

Viva Voce: Implications from the Disappearing Voice Vote, 1865–1996*

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Objective. Congressional votes are only recorded if a member formally requests a roll call vote, and that request is supported by one-fifth of those present. Many votes pass viva voce and are never recorded. We seek to examine changing patterns of unrecorded voting, analyze the causes of these changes, and consider the implications of these changes for congressional scholars. *Methods.* Using landmark legislation from the 39th (1865–1867) to the 104th Congress (1995–1996), we analyze whether bills receive a recorded or unrecorded final passage vote. *Results.* We find that while the likelihood that a landmark law receives a recorded final passage vote fluctuates over time, electoral pressures consistently influence members' decisions to record their votes. *Conclusions.* We argue that studies of Congress must account for the roll call generating process when analyzing roll call data.

On October 17, 2003, the U.S. Senate held a recorded vote on an \$87 billion supplemental appropriations bill, which provided emergency funding for wars in Iraq and Afghanistan. At the time, President George W. Bush's foreign policy approach was fairly popular, and the measure passed with the support of 87 U.S. senators. One of the 12 senators who voted no was the junior Democratic senator from Massachusetts, and Bush's eventual opponent in the 2004 election, John F. Kerry.

Bush and his interest group allies hammered Kerry on this vote during the early stages of the presidential election, accusing him of voting against providing troops with essential food and equipment. Speaking to an audience in West Virginia, the senator responded to the charges, stating, "I actually did vote for the \$87 billion—before I voted against it" (Wilgoren, 2004). The president and his reelection team made frequent use of this confusing and embarrassing statement in attack ads that sought to paint Kerry as inconsistent and weak on defense issues. Kerry's recorded vote and subsequent justification

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was one of many contributing factors that led to his narrow defeat the following November.

This episode underscores the importance of the congressional roll call voting record. A sizeable portion of campaign time is spent by candidates, and their allies, defending their voting record and attacking the record of their opponent. Since the record is a valuable tool for politicians, it follows that it is a valuable tool for observers of American politics seeking to analyze the behavior of those politicians. Roll call votes like Kerry's are frequently used as a proxy for members' ideologies and the aggregate record has been used to evaluate policy change in Congress, to analyze the influence of political parties, and to test various theories of procedural change.

Despite the central role the record plays in American politics, few scholars have stepped back to look at the process that has generated it. Roll call voting in Congress is a two-step process. The U.S. Constitution specifies that a vote will be recorded only if a member formally requests a roll call vote, and that request is supported by one-fifth of those present. The actual vote casting, like John Kerry's on the emergency war appropriations bill, is the second step in the voting process. If a recorded vote is not requested, members cast their votes *viva voce*, or by voice, and individual members' positions are left unknown. This lack of transparency limits the amount of information available to voters. Moreover, recent scholarship has demonstrated that fluctuations in the roll call record could lead to problems in comparing congressional behavior over time (Clinton and Lapinski, 2008; Harbridge, 2011; Madonna, 2011).

In this article, we examine the decision to record a vote on final passage from the 39th Congress (1865–1867) to the 104th Congress (1995–1996). Utilizing three different data sets, we find substantial variation in the likelihood a bill receives a recorded roll call vote over time and between the two chambers. We argue that elections incentivize members to go on record on issues that feature particularized policy costs and benefits. Our empirical results support this, suggesting that the decision to record a final passage vote is highly dependent on the type of issue under consideration. Finally, we find no evidence that institutional changes designed to increase accountability, such as the introduction of electronic voting in the House and the adoption of the 17th Amendment requiring the direct election of senators, had a direct effect on the rising likelihood a bill receives a recorded final passage vote.

In what follows, we consider the constitutional origins of recorded voting requirements and look at how political scientists have treated unrecorded voting in previous work. We then examine the decision to record using data on landmark legislation passed from the 39th Congress (1865–1867) to the 104th Congress (1995–1996). We first establish that patterns of recorded voting have changed substantially over time and then explore what factors explain these changes. We conclude by discussing how our findings may affect the literature on congressional behavior.

Roll Call Voting

There are only a handful of references to legislative rules in the U.S. Constitution. Instead, the framers opted to leave the details of how Congress conducts its business largely to the individual chambers.¹ One of the few congressional rules that the founders did specify and debate was the mechanism allowing members to call for recorded votes.² This provision was presented and debated during the Constitutional Convention on August 10, 1781 (Binder, 1997).

Gouverneur Morris of Pennsylvania proposed amending it by striking the requirement that one-fifth of members support the yeas and nays request.³ Morris's motion was quickly countered by Roger Sherman of Rhode Island, who proposed eliminating the yeas and nays clause altogether (Farrand, 1966; Binder, 1997). Nathaniel Gorham of Massachusetts supported Sherman, expressing concern that recorded votes might be taken out of context and used to mislead the general public.⁴ In the end, both proposals were defeated and the one-fifth requirement for the yeas and nays was left unaltered.⁵

The default voting mechanism in Congress is the unrecorded voice vote. During a voice vote, the chair will put forward two questions: "all in favor say 'Yea'," and "all opposed say 'Nay'." The job of tallying the votes in such a situation falls to the chair, and his or her count cannot be appealed. While members may make their opinions clearly known, voice votes produce no record of individual positions on a vote.⁶

¹Article 1, Section 5, Clause 2 of the U.S. Constitution states that "Each House may determine the rules of its proceedings . . ."

²Specifically, Article 1, Section 5, Clause 3 states that "the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal." The founders also saw it fit to mandate the yeas and nays be called on all votes to override presidential vetoes. See Article 1, Section 7, Clause 2.

³Farrand writes that Morris "urged that if the yeas and nays were proper at all, any individual ought to be authorized to call for them" (1966:255). Morris then professed concern about the ability of small states to reach the one-fifth threshold.

