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How Jon Stewart and Lady Gaga Made Congress Less Lame: The Impact of Social Media on the Passage of Bills Through the “Lame Duck” Session of the 111th Congress and Beyond

ONIKA K. WILLIAMS^{*}

During the most recent lame duck session of Congress,¹ the media engagingly reported on how energized the legislative branch of the U.S. Government had suddenly become.² While this active period for Congress was likely the result of impending changes to the makeup of the legislature,³ social media⁴ appeared to have also played a large role in the passage of several lame duck bills. Two examples of bills passed during the lame duck session and influenced by social media are the James Zadroga 9/11 Health Compensation Act (“9/11 Health Act”)⁵ and the repeal of Don’t Ask, Don’t Tell (“DADT”).⁶

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1. A “lame duck” session of Congress occurs “[w]hen Congress (or either chamber) reconvenes in an even-numbered year following the November general elections to consider various items of business. Some lawmakers who return for this session will not be in the next Congress. Hence, they are informally called ‘lame duck’ Members participating in a ‘lame duck’ session.” *Glossary*, U.S. SENATE, http://www.senate.gov/reference/glossary_term/lame_duck_session.htm.

2. See, e.g., Laurie Kellman, *‘Lame Duck’ Congress Morphed into Energizer Bunny*, MSNBC.COM (Dec. 23, 2010), http://www.msnbc.msn.com/id/40793583/ns/politics-capitol_hill/#.TILIVXO4KjU.

3. See Katie Connolly, *Six Things You Need to Know About the New Congress*, BBC NEWS (Jan. 5, 2011), <http://www.bbc.co.uk/news/world-us-canada-12116209>; see also *Republicans Take Over House with Agenda to Undo Spending, Health Care*, FOXNEWS.COM (Jan. 5, 2011), <http://www.foxnews.com/politics/2011/01/05/gop-house-takeover-sets-stage-fight-obama/> (“At noon, the first session of the new Republican-led Congress begins.”).

4. Social media has been defined as “a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of User Generated Content.” Andreas M. Kaplan & Michael Haenlein, *Users of the World, Unite! The Challenges and Opportunities of Social Media*, 53 BUS. HORIZONS 59, 61 (2010).

5. James Zadroga 9/11 Health and Compensation Act 2010, Pub. L. No. 111-347, 124 Stat. 3623 (2011).

6. Don’t Ask, Don’t Tell Repeal Act of 2010, sec. 2, § 654, 124 Stat. 3515.

I. 9/11 HEALTH ACT

The 9/11 Health Act lingered within the legislature for several years “and looked nearly dead, until comedian Jon Stewart nudged it over the finished line.”⁷ For his last show of the 2010 season, *The Daily Show with Jon Stewart* devoted an entire half-hour to Congress’s passing of the 9/11 Health Act.⁸ The purpose of the 9/11 Health Act is to provide health coverage to workers who gave aid during and after the 9/11 attacks and to reopen the Federal Victim Compensation Fund, which grants economic relief to those harmed in the attacks.⁹ On December 9, 2010, before the taping and airing of Stewart’s show, a fifty-seven to forty-two procedural vote fell short of the required sixty votes needed to advance major legislation in the 100-member Senate.¹⁰

On December 16, 2010, Jon Stewart’s 9/11-based show had two apparent foci: the Republican Party and news networks.¹¹ Stewart ridiculed the Republican Party after several of its members attempted to block the bill.¹² Although the House of Representatives passed the 9/11 Health Act in September 2010, during the lame duck session, Senate Republicans vowed to block any legislation, other than bills to fund the U.S. government, until an impasse was resolved over extending expiring tax cuts for virtually all taxpayers, including the wealthiest Americans.¹³ Republicans contended that allowing tax cuts to expire would harm small businesses and the economy.¹⁴

7. Ari Shapiro, *Jon Stewart’s Latest Act: Sept. 11 Responders Bill*, NPR (Dec. 26, 2010), <http://www.npr.org/2010/12/26/132310870/jon-stewarts-latest-act-sept-11-responders-bill>.

8. *The Daily Show with Jon Stewart: 9/11 First Responders React to Senate Filibuster* (Comedy Central television broadcast Dec. 16, 2010), available at <http://www.thedailyshow.com/watch/thu-december-16-2010/9-11-first-responders-react-to-the-senate-filibuster>. On this episode, “9/11 first responders express their thoughts on Mitch McConnell’s tearful sendoff of a retiring friend and Jon Kyl’s reasons for why the Senate can’t work after Christmas.” *Id.*

9. 9/11 Health Act, sec. 101, sec. 3301(a), 124 Stat. 3623, 3624.

10. *Senate Republicans Block 9/11 Health Bill*, REUTERS (Dec. 9, 2010, 8:33 PM), <http://www.reuters.com/article/2010/12/10/us-usa-congress-firefighters-idUSTRE6B903120101210> [hereinafter *Block*].

11. Bill Carter & Brian Stelter, *In ‘Daily Show’ Role on 9/11 Bill, Echoes of Murrow*, N.Y. TIMES, Dec. 26, 2010, at B1.

12. *Id.*

13. *Block*, *supra* note 10.

14. *See GOP Lawmakers Take Tough Stand on Bush Tax Cuts*, FOXNEWS.COM (Nov. 13, 2010), <http://www.foxnews.com/us/2010/11/13/gop-lawmakers-tough-stand-bush-tax-cuts/>. Before he became Speaker of the House, John Boehner stated that “extending all of the current tax rates and making them permanent will reduce the uncertainty in America and help small business to create jobs again You can’t invest when you don’t know what the rules are.” *Id.* On December 17, 2010, President Obama signed into law a tax bill that will extend Bush-era tax cuts for two more years. *See* Lori Montgomery, Shailagh Murray & William Branigin, *Obama Signs Bill to Extend Bush-Era Tax Cuts for Two More Years*, WASH. POST (Dec. 17, 2010, 5:05 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/16/AR2010121606200.html>.

