the Commerce Committee, the Commerce Committee members may still introduce a competing bill, similar to the Judiciary Committee bill, to obtain jurisdictional benefits. Indeed, there are instances that might arise when a challenger committee may introduce a bill that is far from its ideal point if it believes that the positioning of the bill will enhance its ability to obtain jurisdiction. It depends fundamentally upon how the challenger committee weights the policy outcome with the costs and benefits from legislative and oversight jurisdiction. This is not considered in previous models of committee dominance. We state this in the third hypothesis.

H3: If legislative and oversight jurisdiction is highly enough valued by the challenger committee, the challenger committee will introduce policy that is not close to its idea point to gain jurisdiction.

Not only will different committees have different incentives to act, so too will different members of those committees. Two characteristics to jurisdiction lead to prediction. The first, as King (1997) notes, legislative jurisdiction takes time to build, through multiple bill referrals in many congresses. Oversight jurisdiction takes to time to implement as well (Weingast and Moran 1983). Thus, individuals who value jurisdiction relatively more than those who value policy will be those legislators who expect to be in congress when they are able to realize the benefits. That is, individuals who are in safe seats are more likely to value jurisdiction, which comes to fruition in the longer-term, than those in marginal seats, who will be more concerned about immediate policy outcomes that enhance re-election chances in the next election. Second, jurisdiction will be more important to those most able to use the jurisdiction ceded to them.

These are likely to be the senior members of the committee in the second, third, and fourth positions, who will become chairmen themselves. These considerations are not taken into account in the previous models of bill sponsorship. We state this in the next hypothesis:

H4: Senior members and members in safe seats in the challenger committee are most likely to sponsor challenger bills.

In a one period game (without expectations), there will always be compromise, enforced by the Speaker's gatekeeping power. The last term of the utility function, however, expresses each committees' expectation of outcomes in the next period. If there is full information of these expectations in the next period, compromise is still reached. This is because both committees know the expectations about the outcome of the legislative game in the next period, and can factor this into the compromise they frame in this period. However, if there is uncertainty, and information is private, then compromise may be elusive. Assume each committee makes a private, unbiased assessment of its future prospects in the next congress, with some error, $\varepsilon \sim N(0, \sigma^2)$. If both sides have negative errors (private pessimistic draws about their prospects for the next period) then there will be more room for compromise in the current period. If both sides have positive errors (private optimism about their possibilities in the next period), then there will be no compromise and both bills will die. If one side is optimistic and one side is pessimistic, then it is the relative optimism and pessimism that will matter. We state this in our final hypothesis.

H5: Conditional on the challenger bill being referred to the challenger committee, there will be a compromise equilibrium, provided a) both parties are not idiosyncratically optimistic about their possibilities in the next Congress or, b) the relative optimism of one party does not exceed the relative pessimism of the second party.

IV. EMPIRICAL EVIDENCE

In this section, we empirically examine the predictions of the committee jurisdiction model on legislator and committee behavior, and policy outcomes. We test each of the five hypothesis posed in the theory section by examining Internet legislation and focussing on the copyright fight that occurred between the two committees.

A. EXAMINING HYPOTHESIS 1

In order to examine Hypothesis 1, we must establish the incumbent committee was the Judiciary Committee, and we must examine the probability that the Judiciary Committee would be challenged by another committee over copyright protection. If the probability is high, then, in equilibrium, the Judiciary Committee should introduce a moderate bill, somewhat close to the preferences of the competing committee, to stave off a jurisdictional challenge. If the probability is low that a challenger committee will arise, then the bill introduced by the Judiciary Committee can more closely reflect the preferences of the committee, and thus be more extreme. In this section, we establish three arguments: the Judiciary Committee was the incumbent committee, H.R. 353 likely reflected the sincere preferences of the Judiciary Committee, and the probability of a challenger committee arising was small.

There are three main factors that suggest the Judiciary Committee was the incumbent committee, and that it was likely to receive H.R. 353. First, Representative Coble had a long-expressed interest in the bill. This was not the first time a nearly-identical version of this same bill had gone through the House. The earlier bill was also referred to the Judiciary Committee in

the 105th Congress, giving precedent for this bill to follow the same committee referral path.⁷ Second, Coble's staff, with the help of similarly-minded interest groups, had written the H.R. 353. King (1997) notes that bills are written with language so as to route the bill to certain committees. Coble in essence wrote a bill that had a high probability of being referred to his committee, and eventually his subcommittee. Finally, the Judiciary Committee had set a long-established precedent of handling bills covering copyright. Table 1 examines all legislative hearings covering proposed copyright bills in the 80th through 103rd congresses (1946-1994)⁸. During this nearly 50-year period, the Judiciary Committee received 86% (127) of referrals. We can assume that this was the lowest probability that the Coble bill would have been referred to the Judiciary committee.⁹ That probability was enhanced by the previous bill history, and by the fact that Coble, and interest groups allied with him, had written the bill.

To establish sincerity of the preferences, we turn to two main arguments. First, the current bill was almost identical to the bill introduced into the previous Congress, when there was no jurisdictional challenge. Second, H.R. 353 reflected the consistent behavior and rhetoric of the Judiciary Committee of strong intellectual property rights. Although the Coble bill had the support of the median voter (the voice vote in the previous Congress is an indicator of the capturing of the median voter) it was far stronger than the Feist decision. Thus, we map the policy supported by Judiciary, *C*, to the right of the median voter in Figure 2.

Finally, if the position of H.R. 353 is to be an equilibrium policy choice for the Judiciary Committee, then we must assess the probability (*p*) that nature would refer a challenger bill to a

⁷ In this Congress, Howard Coble attached his bill as an amendment to the Digital Millennium Copyright Act (DMCA). The actual vote on the amendment was a voice vote. Senator Orin Hatch eventually demanded that this provision be retracted from the Senate version, and the DMCA passed without the Coble Amendment.

