

# Congress, Lawmaking, and Political Failure? The Case of the *Fair Labor Standards Act*\*

Joshua D. Clinton<sup>†</sup>

Work in Progress: Comments Welcome

January 9, 2008

## Abstract

There are many reasons why the failure to achieve policy change may be more valuable to election-focused politicians than the political change itself. I investigate whether there is empirical evidence consistent with this possibility by looking at lawmaking activity involving the *Fair Labor Standards Act*. Because definitive evidence is elusive, I rely on several investigations to characterize the nature of lawmaking. I assess: whether the incidence and magnitude of policy change is consistent with policy-motivated candidates over nearly thirty years (1971-2000), whether measures of policy demand correlate with successful legislative activity on the FLSA in the postwar period (1947-2006), and whether journalistic accounts of the legislative activity buttress or refute the statistical characterizations. I find suggestive evidence that the political system is unable to achieve policy change even when change appears possible.

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\*Research supported by a grant from the Dirksen Congressional Center and a grant from the Princeton University Committee of Research in the Humanities and Social Sciences. An earlier version was presented at the 2007 Annual Meeting of the American Political Science Association. I thank Keith Krehbiel in particular, and members of the Stanford GSB Political Economy group in general, for constructive reactions to an earlier draft. I thank Nick Carnes and Will Bullock for excellent research assistance.

<sup>†</sup>Assistant Professor, Department of Politics, Princeton University. Email: [clinton@princeton.edu](mailto:clinton@princeton.edu)

Elections are often identified as essential for ensuring the accountability of legislative bodies such as the U.S. Congress to the electorate. In fact, elections are often thought to be *the* key to ensuring accountable policy.<sup>1</sup> Somewhat paradoxically, the constant anticipation of elections may actually undermine the ability of Congress to legislate policy change.<sup>2</sup> Legislators may decide to take an issue to the election rather than compromise in the hopes of using the issue for electoral gain. Interpreted benignly, the refusal to compromise may represent a willingness to gamble on the possibility that the electoral gains resulting from using the issue facilitates the realization of even more desirable policy outcomes in the future. More troubling is the possibility that issues are used instrumentally for the sole purposes of affecting elections without a strong desire to achieve actual policy change.

The observation that elections, or a public audience, may undermine the prospects for policy change is not novel (see, for example, Ornstein and Mann (2000) and related formal accounts by Besley and Coate (1998), Besley (2006), Canes-Wrone, Herron and Shotts (2001), Groseclose and McCarty (2001), and Maskin and Tirole (2004)). Nonetheless, in political science, elections are commonly treated as influencing who is selected to participate in lawmaking (e.g., the literature on critical realignments) rather than affecting the incentives that lawmakers have for agreeing to policy change. Work that does focus on influence of elections typically focuses on electoral mandates (e.g., Conley 2001) or issue uptake (e.g., Sulkin 2005).

A great deal of theoretical work has been devoted to identifying possible reasons for political failure – that is, instances in which policy change is feasible, but unrealized, given the institutional arrangement and members’ preferences – but empirically isolating the primary cause is a difficult task. I consequently focus on the first-order question of identifying potential instances of political failure. That is, are there instances in which it is possible to identify a failure of the political system to achieve change even though it is desired by the electorate and feasible given the configuration of lawmakers’ preferences? Identifying instances of political failure is non-trivial due to the difficulty of

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<sup>1</sup>As Madison writes in the *Federalist 57*: “...the House of Representatives is so constituted as to support in the members an habitual recollection of their dependence on the people. Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were raised” (pg 384-5).

<sup>2</sup>To prevent elections from undermining the very responsibility they sought to create the six-year terms of the Senate was devised (see, for example, Madison’s comments in *Federalist 63*.) The fact that two-thirds of the Senate is not up for election in any given year seems inadequate to prevent the possible short-term motivations of the entire House and the third of the Senate that are from adversely affecting the prospects for policy change.

determining the constraints to policy change.<sup>3</sup> Legislative histories and contemporaneous accounts of lawmaking activity provide suggestive hints as to when political failures might occur, but it is difficult to use such narratives to determine whether the structural impediments to policy change could be overcome given the incentives of lawmaking participants to mask their true motivations.

Identifying instances of political failure is important because absent such an investigation it is impossible to determine: the extent to which an accountability problem exists, what the primary causes of political failure are, and whether institutional solutions are appropriate. Given the importance of identifying the incidence of political failure for assessing the ability of the political system to produce accountable policy change, the goals of this paper are twofold: to present an analytical strategy for analyzing the nature and magnitude of policy change, and to assess the nature of congressional activity with respect to the Fair Labor Standards Act, the law most prominently known for determining the minimum wage, over selected periods.

The argument of the paper proceeds as follows. I use extant models of congressional lawmaking to define the conditions under it should be possible to amend the Fair Labor Standards Act in section one. Section two presents a method for estimating the induced policy preferences of lawmakers and the perceived location of the status quo policy and its proposed alternatives using the set of observed roll calls even when it is impossible to order the proposed amendments a priori. Analyzing lawmaking activity on the FLSA between 1971 and 2000 reveals political failure to be a persistent phenomenon. Section four extends the analysis to examine the correlates of instances of successful policy change over the postwar period to show that measures that are likely correlated with the demand for policy change do not covary with observed changes, and there is suggestive evidence that electoral proximity does. Section five completes the analysis by examining contemporaneous accounts of lawmaking activity and shows that the conclusions of the prior sections are congruent with qualitative accounts of the proceedings. I conclude the argument by discussing some caveats to the analysis and what the results suggest about the nature of congressional lawmaking.

I focus on a single policy for two reasons. First, a singular focus directly confronts the dynamics of policy change – assessing when and how a particular law is amended rather than trying to determine the correlates of increased legislative success. Second, I can more easily connect the

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<sup>3</sup>As Brady and Fiorina (2000) lament, “systematic empirical research on the manifestations of the permanent campaign in Congress lags behind both theoretical arguments and impressionistic observations” (p. 134).

quantitative analysis with insights from a qualitative investigation that escapes the confines imposed by available data. Conducting both investigations is important because the qualitative investigation provides vital information for identifying the path of policy change in the quantitative analysis, and it also reveals whether the events being analyzed are perceived by participants and journalists in a manner consistent with the examined lawmaking accounts (e.g., what the perceived constraints to lawmaking are). Exhaustively identifying legislative activity on a particular statute also ensures that the legislative record reflects congressional activity.

Focusing exclusively on the Fair Labor Standards Act is justifiable for several reasons. First, it is an undeniably important statute – the 1938 act is the 28th most notable public statute among all public statutes enacted between 1877 and 1994 according to the measure of Clinton and Lapinski (2006), and subsequent amendments have also been highly ranked: the 1961 amendment is 170th, the 1949 amendment is 283rd, the 1977 amendment is 383rd, the 1989 amendment is 430th and the associated Portal-to-Portal act is 562nd. Moreover, attempts to amend the FLSA are almost always salient political issues because of the centrality of the FLSA to the policy agenda of the Democratic party and its importance to organized interests on both sides of the issue. As such, there is a robust record of legislative activity on the FLSA – more than 140 votes between 1971 and 2000. Finally, the policy provides particularly tractable analytical leverage; not only is the status quo subject to inevitable conservative drift because minimum wage levels are affected by inflation, but it is also possible to use the numeric quantities often associated with proposed amendments to evaluate the magnitude of change. For these reasons, it has been the subject of many prior studies (e.g., Silberman and Durden 1976, Uri and Mixon 1980, Seltzer 1995, Norlund 1997, Krehbiel and Rivers 1998, Volden 1988, Sobel 1999, Levin-Waldman 2001).

## **1 Identifying Political Failure**

Determining when policy change is possible is essential for assessing the incidence of political failure because it is otherwise impossible to determine whether the lack of policy change is due to political failure or the infeasibility of policy change given the configuration of preferences. This task is difficult because at least some participants may have an incentive to give a misleading account of whether the failure to change policy is due to actual or strategic impediments. I consequently

rely on several prominent accounts of lawmaking to identify generalized features of the lawmaking environment that presumably affect the feasibility of policy change. In contrast to work which uses models to identify the conditions leading to political failure, I use prominent lawmaking models to identify when and how policy change should occur to identify the occurrence of political failure.

A plethora of explanations have been offered for why policy change occurs. Some focus on the importance of parties (e.g., Rohde 1991, Cox and McCubbins 2005), others identify critical aspects of the institutional environment that need to be overcome (e.g., Krehbiel 1998; Brady and Volden 2006), some focus on the party composition of different branches and the incidence of divided government (e.g., Edwards, Barrett, and Peake 1997; Coleman 1999; Binder 2003), and still others hint at the possibility of vote-buying and the influence of interest groups (e.g., Grossman and Helpman 2001). I focus on two prominent lawmaking theories which both dominate the congressional politics literature and which share similar underlying assumptions about the nature of the policy space and participants' preferences. The models differ in terms of whether the separation of powers or the interests and incentives of political parties represent the largest impediment to policy change, but insofar as the models agree as to when policy change is possible, the critical components of lawmaking stylized by each should permit policy change.

Although irrelevant for identifying instances in which policy change occurs, it is of second-order interest to examine variants which assume both positive and negative agenda control (i.e., whether proposals are made under closed or open amending rules); insofar as we also care about evaluating the models' predictive validity, there is some ambiguity about whether the right model should presuppose positive agenda control on the part of critical actors (see, for example, Krehbiel (1998, pp. 24-25) and Cox and McCubbins (2005)).<sup>4</sup>

In the presence of positive agenda control, the party cartel model (Cox and McCubbins (2005), the pivotal politics model (Krehbiel 1998; Brady and Volden 2006) and a "party-pivot" model combining the essential elements of both can be interpreted as variants of Romer-Rosenthal's (1978) spatial agenda-setting model, but with differences in how influential certain participants are for lawmaking outcomes. Given the location of a conservative status quo  $q$  in a unidimensional policy space, the party cartel theory assumes the liberal majority party median in the House, who cares

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<sup>4</sup>It would be surprising for the sparse models to generate predictions that are confirmed by the data, but assessing whether there are systematic differences between the observed and predicted policy changes may suggest aspects of the lawmaking environment which receive inadequate attention in the dominant congressional lawmaking models.

only about policy outcomes and whose most-preferred policy outcome (ideal point) is denoted  $x_D$ , makes a proposal that must be approved by the chamber median (with ideal point  $x_M$ ). The pivot model assumes that the median of the more conservative chamber makes a proposal that must be approved by the conservative pivot – i.e., the senator needed to invoke cloture or the participant required to prevent a presidential veto with ideal point  $x_C$  (where  $x_C = \max(x_{S60}, \min(x_P, \max(x_{H66}, x_{S66})))$ ). The party-pivot model combines aspects of each and assumes that the median majority party member in the House makes a proposal that must be approved by the conservative pivot.

INSERT TABLE 1 ABOUT HERE

If participants’ preferences are symmetric, and if  $x_D < x_M < x_C < x_R < q$  as section three reveals, it is possible to derive the predicted equilibrium policies. If the chamber median and the majority party median exercise positive agenda control, the predictions in the top-half of Table 1 result depending on which party controls the House of Representatives. The predictions in the bottom-half of Table 1 result for lawmaking under an open rule. Note that if the status quo is sufficiently conservative, the predictions of the three accounts are observationally equivalent. Of particular interest for investigating the incidence of political failure is the fact that policy change is always possible given this configuration of preferences.

The frequent observational equivalence evident in Table 1 poses severe problems for attempts to compare the predictive successes of the various models, but it is irrelevant for determining when policy change is possible. In fact, the observational equivalence is reassuring from this perspective, because it indicates agreement on the possibility of policy change even when alternative lawmaking constraints are emphasized.<sup>5</sup>

## 2 Estimating Policy Change

To estimate the location of the status quo policy and characterize the nature of attempted and realized policy change relative to the policy preferences of critical lawmaking participants requires

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<sup>5</sup>These models clearly do not exhaust the set of models generating similar predictions of policy change. For example, a model focusing only on constitutionally endowed veto-players (e.g., the House and Senate medians and the President (or veto-override pivots)) generates predictions that are equivalent to the Pivot theory when  $x_P < x_{S60}$ , and the median voter model predicts that policy change is always possible unless the status quo lies in the interior of the space spanned by the chamber medians.

a statistical model that identifies the implied locations of the proposals being voted on across time and institutions. It might seem that an analysis of the Fair Labor Standards Act could follow Krehbiel and Rivers (1988) and use the substantive content of the proposals – i.e., real hourly minimum wage – to identify their relative location (see also Anderson (2007) and Canes-Wrone (2006)). This is unfortunately impossible because many proposals are not susceptible to a numeric interpretation. Determining the relative location of two proposals that differ only in the proposed wage level is easy, but determining how a proposal to adopt a youth wage compares to a small business exemption is less so.

Fortunately, models used to analyze roll call behavior provide a way to estimate the location of policy positions even when policy positions do not involve numeric quantities. Following the model presented in Clinton, Jackman and Rivers (2004), for legislator  $i$  on roll call  $t$ , assume the decision to vote yea or nay,  $y_{it}$ , depends on the comparison of the utility received from the proposal associated with the vote’s passage  $\theta_{y(t)}$  and the proposal associated with its failure  $\theta_{n(t)}$ .<sup>6</sup> Legislators have an ideal point  $x_i$  which I interpret as reflecting constituency preferences induced over the policy space. That is,  $x_i$  represents the ideal policy outcome for the legislator’s constituency and can be used to approximate the demand for policy change.

