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## A Statute by Any Other Name Might Smell Less Like S.P.A.M., or, the Congress of the United States Grows Increasingly D.U.M.B.

Chris Sagers

*Cleveland-Marshall College of Law, Cleveland State University, c.sagers@csuohio.edu*

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# A Statute by Any Other Name Might Smell Less Like S.P.A.M., or, The Congress of the United States Grows Increasingly D.U.M.B.

CHRIS SAGERS\*

By focusing on the presentation, structure, and style of legal documents rather than just their literal meaning, we approach the world in which they were written through variables that were generally deployed and altered subconsciously. . . . What is revealed through the assumptions and procedures that a society does not question will often tell us more about its collective values than will that which is debated and contentious. That which is self-evident is evidence of the self.

—Desmond Manderson<sup>1</sup>

As in other circuses, where clowns sometimes cry poignant tears, humor in the U.S. Congress can be tinged with a certain sadness. Under the actual Big Top the irony is deliberate.

To wit, it appears to have occurred to a number of lobbyists, Hill staffers, Members, and other drafters of legislation that there is something to be gained rhetorically in our American institution of “popular” statute names. Those of us outside the Beltway have only begun to notice, as not many of us are in the habit of reading the *Popular Names Table*<sup>2</sup> for fun,<sup>3</sup> but the gimmick is to specify a short name in a given bill whose initials spell out some clever acronym. Though one might have expected less levity from Congress at a time when it is less popular than cockroaches, root canals, colonoscopies, Commu-

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\* James A. Thomas Distinguished Professor of Law, Cleveland State University. © 2015, Chris Sagers. I welcome all feedback at [c.sagers@csuohio.edu](mailto:c.sagers@csuohio.edu). For their careful reviews, feedback, and many suggestions of other ridiculous things Congress has done, I thank Ross Davies, Jay Henderson, Brian Christopher Jones, Adam Liptak, Graeme Orr, Steven Poole, Jeffrey Rosen, Julie Veach, and Mary Whisner.

1. Desmond Manderson, *Statuta v. Acts: Interpretation, Music, and Early English Legislation*, 7 YALE J.L. & HUMAN. 317, 323–24 (1995).

2. I will make a number of references to this book, which actually appears in several different commercial and noncommercial forms. In preparing this Article I relied on the *United States Code Annotated Popular Names Table*, a product of West Publishing, and my references to *Popular Names Table* are to that book. An official document called the *United States Code Table of Acts Cited by Popular Name* is maintained by a congressional staff office called the Office of the Law Revision Counsel, and there are several other hard copy and electronic versions available from various sources.

3. Librarians are paying attention, though, God bless ‘em, and a few others have noticed too. See Mary Whisner, *What’s in a Statute Name?*, 97 LAW LIBR. J. 169 (2005). See also Brian Christopher Jones, *Interpreting Acronyms and Epithets: Examining the Jurisprudential Significance (or Lack Thereof)*, 25 STAN. L. & POL’Y REV. ONLINE 1 (2014); Renata E.B. Strause et al., *How Federal Statutes Are Named*, 105 LAW LIBR. J. 7 (2013); Adam Liptak, *Laws Deserve More than Those Cute Names*, N.Y. TIMES, Dec. 31, 2013, at A18 (discussing this article in manuscript form); Richard Simon, *The Fine Art of Legislation Appellation*, L.A. TIMES, May 8, 2006, at A4, available at <http://articles.latimes.com/2006/may/08/nation/na-billnames8>.

nism, Richard Nixon, and gonorrhea,<sup>4</sup> they have started doing this a *lot*, and they're doing it despite failure to accomplish much else.<sup>5</sup> There appear to have been only three of these things in the entire history of the United States prior to 1988. In the twenty-seven years since then, *there have been nearly one hundred*.

It appears that the cuter the name is, the better, and a few of these have been reasonably amusing. The 2003 CAN-SPAM Act, for example, whose title presumably consumed at least a few lobbyist billables, seems pretty funny to me.<sup>6</sup> Also fairly charming is a bill introduced several times to combat the power of foreign oil producers, the No Oil Producing and Exporting Cartels Act—you guessed it, NOPEC.<sup>7</sup> A few recent statute names have been almost laugh-out-loud funny, mainly for their self-effacing character. Witness California's How Many Legislators Does It Take to Change a Light Bulb Act.<sup>8</sup> So when I first decided to look into this trend, I expected, with what I think was a reasonably open mind, to find it quite fun.

Sadly, it was not. However witty any individual member might be, as a collective soul Congress is about as funny as the average bag of hair. Among many other disappointments, a few of these acronym titles even appear to contain unintentional typos.<sup>9</sup> Still, this project would have been merely tedious were it no more than a tour through the sad little mess of U.S. congresspersons trying to be funny. Instead, the real message turned out to be nothing contained in any particular joke itself. The message was an ugly one because I think the people drafting most of these bills are not actually trying to be funny. I think they're doing the thing that often makes our form of government such an awful, transparent charade. Even a man who would later become U.S. Attorney General found one of these titles—a much talked-about abomination couched in

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4. See *Congress Less Popular than Cockroaches, Traffic Jams*, PUB. POL'Y POLLING (Jan. 8, 2013), <http://www.publicpolicypolling.com/main/2013/01/congress-less-popular-than-cockroaches-traffic-jams.html>.

5. See Darren Samuelsohn & David Nather, *Even Small Ball Is Too Much for Congress*, POLITICO (Jan. 22, 2014, 5:01 AM), <http://www.politico.com/story/2014/01/congress-senate-house-of-representative-republicans-democrats-102448.html> (noting that 2013 was the least productive year in Congress's history, continuing a recent trend).

6. The statute aims to reduce the incidence of "spam" emails. See Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. No. 108-187, 117 Stat. 2699 (codified at 15 U.S.C. §§ 7701–13 (2004)).

7. S. 204, 111th Cong. (2007). The NOPEC bill has been introduced several times, most recently as S. 204 in 2009, but it still awaits floor consideration. A nice background appears in Kenneth S. Reinker, *Recent Developments, NOPEC: The No Oil Producing and Exporting Cartels Act of 2004*, 42 HARV. J. ON LEGIS. 285 (2005).

8. For example, consider Cal. Assembly Bill No. 722, introduced by the apparent smart-aleck Lloyd Levine of Van Nuys. See Mayor Sam, *Levine Legislation to Make California First State in the Nation to Ban Incandescent Light Bulbs*, MAYORSAM2 (Jan. 31, 2007), <http://mayorsam2.blogspot.com/2007/01/levine-legislation-to-make-california.html>. Levine's bill and similar efforts received much media attention, but all have apparently failed for the time being.

9. See *infra* note 137 (discussing the HEROS Acts).

an elaborate and rhetorically manipulative acronym—to be “Orwellian.”<sup>10</sup> The feeling flows not only from the sense that our lawmakers should have something better to do. It reflects the contrast between the titles and the policies they enact. Many of these titles—so seemingly happy and clever—conceal legal substance that is at best trivial, and sometimes fairly malevolent. The case here will be that they betray a more general malaise of the men and women who govern us. The lesson the words teach in this case is that trading in symbols, for their own sake, has come to replace even bare familiarity with substantive policy or responsibility for its consequences. And much as one might like to blame someone else’s heroes for it, it is not a failure of only one party or faction.<sup>11</sup>

And so, alas, what follows is not just a drab tale of humorless drivel. The ugliest thing about it is that, with we Americans, this sort of thing works.

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Why we name our statutes is a rarely asked and nonobvious question. Titles in general, including both legal and literary titles, are the subject of a small but elaborate philosophical literature.<sup>12</sup> As we now know them, titles are relatively

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10. See Richard Schwartz, *Patriot Act Could Be Just the Beginning*, N.Y. DAILY NEWS (July 15, 2004), <http://www.nydailynews.com/archives/opinions/patriot-act-beginning-article-1.583024> (quoting a speech by then-Judge Michael Mukasey of the Southern District of New York referring to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272, now codified in scattered sections of U.S. Code. Mukasey was later appointed Attorney General by President George W. Bush. See *Michael Mukasey Attorney General*, THE WHITE HOUSE OF PRESIDENT GEORGE W. BUSH, <http://georgewbush-whitehouse.archives.gov/government/mukasey-bio.html> (last visited Mar. 16, 2015).

11. Prior to about 2006, some might have explained the trend as just familiar Bush administration behavior; critics blamed President Bush for showy slogans that lacked substance. Indeed, the Bush White House and Republican congressional leaders were hugely fond of cute acronyms. Fearing no confusion of themselves with The Man from U.N.C.L.E., for example, the administration established not one but two totally unrelated programs with the preposterous titles Operation F.A.L.C.O.N. (one being “Federal and Local Cops Organized Nationally,” a cooperative law enforcement effort established by the U.S. Marshals Service, see *Operation FALCON: Federal and Local Cops Organized Nationally*, U.S. MARSHALS SERV., <http://www.usmarshals.gov/falcon/index.html> (last visited Apr. 9, 2015), the other being a Defense Department experimental aircraft program called Force Application and Launch from the Continental United States, see *DARPA Falco Project*, WIKIPEDIA, [http://en.wikipedia.org/wiki/DARPA\\_Falcon\\_Project](http://en.wikipedia.org/wiki/DARPA_Falcon_Project) (last visited May 10, 2015). But following the election of Democratic House leadership in 2006 and Democratic control of the White House and Senate in 2008, the pace of aspirationally clever, acronomically named statutes only quickened. Some acronym titles, like the DREAM Act and the signature “cash for clunkers” incentive program of 2009, formally called CARS, have been closely linked to the Obama White House itself. See *infra* note 58. The DREAM Act is a not-yet enacted bill first introduced by Senators Dick Durbin and Orrin Hatch in 2001. It would grant citizenship to some undocumented aliens who arrived as minors. A DREAM Act bill was introduced in both houses during President Obama’s first term, passed in the House and nearly survived filibuster in the Senate, and had strong White House support. See Ted Barrett & Dana Bash, *Senate Halts ‘Don’t Ask, Don’t Tell’ Repeal*, CNN (Sept. 22, 2010, 8:23 AM), <http://www.cnn.com/2010/POLITICS/09/21/senate.defense.bill/>.

12. See especially the incisive analysis in Gérard Genette, *Structure and Functions of the Title in Literature*, 14 CRITICAL INQUIRY 692 (1988). See generally, e.g., 2 THEODOR W. ADORNO, NOTES TO LITERATURE 299 (Rolf Tiedemann ed., Shierry Weber Nicholson trans., 1992) (1974); Harry Levin, *The*

recent things in the West, both in literature<sup>13</sup> and in legislation,<sup>14</sup> and so evidently such works can at least sometimes live without them. Critics pondering this fact have surmised dozens of different purposes they might serve.<sup>15</sup> The literature's most striking character is the near unanimity of its uneasiness or dislike for denomination. Critics stress the schizoid, borderline nature of titles, living both within and without the text, or between text and reader. There is something lurking in the ambiguity of their purpose and their mysterious relevance to the main text.<sup>16</sup> Even in literary circles, where lawyers might have thought the concern would be only an innocuously aesthetic one, the worries are

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*Title as a Literary Genre*, 72 MOD. LANGUAGE REV. xxiii (1977); Richard Sawyer, *Fictional Titles: A Classification*, 60 U. TORONTO Q. 374 (1991). A number of recent articles have extended this body of thinking to the titles of statutes. See generally, e.g., Nicholas Horn, *Tityrus*<sup>1</sup>, 1 L./TEXT/CULTURE 48 (1994); Desmond Manderson, *The Semiotics of the Title: A Comparative and Historical Analysis of Drug Legislation*, 2 L./TEXT/CULTURE 160 (1995); Graeme Orr, *Names Without Frontiers: Legislative Titles and Sloganeering*, 21 STATUTE L. REV. 188 (2000); Graeme Orr & Joo-Cheong Tham, *The Fair Work Act and Other Names of Shame*, 16 AUSTL. J. ADMIN. L. 74 (2009). Of a similar concern is Vernon V. Palmer, *The Style of Legislation in the United States: Narrative Norms and Constraining Norms*, 42 AM. J. COMP. L. 15 (1994).

13. Although formal titles of academic and literary works were by no means unknown prior to the Renaissance, no standard practice existed prior to the fifteenth century by which they were recorded or recognized. The "title page," in particular, was an invention of the 1470s. Before that, titles commonly grew through tradition and were handed down orally or through informal record-keeping by book sellers and librarians. Even when title pages became common, they were routinely so crowded with editorial and preambular language that no specific item could be clearly identified as "the" title. During the next few centuries it was common for some shortened version to achieve authoritative status only through custom. See generally Genette, *supra* note 12, at 699–700, 703–05.