⁸ Center for American Politics, University of Washington.-

⁹ We contrast this to more stable issues areas, such as agriculture, which has an 86% to 90% probability of bill referral to the Agriculture Committee.

second committee for consideration. If p is high, then Coble should have introduced a bill that was moderate; if p is low the bill can mirror \mathcal{J} 's preferences in equilibrium. As noted in Table 1, 14% of legislative hearings on copyright bills were sent to another committee. Thus, there was an unconditional probability of 14% that another committee might get a second bill. The Science, Space and Technology Committee (under various names) received the second most number of copyright bill referrals at 5% (8) during 1946-1994, and posed perhaps the greatest threat for a competing bill. However, Representative James Sessenbrenner (R-Wis), Chairman of the Science, Space, and Technology Committee, was in line to ascend to the chair of the Judiciary Committee, and did not want to upset the possibility of this coming to fruition in the next congress. He was thus reticent to introduce a bill competing with the Judiciary Committee's bill.¹⁰ With the Science Committee unlikely to introduce a bill, the base probability that Coble faced was about $p = 9\%$ that another committee would introduce a competing bill.¹¹ Thus, in this analysis, the behavior of the Judiciary Committee in introducing a somewhat extreme bill seems reasonable.¹² In this sense, the behavior of the Judiciary Committee was consistent with Hypotheses 1. It is important to establish Hypothesis 1, because Hypotheses 2, 3, and 4 are observable only in disequilibrium, which occurs in this setting.¹³

¹⁰ In all likelihood, he opposed the introduction of H.R. 1858, because this would diminish the jurisdictional clout that the Judiciary Committee maintained over copyright.

¹¹ King has pointed out that in reality, the true probabilities are probably much lower than reflected in this paper, but highly correlated with the estimated probabilities.

¹² Although we are examining 50-year mean probabilities, we can also review shifts in probability over time. Table 1 shows that other than the Science Committee, no other committee had systematically increased their legislative referrals in copyright issues over the past 10 congresses. Thus, had any member of Congress introduced a bill covering copyright law, it would likely have been referred to the Judiciary Committee.

¹³ That is, it is the case that if the Judiciary Committee believes that there will be a competing bill, it will introduce a more moderate position in the first instance, thus making competing bill introduction too costly for the potential benefit, and thus unobservable.

B. EXAMINING HYPOTHESIS 2

In this section, we consider which committees had the lowest effort in crafting a challenger bill, and how committees go about lowering the cost of challenging. The incentive for a member from a competing committee to introduce a bill is both policy and jurisdictionally oriented. Table 1 indicates that only a handful of committees, other than Science, had any expertise in drafting copyright bills (the Commerce Committee included). Although they had minimal expertise in copyright, the Commerce Committee was aggressively attempting to expand its jurisdiction over issues covering the Internet.¹⁴ In framing the copyright bill in another dimension—an Internet bill—the Commerce Committee members not only did craft a bill in an area in which they had expertise, but also enhanced the probability of bill referral to their committee. Creating this added dimension or framing to the issue enhanced Commerce Committee claims to the issue.

The jurisdictional “turf war” over the Internet had proceeded with some vigor during the 106th Congress. Table 2 illustrates all the main bills that were introduced in the 106th Congress covering the Internet. Commerce was attempting to expand its jurisdiction in Internet issues, so it could obtain the political rents related to the “digital economy.” The success of Commerce in this new issue area is evidenced by its reception of primarily referrals on over 63% of these bills (21 of 33). In reframing the copyright issue as an Internet issue, the Commerce Committee had not only an incentive to introduce a competing bill, but it also had lower effort than other committees in crafting a bill in this area. Although *ex ante* Coble’s strategy seemed sensible in crafting an extreme bill as a copyright bill, the Bliley strategy framing the competing bill as an

¹⁴ By the time the 107th Congress convened, the Commerce Committee had changed the name of the Subcommittee on Telecommunications, Trade, and Consumer Protection to the Subcommittee on Telecommunications and the Internet. The Judiciary Committee changed the name of the Subcommittee on Courts and Intellectual Property to

Internet bill not only lower the effort of the bill's crafters, but also *ex post* increased the probability of bill referral to the Commerce Committee where the *ex ante* probability (as a copyright bill) would have been low. These results are consistent with Hypothesis 2 that the Commerce Committee had built up expertise in the area of Internet regulation, and was thus most likely to have low effort in introducing a competing bill.

Table 2 also provides additional evidence of the broader jurisdictional struggle between the two committees in Internet issues. Although 70% of bill referrals were to the bill sponsors' committee, there is still strong evidence of jurisdictional fights. Sixteen bills were introduced by Commerce Committee members, and twenty-three were referred to that committee. Eight were introduced by Judiciary Committee members, and twelve were referred to that committee. While the struggle to regulate the Internet occurred between Judiciary and Commerce, the Transportation and Infrastructure Committee attempted to enter the fray (framing the Internet as an "infrastructure" issue), but was unsuccessful. Though members from this committee introduced five bills, their committee was referred only one bill. Moreover, on specific issues, there are winners and losers. For example, H.R. 313, on consumer privacy, clearly affected the banking industry in a serious way regarding financial transactions and disclosure. Rep. Vento, a member of the banking committee introduced the bill, but his committee received no oversight or reporting authority; instead the bill was referred to the Commerce Committee.

C. EXAMINING HYPOTHESIS 3

The third hypothesis predicts that challenger committees may not support bills in their best policy interest, if they believe that such a position will increase the committee's legislative

the Subcommittee on Courts, the Internet and Intellectual Property. This is consistent with King (1997) arguing that subcommittee names reflect current and desired jurisdictions.

and oversight jurisdictional scope. While the theory in Section III does not exclude the possibility that bills will be introduced by challengers with policy positions they support, there are few theories that predict that bills that are not in the policy interests of the committee will be introduced.

To test this hypothesis, we examine bill co-sponsorship and its relationship to turf wars using multivariate statistical analysis focusing on the policy-jurisdiction trade-off.¹⁵ As noted in Section II, the oversight of the implementation of database copyright bills was to be delegated to the courts in H.R. 353 and to the FTC in H.R. 1858. Hence, Coble and Bliley delegated implementation of their respective bills to agencies for which they had oversight.

If Hypothesis 3 has credibility, we should see the sponsors H.R. 353 bill acting out their relatively sincere constituent preferences. They have an *ex ante* belief that there is a low likelihood of a challenge to the Coble bill, thus the jurisdictional benefits are moot to them. (The second and third term of J 's utility function is not changed.) However, supporters of H.R. 1858 could be responsive to their constituents, or to jurisdictional issues at hand. If we find the former (constituency responsiveness), this is consistent with a host of different theories. However, if we do not find the former, and find only the latter (jurisdictional responsiveness), this is consistent only with the theory of committee jurisdictional conflict.

We begin by considering as our dependent variable whether a legislator co-sponsored H.R. 353 (1) or not (0). In a second set of specifications, we consider whether a legislator co-sponsored H.R. 1858 (1) or not (0).

