Yale Law School
Yale Law School Legal Scholarship Repository

Student Scholarship Papers | Yale Law School Student Scholarship

9-13-2007

The Path of Easy Legislation

Raechel K. Anglin
Yale Law School, raechel.anglin@yale.edu

Follow this and additional works at: http://digitalcommons.law.yale.edu/student_papers

Part of the Health Law Commons, Legislation Commons, Politics Commons, and the Social Welfare Law Commons

Recommended Citation
Anglin, Raechel K., "The Path of Easy Legislation" (2007). *Student Scholarship Papers.* Paper 53.
http://digitalcommons.law.yale.edu/student_papers/53

This Article is brought to you for free and open access by the Yale Law School Student Scholarship at Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Student Scholarship Papers by an authorized administrator of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.

THE PATH OF "EASY LEGISLATION":

A CASE STUDY OF THE U.S. LEADERSHIP AGAINST HIV/AIDS, TUBERCULOSIS AND MALARIA ACT OF 2003

This Article is 11,733 words, exclusive of Abstract, Statement of Originality, and Table of Contents.

Abstract

This Article explores the concept of "easy legislation," tracing the drafting of a bill with strong bipartisan support coupled with an executive imperative from its roots in an information uprising and unenacted bill language through its enactment into law. This Article argues that once a topic is grounded in bipartisan support and an executive imperative, an individual legislator has little choice but to compromise. Such compromise results in two key legislative moments: a) the hot button sacrifice and b) the ideological amendment inundation.

Statement of Originality

This Article examines a previously unconsidered category of legislation: "easy legislation." I define "easy" legislation as legislation with strong bipartisan support[1] coupled[2] with an executive imperative.[3] Prior legislative scholarship has consistently focused on legislative histories situated in eras of domestic conflict and has been oriented to identify the winners and losers in Congress.[4] In contrast, this Article argues that, since Congress in fact often legislates on topics which at their core simply are not divisive, such bills warrant serious academic consideration. This Article makes a significant contribution, as no previous scholarship has pursued a rigorous study of the "easy legislation" process.

Since this Article is the first to explore the process by which an easy legislative topic becomes law, this Article is the first to identify two key events in the process of "easy legislation"—moments when partisan politics flame up but dissolve into compromise: (a) the

---

[1] For the purposes of this Article, I shall define "bipartisan" as denoting "the existence of a high degree of consensus or unity among decision makers on the content of external policy," including decision makers in both the Republican and Democratic parties. CECIL V. CRABB, JR., GLENN J. ANTIZZO, & GEILA E. SARIEDDINE, CONGRESS AND THE FOREIGN POLICY PROCESS: MODES OF LEGISLATIVE BEHAVIOR 82 (2000) ("The desired objective in the foreign policy process is often described by the term *bipartisanship*. Yet it must be acknowledged at the outset that the concept of bipartisanship is by no means easy to define satisfactorily. The term has a number of significant connotations. Unquestionably, the principle of bipartisanship is also sometimes invoked or relied upon by officials in Washington to achieve their own parochial or political ends.")

[2] Since "a wide gap separates what presidents want from what they can get," and "Congress can influence what, when, how or even whether executive recommendations are sent to Capitol Hill," the coupling of an executive imperative *with* bipartisan support is required for easy lawmaking. ROGER H. DAVIDSON & WALTER J. OLESZEK, CONGRESS AND ITS MEMBERS 291 (7th ed. 2000).

[3] Wayne P. Steger, *Presidential Policy Initiation and the Politics of Agenda Control*, 24 CONG. & PRESIDENCY 17 (1997) (arguing that "presidents are more successful on legislation initiated by their administrations because agenda setting and policy initiation are sources of influence in the legislative process and because the administration can accommodate legislative preferences when it initiates legislation").

[4] *See* Charles Whalen & Barbara Whalen, THE LONGEST DEBATE: A LEGISLATIVE HISTORY OF THE 1964 CIVIL RIGHTS ACT (1985); Nina M. Moore, GOVERNING RACE: POLICY, PROCESS, AND THE POLITICS OF RACE 64-65 (2000) (arguing that debates of civil rights legislation spurred "the fiercest active opposition ever pitted against a set of legislative proposals"); Francis Vaas, *Title VII: Legislative History*, 7 B.C. INDUS. & COM. L. REV. 431 (1966); Roger Clegg, *A Brief Legislative History of the Civil Rights Act of 1991*, 54 LA. L. REV. 1459 (1994); and Robert D. Loevy, TO END ALL SEGREGATION: THE POLITICS OF THE PASSAGE OF THE CIVIL RIGHTS ACT OF 1964, at 7 (1990) ("In the Senate, and by far the largest obstacle of all, was the filibuster.")

hot topic sacrifice[5] and (b) the ideological amendment inundation.[6] Additionally, this Article presents a fresh look at compromise in the political process.

Building upon the scholarship of William N. Eskridge, Jr. and Philip P. Frickey, I structure my examination of "easy lawmaking" through the lens of a particular legislative history.[7] Where Eskridge and Frickey examined the 1964 Civil Rights Act, which was enacted in a fraught social context among contentious debate, in this Article I examine the U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003.[8] When President Bush announced in his February 3, 2003 State of the Union address that he would support funding HIV/AIDS prevention and treatment, he provided an executive imperative that propelled Congress toward legislation. However, his announcement was not the first indication that Congress would support for HIV/AIDS research. Rather, the president's executive imperative responded to several years of congressional hearings and proposed legislation.[9] Thus, U.S. Leadership presents an excellent vehicle for research into the process of easy legislation.

---

[5] I will use the term "hot topic sacrifice" to refer to a decision by the executive and majority party to forgo using "easy legislation" as an opportunity to pursue a tangentially-related and highly contentious issue.

[6] I will use the term "ideological amendment inundation" to refer to insertion of majority party ideology into the bill through floor amendments.

[7] *See* William N. Eskridge, Jr., Philip P. Frickey, & Elizabeth Garrett, CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY 21. For

[8] 22 U.S.C. §§ 7601-7682 (2003) [hereinafter U.S. Leadership]. U.S. Leadership is even "easier" legislation, since President Bush was, at the time, a "majority President"—i.e., the Presidency and Congress were controlled by the same political party. *See, e.g.* Sarah A. Binder, *The Partisan Basis of Procedural Choice: Allocating Parliamentary Rights in the House, 1789- 1990*, AM. POL. SCI. REV. 8, 10 (1996) (arguing that "minority rights to offer amendments are routinely limited by the majority party and many committees are disproportionately stacked in the majority party's favor"). *But see* HOW CONGRESS WORKS 5 (3rd ed. 1998) (arguing that "control of Congress and the presidency by the same party does not always guarantee cooperation between the two branches. There have been numerous occasions in American history in which determined lawmakers resisted the proposals of their own presidents, and strong-willed presidents disregarded their party leaders in Congress.").

[9] *See, e.g.*, A bill to provide assistance to combat the HIV/AIDS pandemic in developing foreign countries, S. 2649, 107th Cong. (2002); A bill to amend the Foreign Assistance Act of 1961 to increase assistance for foreign countries seriously affect by HIV/AIDS, tuberculosis, and malaria, and for other purposes, S. 2525 107th Cong. (2002); To amend the Foreign Assistance Act of 1961 to authorize assistance to prevent, treat, and monitor HIV/AIDS in sub-Saharan African and other developing countries, H.R. 2069, 107th Cong. (2001); To amend the Foreign Assistance Act of 1961 to provide assistance for the prevention, treatment, and control of HIV/AIDS, tuberculosis, malaria, polio, and other infectious diseases as such diseases affect children in the countries of Central Asia, H.R. 5681, 107th Cong. (2002). To amend the Foreign Assistance Act of 1961 to authorize the provision of education and

Conclusion

This Article makes a unique contribution to the existing literature on legislation by examining the legislative process at its least contentious. Through study of the legislative history of U.S. Leadership, this Article highlights the mechanisms through which the executive and the majority party compromise in order to propel legislation through both Houses. Thus, this Article contributes to legislation scholarship a previously unconsidered area of legislation: legislative topics with near unanimous support and their corresponding bills that compel compromise.

---

related services to law enforcement and military personnel of foreign countries to prevent and control HIV/AIDS and tuberculosis, H.R. 2104, 107th Cong. (2001); To improve global health by increasing assistance to developing nations with high levels of infectious disease and premature death, by improving children's and women's health and nutrition, by reducing unintended pregnancies, and by combating the spread of infectious diseases, particularly HIV/AIDS, and for other purposes, H.R. 1269, 107th Cong. (2001); To amend the Public Health Service Act to focus American efforts on HIV/AIDS, tuberculosis, and malaria in developing countries, S. 1230, 107th Cong. (2001); To amend the Foreign Assistance Act of 1961 to increase the authorization of appropriations for fiscal year 2002, and to authorize appropriations for fiscal year 2003, to combat HIV and AIDS, and for other purposes, S. 1120, 107th Cong. (2001). *Accord* Jennifer G. Cooke &. Stephen Morrison, *Building an Ethic of Public Policy Discourse: An Appeal to the African Studies Community*, 30 AFR. ISSUES 63, 63 (2002) ("[T]he recent initiatives have been propelled by high-level awareness that expanded commitments in Africa can attract bipartisan support at home and, indeed, that they make for good domestic politics.")