⁴Specifically, Gorham expressed concern that the clause would lead to a practice of "stuffing the Journals with [votes] on frivolous occasions," and "misleading the people, who never know the reasons determining the votes" (Farrand 1966:255).

⁵This was not the first time founders debated the prospect of maintaining a roll call voting record that the general public could view. On May 28, George Mason of Virginia rose to oppose a Constitutional Convention rule that would have authorized any member to call for the yeas and nays and have them publicly entered in the minutes. After Mason argued that such a provision would provide weapons to the enemies of the convention, the measure was struck from the convention's rules.

⁶Two additional methods of voting in Congress are division and teller votes (Tiefer, 1989). A division vote can be requested by any member. Once requested, members rise if they take the affirmative on a question and are then counted by the chair. This process is repeated for those in opposition. Division votes are not recorded and, like with voice votes, the chair's count of the votes cannot be appealed. Teller voting is restricted to the House and is used infrequently. While it is likely to yield more accurate vote totals than either voice or division votes, it is similar to these in that it also does not produce a record of how members cast their votes (Tiefer, 1989:352). Because of the similarities between division votes and voice votes, the two types of votes are treated the same in this study.

To receive a recorded roll call vote in either chamber, a member must request a roll call vote and needs a second of “one-fifth of those present.”⁷ In the House of the Representatives, once a sufficient second is voiced a roll call vote is taken. This voting has largely been done electronically since 1972. When the vote is called, members insert a personalized voting card into a station on the House floor and press either “Present,” “Yea,” or “Nay.” Members’ votes are then displayed on panels throughout the chamber. In the Senate, once the yeas and nays are ordered, the clerk begins to call the names of each senator alphabetically (Tiefer, 1989).

The Roll Call Record in Political Science

While the framers developed a two-step process to generate a recorded vote, political scientists have generally opted to ignore the first step, the decision to record a vote, on the assumption that bills that do not receive recorded votes are largely noncontroversial. Thus, scholars of legislative politics often test nonvoting theories of legislative institutions with roll call data. These institutions include legislative agendas (Campbell, Cox, and McCubbins, 2002; Cox and McCubbins, 2005; Gailmard and Jenkins, 2007), intrachamber rules (Krehbiel, 1998; Wawro and Schickler, 2004, 2006), and political parties (Snyder and Groseclose, 2000; McCarty, Poole, and Rosenthal, 2001; Cox and Poole, 2002).⁸

A classic test of a nonvoting theory of legislative institutions involves examining the effect of legislative rules on the size of enacting coalitions (Krehbiel, 1998; Wawro and Schickler, 2004, 2006). In this line of research, scholars use the average size of winning coalitions on landmark legislative enactments per Congress as a proxy for policy output. Krehbiel argues that nonpartisan pivots play a pivotal role in determining the content of legislation. More specifically, he theorizes that by dropping the number of members required to invoke cloture in 1975 to three-fifths of all members (down from two-thirds of the members present and voting), the average size of winning coalitions in the Senate should shrink.⁹ Additionally, he posits that coalitions should be

⁷It should be noted that the constitutional provision for recorded roll call voting does not apply to amendment voting within the Committee of the Whole in the House, which developed its own separate procedures. We focus almost exclusively on final passage votes in this study, as Roberts and Smith (2003) have already convincingly demonstrated the limitations inherent in aggregating roll call voting from both the House and the Committee of the Whole.

⁸Political scientists have also utilized the entire record to characterize members’ voting behavior (Clausen, 1973; Kingdon, 1973, 1977). Perhaps the most widely used of these efforts, NOMINATE, employs a scaling technique to detail legislators’ preferences onto an underlying policy space (Poole and Rosenthal, 1997). Similar recent efforts have utilized Bayesian statistical methods to identify congressional member ideology using the complete roll call record (Clinton, Jackman, and Rivers, 2004).

⁹Cloture is the only formal mechanism for ending debate in the chamber.

smaller in the House because that chamber features a simple-majoritarian method for ending debate.¹⁰

Another popular tool derived from the record is the partisan roll rate. Cox and McCubbins (2005) argue that negative agenda control is the primary cause of majority party dominance.¹¹ This theory is largely bolstered by analyses of partisan roll rates on final passage votes from 1877 to 1995. The roll rates are consistently lower for the majority party in both chambers. This evidence leads the authors to speculate that majority party dominance is not simply relegated to the House, but is also alive in the Senate.

Coalition size and roll rates are simply two examples of record-generated measures utilized to test nonvoting theories of legislative behavior. Other examples of record-generated measures abound in the congressional politics literature.

Unrecorded Voting and the Roll Call Record

Drawing inferences from longitudinal data like the roll call record requires an understanding of the data-generating process by which the roll call record was created (Morton, 1999). If the data-generating process is not consistent over time, then the roll call record, and various scores derived from it, are not directly comparable through the history of Congress. Scholars making use of roll-call-based measures generally ignore the roll call generating process, and instead assume that the choice to record a vote has no effect on the roll call record. Indeed, the two primary methods of dealing with voice votes are to omit them from analysis altogether (Krehbiel, 1998; Cox and McCubbins, 2005) or to treat them as all being unanimously supported (Mayhew, 1991).¹²

These methods of accounting for unrecorded voting make strong assumptions about measures receiving voice votes. Completely ignoring voice votes assumes that voice votes are only taking place on unimportant and uninteresting legislation. Mayhew's treatment of voice votes makes the strong assumption that measures receiving voice votes are unanimously supported, an assumption that has not been closely examined. If both of these assumptions are true, then the decision to record a vote can safely be ignored. If, however, unrecorded

¹⁰Wawro and Schickler (2004, 2006) use coalition sizes to assess the impact of the introduction of the cloture rule in 1917.