We consider four types of independent variables. All the variable definitions are summarized in Table 3. The first variable measures the amount of educational employment in

¹⁵ For papers on patterns of co-sponsorship, see Gilligan and Krehbiel (1997), Kessler and Krehbiel (1996), and Krehbiel (1995).

the legislator's district. Recall that the only cleanly identifiable industry sector that was uniformly opposed to H.R. 353, and supported H.R. 1858, were universities. Nearly 100 universities publicly expressed opposition to H.R. 353 and support of H.R. 1858. Thus educational employment should be correlated with constituent preferences. The second set of variables is the committee assignments of the legislators, to control for jurisdictional disputes. Dummy variables for membership on the House Commerce Committee, Judiciary Committee, and Science Committee are coded. The third variable measures the ADA score of the representative, as a proxy for the ideology of legislator. Finally, a number of control variables for the representative's district are coded. These include the median income in the district, the median housing value in the district (as a measure of wealth), and the number of individuals with college degrees. All district characteristics are drawn from Census data.

The predictions of the theory are threefold, and relatively stringent. First, to the extent that the incumbent committee believes it is acting unchallenged, the bill it proposes should reflect the true policy concerns of its sponsors' constituents. Therefore, we should find the coefficients on educational employment to be negative and statistically significant for the H.R. 353 regressions. Second, if the challenging (Commerce) committee is seeking jurisdiction, and not actual policy, they should not be voting with their constituents. So the coefficients for on educational employment for H.R. 1858 should not be statistically significant. Finally, jurisdictional conflict between committees should be manifested by committee memberships, with committee members splitting to support their own bills. Thus, in the H.R. 353 regression, there should be a positive coefficient on the Judiciary Committee variable and a negative coefficient on the Commerce Committee variable. The opposite should be true of the H.R. 1858 regressions. All three of these predictions together are consistent with the various predictions of

hypothesis three, and the latter two would be inconsistent with previous models of committee dominance.

We present the results of a probit analysis in Table 4. In all statistical models in this paper, the coefficients report the change in the probability of the dependent variable for an infinitesimal change in each independent, continuous variable and, by default, the discrete change in the probability for dummy variables. The two-sided t-statistics are presented below the coefficient estimates, with the 95%, and 99% significance level noted for each coefficient. Models (1) and (2) use H.R. 353 as the dependent variable; Models (3) and (4) use H.R. 1858 as the dependent variable. Models (1) and (3) contain only the constituency and ideology variables; Models (2) and (4) include the committee assignment variables. H.R. 353 was cosponsored by 17% of the members of Congress, while H.R. 1858 had only 4% of the congress supporting his bill.

Models (1) and (2) show that the coefficient on educational sector employment variable is negative and statistically significant as predicted. In no specification is the coefficient on ADA score or any other control variables statistically significant. The large negative coefficient on educational employment for Models (1) and (2) is consistent with H.R. 353 co-sponsors voting with the preferences of the constituents. Every 10,000-person (about 1.5%) increase in educational employment (about the employment from a medium-sized university in the district) makes a legislator 7.7% less likely to sponsor H.R. 353. This is consistent with the first prediction. In Models (3) and (4), the coefficients on educational employment is not statistically different from zero. This is consistent with H.R. 1858 supporters not sincerely voting with their constituents' interests. This is consistent with the second prediction.

Finally, the four coefficients on the Judiciary and Commerce Committee membership variables are all large in magnitude, signed as predicted, and three of the four are statistically significant. Science Committee members show no discernible higher or lower cosponsorship tendencies for each bill than other members of the House. A Commerce Committee member is 10.1% less likely to cosponsor H.R. 353 than the average House member, and 23.4% more likely to cosponsor H.R. 1858 than the average member. A Judiciary Committee member is 33.5% more likely to cosponsor H.R. 353 and 1.1% less likely to the cosponsor H.R. 1858 than the average House member. This last coefficient on Judiciary Committee is negative as expected, but does not reach statistical significance. Rep. Rick Boucher, who sits on both the Commerce and Judiciary Committees, was the only Judiciary Committee member to co-sponsor the Bliley bill. The small number of sponsors (18) likely drives the lack of statistical significance on this coefficient. Other than this perturbation, all coefficients come out as expected. This last result on committee membership is consistent with the third prediction finding indications of jurisdictional fights between committees. Together, these three results suggest that turf wars are important, and that the incumbents, not expecting a challenge, acted more sincerely than the challengers did in the policy domain.

D. EXAMINING HYPOTHESIS 4

Hypothesis 4 predicts that individual actors will also have preferences over bill introduction. It predicts that senior members and members in safe seats of the challenging committee will have the greatest incentive to exert effort in mounting a jurisdictional challenge. The legislators who gain the most from added jurisdiction and are those most likely to survive in the next election from not sincerely representing their constituents' interest on any given issue.

The latter point could be thought of as those legislators in competitive seats having very high discount rates.

To test this hypothesis, we conduct an econometric analysis of the cosponsorship behavior of members of the challenging committee. We consider who from the Commerce Committee ($n = 53$) cosponsored the H.R. 1858, the challenging bill, using as our dependent variable whether a member of the Commerce Committee cosponsored the H.R. 1858 (1) or not (0). The independent variables are as before, but this time we include two additional variables: Committee Rank as a measure of Commerce Committee seniority, and Election Margin, as a measure of how safe the member is in her seat. We predict that the coefficient on Committee Rank should be negative (more senior members are more likely to support challenging bills) and the coefficient on Election Margin should be positive (members with higher margins of victory in the last election are more likely to support challenging bills).

The results of the probit analysis are presented in Model (5) of Table 5. Congruent with our earlier findings, legislator ideology, educational employment, and the control variables do not have statistically significant coefficients. There is, however, a statistically significant relationship between the two variables of theoretical interest, and the dependent variable. More senior members of the Commerce Committee are more likely to support the H.R. 1858 than are their junior counterparts, and legislators with larger margins in the last election are more likely to support the H.R. 1858. Each step up on the committee makes an individual 2.5% more likely to sponsor the H.R. 1858. Each 2,200 increase in vote margin increases the probability of support of the H.R. 1858 by 1%.¹⁶

¹⁶ A similar analysis done on Judiciary Committee H.R. 353 cosponsors finds that neither of these variables have a statistically significant effect. This is consistent with the theory, because only challenger committees stand to gain jurisdiction from these jurisdictional challenges.