14. Preambular, explanatory language, which might in some sense foreshadow the later rise of recognizably title-like language, appeared in even the earliest English legislation. Originally apologetic and justificatory in nature, over some centuries this language became standardized into routine, incantatory formulas that indicated compliance with procedural formalities. (A typical formula came to read as follows: "It is ordained, established, and enacted by the Advice of the Lords, Spiritual and Temporal, and the Commons in the said Parliament assembled, and by Authority of the same . . .," and so on. Manderson, *supra* note 1, at 356.) Insofar as these introductory bits often stated reasons for which the laws were passed, they seemed to perform functions familiar from more modern titles. *Id.*, at 334–38. Still, it was not until the late fifteenth century that a more familiar practice arose of including "long titles" in the text of legislation itself. See Orr, *supra* note 12, at 192.

15. A convenient explanation is that they help organize large numbers of documents, but that is only the most mundane of the range of possibilities. In literature, titles now constitute a part of the story being told. Importantly, the changing function of the literary title paralleled the diminution of the authorial voice. As the title in fiction now normally constitutes the author's most or only direct commentary on the substance of the story, it has grown into an important opportunity for the author's own critical commentary. See Sawyer, *supra* note 12, at 378. But titles can do more unsavory things, too, like state untoward proprietary claims, or sell books, or otherwise meddle. See *infra* note 16.

16. That titles are simply strange is a basic complaint. As Nicholas Horn put it, "[a] title is a monster which is neither one thing nor the other: neither part of the entitled text nor entirely separate from it; at the same time an indication of the debt owed by the text to its origin and an indication of the text's unique identity." Horn, *supra* note 12, at 49. Moreover, even in literature and especially in law, titles are not simply denominators, but are to some degree arguments. The literature is especially fond of an observation of Umberto Eco, who—writing as an author with regrets about one of his own titles—said that "[a] title . . . already—and unfortunately—is a key of interpretation. One cannot avoid [its] suggestions . . ." Genette, *supra* note 12, at 719 (quoting UMBERTO ECO, POSTSCRIPT TO *THE NAME OF THE ROSE* 510 (William Weaver trans., Harcourt Brace Jovanovich 1984) (1983)) (internal quotation marks omitted). See also Manderson, *supra* note 12, at 165–66; Orr, *supra* note 12, at 190. As Manderson

quite serious, and they have direct relevance to the critique of legislation. Gérard Genette warns that we should “not overperfume our roses,”<sup>17</sup> because titles can betray their text and cheapen the art through their effort to seduce.<sup>18</sup> In lawmaking the matter seems especially dire, if nothing else because of the seriousness of what is going on. Statutes, like other law, are written on a field of pain and death, and manipulation or sleight of hand would seem fairly grave.

But in any case, there remains the question why U.S. statutes have names at all. While statute names and preambular verbiage are old in England and some other common law countries, their origins overseas reflect factors never present in the United States. Changing ways of naming laws followed changes in the role of law itself throughout the Renaissance,<sup>19</sup> the increase in their number during the fifteenth century,<sup>20</sup> and, later, parliamentary procedural rules that were keyed to long-title language.<sup>21</sup> They also may have some actual substantive significance in English law,<sup>22</sup> a thing largely unheard of here.

So, our statutes might all be known by citation only, as indeed some are. Lawyers all know § 1983, antitrust lawyers all know §§ 1, 2 and 7, and litigators all know § 1331. Or, they might all have purely functional names, as they sometimes do in the United States<sup>23</sup> and commonly do elsewhere.<sup>24</sup> We also have always had some incidence of calling statutes by their sponsors’

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writes, “[t]he title in law or literature is . . . a normative and interpretive argument which participates in the power struggle for the legitimacy of its subject-matter.” Manderson, *supra* note 12, at 166.

17. Genette, *supra* note 12, at 720.

18. *Id.* at 719.

19. A very sensitive study of which is in Manderson, *supra* note 1. As he explains, the earliest English statutes merely codified existing norms, and mainly comprised mere administrative directives between the Crown and its functionaries. Not until hundreds of years into the common law era did English statutes routinely specify new norms, and routinely direct them to the populace. Along with that evolution there came a need both to legitimize the legal creation of norms, and to legitimize the new coercive tools thought necessary to implement them. This changing overall conception of law and normativity is relevant here because the government’s legitimization of it took place in part through statutory titles and preambular language. I suppose one might think today’s popular names serve a similar purpose, in that statutes today introduce new norms as well. But I hardly think so, because legislatures making new policy has been a commonplace in America since well before the founding and because thousands of statutes are passed by Congress and state legislatures with no short name at all.

20. So implies Orr, *supra* note 12, at 192. Again, I suppose one might say that the rising numbers of new laws also explains our recent statute naming practices, but for several reasons I don’t buy it. See *infra* notes 161–68 and accompanying text.

21. In the British Parliament, long titles help define the scope of a bill, for purposes of rules governing debate and the adding of amendments. See Orr, *supra* note 12, at 194.

22. See *id.* at 193–94 (noting the possible significance of titles in English statutory construction).

23. Consider, for example, the Bankruptcy Code of 1978, 11 U.S.C. (2012); the Internal Revenue Code, 26 U.S.C. (2012); and, more recently, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified in scattered sections of 47 U.S.C. (1996)).

24. The United Kingdom, for example, has in recent years adopted the Mental Capacity Act of 2005, the Data Protection Act of 1998, the Employment Rights Act of 1996, and the Disability Discrimination Act of 1995. See Home, LEGIS. GOV’T U.K., <http://www.opsi.gov.uk> (last visited Apr. 10, 2015). Japan has the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade of 2005, the Basic Environment Law of 1993, and the Bank of Japan Law of 1998. See Search Legislation: Japan, WORLDLII, [www.worldlii.org/catalog/234.html](http://www.worldlii.org/catalog/234.html) (last visited Apr. 10, 2015). Australia has the Border Protection Act of 2001, the Electronic Transactions Act of 1999, the Jurisdiction of Courts

names,<sup>25</sup> though it is telling that nowadays the choice seems commonly made to indicate that a bill had bipartisan cosponsors.<sup>26</sup> McCain-Feingold and Sarbanes-Oxley come to mind. It seems telling because it shows that the practice of statutory short names is now mainly a practice of strategic rhetoric. In any case, in this country statutes normally are not known by purely functional names. The 2013 *Popular Names Table* is 3,513 pages long and contains something on the order of 15,000 entries. Really quite few of them are merely functional or commonplace.

Among those many thousands of not-simply-functional names, in about the past twenty years or so quite a large number have come to be clever in some way. Admittedly, cleverness is not entirely new. At least one clever statute name happens to be very old, having arisen during a central moment in the early Republic. Thomas Jefferson infamously responded to a British attack on an American cargo ship in Boston Harbor by proposing the Embargo Act of 1807, thereby precipitating the War of 1812.<sup>27</sup> For its economic consequences the public came to know the Embargo Act by mocking, anagrammatic names like “Go bar ’em” and “mob-rage.”<sup>28</sup> Even now *Popular Names* identifies it as the “O Grab Me” Act, which is “embargo” spelled backwards.

But those names were not intended by Thomas Jefferson. “O Grab Me” was apparently coined in a famous political cartoon, and the original text identifies the bill only as “An Act laying an Embargo on all ships and vessels in the ports and harbors of the United States.”<sup>29</sup> In fact, it appears that even though vernacular short-hand names were fairly common throughout the nineteenth century, in this country they arose purely through popular usage.<sup>30</sup> And thus, while it had occurred much earlier in England,<sup>31</sup> the practice of deliberately including statutory short names in American statutes themselves appears to have occurred for the first time no earlier than a federal law of 1916,<sup>32</sup> did not appear in numbers until the New Deal, and would remain relatively uncommon until

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Legislation Amendment Act of 2000, and the Transport Safety Investigation Act of 2003. See *Acts*, AUSTL. GOV’T COMLAW, [www.comlaw.gov.au](http://www.comlaw.gov.au) (last visited Apr. 10, 2015).

25. See Strause et al., *supra* note 3, at 10 n.17 (correcting a misstatement on this point in an earlier manuscript version of this paper).

26. See *id.* at 26.

27. Background of the Act and its various names are examined in Thorp Lanier Wolford, *Democratic-Republican Reaction in Massachusetts to the Embargo of 1807*, 15 *NEW ENG. Q.* 35, 46 (1942).

28. *Id.*

29. Act of Dec. 22, 1807, ch. 5, 2 Stat. 451, 451 (repealed 1809).

30. A similar, purely informal nicknaming tradition goes back much further overseas. As Orr notes, English statutes came to have nicknames as early as the thirteenth century, and these informal names evolved into substantively descriptive short titles as early as the Tudors. Orr’s earliest example of the latter, which seem rather obviously the forebears of our modern titles, is the Statute of Uses of 1536. Orr, *supra* note 12, at 192–93.

31. See Strause et al., *supra* note 3, at 18 (describing an English statute of 1847 that was given a formal short title).

32. See Whisner, *supra* note 3, at 175–76 (reporting as the earliest instance she was able to discover the Federal Farm Loan Act, Pub. L. No. 64-158, 39 Stat. 360, 360 (1916)).

the 1970s.<sup>33</sup> That earliest gesture of 1916 itself may have been in response to a formal request by law librarians in 1914, who had come to find the profusion of new statutes unmanageable,<sup>34</sup> and its later growth may have reflected the formal creation of Congress's Office of Legislative Counsel in 1919.<sup>35</sup> In other words, the origin of U.S. popular names as we now know them was not any legislator's idea at all. A similar history played out not long before that in the United Kingdom and some other common law countries, with some differences but for apparently similar reasons.<sup>36</sup>

In any event, in this country there was apparently not a deliberately *clever* statute name until 1950, when the United States adopted the AID Act for humanitarian assistance overseas.<sup>37</sup> A few more trickled in during the next few decades. The next was conceivably the FINS Act of 1964, which sets aside a "national seashore" and so might have been intended to allow visitors to observe finned sea-life,<sup>38</sup> but that was almost certainly a coincidence.<sup>39</sup> There has also long lingered a suspicion that the RICO statute of 1970 conceals a pun.<sup>40</sup> But the first clearly, deliberately clever acronyms after the AID Act were the IDEA Act of 1970, relating to public school special education programs, and

33. See Strause et al., *supra* note 3, at 24–25.

34. This fact too was uncovered in Whisner's remarkable article. See Whisner, *supra* note 3, at 176 & n.52 (citing a request formally made that all state and federal legislation contain short titles, a request made by the American Association of Law Libraries in A.J. Small et. al., *Report of the Committee on Legal Bibliography*, 7 L. LIBR. J. 53, 57 (1914)). Again, much earlier advice had been given in England. See Strause et al., *supra* note 3, at 18–19 (describing an English legislative drafting manual of 1860 that encouraged short titles).

35. See Strause et al., *supra* note 3, at 20–21.

36. Late in the nineteenth century the British Parliament deliberately renamed masses of statutes then in force. The renamed statutes simply made reference to statutes in force and gave each one a new, manageably short name. This was strictly a matter of housekeeping. Similar steps were taken in some other common law countries, though not in the United States. See Orr, *supra* note 12, at 191–93.

37. See Act for International Development of 1950, Pub. L. No. 81-535, 64 Stat. 204 (formerly codified at 22 U.S.C. § 1557). The original AID Act has been replaced by the AID Act of 1961, Pub. L. No. 87-195, 75 Stat. 424 (codified at 22 U.S.C. § 2151 (2000)).

38. See Fire Island National Seashore Act, Pub. L. No. 88-587, 78 Stat. 928 (1964) (codified at 16 U.S.C. §§ 459e–459e-9 (1978)).

39. The FINS Act was one of a series of national seashore acts set up at the same time, none of the rest of which spells any meaningful acronym. See, e.g., Cape Cod National Seashore Act, Pub. L. No. 87-126, § 1, 75 Stat. 284, 284 (1961); Point Reyes National Seashore Act, Pub. L. No. 87-657, § 1, 76 Stat. 538, 538 (1962).

