Article

Is the Policy Window Open for High-Speed Rail in the United States: A Perspective from the Multiple Streams Model of Policymaking

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ABSTRACT

With the election of a new government, intercity passenger rail transportation, for which interest had "faded" for years, is now back on President Obama's agenda. Technological innovation has brought focus to high-speed intercity passenger rail transportation. This new focus has revealed too many people who are tired of modern transportation problems, such as airline delays and highway congestion, and also revealed a new hope for future travel. This paper will begin with a chronological introduction of the intercity passenger rail policy in the United States. John Kingdon's Multiple Streams model ("MS") is adopted to explore the roles of political streams in the processes of shaping the national strategic plan for high-speed rail development. Three main questions will be answered through the analysis: (1) Why is High Speed Rail ("HSR") on President Obama's agenda now? (2) What role does HSR play in the US? (3) What can be done in order to have such a large infrastructure project implemented both efficiently and effectively over the long term and without facing the hurdles of a shift in the political tide?

I. INTRODUCTION

High-Speed Rail ("HSR"), also known as an intercity passenger transport, can run at top speeds of at least 150 mph.[1] Traditionally, rail-dominated countries such as Japan, Germany, and France use HSR to connect metropolitan areas and have achieved impressive social and economic successes due to their use of HSR.[2] Countries such as Spain, Ko-

1. *See generally* FEDERAL RAILROAD ADMINISTRATION (FRA), VISION FOR HIGH-SPEED RAIL IN AMERICA (April 2009), http://www.fra.dot.gov/downloads/Research/FinalFRA_HSR_Strat_Plan.pdf (The Federal Railroad Administration defines high-speed rail in three different ways:

High-Speed Rail – Express: Frequent, express service between major population centers 200–600 miles (320–965 km) apart, with few intermediate stops. Top speeds of at least 150 mph (240 km/h) on completely grade-separated, dedicated rights-of-way (with the possible exception of some shared track in terminal areas). Intended to relieve air and highway capacity constraints.

High-Speed Rail – Regional: Relatively frequent service between major and moderate population centers 100–500 miles (160–800 km) apart, with some intermediate stops. Top speeds of 110–150 mph (177–240 km/h), grade-separated, with some dedicated and some shared track (using positive train control technology). Intended to relieve highway and, to some extent, air capacity constraints.

Emerging High – Speed Rail: Developing corridors of 100–500 miles (160–800 km), with strong potential for future HSR Regional and/or Express service. Top speeds of up to 90–110 mph (145–177 km/h) on primarily shared track (eventually using positive train control technology), with advanced grade crossing protection or separation. Intended to develop the passenger rail market, and provide some relief to other modes).

2. Yong, Sang Lee, *A Study of the Development and Issues Concerning High Speed Rail*

rea, and China have introduced HSR into their transportation systems and are also beginning to see the results of HSR after years of projects.[3] As a result of the Intermodal Surface Transportation Equity Act ("ISTEA") of 1991, America has initiated the creation of a concrete HSR plan.[4] The High-Speed Rail Development Act ("HSRDA") of 1994 took further clear steps to bring HSR to the United States.[5] However, during previous administrations HSR had "faded" out of the governmental agenda.[6]

In recent years, under the backdrop of soaring gasoline prices and increasing concerns about environmental protection, it has become clear that HSR is an ideal alternative for future transportation. HSR has gained new attention in the United States. Furthermore, because of the 2008 economic recession, job creation is the first priority of the Obama Administration.[7] The Obama Administration has given HSR a new task—creating jobs. In February 2009, just a few days after his inauguration, the American Recovery and Reinvestment Act ("ARRA") was passed, which apportioned eight billion dollars designated for a national high-speed rail investment.[8] In April 2009, the United State Department of Transportation (USDOT) announced the national strategic high-speed rail plan, *Version for High Speed Rail in America*, which includes eleven high-speed corridors designed to accommodate maximum speeds of over 120 mph.[9] On January 28, 2010, President Obama unveiled the High-Speed Intercity Passenger Rail Program, which included several initial

(HSR), TRANSPORT STUDIES UNIT OXFORD UNIVERSITY CENTRE FOR THE ENVIRONMENT (Jan.2007) *available at* http://www.tsu.ox.ac.uk/pubs/1020-lee.pdf .

3. Yong, *supra* note 3 (The Japanese Shikansen, French TGV, and German ICE are thought to be the most successful high-speed rail worldwide. After the maturity of the high-speed rail technology, other countries also started to build their own high-speed rails through technology introduction. Currently, the Spanish AVE high-speed rail and Korean KTX high-speed rail is directly derived from the French Alstom's technology. The Chinese CRH high-speed rail system is based on the high-speed rail technology from the Japanese Shikansen, French TGV and German ICE all together).

4. Intermodal Surface Transp. Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (Dec. 18, 1981).

5. Swift Rail Dev. Act of 1994, Pub. L. No. 103-440, 108 Stat. 4615 (Nov. 2, 1994).

6. *See* Dave Bohon, *Obama Administration Proposes $53 Billion for High-Speed Rail*, THE NEW AMERICAN (Feb. 15, 2011), *available at* http://www.thenewamerican.com/index.php/tech-mainmenu-30/energy/6320-obama-administration-proposes-53-billion-for-high-speed-rail.

7. THE WHITE HOUSE, http://www.whitehouse.gov/issues/economy (last visited Feb. 23, 2011).

8. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 208 (2009) ($8 billion capital assistance was planned for intercity passenger rail projects and rail congestion grants, with priority for high-speed rail).

9. *Id.*; FRA *supra* note 2 (The ARRA requires within 60 days of the enactment of this Act, the Secretary shall submit to the House and Senate Committees on Appropriations a strategic plan that describes how the Secretary will use the funding provided under this heading to improve and deploy high speed passenger rail systems).

selected projects that would be awarded federal funds.[10]

These changes in policy and funding show that unlike other countries, the idea of HSR in the United States has been on and off public and presidential agendas because of different economic situations and political tides. Now supported by an innovative and ambitious president, the "faded" HSR seems on the verge of a comeback and ready to get on the right track. Yet, the answers to several fundamental questions are still unclear. Why is President Obama now pushing HSR instead of other alternative modes? What are the situational differences between the related HSR Acts that have passed during Obama's administration and that in Clinton's and George W. Bush's administrations? What role does HSR play in the United States, and what can be done to implement these long-term infrastructure projects efficiently and effectively?

To answer these questions it is necessary to understand the internal mechanism of agenda-setting in the policy making process by following paths of public policy theory and then find a rational explanation for the policy outcomes. Many public policy theories have addressed the policy making process in different approaches, including: the Pluralism Theory, Public Choice Theory, Critical Theory and Rationalism Theory.[11] Another classic theory, also known as the Multiple Streams (MS) model, developed by John Kingdon in his book *Agenda, Alternatives and Public Policies*, has been widely used for a variety of policy analyses.[12] Kingdon posits three relatively independent, but intermittently "coupled" streams that constitute the policy process: "political," "problem," and "policy."[13]

The "political" stream is constituted by political developments as conventionally understood as: public moods, pressure group campaigns, election results, partisan or ideological distribution in Congress, and changes of administration.[14] The "problem" stream is composed of external events that impress themselves on the decision-makers' attention, whether through mechanisms of indicators, focusing events, or feed-

10. FEDERAL RAILROAD ADMINISTRATION, HIGH-SPEED INTERCITY PASSENGER RAIL (HSIPR) PROGRAM (Sept. 2010), http://www.fra.dot.gov/downloads/hsiprapplist.pdf [hereinafter HSIPR] (The Federal Railroad Administration (FRA) received 259 grant applications from 37 States and the District of Columbia requesting nearly $57 billion in funding, – far exceeding the initial $8 billion available under the American Recovery and Reinvestment Act of 2009. In total, 79 applications from 31 States were selected for funding).

11. *See* ANNE LARASON SCHNEIDER & HELEN INGRAM, POLICY DESIGN FOR DEMOCRACY (Univ. Press of Kan. et al. eds., 1997).

12. *See* JOHN KINGDON, AGENDA, ALTERNATIVES AND PUBLIC POLICIES (Harper Collins Coll. Publishers et al. eds., 2nd ed. 1995).

13. *See* Jeremy Ahearne, *Public Intellectuals Within a "Multiple Streams" Model of the cultural Policy Process Note from a French perspective*, 12 INT'L J. OF CULTURAL POL'Y 1, 1-15 (2006) (discussing "multiple streams" model of policy process).

14. Kingdon, *supra* note 13, at 145.

back.[15] The policy stream is constituted by the accumulation of competing proposals put forth by various "policy communities."[16] This stream comes to compose a "policy primeval soup," in which politicians and their advisors cast about for responses to events thrown up by the other two streams.[17] The soup is stirred by "policy entrepreneurs" who are continually looking for connections between politics and policy making.[18] They are persistent and are constantly looking for a "policy window" to take action.[19] This paper concentrates on the MS model to analyze how these different streams interact with each other in the HSR policy-making process. The reason for adopting the MS model instead of other theories is because the MS model provides a better framework to investigate how policy outcome is shaped by different political factors. Additionally, a case study of the Florida HSR is introduced specifically to explain how coupled activities of policy entrepreneurs influence the policy outcome when the policy window opens.