These results stand in contrast to Krehbiel (1995), in his examination of budget co-sponsorship, which shows that electoral margins make no difference in bill co-sponsorship, while more junior members of committees were more likely to co-sponsor bills. One key factor that differentiates Krehbiel's work from this study is that there is no jurisdictional conflict in Krehbiel's budget vote. Indeed, it may be that precisely because there is jurisdictional conflict, the current paper obtains results that are the opposite that Krehbiel has. Junior members get little benefit from jurisdiction (as in this paper), but may get lots of benefit from high profile co-sponsorship on budgeting issues (as in Krehbiel's paper). Likewise, those in safe districts can trade policy for jurisdiction (as in this paper), but there is no trade to occur when there is no jurisdiction at stake (as in Krehbiel's paper).¹⁷

E. EXAMINING HYPOTHESIS 5

With H.R. 353 in the Judiciary Committee, and H.R. 1858 in the Commerce Committee, the game proceeded to the final stage of three options: kill both bills, compromise on a single bill, or engage in a floor fight where the "best bill" would win.

The first option, a floor fight, is institutionally possible in the House. In fact, the two sides considered such a proposition. One H.R. 353 supporter noted:

"We were ready to have a floor fight over this issue. However, the leadership of the House was not willing to have a floor fight. There would be too much blood. They were going to kill both bills if we couldn't get a compromise."

For the same reasons elucidated in Section III, the floor fight alternative was eliminated (or dominated by other strategies) through the gatekeeping power of the Speaker.

¹⁷ Schiller (1995) also finds no election margin effect.

This floor fight eliminated as a strategy, the two sides attempted compromise. A series of meetings were held with Bliley and Coble staffers, and the interest groups involved. For a number of months, both sides attempted to craft a compromise agreement, but none could be found. Thus, the Speaker refused to bring either bill to the floor for a vote, and both were killed.

Why was neither committee willing to compromise? The reason lies in the comparative payoffs between compromise and killing the bill. The interest groups supporting Bliley offered H.R. 1858 to block H.R. 353 from becoming law. That is, they were attempting to force a satisfactory compromise between committees that they had been denied within the Judiciary Committee. Had compromise been reached within the Judiciary Committee, this jurisdictional fight would not have occurred. Moreover, in the long term, H.R. 1858 supporters believed that their coalition would expand, and they would continue to win future fights. In addition, with the change in Judiciary Committee chairmanship in the next Congress from Hyde to Sessenbrenner (at the time the subcommittee chairmanship was unclear, though a year later it turned out to be Hyde), advocates of the low intellectual property protection position believed Sessenbrenner would pressure the subcommittee chair to offer a much more moderate position. Sessenbrenner had been sympathetic to the university community as Chairman of the Science Committee in the past. The Commerce Committee had already succeeded in claiming some legislative jurisdiction over copyright issues, and H.R. 1858 supporters believed that, in the worst case, they could again have the Commerce Committee claim jurisdiction, and thus block, any unsuitable compromise position. Hence, the current and future payoffs to compromise seemed lower than those of having the bills jointly killed for the H.R.1858 coalition.

For the H.R. 353 coalition, the final calculus was also intertemporal. Though they were willing to compromise with the supporters of H.R. 1858, they were unwilling to move

sufficiently close to engender unified support for a compromise bill. A bill similar to H.R. 353 had been approved by the House floor in the previous session of congress. Although it was facing a challenge in the current session of congress, H.R. 353 was likely to pass in the next congress, they professed amongst themselves. Billy Tauzin (R-LA) (who was to take over for Bliley as Commerce Committee chair) would be more sympathetic to their interests. Finally, H.R. 353 supporters believed as the Internet evolved and stabilized, more members of Congress would see the logic of their approach. That is, the preferences of the median voter would shift in their favor. H.R. 353 forces were willing to let status quo prevail this year, and attempt to pass their bill again next year attempt again. Compromise today for the H.R. 353 supporters had a lower payoff than having both bills killed.

Thus, compromise was not reached in the 106th Congress, and instead, both bills were killed in the Rules Committee by the House leadership. Both sides were optimistic about their chances in the next Congress, and this resulted in the equilibrium that neither side accepted compromise. Thus, even though either bill would likely have made the median voter of the House floor better off than Feist, both bills died. This final result is consistent with Hypothesis 5 on relative optimism.

V. EXTENSIONS AND ALTERNATIVE EXPLANATIONS

In the previous section, we provide evidence consistent with the theory. In this section, we consider three alternative explanations or extensions to the theory presented: the role of the Parliamentarian as an agent of the Speaker of the House, the role of uncertainty and information in jurisdictional disputes, and the role of interest groups in affecting the utility function of legislators and committees.

A. THE SPEAKER OF THE HOUSE AND BILL REFERRAL

One concern with the theory is that the Parliamentarian is modeled as a nonpartisan, unbiased allocator of bills. As an appointee of the The Speaker of the House, one might expect that the Speaker will exert *ex ante* control over the bill referral process, through his agent (the Parliamentarian). The Speaker may have preferences over target committees for particular bills and wish to mold the nature and policy outcomes of jurisdictional battles, and thus exert his discretion through the Parliamentarian.

There is a large amount of evidence, however, this is not the case. King (1997: Chapter 4), in perhaps the most detailed and cited analysis of congressional parliamentarians, has argued strongly that the Parliamentarian, while serving at the pleasure of the Speaker, has wide discretion, exclusive of the Speaker, in determining which committees receive which bills. King points out that between 1928 and 1994, there were 13 different speakers of the House, but only two head parliamentarians (p. 78). When Newt Gingrich (R-GA) became Speaker in 1995 (after the ouster of Thomas Foley (D-WA)), he fired all employees under his remit (including the nonpartisan House Historian and the Head of Food Services), but retained the Parliamentarian. Speaker after speaker has been bombarded with requests to remove the parliamentarian for political reasons, only to stand behind the nonpartisanship of the speaker. Additionally, King documents in extensive interviews with both Democrats and Republicans, that the Parliamentarian is essentially the last nonpartisan member of the Congress.¹⁸ CQ Weekly

¹⁸ King notes that one minority staffer on the Rules Committee who regularly interacts with Parliamentarians said that “sometimes you get a little hint [the Parliamentarian is] being reined by the speaker, but not on bill referrals. They’re straight about that.” Another noted, “Even the parliamentarians have to be careful, frankly, that they don’t piss off the leadership too much by giving advice that’s totally contrary to where the leadership wants to go. There is some politics mixed in, but they would never admit to it. But if you want to know, does anyone tell the parliamentarians what to do or how to refer bills? Absolutely not. No.” (p. 84)

Report noted, "...[the House Parliamentarian] maintains a tradition of nonpartisanship in the post." In addition, the 30 years of apprenticeship required to understand the complex rules of procedures make the Parliamentarian difficult to replace.