THE PATH OF "EASY LEGISLATION":
A CASE STUDY OF THE U.S. LEADERSHIP AGAINST HIV/AIDS, TUBERCULOSIS AND MALARIA ACT OF 2003

I. INTRODUCTION…….....1

II. THE "EASY LEGISLATION" CONGRESSIONAL CULTURE……..6

A. Hearings……..7

B. Early Attempts at HIV/AIDS Legislation in the 107th Congress….....9

III. PASSING "EASY LEGISLATION": A STRUGGLE IN THE IDEOLOGICAL SWAMP AND THEN THE PATH OF LEAST RESISTANCE…….....……14

A. Negotiation of Bill Language……15

B. Hot Topic Sacrifice……19

C. Ideological Amendment Inundation……...21

D. The Senate Acquiesces……...27

THE PATH OF "EASY LEGISLATION": A CASE STUDY OF THE U.S. LEADERSHIP AGAINST HIV/AIDS, TUBERCULOSIS AND MALARIA ACT OF 2003

[T]his entire bill is a moral crusade. Not to impose our values on anyone, but to save a continent of the Great Plague of our age."[10]

-- Rep. DeLay (R-TX)

"In this post-Sept. 11 world, it is all too easy to lose sight of the global HIV/AIDS crisis . . . if we have learned anything through our terrible national tragedy, it is that the world's problems are our problems." [11]

-- Rep. Tom Lantos (D-CA)

I. INTRODUCTION

Previous scholars working on legislative histories have often focused on tumultuous legislation—the 1964 Civil Rights Act,[12] Title VII,[13] or the Civil Rights Act of 1991.[14] Their scholarship tells a story of "the NAACP and other organizations . . . pressing in courts and in legislative halls and lobbies for protection of minority rights,"[15] of "[d]emonstrations —and the tensions and counter violence that often accompanied them,"[16] of a "heightened sense of urgency."[17] These legislative histories teach the struggle of filibusters[18] and the seeming miracle

[10] 149 CONG. REC. H 3579, 3615 (2003) (statement of Rep. DeLay)
[11] Miles A. Pomper, *House Votes to Increase Efforts to Fight AIDS Worldwide*, CQ WKLY., Dec. 15, 2001.
[12] *See* Charles Whalen & Barbara Whalen, THE LONGEST DEBATE: A LEGISLATIVE HISTORY OF THE 1964 CIVIL RIGHTS ACT (1985). *See, e.g.*, Nina M. Moore, GOVERNING RACE: POLICY, PROCESS, AND THE POLITICS OF RACE 64-65 (2000) (arguing that debates of civil rights legislation spurred "the fiercest active opposition ever pitted against a set of legislative proposals")
[13] *See* Francis Vaas, *Title VII: Legislative History*, 7 B.C. INDUS. & COM. L. REV. 431 (1966). *Cf.* Note, *Employment Discrimination and Title VII of the Civil Rights Act of 1964*, 84 HARV. L. REV. 1109, 1113-19 (1971) (discussing the legislative purpose of Title VII).
[14] *See* Roger Clegg, *A Brief Legislative History of the Civil Rights Act of 1991*, 54 LA. L. REV. 1459 (1994). *Cf.* Cheryl M. Miller & Hanes Walton, Jr., *Congressional Support of Civil Rights Public Policy: From Bipartisan to Partisan Convergence*, 21 CONG. & PRESIDENCY 11 (1994) (analyzing the partisan/bipartisan shifts in support for civil rights legislation).
[15] *See* Vaas, *supra* note 5.
[16] *Id.*
[17] *Id.*
[18] *See* Whalen, *supra* note 4 at 148 ("[Supporters] would face a fierce filibuster . . . that could be stopped only by cloture. And cloture . . . had never been successful on a civil rights bill."); Robert D. Loevy, TO END ALL SEGREGATION: THE POLITICS OF THE PASSAGE OF THE CIVIL RIGHTS ACT OF 1964, at 7(1990) ("In the Senate, and by far the largest obstacle of all, was the filibuster.")

of cloture.[19] They are dramatized with a decided flourish: "Senator Engle cast his vote from his wheelchair by feebly lifting his left hand toward his eye . . . Hubert Humprey raised his arms over his head in jubilation."[20] Even a scholarly legislative history of the American Inventor's Protection Act ("AIPA")—a patent law—tells of congressional tension: "After four years of scathing debate, the final hours of the 1999 legislative session gave birth to a $ 390 billion omnibus spending bill that implemented the biggest changes to patent law since 1952. The bill was subsequently signed into law . . . amid a flurry of denunciations and reprisals by the bill's opponents."[21] These legislative histories are situated in eras of domestic conflict and are consistently oriented to identify the winners and losers in Congress.[22]

While such stories do illuminate congressional procedures and illustrate coalition building, they do not tell the only story of lawmaking. The 1964 Civil Rights Act may well be "an excellent vehicle for the consideration of our analysis of statute making, legislative rhetoric, and the relevance of our views to the current normative debate over statutory interpretation."[23] Yet, the nation is not always up in arms. Congressmen are not always bitterly divided on whether a topic should even be the subject of legislation. How, then, is the legislative scholar to approach a bill with deep bipartisan support and a moral imperative recognized across the

---

[19] *See* William N. Eskridge, Jr., Philip P. Frickey, & Elizabeth Garrett, CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY 21.
[20] *Id*.
[21] Edward R. Ergenzinger Jr., *The American Inventor's Protection Act: A Legislative History*, 7 WAKE FOREST INTELL. PROP. L.J. 142, 143 (2006). *But see* Vincent P. Tassinari, *Compiled Legislative History of 35 U.S.C. § 284; The Patent Compensation Statute*, 31 U. WEST. L.A. L. REV. 45 (2000) (composing a straight-forward legislative history without theatrical flourish).
[22] Ergenzinger, *supra* note 12, at 165.
[23] Daniel B. Rodriguez & Barry R. Weingast, *The Positive Political Theory of Legislative History: New Perspectives on the 1964 Civil Rights Act and Its Interpretation*, 151 U. PA. L. REV. 1417, 1423 (2003).

country?[24] What if that bill does not even address an exclusively—or even expressly—American topic? What can one learn from bills that, topically and at their core, are not divisive?

This Article will explore the process of "easy lawmaking."[25] I define "easy" legislation as legislation with strong bipartisan support[26] coupled[27] with an executive imperative.[28] Particularly "easy" legislation is a means to further both moral[29] and national security ends[30]—

---

[24] *See* David Epstein, *Legislating from Both Sides of the Aisle: Information and the Value of Bipartisan Consensus*, 101 PUB. CHOICE 1, 2 (1999) ("When actors from both ends of the political spectrum support a policy, then the uncertainty surrounding outcomes is reduced, to the benefit of all legislators."). *See also* ABNER J. MIKVA & ERIC LANE, LEGISLATIVE PROCESS 364 (2nd ed. 2002) (characterizing bipartisan legislation as "somewhat atypical").

[25] "Easy legislation" is not synonymous with "noncontroversial bills or bills of minor interest," which often qualify for "unanimous consent and suspension of the rules," which are House "time-saving procedures." HOW CONGRESS WORKS 72 (3rd ed. 1998).

[26] For the purposes of this Article, I shall define "bipartisan" as denoting "the existence of a high degree of consensus or unity among decision makers on the content of external policy," including decision makers in both the Republican and Democratic parties. CECIL V. CRABB, JR., GLENN J. ANTIZZO, & GEILA E. SARIEDDINE, CONGRESS AND THE FOREIGN POLICY PROCESS: MODES OF LEGISLATIVE BEHAVIOR 82 (2000) ("The desired objective in the foreign policy process is often described by the term *bipartisanship*. Yet it must be acknowledged at the outset that the concept of bipartisanship is by no means easy to define satisfactorily. The term has a number of significant connotations. Unquestionably, the principle of bipartisanship is also sometimes invoked or relied upon by officials in Washington to achieve their own parochial or political ends."). For a discussion of the circumstances under which the benefits of bipartisanship outweigh its costs, see Epstein, *supra* note 15, at 2 ("First, I show that in all instances bipartisan support for legislation is treated as more informative than partisan support. Second, bipartisanship will be used more when the uncertainty surrounding policy outcomes is greatest and when partisan policy differences are small. Third, my model predicts the possibility of "minority party gatekeeping": by withholding their support from legislation, minority party members can induce the majority party to hold up bills in committee. Finally, my results point to a paradox of partisanship. Legislators viewed as partisan are usually assumed unwilling to accommodate minority party demands. But in an incomplete information setting, it is exactly those legislators with extreme preferences who most need minority party support to pass legislation. In other words, the more partisan a legislator, the more she values bipartisanship.").

[27] Since "a wide gap separates what presidents want from what they can get," and "Congress can influence what, when, how or even whether executive recommendations are sent to Capitol Hill," the coupling of an executive imperative *with* bipartisan support is required for "easy legislation." ROGER H. DAVIDSON & WALTER J. OLESZEK, CONGRESS AND ITS MEMBERS 291 (7th ed. 2000).

[28] Wayne P. Steger, *Presidential Policy Initiation and the Politics of Agenda Control*, 24 CONG. & PRESIDENCY 17 (1997) (arguing that "presidents are more successful on legislation initiated by their administrations because agenda setting and policy initiation are sources of influence in the legislative process and because the administration can accommodate legislative preferences when it initiates legislation").

[29] *See* Barbara Cole Nienstedt, *The Use of Mandatory Sentencing Legislation as Symbolic Statements*, 6 POL'Y STUD. REV. 36, 36 (1986) ("Laws are passed for many reasons. Not the least among these are laws which are passed to legitimize and accentuate moral indignation.").

[30] *See* 148 CONG. REC. S5774, 5780 (2002) (statement of Sen. Frist) ("The disease had wiped out the parents the most productive segment of the population teachers, military personnel, hospital workers, and law enforcement officers. African orphans therefore lack teachers, role models and leaders. This leaves them vulnerable to criminal organizations, revolutionary militias, and terrorists. Terrorism and crime could become a way of life for a young generation."). *But see* David P. Fidler, *Public Health and National Security in the Global Age: Infectious Diseases, Bioterrorism, and Realpolitik*, 35 GEO. WASH. INT'L L. REV. 787, 843 n.238 (2003) (arguing that from a "realpolitik" perspective the HIV/AIDS crisis does not present a national security crisis for the United States).

ends recognized and backed by both sides of the aisle.[31] An even "easier" piece of legislation responds to an issue where any individual Congressman's choice not to legislate could spin her into a public relations nightmare.