Stewart also mocked broadcasting networks, which, Stewart charged, had not reported on the progress of the 9/11 Health Act for more than two months.¹⁵ Stewart accused network newscasts of covering the music catalog deal between the Beatles and Apple Inc. more than the progress of the 9/11 Health Act.¹⁶

Before Stewart's show on the topic and during the waning lame duck session, supporters of the 9/11 Health Act seemed to turn to social media to rally support for the bill. For instance, Mayor Michael Bloomberg "tweeted"¹⁷ the following on Twitter after the failed senate procedural vote: "Today's failed vote on the 9/11 Health & Compensation Act is a tragic example of partisan politics trumping patriotism <http://bit.ly/hVDyKt>."¹⁸ New York Senator Kristen Gillibrand also utilized social media to voice her views on the 9/11 Health Act before the procedural Senate vote: "We now have an undeniable moral obligation to take care of the innocent victims & heroes of 9/11 and provide them w/the care they need."¹⁹ After the bill failed to muster enough procedural votes to advance in the Senate, Senator Gillibrand later tweeted, "The idea that tax cuts for millionaires would derail the 9/11 health bill is outrageous & offensive."²⁰ She went on to tweet, "Our brave 1st responders did not delay on 9/11 & the Senate should not have delayed today, certainly not to give tax breaks to millionaires."²¹

Following the airing of Stewart's December 16 show, on December 22, 2010, the Senate passed the 9/11 Health Act,²² several individuals credited Stewart with the successful passing of the bill.²³ New York Mayor Michael Bloomberg thanked Senator Gillibrand, Senator Schumer, and Jon Stewart in a tweet after the bill finally made its way through the Senate.²⁴ Then-White-House-spokesman Robert

15. Carter & Stelter, *supra* note 11.

16. *Id.*; see, e.g., Ki Mae Heussner, *Beatles Music, Finally, Comes to Apple's iTunes*, ABC NEWS (Nov. 16, 2010), <http://abcnews.go.com/Technology/beatles-collection-apples-itunes/story?id=12159891>.

17. To "tweet" is to post a message that is up to 140 characters on the social networking site Twitter. For the purposes of this Article, "to tweet" is a verb and a "tweet" is a noun.

18. Michael Bloomberg, TWITTER (Dec. 9, 2010), <http://twitter.com/#!/MikeBloomberg/status/12933954290065410>. The link in Bloomberg's tweet leads to a longer statement on the matter. *On the US Senate Failure to Pass the 9/11 Health and Compensation Act*, MIKEBLOOMBERG.COM (Dec. 9, 2010), <http://www.mikebloomberg.com/index.cfm?objectid=CC40FA78-C29C-7CA2-F4CD8AC1D1C96A44>.

19. Kristen Gillibrand, TWITTER (Dec 7, 2010), <http://twitter.com/#!/SenGillibrand/status/12171146266943488>.

20. Kristen Gillibrand, TWITTER (Dec. 9, 2010), <http://twitter.com/#!/SenGillibrand/status/12963792006684672>.

21. Kristen Gillibrand, TWITTER (Dec. 9, 2010), <http://twitter.com/#!/SenGillibrand/status/12964066326740992>.

22. Jonathan Karl & Matthew Jaffe, *EXCLUSIVE: Senate Strikes Deal on 9/11 First Responders Bill*, ABC NEWS (Dec. 22, 2010), <http://abcnews.go.com/Politics/exclusive-senate-strikes-deal-911-responders-bill/story?id=12459170>.

23. Carter & Stelter, *supra* note 11. New York City Mayor Michael R. Bloomberg wrote the following in an email: "Success always has a thousand fathers But Jon shining such a big, bright spotlight on Washington's potentially tragic failure to put aside differences and get this done for America was, without a doubt, one of the biggest factors that led to the final agreement." *Id.* (internal quotation marks omitted).

24. Shapiro, *supra* note 7.

Gibbs also took notice of Stewart's impact and concluded that Stewart "put the awareness around this legislation."²⁵

While Jon Stewart may have his own reservations about the use and purpose of Twitter,²⁶ Stewart eventually brought light to a cause that had essentially "tweeted" its way to the attention of the American people when traditional media, such as television and newspaper, seemingly overlooked the issue. On January 2, 2011, President Barack Obama signed the 9/11 Health Act into law after the lame duck Senate passed the bill.²⁷

II. REPEAL DADT

Jon Stewart was not the only celebrity who influenced Congress's lame duck session; Lady Gaga also played a role in making the session a little less lame. Lady Gaga poked her face²⁸ into the DADT debate before the issue even became a lame duck agenda item, using social media along the way to spread her message of repeal.

DADT was a congressional prohibition of openly gay people serving within the ranks of the military.²⁹ Lady Gaga initially shined her celebrity light on the repeal of DADT when she brought several discharged openly gay service members as her guests³⁰ to the 2010 Music Television (MTV) Video Music Awards (VMA).³¹ Gaga tweeted about her VMA appearance and guests: "Silks, fabrics, shoes +

25. *Id.*

26. *The Daily Show with Jon Stewart: Twitter Frenzy* (Comedy Central television broadcast Mar. 2, 2009), available at <http://www.thedailyshow.com/watch/mon-march-2-2009/twitter-frenzy>. On the segment, "Stewart raised concerns that this trend further frays our already small attention spans, and admitted that he 'has no f**king idea how Twitter works . . .'" Alex Leo, 'The Daily Show' Takes on Twitter (VIDEO), HUFFINGTON POST (Apr. 3, 2009, 5:12 AM), http://www.huffingtonpost.com/2009/03/03/the-daily-show-takes-on-t_n_171333.html.

27. Ed Henry, *Obama Signs 9/11 Health Bill*, CNN (Jan. 2, 2011, 11:45 PM), <http://edition.cnn.com/2011/POLITICS/01/02/obama.9.11.bill/?hpt=T2>.

28. LZ Granderson, *Lady Gaga Not Nearly As Powerful As Politics*, CNN (Sept. 21, 2010, 2:36 PM), <http://edition.cnn.com/2010/OPINION/09/21/granderson.gaga.dadt/index.html?iref=allsearch> ("Not even Lady Gaga, who poked her face into the 'don't ask, don't tell' debate with a rally appearance in Maine and tweets addressing Sens. Harry Reid and Sen. John McCain [sic], could stop the ongoing theme in the Senate—partisanship.").

29. Policy on Homosexuality in the Armed Forces, 10 U.S.C. § 654 (2006).

30. Gaga's guests were "former U.S. Air Force Staff Sgt. David Hall, former Air Force Major Mike Almy, and former U.S. Army Sgt. First Class Stacy Vasquez, who were discharged under the policy, and former West Point cadet Katie Miller, who resigned [in August 2010] in protest of the policy." Ed O'Keefe, *Lady Gaga at VMAs Call for Repeal of 'Don't Ask, Don't Tell', in Federal Eye*, WASH. POST (Sept. 12, 2010, 10:18 PM), http://voices.washingtonpost.com/federal-eye/2010/09/lady_gaga_at_vmas_calls_for_do.html.