This strong form argument of nonpartisanship of the Parliamentarian does not preclude the Speaker from influencing jurisdictional disputes. The Speaker, in determining which bills come to the floor from committees, can control the agenda setting process *ex post*, as modeled in Section III. Alternatively, the Speaker can encourage (and perhaps offer resources to) committees to introduce bills competing with ones he does not prefer. In this way, the Speaker can create jurisdictional conflict, and then strengthen his hand at killing the original bill (and the competing bill) through the *ex post*, agenda-setting mechanisms.

B. UNCERTAINTY, INFORMATION, and THE SPEAKER OF THE HOUSE

A second concern is that despite this detailed and well-evidenced argument by King, it may be the case that King is incorrect, and the Speaker can control the bill referral process. We may not observe Speaker intervention with parliamentarians because parliamentarians are compliant to the Speaker's wishes in equilibrium.

In a complete information model of Speaker *ex ante* bill referral control, the Speaker refers bills only to those committees with preferences close to his own. Through the use of *ex ante* control, the Speaker can micromanage the process of bill introduction and referral (and thus policy outcomes), by insuring that all bills go to the committee that has similar ideology to his own. In doing this, there will be no jurisdictional conflict, because all bills will go to the committee of congruent ideology with the Speaker, and this committee will generate a policy which is close to the Speaker's ideal point. Members, anticipating this outcome, will not

introduce competing bills, in equilibrium. We do see jurisdictional conflict in practice, so this model must not be correct.

A more interesting reason for *ex ante* control, however, is that the Speaker may be splitting jurisdiction for informational reasons in a model of incomplete information.¹⁹ The Speaker, when faced with a new issue, may not know what outcome is congruent with his preferences. Thus, the Speaker creates jurisdictional conflict between committees of differing ideologies so that they generate information for the Speaker to assess the optimal bill structure. Committees with differing ideologies (e.g. liberals and conservatives) are each encouraged to introduce competing bills on a given topic. The return to a given committee to exerting effort in bill introduction is twofold: a) jurisdictional claims, and b) ideological policy claims if they win.²⁰

In order to econometrically test this hypothesis, one would need a detailed analysis of preferences on a variety of bills and issues. This is well beyond the scope of this paper. However, we introduce three different reasons that while this story may be possible, it is not likely. First, other tools available to the Speaker can generate this same result at lower cost to the committees and speaker. The Speaker can refer a given bill contemporaneously to two or more different committees, or sequentially to one committee and then to another committee. Each committee has the power to modify the bill in the committee to its liking, thus generating information for the Speaker, without having to engage in a complete, and more costly, writing of a new bill. Sequential referral and multiple referral mechanisms, at the discretion of the Parliamentarian, can generate the result without any “strategic” behavior by committees.

A second, more case-specific, reason that it is unlikely the Speaker created *ex ante* jurisdictional conflict for this particular issue is that the bill was previously introduced onto, and

¹⁹ See Gilligan and Krehbiel (1989) for an example.

²⁰ This is akin to side payments as in Snyder (1991).

passed, the House Floor as an amendment to the DMCA. Therefore, in order for the Speaker to create jurisdictional conflict for informational reasons in this case, there would have to be new information in the previous 12 months that the Speaker sought.

Third, we can examine the data to see if informational reasons drove the Speaker to create jurisdictional conflict to obtain information. If the Speaker wishes to obtain maximum information, he should maximize the variance of information he obtains. In doing this, he lowers the probability of obtaining identical information from two like-minded committees. He therefore should allocate jurisdiction to committees with demonstrated differing ideologies on the issue. That is, the Speaker should refer competing bills to committees that are opposed (or on the opposite ends of the spectrum) to the Judiciary Committee.

To explore this point, we examined all bills that referenced the Internet, Digital Technology, or Copyright, that were introduced into the second session of the 105th Congress and the first session of the 106th Congress, before the referral of H.R. 1858 to the Commerce Committee. Although there were numerous bills, three bills were brought up for a total of four votes that were not unanimous. In all four votes, *all* the members of the Commerce Committee voted with *all* the members of the Judiciary Committee. The legislators who voted against this group were predominantly from the Armed Services, Banking, Education, Resources, and International Relations Committees. If a Speaker was attempting to expand the scope of the information draw, it seems he would refer competing bills to these committees to generate maximum information, rather than the more like-minded Commerce Committee.

While the foregoing discussion does not exclude the possibility that the Speaker creates jurisdictional overlap for informational reasons, it suggests that competing bill introduction is an expensive way of doing this. Moreover, the data do not support the argument that the Speaker

maximizes information in this case. Rather, the Speaker has more control and lower costs in using multiple referrals or sequential referrals to generate the same outcome.

C. INTEREST GROUPS

A final concern about the theory is that interest groups are not formally modeled. This, however, can easily be incorporated into the model. Interest groups serve two main purposes in the model. First, they serve a fire alarm function (McCubbins and Schwartz 1984). They troll the landscape and alert competing committees about jurisdictional “mistakes” made by incumbent committees. When there is an opportunity for an interest-group-friendly committee to claim some jurisdiction over the issue, interest groups alert the potentially competing committee. In this sense, they notify competing committees of the probability, p , in the model. Second, interest groups are quite instrumental in bill creation. By writing sections of bills, interest groups can lower the cost, $C(e)$, to the competing committee of challenging jurisdiction.

In Internet intellectual property protection, interest groups were active in creating jurisdictional conflict. The universities and groups which opposed H.R. 353 were quite active in seeking out competing committees (p), and affected the cost of bill introduction for Commerce Committee, $C(e)$, through crafting sections of a competing bill.

VI. CONCLUSION

Jurisdictional conflict between committees within Congress is common and increasing (Baumgartner et al 2000). The theory developed in this paper extends upon a small but important body of literature examining congressional committee jurisdiction. The theory demonstrates that actors with foresight can have large impacts on policy outcomes by merely threatening to engage

in jurisdictional turf wars. Moreover, legislators and committees will engage in jurisdictional turf wars even if it means introducing sub-optimal legislation from the sponsor's viewpoint. This is because the gains from obtaining a slice of legislative or oversight jurisdiction over an issue may result in a greater gain to utility than the loss of the policy position.