¹¹Partisan roll rates work accordingly: when over half of a party votes for (against) a measure, but the measure still loses (wins), this qualifies as the party being rolled. For example, if the minority party unanimously opposes a bill, but the majority party unanimously favors a bill, then the minority will be rolled, due to the majority party's seat advantage. Like many analyses that extend into the late 19th and early 20th century Congresses, additional uncertainty is caused by the high level of abstention of paired voting in the errors.

¹²Commendably, Wawro and Schickler (2004, 2006) use both methods, although this is still not without its drawbacks. Cox and McCubbins (2005:240–41) discuss the possibility of "hidden rolls" where the majority is rolled on a vote, but a recorded vote is not held. They contend that it is "unlikely" that a minority party would not request a recorded vote in such a situation.

voting is taking place on unimportant, unanimously supported legislation in some time periods but on important, contentious measures in other periods, these changing patterns must be accounted for. Any inconsistencies in the roll call generating process can make it impossible to accurately compare roll-call-based measures from different time periods. Confidence in roll call based measures can only be maintained if patterns of unrecorded voting have remained consistent throughout the history of Congress.

Recent political science scholarship has called into question assumptions of consistency, suggesting that changes in congressional practices across time have led to problems in comparing historic congressional behavior. Responding to the ability of Cox and McCubbins to compare roll rates between Congresses, Smith (2007) points out that the ratio of public laws to final passage votes greatly fluctuates over time. He concludes: “Only in the modern period are even a majority of enacted bills subject to a vote at final passage” (Smith, 2007:141). Furthering Smith’s point about public laws, Clinton and Lapinski (2008) track public laws from the bill stage to enactment. They find that from 1889 to 1994 the percentage of enacted laws that receive a roll call vote has varied significantly from Congress to Congress.¹³

A look at unrecorded voting rates on landmark legislation data confirms suspicions about the consistency of the roll call record. We examine the rate of unrecorded voting for a data set of all landmark enactments, final passage votes by Congress from the 39th Congress (1865–1867) to the 104th Congress (1995–1996).¹⁴ Figure 1 reports the percentage of landmark legislation that passed the House (top panel) and Senate (bottom panel) with an unrecorded final passage vote (voice vote). Rates of unrecorded voting have clearly not been consistent throughout congressional history. Recent Congresses rarely pass landmark legislation without a roll call vote. The percentage of recent landmark legislation passing the House without a recorded vote has averaged less than 10 percent, while around of 15 percent of landmark bills have passed recent Senates without a recorded vote.¹⁵ While recent numbers are somewhat consistent with the assumption that unrecorded voting is usually on unimportant and noncontentious legislation, this is not the case with patterns from earlier Congresses. In the early 1900s an average of 40 percent of landmark bills passed the House without a recorded vote. In the Senate around 50 percent of landmark legislation was passed without a roll call vote.

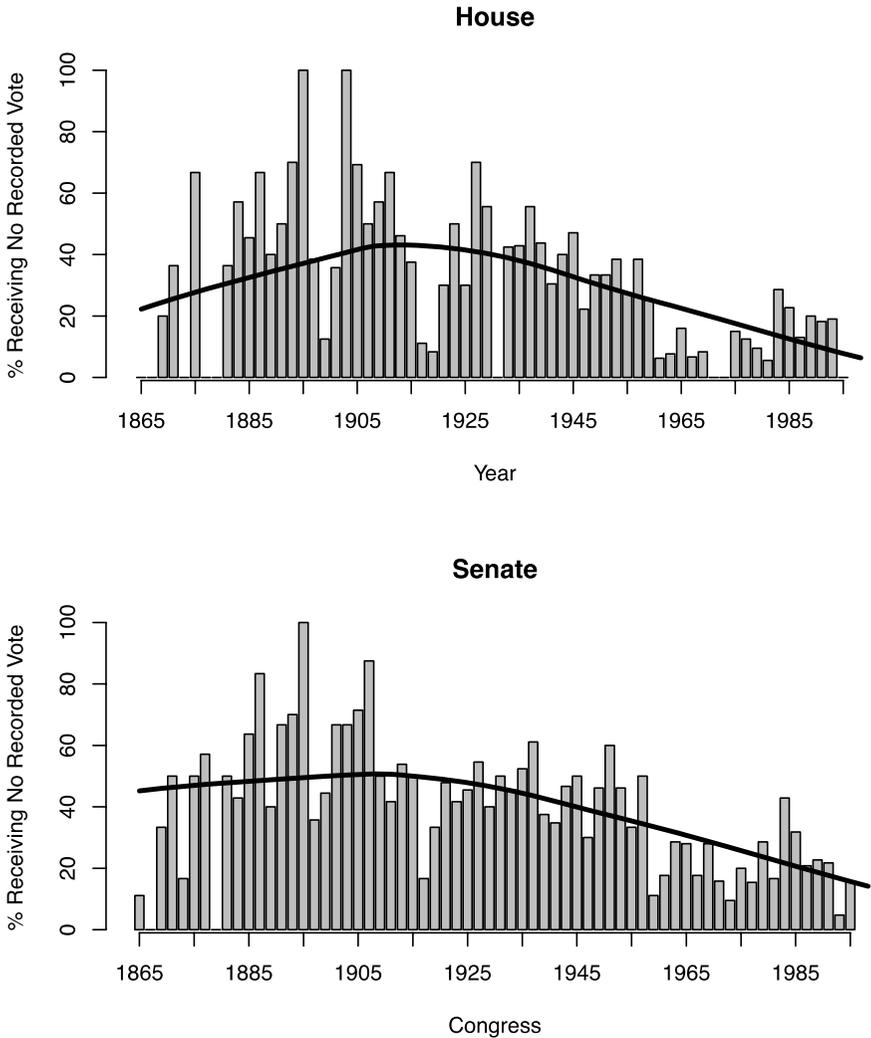
¹³Studies in comparative politics have also been particularly sensitive to how selection biases may be introduced into the roll call record if certain types of issues are more likely to receive a roll call vote than others. Using data from all votes cast in the European Parliament from July 1999 to June 2000, Carrubba et al. (2006) show that the rate of measures receiving a roll call vote are inconsistent across issue areas, by an issue’s level of salience, and by the party that introduced a measure. Hug (2010) draws similar inferences in his study of all roll call votes cast in the Swiss lower house.