II. Multiple Stream Model

Policy making is a complicated process because many actors are involved, and their propositions and influences can have impacts on the policy making process.[20] The involvement of many actors inexorably makes the policy outcome difficult to predict.[21] Through a drastic oversimplification, public policy-making can be considered to be a set of processes including: (1) the setting of the agenda, (2) the specification of alternatives from which a choice is made, (3) an authoritative choice among those specified alternatives, and (4) the implementation of the decision.[22] For the past forty-four years, the concept of HSR has been ad-

15. Kingdon, *supra* note 13, at 113.

16. Kingdon, *supra* note 13, at 117 (Policy communities indicate specialists in a given policy that are scattered both through and outside of government. They include committee staffs in Congress, staffs in Congressional staff agencies such as the Congressional Budget Office or the Office of Technology Assessment, and academic scholars, consultants, or analysts for interest groups).

17. *Id.* (Policy primeval soup, as pointed out by Kingdon, refers to the formation process of policy ideas, alternatives, and proposals in the policy community because this resembles a process of biological natural selection where molecules floated around in what biologists call the "primeval soup" before life came into being).

18. Kingdon, *supra* note 13, at 122 (Kingdon defines the policy entrepreneur as advocates for proposals or for the prominence of an idea).

19. Kingdon, *supra* note 13, at 165 (The policy window refers to an opportunity for advocates of proposals to push their political ideas or to push attention to their special problems).

20. Kingdon, *supra* note 13 at 21 (Policy actors are divided into two groups: participants on the inside of government, including the Administration, civil servants and Capitol Hill; Outside of government, which includes interest groups, academics, researchers, consultant, the media, election-related participant, and public opinion).

21. *Id.*

22. Kingdon, *supra* note 13 at 2-3.

dressed and discussed among policymakers only at the agenda-setting and alternative stages, and the concept has never reached the authoritative or implementation stages.[23] However, this situation has changed since Barack Obama became the President of United States. Through two acts, the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA") and ARRA, HSR has been pushed onto the national agenda and has begun to enter the authoritative and implementation stages.[24] There must be a powerful strength behind this change for success. In order to understand the inherent driving force for this change, we will follow John Kingdon's MS model to explore different streams behind HSR policy.

A. Problems Stream

What does the problems stream consist of in the HSR policymaking process? Why is HSR raised? How do problems attain the attention of policymakers? According to Kingdon's model, various mechanisms—indicators, focusing events, and feedback—bring problems to governmental officials' attention.[25] In the actual HSR policy-making process, all these mechanisms have played roles in pushing HSR forward.

Generally, HSR is addressed to solve contemporary transportation issues. As a new transportation mode, HSR is different from conventional passenger rail because of higher speed, better amenities, and higher reliability for on-time performance.[26] Also, in terms of energy efficiency and social and economic impacts, HSR has a unique advantage over other transportation modes in medium-distance travel.[27] From 1990-2009, seventy-three bills have been proposed in the House or Senate related to HSR, and only eight of the HSR related bills have been passed.[28] The problems addressed by theses bills vary in terms of the

23. Lyndon B. Johnson, President of the U.S., Annual Message to the Congress on the State of the Union (Jan. 4, 1965), *available at* http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650104.asp (From January 4, 1965 in the Annual Message to the Congress on the State of the Union by President Lyndon Baines Johnson (LBJ) publicly supporting high-speed rail development to February 17, 2009 when ARRA passed; the period is forty-four years).

24. *See* Rail Safety Improvement Act of 2008, Pub. L. No. 11-432,122 Stat. 4848 (2008); American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 208 (2009).

25. Kingdon, *supra* note 13, at 113.

26. U.S. High Speed Rail Ass'n, http://www.ushsr.com/benefits.html (last visited Feb. 23, 2011).

27. *See* Yoav Hagler, *Where High-Speed Rail Works Best,* America 2050, http://www.america2050.org/pdf/Where-HSR-Works-Best.pdf (Normally, HSR is thought to serve distances between 100-500 miles, higher than 500 miles is serviced by air, and lower than 100 miles is serviced by automobiles).

28. The 73 proposed high-speed rail related bill between 1990 to 2008 are H.R. 3947, H.R. 1087, H.R. 1452, S. 797, H.R. 2102, S. 1474, S. 1493, HR 2761, H.R. 2878, H.R. 2914, S. 811, H.R. 928, S. 438, S. 839, H.R. 1919, H.R. 4556(Law No: 103-331), H.R. 4867, S. 1318, H.R. 2002(Law No: 104-50), H.R. 3675, S. 738(Law No: 105-134), H.R. 2066, S. 961, H.R. 2169(Law No: 105-66),

different time period of passage. Generally, three major problems that HSR aims to correct are: (1) improving the national intermodal transportation network, (2) providing transportation alternatives for energy savings and environmental concerns, and (3) creating jobs and stimulating economy prosperity.[29]

The first problem that HSR aims to correct is to improve the national intermodal transportation network.[30] As a new dimension of transportation infrastructure created to meet passenger transportation demand, HSR has been addressed as a way to enhance the national transportation system. Many indicators were used to reveal this problem. In 1965, in his remarks signing the High-Speed Ground Transportation Act, President Lyndon B. Johnson quoted socioeconomic statistics to point out the need for HSR development:

> In the past 15 years, travel between our cities has more than doubled. By 1985—only 20 years away—we will have 75 million more Americans in this country. And those 75 million will be doing a great deal more traveling . . . we must find ways to move more people, to move these people faster, and to move them with greater comfort and with more safety.[31]

Later in the 1990s, highway and airport congestion became a more apparent issue for policymakers to tackle.[32] A study was conducted to assess the feasibility of implementing a HSR system as an alternative mode of transportation in the United States.[33] At the request of the USDOT, the National Research Council, operating through the Transportation Research Board, assembled a committee to assess the applicability of HSR technologies to meet the demand for passenger transportation service in high-density travel markets and corridors.[34] The study results

S. 1103, H.R. 2341, H.R. 2400(Law No: 105-178), S. 2063, H.R. 3805, S. 2307, H.R. 4328(Law No: 105-277), H.R. 2450, H.R. 2666, H.R. 2683, S. 1496, H.R. 3700, S. 1530, H.R. 3166, S. 250, S. 870, H.R. 2329, H.R. 2950, S. 1991, H.R. 4761, H.R. 5216, H.R. 396, S. 104, S. 1961, H.R. 2571, H.R. 2615, H.R. 2378, H.R. 2726, S. 1409, S. 1501, S. 1505, H.R. 3211, S. 2306, H.R. 1631, H.R. 1713, H.R. 2351, H.R. 2992, H.R. 3058(Law No: 109-115), S. 1516, H.R. 5965, S. 294, H.R. 4122, H.R. 4123, H.R. 1300, H.R. 2095(Law No: 110-432), S. 3700, H.R. 5644, H.R. 6003, and H.R. 6004.

29. U.S. High Speed Rail Ass'n, *supra* note 27.

30. *See* Anthony Perl, *Integrating HSR into North America's Next Mobility Transition*, URB. STUDIES PROGRAM SIMON FRASER U. (2010) *available at*: http://wagner.nyu.edu/rudincenter/publications/RCWP_Perl.pdf.

31. Lyndon B. Johnson, President of the U.S., Remarks at the Signing of the High-Speed Ground Transportation Act (Sept. 30, 1965), *available at* http://www.presidency.ucsb.edu/ws/?pid=27281.

32. *See* MICHAEL MARIEN & LANE JENNINGS, FUTURE SURVEY ANNUAL 1988-89 134-35 (1989).

33. *See* CALIFORNIA HIGH SPEED RAIL AUTHORITY, MOVING CALIFORNIA FORWARD: CALIFORNIA'S HIGH SPEED TRAIN SYSTEM, (Sept. 2, 2010), http://www.cahighspeedrail.ca.gov/news/MOBILITY_lr.pdf.

34. *See* Brian Kingsley Krumm, *High Speed Ground Transportation Systems: A Future Component of America's Intermodal Network ?*, 22 TRANSP. L.J. 309, 326 (1994).

showed that HSR could be an effective alternative to auto and air travel in corridors where travel demands are increasing, but where increasing the capacity of highways and airports is difficult.[35] Studies have also shown that building a HSR system can help improve the national intermodal network, and thus, strengthen national competitiveness through alleviating congestion and fostering economic development.[36] For many years, this was the issue that HSR bills addressed.

The second problem that HSR development addressed was accounting for environmental concerns by providing an energy efficient alternative form of transportation.[37] This is especially true when the economy is under certain energy and environmental pressures. During 2007 and 2008, high gasoline prices demonstrated a weakness in the current American intermodal transportation system and illustrated how PRIIA developed HSR could provide a feasible alternative.[38] The main objective of PRIIA focused on increasing support for intercity passenger rail travel, including Amtrak's long-distance passenger line along the Northeast Corridor ("NEC"), an HSR corridor.[39]

Before PRIIA was submitted to Congress, two notable studies had been conducted to examine HSR's impact on energy and on the environment. The first study named "High Speed Rail and Greenhouse Gas Emissions in the U.S." concluded that the implementation of proposed federally designated HSR corridors could result in an annual reduction of 6 billion pounds of carbon dioxide emissions.[40] The second study conducted by the congressionally created National Surface Transportation Policy and Revenue Study Commission, indicated that intercity passenger rail consumes seventeen percent less energy per passenger mile than air travel and twenty one percent less energy per passenger mile than passenger automobile travel.[41] These statistical indicators underscored a need for sustainable, clean, and efficient transportation alternatives. The

35. *See Id.*

36. *See* FEDERAL RAILROAD ADMINISTRATION, FINAL IMPACT STATEMENT: FLORIDA HIGH SPEED RAIL TAMPA ORLANDO, (May 17, 2005), http://www.fra.dot.gov/downloads/RRDev/florida_tampa-orlando_feis.pdf; *see also* David Randall Peterman, John Fritelli & William J. Mallet, *High Speed Rail (HSR) in the United States*, Congressional Research Service, (Dec. 8, 2009), http://www.fas.org/sgp/crs/misc/R40973.pdf.

