

**Burning the Midnight Oil:
Clandestine Behavior, Hard Work, or Strategic Rush in Congressional Voting?**

Phillip J. Ardoin

ardoinpj@appstate.edu

Adam J. Newmark

newmarkaj@appstate.edu

**Appalachian State University
Department of Political Science and Criminal Justice
Boone, NC 28608**

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Abstract

While the vast majority voting in Congress occurs during regular working hours, nearly two percent of the recorded votes each session over the last 15 years have occurred late into the evening. We examine the unique set of votes that members of Congress cast while burning the midnight oil. While these late night votes represent only a small percentage of roll-call votes, they are evidently important to members of Congress, or at least their leaders, who are extremely busy. Roll-call votes scheduled late in the evening clearly interfere with members' regular schedules, and no member wants to spend their night on the hill after a long day of Washington work. The results of our analysis indicate the majority of late night voting can be explained by the strategic rush hypothesis which suggest members burn the midnight oil prior to long recesses and also later in the week in order to return to their constituents. They also vote late in the evening because of the sheer amount of work they must complete. Finally, increases in the number of amendments offered during late night voting suggest that members also attempt to dilute and delay legislation for political purposes.

Although most Congressional voting takes place during the typical workday, nearly two percent of the recorded votes each session over the last decade and a half have occurred late into the evening. Moreover, these late-night votes (between midnight and 7:00am) have increased in frequency in recent years. For instance, in 2002 nearly five percent of roll-call votes recorded in the U.S. House of Representatives were cast after midnight. The purpose of this research is to examine this unique set of votes which members of Congress cast while burning the midnight oil. Though these late night votes represent only a small percentage of roll-call votes, they are clearly important to members of Congress and the leadership who are extremely busy. Late-night, roll-call votes interfere with members' schedules, and no member wants to spend their night on Capitol Hill after a long day of Washington activity.

Of the late night votes, none have garnered as much attention as those taken on Sunday, November 23, 2003 the roll call for H. R. 1: Medicare Prescription Drug, Improvement, and Modernization Act (Mann et al. 2006). This legislation represented a critical policy initiative for President George W. Bush and Republican congressional leaders. While debate regarding H.R. 1 began at 3:41 p.m. on Saturday afternoon, lobbying and maneuvering continued on this legislation for more than 14 hours before the final gavel fell providing President Bush and the Republican leaders in Congress a tough victory early Sunday morning at 5:53 a.m. Prior to the final vote on H.R. 1, several procedural motions were debated and ultimately approved by the majority throughout the evening. The final roll-call vote began Sunday morning at 3:01 a.m. with the presiding officer announcing, "Members will have fifteen minutes to record their votes." While the official time for the roll call ended at 3:15 a.m., at 3:30 a.m. the vote was still open with an official tally of 212 yeas and 214 nays. By 3:48 a.m. the vote was 215 yeas and 218 nays, with opposition to the bill attaining an absolute majority. The roll call remained open for nearly three more tumultuous hours of arm-twisting by the Republican leadership and even a 5:30 a.m. phone call by the president before the leadership was able to muster a majority of yea votes and gavel the vote to a close at 5:53 a.m. While Speaker Hastert and Majority Leader Delay were

delighted, House Democrats and some Republicans were outraged. For instance, Jerold Nadler (D-NY) remarked:

They grossly abused the rules of the House by holding the vote open. The majority of the House expressed its will, 216 to 218. It means it's a dictatorship. It means you hold the vote open until you have the votes (Mann et al. 2006).

Surprisingly, when the gavel fell at 5:53 a.m. the House chamber did not conclude their business for the evening or rather morning. After Majority Leader Delay's move to table a Democratic motion to reconsider H.R. 1 was quickly approved by a party line vote at 6:13 a.m., the House Leadership went forward with a completely new issue. This bill, S. 877: Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, easily passed with bipartisan support at 6:23 a.m.

Considering the disincentives for holding late night roll-call votes, why do they occur? Cynics might assume our representatives are trying to hide votes, conducting these roll calls while most Americans are sleeping rather than attentively watching C-Span. An alternative view might suggest late night voting is simply another example of members of congress working tirelessly to serve their constituents. Specifically, we consider four explanations of late night voting. First, we consider the *Strategic Rush Hypothesis* which assumes there are a greater number of votes prior to recesses (Yackee 2003), and we test if this holds true for late night voting as well.¹ Our second hypothesis is an offshoot of the strategic rush but focuses on the *Tuesday to Thursday* pattern of Congressional activity. We contend that leaders and members are willing to schedule legislation late into the evening on Thursdays and Fridays in order to return to their families and constituents for the weekend. Our third hypothesis, the *Dilute and Delay Hypothesis* involves members delaying votes through the use of amendments and the leadership holding votes open in order to lobby members to support their preferred position (as described

¹ It is widely known that many votes are cast at the end of each congressional session in an effort to put issues to rest prior to recess (Oppeheimer 1985; Oleszek 2001; Yackee 2003; Davidson and Oleszek 2004). Yackee (2003) called the increased number of votes near recesses the "Strategic Rush Hypothesis."

above with the 2003 Medicare Prescription Drug, Improvement, and Modernization Act). Our final hypothesis, described as the *Overburdened hypothesis*, suggests late night roll-call votes are simply the result of a congressional schedule which is overburdened. Consequently, Congressional leaders are required to schedule some votes late into the evening in order to address the numerous and complex issues facing our country.

In order to test these four explanations of late night voting, we examine all roll-call votes which occurred between midnight and 7:00 a.m. during the 102nd - 109th Congresses. Our purpose is to describe the nature of these votes and determine why they take place late into the night. This should improve our understanding of this unique and important set of votes and more generally scheduling and the congressional voting process.