Suppose further that the utility difference  $U_i(\theta_{y(t)}) - U_i(\theta_{n(t)})$  is the difference of quadratic distances  $-(x_i - \theta_{y(t)})^2 + (x_i - \theta_{n(t)})^2$  plus an idiosyncratic error component  $\epsilon_{it}$ . The model assumes that members receive utility based on the (potentially sophisticated) positions. Assuming  $\epsilon_{it} \sim N(0, 1)$  and defining  $\alpha_t = \theta_{y(t)}^2 - \theta_{n(t)}^2$  and  $\beta_t = 2(\theta_{y(t)} - \theta_{n(t)})$  yields the expression:  $\Pr(y_{it} = 1 | x_i, \theta_{y(t)}, \theta_{n(t)}) = \Pr(\beta_t x_i - \alpha_t - \epsilon_{it} > 0) = \Phi(\beta_t x_i - \alpha_t)$  where  $\Phi$  denotes the standard normal CDF. Assuming independence across both indices yields the likelihood:  $L(\boldsymbol{\alpha}, \boldsymbol{\beta}, \mathbf{x}) = \prod_{i=i}^L \prod_{t=1}^T \Phi(\beta_t x_i - \alpha_t)^{y_{it}} (1 - \Phi(\beta_t x_i - \alpha_t))^{1-y_{it}}$ . (I do not estimate this version of the likelihood, but I use it to highlight the similarities to existing work.)

Rather than assuming a single dimension underlies all congressional activity and every observed vote is informative for understanding activity on the FLSA, I only analyze votes directly related to attempts to amend the FLSA. Because I only analyze votes dealing directly with the FLSA between 1971 and 2000 – Appendix A lists the specific votes – I impose the weaker assumption that only

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<sup>6</sup>Note that there is no explicit model of proposal activity and proposals may be motivated by a desire to publicly consider infeasible proposals. The statistical model assumes legislators vote according to their position-taking preferences (over the sophisticated equivalents defined below).

votes involving the FLSA are structured by a common underlying dimension.<sup>7</sup>

One complication with identifying the votes of interest is that some proposals to amend the FLSA were explicitly considered in tandem with other legislation (e.g., the 1996 amendment to the FLSA reportedly passed because of a log roll involving a tax cut for small businesses). I do not analyze potentially, but not directly, related issues because it is difficult, if not impossible, to identify all of the potential log rolls involved with FLSA legislation.<sup>8</sup> Insofar as votes on the minimum wage are partially determined by preferences on excluded votes and other considerations affect voting behavior besides the relative proximity of the positions being voted upon, such effects will be accounted for by the idiosyncratic error term  $\epsilon_{it}$ .

Two vote-specific parameters are estimated in the typical statistical voting model:  $\alpha_t$  (the probability of voting yea on vote  $t$  irrespective of  $\mathbf{x}$ ) and  $\beta_t$  (the extent to which the probability of voting yea depends on  $\mathbf{x}$ ). Vote parameters are typically characterized using the cutpoint  $\alpha_t/\beta_t$  (or a similar function based on a reparameterization of the likelihood (e.g., Bafumi et. al. 2005)), but the quadratic utility assumption parametrically identifies the proposal locations  $\theta_y = \alpha_t/\beta_t + \beta_t/4$  and  $\theta_n = \alpha_t/\beta_t - \beta_t/4$ . Given the nature of the identification, scholars have been reluctant to use these, and similarly identified, estimates of proposal locations (Poole and Rosenthal 1997, Appendix A). Moreover, the estimates also ignore the relationship between the outcomes being voted on.

Following the arguments of Clinton and Meirowitz (2003), and using information derived from the *Congressional Record*, *THOMAS* and accounts of legislative proceedings written by journalists and the Congressional Research Service, I identify how the positions being voted on are substantively related (e.g., substitute amendments, first and second degree amendments). These relationships define a set of equality constraints on the position parameters, which, in turn, identify the implied policy locations because some alternatives are involved in multiple votes.<sup>9</sup>

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<sup>7</sup>Excluding the votes on the House resolutions defining the rules for considering the various proposals, there are 147 roll calls on motions, amendments and proposals between 1971 and 2000. I exclude 12 votes receiving near-unanimous support because they are politically uncontested and provide no information as to the nature of the politics underlying the vote. There are 20 other votes involving cloture motions, votes on motions to table non-germane amendments involving the FLSA that were attempted on other bills, and votes on bills related to aspects of the FLSA unrelated to the minimum wage (e.g., the activity in the 104th and 105th trying to amend the FLSA to provide for compensatory time off instead of overtime pay) that are also excluded because it is unclear how they relate to the positions being voted upon in the other votes.

<sup>8</sup>Assuming unidimensionality and separability is imperfect, but it is considerably weaker than assuming a single policy space across all roll calls.

<sup>9</sup>An alternative approach would be to use information about the proposers. If we assume that proposer  $j$  of the amendment involved in vote  $t$  proposes their ideal point then  $\theta_{y(t)} = x_j$  (and  $\theta_{n(t)}$  is unconstrained). This is a very strong assumption because nothing implies that members propose their ideal policy. So long as members do not

To illustrate the nature of the constraints, Figure 1 depicts the agenda tree for the floor activity in the 92nd House on May 11, 1972 for H.R. 7130. The left-most agenda tree depicts the assumed relationships if the votes are analyzed using conventional roll call estimators (e.g., Heckman and Snyder 1996, Poole and Rosenthal 1997, and Clinton, Jackman and Rivers 2004). The agenda tree on the right depicts the relationship that results from incorporating information about the positions being voted upon assuming that legislators anticipate the consequences of the agenda.

INSERT FIGURE 1 ABOUT HERE

As the left-most agenda tree in Figure 1 makes clear, the assumptions implicit in standard roll call estimators do not impose any constraints on the positions of roll call votes; the success or failure of a vote does not imply anything about the positions associated with subsequent votes. Moreover, the timing of the votes is irrelevant; the likelihood function is insensitive to whether a second-degree amendment is voted on before or after the vote on the associated first-degree amendment even though the policy consequences of the ordering is critical. In contrast, the right-most agenda tree uses information about the proposals being voted on and assumptions about how they were perceived by legislators to define a series of relationships between the alternatives.

Considering the legislative activity depicted by Figure 1 reveals the source of the constraints imposed in the right-most agenda tree. After overwhelmingly approving the rule for H.R. 7130 which allowed for the consideration of Ranking Member of the House Education and Labor Committee Rep. Erlenborn’s (R,IL) substitute amendment containing Pres. Nixon’s proposed amendment to the FLSA, the 92nd House considered three second-degree amendments to the substitute amendment. The first vote was to adopt Anderson’s amendment to Erlenborn’s substitute amendment and define new wage levels. A yea vote was a vote for Erlenborn’s amended amendment,  $\theta_{Y(1)}$ , and a vote against the secondary amendment was a vote for the unamended substitute amendment  $\theta_{N(1)}$ . Because the amendment succeeded 216 to 187, when voting on Rep. Randall’s (D,MO) amendment to amend the substitute amendment and provide overtime to transit workers, a yea

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propose “killer” amendments, we know only that members prefer the proposal to the status quo. Inspecting the identity of those making proposals reveals a small set of legislators with well-known expertise in the area – e.g., Rep. Dent (D,PA), Rep. Erlenborn (R,IL), Sen. Taft (R,OH), Sen. Dominick (R,CO), Sen. Kennedy (D,MA) – and the proposals likely reflect strategic legislative considerations rather than ideal policy preferences. There is ample evidence in the *Congressional Record* that members sometimes propose compromise policies (see, for example, the post-veto activity in 1989).

vote was a vote for the position denoted  $\theta_{Y(2)}$  and a vote against was a vote for the substitute amendment as amended by Anderson ( $\theta_{N(2)} = \theta_{Y(1)}$ ). The vote failed 186 to 206, as did the amendment by Rep. W.D. Ford (D,MI) to strike the youth wage provision from the once-amended substitute amendment. The latter vote involved positions associated with the once-amended substitute amendment excluding a youth wage  $\theta_{Y(3)}$  and the once amended substitute amendment including a youth wage provision  $\theta_{N(3)} = \theta_{N(2)} = \theta_{Y(1)}$ . The House then voted to amend H.R. 7130 as reported by the House Committee on Education and Labor by substituting the once-amended substitute amendment 217-191. A yea vote on the adoption of the substitute amendments was a vote for  $\theta_{Y(4)} = \theta_{N(3)} = \theta_{N(2)} = \theta_{Y(1)}$  and a nay vote implies a preference for the original committee proposal  $\theta_{N(4)}$ .

Complications emerge, however, when considering the implications of voting to pass H.R. 7130 containing the once-amended substitute amendment. It would seem that a vote for  $\theta_{Y(5)}$  is a vote for the position associated with  $\theta_{Y(4)} = \theta_{N(3)} = \theta_{N(2)} = \theta_{Y(1)}$  and a vote against is a vote to maintain the status quo  $\theta_{N(5)}$ . Accounts of congressional activity reveal this to be an incorrect characterization. In part, H.R. 7130 was passed by the lopsided vote of 330 to 78 because Northern Democrats vowed to fix the problem in conference committee where they could adjust the bill and force an up or down vote on the conference committee version. Rep. John Dent (D,PA), the sponsor of H.R. 7130 and chair of the Subcommittee on Labor Standards, publicly vowed: “In conference we will write that kind of legislation that will provide the greatest good for the greatest number” (Rosenbaum, 1972a). Because a vote for H.R. 7130 in the House was likely a vote to simply push the process forward, I do not constrain  $\theta_{Y(5)}$ .

Imposing the above parameter constraints requires assuming that members identically perceive the consequences of voting for and against various proposals. That is, when voting on Anderson’s second-degree amendment, members anticipate the consequences of approving the policy – i.e., the subsequent rejections of the second-degree amendments by Randall and Ford and the ultimate adoption of the substitute amendment. While conventional estimators of the left-most agenda tree assume that members identically perceive the consequences of voting yea and nay, the constraints implied by the right-most agenda tree results from the additional assumption that members evaluate the consequences of voting yea and nay according to their sophisticated equivalents

For the agenda tree depicted in Figure 1, this second assumption reduces the number of es-

timated parameters from  $5 \times 2 = 10$  to 7. Over the time period I examine, 1971-2000, whereas analyzing 114 votes typically results in the estimation of 228 vote parameters, two for each vote, imposing the agenda constraints listed in Appendix A reduces the number of estimated vote parameters to 112.<sup>10</sup>

The assumption that legislators anticipate the future consequences of their voting behavior on proposals related to the FLSA is reasonable for two reasons.<sup>11</sup> First, given the prominent attention to the issue by the national media and interest groups, legislators were likely especially aware of the stakes involved and the consequences of the roll call agenda. As suggestive evidence of the heightened media environment, Figure 2 graphs the total number of *New York Times*, *Washington Post*, and *Wall Street Journal Articles* stories discussing the minimum wage each month.<sup>12</sup> The vertical lines denote months in which roll call activity occurs. For the 360 months I examine, the median number of stories per month in these three papers is 20, and the median number of stories increases to 47 when a roll call occurs. This provides at least suggestive evidence of the saliency of the issue to, at a minimum, the readership of three prominent national papers.

INSERT FIGURE 2 ABOUT HERE

Second, as Table 2 shows, many of the votes occur on the same day and the concentrated legislative activity in tandem with the salience of the issue likely focused legislators' attention.

INSERT TABLE 2 ABOUT HERE

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<sup>10</sup>I focus primarily on congressional activity between 1971 and 2000 (92nd to 106th Congresses) because prior to 1971, the last activity – the 1966 FLSA Amendment – involved issues closely related to race relations. As a consequence, it is likely that the activity involved multiple policy dimensions and may have involved log rolls across different policy areas. Moreover, a series of institutional reforms in the early 1970s may have created a slightly different institutional environment and complicate the comparisons between the pre-reform and post-reform congresses. Because 112 vote parameters are estimated from 114 votes, it is possible to relax the assumption that members identically perceive the consequences of voting yea and nay on some votes. It is also possible to permit a change in the status quo when it is likely that the stakes of policy changed (e.g., the location of voting yea likely changed between the adoption of Erlenborn's substitute amendment and the adoption of H.R. 7130). Similarly the location of the status quo policy likely changed in the midst of the debates during the 93rd Congress given the rampant inflation at the time. I use this substantive information to relax the relevant parameter constraints in both instances.

<sup>11</sup>This is slightly stronger than the typical assumption that vote parameters are identical for all members. Imposing the relationship constraints across votes assumes not only that members identically perceive the yea and nay locations (i.e., each vote generates a unique cutpoint), but also that members identically perceive the consequences of success and failure for the positions associated with subsequent votes.

<sup>12</sup>The pairwise correlations between the three individual series was in excess of .723. The precise search terms used in these queries was: "minimum wage" AND ("house" OR "senate" OR "congress") in citation and document text, AND NOT ("display ad" OR "classified ad" OR "table of contents") in citation and abstract.

To compare estimates across time and institutions requires two additional parameter constraints. To ensure that the estimates are temporally comparable, I assume members policy preferences’ are constant within a chamber, but preferences may change if the member is elected to the other chamber or changes party. The temporal overlap is considerable for the period I examine: 9 representatives and 7 senators vote in all seven Congresses with roll call activity, 365 representatives and 105 senators vote in at least three congresses, 455 representatives and 86 senators vote in exactly two congresses, and only 497 representatives and 73 senators vote in a single congress. Because I constrain the preferences of legislators serving within a single chamber across time to achieve temporal comparability, I allow the location of the status quo in the policy space to change over time to account for the effects of inflation, the changing business environment, or other external events (e.g., Watergate). I do not, for example, constrain the status quo for the 95th Congress to be the location associated with the passage of PL 93-259 in the 93rd Congress.

Cross-chamber comparability is achieved using the fact that the House and Senate sometimes vote on identical proposals. That is, I assume that the yea location associated with the adoption of the conference report on S. 1871 in the 93rd Congress (1974) is identical in the House and Senate.<sup>13</sup> Imposing two such constraints per Congress establishes cross-chamber comparability (Rivers 2003). (As Appendix A makes clear, many votes involve at least one inter-chamber equality constraint.)

I estimate the model using MCMC and Metropolis sampling (Appendix B contains the code and diffuse priors used to generate the estimates). The estimates are based on thinning 500,000 iterations by 200 and using the first 200,000 as “burn-in;” estimates were post-processed to impose the normalization that  $\hat{x} \sim N(0, 1)$  to identify the scale of the recovered policy space.<sup>14</sup>

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<sup>13</sup>This is weaker than assuming that the vote parameters  $\alpha_t$  and  $\beta_t$  (and the cutpoint for vote  $t$ ) are equivalent. Assuming that the cutpoints of bills voted on in both the House and the Senate are equivalent assumes that *both* the yea and nay positions are identical even though the chamber moving first may affect the reversion point for the chamber moving second. For example, the outcome associated with defeating H.R. 7130 in the 92nd House was arguably the status quo, but a vote in in the 92nd Senate against the Taft-Dominick substitute amendment was effectively a vote for the more liberal policy being considered on the Senate floor (S. 1871).