This Article will use the "U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003" (U.S. Leadership),[32] Public Law 108-25, for a case study of such "easy legislation." This Article will not address in any detail post-enactment political reactions or legal challenges to the law.[33] Nor will this Article focus on post-enactment appropriations concerns or

---

[31] See, for example, Senators Boxer (D-CA) and Smith's (R-OR) bill from the 107th Congress, which outlines its purposes: "(1) help prevent human suffering through prevention, diagnosis, and treatment of HIV/AIDS; and (2) help ensure the viability of economic development, stability, and national security in the developing world by advancing research to—(A) understand the cuases associated with HIV/AIDS in developing countries; and (B) assist in the development of an AIDS vaccine." To amend the Foreign Assistance Act of 1961 to increase authorization of appropriations for fiscal year 2002, and to authorize appropriations for fiscal year 2003, to combat HIV and AIDS, and for other purposes, S. 1120, 107th Cong. (2001).

[32] 22 U.S.C. §§ 7601-7682 (2003) [hereinafter U.S. Leadership]. U.S. Leadership is even "easier" legislation, since President Bush was, at the time, a "majority President"—i.e., the Presidency and Congress were controlled by the same political party. *See, e.g.* Sarah A. Binder, *The Partisan Basis of Procedural Choice: Allocating Parliamentary Rights in the House, 1789- 1990*, AM. POL. SCI. REV. 8, 10 (1996) (arguing that "minority rights to offer amendments are routinely limited by the majority party and many committees are disproportionately stacked in the majority party's favor"). *But see* HOW CONGRESS WORKS 5 (3rd ed. 1998) (arguing that "control of Congress and the presidency by the same party does not always guarantee cooperation between the two branches. There have been numerous occasions in American history in which determined lawmakers resisted the proposals of their own presidents, and strong-willed presidentes disregarded their party leaders in Congress."). *See generally* Larry Nowels, CONG. RES. SERV., AIDS IN AFRICA (2003) (providing legislative details and policy analysis of the new global AIDS law). *Cf.* Jennifer G. Cooke &. Stephen Morrison, *Building an Ethic of Public Policy Discourse: An Appeal to the African Studies Community*, 30 AFR. ISSUES 63, 63 (2002) ("Americans favor engagement in good faith with Africa, and in this era the U.S. relationship with Africa has grown more, not less, complex and enduring.")

[33] *See* David P. Fidler, *Fighting the Axis of Illness: HIV/AIDS, Human Rights, and U.S. Foreign Policy*, 17 HARV. HUM. RTS. J. 99, 100 (2004) ("discontent with the Bush Administration's handling of HIV/AIDS continues and flows from a variety of concerns, including the perceived inadequacy of U.S. financial contributions, the speed with which U.S. contributions will reach affected countries, the manner in which the United States has increased its commitment to fight HIV/AIDS, the conditions imposed by the United States for use of its financial contributions, and the underlying policy rationales for heightened U.S. concern with HIV/AIDS") (citations omitted). For a discussion of political and legal reactions to the anti-prostitution "pledge" provision, see Lauren E. Baer, Recent Development, *Making Enemies from Allies: How the Global AIDS Act Undermines Partnerships to Combat AIDS and Sex Trafficking*, 31 YALE J. INT'L L. 513 (2006); Rachael Moshman, *Litigation Updates: The Anti-Prostitution Pledge: Limiting Speech and Development*, 6 SUSTAINABLE DEV. L. & POL'Y 66 (2005). *See also* Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT'L L. 437, 491 (2006) ("While some of these consequences are perhaps beyond the control of the U.S. government, it is entirely predictable that certain U.S. government actions would chill NGO participation in the interactive process. The requirement that NGOs take an "anti-prostitution pledge" or else be disqualified from U.S. financial assistance will continue to alienate service providers whose contribution to anti-trafficking norm development is vital.") (citations omitted); Edi C. M. Kinney, Recent Development, *Appropriations for the Abolitionists: Undermining Effects of U.S. Mandatory Anti-Prostitution Pledge in the Fight Against Human Trafficking and HIV/AIDS*, 21 BERKELEY J. GENDER L. & JUST. 158, 169 (2006).

functional difficulties.[34] Rather, this Article will discuss the process by which this bill emerged from a pool of legislative options and became law.

I will argue from the experience of U.S. Leadership's enactment that once the foundational topic up for legislation receives resounding bipartisan support and an executive mandate, there is suddenly little an individual legislator can do but compromise. "Easy legislation" is an unwilling vehicle for partisan politics.

In Part I, I will examine the pre-enactment milieu. I will consider the information uprising that rendered the African and Caribbean HIV/AIDS crisis an "easy legislation" topic. Additionally, in order to best understand the process of enacting U.S. Leadership, I will consider its legislative predecessors, tracing the development of U.S. Leadership's constituent parts. In Part II, I will analyze the critical choices in the legislative history of U.S. Leadership. I will provide an evaluation of that history contrasting the bill's compromise march with its staccato ideological insertions. Most importantly, I will explore the two principal moments when partisan politics flamed up but to a large extent dissolved into compromise: (a) the hot topic sacrifice[35] and (b) the ideological amendment inundation.[36]

For critical discussion of PEPFAR's position on pharmaceutical pricing, see Kevin Outterson, *Pharmaceutical Arbitrage: Balancing Access and Innovation in International Prescription Drug Markets*, 5 YALE J. HEALTH POL'Y L. & ETHICS 193, 273 (2005) ("PEPFAR appears to operate in the mode of many bilateral aid projects, as a subsidy for domestic exports.") *See also* International Women's Health Coalition, Global HIV/AIDS: Ideology over Prevention: The Global HIV/AIDS Pandemic and the Bush Administration, http://www.iwhc.org/global/uspolicy/hivaids (last visited Mar. 31, 2007) (criticizing the Pitts Amendment, Smith Amendment, and "Litmus Test").

[34] For a discussion of hurdles in the PEPFAR appropriations process, see Asia Russell, Case Study, *The Bush Administration's Global AIDS Promises—and Praxis*, 4 YALE J. HEALTH POL'Y L. & ETHICS 133 (2004). *See also* Donald G. McNeil Jr., Bush's AIDS Effort Limited By Restrictions, NY TIMES, Mar. 31, 2007 (discussing legislative restriction deemed "hindering" by the Institute of Medicine"). *Cf.* Caroline Scorneck, *House Panel Expresses Regret Over Lack of Funding to Fight HIV/AIDS Overseas*, CQ WKLY, July 12, 2003, at 1766.

[35] I will use the term "hot topic sacrifice" to refer to a decision by the executive and majority party to forgo using "easy legislation" as an opportunity to pursue a tangentially-related and highly contentious issue.

[36] I will use the term "ideological amendment inundation" to refer to insertion of majority party ideology into the bill through floor amendments.

I. THE "EASY LEGISLATION" CONGRESSIONAL CULTURE

U.S. Leadership authorized $15 billion to fight the HIV/AIDS pandemic in Africa and the Caribbean.[37] This legislation crystallized after President Bush's State of the Union address on February 3, 2003, when the President asked "Congress to commit $15 billion over the next 5 years, including nearly $10 billion in new money, to turn the tide against AIDS in the most afflicted nations of Africa and the Caribbean."[38] President Bush announced that "to meet a severe and urgent crisis abroad" he proposed "the Emergency Plan for AIDS Relief, a work of mercy beyond all current international efforts to help the people of Africa."[39] The President's plan would "prevent 7 million new AIDS infections, treat at least 2 million people with life-extending drugs, and provide humane care for millions of people suffering from AIDS and for children orphaned by AIDS."[40] As now enacted and effectuated, the President's Emergency Plan for AIDS Relief (PEPFAR) works with a three-prong focus—prevention, treatment, and care—and is administered through the U.S. Global AIDS Coordinator, a new section within the U.S. State Department.[41] President Bush's State of the Union announcement provided Congress with an executive imperative that propelled HIV/AIDS legislation onto the Union Calendar.[42]

---

[37] United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, 22 U.S.C.A. 7601 (2003).
[38] President George W. Bush, Address Before a Joint Session of the Congress on the State of the Union, Feb. 3, 2003.
[39] *Id.* The Union Calendar is a "Calendar of the Committee of the Whole House on the state of the Union, to which shall be referred public bills and public resolutions raising revenue, involving a tax or charge on the people, directly or indirectly making appropriations of money or property or requiring such appropriations to be made, authorizing payments out of appropriations already made, releasing any liability to the United States for money or property, or referring a claim to the Court of Claims. general appropriations bills, and bills of a public character directly or indirectly appropriating money or property." Parliamentary Outreach Program, Calendars of the House, http://www.rules.house.gov/Archives/house_cals.htm.
[40] *Id.*
[41] "Latest Results," http://www.pepfar.gov/about/c19785.htm.
[42] *Cf.* Steger, *supra* note 19 ("Congress influences the administration's legislative requests, through consultations and the anticipation of congressional reactions, even before those requests are submitted. When executive branch officials anticipate congressional reactions to their proposals and structure their proposals so as to minimize changes, then congressional attitudes have affected the product since they affected the ways in which the proposals were developed and framed.")

However, his address was not the original catalyst for international HIV/AIDS legislation. Rather, his executive imperative responded to several years of congressional hearings and proposed legislation.[43] When the President announced his Emergency Plan, the greatest surprise was the funding level—not the federal government's interest in passing HIV/AIDS legislation. For example, under the Clinton Administration, Congress passed the Global AIDS and Tuberculosis Relief Act of 2000.[44] President Bush's executive imperative responded to several years of congressional hearings and numerous bills seeking to increase international assistance to combat the HIV/AIDS crisis. Examination of those hearings and bills illuminates the depth of information and legislative choice that would facilitate the 108th Congress's "easy legislation."