Literature on Vote Scheduling

The literature on how and when members of Congress schedule votes is surprisingly limited, with a few exceptions. Oppenheimer (1985), Cox and McCubbins (1993), Sinclair (1994), Oleszek (2001), Yackee (2003), and Davidson and Oleszek (2004) discuss the role of scheduling in the legislative branch. In many cases, scheduling is used as a strategic advantage for Congressional leaders. Oppenheimer (1985) notes the increase in legislative activity as recesses approach. Over time, the Congressional calendar has become less flexible, so these deadlines are now even more important in vote scheduling. Davidson and Oleszek (2004) note that controversial legislation may pass at the end of session because of the rush to get the legislative agenda completed. Early in the session, members may be reluctant to address controversial issues, while later, bills may pass as a result of the end of session rush.

Some of the literature notes the difference between the House and Senate when it comes to scheduling (Oleszek 2004). Cox and McCubbins (1993) and Yackee (2003) note the ability of the Speaker of the House to use scheduling as a means of manipulating legislation around deadlines. The Speaker uses scheduling to help promote the party's legislative agenda which aids

in the members' reelection goals and the party's chances at maintaining control of the chamber. Senate leaders, on the other hand, are constrained by the rules of unanimous consent and institutional tactics such as the filibuster, thereby limiting their ability to use scheduling as a means of controlling the legislative agenda like House leaders (Sinclair 2000; Oleszek 2004).

Perhaps the most direct test of strategic scheduling comes from Yackee (2003), who finds that there are increases in legislation prior to major recesses. These "rushes" exist to a greater extent in the House, where leaders are able to manipulate schedules resulting in increases in legislation as the close of session approaches. Her findings illustrate the importance of scheduling, particularly in the House of Representatives.

Theoretical Approaches to Explaining Late-Night Votes

Since members of Congress are rational, it follows that they will utilize deadlines to help achieve their legislative and reelection goals. Given the increase in late-night votes over time, and since it seems counterintuitive that members of Congress would want to burn the midnight oil, we offer several explanations for these votes.

The Strategic Rush Hypothesis

Several scholars have noted that there is typically a rush to pass legislation just prior to a Congressional recess (Oppenheimer 1985; Davidson and Oleszek 2004). This allows members to return to their districts to claim credit and advertise their activity in Congress, helping them to pursue their reelection goal (Mayhew 1974). The strategic rush hypothesis refers to members attempting to pass a significant amount of legislation before the session ends. Members of Congress have busy schedules, and in order to deal with matters that may have been postponed over the course of the session, will vote on bills late into the night before the session adjourns.

The Tuesday to Thursday Rush

The strategic rush hypothesis can take a second form, however. The second version is much more frequent than the first and refers to the limited amount of time that members spend in Washington D.C. The contemporary Congress is often referred to as the Tuesday to Thursday club, because most members spend Tuesday through Thursday in the Capitol, while the remainder of their time is spent in their districts. This form of strategy, which we term the *Tuesday to Thursday Rush*, is based on a desire to pass bills, even if it requires late night voting on Thursdays or Fridays in order to return to the district for the weekend. Some of this is related to members' work activities in their districts, and some of it is a desire to return to their families. Whatever the explanation, we should expect to see greater late-night voting activity on Thursday and Friday nights as opposed to other nights of the week.

Dilute and Delay

The amendment process can delay votes by pushing them late into the evening. A former member of Congress described a procedure the minority party used a number of years ago, whereby numerous amendments were offered which diluted the content of the legislation and delayed votes on it.² Unlike the Senate, debate is limited in the House, but this does not mean that legislation cannot be delayed. Members of the minority party can offer amendments, and although their arguments are limited in time, it is commonplace for members to ask their colleagues to speak on behalf of the amendment as well. Those opposed to the amendments are, of course, allowed to rebut their colleagues, so votes tend to get pushed back further. This is one reason why the Rules Committee places limits on the number of amendments offered or prohibits them altogether. Thus, we inquire whether late-night votes are a result of numerous amendments added to proposed bills. While members of the U.S. House may use amendments to dilute and

² The “dilute and delay” tactic was described during an interview we had with a former member of congress.

delay legislation, U.S. Senators can utilize the filibuster as a means of delaying action on legislation which they oppose. According to Oleszek (2001), the use of or threat of a filibuster has been on the increase in recent years, and it may be most effective near the end of the term (Davidson and Oleszek 2004).

While members who oppose legislation may use amendments and filibusters to delay voting, congressional leaders, particularly in the U.S. House of Representatives, can hold votes open as long as necessary to cajole those members sitting on the fence to support their position. As noted by political scientist and U.S. Representative David Price, one of the most notorious examples of this technique was the vote on the Republicans' privatized Medicare drug benefit which was held open for almost three hours on November 22, 2003 (Price 2006).

The Overburdened Hypothesis

The *overburdened hypothesis* acknowledges the growing demands on our nation's lawmakers. Members of Congress represent diverse constituencies with a multitude of issues and concerns, most of which will not be addressed during a given legislative session. Thus, there is simply not enough time to deal with the sheer volume of proposed bills during regular business hours. Therefore, late-night votes may simply reflect the growing demands and long hours which members of Congress work in their efforts to represent their constituents and the nation. A likely indication of this is if late-night votes occur regardless of the time before recess or day of the week. Moreover, late night votes should be more likely to occur when there is a larger legislative agenda. Congress is typically more active at various times of the year, and the probability of late night votes should increase during periods of greater overall activity in the chambers.

Data and Methods

Data employed for this analysis were attained from a unique database provided by *The Washington Post* online *Votes Database* which allows readers to examine all votes for the U.S.

Congress from 1991 through the present.³ Included in this database are several subcategories such as key votes, votes decided by narrow or large margins and, most significant for this analysis, late night votes. Late night votes are defined by *The Washington Post* and this analysis as votes taken in Congress between the hours of 12:00 a.m. and 7:00 a.m. For our purposes, we consider a vote that takes place after 12:00 a.m. as a late night vote for the previous day. Over the period of the analysis (1991 – 2006), this includes 151 late-night votes in the U.S. House of Representatives and 41 late-night votes in the U.S. Senate. While the descriptions and specific times of the late night votes were obtained from the *Washington Post's Votes Database*, the individual vote positions taken by members of Congress and the dates of all non-late votes were obtained from Keith Poole's VoteView.com Data Archive (2007). Finally, key votes for each congress were taken from the *Congressional Quarterly Almanac* (1991-2006).