The theoretical results in this paper stand in contrast to the vast literature on committee dominance. This paper's results show how individual legislators will engage in behaviors not predicted by previous theories. Moreover, in many cases, policy outcomes are predicted to be more moderate than they would be in the traditional committee dominance literature.

The paper examines two Internet intellectual property protection bills before the 106th Congress, to test implications of the theory. The descriptive and statistical evidence illustrates how jurisdictional wars between committees play out. The evidence is consistent with the main tenets of the paper.

This paper puts renewed spotlight on the committee jurisdiction literature. It suggests that when scholars examine the relationship between committee behavior and policy outcomes, they should be careful to consider the jurisdictional disputes that could potentially arise and how that might affect policy outcomes. Without controlling for this effect, scholars may generate spurious results. The model enclosed will help guide thinking about how these effects play out.

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Figure 1: Interest Groups

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American Business Media
American Medical Association
Carfax, Inc.
Congressional Quarterly, Inc.
CoStar Group
The Deal LLC
Dow Jones & Co., Inc.
eBay, Inc.
Encyclopedia Britannica, Inc.
EPM Communications
The Executive Speaker Company
Half.com
Kruse International
The McGraw-Hill Companies
Miller Freeman
Monster.com
Muze, Inc.
National Association of Securities Dealers
National Association of Realtors
New York Board of Trade
New York Stock Exchange
Newsletter & Electronic Publishers Association
Newspaper Association of America
Oceana Publications, Inc.
Phillips International, Inc.
Pollstar
Reed Elsevier Inc.
SilverPlatter Information, Inc.
Skinder-Strauss Associates
Software and Information Industry Association
Thomas Publishing Co.
The Thomson Corporation
Travelocity.com
Warren Communications News

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Over 100 Universities, including Harvard, MIT,
Chicago, and Stanford
Amazon.com, Inc.
Amdahl Corporation
American Association for the Advancement of Science
American Association of Legal Publishers
American Association of State Colleges and Universities
American Council on Education
American Meteorological Society
Americans for Tax Reform
Ameritrade
Association of American Physicians and Surgeons
Association of American Libraries
Association of Research Libraries
AT&T
Ball Research, Inc.
Bell Atlantic
Bloomberg Financial Markets
CDnow, Inc.
Charles Schwab & Co., Inc.
Citizens' Council on Healthcare
Commercial Internet eXchange Association
Computer & Communications Industry Association
Consumer Electronic Manufacturers Association
Council of Graduate schools
Digital Media Association
Electronic Frontier Foundation
Geocities
Inktomi
Lycos
MCI WorldCom
NetCoalition
NetRadio Network
Netscape Communications Corporation
Online Banking Association
RealNetworks, Inc
Spinner Network
StorageTek
United States Catholic Conference
United States Chamber of Commerce
Yahoo! Inc.

Figure 2: Preference Ordering

IP Protection (IPP)

