

# *Investigating the Incidence of Killer Amendments in Congress*

Jeffery A. Jenkins  
Northwestern University  
Michael C. Munger  
Duke University

While much empirical research has been devoted to the study of “killer amendments” in recent years, few studies have explicitly examined the theoretical foundations of the phenomenon. The goal of this paper is to investigate why some killer amendment attempts are successful, when theory suggests that they should always fail. More specifically, we examine the practical political constraints on legislators’ abilities to neutralize the imminent threat of killer amendments through sophisticated voting. We also present two new cases, both occurring during the Reconstruction era, in which killer amendments were used successfully. In the end, our findings support previous research on *all* successful killer amendments detailed in the congressional literature: *race* was the issue under consideration at the amendment stage.

**W**hile students of formal political theory have made theoretical advances in recent years connecting the twin concepts of agenda manipulation and sophisticated voting in legislative bodies such as Congress, students of Congressional politics have had less success producing analogous empirical advances (Volden 1998). One notable exception has been in the study of “killer amendments,” a particular type of agenda manipulation that has elicited a number of empirical

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treatments (Calvert and Fenno 1994; Denzau, Riker, and Shepsle 1985; Enelow 1981; Enelow and Koehler 1980; Krehbiel and Rivers 1990; Poole and Rosenthal 1997; Riker 1982, 1986; Strom 1990; Wilkerson 1999).

The ostensible purpose of a killer amendment is to transform a bill that is a sure winner into a loser (Enelow and Koehler 1980). That is, legislators who oppose a bill that they expect to pass may try to alter its dynamics with an amendment, in hopes that the amended bill will lose majority support and be “killed.” Introducing a killer amendment cannot actually kill a bill, however, unless many legislators vote sincerely when they would be better served by voting sophisticatedly, that is, anticipating final outcomes rather than evaluating the particular alternatives being voted on stage by stage. Stated more generally, agenda manipulation of *any* kind can *always* be defeated by sophisticated voting (Enelow 1981; Ordeshook 1986).

So while killer amendments might be introduced, the theoretical literature predicts that they should fail. Yet, rare cases of successful killers have been documented in the literature, most notably the Wilmot Proviso in 1846, the DePew Amendment in 1911, and the Powell Amendment in 1956 (Poole and Rosenthal 1997; Riker 1982).<sup>1</sup>

The goal of this article is to investigate why some killer amendment attempts are successful. More specifically, we set out to examine the practical political situations that might lead legislators to vote sincerely when faced with a potential killer amendment. We claim that there are two such situations: *failures of expectations*, in which legislators mistakenly vote sincerely, and *failures of trust*, in which legislators are forced by the nature of the issue to cast a sincere rather than a sophisticated vote.<sup>2</sup>

Our contention is that systematic failures of expectations should be rare in a legislature where members can check and correct their subjective perceptions as to the likelihood that a bill (amended bill) will pass. Failures of trust are a different matter, however, and could in principle be observed on any issue where the *vote itself*, rather than the outcome, is the key factor considered by the member’s constituents. The underlying problem is that sophisticated voting is by definition a violation of the apparent interests of the constituency being represented. Failures of trust, as described by Denzau, Riker, and Shepsle (1985) and Bianco (1994), occur because a legislator is not confident he can offer a persuasive *explanation* for a sophisticated vote to uninformed voters.

On what sorts of issues should we expect failures of trust to occur? The claim advanced here is that such issues are: (1) cross-cutting, that is, dividing the parties, (2) highly salient for the legislator’s constituency, and (3) easy for voters to process, in the sense described by Carmines and Stimson (1980, 1989).

<sup>1</sup> For an account suggesting that the Powell Amendment was not a killer amendment, see Gilmour (2001).

<sup>2</sup> Of course, this assumes that a killer amendment makes it to the floor. A cohesive majority or active party leadership can often prevent a potentially successful killer from making it onto the legislative agenda.

In the next section, we consider some background on killer amendments and provide a more precise definition of the strategic action being analyzed. The subsequent section presents two new historical examples of candidates for denomination as killers, both of which involved the issue of race. The final section summarizes our findings and discusses the connection between killer amendments and race in more detail.

## Investigating the Incidence of Killer Amendments

### *Expectations*

The basic structure of killer amendments is well known and related to the general phenomenon of sophisticated voting (Farquharson 1969; McKelvey and Niemi 1978). For an amendment to qualify as a killer, assuming pair-wise, majority-rule voting, the following conditions must be met:

- C1: It is believed that the bill under consideration, if unamended, would beat the current status quo.
- C2: It is believed that this bill would lose to at least one amended form of the same bill.
- C3: It is believed that the amended bill (the bill containing the killer amendment) would lose to the status quo.

If any of these conditions is violated in outcomes, then the amendment is not a killer. For example, suppose C3 is false. Then the amendment simply watered down the original bill, but did not kill it. If C2 is violated, the amendment did not matter much anyway, because the original bill is a Condorcet winner. If C1 is false, the bill would not have beaten the status quo in the first place and thus was never “alive” enough to be killed.

What can be said about members’ beliefs, as embodied in conditions C1–C3? If outcomes are not known with certainty at the time legislators cast their votes, then it is quite possible that *expectations* could be mistaken and inconsistent. In other words, different legislators may have different information, and consequently their subjective probability assessments may vary widely. For example, legislators who believe C3 to be false may vote incorrectly, leading to an amendment that *turns out* to be killer.