40. The story goes that RICO was crafted in honor of Edward G. Robinson's gangster character, Rico Bandello, in the 1932 film *Little Caesar*. G. Robert Blakey, now a Notre Dame law professor and a one-time Senate staffer with drafting responsibilities for the statute, is said to know the truth, see, e.g., Tony Mauro & Elaine Shannon, *LEGAL TIMES*, Oct. 8, 1979, at 32, but he has always refused to "admit or deny" it. See G. Robert Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 NOTRE DAME L. REV. 237, 237 n.3 (1982); cf. G. Robert Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1025 n.91 (1980). The RICO statute is the Racketeer Influenced and Corrupt Organizations Act, Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 901(a), 84 Stat. 922, 941 (codified at 18 U.S.C. §§ 1961–68 (1978)).



the VISTA Act of 1973, which set up a federal volunteer service program.<sup>41</sup> The next would not follow until fully fifteen years later, the WARN Act of 1988.<sup>42</sup>

The long, elaborately engineered titles that are now common came shortly thereafter. The first seems to have been a foreign aid bill of the early 1990s, which tried to capture the post-Cold War spirit by naming itself the FRIENDSHIP Act.<sup>43</sup> (Perhaps it is a clue that the same era of late-Cold War politics gave us the similarly optimistic START treaty of 1991.)<sup>44</sup> FRIENDSHIP was followed some years later by the bill to finally undo the FDA's long campaign against saccharin, the SWEETEST Act of 2000,<sup>45</sup> and then by the infamous USA PATRIOT Act in 2001.<sup>46</sup> The genuine explosion of acronyms occurred only at about that time.

To be fair, among the surge of acronomial names many are not just aspirationally amusing little puns. Some, like the FACE Act and one of the two (count 'em, two) FACT Acts, don't even bear any obvious connection to their legal subject matter.<sup>47</sup> A few are basically only inside jokes or matters of personal amusement, like the 2005 highway spending bill named for the relevant committee chairman's wife.<sup>48</sup>

41. See Education of the Handicapped Act, Pub. L. No. 91-230, § 601, 84 Stat. 121, 175 (1970) (codified at 20 U.S.C. §§ 1400-82 (2005)); Domestic Volunteer Service Act of 1973, Pub. L. No. 93-113, 87 Stat. 394 (codified at 42 U.S.C. §§ 4950-5085 (2009)) (creating the Volunteers in Service to America program).

42. See Worker Adjustment and Retraining Notification Act, Pub. L. No. 100-379, 102 Stat. 890 (1988) (codified at 29 U.S.C. §§ 2101-09 (1988)) (requiring employer notice to workers before certain factory closings or other major employment related actions).

43. Act For Reform In Emerging New Democracies and Support and Help for Improved Partnership with Russia, Ukraine, and Other New Independent States, Pub. L. No. 103-199, 107 Stat. 2317 (1993) (codified at 22 U.S.C. § 5801 (2012)).

44. Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms, U.S.-U.S.S.R., July 31, 1991, S. TREATY DOC. No. 102-20 (1991), is commonly known as the Strategic Arms Reduction Treaty (START), after the formal name that had been given to the talks leading to the agreement. See Lawrence D. Freedman, *Strategic Arms Reduction Talks (START): International Arms Control Negotiations*, BRITANNICA, <http://www.britannica.com/EBchecked/topic/568196/Strategic-Arms-Reduction-Talks-START> (last updated July 24, 2014).

45. Saccharin Warning Elimination via Environmental Testing Employing Science and Technology Act, H.R. 5668, 106th Cong. (2d Sess. 2000), and adopted as Appendix A, § 517 of the Consolidated Appropriations Act, Pub. L. No. 106-554, app. § 517, 114 Stat. 2763, 2763A-73 (2001). Strictly speaking, the short title of the original bill was not included in the adopting language of the appropriations law, but its operative provisions were adopted verbatim.

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

47. Freedom of Access to Clinic Entrances Act of 1994, Pub. L. No. 103-259, 108 Stat. 694 (codified at 18 U.S.C. § 248 (1994)), provides civil and criminal penalties for violent interference with "reproductive health services." Likewise, the Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. No. 101-624, 104 Stat. 3359 (codified in scattered sections of 7 U.S.C. (1990)), is an agriculture policy instrument. The other FACT Act was the Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, 117 Stat. 1952, a package of reforms to the Fair Credit Reporting Act, which most famously added the "free" annual credit report program (codified at 15 U.S.C. § 1681j(a) (2003)).

48. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, 119 Stat. 1144 (2005) (expired 2009). SAFETEA-LU was drafted by Chairman Don

But in any case, and for whatever reason, there are now a lot of these statutes. For whatever it may be worth, the following lists every single one of them that I could find. These are in roughly alphabetical order, with such commentary as seems fitting: ADAM;<sup>49</sup> ADVANCE Democracy;<sup>50</sup> AID;<sup>51</sup> AMBER;<sup>52</sup> ART;<sup>53</sup> BEACH;<sup>54</sup> a genuinely insipid waste of legislative attention called CALM;<sup>55</sup> CAN-SPAM;<sup>56</sup> CARE;<sup>57</sup> CARS;<sup>58</sup> the superficially-but-evidently-not-quite-so-humane CHIMP law;<sup>59</sup> CLASS;<sup>60</sup> COATS;<sup>61</sup> COASTAL;<sup>62</sup> two bills that milk that old cow of Yankee do-it-yourselfism, COMPETE<sup>63</sup> and America

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Young of the House Committee on Transportation and Infrastructure, whose wife's name is Lu. Press accounts quote his staffers as having spent an entire day trying to satisfy his direction to name the bill in her honor. *See* Simon, *supra* note 3. Fareed Zakaria, noting that SAFETEA-LU was among the most pork-laden bills in American history, wondered if the next highway spending bill would grant Mrs. Young a necklace. Fareed Zakaria, *Leaders Who Won't Choose*, NEWSWEEK, Sept. 26, 2005, at 38.

49. Automatic Defibrillation in Adam's Memory Act, Pub. L. No. 108-41, 117 Stat. 839 (2003) (codified at 42 U.S.C. § 201 (2003)).

50. Advance Democratic Values, Address Nondemocratic Countries, and Enforce Democracy Act of 2007, Pub. L. No. 110-53, § 2101, 121 Stat. 266, 526 (codified in scattered sections of 22 U.S.C. (2007)).

51. *See supra* note 37.

52. Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, §§ 301-05, 117 Stat. 650, 660-64 (codified at 42 U.S.C. § 5791 (2003)) (creating the well-known AMBER (America's Missing Broadcast Emergency Response) Alert program).

53. Artists' Rights and Theft Prevention Act of 2005, Pub. L. No. 109-9, 119 Stat. 218 (codified at 17 U.S.C. § 101 (2005)) (providing criminal penalties for recording copyrighted audiovisual performances, even if not thereafter sold).

54. Beaches Environmental Assessment and Coastal Health Act of 2000, Pub. L. No. 106-284, 114 Stat. 870 (codified in scattered sections of 33 U.S.C. (2000)) (requiring federal monitoring of water quality at coastal recreation areas on navigable waters).

55. Commercial Advertisement Loudness Mitigation Act, Pub. L. No. 111-311, 124 Stat. 3294 (2010) (codified at 47 U.S.C. § 621 (2010)). As to the law's content, *see infra* text accompanying note 199.

56. *See supra* note 6.

57. Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Pub. L. No. 101-381, 104 Stat. 576 (codified at 42 U.S.C. § 300ff (1990)) (providing assistance funds through Public Health Service to areas disproportionately affected by HIV/AIDS).

58. Consumer Assistance to Recycle and Save Act of 2009, Pub. L. No. 111-32, § 1301, 123 Stat. 1909, 1909 (codified at 49 U.S.C. § 32901 (2009)).

59. Chimpanzee Health Improvement, Maintenance and Protection Act, Pub. L. No. 106-551, 114 Stat. 2752 (2000) (codified at 42 U.S.C. § 283m (2007)) (providing for the lifetime healthy care of chimpanzees used in federal research). As to the law's not-quite-so-humane nature, *see* Gary L. Francione, *Reflections on Animals, Property, and the Law and Rain Without Thunder*, 70 L. & CONTEMP. PROBS. 9, 17-22 (2007).

60. Community Living Assistance Services and Supports Act, Pub. L. No. 111-148, 124 Stat. 828 (2010) (repealed 2013).

61. Community Opportunities, Accountability, and Training and Educational Services Act of 1998, Pub. L. No. 105-285, 112 Stat. 2702 (codified at 42 U.S.C. §§ 9801-9924 (1998)) (setting out various types of administrative and financial assistance for local Head Start agencies).

62. Consumer Option for an Alternative System to Allocate Losses Act of 2012, Pub. L. No. 112-141, § 100251, 126 Stat. 969 (codified in scattered sections of 42 U.S.C. (2012)).

63. Creating Opportunities for Minor League Professionals, Entertainers, and Teams through Legal Entry Act of 2006, Pub. L. No. 109-463, 120 Stat. 3477 (codified at 8 U.S.C. § 1101 (2006)).

COMPETES,<sup>64</sup> neither of which holds the slimmest promise for consumer benefit or allocational efficiency;<sup>65</sup> CREATE;<sup>66</sup> Credit CARD;<sup>67</sup> CROWD-FUND;<sup>68</sup> EARLY;<sup>69</sup> ENHANCE 911;<sup>70</sup> ENHANCED;<sup>71</sup> E-SIGN;<sup>72</sup> FLAME;<sup>73</sup> FOR VETS;<sup>74</sup> FREEDOM;<sup>75</sup> FRIENDSHIP;<sup>76</sup> GO Zone;<sup>77</sup> GRAD;<sup>78</sup> HALE Scouts;<sup>79</sup> HELP;<sup>80</sup> HEARTH;<sup>81</sup> HERO;<sup>82</sup> HITECH;<sup>83</sup> IDEA;<sup>84</sup> JOBS;<sup>85</sup> KIDS;<sup>86</sup>

64. America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Act, Pub. L. No. 110-69, 121 Stat. 572 (2007) (codified in scattered sections of 20 U.S.C. (2007)).

65. *See infra* notes 197–98 and accompanying text.

66. Cooperative Research and Technology Enhancement Act of 2004, Pub. L. No. 108-453, 118 Stat. 3596 (codified at 35 U.S.C. § 103 (2004)) (dealing with the patentability of inventions that were collaboratively developed by more than one person).

67. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (codified in scattered sections of 15 U.S.C. and 16 U.S.C. (2009)).

68. Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012, Pub. L. No. 112-106, § 301, 126 Stat. 315, 315 (codified at 15 U.S.C. § 77d-1 (2012)).

69. Young Women's Breast Health Education and Awareness Requires Learning Young Act of 2009, Pub. L. No. 111-148, § 10413, 124 Stat. 990, 990 (2010) (codified as amended at 42 U.S.C. § 280m (2014)).

70. Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004, Pub. L. No. 108-494, 118 Stat. 3986 (codified at 47 U.S.C. § 901 (2004)) (providing for the development of “enhanced 911” service, as defined in FCC regulations, *see* 47 C.F.R. § 20.18 (2014), to be carried over certain kinds of consumer wireless communication devices).

71. Establishing a Network of Health-Advancing National Centers for Excellence for Depression Act of 2009, Pub. L. No. 111-148, § 10410, 124 Stat. 119, 984 (2010) (codified as amended at 42 U.S.C. § 290bb-33 (2010)).

72. Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000) (codified at 15 U.S.C. §§ 7001–31 (2000)) (providing for the legal validity of electronic signatures made on contracts in interstate commerce).

73. Federal Land Assistance, Management and Enhancement Act of 2009, Pub. L. No. 111-88, 123 Stat. 2968 (codified at 43 U.S.C. § 1748(a) (2009)).

74. Formerly Owned Resources for Veterans to Express Thanks for Service Act of 2010, Pub. L. No. 111-338, 124 Stat. 3590 (codified as amended at 40 U.S.C. § 549 (2014)).

75. Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992, Pub. L. No. 102-511, 106 Stat. 3320 (codified as amended at 22 U.S.C. § 5958 (1992)).

76. *See supra* note 43.

77. Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135, 119 Stat. 2577 (codified at 26 U.S.C. §§ 1400M–1400T (2005)).

78. Graduation Really Achieves Dreams Act, H.R. 887, 110th Cong. (1st Sess. 2007) (adopted as Higher Education Opportunity Act, Pub. L. No. 110-315, § 801, 122 Stat. 3078, 3378 (2008) (codified in scattered sections of 20 U.S.C. (2008))).

79. Help to Access Land for the Education of Scouts Act, Pub. L. No. 112-103, 126 Stat. 284 (2012).

80. HELP Commission Act, Pub. L. No. 108-199, § 637, 118 Stat. 101, 101 (2004) (codified at 22 U.S.C. § 2394b (2004)) (included as an amendment to the Consolidated Appropriations Act of 2004, creating the Helping to Enhance the Livelihood of People Commission, a federal advisory panel charged with investigating U.S. foreign aid policy).

81. Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, Pub. L. No. 112-151, 126 Stat. 1150 (codified at 25 U.S.C. § 415 (2012)).

82. Heroes Earned Retirement Opportunities Act, Pub. L. No. 109-227, 120 Stat. 385 (2006). Not to be confused with a couple of apparently misspelled statutes called “HEROS,” discussed below. *See infra* note 137 and accompanying text.

83. Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, § 13001, 123 Stat. 226, 226 (2009) (codified in scattered sections of 42 U.S.C. (2009)).