37. Ray LaHood, Sec., U.S. Dep't of Transp., Address in Tampa, Florida (Jan. 28, 2010) (transcript available at http://fastlane.dot.gov/2010/01/president-obama-delivers-on-american-highspeed-rail.html).

38. *See* Peterman, *supra,* note 37.

39. *See* Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432, 122 Stat. 4907 (Oct. 16, 2008).

40. *See* CENTER FOR CLEAN AIR POLICY & CENTER FOR NEIGHBORHOOD TECHNOLOGY, HIGH SPEED RAIL AND GREENHOUSE GAS EMISSIONS IN THE U.S., (Jan. 2006), http://www.cnt.org/repository/HighSpeedRailEmissions.pdf.

41. *See* PASSENGER RAIL WORKING GROUP (PRWG), VISION FOR THE FUTURE: U.S. IN-

Obama Administration capitalized on this in need promoting HSR.[42] These statistical indicators, combined with high profile, presidential support have helped a greater number of policymakers to become aware of the problem and have stimulated them to take the issue seriously.[43]

The third problem addressed by HSR is high unemployment resulting from the economic recession of 2008 and 2009. Creating jobs and stimulating the economy demonstrates important objectives and benefits of the HSR.[44] Creating jobs through HSR projects has been previously addressed, but the impact of the economic recession of 2008 and 2009 increased focus on the job creation potential of HSR. On April 28, 1993 Secretary of Transportation, Federico Peña introduced the Clinton Administration's proposal for a major new initiative to advance high-speed ground transportation.[45] This proposal reflected a new dimension of HSR development, the use of HSR projects to spur economic development and create jobs.[46] Despite this new approach, progress on this proposal was impeded by a powerful opponent, transportation unions motivated by the perception that HSR projects would result in lay offs and wage cuts for existing transportation workers .[47]

Compared to the recession damaged economy of 2009, the American economy in 1993 was healthy. A healthy economy and job security can explain why earlier HSR proposals failed to gain traction. Simply put, when jobs are threatened any measure securing or creating jobs is considered. For this reason, during the 2009 recession the HSR plan proposed by President Obama aimed at creating jobs and sought to capitalize on unemployment concerns to gain national support.[48] Reframing HSR as a job creation mechanism helped support the HSR initiative by creating a distinct, employment-oriented argument in favor of HSR.[49] The economic recession, and resulting passage of the ARRA of 2009, facilitated

TERCITY PASSENGER RAIL NETWORK THROUGH 2050, (Dec. 6, 2007), http://www.dot.state.wi.us/projects/state/docs/prwg-report.pdf.

42. *See* Barack H. Obama, President of the U.S., Remarks at Hudson Valley Community College (Sep. 21, 2009) (transcript available from CQ Transcriptions, LLC).

43. *See* Press Release, Governor Arnold Schwarzenegger, Senator Barbara Boxer, Senator Diane Feinstein, Feinstein Boxer and Schwarzenegger Join in Support of High-Speed Rail Funding (Nov. 23, 2009) (available from CQ Transcriptions, LLC).

44. CALIFORNIA HIGH SPEED RAIL AUTHORITY, *supra*, note 34.

45. *See* Krumm, *supra*, note 35.

46. Krumm, *supra*, note 35.

47. *Id.*

48. *See* ANGUS REID PUBLIC OPINION, HALF OF AMERICANS SUPPORT OBAMA'S HIGH-SPEED RAIL PLAN, VISION CRITICAL, (Apr. 6, 2010), http://www.visioncritical.com/wpcontent/uploads/2010/04/2010.04.06_Trains_USA.pdf.

49. *See* Peter Gertler, *High Speed Rail is a Game Changer*, THE ENGINEERING NEWS RECORD (Apr. 27, 2009), http://enr.construction.com/opinions/viewpoint/2009/0427-HighSpeedRail.asp.

support for HSR by dedicating an eight billion dollar investment to create jobs in HSR.[50]

Kingdon's theory posits that problems are not often self-evident from certain indicators.[51] "Problems need a little push to get the attention of people in and around government."[52] This "push" can be provided by a focusing event, like a crisis or disaster that calls attention to the problem; in turn the personal experience and perception of policymakers is changed. Broad-based, systemic indicators of the problem's existence often generate policymaker awareness.[53] A triggering event serves to accelerate and exacerbate the effects of the problem, speeding and intensifying policymaker awareness and response.[54] As a result, government and has found HSR as an attractive solution to the current problems faced by the nation.[55]

B. Policy Stream

In Kingdon's theory, the policy stream represents a short list of proposals.[56] This short list does not gain consensus from the policy community because one proposal does not meet their criteria to solve a problem; rather, the availability of multiple potential solutions drives policymakers.[57] When considering a policy stream or a short list of proposals, concrete ideas are favored by governmental policymakers because of their technical feasibility and capacity for actual implementation.[58] A detailed development plan and a clear project purpose can be very helpful for policymakers to make decisions. In order to gain legislative supports, HSR proposals were submitted with a variety of contents and focuses (See Table 1).

50. *See* American Recovery and Reinvestment Act, 123 Stat. 115.

51. Kingdon, *supra,* note 13 at 94-95.

52. *Id.*

53. Kingdon, *supra,* note 13 at 90-98.

54. *Id.*

55. Tony Duzik & Siena Kaplan, U.S. PIRG Education Fund, The Right Track: Building a 21st Century High-Speed Rail System for America, (2009), http://cdn.publicinterestnetwork.org/assets/d2cbda5b0c2d2d23101a0aef69daece6/The-Right-Track-vUS.pdf.

56. *Id.*

57. *Id.*

58. *See* Kingdon, supra note 13 at 144.

Table 1 Proposed High-Speed Rail Bills from 1991-2008[59]

Bill Type	Total	Breakdown by Number		Breakdown by %	
		SENATE	HOUSE	SENATE	HOUSE
Authorization	37	16	21	43	57
Corridor Planning	3	1	2	33	67
Financing	35	12	23	34	66
Energy Concerns	14	8	6	57	43
Safety and Security	15	3	12	20	80
Technology	4	3	1	75	25
Economy Stimulation	7	1	6	14	86

* Some bills may contain more than one type.
* **Authorization:** includes authorized appropriations, authorize Secretary of Transportation to establish special corporation, committee or agencies, to provide supports for HSR design and research. **Financing:** to provide direct financial assistance for HSR infrastructure. **Corridor Planning:** specific HSR corridor or route planning, service improvement. **Energy Concerns:** to promote energy independence by bolstering rail infrastructure. **Safety and Security:** to strengthen national security and improve intercity passenger rail safety, to prevent railroad fatalities, injuries. **Technology:** To encourage development of HSR related technology. **Economy Stimulation:** to provide support for HSR investment to restore the United States economy.

Among these focuses, the most dominant issues are legislative support and allocated financing. Legislative support is important because it demonstrates authorization for HSR development, while financing allows HSR projects to begin. These two elements are key to HSR development in the United States.[60] Furthermore, post 9/11 efforts to improve safety and security on rail travel have also driven public sector stakeholders to improve cooperation in the development and oversight of domestic rail travel.[61] Considered in conjunction with statistical indicators, emphasizing that rail rider-ship increases when gasoline prices rise and that rail travel can maintain rider-ship after gasoline prices level off, a healthy environment for developing HSR exists.[62] A confluence of circumstance and opportunity lead to the proposed Program for Real Energy Security

59. Bills are selected through the legislation search bill engine from the Library of Congress website with a key word "high speed rail." The classification method is based on the purpose of bills. A similar method has been adopted by Cameron Gordon in "Congressional Response to Fragile Foundations: An Analysis of Congressional Infrastructure Legislation since 1988," available at: http://ssrn.com/abstract=1090100, (assessed Sep 2, 2010).

60. *See* GOVERNMENT ACCOUNTABILITY OFFICE, HIGH SPEED PASSENGER RAIL: FUTURE DEVELOPMENT WILL DEPEND ON ADDRESSING FINANCIAL AND OTHER CHALLENGES AND ESTABLISHING A CLEAR FEDERAL RULE, (Mar. 2009), http://www.gao.gov/new.items/d09317.pdf.

61. *See* Van R. Johnston & Jeremy F. Plant, *Rail Security After 9/11: Toward Effective Collaborative Regulation*, 13 PUB. WORKS MGMT POL'Y 1, 12 (2008).

62. *See* CAPITAL CORRIDOR JOINT POWERS AUTHORITY, STATE OF CALIFORNIA BUSINESS, TRANSPORTATION AND HOUSING AGENCY, CAPITOL CORRIDOR INTERCITY PASSENGER RAIL SERVICE BUSINESS PLAN UPDATE: FY 2009-10 FY 2010-11, (Mar. 2009), http://www.capitolcorridor.org/included/docs/business_plans/09_11_Business_Plan.pdf.

Act, sponsored by Representative Steny H. Hoyer's in 2007.[63] The bill proposed a series of solutions to promote energy independence by several means, including supporting passenger rail travel.[64] The bill sought to improve passenger vehicle fuel technology and efficiency and provided the financial means to bolster the American rail infrastructure.[65] In particular, the bill added specific sections that created high-speed rail infrastructure bonds and provided tax incentives to bond holders to stimulate high speed rail development.[66]

One common objective for these HSR policy proposals is to build an efficient HSR system in the United States. However, neither lawmakers nor the President have personal experience with HSR.[67] Therefore, when the idea of HSR is addressed, reactions from both Congress and the White House are very cautious.[68] Under such a scenario, for HSR to be accepted, policymakers must be persuaded that HSR can benefit the nation. It seems that the long-term benefits, such as congestion alleviation and energy consumption reduction, are too far off in the future to see any practical immediate effects.[69] Consequently, those tangible advantages that can be seen in a short term are preferred by policy communities in order to prove its feasibility.