Still, saying that mistakes are *possible* is quite different from saying that errors are *likely*. As Enelow (1981, 1064) states, “In real world voting bodies, such as the U.S. Congress, perceptions of critical amendments as either a saver or a killer will probably be widely shared.”<sup>3</sup> What does this mean? Formally, the shared nature of expectations is related to the technical condition of “common knowledge” (McKelvey and Page 1986). That is, expectations will always be shared, and fulfilled, if all legislators know each others’ preferences, all legislators know

that all legislators know, and so on. So while admitting that failures of expectations *could* occur, we will consider them no further here.

### *Trust*

A very different situation occurs if the legislator is not free to focus on *outcomes*. The whole “sophisticated voting” perspective in fact is premised on an exclusive focus on outcomes, with intermediate actions being only a means to an end. Yet, there is little reason to believe that outcomes are the major focus of voters. For example, many voters have little direct measure of outcomes and possess neither the patience nor the interest to understand complex legislation. Bianco (1994, 32) makes this point convincingly:

The idea that legislators behave according to [policy goals] implies they are willing to take whatever actions are needed to move public policy toward a particular outcome. *The problem is that legislators are evaluated [by voters] on the basis of actions, not outcomes.* Particularly when high-salience proposals are voted on, a legislator may have one set of preferences across policy outcomes (resulting from her policy goals, and perhaps her desire for particularized benefits), and a distinct set of preferences across actions. . . . In these situations, a legislator’s preferences across policy outcomes need not match her preferences across the actions needed to produce these outcomes. (emphasis added)

Bianco goes on to note that the two orderings (preferences over policy outcomes, stemming from policy goals, and preferences over actions, stemming from positions on issues) will be identical only if one of two conditions are met: (1) the legislator cares only about policy or (2) the legislator believes voters trust him completely and that he has leeway to vote as he sees fit. The first condition seems implausible; legislators may value policy, but not to the exclusion of all else. The second condition also seems unlikely, as Bianco (1994, 60–61) argues that trust is not a bank account, which can be drawn up or down, but a fragile equilibrium that can be upset if the legislator takes an action that voters do not expect or understand. Of course, the legislator may think in incremental terms (“How many votes do I lose if I vote this way?”), but the relation is not linear or even necessarily predictable.

Thus, given the often strategic nature of the political agenda, a legislator may need to take an unpopular action (cast an unpopular vote) in an early round in order to generate a preferred policy output later. Yet, the legislator may feel that the initial unpopular action is not worth the eventual policy output, a point driven home by Denzau, Riker, and Shepsle (1985, 1118):

Result-oriented strategic calculation and sophisticated behavior in the legislative arena may require actions that run contrary to the nominal preferences of important constituents. Although helpful in producing a final result desired by constituents, a strategic vote, for example on some

<sup>3</sup> Calvert and Fenno (1994) extend Enelow’s model to situations in which legislators lack complete information about their colleagues’ preferences.

particular amendment, may nevertheless entail behaving in a manner that directly conflicts with the wishes of constituents on the amendment in question. Such actions will need to be explained by the legislator. But can he explain those actions?<sup>4</sup>

Our conclusion, then, is this: while failures of *expectations* constitute a tenuous basis for sustaining a killer amendment, since they posit systematic errors, failures of *trust* might plausibly be searched out by students of Congressional voting. Failures of trust prevent legislators from responding rationally, through *sophisticated voting*, when confronted with a potential killer amendment. If enough legislators are confronted with a failure of trust simultaneously, a killer can succeed. As Poole and Rosenthal (1997, 147) note: “When there is a mixture of sincere and sophisticated types, agenda manipulation is possible.”

There is no need for trust, of course, if voters are perfectly informed or can monitor legislators without cost. But this is simply not the case: voters typically know very little about the complexities of legislative rules and parliamentary procedures and can only with some cost discover the proximate goals of their representatives. Thus, voters often turn to a form of monitoring that is second best, which is to focus on *inputs*, more specifically, *votes*.

This focus on inputs, however, presents a real problem to a legislator who wants to provide the best possible policy to voters. Since, by assumption, voters do not fully understand the intricacies of the legislative process, they may be unable to tell which votes are truly important and which are merely intermediate or strategic. Consequently, a “wrong” vote at an intermediate step in an agenda may hurt the legislator’s reelection chances. This is true even if it is the “right” vote for the final outcome that voters would desire if they had full information.

To summarize: we assume that voters care about policy outcomes but cannot easily discern the contribution that their representative has made to the policy process. This costly monitoring problem restricts voters to monitor inputs (in this case, votes), which are easily observable. Second-best monitoring gives the reelection-minded legislator an incentive, all else equal, to develop a *reputation* or ideological *brand name*, which serves as a low-cost heuristic for voters, and to vote in a way that is consistent with that reputation (Dougan and Munger 1989; Downs 1957; Hinich and Munger 1994; Poole and Rosenthal 1997).

### Issues

When can a legislator deviate from his ideological reputation, and when must he be careful to vote precisely as voters think that they want? We contend that there are three elements of an issue, *all* of which are necessary, that allow for a failure of trust to occur:

- *Cross-cutting nature*, which affects the space for maneuver. While many issues historically have been distinctly partisan, some have tended instead to separate

<sup>4</sup>For further discussions of constituency constraints on legislators’ decision making, see Fenno (1978), Wilkerson (1990), and Krehbiel and Rivers (1990).

legislators along *regional* lines. A divided majority party provides the most likely case for the fulfillment of a successful killer. A *homogenous* majority party, via the presiding officer, can short-circuit a killer amendment before it even starts by failing to recognize the amendment proposer, who will inevitably be a member of the minority.<sup>5</sup> When a majority party is divided, however, the presiding officer has less discretion and a potential killer can make it to the floor, *especially if it is initiated by a member of the majority party*.<sup>6</sup> This occurs when a bloc within the majority party views the new issue (encapsulated by the killer) as more important than the success of the bill itself (see Wilkerson 1999).