84. *See supra* note 41.

LEGACY;<sup>87</sup> the unaccountably culturally ecumenical LIBERTAD;<sup>88</sup> LIFE;<sup>89</sup> LIFT;<sup>90</sup> the LOCAL TV law, which despite its promising title will do nothing to put hard-hitting, “investigative” local news reporters in prison;<sup>91</sup> MAP-21;<sup>92</sup> MD-CARE;<sup>93</sup> MEDS;<sup>94</sup> MINER;<sup>95</sup> NET;<sup>96</sup> NET 911;<sup>97</sup> No FEAR;<sup>98</sup> ORBIT;<sup>99</sup>

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85. Jumpstart Our Business Startups Act, Pub. L. No. 112-106, 126 Stat. 306 (2012) (codified at 15 U.S.C. § 78a (2012)).

86. Keeping the Internet Devoid of Sexual Predators Act of 2008, Pub. L. No. 110-400, 122 Stat. 4224 (codified at 42 U.S.C. §§ 16915a–15b (2008)).

87. Living Equitably: Grandparents Aiding Children and Youth Act of 2003, Pub. L. No. 108-186, § 201, 117 Stat. 2688, 2688 (codified at 12 U.S.C. § 1701q note (2003)) (providing assistance through the U.S. Department of Health & Human Services (HUD) for “intergenerational families,” in which an elderly person provides primary care for grandchildren or other young people).

88. Cuban Liberty and Democratic Solidarity Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (codified at 22 U.S.C. §§ 6021–91 (1996)). The main effect of this statute, which is more commonly known as the Helms-Burton Act, was to impose sanctions and embargo on Cuba; it has been fairly controversial and has been the subject of WTO action against the United States. *See* Panel Report, *United States—The Cuban Liberty and Democratic Solidarity Act*, WT/DS38/R (Apr. 22, 1998), available at [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds38\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds38_e.htm).

89. Legal Immigration Family Equity Act, Pub. L. No. 106-553, app. § 1101, 114 Stat. 2762, 2762A-142 (2000) (codified in scattered sections of 8 U.S.C. (2000)) (amending U.S. immigration law in various respects concerning immigration status of family members of U.S. noncitizen permanent residents).

90. Literacy Involves Families Together Act, Pub. L. No. 106-554, app. § 1601, 114 Stat. 2763, 2763A-328 (2000) (codified in scattered sections of 20 U.S.C. (2000)) (amending several provisions of the Elementary and Secondary Education Act to provide literacy education programs).

91. Launching Our Communities’ Access to Local Television Act of 2000, Pub. L. No. 106-553, app. § 1001, 114 Stat. 2762, 2762A-128 (codified at 47 U.S.C. §§ 1101–10 (2000)) (providing federal loan guarantees for the establishment of local broadcast television stations in rural and other “underserved” areas).

92. Moving Ahead for Progress in the 21st Century Act, Pub. L. No. 112-141, 126 Stat. 405 (2012) (codified in scattered sections of 23, 33, 40, 42, and 49 U.S.C. (2012)).

93. Muscular Dystrophy Community Assistance, Research and Education Amendments of 2001, Pub. L. No. 107-84, 115 Stat. 823 (codified in scattered sections of 42 U.S.C. (2001)) (setting out terms for NIH and Public Health Service coordination of research in musculoskeletal diseases).

94. Medicine Equity and Drug Safety Act of 2000, Pub. L. No. 106-387, app. § 745, 114 Stat. 1549, 1549A-35 (codified at 21 U.S.C. § 384 (2003)).

95. Mine Improvement and New Emergency Response Act of 2006, Pub. L. No. 109-236, 120 Stat. 493 (codified at 30 U.S.C. §§ 826, 963–65 (2006)).

96. No Electronic Theft (NET) Act, Pub. L. No. 105-147, 111 Stat. 2678 (1997) (codified as amended in scattered sections of 17, 18, and 28 U.S.C. (1999)).

97. New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620 (codified at 47 U.S.C. § 615a-1 (2008)).

98. Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, Pub. L. No. 107-74, 116 Stat. 566 (codified as amended at 5 U.S.C. § 2301 note (2006)) (creating budgetary consequences for federal agencies that suffer judgments in employee whistleblower and employment discrimination claims; *see* S. REP. NO. 107-143, at 1–2 (2002)).

99. Open-market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000) (codified at 47 U.S.C. §§ 761–63 (2000)) (privatizing the operations of the former multigovernmental satellite service organization INTELSAT; for an excellent analysis of the bill and its potential shortcomings, see generally Kenneth Katkin, *Communications Breakdown?: The Future of Global Connectivity After the Privatization of INTELSAT*, 38 VAND. J. TRANSNAT’L L. 1323 (2005)).

OPEN Government;<sup>100</sup> PACT;<sup>101</sup> PACE–Energy;<sup>102</sup> PEP;<sup>103</sup> PETS;<sup>104</sup> PREEMIE;<sup>105</sup> PRICE of Homeland Security;<sup>106</sup> PRIME;<sup>107</sup> REAL ID;<sup>108</sup> the REAP law,<sup>109</sup> which I guess could be introduced only after the SEED law;<sup>110</sup> SAFE DOSES;<sup>111</sup> SAFE ID;<sup>112</sup> SAFETEA–LU;<sup>113</sup> SAFETY;<sup>114</sup>

100. Openness Promotes Efficiency in our National Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524 (codified at 5 U.S.C. § 101 note (2007)).

101. Prevent All Cigarette Trafficking Act of 2009, Pub. L. No. 111-154, 124 Stat. 1087 (2010) (codified at 15 U.S.C. § 375–378 (2010)).

102. Protecting America’s Competitive Edge Through Energy Act, Pub. L. No. 110-69, § 5001, 121 Stat. 600, 600 (2007) (codified at 42 U.S.C. § 15801 (2007)).

103. Physical Education for Progress Act, Pub. L. No. 106-554, app. § 10999A, 114 Stat. 2763, 2763A-76 (2000) (repealed 2012) (funding measure for physical education initiatives). The PEP Act was severely frustrated by congressional budget disputes, *see* Steve Esack, *Holmes’ Push for More Physical Education Includes Talk at Phillipsburg Head Start*, MORNING CALL (Feb. 1, 2003), [http://articles.mcall.com/2003-02-01/news/3456825\\_1\\_physical-education-education-law-national-pe-day](http://articles.mcall.com/2003-02-01/news/3456825_1_physical-education-education-law-national-pe-day), and was repealed in toto without explanation by the No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425, 1986 (2002). The legislative history is similarly quiet.

104. Pets Evacuation and Transportation Standards Act of 2006, Pub. L. No. 109-308, 120 Stat. 1725 (codified in scattered sections of 42 U.S.C. (2006)).

105. Prematurity Research Expansion and Education for Mothers who deliver Infants Early Act, Pub. L. No. 109-450, 120 Stat. 3341 (2006) (codified in scattered sections of 42 U.S.C. (2007)).

106. Personnel Reimbursement for Intelligence Cooperation and Enhancement of Homeland Security Act of 2008, Pub. L. No. 110-412, 122 Stat. 4336 (codified at 6 U.S.C. § 101 note (2008)).

107. Program for Investment in Microentrepreneurs Act of 1999, Pub. L. No. 106-102, § 171, 113 Stat. 1338, 1471 (codified at 15 U.S.C. §§ 6901–10 (1999)) (establishing funding program within the Small Business Administration (SBA) for small business incubators to assist small disadvantaged entrepreneurs). PRIME is one of many federal “microenterprise” initiatives aimed at attacking poverty through self-sufficiency. All apparently emulate the Grameen Bank of Nobel Peace Prize winner Muhammad Yunus, a microenterprise effort in Bangladesh. *See generally* Susan R. Jones, *Representing the Poor and Homeless: Innovations in Advocacy, Tackling Homelessness Through Economic Self-Sufficiency*, 19 ST. LOUIS U. PUB. L. REV. 385 (2000). This bill comes notably close to P(rogram for) I(nvestment in) M(icroentre)P(reneurship).

108. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302 (codified in scattered sections of 8 U.S.C. (2005)). The REAL ID Act is a fairly bizarre little law. Half of it does the mundane work of setting guidelines for state government ID cards. The other half repeals the writ of flipping habeas corpus. *See generally* Aaron G. Leiderman, Note, *Preserving the Constitution’s Most Important Human Right: Judicial Review of Mixed Questions Under the REAL ID Act*, 106 COLUM. L. REV. 1367 (2006) (discussing the gravity of the law’s civil rights consequences).

109. Rural Education Achievement Program, Pub. L. No. 107-110, sec. 601, § 6201, 115 Stat. 1425, 1891–98 (2002) (codified at 20 U.S.C. §§ 7341–55, 7371–72 (2002)) (authorizing specialized Department of Education grants to rural school districts).

110. Support for East European Democracy (SEED) Act of 1989, Pub. L. No. 101-179, 103 Stat. 1298 (codified at 22 U.S.C. §§ 5401–95 (2004)) (foreign assistance package for newly liberated, formerly Soviet Eastern European countries).

111. Strengthening and Focusing Enforcement to Deter Organized Stealing and Enhance Safety Act of 2012, Pub. L. No. 112-186, 126 Stat. 1427 (codified in scattered sections of 18 U.S.C. (2012)).

112. Secure Authentication Feature and Enhanced Identification Defense Act of 2003, Pub. L. No. 108-21, § 607, 117 Stat. 650, 689 (amending 18 U.S.C. § 1028) (providing criminal penalties for acquiring or trafficking in fraudulent government ID documents with technological “authentication features”).

113. *See supra* note 48.

114. Support Anti-terrorism by Fostering Effective Technologies Act of 2002, Pub. L. No. 107-296, § 861, 116 Stat. 2135, 2238 (codified at 6 U.S.C. §§ 441–44 (2002)) (tort reform provision limiting recovery where plaintiff’s injury arises from the use of “qualified anti-terrorism technology” during a

SAVER;<sup>115</sup> SCAMS;<sup>116</sup> SOAR;<sup>117</sup> SPARTA;<sup>118</sup> SPEECH;<sup>119</sup> STEP;<sup>120</sup> STOP;<sup>121</sup> SWEETEST;<sup>122</sup> TREAD;<sup>123</sup> the disappointingly predictable USA<sup>124</sup> and the unrelated USA Act,<sup>125</sup> which followed only shortly after the aesthetically and otherwise execrable USA PATRIOT;<sup>126</sup> US SAFE WEB;<sup>127</sup> VISTA;<sup>128</sup> VOICE;<sup>129</sup> and VOW.<sup>130</sup> But there are more. In addition to all those, it seemed worth pointing out separately that there are now a series of otherwise unrelated statutes that were given, apparently by accident, the same acronomial name. There are two things called FACE,<sup>131</sup> two things called FACT,<sup>132</sup> two things called FAIR (each of which no doubt seems to someone somewhere not to be),<sup>133</sup> two things called HEART,<sup>134</sup> yet another two things called PROTECT,<sup>135</sup>

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terrorist attack, if defendant is a third party manufacturer who sold the technology to a federal, state, or local government, and if the technology was first certified by the Secretary of Homeland Security).

115. Savings Are Vital to Everyone's Retirement Act of 1997, Pub. L. No. 105-92, 111 Stat. 2139 (codified at 29 U.S.C. §§ 1146–47 (1998)) (requiring Secretary of Labor to undertake education and outreach programs to encourage retirement savings).

116. Senior Citizens Against Marketing Scams Act of 1994, Pub. L. No. 103-322, § 250001, 108 Stat. 1796, 2081 (codified at 18 U.S.C. §§ 2325–27 (2001)) (imposing criminal penalties for fraudulent telemarketing schemes that target seniors).

117. Scholarships for Opportunity and Results Act, Pub. L. No. 112-10, § 3001, 125 Stat. 199, 199 (2011).

118. Sports Agent Responsibility and Trust Act, Pub. L. No. 108-304, 118 Stat. 1125 (2004) (codified at 15 U.S.C. §§ 7801–07 (2004)) (setting out rules to deter fraud or abuse by sports agents of student athletes).

119. Securing the Protection of our Enduring and Established Constitutional Heritage Act, Pub. L. No. 111-223, 124 Stat. 2380 (2010) (codified at 28 U.S.C. §§ 4101–05 (2010)).

120. Supporting Teens through Education and Protection Act of 2005, Pub. L. No. 109-162, § 41204, 119 Stat. 3010, 3010 (2006) (repealed 2013). This law provided funding for domestic violence prevention programs in middle and high schools.

121. Sober Truth on Preventing Underage Drinking Act, Pub. L. No. 109-422, 120 Stat. 2890 (2006) (codified at 42 U.S.C. § 201 note (2006)).

122. *See supra* note 45.

123. Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. No. 106-414, 114 Stat. 1800 (2000) (codified at 49 U.S.C. §§ 30101–70 (2000)).

124. Uninterrupted Scholars Act (USA), Pub. L. No. 112-278, 126 Stat. 2480 (2013) (codified at 20 U.S.C. § 1221 note (2013)).

125. Unity in the Spirit of America Act, Pub. L. No. 107-117, § 1301, 115 Stat. 2230, 2339 (2002) (codified at 42 U.S.C. § 12501 note (2006)) (providing funds for memorials to September 11 victims, the funds to be administered through the Points of Light Foundation, a nonprofit organization dedicated to encouraging private altruistic volunteerism).

126. *See supra* note 46.

127. Undertaking Spam, Spyware, and Fraud With Enforcers beyond Borders Act of 2006, Pub. L. No. 109-455, 120 Stat. 3372 (codified in scattered sections of 15 U.S.C. (2006)).

128. *See supra* note 41.

129. Victims of Iranian Censorship Act, Pub. L. No. 111-84, 123 Stat. 2553 (2009) (codified as amended at 22 U.S.C. § 6201 (2011)).

130. VOW to Hire Heroes Act of 2011, Pub. L. No. 112-56, § 201, 125 Stat. 712, 712 (codified at 38 U.S.C. § 101 note (2011)) (so named because it created the Veterans Opportunity to Work program within the Veterans Administration).

131. *See supra* note 47.

132. *See supra* note 47.

133. *See infra* note 165.

another two things called WARN,<sup>136</sup> yet another two things, both of them apparently misspelled, called HEROS,<sup>137</sup> three separate things called SAFE,<sup>138</sup> and no fewer than six separate things called HOPE.<sup>139</sup>

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A sociology or semiotics of acronyms might explain why we do these things. Acronyms are now of course pandemic.<sup>140</sup> Also, revealed preference suggests that the public (or at least the practicing bar) wants acronomically clever statutes and otherwise adorable public policy. A 1991 transit policy bill, with the clunky title Intermodal Surface Transportation Efficiency Act or ISTEA, is apparently known—and even listed in *Popular Names*—as “Ice-Tea,” even though the

134. Heroes Earnings Assistance and Relief Tax Act of 2008, Pub. L. No. 110-245, 122 Stat. 1624 (codified in scattered sections of 26 U.S.C. (2008)); Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, Pub. L. No. 111-22, § 1001, 123 Stat. 1663, 1663 (codified at 42 U.S.C. § 11301 note (2009)).

135. The first was the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (codified in scattered sections of 18 and 42 U.S.C. (2003)). PROTECT was the larger bill that included the AMBER Alert law; PROTECT included a variety of provisions to address child abduction, abuse, and pornography. The second was the Providing Resources, Officers, and Technology To Eradicate Cyber Threats to Our Children Act of 2008, Pub. L. No. 110-401, 122 Stat. 4229 (codified at 42 U.S.C. §§ 17601–31 (2008)).

136. *See supra* note 42; Warning, Alert, and Response Network Act, Pub. L. No. 109-347, § 601, 120 Stat. 1936, 1936 (2006) (codified at 47 U.S.C. §§ 1201–05 (2006)) (directing the FCC to develop program for emergency alert capabilities over cellphone services).

137. Higher Education Relief Opportunities for Students Acts of 2001 and 2003, Pub. L. No. 107-122, 115 Stat. 2386 (2002), and Pub. L. No. 108-76, 117 Stat. 904 (2003) (codified at 20 U.S.C. § 1070 note (2006)). The later of the two statutes is a reauthorization of the earlier, but with some differences.

138. The first is the Set America Free Act of 2005, Pub. L. No. 109-58, § 1421, 119 Stat. 594, 1064 (codified in scattered sections of 42 U.S.C. (2005)) (creating the U.S. Commission on North American Energy Freedom, an advisory committee tasked with recommending to Congress and the President a policy to end dependence on foreign energy resources by 2025). The second is the Security and Accountability For Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884 (codified in scattered sections of 6 U.S.C. (2006)) (setting out a variety of initiatives to increase U.S. port security). The third is the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Pub. L. No. 110-289, § 1501, 122 Stat. 2810, 2810 (codified at 12 U.S.C. §§ 5101–16 (2008)).

139. They are: (i) the HIV Organ Policy Equity Act, Pub. L. No. 113-51, 127 Stat. 579 (2013) (codified in scattered sections of 42 U.S.C. (2013)); (ii) the HOPE for Homeowners Act of 2008, Pub. L. No. 110-289, § 1401, 122 Stat. 2800, 2800 (codified at 12 U.S.C. § 1715z-23 (2008)) (so titled because it created a fund within the Federal Housing Administration called the Home Ownership Preservation Equity Fund); (iii) the Haitian Hemispheric Opportunity through Partnership Encouragement Acts of 2006 and 2008, Pub. L. No. 109-432, § 5001, 120 Stat. 3181, 3181 (2006), and Pub. L. No. 110-246, § 15401, 122 Stat. 2289, 2289 (2008) (codified in scattered sections of 19 U.S.C. (2008)); (iv) the Housing Opportunity Program Extension Act of 1996, Pub. L. No. 104-120, 110 Stat. 834 (codified as amended at 42 U.S.C. § 1490p-2 (2000)); (v) the Homeownership and Opportunity Through HOPE Act, Pub. L. No. 101-625, 104 Stat. 4148 (1990) (codified at 42 U.S.C. §§ 12870–12899 (1990)); and (vi) the Health Omnibus Programs Extension of 1988, Pub. L. No. 100-607, 102 Stat. 3048 (codified at 42 U.S.C. § 201 note (1988)) (dealing with various research and funding programs of the Public Health Service).

140. One website that collects and defines acronyms claims to contain more than five million entries. *See Find Out What Any Acronym, Abbreviation, or Initialism Stands for*, ACRONYM FINDER, <http://www.acronymfinder.com> (last visited Apr. 11, 2015).

original bill does not so specify.<sup>141</sup> The unmusical Public Company Accounting Reform and Investor Protection Act of 2002,<sup>142</sup> which could probably have gone by PCARIPA (one might say pik-ə-‘rip-ə), and commonly goes by “Sarbanes-Oxley,” has become colloquially known as “SOX.”<sup>143</sup> Among transportation lawyers the U.S. Surface Transportation Board is known as the “Surf Board,” and rumor has it that within the agency entrusted with its administration the Federal Oil and Gas Royalty Management Act is known as “Foggy Grandma.”<sup>144</sup> Can you stand it? Lawyers even complain about failure to come up with a clever acronym, or at least an easily pronounceable one, as in belly aching over the so-called “all-vowel statute,” the IAEAA.<sup>145</sup> The lay public does this too, COBRA being an example. The leaving of a job with portable health insurance rather unexpectedly took its name from a federal budget bill to which the relevant health insurance law was attached, and it is now sometimes known as “COBRAing.”<sup>146</sup>

This same predilection shows in the *schadenfreude* we all savor when catching someone in an accidental acronomial malapropism. Consider the ill-advised Ohio Department of Development,<sup>147</sup> or the group that designs standards for, among other things, toilet seats, known as the American Society of Sanitary Engineering,<sup>148</sup> or the acronym under which the 2003 invasion of Iraq was announced—Operation Iraqi Liberation. That’s right, a major U.S. military misadventure in the Middle East was originally named OIL, a fact the political blogosphere did not require long to pounce upon.<sup>149</sup>

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141. Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (codified in scattered sections of 49 U.S.C. (1991)).

142. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified in scattered sections of 15 U.S.C. (2002)).

143. See, e.g., Roberta Romano, *The Sarbanes-Oxley Act and the Making of Quack Corporate Governance*, 114 YALE L.J. 1521, 1523 (2005).

144. A term used by Interior Department officials, or so it was reported in Aaron Streett, *Supreme Court Update*, PRAWFSBLAWG (Dec. 12, 2006), [http://prawfsblawg.blogspot.com/2006/12/supreme\\_court\\_u.html](http://prawfsblawg.blogspot.com/2006/12/supreme_court_u.html). The statute is Federal Oil and Gas Royalty Management Act of 1982, Pub. L. No. 97-451, 96 Stat. 2447 (1983) (codified at 30 U.S.C. §§ 1701–57 (1983)).

145. See Joseph P. Griffin, *Regulation of Competition in the Canada/U.S. Context—Extraterritorial Reach of U.S. Antitrust Law—A U.S. Perspective*, 24 CAN.-U.S. L.J. 315, 317 (1998) (expressing frustration with the International Antitrust Enforcement Assistance Act of 1994, Pub. L. No. 103-438, 108 Stat. 4597 (codified in scattered sections of 15 U.S.C. (1994))).

146. So named for the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, 100 Stat. 82 (1986) (codified at 29 U.S.C. § 1166 (1997)). For lay use of COBRA as a verb, see, e.g., Junior Member Maryn14, *Thread: Cobraing Insurance*, FREEADVICE (Oct. 30, 2005, 8:23 PM), <http://forum.freeadvice.com/fringe-benefits-95/cobraing-insurance-286983.html>.

147. The agency has been renamed, and is now the Ohio Development Services Agency. See *Home*, OHIO DEV. SERV. AGENCY, [www.development.ohio.gov](http://www.development.ohio.gov) (last visited Apr. 11, 2015).

148. See *Home*, ASSE INT’L, <http://www.asse-plumbing.org> (last visited Jan. 31, 2015).

149. The invasion was initially so announced by White House Press Secretary Ari Fleisher. See James S. Brady, *Press Briefing by Ari Fleisher*, WHITE HOUSE PRESIDENT GEORGE W. BUSH (Mar. 24, 2003, 1:00 PM), <http://georgewbush-whitehouse.archives.gov/news/releases/2003/03/print/20030324-4.html#>. Like the Lady who protested too much, the White House proved the rhetorical power of meaningful acronyms by the very speed with which the war was renamed. It was almost immediately



Some groups try to short-circuit this risk proactively, though it turns out not to be that easy to give yourself your own nickname. (I recall a colleague once named Gordon who was known by precisely no one as “Gordo” despite signing his emails “Gordo.”) The National Association of Area Agencies on Aging, evidently to avoid undue negativity, markets itself as “n4a” (because otherwise they would be NAAAA),<sup>150</sup> and one wonders just exactly why the professional association of British law professors recently changed its name to the Society of Legal Scholars—they had been the Society of Public Teachers of Law.<sup>151</sup>

The motive for clever acronyms could be purely aesthetic—maybe their drafters really just think they’re better than the alternatives. For example, while many statutes are known by nonclever acronyms, most of them are awkward, like the 4R Act, which in part kicked off deregulation in the 1970s.<sup>152</sup> Neither is much warmth kindled in one’s heart by a title like, say, ACFCMA,<sup>153</sup> which someone somewhere no doubt calls “ack-‘fick-mə.” There are hundreds of such things, statutes with unbelievably long, many-word titles that, according to *Popular Names*, are commonly known by unpronounceable acronyms like NANPCA, FELRTCA, FRRRPA and—impossibly—FRRRRA.<sup>154</sup> Nonacronomical short names are also often unhandsome. Consider the Filled Cheese Act,<sup>155</sup> the Hump Law,<sup>156</sup> the Pickle Amendment,<sup>157</sup> or the very cheery old Tariff of

renamed Operation Iraqi Freedom. The incident and the operation’s renaming are discussed at some length in STEVEN POOLE, UNSPEAK: HOW WORDS BECOME WEAPONS, HOW WEAPONS BECOME A MESSAGE, AND HOW THAT MESSAGE BECOMES REALITY 103–07 (2006). *See also* GREG PALAST, ARMED MADHOUSE: FROM BAGHDAD TO NEW ORLEANS—SORDID SECRETS & STRANGE TALES OF A WHITE HOUSE GONE WILD 51–54 (2007).

150. *See About*, N4A, <http://www.n4a.org/about> (last visited Apr. 11, 2015).

151. *Cf. Society of Public Teachers of Law (now Society of Legal Scholars) Archive 1909-2011*, INST. OF ADV. LEGAL STUD., <http://www.ials.sas.ac.uk/library/archives/sptl.htm> (last visited Apr. 11, 2015). Admittedly, I may just be trying too hard to find these things. I hesitated recently, for example, for fear of the tragedy of colorectal cancer it might presage, before joining the American Society of Political and Legal Philosophy.

152. Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (codified in scattered sections of 15, 31, 45, and 49 U.S.C. (1976)).

153. Atlantic Coastal Fisheries Cooperative Management Act, Pub. L. No. 103-206, 107 Stat. 2447 (1993) (codified as amended in scattered sections of 16 U.S.C. (2000)).