<sup>14</sup>To assess model fit, I compare the model classification to the naive classification using the modal vote for every vote. Even though a single model is estimated, Appendix C reports the percent correctly classified for each Congress separately. Of some interest is the ratio of estimated parameters to roll call votes. Recall that the standard model estimates two parameters for every vote. Because of agenda constraints, the number of estimated parameters is considerably less (except for the 106th Congress, which, because of the additional parameters, has the best classification).

### 3 Statistical Analysis of Policy Change

I establish the substantive reasonability of the resulting estimates by comparing the estimated status quo locations to the real minimum hourly wage. Because the estimated status quo locations are unconstrained – temporal comparability of the estimates is achieved by constraining legislator ideal points — nothing ensures a relationship between the estimated status quo locations and the real minimum wage. Finding that more conservative status quo estimates are associated with lower real minimum wages provides some evidence of the estimates’ reasonability.

INSERT FIGURE 3 ABOUT HERE

Figure 3 plots the real wage, in 2006 dollars, against the estimated location of the status quo using the model described in section two. A very strong relationship, correlation of  $-.844$ , between the set of estimated status quo locations and the real wage level is clearly evident; more conservative status quo locations (i.e., positive estimates) occur when the real wage level is low.

Having demonstrated the face-validity of the estimates, investigating whether political failure occurs entails assessing whether policy change occurs when the status quo is estimated to be more conservative than the most conservative “pivot.” Of second-order importance, is whether successful and unsuccessful proposals occur as predicted in Table 1, and, if not, whether there are systematic differences in the prediction errors. Figure 4 graphs the estimated status quo locations (solid squares) as well as the preference estimates for the critical participants in the lawmaking models: the conservative pivot (dashed vertical line), the more conservative chamber median (solid vertical line), the median member of the Democratic party in the House (left-most dotted vertical line), and the median member of the Republican party in the House (right-most dotted vertical line). Solid squares represent status quo locations (with the horizontal line denoting the 95% region of highest posterior density).

INSERT FIGURE 4 ABOUT HERE

So long as the considered lawmaking models identify the primary constraints to lawmaking, Figure 4 reveals that there is often no impediment to policy change in those congressional sessions in which roll call votes are observed because the status quo is always estimated to be more conservative

than the most conservative key participant.<sup>15</sup> That is, because policy change is possible in every instance, congresses in which change does not occur represent instances of political failure.

Given the apparent ability to frequently change the status quo, it is of some interest to identify whether the change predicted by each lawmaking model in Table 1 is realized. The shaded region in Figure 4 labeled “C” depicts the most liberal policy possible under the party cartel theory given the estimated locations of the House median and status quo accounting for the estimation uncertainty in each. The shaded region labeled “P” describes the most liberal policy possible under the pivot theory given the estimated location of the status quo and right pivot.

In the presence of negative agenda control, because the reflection point of the estimated status quos are more conservative than the chamber median in every instance, all three models predict that the enacted policy should be indistinguishable from the preferences of the chamber median under Democratic majorities. Policy change should not be possible in the 104th (1995-1996) and 106th (1999-2000) according to the party cartel and pivot-party models if only negative agenda control exists because the Republican median prefers the status quo to the policy that would be chosen by the chamber median.

In the presence of positive agenda control, because the reflection of the status quo about the chamber median is more liberal than the Democratic median in every congress, the party cartel account predicts that successful proposals should occur at the party median when Democrats are in the majority. When Republicans are in the majority, the policy should be moved to their ideal policy. Similarly, because the most liberal policy possible under the pivot theory is either indistinguishable (in the case of the 92nd and 93rd Congress) or more liberal than the more conservative chamber median, the chamber median ought to be able to implement their preferences in every Congress. The composite party-pivot model predicts that policy should be as close to the Democratic party median as possible given the constraints of the pivot theory. Because the right-most shaded region designating the most liberal policy possible under the pivot theory is more liberal than the chamber median in every instance, successful policy should always be more liberal than the chamber median (only following Carter’s election in 1976 is it possible for the Democrats to enact the policy preferences of the median Democrat in the 95th Congress).

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<sup>15</sup>This conclusion is clearly contingent on the observed activity; it is unclear whether the opportunity to change policy would exist in the 93rd Congress had policy been successfully changed in the 92nd Congress.

The plotted points of Figure 4 denote the location of the final policy outcome of each legislative attempt to change the status quo resulting in floor activity (the appendix graphs 34 highly salient proposals based on journalistic accounts of the time). Solid (open) triangles denote successful (unsuccessful) proposals of interest, and asterisks denote the location of proposals which became law. The arrow tracks the evolution of the status quo across time.

The conclusion is immediately evident from Figure 4. Despite status quos that are estimated to be more conservative than the most conservative pivot according to any of the lawmaking models summarized in section one, policy change did not occur in the 92nd (1971-1972), 106th (1999-2000) or the first session of the 93rd (1973). Moreover, the changes that were enacted are not correctly predicted. The 93rd (1974) and 101st (1989-1990) Congresses produced more conservative policy than any of the models predict under either positive or negative agenda control, and the change in the 104th Congress (1995-6) is more liberal than the party cartel model with positive agenda control predicts, but more liberal than the pivot model predicts. (In fact, with negative agenda control, policy change should be impossible in the 104th Congress.) Overall, these findings provide suggestive, but not definitive, evidence of political failure; there are many instances between 1971 and 2000 in which it appears that the FLSA can be amended given but yet it is not. Put differently, there are many instances in which induced constituency preferences prefer an amendment to the FLSA to the status quo but yet the change is either unrealized, or else more limited than constituents would apparently prefer.

## 4 Correlates of Policy Change, 1947 to 2006

To extend the analysis over a longer period and escape the reliance on recorded roll calls, I also examine the correlates of when the FLSA is successfully amended for the postwar period of 1947 to 2006.<sup>16</sup> It is straightforward to identify the 43 instances in which the FLSA has been amended since its passage in 1938; the *The Fair Labor Standards Act of 1938, as Amended* (March 2004 revision) published by the U.S. Department of Labor identifies not only amendment to the statute, but also precisely how every amendment changed the law. More difficult is determining whether the changes are minor (e.g., sec. 108 of the Department of Labor Appropriations Act which was

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<sup>16</sup>I exclude the period from 1938 to 1946 because the issue was complicated considerably by World War II and its buildup.

the “Fair Labor Standards Act Woodworking Exemption”) or major. In the analysis that follows, I include amendments explicitly titled “The Fair Labor Standards Amendments” (1949, 1955, 1961, 1966, 1974, 1977, 1985, 1989) as well as the *Minimum Wage Increase Act of 1996*, *The Plan-to-Portal Act of 1947*, and the *Equal Pay Act of 1963* because these acts resulted in the greatest changes. The other amendments typically dealt with territories (e.g., Puerto Rico and the Marianas Islands), exemptions for particular sets of workers, and the administration of the program.<sup>17</sup>

As an initial characterization, I assess whether amending activity covaries with political control of the three institutions necessary for amending the law. Roughly half of the unified Democratic governments (4/9), a third of divided governments (6/17), and no unified Republican governments (0/4) produced policy change. This ordering is expected, but it is unclear whether instances in which Democrats controlled at least one institution and policy change did not occur is because of the infeasibility of policy change or else because a decision was made to not seek change even though the status quo was amendable.

To explore whether there are other underlying aspects of the political-economic environment correlated with amending activity on the FLSA, I examine the relative influence of several aspects that plausibly measure the demand for, and possible constraints to, policy change. To do so, I model the probability of a successful amendment to the FLSA by a Congress. To the extent that the timing of policy change is at odds with expectations regarding when policy change should be possible, I interpret this as additional suggestive evidence of political failure.

The literature suggests several correlates of the demand for policy change. Public support for policy change is an obvious (e.g., Erikson, MacKuen and Stimson (2002)) measure, as is the legislative strength of the Democratic party given the content of the FLSA. National union strength is arguably correlated with the impact of direct (e.g., lobbying) and indirect (i.e., constituent interest) interest group influence. To measure the support of the public and organized interests I use Bartels’ (2007) measures of aggregate public support for increasing the minimum wage (*% Public Support*) and the national percentage of unionized workers (*% Union*) for each two-year period.

Public support over this period is uniformly high – ranging from 61.25 % (1950-1951) to 82.06 %

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<sup>17</sup>Using only those amendments which changed the hourly minimum wage (1949,1955,1961,1966,1974,1977,1989, and 1996) as an alternative measure of “significant” political change fails to change the reported results.

(2005-2006) – and national union membership steadily declines from 31.8 % (1949-1950) to 12.5 % (2005-2006). I measure the legislative strength of the Democratic party using an indicator for partisan control of the lawmaking institutions (*Unified Democratic Government*). (Using Democratic seat share in congress produces no substantive differences).

To measure possible constraints to lawmaking I measure *Senate Polarization* (e.g., McCarty, Poole and Rosenthal 2006) using the standard measure of the distance in the median DWNOMINATE scores of the two parties. I also control for the presence of an economic crisis during the Congress using Romer’s (1999) characterization of whether a recession occurs. Finally, to control for possible electoral incentives, I include an indicator for whether the Congress precedes a midterm election (*Midterm Election Indicator*).

Collectively, these covariates control for: the demand for legislation (*Unified Democratic Gov’t, % National Union Membership, % Public Support*), the constraints to lawmaking (*Rep. President Indicator, Senate Polarization, Severe Recession Indicator*), and possible non-policy incentives (*Midterm Election Indicator*).

Note that several measures are highly correlated: both union membership and party polarization in the Senate increases over this time period (pairwise correlation of -.886), and popular support is increasing despite a steady decrease in union membership (pairwise correlation of -.920). As a consequence, specifications including all three measures are imprecisely estimated, and Table 7 presents several specifications to establish the robustness of the results. The columns labeled “dy/dx” provide the marginal effect on the probability of amending the FLSA for a Congress with characteristics set at the covariate means (i.e., a Democratic congress preceding a midterm election with a Republican president in the absence of a recession in which 27.9% of the populace belongs to a union and 73.8% support a higher minimum wage).

INSERT TABLE 7 ABOUT HERE

There is no evidence that the variables likely correlated with the demand for new legislation are strongly correlated with the incidence of policy change. The imprecisely estimated substantive effect of increasing union membership by 1% nationwide is roughly .02 on the probability of a successful change to the FLSA, and the effect of increasing public support is even less so. Periods of unified Democratic control are also no more likely to produce policy change than periods of

divided partisan control. That is, policy change does not occur even when the measures indicate a high level of demand for legislation.

There is some evidence that the measures of constraint are negatively correlated with legislative change. Amendments are unlikely in periods of severe recession—presumably out of a perceived fear of increasing business costs in a weak economic environment – and when there is a Republican president. Consistent with prior work, increased polarization also results in a smaller probability of policy change.<sup>18</sup>

Somewhat surprisingly, policy change on the Fair Labor Standards Act is slightly more likely before a midterm election than before a presidential election. The substantive effect of this is large – ranging from .253 (Model 2) to .430 (Model 4). Although it is always difficult to interpret the substantive meaning of an indicator variable, the evident effect is not inconsistent with the possibility that electoral motivations may partially explain lawmakers’ behavior on the timing of amendments to the FLSA. It is clearly impossible to identify whether this effect might reflect an intention to reward supporters for efforts made during the presidential election or positioning for the upcoming midterm elections. Nonetheless, the finding is suggestive.

Overall, the results complement the conclusions of the previous section. Contrary to expectations, popular demand and Democratic control of the lawmaking institutions do not necessarily correlate with policy change. Instances in which change appears possible do not correlate with observed change.

## 5 Legislative Activity: 1971-2001

Given the coarseness of the available data, it is also useful to briefly investigate the political proceedings analyzed in section two. A qualitative investigation not only provides a useful narrative context for interpreting the statistical results, but it also illuminates aspects not easily summarized in a quantitative manner. Journalists’ perceptions and speeches made on the floor may provide a partial, and perhaps mistaken, recounting of congressional activity, but in combination with the quantitative analysis of the previous section they help identify whether congressional activity is consistent with the lawmaking accounts of section one. If the qualitative accounts reinforce the

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<sup>18</sup>This is consistent with McCarty, Poole and Rosenthal’s (2006) findings, but whereas they predict the level of the real minimum wage, I predict the incidence of policy change of any kind.

inferences from the quantitative investigations, our belief in the plausibility of the estimates should be strengthened.

The overall pattern confirms the statistical results – there is abundant evidence of political failure. During the period from 1971 to 2000, there are five publicized legislative attempts that result in failure, four successful amendments to the FLSA, one amendment passed without a single roll call, and two instances in which proponents decided to postpone a change to pursue other legislative priorities.

### **92nd Congress, 1971-1972**

Prior to the 92nd Congress, the last FLSA amendment occurred in 1966. (The 1966 Amendment increased the hourly minimum wage from \$1.25 to \$1.60 in two steps and expanded the coverage of the FLSA to include more than 9 million workers (from 3.7 million workers).) On October 13, 1971, the House Committee on Education and Labor reported out H.R. 7130 which increased the nominal wage to \$2, increased coverage by 1.4 million domestic workers and 5 million Federal state and local employees, and defined a student wage. It did not contain the youth wage provision publicly demanded by President Nixon (Hunter, 1971).

Under the chairmanship of Rep. William Colmer (D, MS), the House Rules Committee delayed consideration of H.R. 7130 by nearly six months. Under the threat of being overruled in committee, Chairman Colmer finally scheduled a hearing on the bill for April 11, 1972 (Hunter, 1972). On May 9, 1972, the Rules Committee reported out a rule which permitted substitute amendments, and the rule was overwhelmingly approved in the House two days later.