Our analysis proceeds in two parts. First, we address the distribution and type of late night voting that takes place in Congress. Second, we turn to explanations for these late votes.

A Look at Late Night Voting: Their Distribution and Type

We begin by asking several rather simple questions: What do late-night votes look like? That is, we are interested in the characteristics of these bills and how they compare to votes taken during more traditional business hours. Has there been an increase or decrease in late night voting? Is either the U.S. House or U.S. Senate more likely to conduct late night votes? When are late-night votes most likely to occur? What are the issues that late night votes address? Finally, are late night votes more partisan and or divisive?

To begin answering these questions, we present several tabular and graphical representations of the distribution of late night votes over time. First, there has clearly been an increase in the rate of late night voting over the last 15 years (see Figure 1). While both chambers

³ The Washington Post Votes Database can be accessed at the following URL: <http://projects.washingtonpost.com/congress/>.

of Congress had several years during the 1990s without any late night votes, since 2000, we have seen an increase in late night voting. Figure 1 also illustrates that the majority of late night votes occur in the House, as 151 of the 192 votes took place in the lower chamber for the period of our analysis. Additionally, a greater proportion of late night votes out of all votes occur in the House compared to the Senate. These late night votes may be a reflection of the scheduling powers of the House leadership, while in the Senate, late night votes are more inhibited due to institutional constraints.

Figure 1 about here

But when do these votes occur throughout the year? Figures 2A and 2B display the distribution of late night and regular votes by month for the U.S. House and U.S. Senate. In line with the strategic rush hypothesis discussed above, we expect the number of late-night votes to increase in the latter months of each session of Congress. This expectation is based on the idea that members of Congress become more concerned about completing their legislative work as the end of a session approaches. In addition, considering our over-burdened hypothesis we expect the number of late-night votes to increase as the overall level of voting in each chamber increases.

Figure 2A about here

Figure 2B about here

The monthly distribution of late-night and regular votes displayed in Figures 2A and 2B provides mixed support for the strategic rush hypothesis, with the plurality of late-night votes occurring in the spring and summer months rather than the latter months of the year and immediately prior to the end of each session. However, the increased number of late-night votes during the summer months precedes the rather long recess in the Congressional calendar that often takes place from the beginning of August to the beginning of September. There also appears to be a significant relationship between the overall number of votes taken each month and the number of late-night votes that occur, suggesting tentative support for our over-burdened

hypothesis.⁴ Clearly, as the amount of voting activity on the floor of each chamber increases the probability of late night voting also increases.

We argued earlier that a variant of the strategic rush hypothesis is the Tuesday to Thursday rush, which reflects the scheduling that enables members of Congress to return to their districts. Table 1 indicates that 85 percent of the regular votes in the U.S. House occur between Tuesday and Thursday, but the pattern is slightly different for late-night votes. For late-night votes there is a monotonic increase in votes from Monday through Friday. Twenty nine percent of late-night votes occur on Thursday night and nearly 40 percent occur the following evening. The data indicate that as the week progresses, more late night votes occur reflecting the pressures to hold sessions late in the evening to complete work. The near 70 percent of late night votes occurring on Thursday and Friday nights appears to indicate the strong presence of the Tuesday to Thursday rush.

Table 1 about here

Voting in the Senate reflects a similar pattern to the House (Table 1). For regular votes, there is an increase through Thursday, with about 84 percent of the votes occurring between Tuesday and Thursday. For late-night votes, there is a steady increase through Friday with 82 percent of late-night votes occurring on Thursday and Friday evenings. The key difference for both chambers is that regular votes are spread throughout the week, while late night votes are concentrated on Thursday and Friday evenings. Indeed, for both chambers of Congress, there appears to be a rush that reflects the desire of members to return to their districts for the weekend.

In addition to an excess of late-night votes toward the end of the week, the Strategic Rush explanation should also result in few votes the day after a late-night roll call. That is, if members are staying up late to complete legislative work in order to return to their districts, we would expect few if any votes the following day. Table 2 indicates that for the majority of late-night

⁴ The Pearson Correlations between late night and regular votes in U.S. House of Representatives is 0.67 and 0.66 in the U.S. Senate.

votes this is the case, with no votes the day after a late-night roll call. The data reported in Table 2 support this view with the vast majority of late-night voting sessions in the U.S. House (64.9%) and the U.S. Senate (75.6%) preceding a day with no roll-call votes. This pattern suggests members of Congress are burning the midnight oil in order to head home to their districts rather than returning to the chamber the following day. However, we note there are a sizeable number of late-night roll calls in each chamber (particularly the U.S. House) which are followed by another day of voting. This suggests the preceding evenings late-night votes could have at least been postponed to the next morning.

Table 2 about here

We also report in Table 2 the percent of regular and late-night votes cast prior to a recess.⁵ These results provide additional support for the strategic rush hypothesis. Whereas only 11.3% and 13.4% of regular votes in the House and Senate, respectively, take place prior to a recess, 48.3% and 26.8% of late-night votes occur prior to a recess in the House and Senate. This is an indication that members are willing to stay up late in order to complete work before returning to their districts prior to recesses offering further preliminary support of the strategic rush hypothesis.