A. Hearings

Congressional hearings building toward U.S. Leadership began on June 7, 2001 in the House Committee on International Relations. These hearings continued throughout the next two years, as both the House and Senate heard testimony on the HIV/AIDS crisis. The first hearing in the House was designed to "examine the HIV/AIDS epidemic in Africa and to review the U.S. role in AIDS prevention and control in Africa."[45] The Committee on International Relations heard testimony from a range of government officers and NGOs, including the Administrator of the U.S. Agency for International Development, the Senegal Ambassador to the U.S., the President of the Corporate Council on Africa, the Executive Director of the Foundation for International Community Assistance, and the Co-Director of the Global AIDS Alliance.[46] This

[43] *See, e.g.*, Cooke &. Morrison, *supra* note 23, at 63 ("[T]he recent initiatives have been propelled by high-level awareness that expanded commitments in Africa can attract bipartisan support at home and, indeed, that they make for good domestic politics.")
[44] 22 U.S.C. 6801 et seq.
[45] *AIDS Epidemic in Africa, Review & Response: Hearing Before the Comm. On Int'l Rel*., 107th Cong. (2001).
[46] *Id.*

discussion highlighted the microenterprise development programs, which would provide loans to the poor in developing countries so that they could establish small businesses for self-employment. This early debate about microenterprise development programs sparked a funding debate that would continue for almost three years and emerge in the debate over U.S. Leadership.

The Senate Committee on Foreign Relations held a complementary hearing in February of 2002. Three-quarters of a year later, the focus of the debate had shifted toward reviewing U.S. efforts to combat HIV/AIDS alongside international efforts in HIV/AIDS prevention and control. The Senate also heard from a broad range of government officers and NGOs. The Administrator of the U.S. Agency for International Development testified again. This time he was accompanied by the Secretary of HHS and the Under Secretary for Global Affairs in the Department of State. The Executive Director of the Joint UN Programme on HIV/AIDS addressed the UN HIV/AIDS prevention measures. The Senate Committee also heard from the directors of various African medical programs and global health initiatives, as well as from the Director of the Center for International Development at Harvard University and the Director of the Infectious Disease and Social Change at Harvard Medical School. This Senate attention to the academic perspective on the HIV/AIDS crisis reflects in several bill drafts from the 107th Congress.

In April of 2002, the House Committee on International Relations again addressed the HIV/AIDS epidemic—this time with a focus on efforts to assist children "orphaned or otherwise adversely affected by the HIV/AIDS epidemic in Africa. The International Relations Committee heard from yet another panel of NGOs: Nyumbani Orphanage in Kenya, AIDchild, World Vision International, and the Horizons Global Research on HIV/AIDS Project of the Population

Council. Finally,[47] the House Committee on Energy and Commerce held a hearing in March of 2003 to focus on the US and international medical response to the epidemic. The Energy and Commerce Committee heard from the Department of Health and Human Services, as well as from the Institute for Youth Development, the Russia Programs Partners in Health, the Global Health Council, and from a Senior Research Scientist from the Harvard School of Public Health.[48]

As the House and Senate heard testimony on the HIV/AIDS crisis, the issue grew in prominence within the legislature. Indeed, this swell of information about the U.S. role in the HIV/AIDS crisis fueled a range of legislative options.

B. Early Attempts at HIV/AIDS Legislation in the 107th Congress

U.S. Leadership, when enacted in the 108th Congress, was particularly "easy legislation" because the bill drafters had a wide variety of proposals from the 107th Congress from which to draw. When President Bush issued his executive imperative, Congress had already identified the pivotal concerns of each major coalition. Of course, "[t]he contents of the bill itself are not set in granite but evolve over the legislative process [and] the coalition structure supporting the bill and the bill's contents evolve simultaneously."[49] Yet, to a large extent, by the 108th Congress, the contentious issues surrounding HIV/AIDS legislation were on the table, such that those legislators most intimately involved with negotiating U.S. Leadership went into the negotiations prepared to defend their positions, parry, or compromise.

---

[47] The Senate Committee on Health, Education, Labor and Pensions held a hearing on HIV/AIDS on March 27, 2003 and the House Committee on International Relations held a hearing on the five-year U.S. strategy to implement U.S. Leadership on April 2, 2003. As these hearings (and subsequent hearings) corresponded with or occurred after the enactment of U.S. Leadership, they do not fall within the purview of this Article.

[48] For a discussion of the ethics of HIV/AIDS researchers participating as advocates in the political process, see, for example, SANA LOUE, LEGAL AND ETHICAL ASPECTS OF HIV-RELATED RESEARCH 179-83 (1995).

[49] Daniel B. Rodriguez & Barry R. Weingast, *The Positive Political Theory of Legislative History: New Perspectives on the 1964 Civil Rights Act and Its Interpretation*, 151 U. PA. L. REV. 1417, 1438 (2003) (citations omitted).

There were several prominent HIV/AIDS bills introduced in the 107th Congress, in both the House and the Senate. I will first address the prominent House bills and then address the prominent Senate bills. Additionally, since the politically prominent bills were most likely not the only bills to influence U.S. Leadership, as there were also several minor bills—in the sense that the bill had but a single or few sponsors—in the 107th Congress, I will also address each minor bill in turn.

In the 107th Congress, the House agreed to "A bill to amend the Foreign Assistance Act of 1961 to authorize assistance to prevent, treat, and monitor HIV/AIDS in sub-Saharan Africa and other developing countries," a bill sponsored by Rep. Henry Hyde (R-IL) with a breadth of co-sponsors, including most notably Tom Lantos (D-CA) and Barbara Lee (D-CA), an strong proponent of HIV/AIDS legislation. This House bill emphasized treatment and care through indigenous healthcare systems, prevention of mother to child transmission, hospice programs, care for orphans, and vaccine research. The bill would have established oversight procedures for pharmaceutical distribution and worked for the development of microfinance institutions. The bill authorized $560 million for treatment in FY 2002 and authorized an additional $50 million for the procurement and distribution of pharmaceuticals. Additionally, the House bill sought to establish and Interagency Task Force and a Global Heath Advisory Board to oversee the program. The House bill authorized $750 million in FY 2002 for multilateral efforts to fight HIV/AIDS. While the bill noted that such funding could go to support a global health fund, the bill did not expressly authorize any money for the UN Global Fund, which placed the House bill in tension with the Senate's response.

The Senate soon struck all of the House language after the enacting clause and inserted language that combined two Senate bills, one sponsored by Rep. Kennedy (D-MA) and the other

by Rep. Kerry (D-MA).[50] Both the Kennedy and Kerry bills received bipartisan support, as did the Senate bill combining their efforts. The bill passed the Senate unanimously . . . only to die in the House of Representatives when the right-wing Republican leadership refused to send it to the floor. As passed in the upper chamber, the bill required the administration to spend $ 2.5 billion on the global fight against the three diseases in fiscal year 2004, of which no less than $ 1.25 billion was earmarked for the multilateral Global Fund." [51]

The Kennedy bill,[52] which was notably co-sponsored by Sen. Frist (R-TN),[53] differed from the House bill both in structure and in areas of treatment and prevention concern. Although the Kennedy bill was similar to the House bill in that both bills sought to improve interagency coordination, the Kennedy bill outlined its expenditures through the lens of currently established agencies—the Center for Disease Control, the Health Resources and Services Administration, the National Institutes of Health, and the Department of Labor. Additionally, the Kennedy bill hoped to ensure a safe blood supply, establish links with voluntary counseling programs, improve infrastructure and training, fund laboratory assistance and clinical training, establish family survival partnerships, further microbicide research, and establish workplace-based HIV/AIDS programs.

---

[50] *See supra* note 21, at 5780 (statement of Sen. Frist) ("The legislation I am introducing today with Senator Kennedy and others is a companion to the Foreign Relations bill. This bill codifies and expands current authorities of the Department of Health and Human Services, HHS, to participate in appropriate HIV/AIDS prevention, treatment, care, and support activities in resource poor nations that are experiencing an HIV/AIDS crisis. Coupled with S. 2525, the United States Leadership Against HIV/AIDS Tuberculosis, and Malaria Act of 2002, this legislation would provide a better coordinated, enhanced U.S. response to the global pandemic of HIV/AIDS.").

[51] Jim Lobe, *Health-U.S.: Congress Skirmishes Over Bush AIDS Program*, INTER-PRESS SERVICE/GLOBAL INFO. NETWORK, Feb. 10, 2003.

[52] A bill to provide assistance to combat the HIV/AIDS pandemic in developing foreign countries, S. 2649, 107th Cong. (2002).

[53] *See supra* note 21, at 5780 (statement of Sen. Frist) ("In Nairobi, Kenya, I visited the Kibera slum. With a population of over 750,000, one out of five of those who live in Kibera are HIV/AIDS positive. As I walked the crowded pathways sandwiched between hundreds of thousands of aluminum shanties, I was amazed that there were only children or elderly individuals.")

The Kerry bill,[54] the co-sponsors of which included Sen. Frist (R-TN) and Sen. Leahy (D-VT), first suggested establishing a "comprehensive, integrated five-year, global strategy to fight HIV/AIDS"—a time line adopted in U.S. Leadership. The Kerry bill "[reflected] the strong overall support for AIDS funding, [as it would have authorized] $4.7 billion to fight HIV/AIDS overseas in fiscal 2003 and fiscal 2004."[55] Additionally, the Kerry bill suggests an HIV/AIDS Response Coordinator to established in the Department of State—a position which seems quite clearly to develop into President Bush's Office of the Global AIDS Coordinator Ambassador position. While most of the HIV/AIDS bills nodded toward women's empowerment, the Kerry bill is unique in its inclusion of a comprehensive plan to empower women to prevent the spread of HIV/AIDS. The Kerry bill also sought to increase funding for the International AIDS Vaccine Initiative; to provide for debt stock reduction for countries eligible under the Enhanced HIPC Initiative; and to establish a pilot program placing health care professionals overseas. Quite unusual among HIV/AIDS bills was the Kerry bill's establishment of a voluntary code of conduct for U.S. firms operating abroad, in which those businesses would adopt principles and practices to "eliminate decimation and stigmatization against employees on the basis of real or perceived HIV/AIDS status."[56] Many bilateral efforts (hospice, vaccine research, etc.) provided for in the Kerry bill were provided for in either the House bill or the Kennedy bill; however, in keeping with the Kerry bill's focus on women and girls, the bill calls for bulk purchases of preventive technologies for women. Of particular importance, the Kerry bill authorized $1 million in FY 2003 and an additional $1.2 million in FY 2004 for the Global Fund.