One of the major tangible advantages of developing HSR in the United States that has been advocated is job creation and economic growth.[70] Figure 1 shows the relationship between number of proposed HSR bills introduced in Congress and economic conditions. According to Table 1, from 1991 to 2008, there were a total of three periods when HSR bills were prevalent. Interestingly, Table 1 also indicates that the years with the most HSR proposals submitted were primarily during economic recessions. The first year was in 1991 when the economic recession caused high unemployment, massive governmental deficits and slow GDP growth.[71] In 1991 alone, eleven HSR related bills were submitted, among

63. *See* Program for Real Energy Security Act, H.R. 1300, 110th Cong. § 502 (2007).

64. *See id.* § 503.

65. *See id.* §§ 301, 401, 403.

66. *See id.* §§ 523-24.

67. *See* Calum MacLeod, *China's Fast Trains May Offer Tips for U.S.*, USA TODAY, Feb. 8, 2010 at B10; *see also U.S. to Learn from Europe on High-Speed Rail: Transport Chief*, AFP, (May 30, 2009), http://www.google.com/hostednews/afp/article/ALeqM5jDs5_AbwZmRyOi4k5c PqHp_cLJFA (Only until recent years when high-speed rail was promoted by President Obama, many top governmental officials began to seek first-hand experience on high-speed rail in other countries).

68. MacLeod, *supra* note 68 ("Not everyone thinks high-speed rail is right for the United States.").

69. *Id.*

70. Intermodal Surface Transp. Efficiency Act of 1991, *supra* note 5.

71. U.S. Bureau of Economic Analysis, Gross Domestic Product: Percent Change from Preceding Period, http://www.bea.gov/national/xls/gdpchg.xls (last visited on Mar. 11, 2011).

which seven were Magnetic Levitation development bills.[72] A second recession occurred in the early 2000s, particularly from 2001 to 2003. Again, 2003 is another year that has more HSR bills proposed in Congress. Most of the bills directly addressed economic stimulation and job creation with a strategy of increasing transportation infrastructure investment.[73]

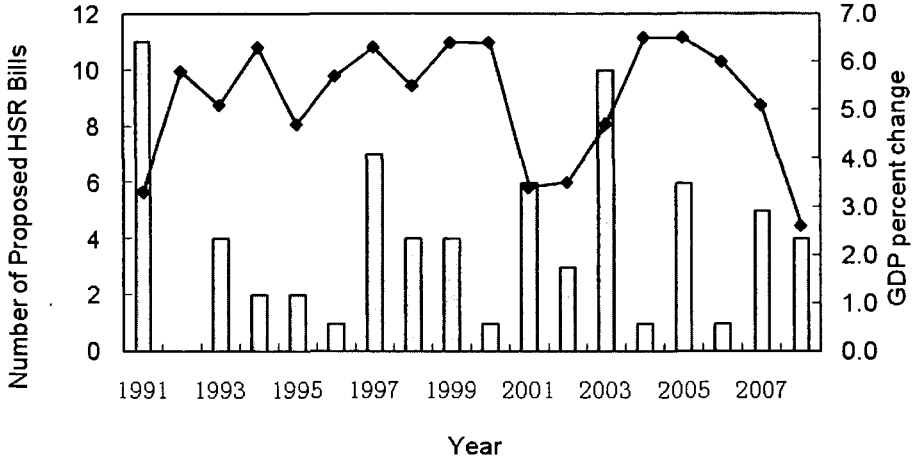
The Rail Infrastructure Development and Expansion Act for the 21st Century, proposed by Representative Don Young, former chairman of the House Committee on Transportation and Infrastructure, on June 24, 2003 required the establishment of an authority for States or Interstate Compacts to issue $12 billion in federally tax-exempt bonds and $12 billion in federal tax-credit bonds for infrastructure improvements in high-speed passenger railroad infrastructure.[74] Although the bill failed to be enacted by Congress, it did reveal that HSR promotion was receiving congressional attention as one method to combat the economic downturn.

72. High Speed Rail Transportation Policy and Development Act, H.R. 1087, 102nd Cong. (1991); National Magnetic Levitation Research and Development Act of 1991, H.R. 1452, 102nd Cong. (1991); Greater Pittsburgh Magnetic Levitation Transportation System Demonstration Act of 1991, H.R. 2102, 102nd Cong. (1991); HR 2761, 102nd Cong. (1991); Magnetic Levitation Research, Development, and Construction Act of 1991, H.R. 2878, 102nd Cong. (1991); Baltimore-Washington Corridor Magnetic Levitation System Demonstration Act of 1991, H.R. 2914, 102nd Cong. (1991); High Speed Surface Transportation Development Corporation Act of 1991, H.R. 3947, 102nd Cong. (1991); Baltimore-Washington Corridor Magnetic Levitation Transportation System Demonstration Act of 1991, S.797, 102nd Cong. (1991); High-Speed Rail Transportation Act of 1991, S.811, 102nd Cong. (1991); Mag-Lev Transportation Construction Loan Guarantee Pilot Program Act, S. 1474, 102nd Cong. (1991); High Speed Surface Transportation Development Corporation Act of 1991, S. 1493, 102nd Cong. (1991).

73. *See* Emergency Anti-Recession Act of 2003, H.R.396, 108th Cong. (2003); Railroad Safety Reform Act of 2003, H.R. 2378, 108th Cong. (2003); Rail Infrastructure Development and Expansion Act for the 21st Century, H.R. 2570, 108th Cong. (2003);Rebuild America Act of 2003, H.R.2615, 108th Cong. (2003); National Defense Rail Act, H.R. 2726, 108th Cong. (2003); Passenger Rail Investment Reform Act, H.R. 3211, 108th Cong. (2003); National Defense Rail Act, S. 104, 108th Cong. (2003); Rebuild America Act of 2003, S. 1409, 108th Cong. (2003); Passenger Rail Investment Reform Act, S. 1501, 108th Cong. (2003); American Rail Equity Act of 2003, S. 1505, 108th Cong. (2003); American Railroad Revitalization, Investment, and Enhancement Act of the 21st Century, S. 1961, 108th Cong. (2003) (In 2003, eleven passenger rail bills were submitted to Congress; five of which targeted railroad investment expansion, three were to combat economic recession, and two focused on national defense).

74. H.R. 2570, §§ 2, 4.

Figure 1 - High Speed Rail Related Bills Submitted to the Houses and GDP Growth from 1991-2008[75]



* Includes all proposed High-Speed Rail and Maglev bills

The third wave of HSR proposals associated with economic recession concerns began in 2008. Compared with prior recessionary years, the number of HSR bills proposed was not as significant; yet, these bills did show more realistic development plans that also increased their likelihood of passage through Congress. For example, the Passenger Rail Investment and Improvement Act of 2008, H.R. 6003 concretely articulated federal appropriations of funds for a HSR corridor development plan.[76] It also provided measures to promote private sector development of the Northeast Corridor and other potential high-speed rail.[77] On October 16, 2008 a related bill, the Railroad Safety Enhancement Act of 2008, H.R.2095, was signed into law. The act expressed a clear statement of the federal government's role in the development of the national HSR.[78] With a detailed HSR legislative guideline, the passage of the ARRA on February 17, 2009 was connected with the PRIIA, and it linked the HSR to the purposes of economy stimulation and job creation.[79]

From the multiple HSR policy proposals during 1991 and 2008, it

75. Legislative data sources for Table 1 were generated by a search of congressional legislative search engines for the term "high speed rail." Gross domestic product (GDP) data is provided by the U.S. Bureau of Economic Analysis, available at http://www.bea.gov/national/index.htm#gdp.

76. H.R. 6003, §§ 501-04.

77. *Id.* § 208.

78. *See* Railroad Safety Enhancement Act of 2008, H.R. 2095, 110th Cong. § 501 (2008).

79. *Id.* (articulating revisions to the high-speed rail assistance program to authorize federal assistance for federal high-speed rail corridor planning activities and authorizing appropriations).

demonstrates that in the United States the idea of building HSR system becomes more likely to meet the short-term objective of stimulating the economy and creating jobs rather than long-term objectives. Because the long-term benefits of HSR, such as alleviation of congestion in other modes, reducing energy consumption, and boosting regional development, not only depend on the system itself, but also on other external variables such as traffic deviation from other modes, source of electricity generation, and the density of urban areas crossed, the actual effect of outcomes becomes hard to predict.[80] Comparatively, the HSR short-term benefits are much more solid for policy communities to focus on. Therefore, in the policy stream, many proposals tend to link HSR with short-term tangible objectives so that it can become more likely to rise to the top of the governmental agenda.

C. Political Stream

In the MS model, flowing independently alongside the problem and policy streams, the political stream is composed of such things as national mood, pressure group campaigns, election results, partisan or ideological alignments in Congress, and changes of administration.[81] The emergence of a HSR is mostly pushed by two major components of political stream: ideological alignments in Congress and changes of administration. In the United States, the idea of HSR stands for a new dimensional perspective that aims at solving contemporary transportation problems, such as relieving congestion and greenhouse gas reduction.[82] However, because of the unpredictable social and economic outcomes and tremendous capital cost, Republicans and Democrats have formed different standpoints regarding government's role in HSR spending. Republicans generally represent a conservative ideology on government spending. They believe government spending on HSR is too risky to be affordable.[83] Democrats, generally represent a liberal ideology, prefer increasing government spending on HSR to spur development and achieve better connection among city centers.[84] These ideological discrepancies can be tracked by the recent usage debate of HSR stimulus money in Madison, Wisconsin.