The activity in the House that followed was described in section two, but the essential point is that the substitute amendment containing the Pres. Nixon's preferred policy was adopted on the floor. After observing what transpired on the House floor, on May 24th the Senate Labor and Public Welfare Committee reported out a bill (S. 1861) which did not contain a youth wage and which increased the nominal wage and the number of workers covered.<sup>19</sup> After rejecting a compromise proposal 81 to 4 on July 19th, the Senate considered S. 1861 the next day. Senators Taft (R, OH) and Dominick (R, CO) proposed a substitute amendment that would effectively adopt

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<sup>19</sup>In fact, the Chair of the Senate Committee took public issue with *New York Times's* May 12th editorial praising the House's proposal (Williams, 1972).

HR 7130, but Sen. George McGovern returned from vacationing in South Dakota to help defeat the substitute amendment 46-47. Subsequent attempts by Senators Dominick, Buckley (Conservative-R, NY) and Taft to incrementally amend the proposal to bring S. 1861 closer to the House bill and Nixon's expressed preferences were also defeated before S. 1861 was adopted 65 to 27.

In an unprecedented move, the House refused to conference with the Senate (attempts to do so were defeated on August 1st and on October 3rd). Precisely because the Northern Democrats were so strident in their proclamations that they would fix the problem in conference, a majority in the House refused to conference with the Senate and face an up or down vote on the conference version.<sup>20</sup>

Consistent with the analysis of the section two, policy change was possible in the 92nd Congress – both chambers were able to pass legislation – but the required compromises were never undertaken because of the apparent political posturing of both sides (perhaps looking to the 1972 midterm elections?).

### **93rd Congress, 1973-1974**

Following the 1972 midterm elections, the 93rd Congress returned to the FLSA. Labor Secretary Peter Brennan introduced President Nixon's proposal when testifying before the House Subcommittee on Labor on April 10, 1973 – a proposal immediately panned by organized labor (Shabecoff, 1973). The source of the opposition was again a disagreement over the speed of the increase and whether youths could be paid less than the minimum wage. After reporting a bill closer to labor's position than Nixon's out of the Subcommittee on Labor on May 2nd, the House Education and Labor Committee approved the proposal (H.R. 7935) on May 15th.

Republicans in the House tried to pass a substitute amendment similar to that which passed in the 92nd, but it was defeated on the floor along with several other attempts bring it closer to Nixon's position. The House proposal was finally approved 287 to 139 on June 6th. In the Senate, Senators Williams (D, NJ) and Javits (R, NY) proposed a bill (S. 1861) nearly identical to the proposal passed by the Senate in the 92nd Congress. Republicans, again led by Senators Robert Taft and

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<sup>20</sup>As the *New York Times* reported, "Mr. Erlenborn noted that all the House Democratic conferees would be men who had voted against the Administration's proposal and for legislation closely resembling that approved by the Senate" (Rosenbaum, 1972b), and it quoted Rep. Erlenborn as justifying the decision by saying "We can almost anticipate with certainty that the position of the House will not be adequately represented" (Rosenbaum, 1972c).

Peter Dominick, tried unsuccessfully to amend the bill. After the substitute amendment containing the administration's proposal failed on July 18th, Taft remarked "that the committee bill 'is about as certain to be vetoed as any I've seen here'" (*NYT*, 1973a). Nonetheless, the Senate passed the committee's version 64-33 after rejecting several amendments the next day which tried to reinstate portions of the administration's proposal. The Senate passed the proposal 62-28 on August 2nd, and the House voted 253-152 to approve the conference report the next day despite looming veto threats. Nixon vetoed the bill on September 6th, and the House fell 23 votes short of overriding the veto on September 19th. Prospects for compromise were faint because "Representative John H. Dent, Democrat of Pennsylvania and chairman of the Education and Labor subcommittee that originated the vetoed bill, vowed that he would never bring out a bill providing for a reduced minimum wage for teen-age workers" (Madden, 1973), and despite pleas for compromise, further action did not occur in 1973.<sup>21</sup>

Early in the second session, Nixon informed Congressional leaders that he was willing to compromise. Whether the change in Nixon's position on the necessity of a youth wage was due to inflation – the Consumer Price Index rose 8.8% in 1973 – or because he was sufficiently weakened by the escalating Watergate scandal is unclear.<sup>22</sup> Legislative activity quickly followed Nixon's remarks: the Senate passed S. 2747, which did not include a provision for a youth wage, on March 3rd, the House passed S. 2747 in lieu of H.R. 12435 on March 20th, conferees agreed to a compromise bill on March 27th, and the next day both the House and the Senate agreed to the conference report (by 345-50 and 71-19 respectively). Nixon signed the bill into law on April 8th (PL 93-259).

### **95th Congress, 1977-1978**

Following the election of President Carter in 1976, the 95th Congress acted to raise the minimum wage. The initial proposal by Chair of the House Labor Standards Subcommittee John Dent (D, PA) was to increase the minimum wage to \$3 and index the wage to be 60% of the manufacturing wage. After internal debate within his administration, Carter stunned labor on March 24th with

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<sup>21</sup>As the *New York Times* editorialized: "Minimum wage improvements, desperately needed by the nation's worst-paid workers in this time of inflation, failed to materialize because of the stubbornness of President Nixon, who vetoed the bill, and of George Meany of the A.F.L.-C.I.O., who refused to compromise on any substitute" (*NYT*, 1973b).

<sup>22</sup>As reported by the *New York Times*: " 'The President knows he couldn't win an override fight this time,' said one Congressional staff official. "By offering to compromise the White House is recognizing the inevitable' " (Shabecoff, 1974).

his competing proposal to raise the wage to \$2.50, and to index subsequent increases at 50% of the manufacturing wage. A compromise to raise the minimum wage to \$2.65 and index the wage to 53% of the average manufacturing wage was announced on July 12th.

On July 19th, the House Education and Labor Committee approved a bill that was similar to the announced compromise (H.R. 3744), but Republicans Bauman (R, MD) and Ashbrook (R, OH) successfully engaged in a series of parliamentary moves to delay consideration of the proposal until September. When the bill finally came to the House floor on September 15th, the House debated a series of controversial amendments before passing an amended bill 309-96. Most notable was Erlenborn's successful amendment which eliminated indexing (an amendment to reinstate indexing was also defeated). Even more dramatic was the defeat of the youth wage amendment. Originally receiving enough votes to pass in the House, the amendment was brought to a tie vote when Representatives Robert Giaimo (D, CT) and Tom Harkin (D, IA) switched their votes from "yea" to "nay." Speaker of the House Thomas O'Neill Jr. (D, MA) was then able to cast the deciding vote against the amendment.<sup>23</sup> The House also approved Rep. John Pickle's amendment (D, TX) to increase the admissible gross receipts for retail and service companies exempt from the minimum wage requirement from \$250,000 to \$500,000. Expressing his disapproval, George Meany, president of the A.F.L.-C.I.O. proclaimed: "we will be working just as hard in the Senate where we will seek to improve on the House version" (Shabecoff, 1977).

Following the activity in the House, Carter dropped his support of indexing and decided to support the higher wage level of the Senate bill instead. On October 6th, the Senate approved the bill after defeating separate attempts by Senators Bartlett (R, TX) and Tower (R, TX) to lower the hourly wage. After defeating four more attempts to provide for a youth wage the following day, the final proposal eventually passed the Senate.

Conferees approved a compromise version largely in the Senate's favor on October 14th. The Senate approved the compromise by voice vote on October 19th, and the House approved the proposal 236 to 187 the next day. On November 1st, Carter signed the bill into law (PL 95-151).

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<sup>23</sup>The reason for the switch was reported in the *New York Times* thusly: " 'They told us we could have their votes if we really needed them,' one elated labor lobbyist said" (Shabecoff, 1977).

## 99th Congress, 1985-1986

Following the Supreme Court's decision to reverse its 1976 decision in *National League of Cities v. Usery* and allow Congress to regulate the working conditions of state and local government employees in February of 1984, Congress returned to the FLSA in the 99th Congress.<sup>24</sup> Arguably motivated by the resulting budgetary implications for state and local governments, the 1985 amendment to the FLSA, Public Law 99-150, allowed non-volunteer state and local government employees to receive compensatory time off instead of overtime pay.

It is notable that the FLSA was successfully amended without a single roll call in either chamber. This was despite the fact that, although local government leaders and the related interests such as the United States Conference of Mayors and the National League of Cities were in favor of the legislation, prominent labor unions such as the American Federation of State, County and Municipal Employees were strongly opposed.

## 100th Congress, 1987-1988

An increase in the minimum wage rate was considered again in 1988 – the 50th anniversary of the passage of the FLSA. The fact that ten years elapsed since the last time the wage was increased may partially be due to the inability to get legislation reported out of the Republican controlled Senate Labor Committee, but, even so, activity was never pursued in the Democratically controlled House.<sup>25</sup>

Early in the first session of the 100th Congress, Senate Majority Leader Robert Byrd (D, WV) proclaimed that “I would say prospects are pretty fair that we will see an increase in the minimum wage” (Noble, 1987). House and Senate committees held a variety of hearings on the implications of raising the wage, and proposals by Sen. Kennedy (D, MA) and Rep. Hawkins (D, CA) were

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<sup>24</sup>In *Garcia v. San Antonio Metropolitan Transit Authority*, the Court ruled 5-4 that the overtime provisions of the Fair Labor Standards Act applied to state and local governments and that Congress had the authority to regulate working conditions.

<sup>25</sup>It is admittedly hard to interpret political rhetoric given the strategic incentives of the speaker, but at least one member indicated that change might have been possible in Reagan's second term during the 1989 floor debate in the House. Rep. Penny (R,MN) opined: “Mr. Chairmain, I am distressed that over the last several years this has become a political fight that has forgotten the very people we set out to help. I am convinced that 4 years ago, when the issue was first raised, we could have adopted in the House and in the Senate a minimum wage in the neighborhood of \$4 to \$ 4.25 over 3 years, and I think that while President Reagan did not indicate any support for any adjustment in the minimum wage, he would have been hard-pressed to veto that kind of proposal...But instead we have been fighting about getting more” (135 Cong Rec H 812, March 22, 1989)).

publicized in the press. Despite pressure from the AFL-CIO to schedule a vote, the Democratic leadership repeatedly delayed scheduling a vote over a dispute as to which chamber should initiate the legislative process. A statement by Vice President Bush indicating support for an increase while campaigning in September of 1988 finally spurred action on the floor. As reported by the *Wall Street Journal*, “A union official rated prospects for enactment as ‘next to zero’ before the Bush remarks, but said they’re now at least 50-50” (Karr, 1988).<sup>26</sup>

Byrd tried to schedule a vote on Sen. Kennedy’s proposed amendment to the FLSA (S. 837) following a week of debate, but Republicans insisted on Bush’s proposed training wage. Kennedy, however, was also resolute on the issue, stating “There will be no compromise; it’s nonnegotiable” (*AP*, 1988). The Senate was consequently unable to invoke cloture on two recorded votes on September 22nd. The issue officially died on September 26th when Sen Byrd conceded that: “There is no point in our continuing to pound on their door. I’m now conceding that the Republican filibuster was successful” (*AP*, 1988b). Both parties publicly blamed the other for the failure, but neither party was willing to compromise (perhaps because of the impending presidential election).

### **101st Congress, 1989-1990**

Following the election of President Bush, both chambers moved quickly on the minimum wage in the 101st Congress. The House debated the issue on March 22 and 23rd, and it passed a version 248-171 on the 23rd despite clear suggestions that the bill was unacceptable to President Bush. In arguing for an (unsuccessful) substitute amendment in accordance with Bush’s proposal, Rep. Penny (R, MN) remarked: “...the President has been very clear that he will veto any measure providing for more than \$4.25...I urge a vote for the Goodling substitue, the only substitute that will become law” (135 Cong Rec H 849, March 23, 1989). Rep. Gunderson characterized the choice members faced more bluntly: “Do we want a minimum, or do we want a political issue?” (135 Cong Rec H 853, March 23, 1989).<sup>27</sup>

Despite repeated claims about the inevitability of a veto made on the Senate floor, the Senate

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<sup>26</sup>At the same time, labor expressed concern at the timing. A lobbyist for the International Ladies Garment Workers Union wondered: “You can ask yourself, why rush it now and get some kind of minimal settlement?” (Getlin, 1988).

<sup>27</sup>Democrats acknowledged the symbolic nature of the vote. Rep. Ridge (D,PA), cosponsor of a successful amendment intermediate between the committee version of H.R. 2 and a just-defeated Republican substitute acknowledged “In this vote we will determine how many truly want to restore the minimum wage. This is not a final vote. This is the first step in a process” (135 Cong Rec H 861, March 22, 1989).

voted 62-37 to pass a proposal after a week of debate. The conference report was adopted in the House on May 8th and on May 17th in the Senate. After reaching his desk on June 13th, Bush vetoed the bill within an hour of receiving it. An attempted override was immediately attempted in the House, but, as expected, it fell short on a 247-178 vote. The public pressure that the Democrats apparently had hoped would force President Bush's hand never materialized.<sup>28</sup>

After a series of negotiations throughout the summer and fall of 1989 between the House and Senate leadership and President Bush, new bills were called up in both chambers and quickly passed. Bush signed the legislation into law (PL 101-157) on November 17, 1989.

### **103rd Congress, 1993-1994**

With the election of a Democratic president and the continued control of the House and Senate by the Democrats following the 1992 elections, the political environment in the 103rd Congress appeared to favor an amendment to the FLSA. Despite strong initial indications of a willingness to do so, President Clinton ultimately postponed increasing the minimum wage to focus on reforming health care. Clinton was reportedly concerned that pushing for a FLSA amendment would erode business support for his proposed health care reforms (Arndt, 1994). Neither the House or Senate attempted to circumvent Clinton's stated priority.

### **104th Congress, 1995-1996**

The minimum wage returned to the agenda in the 104th Congress after President Clinton proposed to increase the minimum wage in his State of the Union address. Given the Republican takeover of the House and Senate in the 1994 elections, the proposal was characterized in the press as "largely symbolic since some leaders of the new Republican Congress are opposed to the very concept" (Purdum, 1995).