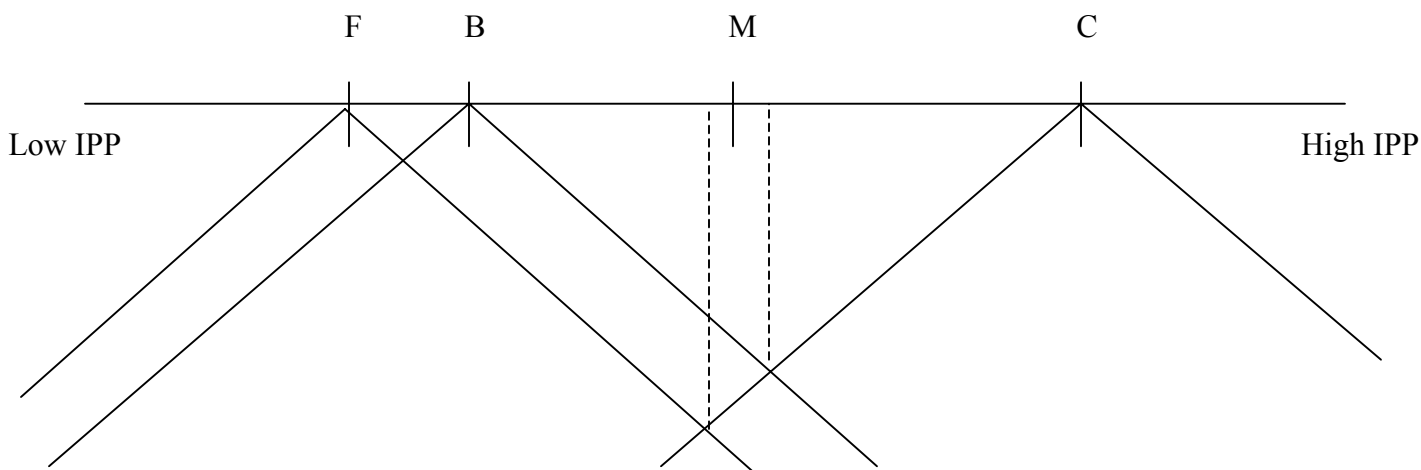


Figure 3: Scope of Jurisdiction

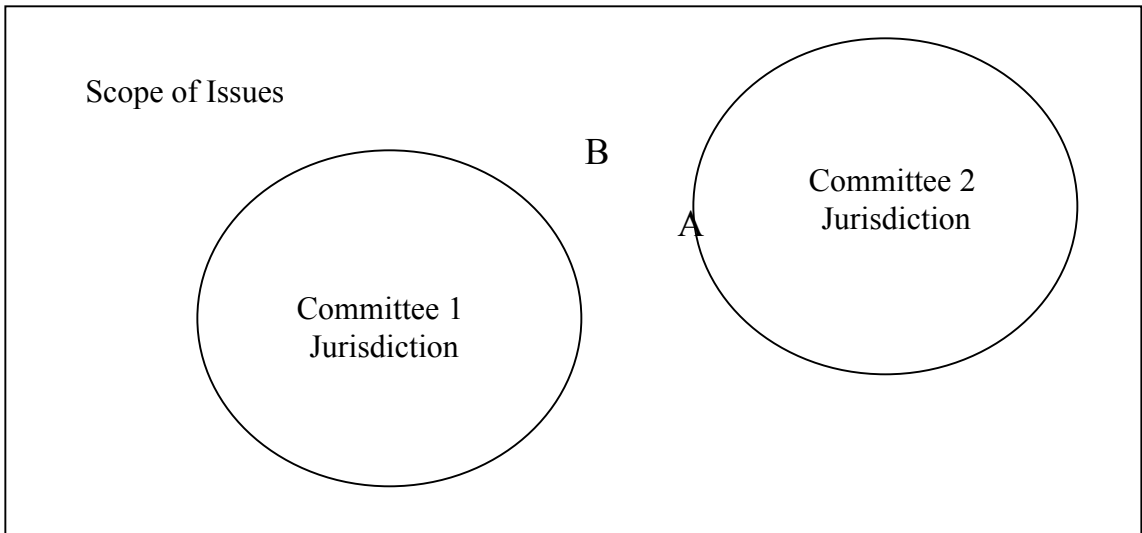


Figure 4: Movements of the Game

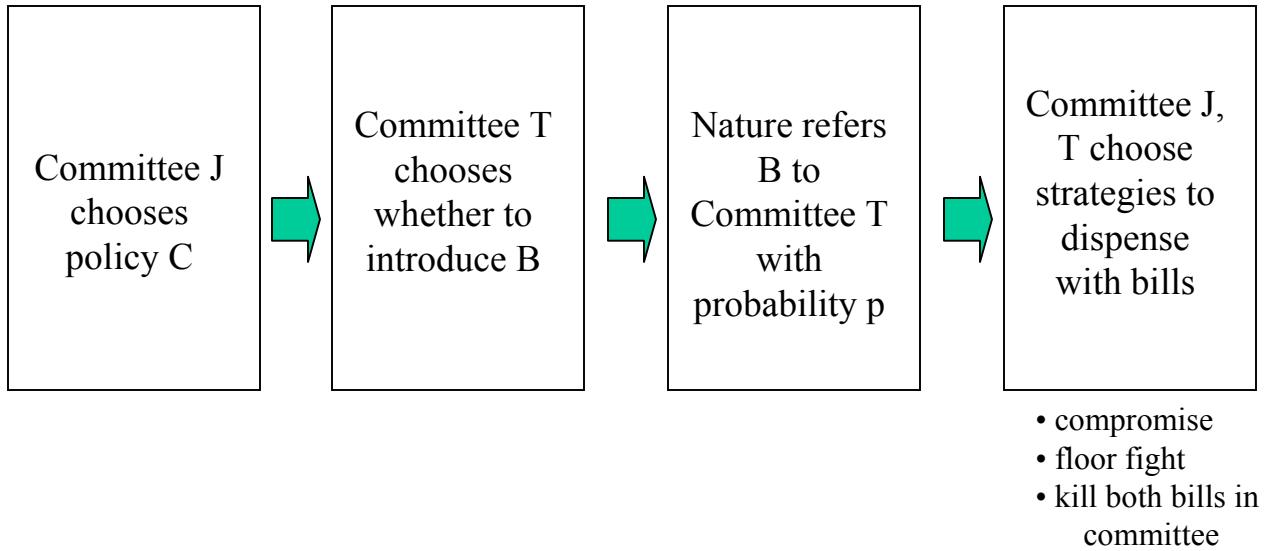


TABLE 1: HOUSE COMMITTEE HEARINGS ON COPYRIGHT BILLS

Congress	Agriculture	Energy & Commerce	Foreign Affairs	Government Operations	Interior/ Insular Affairs	Judiciary	Science/ Space/ Technology	Small Business	Ways & Means	Total Number of Bills
80	0%	0%	0%	0%	0%	100%	0%	0%	0%	9
81	0%	0%	0%	0%	8%	92%	0%	0%	0%	12
82	0%	0%	0%	0%	0%	100%	0%	0%	0%	11
83	0%	0%	0%	0%	0%	100%	0%	0%	0%	5
84	0%	0%	0%	0%	0%	100%	0%	0%	0%	4
85	0%	0%	0%	0%	0%	100%	0%	0%	0%	3
86	0%	0%	0%	0%	0%	50%	50%	0%	0%	2
87	0%	0%	0%	0%	0%	71%	29%	0%	0%	7
88	0%	0%	0%	0%	0%	100%	0%	0%	0%	1
89	0%	0%	0%	0%	0%	100%	0%	0%	0%	3
90	0%	0%	0%	0%	0%	100%	0%	0%	0%	2
91	0%	0%	0%	0%	0%	0%	0%	0%	0%	0
92	0%	0%	0%	0%	0%	100%	0%	0%	0%	3
93	0%	20%	0%	20%	0%	60%	0%	0%	0%	5
94	0%	0%	0%	0%	0%	83%	17%	0%	0%	6
95	0%	0%	0%	0%	0%	100%	0%	0%	0%	2
96	9%	0%	0%	18%	0%	45%	27%	0%	0%	11
97	0%	7%	0%	0%	0%	71%	7%	0%	14%	14
98	0%	0%	0%	0%	0%	91%	9%	0%	0%	11
99	0%	0%	10%	0%	0%	70%	10%	0%	10%	10
100	0%	0%	0%	0%	0%	92%	0%	8%	0%	13
101	0%	0%	0%	0%	0%	88%	13%	0%	0%	16
102	0%	7%	0%	0%	0%	87%	7%	0%	0%	15
103	0%	0%	0%	0%	0%	100%	0%	0%	0%	7
Total	1%	2%	1%	2%	1%	85%	8%	1%	2%	172