---

[54] A bill to amend the Foreign Assistance Act of 1961 to increase assistance for foreign countries seriously affect by HIV/AIDS, tuberculosis, and malaria, and for other purposes, S. 2525 107th Cong. (2002).
[55] Miles A. Pomper, *Amount of HIV Aid Debated*, CQ WKLY, June 22, 2002, at 1680.
[56] *Id.*

Also in the 107th Congress, Rep. Hyde (R-IL) introduced a bill that provided for treatment and care—including the development of microfinance institutions—and supported funding multilateral aid efforts with up to 25% of the aggregate funds in any fiscal year.[57] Rep. Pitts (R-PA) introduced a bill to extend HIV/AIDS assistance into Central Asia, giving priority to Kazakstan, Kyrgyzstan, and Uzbekistan.[58] Rep. Johnson (D-TX) introduced a bill which would have authorized USAID to provide education to foreign law enforcement and military personnel to prevent and control HIV/AIDS and tuberculosis.[59] Rep. Crowley (D-NY), along with 52 Democratic co-sponsors, introduced a bill targeting infectious diseases, including HIV/AIDS, as such diseases affect women and children.[60] Senators Frist (R-TN) and Clinton (D-NY) introduced a bill which would have increased international HIV/AIDS funding to federal agencies and would have established the Paul Coverdale Health Care Corps to provide medical assistance overseas.[61] Senators Boxer (D-CA) and Smith (R-OR) introduced a bill authorizing additional funding to provide treatment and care for children affected by the HIV/AIDS epidemic.[62] Sen. Durbin (D-IL) introduced a bill structured much like Sen. Kerry's initiative from the 107th Congress, as Sen. Durbin sought to establish an interagency working group and

[57] To amend the Foreign Assistance Act of 1961 to authorize assistance to prevent, treat, and monitor HIV/AIDS in sub-Saharan African and other developing countries, H.R. 2069, 107th Cong. (2001).
[58] To amend the Foreign Assistance Act of 1961 to provide assistance for the prevention, treatment, and control of HIV/AIDS, tuberculosis, malaria, polio, and other infectious diseases as such diseases affect children in the countries of Central Asia, H.R. 5681, 107th Cong. (2002).
[59] To amend the Foreign Assistance Act of 1961 to authorize the provision of education and related services to law enforcement and military personnel of foreign countries to prevent and control HIV/AIDS and tuberculosis, H.R. 2104, 107th Cong. (2001).
[60] To improve global health by increasing assistance to developing nations with high levels of infectious disease and premature death, by improving children's and women's health and nutrition, by reducing unintended pregnancies, and by combating the spread of infectious diseases, particularly HIV/AIDS, and for other purposes, H.R. 1269, 107th Cong. (2001).
[61] To amend the Public Health Service Act to focus American efforts on HIV/AIDS, tuberculosis, and malaria in developing countries, S. 1230, 107th Cong. (2001).
[62] To amend the Foreign Assistance Act of 1961 to increase the authorization of appropriations for fiscal year 2002, and to authorize appropriations for fiscal year 2003, to combat HIV and AIDS, and for other purposes, S. 1120, 107th Cong. (2001).

to distribute HIV/AIDS funding through governmental agencies.[63] Sen. Durbin would have distributed funds through the CDC, FDA, USAID, NIH, HRSA, the Agency for Health Care Research and Quality, and the Departments of Defense, Agriculture, Labor, and Commerce. This bill echoed Sen. Frist's bill by suggesting that Congress establish a Global Physician Corps, which would both care for and treat individuals with HIV/AIDS and train host country clinicians. In the 108th Congress, Sen. Durbin (D-IL) introduced an updated version of his bill, which was then co-sponsored by Sen. Landreiu (D-LA).[64] He hoped to authorize $2.1 billion in FY 2004, $2.55 billion in FY 2005, and "such sums as may be necessary for each of fiscal years 2006 and 2007" for the Global Health Fund[65]—up from the $1.2 billion in FY 2003 that the Senator proposed in the 107th Congress[66] and substantially more funding than anyone else had suggested.

Thus, by the time the 108th Congress began to draft U.S. Leadership, each house had a solid legislative basis from which to work. Once the bipartisan interest in HIV/AIDS legislation demonstrated in the 107th Congress was coupled with an executive imperative, an "easy legislation" experience would ensue.

IV. PASSING "EASY LEGISLATION": A STRUGGLE IN THE IDEOLOGICAL SWAMP AND THEN THE PATH OF LEAST RESISTANCE

After President Bush introduced his Emergency Plan in the State of the Union Address, both the House[67] and the Senate began, once again, to draft HIV/AIDS legislation.[68] President

[63] To address the international HIV/AIDS pandemic, S. 1936, 107th Cong. (2002).
[64] To address the international HIV/AIDS pandemic, S. 250, 108th Cong. (2003).
[65] *Id.*
[66] S. 1936.
[67] *Cf.* Steger, *supra* note 19 ("Majority presidents' advantages in controlling the agenda are greater in the House than in the Senate. Majority party leaders can manage floor debate and regulate what legislation reaches the floor, especially in the House. The Rules Committee and the Speaker, backed by a majority on the floor, can determine what amendments will be offered, the order in which amendments will be offered, and the circumstances under which motions will be offered. With the ability to regulate what, when, and how amendments are offered, majority party leaders can censor legislation they oppose while promoting bills they support.") (citations omitted).

Bush announced that he wanted to have a bill in hand when he went to the G-8 Summit, so that he would be able to place pressure on other developed countries to contribute financially to the crisis.[69] The impending G-8 Summit increased pressure on both the House and the Senate to compromise and to some extent race toward completion of a bill. Ultimately, the House was first to complete and pass its bill—sending U.S. Leadership to the Senate. G-8 pressure led the Senate to agree to U.S. Leadership in its House form—although not without grumbling from Senators sponsoring their own HIV/AIDS legislation. Still, had the Senate not been motivated by the "easy legislation" factors—bipartisan support for legislation, morality and national security concerns, and an executive imperative—the Senate may well have repeated its 107th Congress move: striking the House bill after the enacting clause and inserting the policy balance favored in the Senate.[70] Since the Senate agreed to the House bill, this Article will focus on U.S. Leadership's journey through the House, highlighting the two primary moments of partisan conflict.

A. Negotiation of Bill Language

U.S. Leadership "was largely the result of negotiations between the leaders of the House International Relations Committee and the White House."[71] On March 17, 2003, Rep. Henry

---

[68] *See* ROGER H. DAVIDSON & WALTER J. OLESZEK, CONGRESS AND ITS MEMBERS 286 ("Presidents are sometimes called the 'chief legislators' because they are closely involved in decisions Congress makes . . . Soon after delivering the annual State of the Union address, the president sends to Congress draft 'administration bills' for introduction on his behalf.").

[69] *See* George W. Bush, Remarks on Departure for Camp David, Maryland, and an Exchange with Reporters, (May 16, 2003) ("Again, I want to thank the Senate for—as well as the House—for passing a good piece of legislation. It looks like that bill can get done pretty quickly, and I'll be able to sign it and take it to Europe with me as a symbol of the great depth of compassion that our country holds for those that suffer."). *See also* Niels C. Sorrells, *House Passes Bush Anti-AIDS Plan; Democrats Challenge GOP Changes*, CQ Weekly, May 2, 2003, at 1056 ("President Bush could not have been any clearer April 29 when he called for Congress to take quick action on his $15 billion proposal to combat the international spread of HIV and AIDS.").

[70] S. 2525.

[71] Niels C. Sorrells, *Political Expediency Takes Over as Senate Passes AIDS Relief Bill*, CQ WKLY, May 17, 2003, at 1210. *Cf.* For a discussion of legislative procedures manipulated "to benefit the many at the expense of the few," see LAWRENCE BECKER, DOING THE RIGHT THING: COLLECTIVE ACTION AND PROCEDURAL CHOICE IN THE NEW

Hyde (R-IL) introduced U.S. Leadership in the House of Representatives, and the bill was referred to the House International Relations Committee, a committee which Rep. Hyde chaired.[72] Rep. Hyde was joined by a bipartisan coalition, including:

> Representatives Tom Lantos (Democrat of California), the highest-ranking Democrat on the International Relations panel; James Leach (Republican of Iowa), the chairman of the Subcommittee on Asia and the Pacific; Dave Weldon (Republican of Florida), a physician who serves on the House Appropriations Committee; and Barbara Lee (Democrat of California) who serves on the Subcommittee on Africa and chairs the Congressional Black Caucus Task Force on Global HIV/AIDS.[73]

This range of congressional sponsorship emphasizes that U.S. Leadership was born in an "easy legislation" culture. Since the 108th Congress was able to draw upon a range of legislative proposals,[74] the bill drafters could focus on structuring a conceptually balanced bill and simply improving upon bills of the previous session.[75]

Whereas bills introduced in the 107th Congress typically emphasized increasing efficient coordination between established divisions of the federal government through interagency working groups, U.S. Leadership established a HIV/AIDS Response Coordinator within the State

---

LEGISLATIVE PROCESS 133 (2005) (arguing that "only through closed-door meetings, omnibus legislative vehicles, and delegation to unelected officials can the public interest be advanced over the narrow interest.).

[72] H.R. 1298. For a discussion of bill referral politics, see generally BARBARA SINCLAIR, UNORTHODOX LAWMAKING: NEW LEGISLATIVE PROCESSES IN THE U.S. CONGRESS 218-21 (2nd ed. 2000) ("Now bills and other important measures confront a series of decision points where more complex choices are at issue . . . In the House, rules of committee jurisdiction are the most important determinant of the answer, but the Speaker does have some discretion . . . In the Senate, committee leaders usually work out problems of conflicting jurisdiction among themselves, sometimes by agreeing to multiple referral, more often informally; the majority leader lacks the procedural powers the Speaker has and is less likely to take a hand.").