31. James Montgomery, *Lady Gaga's VMA Interview*, MTV.COM (Sept. 14, 2010), http://www.mtv.com/news/articles/1647828/20100914/lady_gaga.jhtml. At the Music Awards, Gaga revealed the reason why she chose to bring discharged soldiers with her to the event: "These soldiers that are with [me] today have all been discharged from the Air Force or Army, or opted to leave on their own . . . Their stories are truly inspiring, and in my opinion—and as so many young people around the world believe—'don't ask, don't tell' is wrong, it's sick, it's immoral." *Id.*

jewels, fashion dreams + breaking rules. Real heroes on my arm, tonight, is for us monsters, and our fight. X.”³² Gaga also posted pictures of the event and links to her VMA interviews on her Facebook page.³³

Declaring that “[e]quality is the prime rib of America,”³⁴ the pop star addressed a rally of approximately two thousand people in Portland, Maine, on the subject days after her VMA appearance.³⁵ Gaga used social media sites, such as Facebook, to invite her fans to the event.³⁶ Shouting to the crowd of rally goers, “[i]f you are not honorable enough to fight without prejudice, go home,” Gaga urged Maine’s U.S. Senators to join Democrats in halting a Republican-led filibuster of a defense authorization bill that would repeal DADT.³⁷

On September 21, 2010, despite Gaga’s high-profile pleas of repeal, Democratic Senators failed to garner the required sixty votes that would bring the repeal bill to the floor.³⁸ Lady Gaga used social media to address those who did not vote in favor of the repeal. Gaga retreated to Twitter and Facebook to tell Senator John McCain the following: “@senjohnmccain the language in defense bill says it will not enforce DADT repeal until pentagon review + president signs. Why block debate?”³⁹ In true social media style, Gaga also released several viral videos⁴⁰ urging her fans to get involved in the cause.⁴¹ In one video, Gaga urged her “Little Monsters”⁴² to support the Servicemembers Legal Defense Network⁴³ in an effort to repeal the law.⁴⁴

32. Lady Gaga, TWITTER (Sept. 12, 2010), <https://twitter.com/#!/ladygaga/status/24313868608>.

33. Lady Gaga, FACEBOOK (Sept. 13, 2010, 10:15 AM) <http://www.facebook.com/ladygaga/posts/126190134097716> (“After the VMAs last night, Lady Gaga paid a visit to Ellen to discuss the awards, repealing ‘Don’t Ask, Don’t Tell,’ and her now famous meat dress! Check out the interview at the link below!”).

34. *Lady Gaga Rallies for ‘Don’t Ask, Don’t Tell’ Repeal in Maine*, CNN (Sept. 21, 2010, 2:18 PM), <http://edition.cnn.com/2010/SHOWBIZ/Music/09/20/gaga.gays.military/index.html?hpt=C2> [hereinafter *Gaga Rallies*].

35. *Lady Gaga Gets Heads Up from Reid on DADT Repeal*, MSNBC.COM (Dec. 18, 2010, 9:57 PM), http://www.msnbc.msn.com/id/40733618/ns/politics-capitol_hill/.

36. Lady Gaga, FACEBOOK (Sept. 19, 2010, 7:39 PM), <http://www.facebook.com/?ref=logo#!/ladygaga> (“Meet me in Portland, Maine 2moro, 9/20 to help repeal #DADT. I’m holding a Rally + speaking live in Deering Oaks Park . . .”).

37. *Gaga Rallies*, *supra* note 33.

38. Granderson, *supra* note 28.

39. Lady Gaga, TWITTER (Sept. 21, 2010), <http://twitter.com/#!/ladygaga/statuses/25141849362>; *see also* Lady Gaga, FACEBOOK (Sept. 21, 2010, 10:00 PM), <http://www.facebook.com/ladygaga/posts/162257903789421>.

40. A “viral video” is a video that becomes popular through the process of internet sharing. *See* Mitchell Reichgut, *Social Video and Sharing: What to Expect*, MEDIAPOSTBLOG (Feb. 2, 2011, 5:03 PM) <http://www.mediapost.com/publications/article/144200/>.

41. James Withers, *Withers: Lady Gaga Releases Anti-DADT Video*, 365GAY AGENDA BLOG (Nov. 30, 2010, 9:01 AM), *originally posted at* <http://www.365gay.com/blog/113010-lady-gaga-releases-anti-dadt-video/>, *available at* <http://www.gaylgbt.com/blog/gay-news/365-gay-news/2010/11/withers-lady-gaga-releases-anti-dadt-video/>; *see also* Ladygagaofficial, *A Message from Lady Gaga to the Senate Sept 16 2010*, YOUTUBE (Sept. 17, 2010), <http://www.youtube.com/watch?v=GG5VK2lquEc&feature=channel>.

42. Lady Gaga refers to her fans as “Little Monsters.” *See* Ladygagaofficial, *Lady Gaga Thanks All Her Little Monsters on Facebook!*, YOUTUBE (July 2, 2010),

On December 18, 2010, the Senate voted sixty-five to thirty-one to give final congressional approval to the repeal of the seventeen-year-old military ban.⁴⁵ Gaga once again used social media as a canvas to express herself. Lady Gaga tweeted, “Can’t hold back the tears+pride. We did it! Our voice was heard + today the Senate REPEALED DADT. A triumph for equality after 17 YEARS.”⁴⁶ Senate majority leader, Harry Reid, tweeted a word of gratitude to Lady Gaga after DADT was repealed by the Senate: “@ladygaga We did it! #DADT is a thing of the past.”⁴⁷ In celebration of the repeal of DADT, President Obama provided a link to a YouTube video⁴⁸ on Twitter showing him signing the repeal of the ban.⁴⁹

III. FORESHADOWING

While the impact of social media on the lame duck session of the 111th Congress was unprecedented, the impact of social media has electronically engulfed the 112th Congress, and it appears as though its influence will only continue to grow. Issues like the national healthcare law, entitlement programs, new limits on emissions of greenhouse gases from oil refineries and power plants, and other legislation are all on the agenda of the 112th Congress.⁵⁰ The newest Speaker of the House, John Boehner,⁵¹ used social media sites, such as YouTube⁵² and Twitter,⁵³ to express his ideas and leadership plans for the new Congress. For

<http://www.youtube.com/watch?v=Bu7NqI0hP9M&feature=channel>.