¹⁴This database includes the final passage votes for landmark enactments as coded by Stathis (2003) and Petersen (2001).

¹⁵An examination of all bills that received final passage votes in either chamber reveals similar patterns.

FIGURE 1

Proportion of Unrecorded Votes on Landmark Legislation, 1865–1996



NOTE: Proportion of all landmark legislation that passed the House and Senate by voice vote from 1865 (39th Congress) to 1996 (104th Congress). The solid line is a loess smoothing line indicating the average percentage of landmark legislation passed *viva voce*. The list of landmark enactments is provided by Stathis (2003).

Indeed, a few Houses and Senates from this period passed all of the landmark bills from a particular Congress without holding a recorded vote.

As landmark legislation is, by definition, not trivial, these figures suggest that unrecorded voting is not reserved for simply trivial matters. Moreover, the rapid decrease in the use of unrecorded voting highlights how changing

patterns of vote requests have changed the content of the roll call record over time. In recent Congresses the roll call record is likely to contain almost all votes on landmark legislation. In other time periods votes on such legislation were much more likely to be excluded from the voting record.

Anecdotal evidence also suggests that unrecorded voting is used to pass important legislative measures that clearly *do not* have unanimous support. On November 3, 2003, shortly after Kerry's famous no vote on the Senate version of the emergency war appropriations bill, the Senate considered the conference report of the same bill. Despite the 12 no votes the Senate version initially received, the conference report was passed by voice vote. Both Republicans nervous about explaining a vote on a large spending package and Democrats worried about appearing unpatriotic by opposing the bill were happy to avoid a recorded vote (Firestone, 2003). Only six senators were on the floor during the vote on this contentious measure, with Senator Robert Byrd loudly shouting "no" to voice his opposition to the bill.¹⁶

An examination of landmark legislation confirms that opposition to measures receiving an unrecorded vote is not a rarity. To look for evidence to counter the belief that measures receiving voice votes enjoy unanimous support, we attempt to measure the relative contentiousness of legislation receiving an unrecorded final passage vote. Typically, we would use the final vote total as a measure of contentiousness, but since these are unrecorded votes we are forced to use others methods. We rely on the fact that all legislation receiving a final passage vote in one body of Congress must also receive a final passage vote in the other body.¹⁷ We examine all bills that receive a final passage voice vote in the House (Senate) and check to see if that bill received a recorded final passage vote in the Senate (House). If a bill receiving a voice vote in the House (Senate) is unanimously supported, we would expect that bill to receive a unanimous recorded vote in the other chamber.¹⁸ The 2003 emergency war appropriations bill confirms this logic. While the Senate's voice vote provides no record of opposition, the 121 no votes in the House on the same measure strongly imply that Senate opposition would have existed had the chamber held a recorded vote. This implied opposition is confirmed by Byrd's shouted "no" (Firestone, 2003).¹⁹

¹⁶While Byrd's opposition was recorded by the media (Firestone, 2003), the *Congressional Record* makes no mention of Byrd's opposition. The lack of a formal record of opposition on voice votes highlights the difficulty of detecting opposition on measures receiving a voice vote.

¹⁷This is true for all legislation except for the 37 treaties in our data set that were passed solely by the Senate.

¹⁸This expectation relies on an assumption that the House and Senate have identical ideological distributions. This is obviously not true for the entire historical record considered, but if the two chambers' distributions are at least similar, then measures receiving only 70 percent or 80 percent support in one chamber are highly unlikely to have enjoyed unanimous support in the other chamber.

¹⁹To examine the robustness of this finding, we constructed a data set of all bills that received final passage votes in either chamber from the 39th Congress (1865–1867) to the 104th Congress (1995–1996). Of the 3,885 bills that received final passage votes in the House, the average size of the coalition was 0.776 [0.770, 0.782]. This is not significantly different

We find that bills receiving a voice vote in one chamber do not receive unanimous support in the other chamber. Instead, the average bill receiving a voice vote in one chamber enjoys a winning coalition size in the other chamber that is very similar to bills receiving only recorded votes. Of the 57 pieces of landmark legislation that received a voice vote in the House but received a recorded vote in the Senate, the average coalition size that supported the measure in the Senate was 0.853 [0.820, 0.885]. This is only slightly higher than the 0.815 [0.804, 0.826] average for all recorded Senate votes on landmark legislation. While items passing the House *viva voce* do enjoy slightly higher levels of support in the Senate than do other bills, voice votes clearly are not reserved for unanimously supported legislation.

The results are similar for legislation passing the Senate by unrecorded voting. Of the 148 pieces of landmark legislation that received a voice vote in the Senate but received a recorded vote in the House, the average House coalition size was 0.853 [0.830, 0.877]. This is compared to an average coalition size of 0.802 [0.790, 0.814] for all 674 recorded votes on landmark legislation made by the House. Again, measures passed by voice vote in the Senate do enjoy slightly higher levels of support than other bills in the House, but not much bigger than bills receiving only recorded votes.

Given that important and contentious measures are frequently passed in the House and Senate *viva voce* and because the patterns of unrecorded voting have dramatically changed over time, it seems clear that unrecorded voting should be accounted for in work making use of the historical roll call record. Perhaps it is not surprising that recent literature that controls for unrecorded voting in the Congress has found that ignoring unrecorded votes can bias studies that utilize various roll-call-based measures, like coalition sizes and polarization rates (Carson, Lynch, and Madonna, 2011; Madonna, 2011).