80. *See* Ginés de Rus, Joint Transport Research Centre, The Economic Effects of High Speed Rail Investment, Discussion Paper 2008-16 (Oct. 2008), http://www.internationaltransportforum.org/jtrc/discussionpapers/DP200816.pdf .

81. Kingdon, *supra* note 13, at 162.

82. *See* Barack H. Obama, President of the U.S., and Joseph Biden, Vice President of the U. S., Remarks by the President and Vice President on a Vision for High-Speed Rail in America (Apr. 16, 2009) (transcript available at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-and-the-Vice-President-on-High-Speed-Rail/).

83. *See* Daniel C. Vock, *Republicans Fight Wisconsin High-Speed Rail*, Stateline, Sept. 14, 2010.

84. *Id.*

Democrats proposed a new state office building be one of the first new station stops on a high-speed rail network paid for primarily with federal dollars, while Republicans opposed that idea because of a concern about runaway government spending.[85] From a broader view, through the party initiation of HSR and Maglev related bills proposed from 1991 to 2008 (See Table 2), HSR and Maglev matters are more likely to be addressed by Democrats than Republicans in Congress.[86] Consequently, the shift of the political majority in both Congress and the administration directly affects the viability of HSR proposals on the governmental agendas.

Table 2 - Proposed High-Speed Rail and Maglev Bills from 1991-2008[87]

		Breakdown by Number		Breakdown by %	
Bill Type	Total	REPUBLICAN	DEMOCRAT	REPUBLICAN	DEMOCRAT
High-Speed Rail	65	23	42	35	65
Magnetic Levitation	8	1	6	14	86

American political history has two periods when HSR became part of the governmental agenda. The first period started with the passage of ISTEA in 1991 and ended with the passage of Swift Rail Development Act in 1994. The second period started in late 2007 with the passage of the Railroad Safety Enhancement Act of 2008 and is still ongoing today. In the first period, Democrats controlled both Houses.[88] From 1989 to 1996, eight HSR proposals and six Maglev proposals were submitted to Congress.[89] More interestingly, all the proposals were submitted by

85. *Id.*

86. Table 2 demonstrates that high speed rail bills proposed by Democrat are 30 percent higher than Republican, and magnetic levitation bills are proposed by Democrats 72 percent more than Republicans.

87. *See* Cameron Gordon, *Congressional Response to Fragile Foundations: An Analysis of Congressional Infrastructure Legislation since 1988 (Through 1996)*, U. OF CANBERRA; U. OF TRANSP. RES. CTR (1988).

88. In the 103rd Congress, the Democratic Party controlled the U.S. Senate with as many as 57 seats, and the U.S. House of Representatives with 258 seats.

89. *See* High Speed Rail Development Act of 1994, H.R. 4867, 103rd Cong. (1994); High Speed Rail Incentives Act of 1993, S. 438, 103rd Cong. (1993); High-Speed Ground Transportation Development Act of 1993, S.839, 103rd Cong. (1993); High-Speed Rail Development Act of 1993, H.R. 1919, 103rd Cong. (1993); High Speed Rail Transportation Policy and Development Act, H.R. 1087, 102nd Cong. (1991); High Speed Surface Transportation Development Corporation Act of 1991, H.R. 3947, 102nd Cong. (1991); High Speed Surface Transportation Development Corporation Act of 1991, S.1493, 102nd Cong. (1991); High-Speed Rail Transportation Act of 1991, S.811, 102nd Cong. (1991); *See also* National Magnetic Levitation Research and Development Act of 1991, H.R. 1452, 102nd Cong. (1991); Greater Pittsburgh Magnetic Levitation Transportation System Demonstration Act of 1991, H.R. 2102, 102nd Cong. (1991); Magnetic Levitation Research, Development, and Construction Act of 1991, H.R. 2878, 102nd Cong.

Democrats.[90] In the second period, the nation was in a recession. Due to more uniform ideological distributions in the House and Senate, a variety of HSR policy proposals were submitted and awaiting a policy window opening.

Another important political stream component appeared and helped facilitate the passage of HSR bills, the change of administrations. Now HSR is back on the governmental agenda and is basically attributable to the new unified rail leadership.[91] President Obama, as one of the most active HSR advocates in this country, collaborated with a longtime rail user, Vice President Joseph Biden, and a new Secretary of Transportation, Ray LaHood, to speed up the national HSR development process to an unprecedented stage.[92]

Started in 2008, America suffered a severe economic recession, which at one point caused the unemployment rate to reach 10.2%, and tens of thousands of businesses to shut down.[93] In order to get the economy to recover as soon as possible, the ARRA was passed on February 17, just one month after President Obama's inauguration.[94] In this Act, an eight billion dollar transportation infrastructure investment was dedicated to HSR, something that had never been done before.[95] As the first African-American President, Barack Obama was thought to be a revolutionary in American politics.[96] Moreover, he seems to have greater interest in innovation and more courage to take on challenges than his predecessors.[97] Because of this, he seeks new alternatives to solve old

(1991); Baltimore-Washington Corridor Magnetic Levitation System Demonstration Act of 1991, H.R.2914, 102nd Cong. (1991); Baltimore-Washington Corridor Magnetic Levitation Transportation System Demonstration Act of 1991, S.797, 102nd Cong. (1991); Mag-Lev Transportation Construction Loan Guarantee Pilot Program Act, S.1474, 102nd Cong. (1991).

90. *Id.*

91. Jeremy F. Plant, *High-Speed Rail: An Idea Whose Time Has Come?*, THE PUB. MANAGER, 78 (2009).

92. *Id.* at 78.

93. *See* BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, USDL-10-0231, REGIONAL AND STATE UNEMPLOYMENT – 2009 ANNUAL AVERAGES (2010), http://stat.bls.gov/news.release/archives/srgune_03032010.htm (the 2009 annual unemployment rate was 9.3%); *see* BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, USDL-10-0141, THE EMPLOYMENT SITUATION – JANUARY 2010 (2010), http://www.bls.gov/news.release/archives/empsit_02052010.pdf (the unemployment rate later reached 9.7% in January 2010).

94. *See* H.R. 1, 111th Cong. (2009) (introduced in the House of Representatives on January 26, 2009); Pub. L. No. 111-5 on February 17, 2009 (passed the House of Representatives and the Senate, it was signed by President Obama); American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

95. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

96. *See* HORACE G. CAMPBELL, BARACK OBAMA AND TWENTY-FIRST-CENTURY POLITICS: A REVOLUTIONARY MOMENT IN THE USA (Pluto Press 2010).

97. *See generally id.* at 55-57.

problems. On the unveiling event of the national HSR plan on April 16, 2009, President Obama said, "[w]hat we need, then, is a smart transportation system equal to the needs of the 21st century. A system that reduces travel times and increases mobility. A system that reduces congestion and boosts productivity. A system that reduces destructive emissions and creates jobs."[98]

Meanwhile, Vice President Joseph Biden and Secretary of Transportation Ray LaHood have helped President Obama push HSR as well as implement the HSR.[99] In fact, as a long time train user, Biden was in charge of the infrastructure expenditure from the Obama stimulus package whose purpose was to counteract the ongoing recession.[100] Also, it shows that HSR is Secretary LaHood's top priority as Transportation Secretary. After the announcement of the national HSR plan in April 2009, he has been actively involved in allocating HSR money.[101] Not only did he visit Spain to gain knowledge for HSR development in the United States, but he also had discussions with HSR grant applicant states to allocate the money to the most practical routes.[102] In short, the change of administration was a key component in the HSR political stream.

According to the MS model, "the agenda is affected more by the problems and political streams, and the alternatives are affected more by the policy stream."[103] A "policy window" indicates an opportunity for policy entrepreneurs who are "advocates of proposals to push their pet solutions."[104] When policy windows open, policy entrepreneurs act to couple the three streams.[105] In Florida, a policy window has opened. A case study of the Florida HSR explores how policy entrepreneurs couple the three streams because Florida's Tampa-Orlando HSR plan was awarded $1.25 billion in federal HSR grants and is likely to be the first real HSR system completed.[106] Although studies have shown that the

98. Obama, *supra,* note 83.

99. *See id.*

100. *See* Michael Scherer, *What Happened to the Stimulus?*, TIME, July 1, 2009, *available at* http://www.time.com/time/nation/article/0,8599,1908167,00.html.

101. *See id.*

102. *See id.*

103. *See* Kingdon, *supra* note 13 at 168.

104. *Id.* at 165.

105. *See id.* at 196-97.

106. *See* FLA. HIGH SPEED RAIL, FLA. DEP'T OF TRANSP., FL HSR PROJECT SUMMARY (2010), http://www.floridahighspeedrail.org/storage/FHSR%20Early%20Works%20Projects%20Overview%20Summary-%2010-14-10.pdf; *see* FED. R.R. ADMIN., DEP'T OF TRANSP., HIGH-SPEED INTERCITY PASSENGER RAIL PROGRAM: TAMPA – FLORIDA – MIAMI (2010), http://www.fra.dot.gov/rpd/downloads/Tampa_Orlando_Miami_FINAL_1027.pdf; *see also* FEDERAL RAILROAD ADMINISTRATION, HIGH-SPEED INTERCITY PASSENGER RAIL PROGRAM: SUMMARY OF APPLICATIONS (2010), http://www.dot.gov/recovery/docs/hsiprapplist.pdf (The original federal

most recommended places to have HSR are city pairs in the Northeast Corridor,[107] Florida's success in winning the initial HSR as the single developing HSR in the United States is no surprise.[108] Florida's HSR is not merely a solution to the transportation issue; more importantly, it is the outcome of political gaming among different stakeholders. Through this case analysis, we can understand how the United State's policy entrepreneurs are achieving the HSR policy goals through the coupling of activities.