43. “Servicemembers Legal Defense Network is a non-partisan, non-profit, legal services, watchdog and policy organization dedicated to ending discrimination against harassment of military personnel affected by ‘Don’t Ask, Don’t Tell’ (DADT).” *About the Servicemembers Legal Defense Network*, SLDN, <http://www.sldn.org/pages/about-sldn>.

44. Ladygagaofficial, *Repeal DADT Message from Gaga*, YOUTUBE (Nov. 29, 2010), <http://www.youtube.com/watch?v=McEbjPuLUIw>.

45. *Senate Votes to Repeal Ban on Gays Openly Serving in Military*, CNN (Dec. 18, 2010), http://articles.cnn.com/2010-12-18/politics/senate.dadt_1_service-members-senate-votes-repeal-ban?_s=PM:POLITICS. Eight Republicans and Independent Joe Lieberman of Connecticut joined the Senate Democrats in repealing the ban. *Id.*

46. Lady Gaga, TWITTER (Dec. 18, 2010), <https://twitter.com/#!/ladygaga/status/16228195292413952>.

47. Senator Harry Reid, TWITTER (Dec. 18, 2010) <http://twitter.com/#!/senatorreid/status/16229409887363073>. On Twitter, a “#” followed by a word or phrase creates a “trending topic” on the website. The website shows users which topics are the most popular trending topics at the moment.

48. Whitehouse, *President Obama Signs Repeal of Don’t Ask, Don’t Tell*, YOUTUBE (Dec. 22, 2010), <http://www.youtube.com/watch?v=cS26CciE0VQ>.

49. Barack Obama, TWITTER (Dec. 23, 2010), <http://twitter.com/#!/BarackObama/status/18022920076918784>.

50. Jennifer Steinhauer & Robert Pear, *G.O.P. Newcomers Set Out to Undo Obama Victories*, N.Y. TIMES, Jan. 3, 2011, at A1.

51. Lisa Lerer & James Rowley, *Boehner Is Elected House Speaker as Republicans Assume Majority in Chamber*, BLOOMBERG (Jan. 5, 2011, 5:37 PM), <http://www.bloomberg.com/news/2011-01-05/speaker-boehner-vows-to-break-gridlock-give-government-back-to-people-.html>.

52. John Boehner, *GOP Leader Boehner Floor Speech Opposing Democrats’ Trillion-Dollar Spending Bill*, YOUTUBE (Feb. 13, 2009), <http://www.youtube.com/watch?v=CvnnwOjDjnH4>.

53. John Boehner, TWITTER (Jan. 5, 2010), <http://twitter.com/#!/johnboehner/status/22664278909657089>.

example, Boehner tweeted on the opening day of the 112th Congress that “[w]e must end DC rituals that have made it easy to dodge tough decisions, then make the choices necessary to return our economy to prosperity.”⁵⁴

Congress and social media appear to be an inevitable couple. Constituents across the country elect representatives and send them to Washington, D.C. to represent their local interests. Social media allows the everyday individual to electronically create their own bully pulpit-like platform to interact with other users. Thus, social media has become an innovative way for elected representatives to interact with the public. The power that social media has given constituents cannot be overstated. This sentiment has become evident in the first months of the 112th Congress.

IV. GOVTSHTUTDOWN

On Friday, April 8, 2011, the time on countdown clocks on every cable news channel seemed to rapidly disappear and memos classifying federal employees as “essential” and “nonessential” urgently filled email inboxes.⁵⁵ However, this potential federal government shutdown had a different feel than shutdowns of the federal government’s past: status updates and hashtags instantly provided social media users with up-to-date information, opinions, and concerns.

Social media users retreated to the internet to express their feelings about the looming federal government shutdown. Using hashtags such as #governmentshutdown and #ifgovernmentshutdown, so many users were tweeting about the potential shutdown that the Twitter administrators created an information page entitled “10 Twitter Feeds Tweeting About the Government Shutdown.”⁵⁶ Twitter featured the following ten feeds: Govt_shutdown, “sponsored by the National Journal”; GovTwit, host of the world’s largest list of government agencies and elected officials on Twitter; NPRPolitics, the news service’s Twitter page; Tweetbeat, which kept track of what tweeters were tweeting about the government shutdown; ryanjreilly, perspectives on the debate between the White House and Congress over the budget; Barackobama, the President’s Twitter page;

54. *Id.*

55. In the wake of the potential government shutdown, federal employees discovered if they would be furloughed. See Steven Thomma, *Who Stays on Job in Federal Government Shutdown?—A Shutdown of the Federal Government Doesn’t Mean All Federal Employees Won’t Be on the Job*, MIAMI HERALD, Apr. 6, 2011 (“Roughly 800,000 federal employees would be furloughed, including many civilian workers in the Defense Department, much of the White House staff, and at least some of Congress’s staff. National parks would close. Hand-mailed tax returns would go unopened.”).

56. *10 Twitter Feeds Tweeting About the Government Shutdown*, TWEETING, <http://tweeting.com/10-twitter-feeds-tweeting-about-the-government-shutdown>. The description of the information page reads:

With the U.S. government shutdown looming ever so closer to the Friday Midnight deadline Twitter is again the place to find tweets from a variety of sources including top tweeting feeds from agencies and official government Twitter accounts. I put together a list of 10 important links to Twitter related sites and direct feeds tweeting about the potential crisis.

Id.