We next examine how late-night votes were distributed throughout the evening and early morning hours. While we define late-night voting as any vote which occurs between 12:00 a.m. and 7:00 a.m., there is clearly a difference between a vote which occurs a few minutes after midnight and one which keeps members on the chamber floor until early the next morning. In Table 3 we provide an hourly distribution of late-night voting for the House and Senate. For each chamber the majority of late-night votes occur between midnight and 2:00 a.m., with a plurality

⁵ We define a recess as any congressional break greater than 5 days. Additional definitions of recess were examined, and we found similar results in both our bi-variate and multi-variate analyses. However, from a theoretical perspective we believe breaks greater than 5 days are most appropriate for our analysis. The greater than 5 days definition includes short recesses for Holiday weekends when most members return to the district and boast of the good work they are accomplishing on Capitol Hill.

occurring between 12:00 a.m. and 1:00 a.m. in both chambers. However, in the House of Representatives, 32 (21%) votes were cast after 3:00 a.m. over the period of our analysis. Finally, we find the vast majority of late night Senate votes occurred before the 2 o'clock hour. Clearly, no member wants to spend their night in the legislative chamber when they could be sleeping, so there must be some explanation for these votes.

Table 3 about here

What types of issues are keeping members in the chamber until the wee hours of the night? For both chambers we find domestic issues make up a large majority of late-night votes. Specifically, we find 63% of the House and 79% of the Senate's late-night votes address domestic issues. The remaining late night votes in the House represent Foreign Policy (29%) and administrative issues (8%) while the remaining late-night votes in the Senate represent votes on Foreign Policy (14%) and presidential nominations (7%). Considering the numerous disincentives for forcing members to spend their evening on the hill after a long day of Washington work, we expect congressional leaders would only hold late night roll call for legislation which they view as critical. Using Congressional Quarterly's Key Votes (1991-2006) as an indirect measure of legislative importance, we find late-night votes in both chambers are more likely to be important than votes taken during the day (See Table 4). While only 2% of day-time votes in the U.S. House were defined by Congressional Quarterly as Key Votes, 11% of the late-night votes were designated as Key Votes. For the U.S. Senate, the results are similar with 3% of day-time votes defined as Key Votes and 10% of late-night votes designated as Key Votes. Finally, we note surprisingly that only 3 (7%) of the late night votes cast in the U.S. Senate were cloture votes.

Table 4 about here

Finally, as an indirect means of examining whether late-night roll calls were more likely to be divisive and or the result of partisan strategies to delay the legislative process, we examine

the proportion of party line votes and close votes taken after midnight as compared to regular hours.⁶ First, we find late-night votes in the U.S. House were significantly more likely to be partisan votes, while in the U.S. Senate late-night votes were only slightly more partisan. Furthermore, we find a significantly greater number of close votes in the U.S. House while in the U.S. Senate close votes were actually less likely to occur during late night sessions. Twenty percent of the late-night votes were close in the House compared to only six percent of the regular votes. However, in the Senate 22 percent of the regular votes were close, but only 12 percent of the late-night votes were similarly competitive. Again, this may reflect the scheduling powers of the House leadership, while in the Senate, procedural maneuvers like the filibuster might make a late-night vote a waste of the majority's time. Given the small number of cloture votes noted earlier, the use of the filibuster to keep the U.S. Senate in session throughout the evening may simply be symbolic.

Explaining Late-night Votes in Congress

We now consider several multivariate models which examine the factors which have been hypothesized to influence the probability of late night votes. To do this, we have multiple units of analysis, so for clarity, we present the variables for each model followed by the analysis for that model.

To begin, we consider the probability that a given vote in Congress from 1991 to 2006 occurred between 12:00 a.m. and 7:00 a.m. For this model, the unit of analysis is the individual vote. Thus, our first dependent variable is a variable coded 0 for non late night votes and 1 for late night votes. We have constructed this variable for both the U.S. House and the U.S. Senate and perform our analyses on each chamber separately. Late-night roll call votes account for 151

⁶ Party votes are measured as a dichotomous variable with roll-call votes which a majority of Democrats voted against a majority of Republicans coded as 1 and all other votes coded as 0. Close votes are also measured as a dichotomous variable with roll-call votes decided by a margin of less than five percent coded as 1 (close or rather competitive) and those decided by more than 5 percent coded as 0.

(1.7%) of the 9,111 votes cast in the U.S. House and 41 (0.8%) of the 5,430 votes cast in the U.S. Senate. Given the skewed distribution of our dependent variable, we employ a weighted LOGIT procedure developed by King and Zeng (1999) which allows us to estimate the predicted probabilities associated with the two outcomes reflected in a skewed dichotomous dependent variable. Given the parameter values obtained by the LOGIT model, it is possible to estimate the probability that each roll-call vote was held after midnight.

The independent variables are included to test the hypotheses discussed earlier in this paper. To test the Strategic Rush hypothesis, we include a dummy variable if a vote occurs prior to a recess. To examine the Tuesday to Thursday Rush hypothesis, we include a dummy variable for votes that took place on either Thursday or Friday evenings. In each of these cases, the variables were coded 0 if they did not occur before a recess or on a Thursday or Friday, and 1 if they did. The size of the legislative agenda is designed to test our overburdened hypothesis. Thus, we use the number of votes taken throughout the calendar week of a given vote to gauge the amount of work being conducted on the chamber floor. To consider whether important votes are more or less likely to be delayed, we also include Congressional Quarterly's (1991-2006) Key Votes, which they rate each year. This is a dichotomous variable coded 1 if the vote is a Key Vote and 0 if it is not. We also include variables that serve as rudimentary tests of our dilute and delay hypothesis; at the very least they are necessary controls. We include a dichotomous measure of the competitiveness of each roll-call vote with those decided by a margin of less than five percent coded as 1 and those decided by more than 5 percent coded as 0. We also include a dichotomous variable measuring whether the vote was along party lines with roll-call votes which a majority of Democrats voted against a majority of Republicans coded as 1 and all other votes coded as 0. Finally, we consider the size of the majority party to gauge whether smaller majorities are forced to resort to unusual tactics such as scheduling votes late at night. The expectation is that larger majorities do not have to resort to such scheduling tactics.