[73] Stephen La Rocque, *Hyde Introduces Bill For $15,000 Million to Fight Diseases*, FED. INFO. & NEWS DISPATCH, Mar. 18, 2003.

[74] Ramesh Ponnuru, *Fighting AIDS Right*, NAT'L REV., May 19, 2003, at 37 ("In the last Congress, Sens. Bill Frist and John Kerry had introduced a global-AIDS bill. After the President spoke, that bill formed the template for legislation. . . .")

[75] LEE HAMILTON, HOW CONGRESS WORKS AND WHY YOU SHOULD CARE 56 (2004) ("Even the earliest stages [of bill drafting] involve much maneuvering. The [sponsoring] member needs to consult with colleagues, experts, and interest groups to refine and sharpen the idea [and] study how it differs from and improves upon related proposals introduced in the past . . . .")

Department to operate international programs and allocate funds authorized in U.S. Leadership.[76] Otherwise, U.S. Leadership is to a large extent an amalgamation of prior bills, authorizing funds to establish prevention programs to provide counseling, prevent mother to child transmission, ensure a safe blood supply, finance microfinance programs, improve indigenous health care delivery, provide hospice care, provide pharmaceuticals and bulk purchases of condoms. U.S. Leadership also authorizes funds to target children affected by HIV/AIDS, in part by providing food and nutrition, to improve infrastructure for HIV/AIDS related programs, to fund vaccine research, to combat tuberculosis and malaria, to establish a pilot program to place health care professionals overseas, and to improve injection safety. U.S. Leadership provides some additional debt cancellation under the Enhanced HIPC Initiative. While U.S. Leadership is less enthusiastic than some prior bills about microbicides, the bill authorized funds when and if microbicides were "proven effective." Finally, U.S. Leadership contained two apparently new provisions, including authorization for a study on the illegal diversion of prescription drugs and a remarkable clause authorizing "assistance for the purpose of encouraging men to be responsible in their sexual behavior, child rearing, and respect to women."[77]

When drafting this bill, "[b]oth sides made major concessions with the understanding that those dying of AIDS would trump . . . political differences," said Rep. Lee.[78] Primary among Democratic concessions was substantial funding for the Global Fund.[79] The White House

---

[76] *See, e.g.*, Adam Burton, Note, *A Grave and Gathering Threat: Business and Security Implications of the AIDS Epidemic and a Critical Evaluation of the Bush Administration's Response*, 35 GEO. J. INT'L L. 433, 436, 448-54 (2004) (arguing that the Global Fund is a "more effective vehicle" for fighting AIDS than the U.S. Special Coordinator created by U.S. Leadership").

[77] H.R. 1298. *See also* 149 CONG. REC. H3579, 3600 (2003) (statement of Rep. Lantos) ("It is absolutely necessary that we deal with both genders if we are to reduce the impact of this disease on women's life and offer them opportunities to live with respect and dignity, free from sexual violence and coercion.").

[78] 149 CONG. REC. H3579, 3611 (2003) (statement of Rep. Lee).

[79] *See* Sorrells, *supra* note 62. *See also* 149 CONG. REC. H3579, 3598 (statement of Rep. Brown) ("The Global Fund is a public-private partnership which draws contributions from governments, from private corporations, from faith-based organizations and foundations. The Global Fund has shown signs that it works. Government entities, in

strongly favored a unilateral response to the HIV/AIDS crisis—unilateral, in that the U.S. State Department would coordinate expenditure of the authorized funds.[80] As such "the White House [wanted] to reduce or eliminate altogether the $ 1.25-billion earmark for the Global Fund."[81] Although "Democrats had insisted that the United States needed to contribute $1 billion a year to the fund over the course of the bill's five-year $15 billion authorization," "[t]hey had to settle for an authorization of up to $1 billion with the understanding that the Bush White House is unlikely to contribute more than $200 million a year."[82]

The House HIV/AIDS leadership wanted to clinch White House support for their bill, as opposed to the Senate bill—support that would ultimately propel U.S. Leadership into law. House members continued to compromise, and "after weeks of haggling—and the cancellation of several scheduled markups—House members were confident their bill would be the one to become law with White House backing."[83] Once the bill language was negotiated with the

---

coordination with nongoverment [sic] organizations, submit 5-year plans. The Global Fund recognizes cultural differences. What works in Christian Uruguay may not work the same in Muslim Bangladesh. No overriding, international political agenda is attached to the Global fund's assistance . . . If we can fully commit to the Global Fund, and fully commit means at least $1 billion every year, 2 million patients will be treated for TB, a half million AIDS orphans will receive support, and 16 million new malaria nets will be distributed over the next few years.").

[80] *See, e.g.*, *AIDS; Applause For Bush HIV/AIDS Speech; Concern for Global Fund*, AFR. NEWS, Feb. 10, 2003 ("'We believe that multilateral approaches are effective,' says the director of the White House Office of National Aids Policy, Dr. Joseph O'Neill. 'But the Global Fund was never intended to be the sole mechanism by which the U.S. government achieves our goal strategically for HIV/Aids care.'"). *See also* U.N. Integrated Regional Info. Networks, *PanAfrica; Aids Activists Call for More US Support to Global Fund*, AFR. NEWS, Feb. 12, 2003 ("'The discrepancy over the allocation of money could be attributed to the US desire for more control of multi-lateral bodies such as the Fund.' David Bryden of the Global AIDS Alliance has suggested that '[t]he best way they can control any funding for HIV/AIDS is to distribute it through US agencies."').

[81] Jim Lobe, *Health-U.S.: Congress Skirmishes Over Bush AIDS Program*, INTER-PRESS SERVICE/GLOBAL INFO. NETWORK, Feb. 10, 2003. See, e.g., Alan Ingram, *Global Leadership and Global Health: Contending Meta-narratives, Divergent Responses, Fatal Consequences*, 19 INT'L REL. 381, 390-92 (2005) (discussing the "unilateral orientation" of the Bush administration regarding global health initiatives).

[82] Sorrells, *supra* note 62.

[83] *Id.* *See also* SINCLAIR, *supra* note 52, at 223 ("In the House, a bill can benefit from "special procedures and practices," including "multiple referral, omnibus, the result of a summit, committee bypassed, postcommittee adjustments, and consideration under a complex or closed rule. The Senate measure is identical except that it does not include consideration under a complex or closed rule . . . The likelihood that a bill will become law increases with the number of special procedures and practices employed in the House. Again the relationship is similar for the Senate.").

White House,[84] U.S. Leadership would navigate the two crucial moments in "easy legislation"—first, the hot topic sacrifice, and then amendment on the floor.

B. Hot Topic Sacrifice

U.S. Leadership demonstrates that passing bipartisan legislation can be facilitated by the sacrifice of a hot-button topic—here, the "Mexico City Policy." Under the "Mexico City Policy," commonly known as the "global gag rule," U.S. funding for family planning services is conditioned on NGOs ceasing "to perform and 'actively promote' abortion-related services."[85] "Initially, [social conservatives] major worry about [the President's Emergency Plan] was that it would give government funds to groups that perform or promote abortion."[86] As indicated by an unclassified briefing memorandum from February 11, 2003 to Secretary of State Colin Powell, the White House hoped to expand the coverage of the "Mexico City Policy" to include "funds expended for HIV/AIDS assistance . . . as well as, presumably, other components of reproductive health assistance . . . ."[87] This memo stated that "Hill conservatives will not support a policy that provides carve out for HIV/AIDS projects performed by foreign NGOs who also perform abortions or support abortion policies. Moderate and liberal members of both sides of the aisle will support such a carve out."[88] Additionally, the memo predicted that expansion of the "Mexico City Policy" would "generate great controversy and likely cause a major delay in

---

[84] *See* LEE H. HAMILTON, HOW CONGRESS WORKS AND WHY YOU SHOULD CARE 58 ("The fate of a legislative proposal is also influenced by the preferences of the president and the executive branch bureaucracy. A member of Congress trying to advance a bill must take constant readings from the White House to learn if the president will veto it or sign it in its current form.")

[85] Allegra A. Jones, Note, *The "Mexico City Policy" and Its Effects on HIV/AIDS Services in Subsaharan Africa*," 24 B.C. THIRD WORLD L.J. 187, 188-9 (2004).

[86] Ramesh Ponnuru, *Fighting AIDS Right*, NAT'L REV., May 19, 2003, at 36.

[87] *See* Memorandum from Arthur E. Dewey, Assistant Secretary of the Bureau of Population, Refugees and Migration, to Colin Powell, Secretary of State (Feb. 11, 2003) [hereinafter Dewey Memo], *available at* http://www.planetwire.org/wrap/files.fcgi/3844_StateDeptMemo.htm (last visited Mar. 31, 2007). Statements by Secretary Powell at a subsequent congressional hearing intimated that the White House was considering expanding the Mexico City Policy. *See generally* Hon. Colin Powell, S. Budget Comm., 108th Cong., Statement on President's International Affairs Budget (Comm. Print 2003).

[88] *Id*.

consideration of the FY 2004 Foreign Operations Bill."[89] While this memo does not speak specifically to the U.S. Leadership bill, if the White House wished in February 2003 to expand the "Mexico City Policy" into the realm of HIV/AIDS funding, U.S. Leadership would have been a natural vehicle for such an expansion.