Washingtonpost, the newspaper's Twitter page; IRSnews, the Internal Revenue Service's Twitter page; Whitehouse, the White House's official Twitter page; and GovtTwitterfeeds, a list of government Twitter feeds that actively tweet.⁵⁷

Anger about a possible government shutdown hit a high note when social media users discovered that a shutdown would affect military pay.⁵⁸ The Department of Defense warned that if the government were to shut down for an extended period of time, troops—including those fighting in Afghanistan and Iraq—would not be paid on time.⁵⁹ In addition, the Pentagon revealed that it would not pay the \$100,000 death benefit to the families of military members killed in the line of duty if the government was to shutdown; the families would have to wait until the government reopened to receive the funds.⁶⁰

Social media users turned their concerns over military pay into an online movement.⁶¹ Multiple Facebook groups were created advocating for help for military families during the possible shutdown.⁶² One group, Ensuring Pay for Our Military Act of 2011, declared that “[i]t is time for our generation to stand up and let this government know that regardless of our party affiliations there are things that are UNACCEPTABLE to us as Americans.”⁶³ The group requested that members contact their congressional representatives to urge them to pass the Ensuring Pay for Military Act of 2011; the bill would guarantee that military pay would go uninterrupted, even in the event of a government shutdown.⁶⁴

Before the federal government was forced to turn out its proverbial—and literal—lights, congressional leaders were able to agree on an eleventh hour compromise that would keep the federal government funded for the rest of the fiscal year.⁶⁵

V. #NOTINTENDEDTOBEAFACTUALSTATEMENT

While there may be room for debate on social media's impact on the outcome of the government shutdown, there is no doubt social media propelled certain

57. *Id.*

58. Chris Lawrence, *Pentagon: Government Shutdown Threatens Military Families*, CNN (April 4, 2011), http://articles.cnn.com/2011-04-04/politics/government.shutdown.military_1_government-shutdown-military-families-budget-impasse?_s=PM:POLITICS.

59. *Id.*

60. Brian Montopoli, *Military Won't Pay Death Benefits During Government Shutdown*, in *Political Hotsheet*, CBSNEWS (April 8, 2011, 4:54 PM), http://www.cbsnews.com/8301-503544_162-20052252-503544.html.

61. Ed Hornick, *Angry Military Supporters Take Movement to Facebook*, in *Political Ticker*, CNN (April 8, 2011, 11:01 AM) <http://politicalticker.blogs.cnn.com/2011/04/08/angry-military-supporters-take-movement-to-facebook/>.

62. *See, e.g., Ensuring Pay for Our Military Act of 2011*, FACEBOOK, https://www.facebook.com/event.php?eid=208173649210797&ref=notif¬if_t=event_invite [hereinafter, *Ensuring Pay*]; *Military Families Against Government Shutdown*, FACEBOOK, https://www.facebook.com/home.php?sk=group_111908695558874.

63. *Ensuring Pay*, *supra* note 62.

64. Ensuring Pay for Our Military Act of 2011, S. 724, 112th Cong. (2011).

65. Brian Montopoli, *Government Shutdown Averted as Last-Minute Deal Reached*, CBSNEWS (Apr. 8, 2011, 11:00 PM), http://www.cbsnews.com/8301-503544_162-20052351-503544.html.

shutdown-related topics into the limelight. One point of contention between congressional members during the budget talks was the funding Planned Parenthood receives each year under Title X.⁶⁶ Republicans wanted to block \$70 million in funding to Planned Parenthood; many conservative lawmakers believe the federal money indirectly subsidizes abortions.⁶⁷

On April 8, 2011, hours before the government was due to shutdown, Senator Jon Kyl, during a senate floor speech, proclaimed that “[i]f you want an abortion you go to Planned Parenthood and that’s well over 90 percent of what Planned Parenthood does.”⁶⁸ Critics of Senator Kyl’s statement argued that abortion only makes up three percent of Planned Parenthood’s services.⁶⁹ Senator Kyl eventually issued a clarification saying his claim was “not intended to be a factual statement.”⁷⁰

While Senator Kyl may have stricken his comment about Planned Parenthood from the congressional record,⁷¹ his statement has been turned into an infamous Twitter hashtag by television personality, Stephen Colbert, host of *The Colbert Report*.⁷² Colbert retreated to his Twitter page and tweeted statements about

66. Devin Dwyer, *Planned Parenthood at Center of Budget Shutdown Threat*, ABC NEWS (April 8, 2011), <http://abcnews.go.com/Politics/planned-parenthood-center-budget-shutdown-threat/story?id=13328750>.

67. *Id.*

68. Jon Terbush, *Sen. Kyl Erases His False Statement on Planned Parenthood from Congressional Record*, TALKING POINTS MEMO (April 22, 2011, 2:52 PM), <http://tpmdc.talkingpointsmemo.com/2011/04/sen-kyl-erases-his-false-statement-on-planned-parenthood-from-congressional-record.php>.

69. *Id.*

70. John P. Avlon, *Colbert vs. Kyl and Spread of ‘Misinformation’*, CNN (April 15, 2011, 5:20 PM), <http://www.cnn.com/2011/OPINION/04/15/avlon.kyl.truth/index.html?ref=allsearch>. Senator Kristen Gillibrand retorted to Kyl’s statement: “For my friends and colleagues, *this is a factual statement*—current law already prevents federal money from paying for abortions This has been the law of the land for over 30 years.” Reid Pillifant, *Gillibrand Jabs Kyl with a ‘Factual Statement’*, OBSERVER.COM (Apr. 13, 2011) (emphasis in original), <http://www.observer.com/2011/politics/gillibrand-jabs-kyl-factual-statement>; *see also* KirstenEGillibrand, *Senator Gillibrand Fights Back for Women’s Health on the Senate Floor*, YOUTUBE (Apr. 13, 2011), <http://www.youtube.com/watch?v=-93QxCf2f4o&t=1m47s>.

The Hyde Amendment is a legislative provision that bars the use of certain federal funds to pay for abortions. Pub. L. No. 96-123, § 109, 93 Stat. 926 (1979).

[N]one of the funds provided by this joint resolution shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest when such rape or incest has been reported promptly to a law enforcement agency or public health service

Id.

71. Ben Smith, *Kyl Statement Stricken from the Record*, POLITICO (Apr. 22, 2011, 12:21 PM), http://www.politico.com/blogs/bensmith/0411/Kyl_statement_stricken_from_the_record.html.

72. *The Colbert Report: Jon Kyl Tweets Not Intended to Be Factual Statements* (Comedy Central television broadcast Apr. 11, 2011), *available at* <http://www.colbertnation.com/the-colbert-report-videos/381484/april-12-2011/jon-kyl-tweets-not-intended-to-be-factual-statements>.