Overall the results of this model support several of the hypotheses for explaining the occurrence of roll-call votes after midnight. First, we find late night votes are significantly more likely to occur in the House toward the end of the week and prior to a recess lending substantial support to our strategic rush hypothesis (Table 5). Notably, a pending recess in the House has the most substantial impact of all of our independent variables, increasing the likelihood a late-night roll call by 3.35%. Similarly, we find late night voting in the U.S. Senate is significantly more likely to occur toward the end of the week (a 3% increase), while the impact of a pending recess in the Senate only borders on statistical significance. The size of the legislative agenda is also significant for understanding the occurrence of late-night voting in both chambers. Specifically, an increase of two standard deviations in the number of votes cast in a week increases the likelihood of a late-night vote in the House by 1.6 percent and in the Senate by 0.5 percent.

Table 5 about here

Our last set of variables indirectly examines the dilute and delay hypothesis. As noted above, the dilute and delay hypothesis suggests legislators use amendments⁷ and parliamentary tactics to dilute and delay legislation which they do not support or for which the majority leadership needs time to cajole members sitting on the fence to support their position. As an indirect measure of this hypothesis, we examine whether late night votes are more likely to be votes on critical and or contentious legislation. For the House of Representatives, we find all three of our variables (Key Votes, Competitive Votes, and Party Votes) are significant and in the hypothesized direction with Key Votes being the most likely to occur as late-night roll calls increasing the probability of a late-night vote by 1.8%. For the Senate, Party Votes are not significant but Key Votes and Competitive Votes do have a significant impact on the likelihood of a roll-call vote occurring after midnight. As with the House, Key Votes have the most

⁷Amendments are not included in this model because their inclusion would be inappropriate given the unit of analysis. We do, however, include them in later models.

substantial impact of the three variables increasing the likelihood of a late-night vote by 1.3% in the Senate. Finally, considering the scheduling of votes is determined by the leadership of the majority party we examine the impact of majority party size on the occurrence of late night votes. As the majority party's size increases, we would expect the need to delay votes for cajoling would decrease and therefore decrease the likelihood of late-night roll calls. Conversely, smaller majorities indicate a greater need for late-night voting, as they are more likely to lack the numbers to attain a clear victory and/or force an earlier vote. While majority size is significant and in the hypothesized direction for our model of late night votes in the House, it is not significant for our Senate model.

Although the results of our model confirm several of our hypotheses, the impact of the variables included is small. However, we note it is important to remember the highly skewed nature of the data and that late night votes only represent a very small proportion of votes in each chamber and given the disincentives for members to remain in the chamber at such late hours, these influences may be subtle, but they are also important.

Table 6 about here

We now examine the factors that predict whether or not there was a late-night vote on a given day that Congress was in session. Our dependent variable is measured as a dichotomous variable with days which a late night roll call was conducted coded as 1 and all other days coded as 0. The U.S. House of Representatives was in session for 1,682 days during the period of our analysis and conducted late-night roll calls on 58 separate days. The U.S. Senate was in session for 1,620 days and conducted late-night rolls on 24 separate days. As with our first model, we employ a weighted LOGIT procedure developed by King and Zeng (1999) because of the skewed distribution of our dependent variable. Our independent variables replicate those employed in our model of individual votes, except for the Key Vote variable which is coded differently where 1 indicates all days in which a Key Vote was cast and 0 for all other days. In addition, we drop two variables (Party Vote and Competitive Vote) which cannot be properly measured for this unit of

analysis (since some days have zero votes and others have more than one). In general, the results of this model confirm our earlier findings. For both the House and Senate models, late-night roll calls are significantly more likely to occur on Thursday and/or Fridays. As with the previous models, a pending recess significantly increases the probability of a late-night roll call vote in the House suggesting that members will stay up late in order to return to their districts a day earlier. Members of Congress also appear to remain in their chambers late in the evening because of the burden of their workload. In both the House and the Senate, we find an increased probability of late night voting as the size of the legislative agenda increases. The variable is positive and significant for both the House and the Senate models. Finally, as expected, majority size is estimated to have a negative effect on the probability of a late-night vote occurring on a given day in both chambers.

Table 7 about here

Our last set of models estimates the factors explaining the number of late-night votes on a given day. Thus, the dependent variable is the number of late-night votes on a given day for each chamber. Since we use count data, and diagnostics reveal overdispersion, we estimate each model using negative binomial regression (cf. Cameron and Trivedi 1998). The independent variables are similar to the earlier models. We also include the number of amendments on a given day as a direct test of our dilute and delay hypothesis since the number of amendments likely increases the number of late-night votes. Again, we omit party-line votes and competitive votes since they are inappropriate given our unit of analysis.

As with the previous models, we find that pending recesses are estimated to increase the number of late-night votes in both the House and the Senate. For instance, holding all other variables in our model constant, a pending recess in the Senate increases the rate ratio of late-night votes by a factor of 6.9 and for the House we find the rate ratio increases by a factor of 10.2. We also find evidence of a Tuesday to Thursday rush in the House given the positive and significant coefficients for this variable; however, no such relationship exists in the Senate. The

size of the legislative agenda is also found to significantly increase the number of late-night votes in the House but not in the Senate. In the House, key votes are found to increase the number of late-night votes, while the size of the majority is found to decrease the number of late-night votes; neither variable influences late-night voting in the Senate, however. Finally, the number of amendments is found to significantly increase late-night votes in both chambers. Notably, we find for every additional amendment offered in the U.S. Senate the rate ratio for late night votes increases by a factor of 12, thus offering additional support for our dilute and delay hypothesis.

Discussion and Conclusion

Our analysis supports several explanations of late night voting in Congress. We find consistent evidence of a strategic rush of late night voting prior to legislative recesses, but we also note that these votes occur more often later in the week, particularly late in the evenings (early mornings) on Thursdays and Fridays. Thus, the Tuesday to Thursday club appears to work late in order to return to their districts to campaign and provide constituency services. It is widely known that members of Congress maintain this schedule in order to return to their districts, and we add something about the lengths that they will go to ensure their ability to get back to their constituencies. We also note that there is a spike in late-night voting during the summer months that precede the long August recess.