Specifically, Madonna (2011) demonstrates that the early 20th century witnessed a sharp increase in the probability a landmark enactment would receive a recorded roll call vote. This led to more noncontroversial measures passing with overwhelming majorities. When he varies the treatment of voice-voted enactments, he finds no support for the thesis that Rule XXII led to an increase in coalition sizes. Carson et al. (2011) control for voice-voted legislation using only bills that received final passage votes in both chambers. They also find no evidence that the adoption of institutions like Reed's Rules in the House or Rule XXII in the Senate influenced the size of enacting coalition on bills. Additionally, Harbridge (2011) investigates the recent increase in congressional polarization as reported by studies of the roll call voting record. She compares measures generated by the record to several measures derived

from the 0.768 [0.760, 0.776] average for all bills that received recorded final passage votes in the Senate as well. For the Senate, the average size of coalitions on bills that did not receive a recorded final passage vote in the House was 0.793 [0.786, 0.801]. Much like the House, this is also not significantly different from the 0.807 [0.799, 0.814] average for all bills that received recorded final passage votes in the other chamber. We discuss these matched final passage data in greater detail in our empirical section.

from bill co-sponsorship coalitions. Harbridge reports that bill co-sponsorship patterns have remained consistent over this time period, while polarization on roll call votes has increased dramatically. She suggests that this increase in polarization is at least in some degree artificial, and is the result of changes in the roll call generating process.

A Theoretical Account of Recorded Voting

In the remainder of this article, we seek to explain why some measures receive recorded votes and others do not. Scholars' focus on roll call voting and not on the roll call generating process could introduce bias into historical studies of Congress, but perhaps more importantly, scholars' focus on roll call voting has left a potentially interesting facet of legislative behavior unanalyzed. The decision to record votes on some issues and not others directly influences the amount of information available to voters. The availability and cost of information available to voters can significantly influence democratic accountability (Downs, 1957). We argue that while the rate of voice voting has changed throughout history, members of Congress have always had incentives to put themselves "on the record" on certain types of issues. As these types of issues have changed throughout history, it has made comparisons across time more difficult for scholars of legislative politics.

Given the dramatically changing patterns of unrecorded voting across the history of Congress, we identify potential institutional changes in Congress that may have led to a historical reduction in unrecorded voting. Additionally, we identify key factors that may lead members of Congress to prefer recorded votes on some issues more than on others. If changes in the use of unrecorded voting can be explained, then it will facilitate future researchers in accounting for the potential biases that unrecorded votes introduce into congressional scholarship and help explain a previously unexplained part of congressional behavior.

The steady disappearance of unrecorded voting throughout the Congress leads us to believe that some major institutional changes in Congress may be driving the disappearance of unrecorded voting. Institutional changes that promote democratic accountability seem especially likely to lead to decreased levels of unrecorded voting. As members feel more pressure to answer to their constituents, they are more likely to record their votes and present a record of their work to constituents. Two institutional changes that were designed to increase democratic accountability are likely candidates to have reduced the level of unrecorded voting over time. In 1973, the House instituted electronic voting. One of the motivating factors behind this decision was to force members to be accountable to their electoral constituencies. After electronic voting was instituted, the time that it took to physically hold a recorded vote decreased, which should increase the likelihood of a bill receiving a recorded vote.

Additionally, the introduction of the 17th Amendment established the direct election of senators. Scholars have argued that this change should make members of the chamber more responsive to the mass electorate (Brandes Crook and Hibbing, 1997; Gailmard and Jenkins, 2009). Thus, we expect senators to be more likely to go on record after the 17th Amendment was put into effect.

Member motivations and goals are likely to strongly influence which bills receive recorded votes and which do not. Reelection is frequently seen as the primary goal for members of Congress (Mayhew, 1974; Cox and McCubbins, 2005, 2007). In order to achieve this goal, members take positions on issues and policies that are in line with that of their electoral constituencies. As Mayhew (1974) notes, this position is often stated in the form of a roll call vote. When bills are passed without recorded votes, the members' position is often unclear to voters. Consistent with this, in their study of the impact recorded voting had on House speaker elections, Jenkins and Stewart (2003:504) report that it became "impossible for House members to hide from their ballot choices and therefore impossible for them to avoid political pressure over the choice of Speaker."²⁰ Thus, it follows that roll call votes are most likely to occur on issues that members want to publicize to their constituencies.²¹

The types of issues on which members of Congress are most likely to want to take clear positions are those that directly affect voters in their districts. Voters are likely to be most affected by bills that provide for some combination of particularized costs and benefits. Political scientists have long argued that zero-sum issue areas that give benefits to one group while passing along the costs to another group are most likely to produce conflict in the legislative process (Riker, 1962; Riker and Ordeshook, 1968; Koehler, 1972; Madonna, 2011). When issues call for benefits to be balanced by dispersed or delayed costs (e.g., deficit spending), or for particularized cuts without direct benefits, the desire to take a publicized position is less clear. For example, quoting Senator Paul Douglas (D-IL), Mayhew argues that members had little to no incentive to go on record supporting particularized benefit cuts. Douglas complains that his proposals to cut specific programs were consistently beaten and that he often "failed to get the necessary one-fifth for a quorum roll call" (Douglas, 1972, quoted in Mayhew, 1974:91). In what follows, we examine several zero-sum issues that members should be inclined to publicize their positions on.

²⁰ Additional research suggests that moving to recorded voting in the House Committee of the Whole in the 1970s was motivated by a desire to force rank and file Democrats to be accountable to Democratic voters. Unrecorded voting had ensured that only committee chairs—often conservative Southerners—knew how a member voted (Smith, 1989; Rohde, 1991).

²¹ A classic example of a bill that members would not want to publicize their positions on is one that provides for member pay raises. For example, while discussing such a measure during the 79th Congress, senators William Langer (R-ND) and Wayne Morse (R-OR) repeatedly requested the yeas and nays on an amendment lowering the pay raise and were denied sufficient seconds in both instances (*Congressional Record*, 79th Congress, May 28, 1945, 5207–08).