Indeed, U.S. Leadership became "caught in the long-standing fight over the gag-rule."[90] While conservatives and religious groups pressed for inclusion of the "Mexico City Policy" in the bill, public health advocates strongly denounced its expansion.[91] In February, the White House offered a "compromise," suggesting that organizations performing abortions would be eligible for funding as long as they kept their funded, non-abortion programs separate and accounted for all of the money.[92] AIDS advocates responded that such bookkeeping would be "impractical in Third World countries and would discriminate against pregnant women with AIDS."[93] Kirsten Sherk, the spokeswoman for Planned Parenthood's international programs, argued that this compromise would be unworkable not only because women would be unlikely to visit multiple clinics for their healthcare needs, but also because "cash-strapped" NGOs would be unable to finance separate facilities.[94] The Center for Health and Gender Equity was one of many groups that wrote to President Bush to urge him not to expand the policy. As stated by

---

[89] *Id.*
[90] Edward Epstein, *House set to OK AIDS funding; Abortion gag rule has barred some programs overseas*, SAN. FRAN. CHRON., Mar. 17, 2003, at A1.
[91] Bob Cusack, *AIDS bill moves forward; lawmakers sidestep abortion*, THE HILL, Mar. 19, 2003, at 37.
[92] Mike Allen, *Abortion Providers May Get AIDS Money; International Groups that Offer Procedure, Counseling Separately Eligible*, WASH. POST, Feb. 15, 2003, at A08 ("Money from President Bush's new AIDS initiative will be available to some international groups that perform or promote abortions, administration officials said yesterday. Groups will be eligible to apply for the funds as long as their AIDS treatment programs do not offer abortion services or counseling. But the groups could continue to offer those services separately, a senior administration official said. Integrated AIDS programs that included abortion services would not be eligible, the official added. The policy has not been announced, but Capitol Hill leaders were briefed on it yesterday. Antiabortion activists, some of whom can be expected to be disappointed by the decision, were notified last night by White House officials.").
[93] Edward Epstein, *House set to OK AIDS funding; Abortion gag rule has barred some programs overseas*, SAN. FRAN. CHRON., Mar. 17, 2003, at A1.
[94] *AIDS Funding: White House hopes to restrict AIDS money for foreign family planning groups*, AIDS WKLY., MAR. 10, 2003, at 8.

their Executive Director, Jodi Jacobson: "We're talking about places where it's not like, you know, the money is available to set up a clinic here and a clinic there. We're talking about places where access to health care itself is an urgent situation."[95] The tumult increased as anti-abortion advocates were pitted against AIDS advocates,[96] and the "global gag-rule" threatened to turn global AIDS legislation into a massive stalemate.

Ultimately, however, the "Mexico City Policy" was not expanded into U.S. Leadership.[97] The Bush administration stipulated "that the AIDS funds would not be used for abortions. That was enough to get the leading pro-life group, the National Right to Life Committee, to hold its fire."[98] Rep. Lantos and Rep. Hyde were determined to usher the House bill through on a bipartisan basis. Rep. Lantos stated, "In negotiating this with the White House, I felt it was extremely important not to become bogged down in gag rule politics. . . . So far, I've been successful in getting that rational position to prevail."[99] However, a Democrat's desire to avoid "gag rule politics"—and thus avoid expansion of the "gag-rule"—was really no surprise. It seems clear that Rep. Henry Hyde, himself an "adamant opponent of abortion,"[100] was well aware that any Mexico City provision "would scuttle the legislation [and] warned lawmakers on both sides of the aisle not to pursue controversial amendments . . . ."[101]

C. Ideological Amendment Inundation

The "easy legislation" process comes up against a crucial hurdle with the introduction of floor amendments. "In Congress . . . floor amendments are a very important part of the process

---

[95] Brenda Wilson, *Expected announcement by Bush administration on extending the Mexico City Policy to AIDS funding*, Nat'l Pub. Radio, All Things Considered, Feb. 28, 2003.
[96] Kati Marton, *Protect women, stop a disease; The first victims*, NY TIMES, Mar. 4, 2003, at 8 (referring to the "Mexico City Policy" as "[d]riven by ideology rather than concern for public health").
[97] *See* Associated Press, *Lawmakers agree on AIDS package*, CHI. TRIB., Mar. 18, 2003, at 9.
[98] Ramesh Ponnuru, *Fighting AIDS Right*, NAT'L REV., May 19, 2003, at 37.
[99] Edward Epstein, *House set to OK AIDS funding; Abortion gag rule has barred some programs overseas*, SAN. FRAN. CHRON., Mar. 17, 2003, at A1.
[100] Jones, *supra* note 20.
[101] *Id.*

and are often adopted."[102] U.S. Leadership survived intact through committee, even though conservatives "attempted to give abstinence and monogamy education programs priority over condom distribution plans. . . ."[103] Since the Democrats enjoyed a small majority within the House International Relations Committee, they were able to defeat several such conservative suggestions for altering the bill.[104] However, when U.S. Leadership was enacted, the Republican Party enjoyed the majority in the House, and Democrats were wary of a reemergence of conservative proposals on the floor.[105] When those conservative amendments were introduced for floor consideration, "Democrats said they were surprised to see they had been significantly toned down."[106] Indeed, "despite their consternation at the amendments inserted into the bill, Democrats conceded that it could have been much worse."[107] In an "easy legislation" culture, floor amendments reflect the spirit of the hot button sacrifice: even if the majority party would like to flood a bill with ideological amendments, both parties continue with a spirit of acceptance and compromise.[108]

---

[102] ABNER J. MIKVA & ERIC LANE, LEGISLATIVE PROCESS 337 (2nd ed. 2002). *See also* CHARLES TIEFER, CONGRESSIONAL PRACTICE AND PROCEDURE 640 (1989) ("The moment of truth . . . comes when a . . . [legislator] has offered a floor amendment and the bill manager must decide how to respond. Floor managers work in two dimensions. They work strategically, to obtain passage of the bill in some form, which motivates them to oppose amendments that would kill or reshape the bill, but to accept amendments that move the bill towards passage in acceptable shape.").

[103] Sorrells, *supra* note 60.

[104] *See, e.g.* 149 CONG. REC. H3575, 3578 (2003) (statement of Rep. Blumenauer) ("I am proud of what transpired in the Committee on International Relations this last couple of months in moving this legislation forward. It was reported out of committee by an overwhelming bipartisan majority, and it shows what we can do when we come together in bipartisan fashion. I commend the administration for its support of a creative solution for the HIV-AIDS epidemic that Members from both parties can support.").

[105] *See* Nina J. Crimm, *Toward Facilitating a Voice for Politically Marginalized Minorities and Enhancing Presidential Public Accountability and Transparency in Foreign Health Policymaking*, 39 VAND. J. TRANSNAT'L L. 1053, 1076 (2006) ("President Bush also supported three conservative legislative amendments to PEPFAR that have damaged financial support for HIV/AIDS.").

[106] Sorrells, *supra* note 60.

[107] *Id.*

[108] Consider that Rep. Smith's amendment, which would have lowered the authorized appropriations for the initial fiscal year from $3 billion down to the President's suggested $2 billion, failed. The failure of this amendment further indicates that Congress, as a whole, was motivated to provide substantial funds to fight the HIV/AIDS crisis.

The Tauzin-Brown amendment, which primarily worked to prioritize U.S. programs to countries based on the size and demographics of their HIV/AIDS population, is a particularly apt example of floor amendment responsive to an "easy legislation" culture. The amendment required that the HIV/AIDS coordinator make available to Congress "all financial and accounting statements for the Global Fund" and placed limitations on administrative expenditures of the Global Fund. Rep. Tauzin stated that, "the amendment requires that the HIV/AIDS coordinator make available to Congress basic information on the Global Fund . . . In the past we have had great difficulty getting this information from the Global Fund. We are confident that the coordinator will do a wonderful job in delivering this information to Congress."[109] Rep. Lantos, however, had reservations about limitations on administrative expenditures for the Global Fund: "when the fund may be going through a massive expansion of operations, there may be a need for some significant investments to make sure that the Global Fund can properly administer its programs." Still, Mr. Lantos was "prepared to accept the amendment [and looked] forward to working with the sponsors to clarify and further refine [the] provisions."[110] When considered alongside Rep. Biggert's (R-IL) amendment, which encourages the President to "conduct an outreach campaign that is designed to inform the public of the existence of the Global Fund [and] encourage private contributions to the Global Fund,"[111] the

[109] 149 CONG. REC. H3579, 3597 (2003) (statement of Rep. Tauzin).
[110] 149 CONG. REC. H3579, 3597 (2003) (statement of Rep. Lantos). *See also* 149 CONG. REC. H3579, 3598-9 (2003) (statement of Rep. Lee) ("The current system that the [Global Fund] has set up provides several layers of accountability. On a country level, the proposals are gathered and voted upon by an advisory body that represents government, civil society, the private sector, faith-based groups, and nongovernmental organizations. Proposals that are submitted to the Global Fund then undergo a technical review from an independent body composed of leading global health experts . . . So I believe this amendment will help further strengthen the Global Fund system of accountability, and I encourage Members to vote for its inclusion."). Additionally, Rep. Stearns introduced an amendment, which was agreed to, that addressed the Global Fund. The Stearns amendment limits the salary of Global Fund employees to the salary of the Vice President of the United States, as the salaries of Federal employees are so limited.
[111] 149 CONG. REC. H3579, 3601 (2003) (statement of Rep. Biggert).

Tauzin-Brown/Biggert response to the highly contentious Global Fund emphasizes U.S. Leadership's "easy legislation" culture of compromise.

Yet, as previously noted, floor amendments provide a solid opportunity for the majority party to insert ideological bias into an "easy legislation" bill. Much news coverage of U.S. Leadership has focused on its apparent promotion of abstinence.[112] In the draft bill, Congress adopted the ABC model to prevention—abstain, be faithful, use condoms. Then, by agreeing to an amendment offered by Congressman Pitts (R-PA), Congress altered U.S. Leadership to require that at least 33% of prevention funding should be expended for abstinence-until-marriage programs.