154. *Popular Names* seems to imply that all of these statutes are in fact known, by someone somewhere, by these acronyms. *Popular Names* does not explain how it determines when such an acronym is in popular use, and ordinarily the statute itself does not formally identify the acronym as its short title. *See* Forest and Rangeland Renewable Resources Planning Act of 1974, Pub. L. No. 93-378, 88 Stat. 476 (codified as amended at 16 U.S.C. §§ 1600–14 (1990)); Forest and Rangeland Renewable Resources Research Act of 1978, Pub. L. No. 95-307, 92 Stat. 353 (codified at 16 U.S.C. §§ 1600–87 (1990)); Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, Pub. L. No. 101-646, 104 Stat. 4761 (codified at 16 U.S.C. §§ 4701–51 (1990)); Federal Employees Liabilities Reform and Tort Compensation Act of 1988, Pub. L. No. 100-694, 102 Stat. 4563 (codified at 28 U.S.C. § 1 note (1988)).

155. Act of June 6, 1896, ch. 337, 29 Stat. 253.

156. Act of Aug. 11, 1959, Pub. L. No. 86-155, 73 Stat. 333 (codified at 10 U.S.C. § 5701 note (1959)).

157. Unemployment Compensation Amendments of 1976, Pub. L. No. 94-566, 90 Stat. 2667 (codified in scattered sections of 42 U.S.C. (1976)).

Abominations of 1828,<sup>158</sup> and lord knows junior high was tough for the Dick Act.<sup>159</sup> So maybe the trend in funny acronyms is really just a beautification effort, and maybe a clever title of some kind would have been better in all such cases. The Fastener Quality Act,<sup>160</sup> which bars federal contractors from bilking the government by providing goods with substandard nuts and bolts, surely would be less forgettable if it were named the Secure Connector Reliability, Efficiency, Workability and Justice On Building Act.

On a more homely level, the trend might just reflect our large amount of legislation. One can't actually say how many federal statutes there are in force, but on one reasonable estimate the number is well into the tens of thousands.<sup>161</sup> Cute and funny names might make all these thousands of statutes easier to remember. Plainly, ordinary acronyms (that is, those that don't spell something) can no longer do that job. According to *Popular Names*, three separate statutes are commonly known as the FAA,<sup>162</sup> two are known as FAAA,<sup>163</sup> and one is known unbelievably as FAAAA (do people say "F-quadruple-A," or "F4A," or just *faaaaaaaaaaaaaahhhhhhhh*?).<sup>164</sup> So clever acronyms might help keep our legislation straight, perhaps through a minor anthropomorphosis.

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But in fact, for having said all that, the reason why Congress has started making these things aspirationally clever or funny seems to be a special case, and no benign explanation really fits. Surely the purpose is not just housekeeping. There now exist so many clever acronomial statutes that it's hard to believe they provide any organizational value, and indeed several now even have the same clever acronym. There are two different FACT Acts, two PROTECT Acts, two WARN Acts, three SAFE Acts, and six HOPE Acts, and not only are there

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158. Tariff of 1828, ch. 55, 4 Stat. 270 (repealed 1833). *See also* 1 ENCYCLOPEDIA OF TARIFFS AND TRADE IN U.S. HISTORY 363–65 (Cynthia Clark Northrup & Elaine C. Prange Turney eds., 2003).

159. *See* Militia Act of 1903, ch. 196, 32 Stat. 775.

160. Fastener Quality Act, Pub. L. No. 101-592, 104 Stat. 2943 (1990) (codified at 15 U.S.C. § 5401 note (1990)).

161. *See* Email from Shameema A. Rahman, Legal Reference Specialist, U.S. Library of Congress, to Schuyler Cook, Librarian, Cleveland State University Cleveland-Marshall College of Law (Sept. 29, 2005, 12:52 PM) (on file with author) (explaining that, excluding private laws and simple resolutions, the number of federal laws adopted through the end of the 108th Congress was 44,291. The number must be discounted substantially, as many of those laws are no longer in force, and many of them merely amended or repealed one or more other existing laws. Further, all of the foregoing begs the metaphysical question of how one defines a unitary "law," because for example the Internal Revenue Code could be thought of as one law or thousands of them).

162. Federal Arbitration Act, Pub. L. No. 68-401, 43 Stat. 883 (1925) (codified at 9 U.S.C. §§ 1–14 (1925)); Federal Aviation Act of 1958, Pub. L. No. 85-726, 72 Stat. 731 (codified as amended in scattered sections of 49 U.S.C. (1958)); Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424 (codified at 22 U.S.C. §§ 2151–232431k (1961)).

163. Federal Alcohol Administration Act, Pub. L. No. 74-401, 49 Stat. 977 (1935) (codified at 27 U.S.C. §§ 201–219a (1935)); Federal Aviation Administration Authorization Act of 1994, Pub. L. No. 103-305, 108 Stat. 1569 (codified in scattered sections of 49 U.S.C. (1994)).

164. This statute is actually one of the two known as FAAA—the Federal Aviation Administration Authorization Act of 1994. *Popular Names* says it goes by both FAAA and FAAAA.

already two different FAIR Acts in force, but just in the past few years no fewer than four others have been introduced unsuccessfully.<sup>165</sup> Likewise, even though other countries have as many statutes and regulations as we do, no other country in the world does this—no other country so far seems interested in aspirationally clever acronym titles or even nonserious titles of any kind. This may bear some relationship to our American solitude in other sordid embarrassments, like the Freedom Fries fiasco (launched by my fellow Ohioan and a convicted felon).<sup>166</sup> Admittedly, a few other countries have recently begun sneaking some sloganeering into their statutes,<sup>167</sup> but the degree of it pales in comparison to our own, and what is really telling is that observers in those countries suspect that its origin actually lies in U.S. influence. People overseas blame our legislature for having tainted their own.<sup>168</sup>

One other observation before moving on. If this trend really were to betray some new willingness of federal policymakers to laugh at themselves, that might not be an unwelcome thing, even if the jokes are typically pretty stupid. Surely the great scourge of the weak has been the distinguished self-importance of gray-haired men in high office, because it is often in taking government too seriously that abuses occur in the crucible of our law. But in drafting these statutes I think they are not laughing at themselves. If they are laughing at anyone in particular, I expect it is us.

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165. Those that became law were the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, 110 Stat. 888 (codified in scattered sections of 7 U.S.C. (1996)); Federal Activities Inventory Reform Act of 1998, Pub. L. No. 105-270, 112 Stat. 2382 (codified as amended at 31 U.S.C. § 501 (2012)). Those that did not or have not yet passed despite several introductions were the Fairness, Accuracy, Inclusivity and Responsiveness in Ratings Act of 2005, S. 1372, 109th Cong. (1st Sess. 2005); the Freemarket Antitrust Immunity Reform (FAIR) Act of 1999, H.R. 3138, 106th Cong. (1st Sess. 1999); the Fairness in Asbestos Injury Resolution Act of 2004, S. 2290, 108th Cong. (2d Sess. 2004); and the Financial Accounting for Intangibles Reexamination (FAIR) Act, H.R. 5365, 106th Cong. (2d Sess. 2000).

166. To wit, in 2003, “french fries” served in restaurants in U.S. House buildings were renamed “freedom fries” by Bob Ney, a Republican Representative from rural northeastern Ohio, who had been Chair of the House Committee on Administration. He did this to protest the now seemingly pretty *raisonnable* French opposition to the invasion of Iraq. One must simply love the French for their reactions at the time. The French Embassy’s only official response was a communiqué pointing out that french fries are actually from Belgium. See *Talk of the Nation: Neal Conan Interviews Andrea Seabrook*, NPR (Mar. 11, 2003), <http://www.npr.org/player/v2/mediaPlayer.html?action=1&t=1&islist=false&id=1189597&m=1189598&live=1>. An Embassy spokeswoman told a reporter that “[w]e are at a very serious moment dealing with very serious issues, and we are not focusing on the name you give to potatoes.” Tom Feran, *Don’t Supersize My Freedom Fries*, CLEVELAND PLAIN DEALER, Mar. 14, 2003, at E1.

In any case, as evidence that America no longer is the country it once was, we might observe how a real American makes fun of France. Twain said this: “France has neither winter nor summer nor morals—apart from these drawbacks, it is a fine country. France has usually been governed by prostitutes.” 2 MARK TWAIN, MARK TWAIN’S NOTEBOOKS AND JOURNALS (1877–1883) 318 (Frederick Anderson et al. eds. 1975).

167. Notably Australia, as detailed in the excellent Orr, *supra* note 12.

168. *Id.* at 208–09.

Instead, the clever-names phenomenon seems to be mostly political. That is, at a minimum, it is intended to persuade. Among other things, it roughly parallels the rapid growth of findings of fact or statements of purpose in legislation. In modern times such findings and statements have rarely had much legal significance, and so they are apparently meant to serve mainly political, polemical goals.<sup>169</sup> It also seems similar to a practice of reserving symbolically significant bill numbers to help sell a bill, like H.R. 200, which became a law setting U.S. fisheries jurisdiction at 200 miles, or H.R. 40, a bill number that Representative Conyers has frequently reserved for a slavery reparations bill (the reference being to “forty acres and a mule”).<sup>170</sup> Admittedly, a clever acronym is no guarantee of legislative success. In the federal Congress alone scores of acronomically named bills have failed.<sup>171</sup> As mentioned, only two of at least six federal FAIR bills became law.<sup>172</sup> But there is little doubt that the naming of bills in this country has come to be part of a crass game in service of goals like legislative victory and campaign-trail self-congratulation.

Suasion in itself may not be a sin—even when it amounts to cold strategy in the aggressive, zero-sum division of finite spoils—because that is the ugly spectacle of democracies everywhere. It also may be no sin to simplify matters of policy through rhetorically manipulative symbols. Capturing the real complexity of issues in public exchange must be beyond any electorate’s attention span. And so, politically simplifying symbols, like persuasive short names, may be the regrettably necessary compromise of humankind with its own epistemic reality. Perhaps for that reason, symbolism in political rhetoric has always existed, and it has always been simplifying and therefore at least a little misleading.<sup>173</sup>

Possibly too this apparently strategic symbol-game will seem not too terrible if it really is just the loose, rhetorical, and frequently incautious puffery

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169. See Palmer, *supra* note 12, at 20–22 (documenting this trend). The trend might not be wholly political, but plenty of reasons suggest it is mainly that. It is hard to take too seriously that, at least since 1937, findings of fact and statements of purpose are really only intended to defend against constitutional attack, and they likely have little influence on judicial construction.

170. See Strause et al., *supra* note 3, at 7–9.

171. The list of failed bills is just as ridiculous as those that passed. It includes, among hundreds of others, BACK (Better Access to Chiropractors to Keep our Veterans Healthy Act, H.R. 917, 109th Cong. (1st Sess. 2005)), STOP SMUT (Special Taxation on Pornographic Services and Marketing Using Telephones Act, H.R. 3201, 101st Cong. (1st Sess. 1989)), yet another HERO (Helping to Encourage Real Opportunity for Veterans Transitioning from Battlespace to Workplace Act of 2015, H.R. 76, 114th Cong. (1st Sess. 2015)), and DISASTER (Disclosing Aid Spent to Ensure Relief Act, H.R. 385, 114th Cong. (1st Sess. 2015)).

172. See *supra* note 165 and accompanying text.

173. Cf. LOUIS HARTZ, *THE LIBERAL TRADITION IN AMERICA: AN INTERPRETATION OF AMERICAN POLITICAL THOUGHT SINCE THE REVOLUTION* 75–80 (1955) (noting that during the founding generation Federalists called their opponents “leveler[s],” implying that they plotted for socialist material equality, whereas Anti-federalists decried the Federalists as essentially monarchist “aristocrat[s].” In Hartz’s view, both criticisms were false because, then and now, American politics has remained one of almost homogeneously bourgeois liberalism, having never had significant radical traditions on either the Right or the Left).

common in policy circles, board rooms, communications outfits, and public life generally. Maybe it is no more than the kind of talk that Harry Frankfurt, a Princeton philosopher, defined as “bullshit”—talk that does not deliberately lie, but that is recklessly indifferent to its own truth. Frankfurt thought the large amount of “bullshit” today may simply reflect our advanced state of bureaucracy and mass communication:

Bullshit is unavoidable whenever circumstances require someone to talk without knowing what he is talking about. Thus the production of bullshit is stimulated whenever a person's obligations or opportunities to speak about some topic exceed his knowledge of the facts that are relevant to that topic. This discrepancy is common in public life, where people are frequently impelled—whether by their own propensities or by the demands of others—to speak extensively about matters of which they are to some degree ignorant.<sup>174</sup>

So maybe this particular load of bullshit is just one more case in which persons overwhelmed by their duties and political pressures lack the time, resources, and incentive for the truth.