- *Salience*, which directly affects the *intensity* of voters' monitoring. On low salience issues, voters generally pay little attention to the legislative process, which allows a legislator to cast a sophisticated vote with little cost. On high salience issues, however, voters are more likely to monitor the legislative process carefully, forcing a legislator to consider seriously the possible repercussions before casting a sophisticated vote (Arnold 1990; Calvert and Fenno 1994; Fenno 1978).
- *Ease of understanding*, in the sense described by Carmines and Stimson (1980, 1989). Easy issues are those that require no deep thought or knowledge of complex means-ends policy processes, but rather invoke an immediate and measured response. Easy issues are therefore clear red flags at the intermediate stages of a sophisticated voting agenda.

### *The Key Issue—Race*

What then are the issues that produce successful killer amendments? Rather than a *set* of issues, the literature points to a *single* source issue, which Poole and Rosenthal (1997, 147) identify succinctly: "There are in fact a few dramatic examples of killer amendments. These all involve race." Why race?

First, racial issues have typically been cross-cutting, a pattern that is revealed in *all* of the cases of successful killers documented in the literature. David Wilmot (D-PA) split a Democratic House majority with a race-based amendment in

<sup>5</sup> For example, the Rules of Procedure for the U.S. House state: "[The Speaker] has the discretionary power to recognize, or not recognize, Members to speak. When a Representative seeks recognition, the Speaker will frequently ask: 'For what purpose does the Gentleman (Gentlewoman) rise?' The Speaker does so in order to determine what business the Member wants to conduct. If the business does not have precedence (e.g., a special order speech), the Speaker can usually deny recognition."

<sup>6</sup> An exception to this norm, discussed by Poole and Rosenthal (1997, 162–63), occurred during voting on the Reagan Interstate Commerce Bill in the 48th House. In that case, a member of the *minority party* introduced a potential killer amendment, which, if passed, would have eliminated racial segregation in passenger rail service. Through some adroit action by the majority party leadership, the amendment itself was quickly modified via a "saving amendment," and the attempt to kill the bill failed.

1846; Chauncey DePew (R-NY) split a Republican Senate majority with a race-based amendment in 1911; and Adam Clayton Powell (D-NY) split a Democratic House majority with a race-based amendment in 1956. Second, race has been among the most, and often has been *the* most, salient and contentious political issues in the nation since its founding. Finally, racial issues are “easy” issues for voters to understand. As Carmines and Stimson (1989, 121) contend: “race . . . can be processed at the gut level, without interest or attention to politics or any sort of refined calculation.” Further, racial issues provide easy arguments for political elites in their efforts to persuade or influence voters. Easy arguments are “short, simple, and symbolic . . . and focus primarily on the consequences of a proposal,” or, in this case, a vote (Cobb and Kuklinski 1997, 93). For example, an electoral challenger might use an incumbent’s past voting behavior on a racial issue to persuade voters that he is not “right” on race. Such an argument could be effective if the incumbent had followed a sophisticated voting strategy when faced with a race-related killer amendment. Thus, in short, racial issues possess *all* of the features that are attractive to proponents of killer amendments.

This is not to say, of course, that race is the *only* issue that could be used to frame a successful killer amendment. We merely note that empirically, the only successful killers *that have been identified in the literature* involve race. Clearly, there have been other issues across Congressional history that could have met the killer criteria.<sup>7</sup> Yet, it is difficult to identify an issue that has ever been *more cross-cutting, more salient, or easier to process* than race. Thus, if a failure of trust should have *ever* produced a successful killer amendment, we would expect it to have occurred along a racial dimension.

In the following section, we consider two (possible) failures of trust, both of which involved race-related killer amendments. Interestingly, both cases occurred in 1872, during the 42nd Congress. The first took place in the House and involved reparations to the College of William and Mary for damages sustained during the Union occupation, with the requirement that the school revise its charter to welcome students of all races, creeds, and colors. The second took place in the Senate and involved granting amnesty to Confederate combatants, with the

<sup>7</sup>Two such issues spring to mind: tariffs and abortion. While tariffs have been both salient and cross-cutting for centuries, we know of no observed cases of tariff bills being used as killer amendments. This may be because tariffs are not “easy” issues, as the correspondence between tariff policy—given the elaborate and complicated tariff schedules across American history—and a voter’s own welfare is often not clear, except for small portions of the polity such as organized labor and import-competing industry. Abortion, on the other hand, has been highly salient and relatively easy in recent years (Abramowitz 1995), but it has *not* been cross-cutting, as Democrats and Republicans have in fact slowly polarized on the issue over time (Adams 1997). However, as one anonymous reviewer suggests, it is possible that “earlier” abortion votes (in the 1970s and early 1980s, before partisan differences became especially pronounced) might have been used to produce successful killer amendments.

requirement that said amnesty be linked to the integration of public facilities of all kinds.

## Two Historical Incidents

### *Reparations to the College of William and Mary, 1872–1873*

On February 2, 1872, during the second session of the 42nd House of Representatives, Representative Legrand W. Perce (R-MS) of the House Committee on Education and Labor reported a bill (H.R. 1335) to reimburse the College of William and Mary for property destroyed during the Civil War (*Congressional Globe*, 42-2, 784). The bill directed the Treasury to pay the sum of \$65,000 to the college as compensation for buildings and other property that were destroyed by fire without authority by disorderly U.S. soldiers on September 9, 1862, while the Union army was in control of Williamsburg, Virginia.