Initial floor activity on the minimum wage occurred in the Senate during the debate on the State Department's authorization bill (S. 908) when Sen. Kennedy proposed a "sense of the Senate" amendment stating that the Congress should consider raising the minimum wage in the 104th Congress. The non-germane amendment (and resulting second-degree amendments) were eventually

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<sup>28</sup>After the failed override, the *Los Angeles Times* reported "it was not clear whether Democrats would seek to scale back the size of the increase...or simple allow the measure to languish and use the veto as a political issue" (Pine, 1989).

tabled 49-48 on July 31, 1995. Sen. Dodd (D, CT), on behalf of Sen. Wellstone (D, MN), also proposed a non-germane amendment raising the minimum wage to the Family Self-Sufficiency Act (H.R. 4) on September 8th, but the amendment was withdrawn at the close of the debate. Separate attempts in the House and the Senate to bring the issue to a floor vote were also defeated in late March 1996. By mid-April, however, twenty House Republicans, largely from the Northeast, joined with Democrats in publicly supporting an increase and pressure was building in the Republican House caucus to schedule a vote (Shogren, 1996).

As the political environment continued to change, a close ally of the Republican leadership and chief lobbyist of the National Retail Federation remarked: “There has been a realization in the last 48 hours that if they [Republicans] pass a minimum wage increase, the Democrats and the president will get credit for it. The only way they can avoid that and get credit themselves is if they restructure the debate” (Jacoby, 1996). Although an increase was initially tied to a decrease in the gasoline tax, the implied logroll fell apart on the floor (potentially due to the strategic maneuverings between Majority Leader and Republican presidential candidate Sen. Bob Dole (R, KS) and President Clinton).

In light of this failure, the House voted overwhelmingly (414-10) to pass a bill relaxing tax requirements and government regulations for small businesses worth \$7 billion on May 23rd. When the minimum wage increase was considered the next day, moderate Republicans voted with Democrats to pass the proposed increase 354-72 and defeat Rep. Goodling’s (R, PA) amendment exempting small businesses with gross revenues of less than \$500,000 from the minimum wage requirements (Goodling’s amendment was characterized as a “poison pill” by President Clinton).

Partially a function of the leadership transition from Sen. Bob Dole to Sen. Trent Lott (R, MS), scheduling a vote on the proposed rate increase was delayed in the Senate. A compromise on the agenda was finally agreed to in late June: the vote on the \$7 billion in tax breaks for small businesses with one amendment would occur on July 8th, the proposed increase of the minimum wage and one amendment would be on July 9th, and votes on amending the Wagner Act and repealing the 4.3 cent gasoline tax adopted in 1993 would then follow. The agreement was reached only hours before the time when Sen. Kennedy was threatening to propose a non-germane amendment increasing the minimum wage to every bill before the Senate.

Sen. Bond (R, MO) attempted to reinstate the small business exemption defeated earlier in the

House. The *New York Times* reported that the passage of the amendment was important for the Republican leadership: “Senator Trent Lott of Mississippi, the majority leader, has made it clear to fellow Republicans that victory on the amendment is important to him as their new leader. In exchange, he is telling Republican moderates that he will soften some of the more objectionable provisions when the House and Senate negotiate a compromise bill later this summer” (Schmitt, 1996). Nonetheless, the proposal was defeated 52-46 when 5 Republican Senators joined with 47 Democratic Senators (2 Republican Senators did not vote).

Despite threats by deputy Republican leader Sen. Don Nickles (R,OK) to keep the approved minimum wage increase from going to conference until concessions were extracted on a health insurance bill (Clymer 1996), the bill was reported to conference without incidence. A compromise on the tax cuts negotiated by House Ways and Means Chairman Bill Archer (R, TX) and Senate Finance Chairman William V. Roth Jr (R, DE) in late July secured its passage (Hook, 1996), and both chambers approved the compromise shortly thereafter. Following a pre-recess and pre-election flurry of activity, Clinton signed the increase into law in August of 1996 (PL 104-188).

### **105th Congress, 1997-1998**

Despite public promises by both President Clinton and the Democratic leadership to push for a further increase in the minimum wage in the 105th Congress (Chen, 1998), no progress was made. Sen. Kennedy proposed a bill, but a companion bill was never introduced in the House. Acknowledging his motivation, Sen. Kennedy defended his amendment by noting: “It is a defining issue. It ought to be an election issue” (Seelye, 1998). The House did pass an amendment to the FLSA to provide workers with the choice of compensatory time-off rather than overtime pay (H.R. 1), but the bill was never reported out of committee in the Senate.<sup>29</sup>

### **106th Congress, 1999-2000**

When the issue of increasing the minimum wage was again raised in the 106th Congress, its passage was immediately linked with the passage of additional tax breaks for employers. In fact, it received a relatively uncontentious reception in Congress because it was characterized in the press as “a

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<sup>29</sup>This reception stands in contrast to the proceedings when the issue was raised in the 99th Congress and the provision of compensatory time off for state and local government employees was resolved quickly and without a single recorded vote.

monument to legislative logrolling” (Borrus, 1999).

The referenced logroll was never consummated, but each chamber subsequently sought to combine the increase with other legislation. The Senate included an increase in minimum wage in the Bankruptcy Reform Act of 1999 (S. 625), and the House included an increase in the Small Business Tax Fairness Act of 2000 (H.R. 3081) – both of which Clinton threatened to veto. Neither became law because the other chamber failed to act before Congress adjourned.

Finally, with the presidential elections looming and with a only a five-vote Republican majority in the House, in an August 28th letter, Speaker of the House J. Dennis Hastert (R, IL) proposed working with President Clinton to increase the minimum wage. The resulting negotiations produced a series of suggested compromises on bills involving tax-deferred retirement accounts and tax breaks to help small business and encourage investment in poor urban areas in exchange for increasing the minimum wage by \$1.

Rep. Traficant (D, OH) introduced a bill to increase the minimum wage (H.R. 5538) on October 25th. It was immediately incorporated into the House’s conference report on H.R. 2614 – the Certified Development Company Program Improvements Act of 1999. On a 207-200 vote, the House agreed to consider the conference report which was subsequently approved 237-174 on a largely party line vote. The resulting bill contained many proposals: \$240 billion in tax cuts, a \$1 increase in the minimum wage rate over a two-year period, and \$28 billion for hospitals, HMOs and health care providers. The Senate took up the conference report on October 26th and discussions continued though October 31st. Perhaps because of Clinton’s threatened veto over the lack of tax breaks to finance new school construction and the amount of money being made available to HMOs, the Senate recessed for the November elections before approving the report, and it failed to consider the report after returning from recess. As a consequence, the minimum wage was unchanged (and remained so until the Democrats held a majority in both the House and the Senate in the 110th Congress (2007-2008)).

## 6 Caveats

Before discussing the possible reasons and consequences of the findings, it is useful to identify some limitations of the analysis to place the conclusions in the proper context. So doing highlights how

future work might contribute to the task of better understanding lawmaking.

One limitation is the singular focus on the FLSA. Due to both the novel nature of the analysis and the desire to integrate qualitative information and quantitative analysis, a clear trade-off between scope and depth exists. Because I focus on the legislative activity for a limited period involving the FLSA, the generality of the results is unknown. The persistence of the conclusions across the time period I examine is reassuring, but it is unclear whether the patterns evident in this issue during the time-periods I examine can be extended either across time within the same issue area or across issue areas.

A related difficulty is that focusing on a single policy makes it impossible to investigate whether lawmakers care about a bundle of policies rather than a single policy (i.e., the results represent a partial equilibrium). Perhaps the fact that outcomes regarding the FLSA were more conservative than expected reflects the fact that the proponents of an increase devoted political capital to other issues and were willing to accept more conservative amendments to the FLSA in return.<sup>30</sup> That is, the failure associated with the FLSA may be due to resources being allocated to alternative policy concerns. Although possibly true, it is difficult to imagine how this possibility could be empirically assessed given the difficulty in defining the set of relevant policies and replicating the above analysis for every policy. These difficulties impose severe constraints on empirically-minded scholars, but they do not mitigate the plausibility of this possibility.

Finally, integrating qualitative information about the relationship between policy proposals into the statistical model requires “hard-wiring” constraints into the estimator of section two. That is, some information is treated as being known with certainty. This is neither new or problematic – structural equation estimation involves many similar trade-offs – but it is a point that should be acknowledged; some information is being privileged in the estimation. Although I think there are defensible reasons to do so, to be clear, it is an assumption being imposed on the data.

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<sup>30</sup>For example, in the 95th Congress (1977-78), organized labor was dealt a strong defeat on a bill which would permit common situs picketing – an issue on which they deployed most of their legislative resources – immediately before the amendment to the FLSA was considered. It is consequently unclear how the allocation of labor’s resources and the defeat affected the outcome of the 1977 FLSA amendment (e.g., would indexing have been retained?).

## 7 Conclusion

Identifying instances of political failure is a necessary first step in assessing whether the political system creates incentives which undermine the prospects for accountability. Given the nature of the question and the available evidence, a definitive answer is difficult to come by. As such, I conduct an analysis that focuses on a single policy and approaches the question from several analytical angles – statistically analyzing the magnitude of policy change over thirty years, assessing the correlates of policy change over nearly 60 years, and investigating how contemporary observers characterize congressional activity and inactivity. The findings accumulate in a suggestive pattern and indicate strong support for the conclusion that political failure is a very real concern for the political system.

Despite the clear evidence of political failure, it is unclear precisely why there is a failure to achieve policy change even when there is strong public support and the status quo appears quite extreme. There are hints that electoral incentives may affect the likelihood of policy failure by creating incentives for politicians to turn the issue into campaign issue, but the evidence on this point is admittedly elusive. Only by looking more broadly and across more than one issue is it likely that more definitive conclusions can be reached. By focusing on a single policy it is difficult to identify why participants sometimes chose to compromise and other times not, why sometimes the issue was put on the agenda and other times it was taken off.

Moreover, the possible motivations for political failure are difficult to disentangle because there are two closely-related explanations. One explanation is that compromise is impossible because both sides wish to use the issue as a campaign issue. Lawmakers may be willing to take the issue to the electorate in the hopes of using the policy defeat for electoral advantage. Compromise may not occur because the Democrats in support of policy change believe that the political failure can be used to deliver electoral benefits in the upcoming election. Alternatively, compromising may be undesirable because a modest change in the present may make it difficult to change policy in the near future. If so, lawmakers may refuse to compromise not only because of a desire to use the issue in the election, but also because achieving a modest change in the present may preclude the realization of a larger change in the future. If there is uncertainty about how the upcoming election may affect the composition of the lawmaking environment, the compromise policy may be

undesirable given expectations about the possible policy change following the election.<sup>31</sup>

As these possibilities indicate, to assess the accountability of the political system requires additional work devoted to analyzing the incidence, causes and consequences of political failure. Only by undertaking such an investigation is it possible to answer the critically important question of whether the political system is able to produce accountable policy outcomes. Our understanding of these issues is currently quite limited. Existing work examines how particular institutional structures may theoretically lead to political failure, but we lack solid empirical evidence of how consequential the problem may be. By assessing the likelihood of political failure in the FLSA, I hope to help initiate this critical investigation.

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<sup>31</sup>For this to be true, however, the majority and minority need to have conflicting views as to the likely outcome of the election.

## References

- [1] Anderson, Sarah E. 2007. "Pivots and Policy: Testing Models of Appropriations," Stanford University Typescript.
- [2] Arndt, Michael. 1994. "Clinton backpedals on Minimum-Wage Hike Strategy Puts Focus on Health-Care Plan," *Chicago Tribune*. Jan. 20, 1994. pg. 1.
- [3] Associated Press. 1988a. "Filibuster on \$4.55 Wage Survives a New Assault," *New York Times*. Sept. 24, 1988. pg. 1.
- [4] Associated Press. 1988b. "Minimum-Wage Bill Falls to GOP Filibuster," *Chicago Tribune*. Sept. 27, 1988. pg. 3.
- [5] Bafumi, Joseph, Andrew Gelman, David K. Park, and Noah Kaplan. 2005. "Practical Issues in Implementing and Understanding Bayesian Ideal Point Estimation," *Political Analysis* 13(2):171-187.
- [6] Bartels, Larry. 2007. *Unequal Democracy: The Political Economy of the New Gilded Age*. Princeton University Typescript.
- [7] Binder, Sarah. 2003. *Stalemate: Causes and Consequences of Legislative Gridlock*. Washington, DC: Brookings Institution Press.
- [8] Besley, Timothy. 2006. *Principled Agents? The Political Economy of Good Government*. New York, NY: Oxford University Press.
- [9] Besley, Timothy, and Stephen Coate. 1998. *American Economic Review* 88(1): 139-156.
- [10] Borus, Amy. 1999. "Why Business Isn't Bucking This Minimum-Wage Hike," *Business Week*. Nov. 1, 1999. pg. 55.
- [11] Brady, David W., and Craig Volden. 2006. *Revolving Gridlock: Politics and Policy from Jimmy Carter to George W. Bush*. Boulder, CO: Westview Press.
- [12] Brady, David, and Morris Fiorina. 2000. "Congress in the Permanent Campaign," in *The Permanent Campaign and Its Future*. Norman Ornstein and Thomas Mann, eds. AEI and Brookings Institution: Washington DC.
- [13] Canes-Wrone, Brandice. 2006. *Who Leads Whom? Presidents, Policy, and the Public*. University of Chicago Press.
- [14] Canes-Wrone, Brandice, Michael C. Herron, and Kenneth W. Shotts. 2001 "Leadership and Pandering: A Theory of Executive Pandering," *American Journal of Political Science* 45(3): 532-550.
- [15] Chen, Edwin. 1998. "Clinton Backs Plan to Hike Minimum Wage \$1 an Hour," *Los Angeles Times*. Feb, 13, 1998. pg. 21.
- [16] Clinton, Joshua D., Simon Jackman and Doug Rivers. 2004. "The Statistical Analysis of Roll Call Voting: A Unified Approach," *American Political Science Review* 98(2):355-70.