A classic zero-sum issue that members would want a recorded vote on is tariff policy. Tariff legislation was the federal government's primary means of raising money before the introduction of the income tax (Hansen, 1990). Scholars have demonstrated that tariff legislation was often highly partisan in nature (Hansen, 1990; Epstein and O'Halloran, 1996). Specifically, high tariff rates led to costs paid directly by particularized Democratic groups like urban laborers and rural farmers. Conversely, they benefited northeastern Republican business interests that sought to protect their goods against foreign competition. The resulting legislation fostered narrow, contentious policy coalitions, and members of both parties were inclined to put themselves on the record as being on the right side of the issue (Wawro and Schickler, 2004, 2006; Madonna, 2011).

For much of the nation's history, civil rights and slavery related legislation has played an important role in dividing political parties (Poole and Rosenthal, 1997). This is because the issue featured a cost-benefit structure that was regionally concentrated. Any federal victory for Northern civil rights proponents was a defeat for their largely Southern opponents. The issue also played an important role in primary elections, especially amongst Southern Democrats. Their opposition to voting rights legislation was an electoral asset in these instances, and as such, something they sought to publicize by going on the record.

Silver coinage is another example of zero-sum issue area that members might seek to publicize their positions on. Western representatives in particular represented constituencies that would benefit from silver coinage. These debt-laden constituents—including farmers and laborers—would benefit from the inflationary monetary policy represented by the free silver movement.²² Again, this was strongly opposed by banking interests who sought to protect their accumulated assets. Scholars have noted that in an effort to minimize divisions within the Republican Party, leaders began to utilize restrictive rules to keep silver-related amendments off the floor (Roberts, 2010).

Modeling the Choice to Record a Vote

In this section, we seek to empirically analyze the decision to record a vote. To assess this question, we employ a primary data set of all landmark enactments passed by Congress from the 39th Congress (1865–1867) to the 104th Congress (1995–1996) as coded by Stathis (2003) and Petersen (2001).²³ We opt for these lists primarily because their extended time series allows us to better assess longitudinal use of the roll call record and extend

²²Pressure from these groups resulted in legislation like the Sherman Silver Purchase Act, passed during the 51st Congress (1889–1891). The Act required the government to purchase large amounts of silver.

²³Restricting our data to only the Stathis or Petersen list does not alter our substantive findings.

the historical record examined by Clinton and Lapinski (2008).²⁴ Restricting the analysis to landmark enactments has a distinct advantage: these lists were created independently of the roll call voting record and allow researchers leverage in tracking the propensity of unrecorded votes.

We have argued that recorded voting is most likely to occur after institutional changes and on certain types of issues that members of Congress have incentive to put themselves “on the record” on. Specifically, issues like tariff, civil rights, and silver coinage that feature zero-sum policy benefits are likely to see increased recorded voting. To examine this more systematically, we coded whether all landmark enactments received a recorded vote and fit a simple probit model. We analyze the decision to record on landmark legislation votes in the House (Model 1), the Senate (Model 2), and in a full model that pools House and Senate votes (Model 3).

We consider the effects of the two institutional changes designed to increase democratic accountability, as discussed above. We expect the 1973 introduction of electronic voting in the House to reduce unrecorded voting. We control for this by including a dummy variable for all landmark legislation passed after the introduction of electronic voting in the House (Model 1). In the full landmark enactment model (Model 3), we control for this by including a dummy variable for all landmark legislation passed after the introduction of electronic voting and by including a House and electronic voting interactive variable to account for the fact that only the House has electronic voting.

Additionally, the introduction of the 17th Amendment that established the direct election of senators should reduce unrecorded voting. We control for this by including a dummy variable for all landmark legislation passed after the adoption of the 17th Amendment in the Senate model (Model 2) and by including a Senate and post-17th Amendment interactive variable to account for the fact that only the Senate’s electoral practices had changed in the full model (Model 3).

We hypothesize that issue areas featuring particularized costs and benefits—like tariff legislation, silver coinage, and civil rights—should be more likely to receive recorded final passage votes than other types of issues.²⁵ To assess this, we apply issue codes as coded by Poole and Rosenthal (1997). For landmark enactments that did not receive Poole and Rosenthal issue codes, we used

²⁴In contrast with other compilations of landmark enactments like Mayhew (1991) and Howell et al. (2000), the long time period analyzed in the Stathis and Petersen lists allows us to extend the 1891–1994 time series examined by Clinton and Lapinski (2008). One potential problem with using any such list of landmark legislation is that landmark status is given to a bill after the fact. This may mean that the bills that were the most salient to contemporary lawmakers end up not being viewed as a historically important bill. Given the lack of reliable contemporary sources of bill importance for early Congresses, we view this potential disadvantage to be worth the increased time series that the merged Petersen and Stathis lists provides.

²⁵These three issue areas do not control for all possible legislation containing particularized costs and benefits, but do represent issue areas the existing literature has clearly identified as being zero-sum. Zero-sum legislation in the 21st century is more difficult to control for via issue specific dummy variables.

the issue codes provided by Stathis (2003). We then hand-checked all issue codes in order to increase the reliability of the measures. The three issue codes included in the model utilize simple dummy variables.

We also include several control variables. Specifically, we control for divided control of Congress by coding all Congresses where one party controlled the House and another party controlled the Senate as 1 and all others as 0. We hypothesize that divided control of Congress will make the use of voice votes less likely, since the party in control of one chamber is likely to want to put the party in control of the other chamber “on the record.” Along similar lines, we expect that the size of the two major political parties may influence the decision to record a vote. Specifically, smaller majority parties (and larger minority parties) may seek to accentuate the policy differences between themselves for electoral purposes. As such, we include a control for the percentage of seats held by the majority party in both chambers.