Senator Kyl—tweets that were false and “not intended to be . . . factual statement[s]” of course.⁷³

It appears that “[s]ervices like Facebook and Twitter ‘[have become] the modern-day equivalent of the office cafeteria, a local bar or the coffee shop Those venues have diminished some in modern times and to some extent been replaced by social media.’”⁷⁴ Social media allows average citizens to electronically interact with elected officials, television personalities, and rock stars. Naturally, the

73. #NotIntendedToBeAFactualStatement: Stephen Colbert’s Best Non-Facts About Sen. Jon Kyl, HUFFINGTON POST (Apr. 12, 2011, 5:29 PM), http://www.huffingtonpost.com/2011/04/13/not-intended-to-be-a-factual-statement_n_848298.html#s263645&title=Stephen_Colbert. An example of the tweets included, “Jon Kyl can unhinge his jaw like a python to swallow small rodents whole. #NotIntendedToBeAFactualStatement.” Stephen Colbert, TWITTER (April 12, 2011), <http://twitter.com/#!/StephenAtHome/status/58010375257464832>.

74. Brian Stelter & Jenna Wortham, *Watching a Trial on TV, Discussing It on Twitter*, N.Y. TIMES, July 6, 2011, at A14 (alteration added) (discussing Headline News host Nancy Grace’s coverage of the Casey Anthony trial). A Florida jury found Casey Anthony not guilty of murder in the death of her two-year-old child; the jurors did find Anthony guilty on four misdemeanor counts of providing false information to law enforcement. Jessica Hopper, Emily Friedman, Yunji De Nies & Aaron Katersky, *Casey Anthony Trial: Not Guilty Murder Verdict*, ABC NEWS (July 5, 2011), http://abcnews.go.com/US/casey_anthony_trial/casey-anthony-guilty-murder-caylees-death/story?id=13987918. After the verdict, Twitter’s top ten trending topics included: #notguilty, Nancy Grace, Johnnie Cochran, HLN, Jose Baez, Law & Order, and Law Abiding Citizen. Doug Gross, *Social Networks Rage over Anthony Verdict*, CNN (July 5, 2011, 9:40 PM), <http://www.cnn.com/2011/TECH/web/07/05/casey.anthony.web.reaction/index.html>. Even celebrities joined in on tweeting about the Anthony verdict. *Tweet of the Week: Casey Anthony Edition*, WALL ST. J.: SPEAKEASY (July 8, 2011, 8:00 PM), http://blogs.wsj.com/speakeasy/2011/07/08/tweets-of-the-week-casey-anthony-edition/?mod=google_news_blog.

Outraged social media users took to Facebook to remember Caylee, the Anthony’s deceased child. On Facebook, a page was created called “Caylee’s Law.” *Caylee’s Law*, FACEBOOK, <https://www.facebook.com/CreateCayleesLaw>. The page urges users to sign petitions to create Caylee’s Law. *Caylee’s Law*, FACEBOOK, <https://www.facebook.com/CreateCayleesLaw?sk=info>. The law “will make it a felony for a parent, caretaker or guardian that [sic] does NOT notify law enforcement with knowledge of a missing, deceased or child in a life threatening situation in a timely matter.” *Id.* Anthony failed to report that her two-year-old, Caylee, was missing for thirty-one days. Timothy Williams, *Anthony Sentenced but Will Go Free on July 17*, BOSTON.COM (July 8, 2011), http://www.boston.com/news/nation/articles/2011/07/08/cleared_in_daughters_death_casey_anthony_sentenced_to_four_years_for_lying_to_investigators/.

It appears social media played an important role in the Anthony defense: lead trial consultant Amy Singer admits “this whole trial was social-media driven.” Julie Kay, *Fort Lauderdale Trial Consultant Used Social Media and Blogs to Help Casey Anthony Defense Team Shift Strategies*, DAILYBUSINESSREVIEW.COM (July 8, 2011), <http://www.dailybusinessreview.com/PubArticleDBR.jsp?id=1202499661133>. Singer combed the pages of blogs and social networking sites to isolate “important negative comments” so that the defense could address them. *Id.* (internal quotation marks omitted). For example, when blogs started attacking George Anthony, the defendant’s father, Singer told the defense to increase their attacks on the father. *Id.* Similarly, Singer noticed that bloggers loved Cindy Anthony, the defendant’s mother, until she took credit for internet searches the prosecution argued the defendant made; Singer informed the defense to not refer to Cindy Anthony’s maternal instincts too heavily in its closing arguments after this occurred. *Id.*

instant nature of these networking sites can have drawbacks and benefits for all users, even elected officials.

VI. #WEINERGATE

Social media sites allow users to disseminate information, thoughts, and concerns quickly. While this mechanism can be helpful, it can also create confusing and uncomfortable situations. Known for his in-your-face communication style,⁷⁵ former New York Congressman Anthony Weiner was an avid user of Twitter.⁷⁶ In late May, a sexually suggestive photo was sent from Mr. Weiner's account to the Twitter account of a female college student in Seattle, Washington.⁷⁷ When the media found out about the tweet, Weiner insisted his account had been hacked.⁷⁸ After several days of answering questions about the Twitter photo and the hacking of his account, Weiner apologized for claiming that his Twitter account had been hacked and admitted to engaging in inappropriate online relations with several women.⁷⁹ After the confession, Weiner refuted calls⁸⁰ for him to quit.⁸¹ However, on June 16, 2011, Weiner heeded the calls for his resignation and announced that he would leave Congress.⁸² Weiner's resignation from the House of Representatives became official on June 21, 2011 when his letter of resignation was read at a meeting of the House.⁸³

Former Congressman Weiner's resignation forced social media users to reexamine the drawbacks of the technology.⁸⁴ The photo Weiner accidentally

75. See, e.g., AskAnthonyWeiner, *Weiner Calls on Republicans to Defund Their Healthcare Plans*, YOUTUBE (Feb. 18, 2011), <http://www.youtube.com/watch?v=h-3XwIeBPkg>.

76. Ashley Parker, *Congressman, Sharp Voice on Twitter, Finds It Can Cut 2 Ways*, N.Y. TIMES, May 30, 2011, at A17 ("Mr. Weiner always knew that his sharp tongue, combined with his frequent use of Twitter, had a potential risk.").

77. *Id.*

78. *Id.* ("Touche Prof. Moriarity. More Weiner Jokes for all my guests! #Hacked!"); see also Anthony Weiner, TWITTER (May 28, 2011), <http://twitter.com/#!/RepWeiner/status/74582925932376065>.