- [17] Clinton, Joshua D., and Adam Meirowitz. 2003. "Integrating Voting Theory and Roll Call Analysis: A Framework," *Political Analysis* 11 (4): 381-396.
- [18] Clinton, Joshua D. and John Lapinski. 2006. "Measuring Legislative Accomplishment, 1877-1994," *American Journal of Political Science* 50(1): 232-249.
- [19] Clymer, Adam. 1996. "Disregarding Pure Politics," *New York Times*, Jul 10, 1996. pg. A12.
- [20] Coleman, John J. 1999. "Unified Government, Divided Government, and Party Responsiveness," *American Political Science Review* 93(4): 821-835.
- [21] Conley, Patricia Heidotting. 2001. *Presidential Mandates: How Elections Shape the National Agenda*. Chicago, IL. University of Chicago Press.
- [22] Cox, Gary W., and Mathew D. McCubbins. 2005. *Setting the Agenda: Responsible Party Government in the U.S. House of Representatives*. New York, NY: Cambridge University Press.
- [23] Edwards, George C. III, Andrew Barrett and Jeffrey Peake. 1997. "The Legislative Impact of Divided Government," *American Journal of Political Science* 41(2): 545-563.
- [24] Erikson, Robert S., Michael B. Mackuen, and James A. Stimson. 2002. *The Macro Polity*. New York, NY: Cambridge University Press.
- [25] Fenno, Richard F., Jr. 1990. "Political Scientists and Journalists: The Dan Quayle Experience," in *Watching Politicians: Essays on Participant Observation*. Berkeley, CA: IGS Press.
- [26] Getlin, Josh. 1988. "Surprised Democrats Weigh Seeking Higher Base Pay This Year," *Los Angeles Times*. Sep.9, 1988. pg 4.
- [27] Groseclose, Tim, and Nolan McCarty. 2001. "The Politics of Blame: Bargaining Before an Audience," *American Journal of Political Science* 45(1): 100-119.
- [28] Grossman, Gene M., and Elhanan Helpman. 2001. *Special Interest Politics*. Cambridge, MA: MIT Press.
- [29] Heckman, Janes N., and James M. Snyder, Jr. 1996. "Linear Probability Models of the Demand for Attributes with an Emprirical Application to Estimating the Preferences of Legislators." *RAND Journal of Economics*, 28:S142-S189.
- [30] Hunter, Marjorie. 1971. "House Panel Backs Wage Floor For Maids and Other Domestic." *New York Times*. Oct. 14, 1971: 28. *ProQuest*. (accessed December 6, 2006).
- [31] Hunter, Marjorie. 1972. "Colmer to Allow Wage Bill Action." *New York Times*. Mar. 15, 1972: 30. *ProQuest*. (accessed December 6, 2006).
- [32] Jacoby, Mary. 1996. "GOP Fights Back on Minimum Wage; Republicans Draft Plan that Won't Hike Costs to Employers." *Chicago Tribune*. 25 Apr. 1996: 6. *ProQuest*. (accessed June 20, 2007).
- [33] Karr, Albert R. 1988. "Prospects Wax for Minimum-Wage Rise, Helped by Bush's Support for Increase," *Wall Street Journal*. Sept. 19, 1988. pg. 1.
- [34] Krehbiel, Keith. 1998. *Pivotal Politics: A Theory of Lawmaking*. Chicago, IL: University of Chicago Press.

- [35] Krehbiel, Keith and Douglas Rivers. 1988. "The Analysis of Committee Power: An Application to Senate Voting on the Minimum Wage," *American Journal of Political Science* 32:1151-74.
- [36] Levin-Waldman, Oren M. 2001. *The Case of the Minimum Wage: Competing Policy Models*. Albany, NY: State University of New York Press.
- [37] Madden, Richard L.. 1973. "House Sustains Wage Bill Veto." *New York Times*. Sep. 20, 1973: 1. *ProQuest*. (accessed December 6, 2006).
- [38] Maskin, Eric and Jean Tirole. 2004. "The Politician and the Judge: Accountability in Government," *American Economic Review* 94(4):1034-1054.
- [39] McCarty, Nolan, Keith T. Poole and Howard Rosenthal. 2006. *Polarized America: The Dance of Ideology and Unequal Riches*. Cambridge, MA: MIT Press.
- [40] New York Times. 1973a. "Senate Rejects Substitute for Wage Bill." *New York Times*. Jul. 19, 1973: 15. *ProQuest*. (accessed December 6, 2006).
- [41] New York Times. 1973b. "...Congress Fumbles." *New York Times*. Dec. 23, 1973: 114. *ProQuest*. (accessed December 6, 2006).
- [42] Noble, Kenneth B. 1987. "Democratic Leaders Say Congress Will Increase the Minimum Wage," *New York Times* . Feb. 16, 1987. pg. A15.
- [43] Norlund, Willis J. 1997. *The Quest for a Living Wage: The History of the Federal Minimum Wage Program*. Contributions in Labor Studies, Number 48. Westport, CT: Greenwood Press.
- [44] Pine, Art. 1989. "Congress Passes \$4.55 Wage Floor Bill in Face of Veto," *Los Angeles Times*. May 18, 1989. pg. 20.
- [45] Poole, Keith T., and Howard Rosenthal. 1997. *Congress: A Political-Economic History of Roll Call Voting*. New York, NY: Oxford University Press.
- [46] Purdum, Todd S. 1995. "President Will Seek a Higher Minimum Wage, Senior Aides Say," *New York Times* Jan. 24. 1995. pg. A14.
- [47] Rivers, Douglas. 2003. "Identification of Multidimensional Item-Response Models." Stanford University Typescript.
- [48] Rohde, David W. 1991. *Parties and Leaders in the Postreform House*. Chicago, IL: University of Chicago Press.
- [49] Romer, Christina D. 1999. "Changes in Business Cycles: Evidence and Explanations," *Journal of Economic Perspectives*. 13(2): 23-44.
- [50] Romer, Thomas, and Howard Rosenthal. 1978. "Political Resource Allocation, Controlled Agenda, and the Status Quo," *Public Choice*, XXXIII:27-44.
- [51] Rosenbaum, David E. 1972a. "House Weighs Rise in Minimum Wage." *New York Times*. May 11, 1972: 9. *ProQuest*. (accessed December 6, 2006).
- [52] Rosenbaum, David E. 1972b. "House Holds Up Wage Base Rise." *New York Times*. Aug. 2, 1972: 12. *ProQuest*. (accessed December 6, 2006).

- [53] Rosenbaum, David E. 1972c. "House Bars Move on Minimum Wage." *New York Times*. Oct. 4, 1972: 97. *ProQuest*. (accessed December 6, 2006).
- [54] Schmitt, Eric. 1996. "Senate Debates Minimum-Wage Increase," *New York Times* Jul. 9, 1996. pg. A1.
- [55] Seelye, Katharine Q. 1998. "Senate Votes Down a Higher Minimum Wage, Citing Squeeze," *New York Times* Spe. 23, 1998. pg. A18.
- [56] Seltzer, Andrew J. 1995. "The Political Economy of the Fair Labor Standards Act of 1938," *Journal of Political Economy* 103(6):1302-1342.
- [57] Sulkin, Tracy. 2005. *Issue Politics in Congress*. New York, NY: Cambridge University Press.
- [58] Shabecoff, Philip. 1974. "Nixon Compromise on Minimum Wage Hinted by Brennan." *New York Times*. Feb. 28, 1974: 77. *ProQuest*. (accessed December 6, 2006).
- [59] Shabecoff, Philip. 1977. "House Votes a Minimum-Wage Rise And Rejects a Lower Youth Wage." *New York Times*. Sep. 16, 1977: 52. *ProQuest*. (accessed December 6, 2006).
- [60] Shogren, Elizabeth. 1996. "20 GOP Lawmakers Break Ranks, Back a Wage Boost." *New York Times*. Apr. 18, 1996: 10. *ProQuest*. (accessed June 20, 2007).
- [61] Silberman, Johnathan I. and Garey C. Durden. 1976. "Determining Legislative Preferences on the Minimum Wage: An Economic Approach," *Journal of Political Economy* 84(2): 317-330.
- [62] Sobel, Russell S. 1999. "Theory and Evidence on the Political Economy of the Minimum Wage," *Journal of Political Economy* 107(4): 761-85.
- [63] Uri, Noel D., and J. Wilson Mixon, Jr. 1980. "An Economic Analysis of the Determinants of Minimum Wage Voting Behavior," *Journal of Law and Economics* 23(1): 167-77.
- [64] Volden, Craig. 1988. "Sophisticated Voting in Supermajoritarian Settings," *Journal of Politics* 60:149-73.
- [65] Waltman, Jerold. 2000. *The Politics of the Minimum Wage*. Urbana and Chicago, IL: University of Illinois Press.

<b>Theory</b>	<b>Dem. Majority</b>	<b>Rep. Majority</b>
Pivot (closed)	$\max(x_H, 2x_C - q)$	$\max(x_H, 2x_C - q)$
Party Cartel (closed)	$\max(x_D, 2x_H - q)$	$x_R$
Party-Pivot (closed)	$\max(x_D, 2x_C - q)$	$x_R$
Pivot (open)	$\max(x_H, 2x_C - q)$	$\max(x_H, 2x_C - q)$
Party Cartel (open)	$x_H$	$x_H$ if $ x_H - x_R  <  x_R - q $ else $q$
Party-Pivot (open)	$\max(x_H, 2x_C - q)$	$x_H$ if $ \max(x_H, 2x_C - q) - x_R  <  x_R - q $ else $q$

Table 1: PREDICTED LOCATIONS OF POLICY CHANGE IF  $x_D < x_M < x_C < x_R < q$

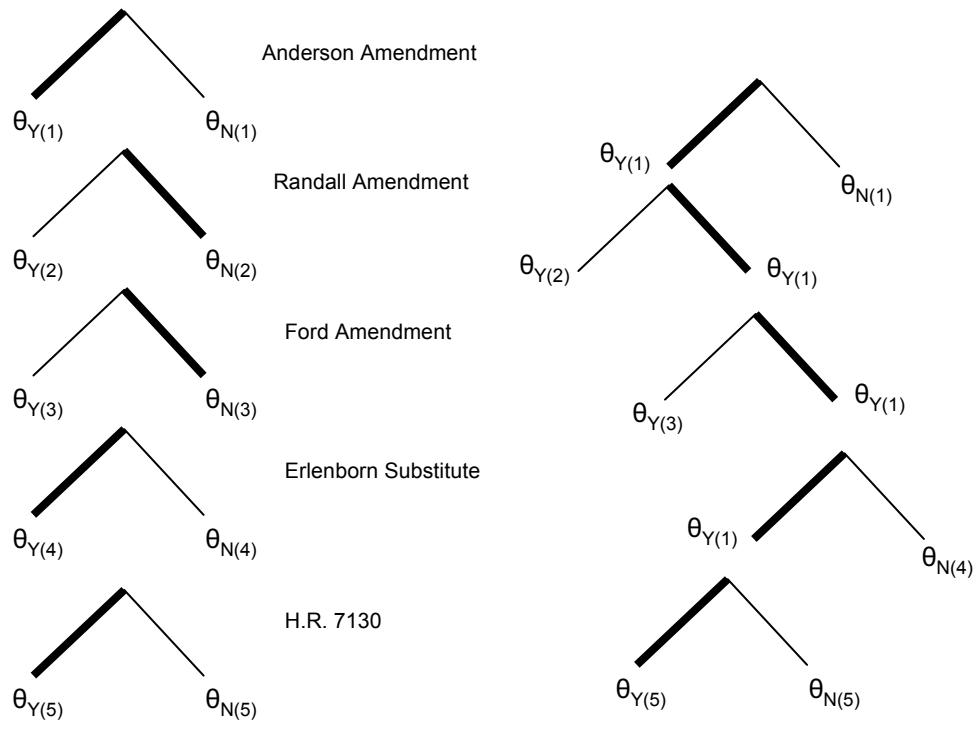


Figure 1: PARTIAL AGENDA TREE FOR H.R. 7130 (92ND HOUSE)

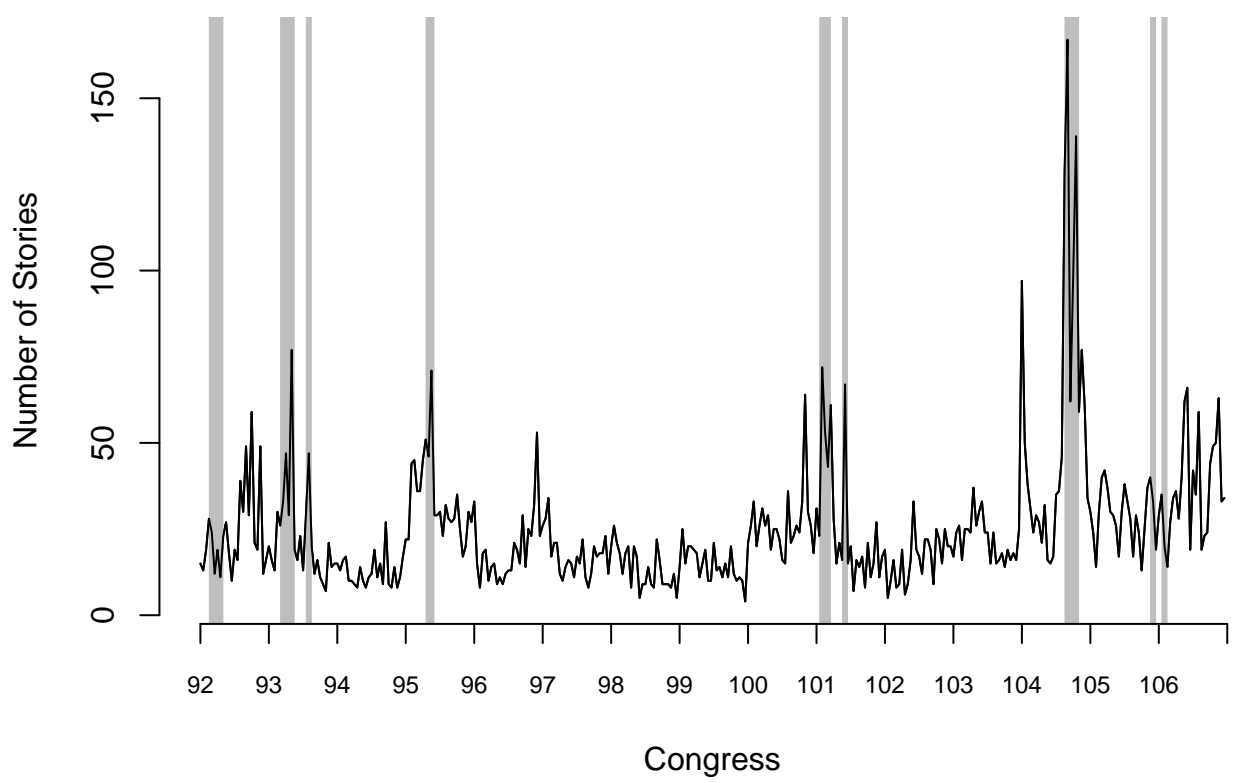


Figure 2: NUMBER OF MINIMUM WAGE STORIES BY MONTH, 1971-2000: *New York Times*, *Wall Street Journal*, and *Washington Post*