The bill elicited an inspired debate over the following month. Advocates of the bill, including Representatives Perce, George F. Hoar (R-MA), Hosea W. Parker (D-NH), and Robert Milton Speer (D-PA), took to the floor and expounded on the virtues and history of the College of William and Mary. While admitting that the institution had no rightful claim by law to seek reimbursement, they asked that the Treasury grant the sum “simply because in the progress of war, an institution of learning was unnecessarily destroyed.”<sup>8</sup>

Opponents of the bill, led by Representatives Julius L. Strong (R-CT), Austin Blair (R-MI), James A. Garfield (R-OH), John F. Farnsworth (R-IL), William L. Stoughton (R-MI), and Henry Waldron (R-MI), countered by reminding the membership that during the war, Virginia had been a rebel state and the college had been a Confederate barracks.<sup>9</sup> Moreover, the college grounds provided cover for enemy raiding parties, making the burning of the buildings a basic military necessity. In addition, as Strong argued, granting the college the requested sum would set a precedent for government repayment of wartime damages that would lead to “a deluge of bills as will shake the very foundation of the Treasury” (*Congressional Globe*, 42-2, 1191).

Despite the heated debate, the bill was tabled and not taken up again until December 13, 1872, during the third session of the 42nd House. Debate had begun anew when Representative John Shanks (R-IN) offered the following amendment to the bill:

*Provided*, That no part of the said sum of \$65,000 shall be paid or delivered, or a warrant or order issued therefor under the provisions of this act, until a regular meeting of the stockholders or equivalent corporate authorities of said College of William and Mary, after proper con-

<sup>8</sup>Quote by Representative Perce, *Congressional Globe*, 42-2, 940. Text of Perce’s, Hoar’s, and Parker’s remarks can be found in the *Congressional Globe*, 42-2, 939–44, 1381–83.

<sup>9</sup>Text of Strong’s, Blair’s, Garfield’s, Farnsworth’s, Stoughton’s, and Waldron’s remarks can be found in the *Congressional Globe*, 42-2, 1190–95, 1373.

sideration, have adopted and caused to be entered upon the records of said corporation a resolution declaring said college to be open, *and that it shall be for all time hereafter open for the admission on equal terms and with equal privileges of all persons irrespective of race, color, or previous condition of servitude*; and that a copy of said resolution duly certified by the appropriate authorities of said corporation shall have been first filed with the Secretary of the Treasury of the United States, and entered upon the records of his office. (*Congressional Globe*, 42-3, 186; emphasis added)

Hoar objected to Shanks' amendment on the basis that it would unnecessarily single out the College of William and Mary, among all public schools, to require civil rights guarantees be placed in its charter (*Congressional Globe*, 42-3, 187). Additionally, Perce, sensing the strategic nature of Shanks' amendment, stated that "an amendment of this character, coming as it does from a gentleman who is opposed to the bill, is offered for the purpose of defeating the measure and not of aid of it" (*Congressional Globe*, 42-3, 186). In our terms, of course, Perce was accusing Shanks of attempting a killer amendment. Despite the protestations of the bill's advocates, the amendment passed by a vote of 90–76, with Democrats voting 0–68 and Republicans voting 90–8. The amended bill then went down to defeat by a vote of 36–127, with Democrats voting 1–64 and Republicans voting 35–63 (*Congressional Globe*, 42-3, 187–88).

In an odd accident of history, or perhaps as a result of a subsequent negotiated agreement, there is an important epilogue to this story. On February 3, 1873, several weeks after the amended William and Mary bill was defeated, the original bill was introduced *once again* (this time as H.R. 3760) by Representative Perce and again referred to the Committee on Education and Labor (*Congressional Globe*, 42-3, 1053). Unlike the first bill, however, it was never reported out of committee.

Two weeks later, on February 17, 1873, the original bill was introduced a *third time* (as H.R. 3973), on this occasion by Representative John B. Storm (D-PA). Rather than have it referred to committee, Storm quickly moved the previous question (which passed by both voice and teller votes), and the bill was engrossed, read a third time, and finally passed, *without debate*, by a vote of 111–75, with Democrats voting 79–6 and Republicans voting 32–68 (*Congressional Globe*, 42-3, 1423–24).

There is a general problem facing researchers interested in killer amendments: one cannot know for certain what the "true" preferences of the participants are for the vote on the unamended bill versus the status quo. But in *this* case, we do have a reading on the true preferences of members on the unamended bill because of the odd decision to vote on the original bill less than two months after the killer amendment did its work. The question is whether we can identify members who favored the bill, but voted for the amendment. The potential sequences of votes fall into eight possible categories, as depicted in Table 1.

While there are eight *possible* patterns of voting, only six are plausible. In particular, profiles #1, #4, and #8 are indicative of sincere voting and potential evidence that the amendment was a killer. Profiles #1 and #2 are especially important

TABLE 1

## Possible Preference Profiles on Three Bills for Reparations to W&amp;M

Profile	Amended Bill vs. Original Bill	Amended Bill vs. No Bill	Original Bill vs. No Bill
1	Yes	Yes	Yes
2	No	Yes	Yes
3	Yes	No	Yes
4	Yes	No	No
5	Yes	Yes	No
6	No	Yes	No
7	No	No	No
8	No	No	Yes

*Profile #1:* Favor both reparations and racial integration; indicative of the moderate Republican position. Sincere voting in each case. Possible evidence of “killer” amendment.