It might not even be too irreparably dispiriting if the problem were only the ignorance or incompetence of some of our representatives or their staffers. We might console ourselves by trying to elect someone else if the only problem were embarrassments like the two acronomial titles that apparently contain typos,<sup>175</sup> or that very odd statute, the REAL ID Act, which looks like it was supposed to be an acronym, because its short-title section gave its name in all capitals, but as to which there is no evidence anywhere what the capital letters actually stand for.<sup>176</sup>

But these kinds of explanations—that the explosion in acronym names is just more essentially harmless political rhetoric, or perhaps “bullshit,” or maybe stupidity or incompetence—all seem too optimistic. These statutes transgress an institutionally important line of which we in America have lost sight. The line was captured in a superb diagnosis by the Australian scholar Graeme Orr. In what at first seems a bit of doctrinaire resistance to Legal Realist truisms, Orr

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174. HARRY G. FRANKFURT, ON BULLSHIT 63 (2005).

175. See *supra* note 137 and accompanying text (discussing the two HEROS Acts).

176. As enacted, both the Public Law in which the REAL ID Act was contained and a bibliographical note in the U.S. Code contain a short title provision identifying it as the “REAL ID Act of 2005,” capitalized in that manner, but with no explanation what the title might stand for. See REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302; 8 U.S.C. § 1101 note (2012). Neither the Senate nor House bills that ultimately became this statute seem to have explained it either; both contain the same, unexplained short title provision. (The bill was introduced only once, during the 109th Congress; the House version was considered by the Senate after House passage, and it became law that year.) See H.R. 418, 109th Cong. (1st Sess. 2005). The bill's sponsor, Representative Sensenbrenner, never seems to have explained the title in press releases or floor statements, and the legislative history is silent. See H.R. REP. NO. 109-72, at 160–87 (2005); Press Release, James Sensenbrenner, Congressman, House Passes REAL ID (May 5, 2005), available at <http://sensenbrenner.house.gov/news/documentsingle.aspx?DocumentID=55591>.

complains that sloganeering titles are “eruptions from the political world into the legal.”<sup>177</sup> But he then continues:

The reticent language that formed the hallmark of modern Anglo-Australian common law traditions . . . [was] studiously indifferent to the political passions and games that dominate parliamentary and political rhetoric . . . . [Sloganeering occurs when] that convention is broken and when the bureaucracy is required not just to translate a government’s policies into legislation, but to adopt and spread the rhetorical ruses that sold such policies. . . . [E]gregious or illegitimate uses of legislative language . . . . [so seem because] people generally still make a distinction between government and commerce.<sup>178</sup>

And so it probably should have been more alarming to us when members of Congress first started introducing bills with names that weren’t just functional or descriptive, and weren’t just named after their sponsors, but were manipulative or rhetorical. The acronym names are hardly the only laws in that category, and tellingly other such laws first appeared in numbers at about the same time. Most striking were a long series of bills named for average people who have suffered in some way, and above all those named for exploited or murdered children. Just some of the many laws in this category are two named for Amber Hagerman,<sup>179</sup> two named for Adam Walsh,<sup>180</sup> Aimee’s Law,<sup>181</sup> Jeanna’s Act,<sup>182</sup>

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177. Orr, *supra* note 12, at 212.

178. Orr, *supra* note 12, at 190, 193, 205.

179. Amber Hagerman was abducted and murdered in 1996, when she was nine years old. The two laws are the America’s Missing: Broadcast Emergency Response Alert Act (AMBER Alert Act), Pub. L. No. 108-21, § 301, 117 Stat. 660, 660 (2003) (codified at 42 U.S.C. § 5791 (2003)); and the Amber Hagerman Child Protection Act of 1996, Pub. L. No. 104-208, § 120(7), 110 Stat. 3009, 3009–31 (codified at 18 U.S.C. § 2241 (1996)). See *AMBER Alert*, WIKIPEDIA, [http://en.wikipedia.org/wiki/AMBER\\_Alert](http://en.wikipedia.org/wiki/AMBER_Alert) (last visited Jan. 31, 2015).

180. Adam Walsh was a six-year-old boy abducted and murdered by the serial killer Ottis Toole in 1981. The two laws are the Code Adam Act of 2003, Pub. L. No. 108-21, 117 Stat. 665 (codified at 42 U.S.C. § 5601 note (2003)), which mandated use in federal buildings of an existing alert system used in retail stores, and the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (codified in scattered sections of 42 U.S.C. (2006)), which updated an existing sex offender registry system. See *Murder of Adam Walsh*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Murder\\_of\\_Adam\\_Walsh](http://en.wikipedia.org/wiki/Murder_of_Adam_Walsh) (last visited Jan. 31, 2015).

181. Aimee’s Law, Pub. L. No. 106–386, § 2001, 114 Stat. 1539, 1539 (2000) (codified at 42 U.S.C. § 13713 (2006)). The law offers federal incentives for states to restrict early release of violent sex offenders. It was named for Aimee Willard, a college senior abducted, raped, and murdered near Philadelphia in 1997 by Arthur Bomar, a serial rapist and murderer who had been released early from prison. See Press Release, Rick Santorum, Senator, Aimee’s Law Signed Into Law: Aimee’s Law Included in Package Signed by the President (Oct. 30, 2000), available at <http://www.pahoops.org/aimeelaw.htm>; Nicole Weisensee, *The Shadowy World of Arthur Bomar Bomar Sought to Control His Women Willard Suspect Pursued Smart Girls*, *Cops Say*, PHILLY.COM (Dec. 23, 1997), [http://articles.philly.com/1997-12-23/news/25554660\\_1\\_maria-cabuenos-arthur-bomar-aimee-willard](http://articles.philly.com/1997-12-23/news/25554660_1_maria-cabuenos-arthur-bomar-aimee-willard).

182. Interstate Transportation of Dangerous Criminals Act of 2000 (Jeanna’s Act), Pub. L. No. 106-560, 114 Stat. 2784 (codified at 42 USC §§ 13726–13726c (2000)). The statute restricts the use of private companies to provide prisoner transportation. It was named for Jeanna North, an eleven-year-

Jennifer's Law,<sup>183</sup> Kristen's Act,<sup>184</sup> Megan's Law,<sup>185</sup> Masha's Law,<sup>186</sup> Suzanne's Law,<sup>187</sup> and the Jacob Wetterling Act.<sup>188</sup>

No doubt all or most of these laws accomplish important aims, and obviously I could mean no disrespect for the tragedies they reflect. The question is why their sponsors linked them to such striking and horrible narratives, when Congress has passed many gravely important laws without such names. The fairly sobering answer is apparently that they are just meant to direct debate away from their substance. Most tellingly, not long after the trend began, other policy entrepreneurs started exploiting it for much more mundane matters of day-to-day regulation. There may have been a time when Congress could pass laws without attaching them to jarringly manipulative narratives, but in recent years it has done so in routine regulatory and funding bills touching on things

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old girl whose murderer escaped from one such transport vehicle. *See Jeanna's Act*, COURT SERV., <http://www.courtservices.org/jeanna.htm> (last visited Jan. 31, 2015).

183. Jennifer's Law, Pub. L. No. 106-177, § 201, 114 Stat. 36, 36 (2000) (codified at 42 U.S.C. §§ 14661–14664 (2012)). The law provides funding to state agencies to improve their missing-persons' systems. It was named for Jennifer Wilmer, a twenty-one-year-old woman abducted on Long Island in 1993 and who is still missing. *See* 145 H. CONG. REC. NO. H7367 (1999) (Statement of Rep. Lazio); *Jennifer Marie Wilmer*, CHARLEY PROJECT, [http://www.charleyproject.org/cases/w/wilmer\\_jennifer.html](http://www.charleyproject.org/cases/w/wilmer_jennifer.html) (last updated Feb. 4, 2011).

184. Kristen's Act, Pub. L. No. 106-468, 114 Stat. 2027 (2000) (codified at 42 U.S.C. § 14665 (2012)) (providing funding to create the National Center for Missing Adults). The bill was named for Kristen Modafferi, a North Carolina college student who went missing in 1997 and is still missing. *See Kristen's Law . . .*, PLEASE HELP FIND OUR DAUGHTER, KRISTEN, <http://www.modlink.com/kristen/html/kristenslaw.shtml> (last visited Jan. 31, 2015).

185. Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (codified at 42 U.S.C. § 13701 note (2012)). The law, relating to the release by state authorities of information relating to sex crimes, was named for Megan Kanka, a seven-year-old New Jersey girl raped and murdered by her neighbor in 1994. *See Megan's Law*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Megan%27s\\_Law](http://en.wikipedia.org/wiki/Megan%27s_Law) (last visited Jan. 31, 2015).

186. Masha's Law, Pub. L. No. 109-248, § 707, 120 Stat. 650, 650 (2006) (codified at 18 U.S.C. § 2251 note (2012)). The law gives a cause of action to persons depicted in child pornography, under which they can sue persons who download or view the images. It was named for Masha Allen, who was adopted at age five from the former Soviet Union by an American man who sexually abused her and posted the pictures on the Internet. *See* James Nye, *Pedophilia Campaigner Masha Allen, Now 20, Files \$20M Lawsuit*, DAILYMAIL (Aug. 27, 2013, 2:03 PM), <http://www.dailymail.co.uk/news/article-2403262/Pedophilia-campaigner-Masha-Allen-20-files-20m-lawsuit-10-years-rescued-stepfather-shared-hundreds-images-horrific-sex-abuse-internet.html>.

187. Suzanne's Law, Pub. L. No. 108-21, sec. 204, § 3283, 117 Stat. 660, 660 (2003) (codified at 42 U.S.C. § 5779 (2012)). The law made modifications to the AMBER alert system. It was named for Suzanne Lyall, a college sophomore who disappeared from the University of Albany in 1989. *See Missing: Suzanne Gloria Lyall*, HELP US FIND SUZANNE, <http://www.suzannelyall.com> (last visited Jan. 31, 2015). The bill was adopted as part of the PROTECT Act. *See supra* note 135 and accompanying text.

188. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, § 170101, 108 Stat. 1796, 2038 (1994), *repealed by* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587. The law set up the first federal sex offender registry. It was named for an eleven-year-old boy kidnapped in Minnesota in 1989 who has not been seen since. *See Jacob Wetterling*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Jacob\\_Wetterling](http://en.wikipedia.org/wiki/Jacob_Wetterling) (last visited Jan. 31, 2015).

like product safety,<sup>189</sup> texting-while-driving,<sup>190</sup> seatbelts,<sup>191</sup> consumer fraud,<sup>192</sup> children's health funding,<sup>193</sup> State Department administrative issues,<sup>194</sup> and a very small funding bill to provide first-aid information.<sup>195</sup> And it simply cannot be a coincidence that not only did this particular trend begin at the same time as the explosion in acronym names, but two of them—the ADAM Act and the AMBER Alert Act—are themselves acronym names. This sort of thing is really not desirable at all. No less than a Supreme Court Justice recently pointed out that it is not a good habit to give laws names that legislators can't vote against.<sup>196</sup>

Worse, the acronym statutes and many other sloganeered laws turn out frequently to conceal legal substance that is highly disagreeable, and so the conflict between their cheery, pun-like frivolity and the darkness they contain verges on the deliberately dishonest or fraudulent. Consider the seemingly well-intended “competitiveness” bill for funding research and science educa-

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189. Danny Keysar Child Product Safety Notification Act, Pub. L. No. 110-314, 122 Stat. 3028 (2008) (codified at 15 U.S.C. § 2056a (2008)). The law tightens certain safety rules for children's products. It was named for an infant killed in a crib that had been recalled some time before his parents bought it. See *Danny Keysar Child Safety Notification Act Enacted*, CORBOY & DEMETRIO, <http://www.corboydemetrio.com/news-245.html> (last visited Jan. 31, 2015).

190. Motor Vehicle and Highway Safety Improvement Act of 2012 (Mariah's Act), Pub. L. No. 112-141, § 31001, 126 Stat. 405, 732 (codified at 23 U.S.C. § 101 note (2012)). The bill, which funds federal auto safety research, was named for Mariah Wells, an Arkansas teenager who died in an auto accident she caused by texting while driving. See *'Mariah's Act' Aims for Safe Driving*, ARK.ONLINE, <http://m.arkansasonline.com/news/2012/jun/30/mariahs-act-aims-safer-driving-20120630> (last visited Jan. 31, 2015).

191. See Anton's Law, Pub. L. No. 107-318, 116 Stat. 2772 (2002) (codified at 49 U.S.C. § 30127 (2002)). The law funds auto safety research. It was named for Anton Skeen, a four-year-old boy killed in an auto accident near Seattle in 1996, in which he had been buckled into his seat in the front seat. See Nick Charles, *Anton's Law*, PEOPLE (Aug. 20, 2001, 1:00 AM), <http://www.people.com/people/article/0,,20135130,00.html>.

