

BACKGROUND

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The Implications of Regular Lame-Duck Sessions in Congress for Representative Government

James I. Wallner, PhD, and Paul Winfree

Abstract

Barring exceptional circumstances Congress should not consider major legislation or presidential nominations during lame-duck sessions. Doing so undermines representative government by weakening the accountability link between the American people and their elected representatives. In recent years, Members of Congress have planned on taking up controversial issues during lame-duck sessions in order to avoid explaining their votes to the electorate. Congress now increasingly relies on lame-duck sessions to conduct its regular work. This practice undermines the ability of the American people to hold their representatives accountable because it allows Members to deliberately postpone unpopular decisions until after their constituents cast their votes.

Barring exceptional circumstances or strict exigency, Congress should not consider any major legislation or presidential nominations during a so-called lame-duck session—that is, between each November election and January 3, when a new Congress forms. Doing so undermines representative government by weakening the accountability link between the American people and their elected representatives.

Congress in the modern era first began using lame-duck sessions to legislate when it ran out of time during its regular session, or to address emergencies. But increasingly, Members have planned on taking up controversial issues during lame-duck sessions in order to avoid explaining their votes to the electorate. In short, a new norm has been created in which congressional leaders view lame-duck sessions as critical to completing the regular work of Congress. This practice undermines the ability of the American

KEY POINTS

- Congress in the modern era first began using lame-duck sessions to legislate when it ran out of time during its regular session, or to address emergencies. But a new norm has emerged in recent years because Members have made a habit of taking up controversial issues during regular lame-duck sessions in order to avoid explaining their votes to the electorate.
- Congress now relies on lame-duck sessions to conduct its regular work. This practice undermines the ability of the American people to hold their representatives accountable.
- The 114th Congress should complete its must-pass work before the November 8 presidential election. Controversial issues should be left for the next President and the new Congress to address.
- Intentionally waiting until after the people vote to take up controversial legislation devalues the accountability link between the people and their representatives.

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The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

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people to hold their representatives accountable because it allows Members to deliberately postpone unpopular decisions until after their constituents cast their votes.

To avoid the representational breakdown that occurs in lame-duck sessions when policy outcomes may be contrary to the will of the people, Congress should complete its work before the November elections. This will enable voters to accurately assess the record of their elected representatives, thereby ensuring that Members are held accountable for policy outcomes. Failure to do so has important implications for the legitimacy of any decisions made during a lame-duck session. Without accountability, representative government does not work.

Lame Ducks and Representative Government

The routine practice today of delaying the consideration of controversial issues until a lame-duck session has important implications for representative government because it devalues the role played by elections. It is more difficult for the people to hold their elected representatives accountable for the decisions they make during such sessions.

The people do not govern directly in representative government. Instead, they select others to represent them in periodic elections. In this sense, the public's influence on Members of Congress is indirect: The people's representatives are free to bargain with one another and to vote on legislation. Put differently, the policy choices confronting Members are not frozen between elections; they are not specifically determined by the electoral results. Rather, policy outcomes reflect the full and open consideration of complex and controversial issues. The legislative process in the House and Senate should facilitate such consideration.

This representative dynamic was a conscious decision on the part of the Framers of the Constitution. Assembled in Philadelphia in 1787, they confronted the problem of how to empower the federal

government to do certain things without making it so powerful that it threatened individual liberty. Their solution was to combine "the requisite stability and energy in government, with the inviolable attention due to liberty, and to the republican form."¹

Providing for the regular election of representatives was one of the primary ways in which the Framers solved this problem in practice. According to Alexander Hamilton, "the representation of the people in the legislature, by deputies of their own election" was a "powerful means by which the excellencies of republican government may be retained and its imperfections lessened or avoided."² In other words, the Members of the House and Senate would be given sufficient independence so that they could "refine and enlarge the public views."³ But the same Members would be subject to regular elections, which would ensure that they ultimately remained dependent on the people for their authority.

In this sense, requiring regular elections made it possible to create an energetic government that did not threaten the liberty of the American people. Under the Constitution, "a dependence on the people is...the primary control on the government."⁴ In a representative government, elections are the mechanism through which the people can hold their representatives accountable. It is the act of voting that allows the people to indirectly control the government, thereby influencing policy outcomes. But the mere act of voting in elections does not itself serve this role. Rather, two conditions must be met if the people are to hold their representatives accountable for the decisions they make in office.