*Profile #2:* Support integration generally, but view the amendment as a potential “killer” and vote sophisticatedly to kill it; indicative of the position of some moderate Republicans. Favor reparations.

*Profile #3:* Implausible; should not be observed.

*Profile #4:* Oppose reparations, but favor racial equality; indicative of the Radical Republican position. Sincere voting in each case. Possible evidence of “killer” amendment.

*Profile #5:* Primarily concerned with racial equality; largely indifferent to reparations.

*Profile #6:* Implausible; should not be observed.

*Profile #7:* Sophisticated voting; evidence of “saving” amendment (opposes bill).

*Profile #8:* Favor reparations, but not if accompanied by racial equality; indicative of the Democratic position. Sincere voting in each case. Possible evidence of “killer” amendment.

for a killer story, as those members likely comprised the moderate wing of the Republican Party and thus the swing voters (as the Democrats and Radical Republicans were of similar size and represented opposite policy positions). The actual pattern of votes for those members who voted on all three measures, broken down by first dimension D-NOMINATE score, is presented in Table 2.<sup>10</sup>

The largest category is profile #8, whose members opposed the amendment, then opposed the amended bill, and then favored the original bill. The second largest category is profile #4, whose members supported the amendment, then opposed the amended bill, and then opposed the original bill. Clearly, these two patterns, which comprise the Democratic and Radical Republican positions, respectively, are consistent with sincere voting and the strategic introduction of a killer amendment.

As mentioned above, the key to the story revolves around the 18 individuals in profiles #1 and #2, who represented the moderate wing of the Republican party.

<sup>10</sup> It is worth noting that the pattern of abstention is consistent with the notion of constituent pressure. There were only 121 legislators who cast ballots on all three recorded votes, just under one-half of the entire membership of the 42nd House. By far the highest abstention occurred on the first vote, where 104 members failed to participate. On the second vote, the Amended Bill v. No Bill, only 81 members abstained. And, on the final vote, only 61 abstained. The “hard” vote was the Amendment v. Original Bill, as one would expect.

TABLE 2

## Votes on Reparations for the College of William and Mary

# of Votes	D-NOMINATE First-Dimension Scores (Scaled from -1 to 1)								Totals
	- .79 to - .60	- .59 to - .40	- .39 to - .20	- .19 to 0	.01 to .20	.21 to .40	.41 to .60	.61 to .80	
#1 (YYY)					1	5	7		13
#2 (NYY)				1		3	1		5
#4 (YNN)					5	33	8		46
#5 (YYN)					1	3	2		6
#7 (NNN)	1		3						4
#8 (NNY)	6	29	10	1		1			47
Totals	7	29	13	2	7	45	18	0	121

*Note:* There was only one representative, Mark H. Dunnell (R-MN), who cast one of our “implausible” vote patterns, YNY. All other members fell into one of the six categories we describe in Table 2.

The exact names and bill numbers of the three resolutions are:

(1) Amendment v. Original Bill: To amend H.R. 1338, a bill reimbursing William and Mary College for property destroyed during the Civil War, by requiring evidence that the college shall admit people without regard to race or creed before damages shall be paid.

(2) Amended Bill v. No Bill: To order engrossment and 3rd reading of H.R. 1338, a bill reimbursing William and Mary College for property destroyed during the Civil War.

(3) “Original” Bill v. No Bill: To order main question on engrossment and 3rd reading of H.R. 3973, a bill providing for the relief of William and Mary College.

Because neither the Democrats nor the Radical Republicans represented a majority of the House, the moderate Republicans would ultimately decide whether the amendment passed or failed. By 1872, moderate House Republicans were concerned foremost with a kinder and gentler reconstruction of the South (Perman 1984; Seip 1983). Thus, while they continued to support racial equality, their principal interest was reparations. They were, however, put in a difficult position by the proposed William and Mary amendment. They could vote sincerely on the amendment and see the amended reparations bill die, as many Democrats defected, or they could vote sophisticatedly on the amendment, thereby defeating it, and then pass the original reparations bill with the support of the Democrats. The problem with this latter strategy was that they would later be required to explain their (apparent) opposition to integration to their constituents.

The historical record clearly shows these members favored reparations over integration, so sacrificing integration to obtain reparations was not a problem in terms of underlying preferences. Further, they had access to all the knowledge necessary to understand the strategic agenda manipulation being pursued by the Radical element in the House. Nonetheless, most moderate Republicans voted sincerely: 13 of the 18 voted *for* the integration amendment. In keeping with our

theme of trust, it appears that these representatives felt that they could not vote against integration, even if it meant giving up reparations, because they would be unable to explain their actions effectively to their constituents.<sup>11</sup> The amendment was a successful killer, therefore, because a sufficient number of moderate Republicans voted sincerely instead of sophisticatedly.

Evidence from a spatial voting analysis supports these sincere voting contentions. Using Poole and Rosenthal's VOTEVIEW program to analyze the voting on the William and Mary amendment, we find that a sincere, spatial voting model fits the vote exceptionally well, correctly classifying 160 of the 166 votes cast (96.4%) with a proportional reduction in error (PRE) of .921. The cutting line splits the Democratic and Republican parties *exactly* and is orthogonal to the first dimension. Of the six classification errors, all are Republicans who are predicted to have voted "yea" (supporting the amendment) but instead voted "nay" (opposing the amendment). Moreover, four of these six misclassified Republicans correspond to four of the five individuals in profile #2 from Table 3. Thus, four of the five members who we contend voted sophisticatedly on the William and Mary amendment (in an effort to prevent a killer amendment from occurring) were in fact classified *incorrectly* by the sincere, spatial voting model.