Congress	Chamber	Date	# Votes	Descr. of Activity
92	House	5/11/1972	5	Amend & Pass H.R. 7130
92	Senate	7/19/1972	4	Amend S. 1861
92	Senate	7/20/1972	8	Amend & Pass S. 1861
92	House	8/1/1972	2	Disagree to Conference
93	House	6/6/1973	12	Amend & Pass H.R. 7935
93	Senate	7/17/1973	1	Amend H.R. 7935
93	Senate	7/18/1973	1	Amend H.R. 7935
93	Senate	7/19/1973	5	Amend & Pass H.R. 7935
93	Senate	8/2/1973	1	Conf. Rpt. on H.R. 7935
93	House	8/2/1973	1	Conf. Rpt. on H.R. 7935
93	House	9/19/1973	1	Failed Veto Override
93	Senate	3/5/1974	3	Amend S. 2747
93	Senate	3/7/1974	5	Amend & Pass S. 2747
93	House	3/20/1974	2	Amend & Pass S. 2747
93	House	3/28/1974	1	Conf. Rpt. on S. 2747
93	Senate	3/28/1974	1	Conf. Rpt. on S. 2747
95	House	9/15/1977	10	Amend & Pass H.R. 3744
95	Senate	10/6/1977	6	Amend H.R. 3744
95	Senate	10/7/1977	9	Amend & Pass H.R. 3744
95	House	10/12/1977	1	Disagree to Sen. amend.
95	House	10/20/1977	1	Conf. Rpt. on H.R. 3744
101	House	3/23/1989	4	Amend & Pass H.R. 2
101	Senate	4/11/1989	1	Pass Graham Substitute to H.R. 2
101	Senate	4/12/1989	7	Amend & Pass H.R. 2
101	Senate	5/17/1989	1	Conf. Rpt. on H.R. 2
101	House	6/11/1989	1	Conf. Rpt. on H.R. 2
101	House	6/14/1989	1	Failed Veto Override
101	House	11/1/1989	1	Pass H.R. 2710
101	Senate	11/8/1989	3	Amend & Pass H.R. 2710
104	House	5/23/1996	4	Amend & Pass H.R. 1227
104	Senate	7/9/1996	3	Amend & Pass H.R. 3448
104	House	8/2/1996	1	Conf. Rpt. on H.R. 1227
104	Senate	7/30/1999	1	Amend S. 1429 (NG)
104	Senate	8/2/1996	1	Conf. Rpt. on H.R. 3448
106	Senate	11/9/1999	2	Amend S. 625 (NG)
106	House	3/9/2000	3	Amend & Pass H.R. 3846

Table 2: OBSERVED ROLL CALL ACTIVITY

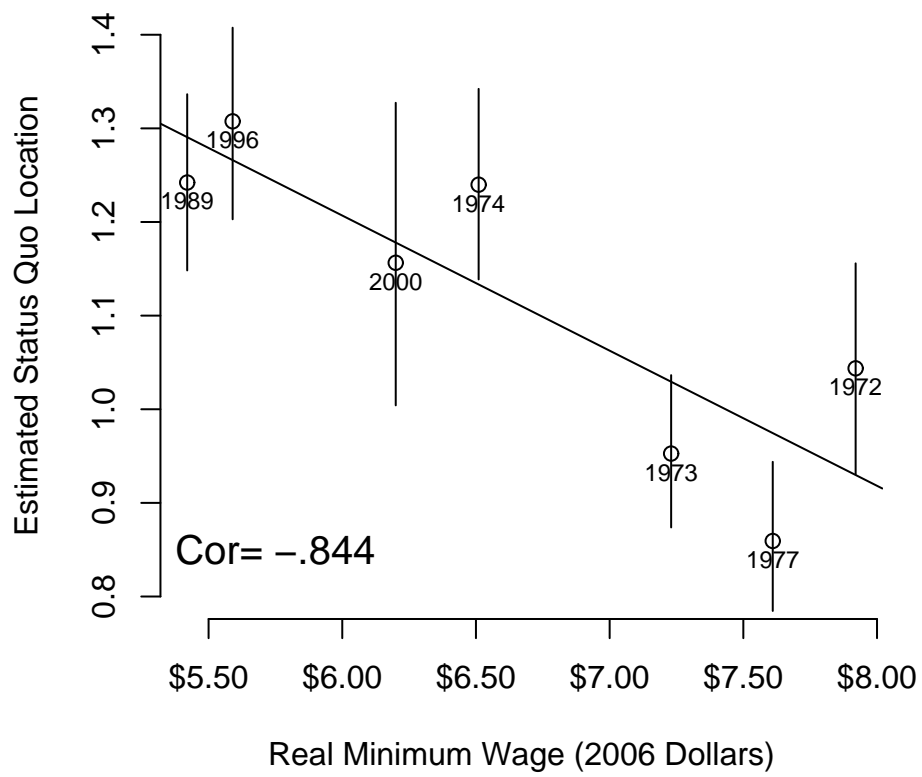


Figure 3: REAL WAGES AND ESTIMATED STATUS QUO LOCATIONS: 1971-2000

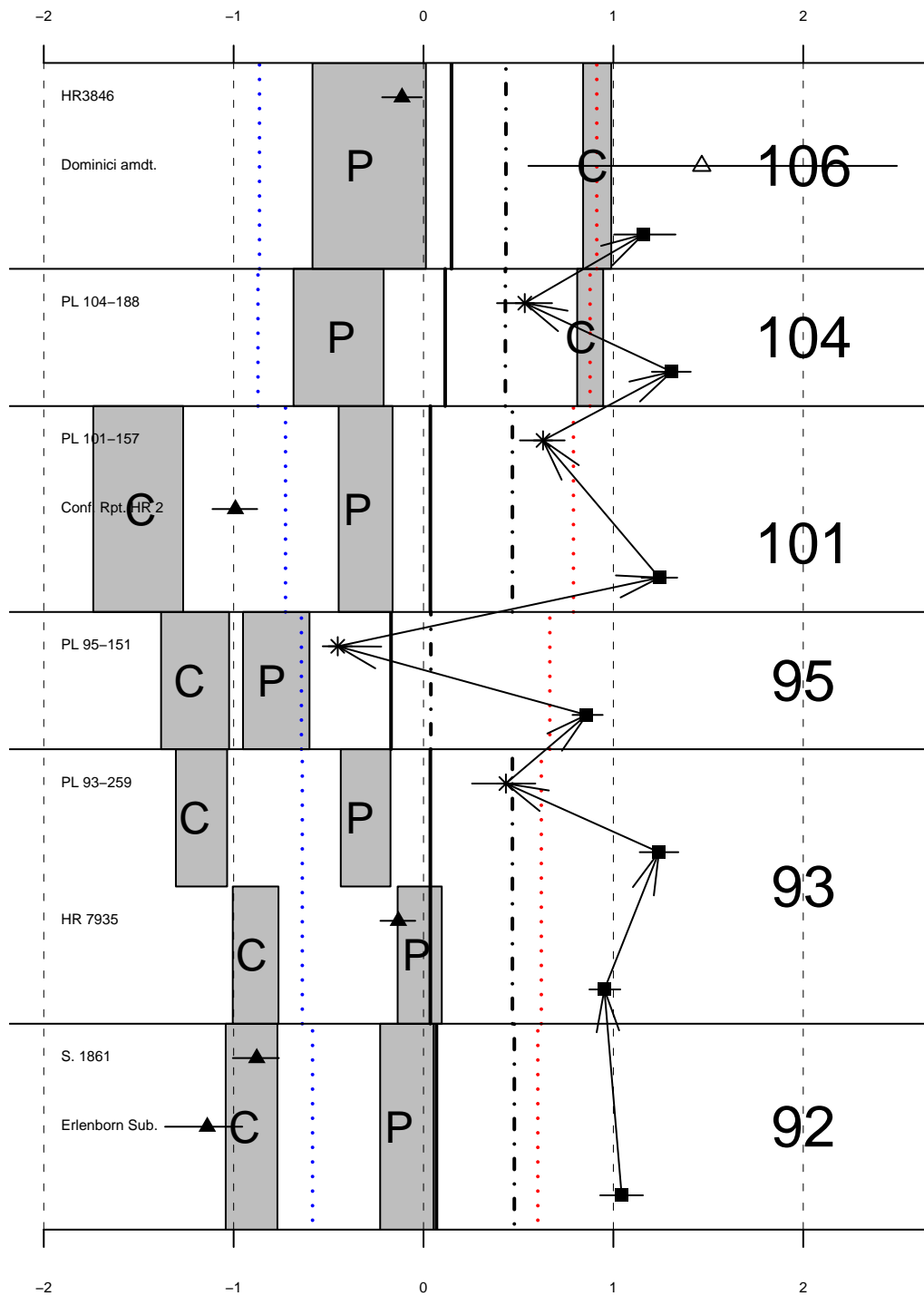


Figure 4: ESTIMATED POLICY CHANGE & FINAL PROPOSAL LOCATIONS, 1971-2001

<b>Variable</b>	Model 1	dy/dx	Model 2	dy/dx	Model 3	dy/dx	Model 4	dy/dx
Constant	-1.83		4.75		3.43		-2.01	
(Std. Err.)	(1.14)		(3.50)		(2.35)		(10.85)	
% Nat. Union Membership	.070	.027					.063	.023
	(.051)	(.017)					(.129)	(.043)
% Public Support			-.066	-.019			.027	.010
			(.046)	(.016)			(.108)	(.038)
Senate Polarization					-5.13	-1.82	-2.32	-860
					(3.17)	(1.33)	(5.09)	(1.90)
Unified Democratic Gov't	-.403	-.159	-.514	-.116	-.876	-.227	-.541	-.212
	(1.07)	(.421)	(.859)	(.153)	(.963)	(.194)	(1.13)	(.440)
Rep. President Indicator	-.981	-.300	-1.16	-.426	-1.52	-.535	-1.14	-.286
	(.973)	(.240)	(.783)	(.275)	(.903)	(.239)	(1.07)	(.253)
Recession Indicator	-.493	-.195	-.187	-.049	-.468	-.144	-.588	-.230
	(.683)	(.265)	(.783)	(.165)	(.683)	(.213)	(.710)	(.266)
Midterm Election Indicator	1.09	.396	.897	.253	1.08	.371	1.16	.430
	(.634)	(.232)	(.586)	(.184)	(.634)	(.231)	(.658)	(.241)
N	29		29		29		29	
Pseudo $R^2$	.185		.179		.207		.192	
Pr(Amend   $\bar{X}$ )		.592		.208		.314		.650

Table 3: CORRELATES OF AMENDING THE FLSA, 80TH-109TH CONGRESSES

Appendix for: Congress, Lawmaking, and Political Failure: The Case  
of the Fair Labor Standards Act from 1971-2000

Joshua D. Clinton\*

January 7, 2008

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\*Assistant Professor, Department of Politics, Princeton University. Email: [clinton@princeton.edu](mailto:clinton@princeton.edu)