III. THE WINDOW OPENS FOR FLORIDA HSR

The original idea of building HSR in Florida can be dated back to 1976.[109] "For more than 30 years, lawmakers and state officials have ordered studies . . . including a 1984 report that said it was a necessity for the 21st century," proposing a passenger system to connect big metropolitan cities in Florida, such as Miami, Orlando, and Tampa.[110] In 2000, voters approved a constitutional amendment mandating a high-speed rail system in the state.[111] Yet, Governor Jeb Bush led a charge to veto the amendment in 2004, which consequently killed the high-speed rail authority.[112] However, Florida's rail advocates never gave up their hope for HSR.

The Florida Department of Transportation actively prepared HSR proposals and waited for another opportunity to arrive.[113] In 2009, the passage of the ARRA opened a window for nationwide HSR advo-

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funding request for Florida Tampa to Orlando High-Speed Rail Express project was $2.65 billion, which included construction of eighty-four miles of track, station improvements, and acquisition of five train sets to provide for sixteen daily round-trips at 168 mph maximum and 100 mph average and the actual awarded fund is $1.25 billion); *See* FEDERAL RAILROAD ADMINISTRATION, HIGH-SPEED INTERCITY PASSENGER RAIL PROGRAM: CALIFORNIA CORRIDORS (2010), http://www.fra.dot.gov/rpd/downloads/California_Corridors_102910.pdf (Compared with California's over $40 billion requested level vs. the actual approved level of $2.344 billion, it is obvious that Florida's HSR projects has a more solid financial condition for completion of HSR project).

107. Hagler *supra* note 18 at 6-8.

108. *See* SUMMARY OF APPLICATIONS *supra* note 108(detailing the summary of applications for the High-Speed Intercity Passenger Rail Program).

109. *See* FLA. HIGH SPEED RAIL, FLA. DEP'T OF TRANSP., TIMELINE, (Aug. 13, 2010), http://flhsr.squarespace.com/history/2010/8/13/timeline.html.

110. Joe Follick, *Rail Remains Far Off even as Florida Gas Prices Soar*, HERALD TRIB. (Sarasota), May 25, 2008, at A1.

111. FLA. CONST. art. X, § 19 (repealed 2005).

112. *Id.*

113. FLA. DEP'T OF TRANSP., THE FLORIDA RAIL SYSTEM PLAN: INVESTMENT ELEMENT ch. 3 at 23 (2010), http://www.stluciempo.org/pdf/A-2010FLRailPlan-InvestmentElement.pdf (Florida Department of Transportation (FDOT) has pushed HSR for more than three decades. The earliest attempt goes back to the 1970s).

cates.[114] A dedicated fund of eight billion and five billion in appropriations in the next consecutive five years will be spent on the national HSR plan.[115] On April 16, 2009, the Secretary of Transportation announced criteria for applying for the federal HSR fund.[116] Then nine months later, just after the State of the Union, President Obama flew to Tampa and announced that Florida had been awarded $1.25 billion in HSR money.[117] Although the amount did not meet the $2.6 billion needed for Florida's proposal, it demonstrated that the Florida HSR seized this unique opportunity and would most likely be the first state to implement HSR.[118]

Florida's HSR success did not happen by chance. In fact, its success reflects how political factors play a tremendous influence in the outcome of HSR in the United States. At a time that both the problem window and political window opened, Florida's HSR policy entrepreneurs actively coupled policy, problem, and political streams, which helped their HSR dream become reality.

A. Problem Window

Probably the most obvious window for Florida's HSR is the economic recession. Florida was severely affected by the recession.[119] According to the Bureau of Labor Statistics in March of 2010, the unemployment rate was 12.3%, much higher than the national level of 9.7%.[120] Putting Floridians back to work is the most urgent task the Florida government has ever faced.[121] Under this condition, the HSR propo-

114. *See* Dutzik *supra* note 56 at 8 (For the first time, the federal government has invested significant resources towards the development of high-speed rail in the United States, with $8 billion allocated in the ARRA and $2.5 billion more allocated in Congress's fiscal year 2010 budget. This has opened a great opportunity for state and interest groups coupling their passenger rail projects with concrete federal financial support).

115. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

116. *See* FRA *supra* note 2 at 14-15 (detailing the general selection criteria for projects and corridors).

117. Jeff Zeleny, *At Florida Stop, Obama Announces Rail Investment*, N.Y. Times, Jan. 29, 2010, at A12.

118. Mark K. Matthews & Dan Tracy, *Florida to Get High-Speed-Rail Cash*, Orlando Sentinel, Jan. 28, 2010, *available at* http://articles.orlandosentinel.com/2010-01-28/news/os-high-speed-announcement-20100127_1_billion-for-high-speed-rail-high-speed-train-linking-orlando-white-house.

119. Bureau of Labor Statistics, U.S. Dep't of Labor, USDL-11-0083, Regional and State Employment and Unemployment – December 2010 tbl.3 (2011), http://stats.bls.gov/news.release/archives/laus_01252011.pdf.

120. Bureau of Labor Statistics, U.S. Dep't of Labor, USDL-10-0469, Regional and State Employment and Unemployment – March 2010 (2010), http://www.bls.gov/news.release/archives/laus_04162010.pdf.

121. *See* Charlie Crist, Governor of Fla., 2010 Florida State of the State Address (Mar. 2, 2010), *available at* http://www.c-spanvideo.org/program/292335-1.

sal is reconsidered as an alternative to create jobs and is well suited to the public and labor unions' current need.[122] The economic recession has consequently pushed the state government to take HSR seriously and put it on the agenda.[123] When the ARRA was passed, Florida's economic situation had naturally stimulated the state to develop ideas for HSR.

Another open problem window for consideration of HSR was the price of gasoline soaring to four dollars per gallon in 2008.[124] The increasing price of gas had scared many Floridians to conclude that their state transportation system had become too dependent on the automobile.[125] Alternatives had to be considered in order to combat a future Florida energy crisis.

B. Political Window

Not only did the problem window open, but also the political window opened at the same time. Barack Obama became the President of the United States and by *de facto* a huge political window opened for HSR in Florida. First, President Obama strongly supports HSR in the United States, so his cabinet members are actively helping him carry out the national High-Speed Intercity Passenger Rail Program.[126] Shortly after his announcement of the vision for HSR in America on April 16, 2009, USDOT began detailing a plan for selecting qualified HSR project proposals nationwide.[127] Since the initial announcement of the designation of the Florida HSR corridor linking Miami with Orlando and Tampa in 1992, the Florida HSR corridor has been formally integrated into the national HSR plan.[128] Therefore, when a new intercity passenger rail program became part of the governmental agenda, Florida's Tampa-Orlando HSR corridor naturally gained the attention of the federal government.[129]

Second, Barack Obama's special individual tie with Florida has

122. Matthews & Tracy, *supra* note 119.

123. *See id.*

124. *See* Lindsay Peterson, *Back on Track*, Tampa Trib., June 22, 2008, *available at* http://www2.tbo.com/content/2008/jun/22/220022/na-back-on-track/.

125. *Id.*

126. *See generally* NPR, *High-Speed Rail on Track for $8 Billion In Grants*, (Jan. 28, 2010), http://www.kqed.org/news/story/2010/01/28/27558/highspeed_rail_on_track_for_8_billion_in_grants?source=npr&category=npr%20home%20page%20top%20stories.

127. *See* Federal Railroad Administration, Vision of High-Speed Rail in America, (Feb. 21, 2011), http://www.fra.dot.gov/rpd/passenger/31.shtml.

128. Federal Railroad Administration, Chronology of High-Speed Rail Corridors, (Feb. 16, 2011), http://www.fra.dot.gov/rpd/passenger/618.shtml [hereinafter Chronology] (In Chronology of High-Speed Rail Corridors, Secretary of Transportation Andrew H. Card, Jr. announces designation of the Florida high-speed rail corridor linking Miami with Orlando and Tampa).

129. See generally *id.*

helped to support a policy preference to benefit his patrons. More precisely speaking, his success in winning the state of Florida in the 2008 presidential election, which was largely attributable to Florida's "I-4" constituents' support, was an important factor.[130] The I-4 corridor refers to the area that borders the 132 mile stretch of the I-4 interstate.[131] The westbound point starts at Tampa and the eastbound ends at Daytona Beach.[132] This area contains a large population and is the most important political swing area for Florida elections.[133] Winning "I-4" normally means winning the whole state because North Florida is largely the Republican's turf while South Florida is Democratic.[134] It was thought to be "the most important part of the most important state in the most important election."[135]

In 2004, the voters heavily voted for Bush, which helped Bush win the state. In 2008 it swung behind Democratic candidate Obama, helping Obama win Florida by a 2.8% margin of victory (see Figure 3). Obama is greatly indebted to Floridians. Because Florida was severely affected by the recession, Obama wants to pay back his Floridian supporters and help them get back to work quickly. On January 28, 2010, just two days after his State of Union speech, President Obama together with Vice President Joseph Biden went to Tampa, Florida.[136] In a Tampa town hall meeting, he announced his firm support with a $1.25 billion down payment for the HSR project between Tampa and Orlando.[137] As he said, the stimulus money would go to buy right-of-ways, build track, and conduct engineering and environmental work that could create 23,000 jobs over four years.[138] Generally, because of the political connection with I-4 corridor constituents, President Obama's support for Florida HSR has undeniably strengthened.