That the vote on final passage in February 1873 came out 111–75 in favor of the original bill, without even a debate, suggests that a political deal may have been struck. Still, it appears that we have found a real example of a killer amendment, the only plausible source of which was the necessity for legislators to vote in a way to maintain trust with constituents. Finally, and not least, the second issue injected into the resolution was race.<sup>12</sup>

Another example hardly confirms the conjecture that, as an empirical matter, all genuine examples of killer amendments involve race, but it does appear that the conjecture is a powerful one. We journey back to the year 1872 once again, but this time with a focus on the Senate rather than the House.

### *Amnesty for Confederate Combatants, 1872*

Between 1867 and 1875, a tumultuous campaign for federal legislation to abolish racial segregation in public places was waged within Congress. One of the chief targets of this civil rights reform movement was the nation's educational system, as reformers in Congress set out to create an integrated public school system (Kelly 1959; Vaughn 1974).

<sup>11</sup> Was there any additional strategic voting? Interestingly, four members (those who voted NNN, or profile #7) may have believed that the amendment was a "saving" amendment. If they opposed the bill, their sincere preference could plausibly have been to favor the amendment weakening the bill. But they opposed the amendment, perhaps believing that the revised version had a better chance of passing.

<sup>12</sup> Unfortunately for advocates of the College of William and Mary, the House bill was sent to the Senate and died in committee. The college did not receive the \$65,000 appropriation until March 3, 1893, during the final hours of the 52nd Congress.

The real causes behind the movement for “mixed schools” are hard to judge, in retrospect. In some ways, the movement was the result of strongly held beliefs by its leader, Senator Charles Sumner (R-MA), and a group of Radical Republicans intent on refashioning American society. Regardless, after the adoption of the 14th Amendment in 1868, it appeared likely that it was only a matter of time before fully integrated schools would be seen nationwide.

Of course, nothing could have been further from the truth. Sumner spent most of 1870 working to get a civil rights bill through Congress, but failed to muster much support (Donald 1970; McPherson 1965). Kelly (1959, 539) characterizes Sumner’s quixotic campaign this way:

Sumner’s leadership of the Radical crusade against segregated schools was at once its inspiration and a revelation of its political weakness. For the plain truth of the matter was that he was for the most part unable to command an effective majority of his Republican colleagues on any definitive vote. It is significant that virtually the only occasions in which Sumner found his cause sufficiently popular to command effective support . . . occurred when it happened to coincide with the momentary tactical or strategic interests of the Republican party.

Students of agenda manipulation know something about “momentary tactical or strategic interests.” Thus, we investigate whether subsequent events reveal whether such interests involved an attempt to use a killer amendment.

In April 1871, the House had passed, without debate or fanfare, H.R. 380, a general amnesty bill that was intended to remove the “disabilities” imposed by the 14th Amendment (*Congressional Globe*, 42-1, 561–62).<sup>13</sup> The amnesty bill’s success in the House was due in part to the growing moderate or “liberal” faction within the Republican party, whose members hoped to attract Southern whites and Northern Democrats for their reelection efforts (McPherson 1965). The Senate, however, was another matter, as the Radical Republicans vociferously opposed the idea of rehabilitating rebel officers and officials, but feared that they might not have the votes to defeat a coalition of Democrats and moderate Republicans.

Rising to the challenge, Sumner fashioned a plan. Instead of attacking the amnesty bill head on, he and the Radicals undertook a flanking maneuver by offering a civil rights bill as a *rider* to the general amnesty measure (Kelly 1959, 574–51). Sumner’s rider was simple and seemed very nearly to be implied by the 14th Amendment itself. The text of the rider proposed to prohibit discrimination, based on “race, color, or previous condition of servitude,” in most public facili-

<sup>13</sup> See especially Section 3 of the 14th Amendment: No person shall be a Senator or Representative in Congress, or an elector of President or Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House remove this disability.

ties in the states, including public transportation such as trolleys and trains, public accommodations such as inns and restaurants, and, of course, schools.

Sumner's ploy was quite controversial. The rider made amnesty supporters irate because it threatened to make the original amnesty bill, which required a two-thirds majority for passage under the 14th Amendment, so distasteful that many Democrats and moderate Republicans would vote against it (Kelly 1959, 574). Moreover, the killer nature of Sumner's rider was not lost on the membership, as indicated by Senator Lyman Trumbell (R-IL), a moderate Republican and friend of Sumner's who believed that a general amnesty measure could be delayed no longer: "I hope the amendment will be voted down . . . because I think it is offered here, or the effect of its being offered here, is to defeat amnesty" (*Congressional Globe*, 42-2, 896).

The arguments made by the Radicals suggest that they believed that they would lose on the general amnesty bill if voted on by itself, but hoped either to defeat the bill by attaching the rider or to humiliate the Democrats by forcing them to accept integration in the South. The following statement, made by Senator James W. Nye (R-NV) on January 22, 1872, reveals the Radicals' depth of feelings and motivations:

If I had outraged the laws and Constitution of my land, if I had attempted to tear down the very temple of liberty here, and now, professing to be its friend, have not sorrow and regret enough in my heart for my bloody deeds to ask pardon, I do not deserve to be forgiven. So I take it that these friends who want to get immediately to a position to hold office had better conclude to let a Negro ride in the cars with them. . . . (*Congressional Globe*, 42-2, 495)

After several weeks of contentious debate, the stage was set for a showdown. On February 9, 1872, voting on the Sumner Amendment commenced, and when the dust finally cleared it passed by the slimmest of margins: with Republicans voting 28–17 and Democrats voting 0–11, a 28–28 tie was broken by Republican Vice President Schuyler Colfax, who cast his vote in favor of passage. The amended amnesty bill, with the "noxious" Sumner rider now firmly attached, was then defeated 33–19, two votes short of the two-thirds constitutional requirement (*Congressional Globe*, 42-2, 919, 928). In early May, precisely the same scenario occurred again. The House passed a new general amnesty bill, and Sumner once again proposed his rider. For a second time, the Senate vote resulted in a 28–28 tie, with Vice President Colfax breaking the tie in favor of the amendment. Finally, as before, the amended bill went down to defeat, this time by an even worse 32–22 margin (*Congressional Globe*, 42-2, 3268, 3270).