TABLE 2: MAJOR INTERNET BILLS BEFORE THE 106TH HOUSE

Internet-related subject area	Bill #	Bill Name	Date Introduced	Primary Sponsor	Primary Sponsor Committee Membership	1st Committee
Copyright	HR 1761	Copyright Damages Improvement Act	5/11/1999	Rogan	Judiciary Commerce	Judiciary
Cybersquatting	HR 3028	Trademark Cyberpiracy Prevention Act	10/6/2000	Rogan	Judiciary Commerce	Judiciary
Digital Signatures	HR 1320	Millenium Digital Commerce Act (House)	3/25/1999	Eshoo	Commerce	Commerce
Digital Signatures	HR 1572	Digital Signature Act of 1999	4/27/1999	Gordon	Science Commerce	Science
Digital Signatures	HR 1714	Electronic Signatures in Global and National Commerce Act	5/6/1999	Bliley	Commerce	Commerce
Digital Signatures	HR 439	Paperwork Elimination Act of 1999	2/2/1999	Talent	Small Business Education Govt Reform	Govt Reform Small Business
Encryption	HR 850	Security and Freedom through Encryption (SAFE) Act	2/25/1999	Goodlatte	Judiciary Agriculture	Judiciary Int Relations Armed Services Commerce Intelligence
E-Rate	HR 1746	Schools and Libraries Internet Access Act	5/11/1999	Tauzin	Commerce Resources	Commerce Ways & Means
E-Rate	HR 3011	Truth in Telephone Billing Act	10/5/1999	Bliley	Commerce	Commerce
E-Rate	HR 3022	Rest of the Truth in Telephone Billing Act	10/5/1999	Markey	Commerce Budget	Commerce
E-Rate	HR 692	E-Rate Termination Act	2/10/1999	Tancredo	Education Resources Int Relations	Commerce
E-Rate	HR 727	Telecommunications Trust Act	2/11/1999	Klink	Commerce	Commerce Ways & Means
Filtering	HR 2560	Child Protection Act	7/20/1999	Istook	Appropriations	Education
Filtering	HR 4600	Children's Internet Protection Act	6/8/2000	Pickering	Commerce	Commerce
Filtering	HR 896	Children's Internet Protection Act	3/2/1999	Franks	Budget Transportation	Commerce
Gambling	HR 3125	Internet Gambling Prohibition Act of 1999	10/21/1999	Goodlatte	Judiciary Agriculture	Judiciary
Internet Access	HR 1686	Internet Freedom Act	5/5/1999	Goodlatte	Judiciary Agriculture	Judiciary Commerce
Internet Access	HR 2420	Internet Freedom and Broadband Deployment Act of 1999	7/1/1999	Tauzin	Commerce Resources	Commerce
Internet Access	HR 2637	Consumer and Community Choice in Access Act of 1999	7/29/1999	Blumenauer	Transportation	Commerce
Junk e-mail	HR 1910	E-Mail User Protection Act	5/24/1999	Green	Commerce	Commerce Judiciary
Junk e-mail	HR 3113	Unsolicited Electronic Mail Act of 1999	10/20/1999	Heather Wilson	Commerce Intelligence	Commerce
Multiple Areas	HR 1685	Internet Growth and Development Act	5/5/1999	Boucher	Judiciary Commerce	Commerce Judiciary
On-line alcohol & gun sales	HR 2031	Twenty-first Amendment Enforcement Act	6/7/1999	Scarborough	Judiciary Armed Services Govt Reform	Judiciary
On-line alcohol & gun sales	HR 3020	Electronic Commerce Crime Prevention and Protection Act	10/5/1999	Crowley	Resources Int Relations	Judiciary
Piracy/Database Protection	HR 1858	Consumer and Investor Access to Information Act	5/19/1999	Bliley	Commerce	Commerce
Piracy/Database Protection	HR 354	Collections of Information Antipiracy Act	1/19/1999	Coble	Judiciary Transportation	Judiciary
Privacy	HR 2644	Personal Data Privacy Act of 1999	7/29/1999	Hinchey	Appropriations	Govt Reform
Privacy	HR 313	Consumer Internet Privacy Protection Act of 1999	1/6/1999	Vento	Banking Resources	Commerce
Privacy	HR 3321	Electronic Privacy Bill of Rights Act of 1999	11/10/2000	Markey	Commerce Budget	Transportation/Agriculture
Privacy	HR 3560	On-line Privacy Protection Act of 2000	1/31/2000	Frelinghuysen	Appropriations	Commerce
Privacy	HR 367	Social Security On-Line Privacy Protection Act	1/19/1999	Franks	Budget Transportation	Commerce
Privacy	HR 369	Children's Privacy Protection and Parental Empowerment Act of 1999	1/19/1999	Franks	Budget Transportation	Judiciary
Taxes	HR 3252	Internet Tax Elimination Act	11/8/2000	Kasich	Ways & Means Armed Services	Judiciary Ways & Means

TABLE 3: VARIABLE DEFINITIONS

Variable	Description
Educational Employment	Population in District employed in Educational Sector (000)
Commerce Committee	=1 if Commerce Committee Member, 0 otherwise
Science Committee	=1 if Science Committee Member, 0 otherwise
Judiciary Committee	=1 if Judiciary Committee Member, 0 otherwise
ADA	ADA Score
Median Home Value	Median Home Value in District (000000)
Median Income	Median Income in District (000)
Educational Attainment	Population in District having completed 4-year degree (000)
Committee Rank	Within Party Rank on the Committee
Election Margin	Margin of Victory in Last Election (000)

TABLE 4: ECONOMETRIC RESULTS FROM BILL COSPONSORSHIP

<u>Variable</u>	<u>H.R. 353</u> <u>Model 1</u>	<u>H.R. 353</u> <u>Model 2</u>	<u>H.R. 1858</u> <u>Model 3</u>	<u>H.R. 1858</u> <u>Model 4</u>
Educational Employment	-0.0083** (-2.11)	-0.0078** (-1.99)	0.0004 (0.19)	0.0008 (0.54)
Commerce Committee		-0.1014** (-1.96)		0.2344*** (5.88)
Science Committee		-0.0278 (-0.50)		0.0179 (0.71)
Judiciary Committee		0.3350*** (4.55)		-0.0112 (-.49)
ADA	-0.0003 (-0.58)	-0.0002 (-.44)	-0.00015 (-0.56)	-0.00003 (-0.21)
Median Home Value	0.0026 (0.07)	-0.0073 (-0.18)	0.0104 (0.48)	0.0018 (0.09)
Median Income	0.0003 (0.78)	0.0036 (0.94)	-0.0016 (-0.72)	-0.0012 (-0.85)
Educational Attainment	.0016 (1.08)	0.0017 (1.17)	-0.0001 (-0.17)	-0.0002 (-0.29)
n	435	435	435	435
LL	11.50	37.39	1.45	38.70

Two-sided t-statistics below coefficient estimates

** 95% significance

*** 99% significance

TABLE 5: COMMERCE COMMITTEE MEMBERSHIP COSPONSORS

<u>Variable</u>	<u>H.R. 1858 Model 5</u>
Educational Employment	-0.0063 (-0.34)
ADA	-0.0008 (-0.54)
Median Home Value	-0.0061 (-0.06)
Median Income	-0.0044 (-0.39)
Educational Attainment	-0.0006 (-0.12)
Committee Rank	-0.0256*** (-3.11)
Election Margin	0.0046** (2.13)
n	53
LL	15.9

Two-sided t-statistics below coefficient estimates

** 95% significance

*** 99% significance