79. CNN Wire Staff, *Key Dates in the Anthony Weiner Scandal*, CNN (June 16, 2011), http://articles.cnn.com/2011-06-16/politics/weiner.scandal.timeline_1_anthony-weiner-conservative-blogger-lewd-photo?_s=PM:POLITICS.

80. Members of Weiner's party, such as House Minority Leader Nancy Pelosi, called for Weiner's resignation. See Raymond Hernandez, *House Democrats Step Up Calls for Weiner to Quit*, N.Y. TIMES, June 8, 2011, at A25. Eventually, President Barack Obama spoke on the issue and said, "I can tell you that if it was me, I would resign." Andrew Miga & Larry Margasak, *Democrats Hoping Rep. Weiner Will Quit on His Own*, ABC NEWS (June 15, 2011), <http://abcnews.go.com/Politics/wireStory?id=13840972>.

81. Beth Fouhy, *Weiner Admits Lying About Lewd Photo, Won't Quit*, SEATTLE TIMES (June 13, 2011, 3:48 AM), http://seattletimes.nwsourc.com/html/politics/2015305854_apuscongressmantwitterphoto.html.

82. Major Garrett & Billy House, *Anthony Wiener to Resign*, ATLANTIC (June 16, 2011, 10:07 AM), <http://www.theatlantic.com/politics/archive/2011/06/anthony-weiner-to-resign/240554/>.

83. See CNN Wire Staff, *Weiner's Resignation Is Official Tuesday*, CNN (June 21, 2011, 4:01 AM), http://www.cnn.com/2011/POLITICS/06/21/weiner.resigns/index.html?hpt=hp_bn4.

84. Chris Taylor, *9 Things Weingate Tells Us About Twitter*, CNN (June 3, 2011,

tweeted on his Twitter page was retweeted by one of his Twitter followers before Weiner could remove the tweet; the picture was actually meant to be sent as a direct, private message.⁸⁵

The main takeaways from Weiner's resignation seem to be that Twitter is very effective at spreading the news, but not as effective at controlling it.⁸⁶ Account hacking⁸⁷ is more common than users might think,⁸⁸ and users take their real-life privacy for granted any time the internet is involved.⁸⁹

VII. #ASKOBAMA

So, while there are drawbacks to social media, the use of social media can be viewed as being wildly beneficial. Social media appears to be developing into a basic, communicative tool for many users. Just as one may check e-mail or phone messages, "Facebookers," "Tweeters," and "YouTubers" use social networking sites to interact with other users and find out information. In fact, according to the Pew Research Center, the number of American adults using social networking sites has nearly doubled since 2008, and the population of social networking users has gotten older.⁹⁰ Thus, the use of social media has become a relatively easy and innovative way for elected officials to interact with their constituents—the young and the young-at-heart.

For example, on July 6, 2011, Twitter held its first town hall meeting with President Barack Obama.⁹¹ President Obama orally answered questions from

6:05 PM), <http://www.cnn.com/2011/TECH/social.media/06/03/weinergate.twitter.insights/>.

85. Ethan Klapper, *How Weiner Fell into the Twitter Direct-Message Trap*, NATIONAL JOURNAL (June 7, 2011, 7:17 AM), <http://www.nationaljournal.com/how-weiner-fell-into-the-twitter-direct-message-trap-20110606>. Sending a private message on Twitter is similar to sending a public tweet. *Id.* The Seattle student he was trying to send a direct message to was 21-year-old Gennette Cordova. *Id.* Weiner typed "@GennetteC [picture]" instead of "D GennetteC [picture]." *Id.* This is a rather common occurrence. *Id.*

86. Taylor, *supra* note 84.

87. When an online account is hacked, false information can spread quickly. Over July 4, 2011, FoxNews.com's Twitter feed was hacked. *See Foxnewspolitics Twitter Feed Hacked*, FOXNEWS.COM (July 4, 2011), <http://www.foxnews.com/politics/2011/07/04/foxnewspolitics-twitter-feed-hacked/>. Foxnews.com alerted the Secret Service after the feed was used to falsely report that President Obama had been killed. Richard Allen Greene, *Secret Service to Probe Fox News' Twitter Hack*, CNN (July 5, 2011, 12:06 PM), <http://www.cnn.com/2011/TECH/social.media/07/04/fox.hack/index.html?iref=obinsite>.

88. Taylor, *supra* note 84.

89. Kate Stevens, *Former Rep. Anthony Weiner Flunks Crisis Response Test; Swift and Honest Tactics Called Crucial*, NOLA.COM (June 19, 2011, 7:24 AM), http://www.nola.com/business/index.ssf/2011/06/former_rep_anthony_weiner_flun.html ("Thanks to the Internet, nothing is private these days, especially for public figures.").

90. LEE RAINIE, KRISTEN PURCELL, LAUREN SESSIONS GOULET & KEITH N. HAMPTON, SOCIAL NETWORKING SITES AND OUR LIVES: SUMMARY OF FINDINGS, PEW RESEARCH CENTER (June 16, 2011), <http://pewresearch.org/pubs/2025/social-impact-social-networking-sites-technology-facebook-twitter-linkedin-myspace>. Seventy-nine percent of American adults used the internet and forty-seven percent of adults say they use at least one of the social networking sites. *Id.* Twenty-six percent of adults used a social networking site in 2008. *Id.*

91. Alexander Mooney, *Obama's Twitter Town Hall to Focus on Economy, Jobs*, CNN (July 6, 2011), http://articles.cnn.com/2011-07-05/tech/white.house.tweetup_1_twitter-users-town-hall-answer-questions?_s=PM:TECH.

Twitter users; the users were asked to use the hashtag #AskObama.⁹² While this event was the first of its kind on Twitter, this is not the President's first electronic town hall.⁹³ President Obama has previously held digital town halls on YouTube⁹⁴ and Facebook.⁹⁵

The aim of these digital town halls is an attempt to bridge a communication gap between elected officials and their constituents.⁹⁶ President Obama is not the only elected official using social media sites to interact with constituents. Several members of Congress recently participated in YouTube's first official Congressional town hall.⁹⁷

Some see the use of social media in this way as revolutionary. One Twitter user said the following about President Obama's Twitter town hall: "It's awesome that Twitter is revolutionizing democracy during @BarackObama's term the same way that radio was revolutionary during FDR era."⁹⁸ Others saw the #AskObama exercise as a "meaningless marketing stunt" and a "dose of digital dumbification."⁹⁹

No matter one's view on how helpful social media actually is in allowing elected officials to communicate with their constituents, no one can deny that social media has altered the way users interact with each other and how information is disseminated.¹⁰⁰ The impact of social networking sites on Congress will only become more apparent as we are permitted to examine their use in hindsight. Ironically, it is a noncongressional example that fully illustrates how powerful social media has become: a Twitter user in Pakistan unknowingly live-tweeted the

92. *Id.*

93. Sherri L. Smith, *Obama Takes to Twitter for Town Hall Meeting*, LAPTOP (July 6, 2011), <http://blog.laptopmag.com/obama-takes-to-twitter-for-town-hall-meeting>.