Shortly after the second failed amnesty bill, the moderate element within the Republican Party revolted and threatened to form a new party. Their first effort to that end was to hold their own national convention in Cincinnati, where they nominated Horace Greeley for president on a platform calling for the "immediate and absolute removal of all disabilities imposed on account of the rebellion" (McPherson 1965, 502). Fearful of the Liberal Republican threat and the potential public backlash on the amnesty issue, Radical leaders struck a deal with Senate Democrats in an all-night session on May 21, 1872. The civil rights rider

would be removed from the general amnesty bill in exchange for the Democrats' support of an "emasculated" civil rights bill, shorn of the mixed schools and juries clauses (Kelly 1959, 550–51). This bargain would allow the Radicals to have their cake and eat it too: passing the amnesty bill would take the wind out of the Liberal Republicans' sails, while passing a civil rights bill, albeit a watered-down version, would serve as a concession to Negro voters.

The following day, amnesty and civil rights again came to a vote. Much to Sumner's chagrin and protestations, the emasculated civil rights bill passed 27–14, the original Sumner Amendment was crushed 13–29, and the general amnesty bill easily secured the required two-thirds majority, on a 39–2 vote (*Congressional Globe*, 42-2, 3736–38).

The political events of late May 1872 notwithstanding, the question remains: was Sumner's amendment a killer, even in the narrow strategic setting of early May? To investigate, we can reprise the analysis of preference profiles inferred from voting patterns on the Sumner Amendment and the amended amnesty bill.<sup>14</sup>

The potential sequences of votes fall into four possible categories, as depicted in Table 3. We expect profiles #1 and #2 to include the bulk of the Republican party. If Sumner's rider was truly a killer, we should expect a majority of *both* Liberal and Radical Republicans to support the rider as well as the amended amnesty bill, represented by profile #1. This pattern would be evidence of sincere voting. If any moderate Republicans tried to vote sophisticatedly, by first voting against the rider and then voting for the amended bill, they should show up in profile #2. We expect Democrats, who disdained the thought of "race mixing" in public places, to oppose both the rider and the amended bill and thus to vote sincerely in each case, represented by profile #3. Profile #4 could also indicate sophisticated voting, but in a different sense: voting for the rider simply as a way of killing the amnesty bill.

To determine whether the bill was truly a killer, we look at Table 4, which gives the breakdown of votes paired with the ideological score on the first D-NOMINATE dimension. The voting is consistent with the rider having been a killer amendment, as most of the members who voted for the rider also voted for the amended bill against the status quo. (The bill did not pass, of course, because of the special constitutional requirement of a two-thirds majority.) The breakdown suggests that Liberal Republicans (here, on the right of the scale between .01 and .40) saw the danger in supporting the rider but voted for it on principle rather than be forced to explain their "negative" vote to constituents. And, of course, Radical Republicans supported both measures, while Democrats opposed both. There are some signs of sophisticated voting: four moderates who opposed the

<sup>14</sup> Following our William and Mary analysis, we could include the May 21 vote on general amnesty as a *third* vote to measure members' preferences on the "original bill vs. the status quo." However, the May 21 bill was significantly watered down (or "emasculated") and thus was not identical to the original bill. In addition, because that vote was so lopsided (39–2), no additional leverage would be gained from including it, and, in fact, leverage would be lost because members who voted on the first two bills but abstained on the third would be thrown out.

TABLE 3

Possible Preference Profiles on Sumner Rider and Amnesty Resolution

Profile	Amended Bill vs. Original Bill	Amended Bill vs. No Bill
1	Yes	Yes
2	No	Yes
3	No	No
4	Yes	No

*Profile #1:* Favor both the rider and amended amnesty bill. Evidence of sincere voting. Indicative of general Republican position.

*Profile #2:* Oppose rider, but support amended amnesty bill. Evidence of sophisticated voting. Indicative of position held by some moderate Republicans.

*Profile #3:* Oppose both rider and amended amnesty bill. Evidence of sincere voting. Indicative of Democratic position.

*Profile #4:* Favor rider, but oppose amended bill. Evidence of sophisticated voting. Indicative of general opposition to amnesty.

TABLE 4

Senate Votes on Sumner Rider and Final Passage of H.R. 380

# of Votes	D-NOMINATE First-Dimension Scores (Scaled from -1 to 1)							Totals
	-1.00 to -.80	-.79 to -.60	-.59 to -.20	-.19 to 0	.01 to .20	.21 to .40	.41 to .60	
#YY	0	0	0	1	3	5	17	26
#NY	0	0	0	1	3	0	0	4
#NN	1	8	4	1	1	2	1	18
#YN	0	0	0	0	0	1	0	1
Totals	1	8	4	3	7	8	18	49

*Note:* Vote order is Sumner Amendment, then Final passage on amended amnesty bill (e.g., YN is “yes” on Sumner, and “no” on final passage). Only members who participated on *both* votes are included.

rider also voted for the amended bill. However, this group of four fell just short of short-circuiting Sumner’s maneuver. If they could have recruited a fifth, their (presumed) ploy would have been successful.