The explanation that members of Congress work late because they are overburdened is less definitive, however. On one hand, members do work late when the legislative agenda is larger; thus, when they have more work to do, they stay up to complete it. This is consistent in all of our House models and in two of the three Senate models. Thus, members are likely burdened by their workload. However, our analysis of when members burn the midnight oil suggests that these votes do not occur evenly throughout the session, nor are they evenly spaced throughout the week. This uneven scheduling offers substantial support that members of Congress are strategic

in scheduling late-night votes. Given their busy schedules and the desirability to return to their districts, the results could hardly be different.

We also have some preliminary support that amendments are responsible for late night votes in both the House and the Senate. This influence is present even in the Senate, where scheduling tactics are not used as often as in the House. This could be an example of dilute and delay tactics, though a more thorough analysis of the individual votes each week would be necessary to determine this with greater confidence. At the very least it suggests that there is a burden of the congressional workload. Whether this burden is created for political purposes to thwart the majority is a question worthy of further study.

There are alternative explanations for late night voting that might offer some insight into why the public often views the Congress negatively. Approval ratings of Congress as an institution frequently drop below 40 percent, and at times have dropped below 20 percent (Durr, Gilmour, and Wolbrecht 1997; Anderson and Newmark 2002). Among the factors that influence congressional approval are scandals, which may paint the legislative branch as corrupt, or at least self-serving. Although all congressional votes are recorded, it may be the case that some controversial bills or roll-call votes are dealt with late at night in order to avoid increased scrutiny from the media and public. As a preliminary test, we examine key votes and find that they increase the likelihood of late-night votes in all three of our House models and in one of the Senate models. Ideally, we would like to know the level of controversy surrounding these votes. Obviously, Congress will not call a vote on a controversial abortion ban or legislation to increase their salaries in the middle of the night since it would likely draw even greater attention to the attempted clandestine behavior. Instead, the controversial nature of these actions is likely more subtle. Thus, a more detailed analysis of the individual votes would determine whether earmarks are cleverly added to late-night legislation.

Another possibility is that the majority party attempts to pass legislation that is not supported by the minority party. However, our results were fairly consistent (at least in the

House) that larger majorities do not need to schedule votes late into the night. Nonetheless, regardless of majority size, it is likely that the more robust results for our House models are driven in part by the greater ability to schedule late-night votes in that chamber by the leadership. Further analysis is needed to ascertain whether in cases of conditional party government (Rhode 1991; Aldrich 1995; Aldrich and Rhode 2001), where there is majority party homogeneity and interparty discord, there is a great deal of deference to the majority leadership. If this is the case, the leadership may schedule votes later in the evening to lessen minority party attempts to quash legislation, while at the same time, the rank-in-file members of the majority party will fall in line.

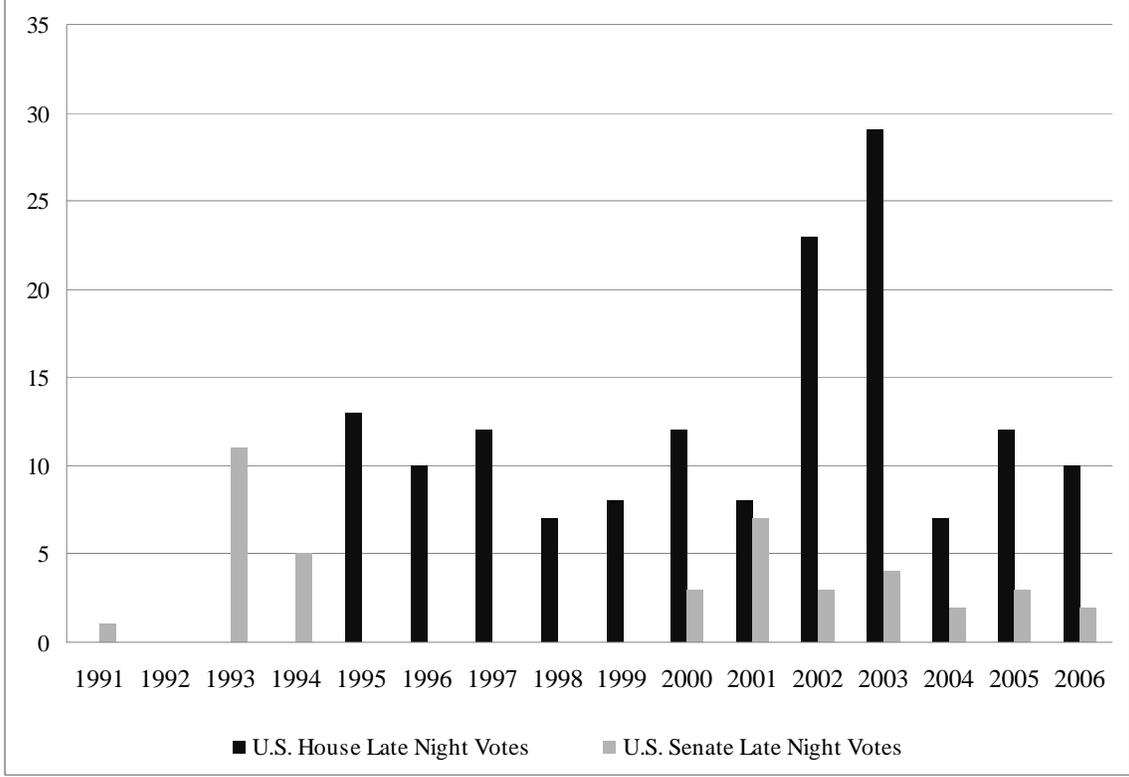
While our results indicate that members of Congress are strategic in when they schedule votes both within a week and throughout the year, we are also confident that lawmakers remain in the chamber late, in part, because of their workload. Whether members engage in dilute and delay tactics is less certain, as we lack a more direct test of this behavior. We are, however, confident that members of congress are rational in their scheduling behavior, and they will likely continue to burn the midnight oil so long as it suits their goals.