94. CBSNewsOnline, *Obama's Youtube Town Hall*, YOUTUBE (Jan. 27 2011), <http://www.youtube.com/watch?v=Ss8nXYfemOU>.

95. *President Obama's Facebook Town Hall – April 20 @ 1:45 PM PDT/4:45 PM EDT*, FACEBOOK, <http://www.facebook.com/event.php?eid=122119071195720>.

96. See Mathew Ingram, *So Was the Twitter Town Hall Better than a Regular One?*, GIGAOM (July 6, 2011, 2:29 PM), <http://gigaom.com/2011/07/06/so-was-the-twitter-town-hall-better-than-a-regular-one/> ("Twitter certainly level[led] the playing field a little when it comes to actual dialogue between Americans and their president, even if it didn't totally disrupt it.")

97. *YouTube Town Hall: Where Your Views Count*, YOUTUBE (May 18, 2011), <http://youtube-global.blogspot.com/2011/05/youtube-town-hall-where-your-views.html> ("YouTube Town Hall is an online platform for members of Congress to virtually debate and discuss the most important issues of the day.")

98. Spencer Schoeben, TWITTER (July 6, 2011), <http://twitter.com/#!/netspencer/statuses/88683974938996736>.

99. Umair Haque, *AskObama Is a Meaningless Marketing Stunt*, HARV. BUS. REV. BLOG (July 6, 2011, 2:47 PM), http://blogs.hbr.org/haque/2011/07/askobama_is_a_meaningless_mark.html ("I find the exercise cynical at worst, and at best, even if nobly well-intentioned, a tiny symbol of exactly how and why the 20th century's stopping the 21st from being born.")

100. See Andrej Sokolow, *Twitter: The World's Pulse in Just 140 Characters*, MONSTERS AND CRITICS (June 26, 2011), http://www.monstersandcritics.com/tech/news/article_1647632.php/Twitter-the-world-s-pulse-in-just-140-characters ("With approximately 200 million users worldwide, Twitter had become a global information machine.")

Seal Team Six raid on Osama bin Laden.¹⁰¹ Hearing helicopters above his home in Abbottabad, Pakistan, the Tweeter made a series of tweets that would later end in his tweeting: “Uh oh, now I’m the guy who liveblogged the Osama raid without knowing it.”¹⁰²

#CONCLUSION

It is apparent to many that social media has seemingly woven its way into the fabric of our communicative practices,¹⁰³ including how we elect our government officials.¹⁰⁴ The use of social media during the 111th lame duck session of Congress has served as a foreshadowing catalyst of how impactful social media has become in various areas of our lives, including politics.¹⁰⁵ The intersection of social media and the law, the juxtaposition of social media and lawmaking, and the marriage of social media and politics are all topics in an emerging area of scholarship that we should continue to analyze in a serious, academic fashion. #withoutadoubt¹⁰⁶

101. Mike Butcher, *Here’s the Guy Who Unwittingly Live-Tweeted the Raid on bin Laden*, TECHCRUNCH (May 2, 2011), <http://eu.techcrunch.com/2011/05/02/heres-the-guy-who-unwittingly-live-tweeted-the-raid-on-bin-laden/>.

102. *Id.* In another example of social media errors related to the bin Laden raid, several media outlets accidentally reported *Obama* bin Laden had been killed instead of *Osama* bin Laden. See, e.g., Daniel Bates, ‘Obama Is Dead’: BBC and U.S. Networks Make Embarrassing Error Reporting bin Laden’s Death, MAIL ONLINE (May 3, 2011, 2:20 AM), <http://www.dailymail.co.uk/news/article-1382778/Obama-dead-BBC-said-basic-error-reporting-bin-Ladens-death.html>. BBC News, MSNBC, and Fox News were among the news outlets that made this reporting error. *Id.*

103. This statement appears to be especially true as social networking sites grow and evolve, as illustrated with the recent launch of Google Plus, Google’s answer to Facebook. Mae Anderson, *Review: Google Plus Thoughtful Answer to Facebook*, ABC NEWS (July 6, 2011), <http://abcnews.go.com/Technology/wireStory?id=14010593>. The review categorizes Google Plus as the “grown-up Facebook.” *Id.*

104. See, e.g., Mark Milian, *No Dearth of U.S. Voter Resources Online*, CNN (Nov. 1, 2010, 3:49 AM), <http://www.cnn.com/2010/TECH/social.media/11/01/facebook.election/index.html?hpt=Sbin> (“For the 2008 election, Facebook’s site was dominated by a virtual rally organized through an application called Causes Causes asked Facebook users to ‘donate their status’ to promote a candidate In less than five days, 1.7 million people sent 4.9 million messages using the app.”).

105. This is not exclusive to the United States; social media allowed the world to watch the “Arab Spring” unfold. Hina Samnani & Lolla Mohammed Nur, *Crowdmapping Arab Spring—Next Social Media Breakthrough*, VOANEWS.COM (Voice of America) (June 28, 2011), <http://www.voanews.com/english/news/middle-east/Crowdmapping-Arab-Spring-Next-Social-Media-Breakthrough--124662649.html> (“Twitter and Facebook have played a crucial role in providing disenfranchised Arab citizens with a space to pressure regimes to democratize power and increase transparency. The impact of social media in the Arab Spring is undeniable.”). The “Arab Spring” is one of the labels used to describe the recent revolutionary wave of uprisings in the Middle East and North Africa. See Simon Tisdall, *The Aftermath of the Arab Spring*, GUARDIAN (July 6, 2011, 1:30 PM), <http://www.guardian.co.uk/commentisfree/2011/jul/06/arab-spring-aftermath>.

106. This hashtag would be read as “without a doubt” on social media sites such as Twitter and Facebook.