To support our results, we again turn to a spatial voting analysis to examine how well a sincere, spatial voting model fits the underlying vote choices on the Sumner amendment. Using VOTEVUEW to examine the balloting, we find that a sincere, spatial voting model correctly classifies 46 of the 58 votes cast (79.3%) and yields a PRE of .571, evidence that an assumption of sincere voting fits the underlying distribution of vote choices well. Furthermore, most of the classifi-

cation errors were moderate Republicans who fell near the cutting line, indicating (at least spatially) that they could have gone either way on the vote. Thus, while not approximating the fit from the William and Mary analysis, these classification results do indicate that a vast majority of legislators voted sincerely on the Sumner rider, supporting our previous assessment that the necessary condition for a killer amendment (i.e., sincere rather than sophisticated types) was in place.

Finally, why did Sumner's third rider attempt fail? As we detailed previously, after the passage of the emasculated civil rights bill, Sumner tried to block passage of general amnesty by reintroducing his rider. Yet, the third time was not the charm: the rider went down to defeat 13–29. Is there evidence that strategic action in the form of sophisticated voting killed the rider, as historians contend? Yes, but that is not the whole story. First, of the 28 members who supported Sumner on the prior vote, only 9 reaffirmed their support. Of the remaining 19 former supporters, 5 changed their vote and opposed Sumner (consistent with sophisticated voting), while 14 others simply failed to participate, perhaps suggesting a different form of strategic action—*strategic abstention*.

Lending credence to the strategic abstention hypothesis, an examination of the congressional record indicates that each of the 14 abstainers participated on at least one other roll-call vote that *same* day. Finally, a spatial voting analysis supports the contention that a fair amount of sophisticated voting may have been taking place *generally*. While a sincere, spatial model correctly classifies 31 of the 42 individual vote choices (73.8%), the PRE is only .154, suggesting an assumption of sincere voting does not fit the observed results terribly well.

## Discussion

This article is by no means the first or the most comprehensive treatment of killer amendments. What we have done is to suggest that the key to successful killers is the political context. Killer amendments can only succeed if there are failures of expectations or failures of trust, and we contend that successful killers are much more likely to result from the latter rather than the former. Stated another way, the ability of a legislator to explain a sophisticated vote to his constituents, that is, to maintain trust, is the single most important determinant of a killer amendment's success.

Under what conditions will a failure of trust occur? We have claimed that there are three features of issues generally that make a failure of trust possible. First, an issue must be *cross-cutting*, that is, the majority party must be divided, in order for a killer amendment to make it onto the legislative agenda. Second, an issue must be especially *salient* to make a legislator wary of voting sophisticatedly. Finally, an issue must be *easy*, in the sense that voter reaction is immediate and visceral, rather than reasoned. For easy issues, there is little occasion for a legislator to offer, or to be asked for, an explanation.

This brings us to an interesting observation by Poole and Rosenthal (1997), who note that there have been several instances in U.S. Congressional history

where killer amendments have succeeded, and *all* have involved the issue of race. We offer two new examples of killer amendments in this paper, and in *both*, race is the central feature of the amendment vote. This is not proof that race, as a highly salient, cross-cutting, and easy issue, has been *unique* across American history in producing successful killer amendments: nonetheless, the empirical evidence is compelling.

The key point about sophisticated voting and race *in a spatial context* is this: race has been the general solution to the problem of choosing a second issue (i.e., a second *dimension*) that as Kelly (1959) states, “happens to coincide with the momentary tactical or strategic interests” of a powerful coalition. That killer amendment advocates have used race as a second dimension *as a matter of strategy* links Poole and Rosenthal’s observation closely to Riker’s (1982, 1986, 1990) notion of “heresthetics.”

Yet, there is reason to believe that the strategic use of race to produce successful killers is an outdated phenomenon. While race traditionally has been the second major dimension of political conflict throughout American history (after general economic issues), this is no longer true in the contemporary era. According to McCarty, Poole, and Rosenthal (1997, 43), since the mid-1970s, “race has been drawn into the first dimension because race-related issues have become increasingly redistributive—welfare, food stamps, affirmative action, and so on.” This issue convergence has produced a polarization in partisan politics as white Democrats in the South have been replaced by black Democrats and white Republicans. During that same period, no new issue has emerged to replace race as a viable second dimension. Thus, voting in Congress has become *strictly* unidimensional, with the general left-right ideological dimension also representing a distinct partisan dimension.

Given the absence of a viable second dimension in contemporary American politics, it is not surprising that Wilkerson (1999), in his thorough examination of the 103rd and 104th Congresses, finds *no* instances of successful killer amendments. It is quite possible, though we can offer it as no more than a preliminary conjecture, that our set of three joint issue conditions (salient, cross-cutting, easy) will rarely be satisfied. Nevertheless, until a new issue emerges with all three characteristics (or race once again becomes distinct from economic issues), students of Congressional politics in search of successful killer amendments must turn their attention to a study of the past. By suggesting a particular political context for the emergence of a killer amendment, we believe we have provided those students with a key to discovery.

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Jeffery A. Jenkins is assistant professor of political science, Northwestern University, Evanston, IL 60208.

Michael C. Munger is professor and chair of political science, Duke University, Durham, NC 27708-0204.