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Figure 1: Number of Late Night Votes by Year



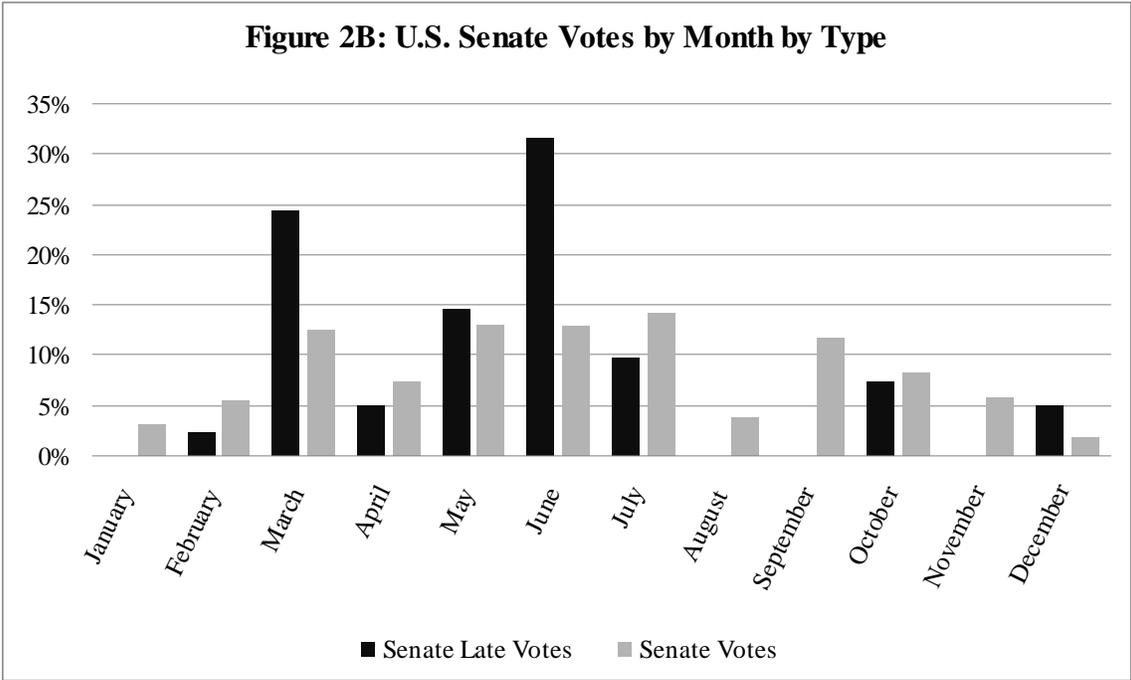
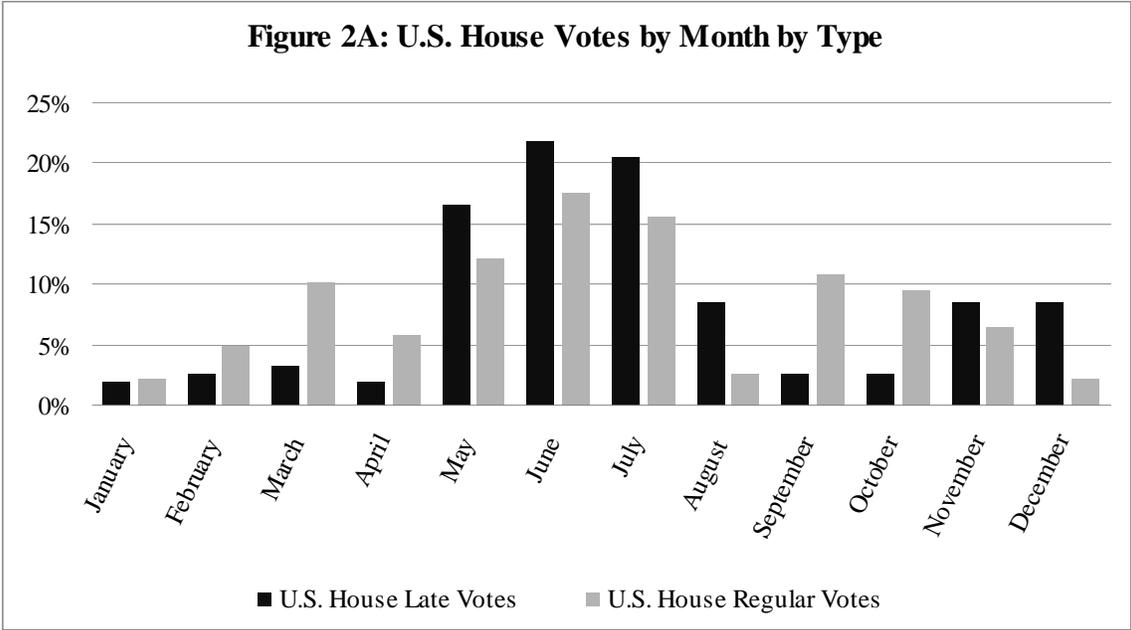


Table 1: Type of Vote by Day of Week

| Day | U.S. House | | U.S. Senate | |
|------------------|------------------------|--------------------|------------------------|--------------------|
| | Regular Votes % | Late Votes% | Regular Votes % | Late Votes% |
| Monday | 6.3% | 6.0% | 5.0% | 0.0% |
| Tuesday | 21.3% | 6.0% | 22.1% | 7.3% |
| Wednesday | 32.7% | 9.9% | 26.8% | 9.8% |
| Thursday | 31.4% | 28.5% | 35.5% | 39.0% |
| Friday | 7.3% | 39.7% | 10.1% | 39.0% |
| Saturday | 0.7% | 8.6% | 0.5% | 4.9% |
| Sunday | 0.3% | 1.3% | 0.0% | 0.0% |
| N | 8960 | 151 | 5389 | 41 |