Differences in both the structure and operation of the House and Senate may lead to differing expectations in the use of voice and recorded votes between the two chambers. Specifically, the larger number of members serving in the House leads to a greater probability any one member will request a roll call on a final passage vote. As Tiefer (1989) notes, once a member requests a recorded vote, sufficient seconds are generally granted. We have also argued that there are electoral incentives for members to want to go “on the record.” Those incentives should be greater for House members, who are up for reelection every two years, than for senators.²⁶

While the Senate has never instituted electronic voting, the process of garnering one-fifth present for a recorded vote is often considered pro-forma today (Smith, 1989). However, this is not necessarily true throughout the chamber’s history. Tiefer notes that during the 1950s it was extremely difficult for senators to obtain roll call votes without the support of either Majority Leader Lyndon Johnson (D-TX) or Minority Leader Everett Dirksen (R-IL) (1989:532). Further, because the chamber often operates by unanimous consent, there are more strategic opportunities to utilize voice voting. Robert Mann details one example of this, not surprisingly involving Lyndon Johnson:

²⁶While we expect the size of the House and its regular elections to facilitate more roll call votes, the procedural environment should make receiving a recorded vote easier in the Senate. Specifically, the lack of any simple-majoritarian method for ending debate allows individual members substantial leverage in delaying the passage of legislation unless a recorded vote request has a sufficient second. A request made by Senator Arthur Vandenberg (R-MI) during consideration of an amendment increasing appropriations made under the Soil Conservation and Domestic Allotment Act in the 75th Congress illustrates this point:

Mr. Vandenberg: I ask for the yeas and nays on the committee amendment.

The Presiding Officer: The yeas and nays are called for. Is the request seconded?
[A pause.] The Chair is in doubt.

Mr. Vandenberg: Then I shall have to suggest the absence of a quorum. I shall be very frank about the matter. We shall simply save time if we may have a roll call. I ask for the yeas and nays. (*Congressional Record*, 75th Congress, December 15, 1937, 1528–29)

In that episode, after the quorum call, the Senate capitulated and provided a sufficient second to Vandenberg’s request.

Typical was the day in 1955 when Johnson realized that Florida Senator Spessard Holland, the chief opponent of legislation to increase the minimum wage, was absent from the Senate chamber. Late in the afternoon, Johnson looked around and said to [Minnesota Democrat Hubert] Humphrey, “I think we’ll pass that minimum wage bill now.” After a brief quorum call, Johnson engineered a voice vote. The bill passed. Minutes later, when Holland came storming onto the Senate floor, “jumping, screaming, hollering and pounding the desk,” Johnson said, “Well, Spessard, I had a little quorum call. If you fellows aren’t on the job around here, I’ve got legislation to pass.” (1996:137)

The primary implication of these interchamber differences is that we would expect to see more frequent roll call voting in the House of Representatives. We control for this with a simple dummy variable, coded “1” if the landmark enactment was considered in the House, and “0” in the Senate. As only Model 3 examines the merged House and Senate data, this variable is only present in that model.

To assess the robustness of our landmark enactments data, we also constructed two separate data sets using bills that received recorded final passage votes in either chamber. We compiled the bill numbers and companion bill numbers for all bills that received recorded final passage votes in the House and the Senate from the 39th Congress (1865–1867) to the 104th Congress (1995–1997). We then “matched” these bill numbers between the two chambers. If a bill received a recorded final passage vote in both the House and the Senate, it was given a “1.” If it only received a recorded final passage vote in one chamber and was voice voted in the other, it was given a “0.”²⁷ We present the results of five different probit models—a model examining recorded voting on landmark enactments in the Senate, landmark enactments in the House, a model that pools both the House and Senate landmark enactment data, one that utilizes the matched final passage vote data from the House, and one that utilizes the matched final passage vote data from the Senate.²⁸ The estimates from these models are presented in Table 1.

The results from the analyses do not support the hypothesis that institutional changes promoting democratic accountability led to more recorded voting. At first glance it appears that the introduction of electronic voting did lead to more recorded voting in the House on landmark legislation (Model 1). The coefficient for the introduction of electronic voting is positive and significant. While in the joint House-Senate model (Model 3) this coefficient is again

²⁷As both chambers have to pass identical versions of legislation before it is sent to the president, we opt to match only final passage votes between the chambers—and not votes on conference reports.

²⁸The two variables accounting for institutional changes (electronic voting and the introduction of the 17th Amendment) failed to significantly explain the decision to record in the landmark legislation models. We therefore choose to omit those variables from the House and Senate final passage models (Models 4 and 5). The substantive results of Models 4 and 5 are unaffected if those variables are included in the analyses.

TABLE 1
 Probit Estimates of Recorded Votes, 39th–104th Congresses

	Model 1 House	Model 2 Senate	Model 3 Joint	Model 4 House	Model 5 Senate
Tariff	0.988* (0.353)	1.380* (0.397)	1.235* (0.384)	0.791* (0.172)	0.541* (0.171)
Civil rights	1.109* (0.300)	0.663* (0.221)	0.944* (0.205)	0.650* (0.203)	0.403* (0.154)
Currency	0.947* (0.405)	1.255* (0.548)	1.151* (0.513)	0.533* (0.214)	0.542* (0.231)
Divided	0.170 (0.163)	0.438* (0.117)	0.202 (0.113)	0.034 (0.087)	0.146* (0.068)
Chamber			−0.225* (0.096)		
House majority seat share	−0.695 (0.826)			0.990 (0.662)	
Electronic voting	0.679* (0.164)		0.509* (0.153)		
Chamber × Electronic voting			−0.064 (0.106)		
Senate majority seat share		1.476 (0.890)			0.396 (0.414)
Post-17th Amendment		0.568* (0.125)	0.438* (0.146)		
Chamber × Post-17th Amendment			−0.023 (.112)		
Constant	0.705 (0.510)	−1.190* (0.565)	0.008 (0.112)	−0.923* (0.428)	−0.913* (0.253)
Observations	936	973	1,909	3,862	5,417
Pseudo R^2	0.072	0.059	0.081	0.012	0.008
Prob > χ^2	0.000	0.000	0.000	0.000	0.000

NOTE: Coefficients are reported with robust standard errors clustered by Congress listed in parentheses.

