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Last-period problems in legislatures

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Abstract Last-period problems seemingly arise in legislatures when members decide to retire from office; they then can indulge themselves without fear of electoral reprisal. In contrast, we argue that last-period indolence is rarely a problem in legislatures: retiring politicians embrace legislative responsibilities since this is their last opportunity to consume these prerogatives; and the actions of legislators seeking post-elective employment are policed by the stream of future earnings they jeopardize if their actions exhibit indications of looming principal-agent problems. Using a unique data set profiling the post-elective careers of ex-legislators, we find no evidence of last-period laxity in roll-call attendance.

Keywords Legislatures · Last-period problems · Retiring politicians · Legislative voting · Shirking-principal-agent problems · Post-elective employment · Self-policing

There are a number of factors that render implicit politician-voter contracts inherently difficult to enforce: rationally-ignorant voters (Downs 1957), "noise" in the transmission of voter preferences (Stigler 1971), moral hazards (Weingast and Marshall 1988), politicians' abilities to effectively rationalize policy decisions (Fenno 1978), and the like. Nonetheless, office holders cannot be too sanguine since voters still exercise the ultimate sanction over them: reelection. Yet, when politicians spurn reelection—that is, when they are in the last term of office holding—this threat is defused and they may indulge themselves with impunity. Under such circumstances, rational behavior can have pernicious consequences for the operations and legitimacy of political institutions, which is why the behavior of public officials in the last period has received extensive scholarly study as well as media attention.[1]

[1] Despite the fact that the question of last-period problems explicitly addresses the inner-workings of political institutions, ironically, economists have taken the lead in its study as the most cited works are authored by them (see, for example, Lott 1987; Zupan 1990; Kalt and Zupan 1990; Vanbeek 1991; Bender and Lott 1996).

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retiring legislators are classified as "voluntarily exiting"—i.e., categorized with the likes of those who failed to run for another term, resigned, or received appointment to higher office—yet very few voluntary departures actually result in retirement; rather, most involve ex-legislators obtaining post-elective employment. Exiting legislators pursuing lengthy post-elective careers should not be expected to behave in the same manner as prospective retirees since their motives differ. For example, the conclusion that legislators shirk by voting their own preferences in the last term (see, for instance, Nelson and Silberg 1987; Kalt and Zupan 1990; Zupan 1990; Rothenberg and Sanders 2000a, 2000b; Tien 2001; Snyder and Ting 2003) might be true of retiring legislators, but those seeking post-elective employment have a more complicated decision to make in this respect. That is, they need to weigh the gains from such behavior against its costs—namely, alerting prospective employers to a potential principal-agent problem, thereby reducing employment prospects, options, and wages. Self-policing in the last period may not make sense to retiring legislators, but it is perfectly rational for legislators seeking post-elective employment; voting personal preferences seems far more perilous to the latter than the former.

In sum, failure to differentiate in explanatory models between exiting legislators' post-elective ambitions creates not only errors in estimation but can also lead to problematic interpretations of last-period behavior. Simply put, it would be a mistake to paint all who exit office voluntarily with the same stroke. Perhaps the important distinction is not between those who have exited Congress voluntarily or at the hands of voters, but whether legislators harbor post-elective employment plans, because if they do, mechanisms of self-policing are viable. This analysis demonstrates that such a conceptual distinction is valuable if not warranted for a better understanding of last-period problems in legislatures in particular, and the behavior of exiting politicians in general. Our inquiry also suggests that too little attention has been given to examining the self-policing of politicians' behavior under opportunistic conditions; in this regard, previous published analyses about last-period conduct warrant revisiting.[23]

We conclude this inquiry with discussion of some of the other intriguing findings emerging from our analysis. Since we have no predetermined theoretical expectations for many of these variables, our explanations should be considered as largely exploratory, and necessarily post hoc, but capable nonetheless of generating engaging hypotheses for further study. A case in point is explaining why Democrats vote 24% more than Republicans in the last term. We start by recognizing that Democrats, as the governing party during much of the period of study,[24] reap greater rewards (e.g., campaign contributions) from being in the majority because they have a greater say in the content and the fate of public policies (see, for example, Cox and Magar 1999); thus, they might be expected to vote frequently to enhance these returns. Since in the last term these gains (e.g., rents) are coming to an end—this is the final time to cash in—Democrats take advantage of their majority-party status even more so through heightened vote selling and trading, which results in increases in last-period voting.

We can also offer a number of reasons why ex-legislators campaigning for higher office would vote less in the last period, although none suggest negligence. Except for extremely small states, campaigning for higher office normally means reaching a larger audience than the congressional district; thus, more time is spent away from the Capitol. This

[23]There are at least 50 articles published in major journals in economics and political science that base important and highly cited findings on the supposition that *voluntary departure* from legislatures is coterminous with *retirement* and therefore exhibits last-period opportunism. Our findings clearly challenge this assumption.

[24]During the span of this study, Democrats controlled the House for 42 years while Republicans were the majority party for 10 years.

Appendix 3: Reason for leaving Congress

Reason for departure	Population	Sample
Lost general election	38.3%	39.3%
Lost in the primary	8.6	5.5
Retired	32.2	27.6
Sought another office	15.4	22.1
Accepted federal office	2.0	1.2
Resignation	3.5	4.3
Number of cases	1672	163

Sources: Biographical Characteristics of Members of Congress, 1789–1996 (ICPSR Study #7803); authors' 2004 survey of former members of Congress here includes members exiting between 1950s and 1996 for comparison

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