192. See Amy Boyer's Law, Pub. L. No. 106-553, app. § 634, 114 Stat. 2762, 2762A-114 (2000) (limiting sales and use of social security numbers, to prevent identity theft).

193. At least two laws fit that description. See Johanna's Law (Gynecologic Cancer Education and Awareness Act of 2005), Pub. L. No. 109-475, 120 Stat. 3565 (2007) (codified at 42 U.S.C. § 201 note (2007)); Michelle's Law, Pub. L. No. 110-381, 122 Stat. 4081 (2008) (codified at 42 U.S.C. § 201 note (2008)) (a law, predating the Affordable Care Act, limiting insurers' ability to terminate health insurance for dependent college students).

194. Daniel Pearl Freedom of the Press Act of 2009, Pub. L. No. 111-166, 124 Stat. 1186 (2010) (codified at 22 U.S.C. § 2151 note (2010)). The statute requires the State Department to report overseas press abuses in its annual human rights reports. It is named for a *Wall Street Journal* reporter who was kidnapped in 2002 by Pakistani militants and murdered, in a videotaped decapitation, by 9/11 organizer Kalid Sheikh Mohammed. See *Daniel Pearl*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Daniel\\_Pearl](http://en.wikipedia.org/wiki/Daniel_Pearl) (last visited Jan. 31, 2015).

195. Automatic Defibrillation in Adam's Memory Act, Pub. L. No. 108-41, 117 Stat. 839 (2003) (codified at 42 U.S.C. § 201 note (2003)). The law authorizes small federal grants to fund local information clearinghouses relating to the need for automatic defibrillation equipment in schools. Neither the legislative history nor other public resources indicate for whom it was named.

196. Transcript of Oral Argument at 47–48, *Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013) (No. 12-96) (“[T]his is not the kind of a question you can leave to Congress . . . [because lawmakers] are going to lose votes if they do not reenact the Voting Rights Act. Even the name of it is wonderful: The Voting Rights Act. Who is going to vote against that . . . ?”).



tion, called America COMPETES.<sup>197</sup> Not only does it spur no price competition or evident allocational efficiency, the bill apparently served up pretty substantial piles of pork.<sup>198</sup> The CALM Act, adopted at a time when Congress seemed unable to do much of anything about a whole series of ongoing, globally critical problems, devoted legislative attention to the concern that broadcasters were turning up the volume on TV commercials.<sup>199</sup> Likewise, the national embarrassment known as the MEDS Act<sup>200</sup> addressed rising prescription drug prices by allowing Americans to benefit from Canadian health care policy, and the NET law protects multi-billion-dollar, publicly traded corporations from graduate students.<sup>201</sup>

And so the lesson, if anything, is that symbolically simplifying rhetoric in Washington is not now simply some heuristic substitute for genuine debate, called for by competition for the public attention span within the daily cacophony. It has something rather to do with Americans as voters and citizens, who the people are in power and where their priorities lie, and, ultimately, just how low their opinion of us must be.

Whether because their real interests are elsewhere or because they just don't care, the men and women who govern us appear eager to disguise their absolute lack of concern for substantive policy with symbols, and symbols alone. We should not be surprised by John Conyers' now-infamous confession that legislators rarely even read the bills on which they vote (a comment he made about no

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197. See *supra* note 64.

198. The bill made a large authorization—tens of billions of dollars—for technology education and innovation. The argument for it was that American economic performance in international markets depends on having enough home-grown intellectual firepower in science and engineering. But Congress was told in connection with the bill, by no less an impartial authority than the Alfred P. Sloan Foundation, that federal policy already causes an overproduction of engineers and scientists for domestic labor market needs. See Richard Monastersky, *Researchers Dispute Notion that America Lacks Scientists and Engineers*, CHRON. OF HIGHER EDUC., Nov. 16, 2007, at A14 (quoting Sloan Foundation official's congressional testimony: "[A]lthough I know you routinely are told by corporate lobbyists that their R&D is being globalized in part due to shortages of scientists and engineers in the [U.S.], no one who has studied this matter with an open mind has been able to find any objective data of such general shortages."). More suspicious yet is that private corporations pushed hard for the bill, and also that a fair bit of the money under the bill benefitted the cosponsors' home states. Cf. Press Release, Kay Hutchison, Sen. Hutchison Meets with TAMIU GEAR UP Students to Discuss Education (Nov. 17, 2007), available at <http://votesmart.org/public-statement/306632/sen-hutchison-meets-with-tamiau-gear-up-students-to-discuss-education#.VVAYfWDSmfR> (Sen. Hutchison cosponsored America COMPETES, much of the funding of which goes to Texas).

199. Commercial Advertisement Loudness Mitigation Act, Pub. L. No. 111-311, 124 Stat. 3294 (2010) (codified at 47 U.S.C. 621 (2010)).

200. Medicine Equity and Drug Safety Act of 2000, Pub. L. No. 106-387, app. § 745, 114 Stat. 1549, 1549A-35.

201. See *supra* note 96. The law amended various sections of copyright and criminal codes to reverse *United States v. LaMacchia*, 871 F. Supp. 535 (D. Mass. 1994), which held criminal penalties unavailable for copyright infringement not involving any commercial gain. See H.R. REP. NO. 105-339, at 3 (1997). Defendant LaMacchia was an MIT graduate student who had encouraged illegal online sharing of computer games.

less an acronomial monstrosity than the PATRIOT Act).<sup>202</sup> Among the recent leadership of our federal government, this sort of approach—this evasion of intellectual substance in favor of reductive slogans and catchy one-liners—has come to be more than just some calculating and insidious sleight of hand. It is a reflexive tic. Our leaders seem more than anything to do it just because they do it, even when there is nothing else to gain by it at all. It is a fetish, an encompassing model of governance, a model of perfectly satisfactory policy and statecraft.

A case in point: the General Accounting Office—which is, after all, responsible for accounting for things, and seemed to do okay with the one solitary title it had had since its creation some ninety years ago—was recently renamed. It is now the Government Accountability Office, a title no doubt meant to convey the Old Testament fury with which the bill’s cosponsors would tame our wasteful and jack-booted federal administrivia.<sup>203</sup> However, not much explanation was given for what was broken at GAO, despite the willingness to fix it, and the statute enacted to change the agency’s name did nearly nothing else.<sup>204</sup>

Manipulative language games like these tend to characterize dark times, and reflect not just sloth or incaution as to truth. Famously, at the end of World War II George Orwell said that “[p]olitical language . . . is designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind.”<sup>205</sup> And so it should be alarming that hundreds of federal statutes are now wrapped in the American flag. Fully fifty different U.S. statutes begin their names with the word “America,” and scores more include it. Moreover, contrary to the Frankfurtian diagnosis of merely negligent bullshit, our statute names fairly often lie deliberately. As a matter of fact, the naming of statutes has

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202. See FAHRENHEIT 9/11 (Lions Gate Entertainment 2004) (Conyers, responding to Moore’s question how so many congresspersons seem to have voted on the USA PATRIOT Act before reading it, said: “Sit down, my son. We don’t read most of the bills.”).

203. GAO was created by the Budget and Accounting Act, 1921, Pub. L. No. 67-13, 42 Stat. 20, Section 301 of which named it the “General Accounting Office.” The bill renaming it was the GAO Human Capital Reform Act of 2004, Pub. L. No. 108-271, § 8(b), 118 Stat. 811, 814 (codified at 31 U.S.C. § 701 note (2004)). It was introduced by three arch-conservative House cosponsors, Tom Davis of Virginia, the late Jo Ann Davis of Virginia, and Adam Putnam of Florida.

204. Admittedly, the bill modified GAO personnel rules in various miscellaneous ways, but it was otherwise unconcerned with the agency’s name and nothing in the bill would seem to have much of anything to do with making the government more “accountable.” It is just a little surprising that the name change was apparently desired by the agency’s head, Comptroller General David Walker, but mainly because he thought it would help in hiring, not in making anybody or anything more accountable. See John Kelly, *Answer Man: Name that Agency*, WASH. POST, Mar. 14, 2005, at C11. In any case, the need for the new name was explained in the legislative history thusly, and one simply must love the last line: “The modern [GAO] is focused on improving the performance and assuring the accountability of the federal government for the benefit of the American people. Importantly, although the name has been changed, the well-known acronym for the agency, ‘GAO,’ remains the same.” H.R. REP. NO. 108-380, at 12 (2003).

205. GEORGE ORWELL, *Politics and the English Language*, in 4 THE COLLECTED ESSAYS, JOURNALISM AND LETTERS OF GEORGE ORWELL: IN FRONT OF YOUR NOSE, 1945-1950, at 127, 139 (Sonia Orwell & Ian Angus eds., 1968) (this essay was originally published in the London periodical *Horizon* in April 1946).

occasionally seemed almost like some game of self-indulgently deceptive, rhetorical brinksmanship, by which our leaders do no more than show just how virile and ballsy they really are. The American Jobs Creation Act of 2004,<sup>206</sup> for example, included a tax holiday scheme sold as a boon to the American worker, but the funds could be used in any way, they rarely if ever benefitted the working class,<sup>207</sup> and they were at least sometimes used to fund severance pay so that workers could be laid off.<sup>208</sup>

But in the end, and whoever is to blame, the saddest aspect of this behavior is neither its shallowness nor the deliberate malfeasance of anyone in government. The saddest aspect is that these tawdry theatrics work. These titles have, if nothing else, cheapened our democracy, like the floridly named novels that Gérard Genette said were roses with too much perfume.<sup>209</sup> Worse yet, to me at least, this trend and some other tokens of prosaic American simplicity imply just how far our democracy has become one of callow children who have earned no right of self-government. For example, as shown by that saber-edged dialectic through which cable news pundits decide whether or not we should “play the blame game,” public debate is now reckoned especially cogent if it can be made to rhyme. No doubt this sort of thing sometimes reflects the psyche of a particular political candidate. That is, a particular person might resort to hollow, jejune sloganeering because he or she really just isn’t that intelligent. More generally it reflects an uninformed and disenchanting electorate disgusted by the personal awfulness of their elected officials, and discouraged by the complex opacity of public issues that actually matter. Their resulting disaffection renders them susceptible to severely reductive, polemical symbols. For example, recall that period of some years when our attention was riveted on Oval Office fellatio, the long-term domicile of little Elian, and the personal life of Terri Schiavo. How many of us were also concerned that—in a nation whose GDP was not only largest in the world, but the largest by a factor of three—infants were dying of things like malnutrition? I mean, F.U.C.K. the poor.

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206. American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (codified at 26 U.S.C. § 1 note (2004)).

207. The initiative was designed to encourage the “repatriation” of otherwise nontaxable foreign profits through what was effectively a generous, temporary tax holiday on condition that repatriated funds be reinvested in this country. The provision’s stated purpose was to “stimulate the U.S. domestic economy by triggering the repatriation of foreign earnings.” H.R. REP. NO. 108-548 pt. 1, at 146 (2004). However, despite the Keynesian rhetoric, repatriated profits could be used in any way and were rarely used to benefit the working class. Much of the money was simply distributed directly to shareholders. Timothy Aepfel, *Tax Break Brings Billions to U.S., but Impact on Hiring Is Unclear*, WALL ST. J., <http://www.wsj.com/articles/SB112847525167060248> (last updated Oct. 5, 2005); cf. Timothy Aepfel, *Buybacks Soar; Firms Deny a Link to Repatriated-Profit-Tax Break*, WALL ST. J., Oct. 24, 2005, at A2 (noting that the other major purpose pursued by many repatriating companies appears to have been stock buy backs).

208. See Editorial, *Postcards from a Tax Holiday*, N.Y. TIMES (Nov. 12, 2005), <http://www.nytimes.com/2005/11/12/opinion/12sat2.html>.

209. See Genette, *supra* note 12 and accompanying text.

This all might seem more amusing if we were running, say, Liechtenstein. But we are not. Men and women campaigning for the highest office in our order—people who propose that they be entrusted with nuclear bombs—make important arguments out of “put it in a lock-box” and “flip-flopper.” And on arguments like that they win. Our democracy is one in which the whims of a juvenile electorate command an aspirationally imperial, worldwide military force of outlandish power, with plans to nurture and police a worldwide liberalism in its own image.<sup>210</sup>

American democracy, like the popular names of some recent statutes, is a joke that isn’t funny.

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210. Cf. NIALL FERGUSON, *COLOSSUS: THE RISE AND FALL OF THE AMERICAN EMPIRE* (2005); EMMANUEL TODD, *AFTER THE EMPIRE: THE BREAKDOWN OF THE AMERICAN ORDER* (C. Jon Delogu trans., Columbia Univ. Press 2003) (2002).



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