*Significance at the $p = 0.05$ level. Models 1, 2, and 3 examine whether landmark legislation received a recorded or unrecorded vote during the 39th (1865–67) to the 104th (1995–96) Congress in the House, the Senate, and jointly. Models 4 and 5 examine whether measures receiving a final passage vote in the Senate (House) received a recorded or unrecorded vote in the House (Senate) during the same time period.

positive and significant, the interactive term (Chamber × Electronic Voting)—used to control for the fact that electronic voting was only introduced in the House—is not significant. This result implies that the electronic voting led to a similar increase in recorded voting in *both* chambers, despite the fact that

the Senate has never used electronic voting. Similarly, while the direct election of senators (Post-17th Amendment) has a positive and significant coefficient for the Senate (Model 2), the joint model (Model 3) shows that the direct election of senators led to increased recorded voting in both the House and Senate.

There is no theoretically compelling reason why an institutional change in one chamber should significantly affect recorded voting rates in the other chamber. We suspect that since the level of recorded voting has been steadily increasing during the time period examined, the dummy variables that were meant to account for institutional changes are actually serving as simple proxies for time. Recorded voting is more common after the introduction of electronic voting, not because of anything having to do with electronic voting, but rather because Congresses early in the data (coincidentally before electronic voting) have generally lower levels of recorded voting than Congresses later in the data (coincidentally after electronic voting). These two institutional change variables highlight the fact that changing rates of recorded voting has led to inconsistencies in the roll call record. Failing to account for the changing record can lead to spurious results, such as the initial conclusion that institutional changes have had a significant effect on recorded voting rates.

There is strong evidence supporting the hypothesis that members are more likely to record votes on issue areas featuring particularized costs and benefits. Tariff, silver coinage, and civil rights measures were all significantly more likely to receive recorded votes than were other measures. This is true for House, Senate, and joint models examining both landmark legislation votes and final passage votes. Because of the direct positive or negative effect that issues like these have on districts, members have a strong electoral incentive to register their vote as being on the “right” side for the interests of their district. While this study only examined three specific zero-sum issues, it seems very likely that members are generally more likely to record votes when their constituents believe there is a “right” way for their members to vote.

Consistent with our expectations, divided control of government did lead to members seeking to put opposition members in the other chamber on the record more often, but the effect is only statistically significant in the two models examining the Senate (Models 2 and 5). The size of the majority party has no discernible effect on recorded voting for either the House or the Senate. Consistent with expectations, the Senate is significantly less likely to record votes than is the House.

Discussion and Conclusion

In the modern Congress, members seek to define themselves from their opponents by building a distinct roll call voting record. As such, much of what Congress does ends up in the modern roll call record. Votes that are contentious and votes on important issues generally end up in the roll call

record. But even in the modern era this is not absolute, and it has not always been the case historically. The analysis contained in this article shows that a high percentage of landmark legislation, which was often highly contentious, passed *viva voce* in past Congresses.

Unrecorded voting poses a problem to both scholars of American politics and voters. The decision to record votes on some issues and not others directly influences the amount of information available to the general electorate. This significantly influences democratic accountability. As such, we argue that it is important to assess what factors lead Congress to request a recorded vote. We have argued that while the rate of unrecorded voting has changed throughout history, elections have always incentivized members of Congress to put themselves on the record on certain types of issues.

Our results suggest that bills that feature both particularized policy costs and benefits are more likely to get recorded votes than other types of issues. Additionally, we have argued that regular elections have led House members to request recorded final passage votes more frequently than their Senate counterparts. The introduction of two institutional changes designed to increase accountability—electronic voting in the House and the direct election of senators—does not appear to have had a direct effect on the increasing likelihood a bill receives a recorded final passage vote.

Notably, this analysis of the roll call generating process has been confined to the macro level. We believe more work can be done on the politics of going on “the record” at the member level. Specifically, for nearly all recorded votes, the *Congressional Record* lists the member who formally requested the roll call. This information could be invaluable for scholars examining how individual members and political parties have used the roll call voting record to promote their electoral brand name.

Finally, the evidence presented here further suggests that the roll call generating process has not been consistent from Congress to Congress. Figure 1 demonstrates how the proportion of unrecorded voting on landmark enactments has changed drastically from the 39th Congress (1865–1867) to the 104th Congress (1995–1996). Two data sets constructed of all bills that received final passage votes in either chamber during this time period confirmed the robustness of these findings. Assuming that the roll call record of the past was generated much the same way as it is in today’s Congress may have serious implications for congressional scholars’ use of the roll call record. This is consistent with recent scholarly work suggesting that changes in unrecorded voting can introduce biases into historical studies of Congress (Carrubba et al., 2006; Smith, 2007; Hug, 2010; Carson et al., 2011; Harbridge, 2011; Madonna, 2011).

What can be done to inoculate historical studies of Congress from biases resulting from historical changes in how a measure comes to receive a recorded vote? We believe two methods can minimize the errors that are likely introduced by a changing roll call record. One method parses the roll call record into various eras where comparisons are more appropriate (Binder,

1996; Roberts, 2007). Another method would involve imbedding the roll call selection process into models of roll call voting (Clinton, 2007). Either approach would demonstrate the proper deference to the relatively disjointed process of what comes to a roll call vote. The key to minimizing such errors must always be the recognition that only a solid understanding of the historical institutions and practices of Congress can properly guide the future analysis of historical congressional data.

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