130. *See* Sean Lengell, *As I-4 Corridor Goes, So Does Florida,* WASH. TIMES, Jan. 28, 2008, at A1.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

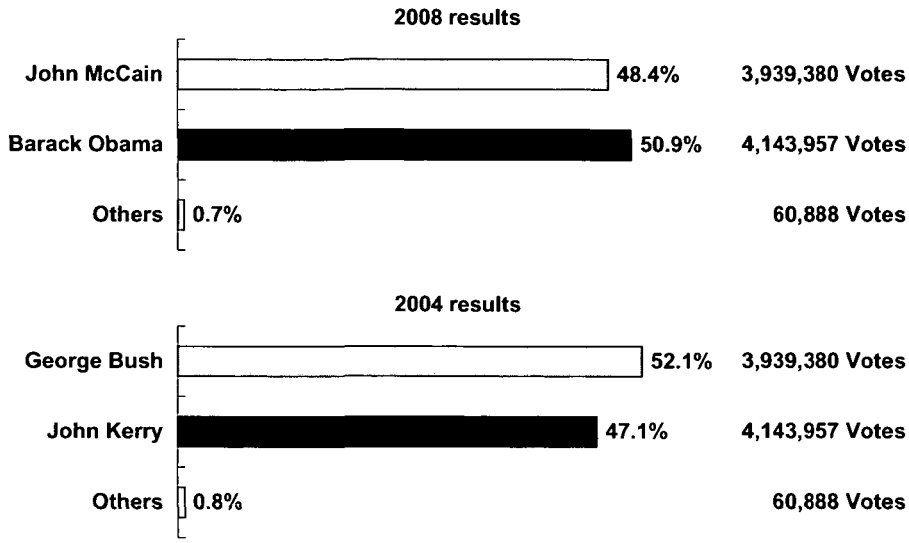
135. CNN, *Candidates Eye Voters on Florida's I-4* (Oct. 11, 2004), http://articles.cnn.com/2004-10-11/politics/campaign.florida.reut_1_persuadable-voters-puerto-ricans-swing-state?_s=PM:ALLPOLITICS (Patti Sharp describing the political importance of I-4 during 2004 presidential election).

136. Zeleny, *supra* note 118.

137. *Id.*

138. *Id.*

Figure 2 - Florida Statewide Election Result- 27 electoral votes[139]
100% of precincts reporting



Third, Florida's geographic advantages makes it an exceptional place to build the HSR model that can help Americans get real experience with HSR, and thus, obtain more political support for it.[140] Currently, the debate about building a HSR system in the United States is focused on the high implementation costs versus unpredictable future benefits.[141] Normally, the HSR-related benefits are measured through rider-ship; the more riders, the bigger benefits it will generate.[142] However, future rider-ship projections are based on current data, and the reality might be quite different because no one has ever experienced HSR and its benefits. Consequently, the cost becomes the focal point that creates the major challenges.

The key to make HSR successful is to establish a dedicated right-of-way so that running at a true high speed can be guaranteed to attract more riders. Unlike other countries, over sixty percent of the land in the United States is privately owned and the government has a very difficult

139. U.S. CENSUS BUREAU, POPULAR VOTE CAST FOR PRESIDENT BY POLITICAL PARTY – STATES: 2004 AND 2008 Table 399 (2011), http://www.census.gov/compendia/statab/2011/tables/11s0399.pdf.

140. *See generally* NAZIH K. HADDAD, FLORIDA HIGH SPEED RAIL: VISION FOR HIGH-SPEED RAIL IN AMERICA, (Mar. 4, 2010), http://southeast.construction.com/southeast_construction_news/2010/extras/0309_RailAdvocates.ppt.

141. *See* Intermodal Surface Transp. Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (Dec. 18, 1981).

142. *Id.*

time obtaining land for public usage.[143] Because of the high cost of land, as well as constraints from 'Not in My Backyard ("NIMBY")', the cost of HSR turns out to be extremely high.[144] This is why the Acela Express, which runs between two of the most densely populated areas, still cannot achieve a true high speed of over 120 mph on average.[145] It simply doesn't have a dedicated right-of-way, and it even has to run on a shared track with freight trains in some parts of NEC corridor.[146] Building another dedicated right-of-way will face lots of constraints from NIMBY persons.[147] Choosing Florida I-4 rather than other planned national HSR corridors as a starting point is smart because the proposed Tampa-Orlando HSR line will be constructed on the land beside I-4 which is owned by the federal government, so land-acquisition costs are minimal.[148] Also, because the land is almost flat in the I-4 corridor, the cost to build a HSR route will not be too high compared with other corridors.[149] Such a low construction cost is likely to face less opposition both from legislators and the public, and thus, allow the Florida HSR plan to become a reality much faster. If the state and federal financing hold, the first phase of the railway is scheduled to be completed by 2015.[150]

In sum, after more than a decade's waiting, both the problem and political window for Florida's HSR has opened. The soaring of gas prices during the economic recession made people realize the need to find an alternative transportation mode to face future energy issues, while the economic recession made people aware of the necessity of creating jobs and stimulating the economy. These events have captured the attention of governmental officials both at the state level and the federal level, and thus, triggered the opening of the problem window for HSR proposals. Also, with a pro HSR administration in office, Obama gives interest groups, legislators, and agencies an opportunity to push HSR positions and proposals they did not have with the previous administration. With a special political bond with the Florida I-4 constituents, as well as the region's unique topological advantages for HSR, the political window opened for Florida's HSR. When the windows open, policy entrepre-

143. Peter Morrisette, *Conservation Easements and the Public Good: Preserving the Environment on Private Lands,* 41 NAT. RESOURCES J. 373 (2001).

144. *See* Mark Reutter, *Bullet Trains for America?*, WILSON Q. (2009), *available at*: http://www.wilsonquarterly.com/printarticle.cfm?aid=1476.

145. *See generally id.*

146. *Id.*

147. *Id.*

148. Mark Reutter, *The Right Track: Improving President Obama's High-Speed Rail Program,* PROGRESSIVE FIX (Sep. 6, 2010), *available at* http://www.progressivefix.com/the-right-track-improving-president-obama%E2%80%99s-high-speed-rail-program.

149. Michael Grunwald, *Can High-Speed Rail Get on Track?*, TIME, Jul. 19, 2010, http://www.time.com/time/magazine/article/0,9171,2002523-1,00.html.

150. Zeleny, *supra* note 118.

neurs began actively coupling the problem and political stream to the policy stream and ultimately facilitated acceleration of the HSR to become reality.

C. Coupling by Policy Entrepreneurs

In Kingdon's theory, policy entrepreneurs are defined as "advocates who are willing to invest their resources—time, energy, reputation, and money—to promote a position in return for anticipated future gain in the forms of material, purposive, or soldiery benefits."[151] The coupling activity by HSR policy entrepreneurs can be analyzed at both the federal and state level. One pivotal policy entrepreneur that pushed the HSR at federal level was Representative John Mica, who represents Florida's 7th congressional district where the proposed Tampa-Orlando HSR is located.[152] As the highest-ranking Republican on the Transportation and Infrastructure Committee, Mica has been collaborating with Committee Chair Jim Oberstar (D-Minn.) to promote HSR.[153] In March 2008, Rep. Mica proposed H.R.5644 in order to provide for competitive development and operation of high-speed rail corridor projects in the United States.[154] The bill proposed a plan to allow a secretary to set up criteria for selecting HSR feasible corridors. The bill was incorporated into the PRIIA and signed by President Bush into law.[155] This was the first time that a concrete HSR implementation plan was made by law.[156] Meanwhile, Mica also proposed that federal money should be used to leverage other resources to support HSR projects.[157] With a bipartisan pull at federal level, Mica helped pave the way for HSR coming to Florida.

In addition, other members of Florida's congressional delegations were active in coupling the state legislature with the White House by delivering relevant information to each other.[158] Because of their coupling

151. Howard Rebach & John Bruhn, Handbook of Clinical Sociology 255 (2d ed. 2001).

152. H.R. 5644, 110th Cong. (2d Sess. 2008).

153. JAMES OBERSTAR, ET AL., Committee on Transportation and Infrastructure, The Surface Transportation Act of 2009, (June 18, 2009), http://www.eenews.net/public/25/11394/features/documents/2009/06/18/document_gw_02.pdf (Chairman James Oberstar and John Mica presenting a blueprint for the next highway authorization bill, intending to provide $50 billion for president Obama's vision on a nationwide HSR system after the President's announcement of $billion HSR grant in January 2009).

154. H.R. 5644.

155. H.R. 5644.

156. *See generally id.*

157. Press Release, John L. Mica, High-Speed Rail Investments Must Yield Real Results (Oct. 14, 2009), *available at* http://republicans.transportation.house.gov/news/PRArticle.aspx?NewsID=698.

158. Ryan Grim, *How Florida Cashed in on High-Speed Rail,* HUFFINGTON POST (Feb. 2, 2010), http://www.huffingtonpost.com/2010/02/10/how-florida-cashed-in-on_n_454467.html.

activities, the state has obtained an opportunity to prove its seriousness about getting into the HSR business to the White house, and at the same time the White House knows what Florida really thinks of HSR. One of the vital efforts was made by Congressman Alan Grayson, who showed he knows how to cater to the White House when it means getting something done for his Orlando district.[159] Congressman Grayson consulted with White House Chief of Staff Rahm Emanuel about the decision-making process.[160] "Emanuel told him that there was real concern in the White House that Florida was not fully ready for [HSR], and that it might not be willing to spend any of its own money toward that end. . . .[161] Florida needed to show it was serious—and it did, by bringing [Secretary] LaHood to Orlando in October 2009 for a public meeting with rail advocates."[162] Congressman Grayson rode with Secretary LaHood for the 45-minute trip to the airport.[163] "The visit was followed up with action in the state legislature."[164]

At the state level, state legislators were actively linking problems with prepared policy proposals. Since the announcement of eight billion dollars in dedicated HSR funds, many states have been trying to get a share.[165] Based on the requirement of PRIIA, USDOT has established a series of selection criteria for applications.[166] One of the important requirements is that the federal HSR fund will be allocated only to those states that are willing to provide state funds to finance HSR projects.[167] The Secretary of Transportation Ray LaHood mentioned that state leaders "have little chance at a federal commitment if they wouldn't put some of their own skin in the game."[168]

In order to seize this opportunity, policy entrepreneurs have tried to create the best conditions for the federal money's arrival. Florida Governor Charlie Crist is one of these policy entrepreneurs who have been pushing the Florida State Legislative to support HSR.[169] As the result of many efforts, the Florida Rail Act (HB1) was passed on December 8,

159. *Id.*

160. *Id.*

161. *Id.*

162. Grim, *supra* note 159.

163. *Id.*

164. *Id.*

165. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

166. CHRONOLOGY, *supra* note 129, at 12.

167. *Id.* at 14.