Table 2: Voting After a Late-Night Vote and Before Recesses by Chamber

| Chamber | Type of Vote | No Votes Day After Vote | Votes Day After Vote | Total Number of Votes | Pearson Chi- Square |
|----------------|---------------------|------------------------------|---------------------------------|--------------------------|------------------------|
| U.S. House | Regular Votes | 29.30% | 70.70% | 8960 | 89.531*** |
| | Late-Night Votes | 64.90% | 35.10% | 151 | |
| U.S. Senate | Regular Votes | 38.20% | 61.80% | 5389 | 25.411*** |
| | Late-Night Votes | 75.60% | 24.40% | 41 | |
| | | <i>Pre-Recess Voting</i> | <i>Voting within 5 days</i> | | |
| U.S. House | Regular Votes | 11.30% | 88.70% | 8960 | 194.04*** |
| | Late-Night Votes | 48.30% | 51.70% | 151 | |
| U.S. Senate | Regular Votes | 13.40% | 86.60% | 5389 | 8.235** |
| | Late-Night Votes | 26.80% | 73.20% | 41 | |

Table 3: Late-Night Votes by Hour

| Time | U.S. House | U.S. Senate |
|-------------|-----------------------|------------------------|
| 12:00:00 AM | 34.9% | 59.5% |
| 1:00:00 AM | 29.6% | 19.0% |
| 2:00:00 AM | 14.5% | 9.5% |
| 3:00:00 AM | 11.2% | 2.4% |
| 4:00:00 AM | 3.9% | 0.0% |
| 5:00:00 AM | 1.3% | 2.4% |
| 6:00:00 AM | 4.6% | 7.1% |
| N | 151 | 41 |

Table 4: Type of Vote by Chamber by Late-Night/Regular Voting

| Chamber | Type of Vote | Key Votes | Party Unity | Close Votes | N |
|--------------------|-------------------------|------------------|--------------------|--------------------|----------|
| U.S. House | Regular Votes | 2.3% | 53.8% | 6.3% | 8960 |
| | Late-Night Votes | 11.3% | 69.5% | 19.9% | 151 |
| | Chi-Square | 51.317*** | 14.735*** | 44.887*** | |
| <i>U.S. Senate</i> | Regular Votes | 4.0% | 58.3% | 22.1% | 5389 |
| | Late-Night Votes | 9.5% | 61.9% | 11.9% | 41 |
| | Chi-Square | 3.297* | 0.228 | 2.509 | |

*=p<0.05; **=p<0.01; ***=p<0.001

Table 5: The Probability of Late Night Votes

| Independent variable | House Votes | Senate Votes |
|-------------------------|----------------------|---------------------|
| Pending Recess | 2.148*** (0.205) | 0.617● (0.376) |
| Thursday/Friday Vote | 0.523*** (0.209) | 1.230*** (0.410) |
| Legislative Agenda Size | 0.053*** (0.007) | 0.032*** (0.007) |
| Key Vote | 1.533*** (0.300) | 1.233** (0.547) |
| Party-line Vote | 0.407* (0.201) | 0.200 (0.034) |
| Competitive Vote | 0.556* (0.259) | -1.006* (0.495) |
| Majority Size | -0.084*** (0.010) | -0.022 (0.115) |
| Constant | 12.692*** (2.169) | -5.127 (6.236) |
| Log likelihood | -604.757 | -227.556 |
| LR Chi-Square(8) | 328.16 | 36.97 |
| Prob > Chi-Square | 0.000 | 0.000 |
| Pseudo R-Square | 0.213 | 0.08 |
| N | 9111 | 5430 |

●=p<0.055; *=p<0.05; **=p<0.01; ***=p<0.001

Table 6: The Probability of a Late-Night Vote on a Given Day

| Independent variable | House Votes | Senate Votes |
|-------------------------|----------------------|---------------------|
| Pending Recess | 1.659*** (0.322) | 0.765● (0.512) |
| Thursday/Friday Vote | 0.693* (0.319) | 1.408** (0.513) |
| Legislative Agenda Size | 0.143*** (0.036) | 0.053*** (0.012) |
| Key Vote | 1.161*** (0.320) | 0.440 (0.535) |
| Majority Size | -0.084*** (0.014) | -0.234* (0.117) |
| Constant | 14.035*** (3.153) | 6.589 (6.177) |
| Log likelihood | -197.167 | -108.715 |
| LR Chi-Square(4) | 110.25 | 32.39 |
| Prob > Chi-Square | 0.000 | 0.0002 |
| Pseudo R-Square | 0.219 | 0.130 |
| N | 1682 | 1620 |

●=p<0.10; *=p<0.05; **=p<0.01; ***=p<0.001

**Table 7: Negative Binomial Estimates of the Factors
Explaining the Number of Late Night Votes on a Given Day**

| Independent variable | House Votes | Senate Votes |
|-------------------------|----------------------|---------------------|
| Pending Recess | 2.317*** (0.384) | 1.819*** (0.518) |
| Thursday/Friday Vote | 0.555* (0.327) | 0.610 (0.525) |
| Legislative Agenda Size | 0.189*** (0.037) | -0.007 (0.063) |
| Key Vote | 1.31*** (0.368) | -0.466 (0.777) |
| Amendments | 1.15** (.424) | 3.163*** (0.660) |
| Majority Size | -0.092*** (0.024) | -0.089 (0.107) |
| Constant | 16.017** (6.219) | -0.460 (5.706) |
| Log likelihood | -211.512 | -114.808 |
| LR Chi-Square(6) | 294 | 75.85 |
| Prob > Chi-Square | 0.000 | 0.000 |
| Pseudo R-Square | 0.41 | 0.25 |
| N | 1682 | 1620 |

*=p<0.05; **=p<0.01; ***=p<0.001