In the debate, Rep. Pelosi (D-CA) argued: "H.R. 1298 is a bipartisan bill that we can all proudly support . . . Why sacrifice that broad support in the name of politics, especially when so many lives are at stake? Keeping information from people does not keep them safe. And when that information is about AIDS, it can be a death sentence."[113] Rep. Lee (D-CA) added: "[A]gain, we see attempts to unravel the delicate compromise established by our negotiations on this bill. We have already dealt with this issue in another forum in the Committee on International Relations when the gentleman from Pennsylvania (Mr. Pitts) pushed for the prioritization of abstinence over condom use in the ABC model of prevention. Abstinence, fidelity, and the use of condoms should all be placed on equal footing; and that is what we agreed to in committee."[114] Rep. Cummings (D-MD) also spoke in opposition to the

---

[112] *See* Andrew Jack, *US AIDS Chief Denies Morality Comes Before Life*, FT.COM, Aug. 16, 2006 (noting that at the International Aids Conference in Toronto, scientists, health officials, and activists "criticised the US President's Emergency Plan for Aids Relief for focusing on abstinence and monogamous relationships over condom distribution in the prevention of HIV/Aids."); Business Day, *UN Envoy Lashes 'Colonial' Bush Aids Plan*, AFRICA NEWS, Aug. 15, 2006 (quoting Congresswoman Lee, ""The abstinence-until-marriage policy makes no sense for women when they face gender-based discrimination, violence, rape and can't control their own bodies."); Health-e, *U.S. President Accused of Undermining Aids Prevention Policies*, AFR. NEWS, Aug. 14, 2006.
[113] *See supra* note 1 at 3615 (statement of Rep. Pelosi).
[114] 149 CONG. REC. H3579, 3613 (statement of Rep. Lee).

amendment: "We do not have time to play Russian Roulette with millions of lives while testing politically charged prevention methods. In fact, a 2001 report issued by the National Institute of Health concluded that beyond mutual lifelong monogamy among uninfected couples, condom use is the only method for reducing the risk of HIV infection and STDs available to sexually active individuals."[115]

However, Rep. Pence (R-IN) argued in support of the amendment that, "in a statement of administration policy, Mr. Chairman, the administration said they, quote 'support additional provisions that would prioritize the abstinence component of the ABC approach which as been successfully implemented in Uganda."[116] As the majority was with Reps. Pitts and Pence, the amendment passed and has become a focal point for arguments that PEPFAR, motivated by a moral agenda,[117] prioritizes abstinence over condom use and "will cause significant numbers of infections than would have been avoided."[118]

In addition to this "abstinence amendment," Rep. Smith (R-NJ) offered what has become known as the "faith based" amendment. Rep. Smith's amendment provides that an "organization

---

[115] 149 CONG. REC. H3579, 3614 (statement of Rep. Cummings).

[116] 149 CONG. REC. H3579, 3614 (statement of Rep. Pence). *See also* Chris Bull, *White House AIDS shake-up*, ADVOCATE, Sept. 3, 2002, issue 871 ("Advocates for people with AIDS expressed [rancer] that the White House is veering erratically between the political demands of right-wing groups that seek abstinence-only education programs and the more established AIDS lobbying groups in Washington, which have long advocated comprehensive HIV prevention programs. 'The thing that concerns us most is, How do we counter the problems we are having with HIV prevention if there is not a consistent message from the top?" [says Robert Dabney, director of communications for the National Minority AIDS Council, a Washington, D.C., lobbying group]. 'There is some sense among AIDS activists that the right wing is using the White House to try to defuse the message about comprehensive AIDS education.'").

[117] *Cf.* David A. Super, *The Quiet "Welfare" Revolution: Resurrecting the Food Stamp Program in the Wake of the 1996 Welfare Law*, 79 N.Y.U.L. REV. 1271, 1273 (2004) ("Public-benefits law has long been a complex fusion of expressive and functional elements. When a broad swath of policymakers and the general public focus on public benefits, they tend to set policy in order to make symbolic statements about their vision of a moral society. These symbolic rules, however, often prove inefficient and unadministerable.")

[118] *Uganda; The Politics of Fighting HIV/Aids*, AFR. NEWS, Jan. 24, 2007 (*quoting* Stephen Lewis, U.N. Special Envoy for AIDS). *Cf.* Brenda Wilson, *Expected announcement by Bush administration on extending the Mexico City Policy to AIDS funding*, National Public Radio, All Things Considered, Feb. 28, 2003 (quoting Connie Mackey, Executive Director for Government Affairs, Family Research Council: "The abortion is the taking of a life that we object to, but we also don't want to see more failed condom distribution programs being the key or the center for solving a very, very serious problem.").

that is otherwise eligible to receive assistance . . . to prevent, treat, or monitor HIV/AIDS shall not be required, as a condition of receiving the assistance, to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection."[119] Rep. Smith argued that "if a Muslim or Catholic organization is excellent in abstinence education or AIDS testing, they should not be disqualified from U.S. funding because they have a moral objection to condoms."[120] In support of the amendment, Rep. Renzi (R-AZ) stated, "While it has been said they undermine, the fact is, again, reiterating, these faith-based organizations, particularly the Catholic-based organizations, care for one out of every four AIDS sufferers in the world."[121]

Rep. Lee, opposed the amendment, stating:

> [I]t seems to me, quite frankly, that social conservatives are looking at a way to carve out a specific exemption. All of us support faith-based organizations, but it looks like one group of individuals in this country wants to carve out for religious organizations a specific exemption. The amendment looks tame on its face, but I really think there is another motive behind this amendment. I do not believe that we should subject this very important piece of legislation to the ideological whims of either side. The compromise that we negotiated in the bill was specifically intended to avoid this . . . It appears now that this amendment would give an organization the ability to affirmatively tell those suffering and dying of AIDS not to use one method over another. This could be deadly.[122]

However, although Rep. Lee worried that the Smith amendment upset the ideological balance of the bill, as with the "abstinence amendment," the language offered on the floor was significantly toned down from the language offered in committee.[123] Thus, although U.S. Leadership went to

---

[119] HR 1298.
[120] 149 CONG. REC. H3579, 3609 (2003) (statement of Rep. Smith).
[121] 149 CONG. REC. H3579, 3611 (2003) (statement of Rep. Renzi).
[122] 149 CONG. REC. H3579, 3611 (2003) (statement of Rep. Lee).
[123] *See* Sorrells, *supra* note 60 ("On the faith based amendment, the language that was defeated in committee would simply have guaranteed faith-based groups the right to opt-out of condom distribution and still receive federal funding; the floor amendment included that language but clarified that groups must show a clear moral or religious exception to certain programs to receive the exemption.") *See also* Daniel B. Rodriguez & Barry R. Weingast, *The Positive Political Theory of Legislative History: New Perspectives on the 1964 Civil Rights Act and Its*

the Senate with a decided ideological bent, that ideology has been tempered by "easy legislation" compromise.

D. The Senate Acquiesces

The Senate passed U.S. Leadership without amendment. Although some Senators complained about the inadequacy of the House bill when compared to the Senate's 107th Congress proposal,[124] their complaints amounted to political posturing, as the Senate was committed to *enacting* an HIV/AIDS bill this time.[125] Sen. Lugar (R-IN), who chaired the Senate Foreign Relations Committee, "had to decide between holding out for his version of the bill—and causing a potentially time-consuming conference that would disappoint his president[126]—and making quick work of the House bill. In the end, he chose the latter, more politically attractive option."[127] Sen. Lugar was joined by Sen. Frist[128] in urging their colleagues to "forgo their vision of the bill and embrace political expediency."[129] Indeed, Sen. Frist has been quoted arguing, "We can't let the perfect be the enemy of the good."[130] In doing so, he sums up U.S. Leadership's legislative journey: in this "easy legislation," the executive, both parties, and both houses choose to compromise.

Interpretation, 151 U. PA. L. REV. 1417, 1438 (2003) ("[S]ome versions of a bill simply cannot pass for want of a majority; other, perhaps less extreme versions of the bill, may become more successful.") (citations omitted).

[124] *See, e.g.*, 148 CONG. REC. S11545, 11545 (2003) (statement of Sen. Biden) ("What we are left with is a stripped down version of what the Senate passed.").

[125] *See* 149 CONG. REC. S6415, 6416 (2003) (statement of Sen. Biden) ("The fact is, I want the President to be able to have a bill when he goes to the G-8 because I believe he is committed to trying to get the rest of the world to do more than they are doing. He wants to be able, to use a phrase he likes to use, lay his cards on the table. He wants to be able to ante up and say: This is what I am ready to do. Now, what are you all going to do?").

[126] *See, e.g.* William N. Eskridge, Jr., Philip P. Frickey, & Elizabeth Garrett, CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY 996 (arguing that "the President . . . effectively sponsors much major legislation . . . [His] views provide useful policy or even linguistic context for understanding the statute, and they can be good evidence of where the political equilibrium lies.").

[127] Sorrells, *supra* note 62.

[128] Larry Bivens, *Frist Caught Between AIDS Activists, Bush on Funding Proposal*, THE TENNESSEAN, Mar. 2, 2003 ("Frist's behind-the-scenes maneuvering raises the question of how much of his personal agenda he is willing to sacrifice to appease the White House. Before being chosen as majority leader in December, Frist said he wanted to spend the remainder of his second term working on health-care issues, including AIDS, Medicare and prescription drugs for the elderly.").

[129] *Id.*

[130] Sorrells, *supra* note 62.

Conclusion

In this Article, I have explored the concept of "easy legislation." I have traced the drafting of a bill with strong bipartisan support coupled with an executive imperative from its roots in an information uprising and unenacted bill language. I have argued that, once a topic is grounded in bipartisan support and an executive imperative, an individual legislator has little choice but to compromise. Even when congressmen in the majority party insert their ideology into the bill through floor amendments, their amendments are tempered. Moreover, the executive and majority party are willing to compromise in order to propel "easy legislation" through both Houses—even if that compromise requires that they sacrifice the opportunity to piggyback contentious legislation onto the bill. Thus, U.S. Leadership has facilitated a fascinating case study of a previously unconsidered area of legislation: legislative topics with near unanimous support and their corresponding bills that compel compromise.