168. Grim, *supra* note 159.

169. Lloyd Dunkelberger, *Fla. Legislature Backs Rail Deal*, THE LEDGER (Fla.), Dec. 8, 2009, at A1, *available at* http://www.theledger.com/article/20091208/NEWS/912085033/1338?tc=ar.

2009.[170] Florida lawmakers endorsed a commuter train for central Florida, agreed to pay more for commuter rail service in south Florida, and potentially improved the state's chances of winning federal funding for high-speed rail.[171] Governor Crist, "who personally lobbied lawmakers on the legislation (HB1), called the outcome of the special session 'a brave and historic step to transform Florida's future - not only as it relates to transportation in our state, but also for the employment and economic opportunity of our people.'"[172] Although there might be a cost for lobbying for the HSR, these coupling activities can help policy entrepreneurs acquire a much greater political benefit if the couplings have been successful.[173]

Another key policy entrepreneur is Doc Dockery, who has been pushing HSR for twenty-eight years.[174] Started in 1982, he helped establish the Florida High-speed Rail Commission to explore a bullet train for the state.[175] He "felt so strongly about the state's [HSR] needs that he refused to sit idle in 1999 when Gov. Jeb Bush took office and put the brakes on plans to build a system connecting Florida's five major metropolitan areas."[176] In 2000, Dockery spent three million dollars of his own money persuading voters to pass a constitutional amendment requiring construction of the system.[177] And in 2001, "he worked to draft legislation creating the Florida High Speed Rail Authority[178] . . . Dockery served on that authority, which completed environmental and rider-ship studies, identified routes and selected a contractor to build and operate the system."[179] Although in 2004, the amendment was repealed by voters

170. *Id.* (Florida House Bill No. 1 (HB 1) passed after the Senate voted 27-10 in favor of the legislation on December 8, 2009, and Governor Crist signed the bill on December 16, 2009); Lloyd Dunkelberger, *Crist Signs Bill to Help Commuter Rail Lines*, THE LEDGER (Fla.), Dec. 16, 2009, at B1, *available at* http://www.theledger.com/article/20091216/NEWS/912165078 (The bill has provided concrete requirements for the state government to take part in the passenger rail development process, such as creating the Florida Statewide Passenger Rail Commission to monitor passenger rail systems, advising DOT concerning rail service and constructing, maintaining, repairing, operating, and promoting high speed rail systems. Fla. House of Representatives); Fla. Laws 2009-271.

171. Dunkelberger, *supra* note 170.

172. *Id.*

173. Lobbying costs for high speed rail may include expenditures associated with hiring a lobbyist, inviting policymakers to give speeches, hosting high speed rail conference, etc.

174. *See* Janet Zink, *Dockery Cheers Obama for Making His Rail Dream Come True*, ST. PETERSBURG TIMES, Jan. 29, 2010, *available at* http://www.tampabay.com/news/localgovernment/dockery-cheers-obama-for-making-his-rail-dream-come-true/1068978.

175. *Id.*

176. *Id.*

177. *Id.*

178. Zink, *supra* note 175.

179. *Id.*

at the urging of Governor Bush.[180] However, the Florida High Speed Rail Authority has never stopped its function of pushing HSR forward.[181] Through numerous studies, the Florida HSR has been supported with a more solid technical foundation, which later directly facilitated the Tampa-Orlando HSR Corridor and met DOT's selection criteria for applying for federal funds and finally succeeded.[182]

In sum, because of the economic recession and the emergence of Obama administration, the windows for HSR have truly opened for HSR proposals and advocates. One of the most significant opportunities for HSR is in Florida. Compared to the total $3.6 billion investment cost, the $1.25 billion award, amounting to approximately 35 percent of the total cost, is the highest ratio funded HSR project that is underway.[183] It also shows that the Florida HSR will likely be the first true HSR service in the United States.[184] Although many people still doubt whether the money has been allocated correctly to support Florida HSR, the reality has proved Florida rail advocates are indeed running ahead.[185] Because of policy entrepreneurs' persistent coupling activities, three elements—problem, proposal, and political receptivity—are all coupled in a single package, and thus, are poised to achieved HSR success in the United States.

IV. CONCLUSION

In this study, we followed John Kingdon's Multiple Stream Mode to record the different political factors that affect the HSR's agenda setting into three streams—problem, policy and politics. The findings show that in the United States, HSR is primarily addressed as an alternative to pro-

180. *Id.*

181. *Id.*

182. CHRONOLOGY, *supra* note 129, at 12-14 (DOT establishes criteria for selecting qualified HSR projects to get this grant); Leo King, *LeMieux Urges Florida Solons to Move on Rail; LaHood Urges State Solons On*, EXAMINER (Fla.), Oct. 22, 2009, http://www.examiner.com/transportation-in-jacksonville/lemieux-urges-florida-solons-to-move-on-rail-lahood-urges-state-solons-on (In order to be eligible for federal funding support, the Florida study was re-evaluated and submitted in October 2009); *see also* NEPA § 102, 42 U.S.C. § 4332 (2006) (Required by the National Environmental Policy Act (NEPA), all proposed HSR plans must ensure that potential system impacts to the natural and built environment have been assessed and any potential impacts will be mitigated); 42 U.S.C. § 4332(2)(C)(i) (2010); 40 C.F.R. § 1505.2 (2010).

183. *See* HSIPR, *supra* note 11 (listing the investment costs and estimated federal awards for all HSR applications).

184. Robert Trigaux, *Global Bullet Train Makers Gird for Tampa-Orlando High-Speed Rail Bidding War*, ST. PETERSBURG TIMES, Oct. 17, 2010, http://www.tampabay.com/news/global-bullet-train-makers-gird-for-tampa-orlando-high-speed-rail-bidding/1128375.

185. *See generally*, Cheryl K. Chumley, *Florida Rail Unlikely to Attract Riders*, ENV'T & CLIMATE NEWS, April 1, 2010, http://www.heartland.org/environmentandclimate-news.org/article/27392/Florida_Rail_Unlikely_to_Attract_Riders.html; Liam Julian, *The Trouble with High Speed Rail*, 160 POL'Y REV. 3, 2010.

vide sustainable medium distance travel service over a long-term. While in the short-term, HSR goals are creating jobs and stimulating the economy. The idea of HSR hasn't just emerged in recent years. On the contrary, it has been promoted by rail stakeholders, as well as Democratic lawmakers for almost a half century. Many kinds of planning, preliminary studies and policy proposals have been prepared, waiting for a window to open. However, the recent economic recession as well as the transition of the federal government administration finally opened the window for HSR. The short-term objective of the current national HSR promotion is political more than any other reason. Under such scenario, those states with substantial political advantages, such as Florida and California, have naturally waited in the front of the line to gain federal support. Moreover, as the catalysts in the process of policymaking, policy entrepreneurs' coupling activities have further advocated connecting their prepared proposals to politics and problem streams, which finally helped achieve their political outcome. The initial award of $1.25 billion of federal funding for Florida's HSR corridor project has proven that their success is largely attributed to the contributions of HSR policy entrepreneurs.

To conclude, the promotion of HSR in the United States is more a product of the American political game than the demand of transportation mode. Whether current HSR policy will truly make President Obama's national HSR strategy plan become reality is still hard to predict because the current open window for HSR may close soon. The current proposals for HSR from the legislative perspective are more likely to be seen as solutions for job creation and as ways to stimulate the economy. However, this perspective may be risky if only the short-term objective is addressed. USDOT reports that the whole national HSR system would cost no less than $500 billion.[186] Compared to this figure, the current thirteen billion dollars (eight billion dollars plus the pledged future five billion dollars) HSR fund is only a seed. The goal of creating jobs may be achieved through the ARRA in the short term, but whether the long term objective of building a cost effective HSR system can be achieved is still unknown. However, one thing that is obvious: if a truly efficient and reliable national HSR system is desired in the United States, more consideration should be put on the long-term objectives instead of the short-term. The implementation of an efficient national HSR system should not solely depend on political and problem windows. It must also be technically and economically feasible. This means the current focus of HSR development should be on fundamental research instead of any

186. Paul Nussbaum, *LaHood Sees Bright Future for High-Speed Trains in U.S.*, PHILLY.COM, Aug. 11, 2010, http://articles.philly.com/2010-08-11/news/24972052_1_gas-tax-high-speed-trains-high-speed-rail.

hasty on-site construction. This research should include: project funding, corridor route planning and design, rider-ship forecasts, cost-benefit estimations, operation and management design, and national HSR publicity campaigns. Only by eliminating irrational political reactions to HSR will America get on the right track for future mobility, both stimulating the economy and achieving a new era of sustainable transportation.