# Appendix A: Votes and Constraints

Cong	Chmbr.	Bill	Date	Brief Description	$\theta_y(t)$	$\theta_n(t)$
92	H	HR7130	5/11/72	Amend Erlenborn Amdt.: Change Wage	2	3
92	H	HR7130	5/11/72	Amend Erlenborn Amdt.: Overtime provision	4	2
92	H	HR7130	5/11/72	Amend Erlenborn Amdt.: Strike Youth Wage	5	2
92	H	HR7130	5/11/72	Amend HR7130: Substitute Erlenborn	2	6
92	H	HR7130	5/11/72	To Pass: HR7130	7	1
92	H	HR7130	8/1/72	To Disagree to Sen. Amdts to HR 7130	16	1
92	H	HR7130	8/1/72	To Disagree to Sen. Amdts to HR 7130	16	1
92	S	S1861	7/19/72	To Amend: Set Youth Wage	10	8
92	S	S1861	7/19/72	To Amend: Ag. Workers Wage	11	8
92	S	S1861	7/19/72	To Amend: Change Wage	12	8
92	S	S1861	7/20/72	To Table Taft Amendment	8	12
92	S	S1861	7/20/72	To Amend: Exempt Domestic Employees	13	8
92	S	S1861	7/20/72	To Amend: Change Wage	14	8
92	S	S1861	7/20/72	To Amend: Delete OT for bus drivers	15	8
92	S	S1861	7/20/72	To Amend: Change Wage for workers in Canal zone	16	8
92	S	S1861	7/20/72	To Amend: Set Youth Wage	17	16
92	S	S1861	7/20/72	To Amend: Change Wage for Puerto Rico and Virgin Islands	18	16
92	S	HR7130	7/20/72	To Pass HR7130: S1861 passed in lieu	16	2
93	H	HR7935	6/6/73	To Amend: Change Ag. Wage	3	2
93	H	HR7935	6/6/73	To Amend: Substitute Erlenborn	4	2
93	H	HR7935	6/6/73	To Amend: Change Wage	5	2
93	H	HR7935	6/6/73	To Amend: Change Wage	6	2
93	H	HR7935	6/6/73	To Amend: Change Ag. Wage	7	2
93	H	HR7935	6/6/73	To Amend: Change Ag. Wage	8	2
93	H	HR7935	6/6/73	To Amend: Exclude Fed. employees	9	2
93	H	HR7935	6/6/73	To Amend: Exclude State, Local employees	10	2
93	H	HR7935	6/6/73	To Amend: Exclude Seasonal industries	11	2
93	H	HR7935	6/6/73	To Amend: Set Youth Wage	12	11
93	H	HR7935	6/6/73	To Amend: Freeze wage in Canal zone	13	11
93	H	HR7935	6/6/73	To Pass: HR 7935	13	1
93	H	HR7935	6/6/73	To Pass: HR 7935 Conf. Rpt.	13	1
93	H	HR7935	9/19/73	To Override Veto	13	1
93	H	HR12435	3/20/74	To Amend: Exempt Newspaper Delivery	30	29
93	H	HR12435	3/20/74	To Pass: S2747 passed in lieu	31	33
93	H	S2747	3/28/74	To Pass: S2747 Conf. Rpt.	32	33
93	S	S1861	7/17/73	To Amend: Change Wage	15	14
93	S	S1861	7/18/73	To Amend: Dominick Substitute	16	14
93	S	S1861	7/19/73	To Amend: Increase Small Bus. Exemption	17	14
93	S	S1861	7/19/73	To Amend: Set Elderly Wage	18	14
93	S	S1861	7/19/73	To Amend: Exempt Workers	19	14
93	S	S1861	7/19/73	To Amend Cook Amdt.: Small Bus. exempt.	20	14
93	S	S1861	7/19/73	To Pass: HR7935 passed in lieu	14	1
93	S	HR7935	8/2/73	To Pass: HR7935 Conf. Rpt.	13	1
93	S	S2747	3/5/74	To Table Buckley Amdt.	22	21
93	S	S2747	3/5/74	To Amend: Dominick Substitute	23	22
93	S	S2747	3/5/74	To Amend: Change Wage	24	22
93	S	S2747	3/7/74	To Amend: Cover Domestic	25	22
93	S	S2747	3/7/74	To Amend: Clarify Guidelines	26	22
93	S	S2747	3/7/74	To Amend: Require Study Before Adoption	27	22
93	S	S2747	3/7/74	To Amend: Exempt Policemen & Firemen	28	22
93	S	S2747	3/7/74	To Pass: S. 2747	22	33
93	S	S2747	3/28/74	To Pass: S2747 Conf. Rpt.	32	33
95	H	HR3744	9/15/77	To Amend: Change Wage	3	2
95	H	HR3744	9/15/77	To Amend: Commission to study effect	4	3
95	H	HR3744	9/15/77	To Amend: Indexing	5	4
95	H	HR3744	9/15/77	To Amend: Tip credit	6	4
95	H	HR3744	9/15/77	To Amend: Exempt Seasonal workers	7	6
95	H	HR3744	9/15/77	To Amend: Set Youth Wage	8	7
95	H	HR3744	9/15/77	To Amend: Exclude Youth Ag work	9	7
95	H	HR3744	9/15/77	To Amend Blouin Amdt: Small bus. exemption	10	9
95	H	HR3744	9/15/77	To Amend Blouin Amdt: Small bus. exemption	11	9
95	H	HR3744	9/15/77	To Pass HR3744	11	1
95	H	HR3744	10/12/77	To Table Motion to Disagree with Sen. Amdt. and Request Conf.	11	12
95	H	HR3744	10/20/77	To Pass Conf. Rpt on HR3744	12	1
95	S	S1871	10/6/77	To Amend William Amdt: Change Wage	13	12
95	S	S1871	10/6/77	To Amend William Amdt: Change Wage	14	12
95	S	S1871	10/6/77	To Amend William Amdt: Change Timing	15	12
95	S	S1871	10/6/77	To Amend: Williams Substitute	12	16
95	S	S1871	10/6/77	To Amend: Study Tip Credit	17	12
95	S	S1871	10/6/77	To Amend: Tip Credit	18	12
95	S	S1871	10/7/77	To Amend: Exempt Youths	19	12
95	S	S1871	10/7/77	To Amend: Set Youth Wage	20	12
95	S	S1871	10/7/77	To Amend: Set Youth Training Wage	21	12
95	S	S1871	10/7/77	To Amend: Set Youth Training Wage	22	12
95	S	S1871	10/7/77	To Amend: Elderly Wage	23	12
95	S	S1871	10/7/77	To Table Division 2 of Deconcini Amdt.	24	12
95	S	S1871	10/7/77	To Table Bumpers Amdt. to Tower Amdt.	25	12
95	S	S1871	10/7/77	To Amend in Nature of Substitute:	11	12
95	S	S1871	10/7/77	To Pass HR 3744: Strike all but enacting clause, insert S1871	12	11
101	H	HR2	3/23/89	To Amend: Goodling Substitute	3	2
101	H	HR2	3/23/89	To Amend: Murphy Substitute	4	2
101	H	HR2	3/23/89	To Amend: Increase penalties	5	4
101	H	HR2	3/23/89	To Pass: HR2	4	1
101	H	HR2	5/11/89	To Pass Conf. Rpt for HR2	6	1
101	H	HR2	6/14/89	To Pass over President's veto	6	1
101	H	HR2710	11/1/89	To Pass: HR2710	7	1

Cong.	Chmbr.	Bill	Date	Brief Description	$\theta_{y(t)}$	$\theta_n(t)$
101	S	S4	4/11/89	To Amend: Perfecting Amdt.	9	8
101	S	S4	4/12/89	To Amend: Hatch Substitute	10	9
101	S	S4	4/12/89	To Amend: Increase SSA monthly earnings	11	9
101	S	S4	4/12/89	To Amend: Delay tax	12	11
101	S	S4	4/12/89	To Amend: Davis-Bacon	13	12
101	S	S4	4/12/89	To Table Wallop Motion	14	13
101	S	S4	4/12/89	To Recommit: S4	15	14
101	S	HR2	4/12/89	To Pass: HR2	14	1
101	S	HR2	5/17/89	To Pass: Conf. Rpt for HR2	6	1
101	S	HR2710	11/8/89	To Table Symms amdt.	7	16
101	S	HR2710	11/8/89	To Table Gramm amdt.	7	17
101	S	HR2710	11/8/89	To Pass: HR2710	7	1
104	H	HR1227	5/23/96	To Amend: Change Wage	3	2
104	H	HR1227	5/23/96	To Amend: Many Changes	4	3
104	H	HR1227	5/23/96	To Amend: Small Bus. exemption.	5	4
104	H	HR1227	5/23/96	To Pass HR1227	4	1
104	H	HR3448	8/2/96	To Pass Conf. Rpt. HR 3448 (& HR 1227)	6	1
104	S	HR3448	7/9/96	To Amend: Wage Provisions	8	7
104	S	HR3448	7/9/96	To Amend: Change Wage & Others	9	7
104	S	HR3448	7/9/96	To Pass HR3448 (& HR 1227)	10	1
104	S	HR3448	8/2/96	To Pass Conf. Rpt. for HR3448 (& HR 1227)	6	1
106	H	HR3846	3/9/00	To Amend:	3	2
106	H	HR3846	3/9/00	Motion to recommit	4	3
106	H	HR3846	3/9/00	To Pass HR3846	3	1
106	S	S1429	7/30/99	Sense of Senate: Amend FLSA (NG)	5	6
106	S	S625	11/9/99	To Table: Sense of Senate: Amend FLSA (NG)	9	10
106	S	S625	11/9/99	To Amend: Change Wage (NG)	7	8

Table 1: Note: the indexing is unique to each Congress –  $\theta_{y(2)}$  in the 92nd Congress is not equivalent to  $\theta_{y(2)}$  in the 93rd.

## Appendix B: WinBUGS Code

```

model{ for (i in 1:V92){
  y92[i] ~ dbern(prob92[i])
  uy92[i] <- -pow((x[legis92[i]] - theta92[yi92[i]]),2)
  un92[i] <- -pow((x[legis92[i]] - theta92[ni92[i]]),2)
  logit(prob92[i]) <- uy92[i] - un92[i]}

for (j in 1:V93){
  y93[j] ~ dbern(prob93[j])
  uy93[j] <- -pow((x[legis93[j]] - theta93[yi93[j]]),2)
  un93[j] <- -pow((x[legis93[j]] - theta93[ni93[j]]),2)
  logit(prob93[j]) <- uy93[j] - un93[j]}

for (k in 1:V95){
  y95[k] ~ dbern(prob95[k])
  uy95[k] <- -pow((x[legis95[k]] - theta95[yi95[k]]),2)
  un95[k] <- -pow((x[legis95[k]] - theta95[ni95[k]]),2)
  logit(prob95[k]) <- uy95[k] - un95[k]}

for (l in 1:V101){
  y101[l] ~ dbern(prob101[l])
  uy101[l] <- -pow((x[legis101[l]] - theta101[yi101[l]]),2)
  un101[l] <- -pow((x[legis101[l]] - theta101[ni101[l]]),2)
  logit(prob101[l]) <- uy101[l] - un101[l]}

for (m in 1:V104){
  y104[m] ~ dbern(prob104[m])
  uy104[m] <- -pow((x[legis104[m]] - theta104[yi104[m]]),2)
  un104[m] <- -pow((x[legis104[m]] - theta104[ni104[m]]),2)
  logit(prob104[m]) <- uy104[m] - un104[m]}

```

```

for (n in 1:V106){
  y106[n] ~ dbern(prob106[n])
  uy106[n] <- -pow((x[legis106[n]] - theta106[yi106[n]]),2)
  un106[n] <- -pow((x[legis106[n]] - theta106[ni106[n]]),2)
  logit(prob106[n]) <- uy106[n] - un106[n]}

for (o in 1:N){x[o]~dnorm(0,1)}
for (p in 1:M92){theta92[p]~dnorm(0,.16)}
for (q in 1:M93){theta93[q]~dnorm(0,.16)}
for (r in 1:M95){theta95[r]~dnorm(0,.16)}
for (s in 1:M101){theta101[s]~dnorm(0,.16)}
for (t in 1:M104){theta104[t]~dnorm(0,.16)}
for (u in 1:M106){theta106[u]~dnorm(0,.16)}
}

```

### Appendix C: Model Fit

	Votes	Vote Parameters	Ratio	Naive Classification	Model Classification
92nd (1971-72)	19	18	.947	.597	.904
93rd (1973-74)	34	32	.941	.631	.855
95th (1976-77)	27	25	.926	.624	.831
101st (1989-90)	19	17	.895	.644	.897
104th (1995-96)	9	10	1.11	.633	.902
106th (1999-00)	6	10	1.67	.588	.920

Table 2: Model Fit

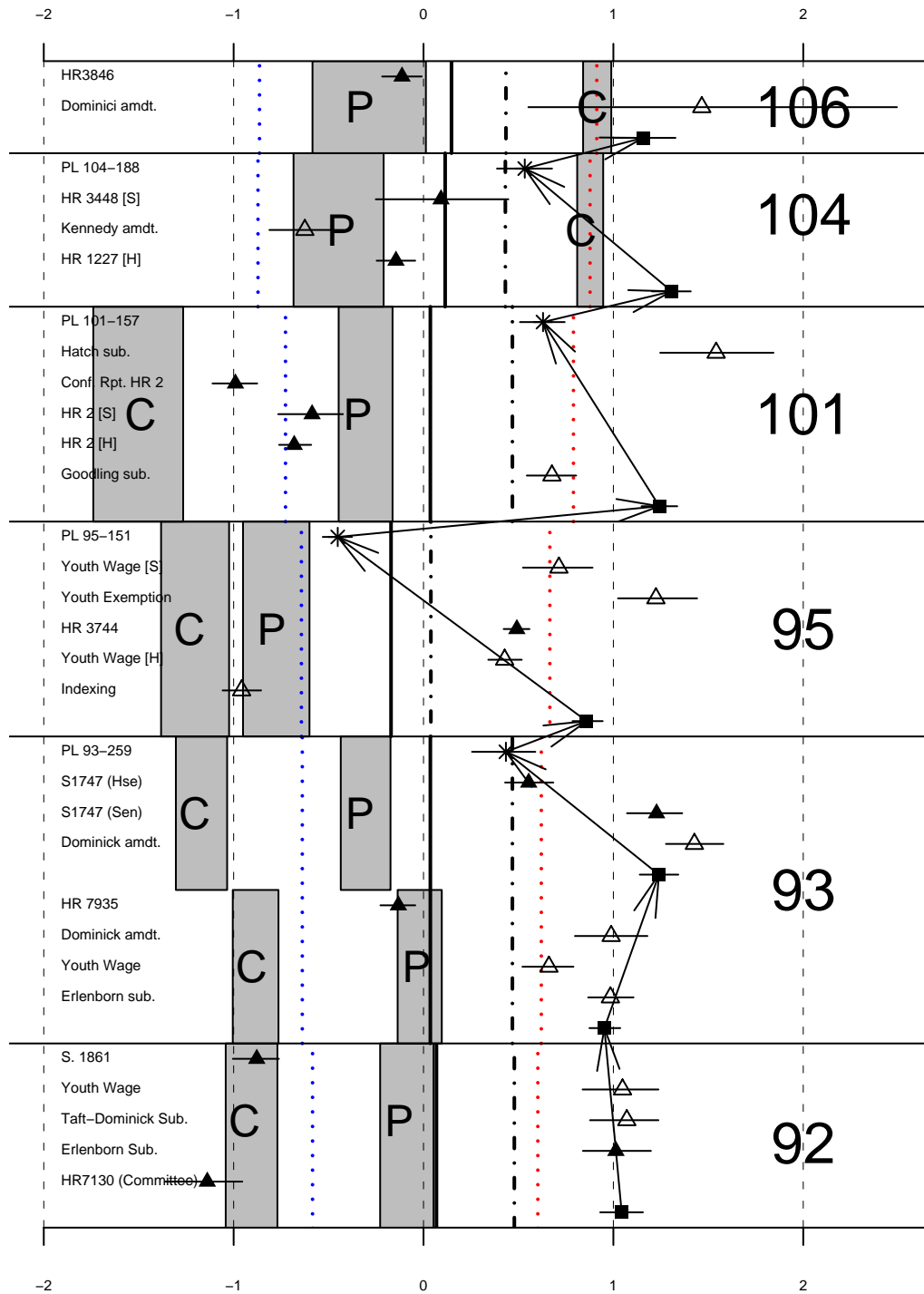


Figure 1: ESTIMATED POLICY CHANGE & KEY PROPOSAL LOCATIONS, 1971-2001