First, the representative must seek re-election. That is, their name must be on a future ballot. This makes it more likely that Members of Congress will be responsible to their constituents. According to a leading work on this subject, "representatives who are subject to reelection have an incentive to *anticipate* the future judgment of the electorate on the policies they pursue. The prospect of possible dismissal exercises an effect on the action of the government at

1. Publius [James Madison], "Federalist No. 37: Concerning the Difficulties Which the Convention Must Have Experienced in the Formation of a Proper Plan," in George W. Carey and James McClellan, eds., *The Federalist* (Indianapolis: Liberty Fund, Inc., 2001), p. 181.

2. Publius [Alexander Hamilton], "Federalist No. 9: The Utility of the Union as a Safeguard against Domestic Faction and Insurrection," in Carey and McClellan, eds., *The Federalist*, p. 38.

3. Publius [James Madison], "Federalist No. 10: The Same Subject Continued," in Carey and McClellan, eds., *The Federalist*, p. 46.

4. Publius [James Madison], "Federalist No. 51: The same subject continued, with the same view, and concluded," in Carey and McClellan, eds., *The Federalist*, p. 269.

every point of its term.”⁵ Accountability is established when people vote on the basis of a candidate’s record in office as opposed to the promises made in the campaign. Put differently, the electoral process “forges connections between the wishes of citizens and the behavior of policymakers. Because of these connections, the policymakers take account of citizens’ preferences more fully than they would otherwise.”⁶

Second, the people must be able to clearly assign responsibility to their representatives for particular legislation. This requires that the congressional deliberations that produce that legislation be public. In the absence of transparent decision making, voters lack the information needed to determine who is responsible for policy outcomes. Accountability requires that a Member’s record in office on a particular issue can be easily assessed by the voter. Moreover, issue salience and time usually exhibit an inverse relationship when voters make retrospective judgments in an election: For example, legislation passed the day before an election will figure more prominently in a voter’s mind, all things being equal, than a bill passed years before.

Lame-duck sessions present a moral hazard because they violate the first condition and make it more difficult to meet the second. First, they create an environment in which Members of Congress who will not seek re-election, and who have already been replaced by the voters, can still make policy decisions. For example, new laws can be passed and judges confirmed for lifetime appointments by Members who were rejected by their voters just a few weeks earlier. This undermines the ability of the people to control the government because these representatives are no longer accountable to their constituents.

Second, lame-duck sessions make it more difficult for the people to assign responsibility for particular policy outcomes. The last-minute consideration of massive omnibus legislation that did not go through the regular order makes it more difficult for voters to understand what role their representative played in the outcome. In addition, voters will not have the opportunity to hold their representa-

tives accountable for the decisions they make in the lame-duck session until two years later at the end of the next Congress. Finally, decisions made during lame-duck sessions compete with the end-of-year holiday season for popular attention. This reduction in accountability combines with the desire of Members to return home to spend holidays with their family and friends, and creates an opaque environment where congressional leaders can pursue policy outcomes opposed by the American people with less concern about the consequences of doing so.

Original Practice and the 20th Amendment

The Constitution set the term length for Members of the House of Representatives at two years, and the Senate at six years. However, it did not specify when those terms would begin. Instead, the Meetings of Congress clause stipulates: “The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.”⁷ The purpose of this provision was to explicitly stipulate when Congress would meet instead of leaving the decision to the President, which was the practice followed at the time in Great Britain where the King was responsible for convening Parliament. The December date was chosen by the Framers for various reasons. Some argued that it would better align the congressional schedule with state elections. Others suggested that it would be more convenient for Members to attend Congress after the fall harvest and before the spring planting season.⁸

After the Constitution was ratified, the Confederation Congress set March 4, 1789, as the official date on which the new federal government would commence proceedings. Accordingly, the terms for the first Members of the House and Senate would also begin on that date. The new Congress did not convene until months after the elections because communications and transportation technologies were limited. It simply took a long time for most of the new Members to travel to Washington, DC. Travel from Charleston, South Carolina, to Washington,

5. Bernard Manin, *The Principles of Representative Government* (New York: Cambridge University Press, 1997), p. 178.

6. G. Bingham Powell Jr., *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven, CT: Yale University Press, 2000), p. 14.

7. U.S. Constitution, Art. I, § 4, cl. 2.

8. David F. Forte and Matthew Spalding, eds., *The Heritage Guide to the Constitution*, 2nd ed. (Washington, DC: Regnery Publishing, 2014), pp. 90–91.

DC, in 1800 would take approximately a week and a half. Such a trip could only begin once the affairs of the newly elected Member were in order.⁹

As a consequence of this act, the terms of successive Representatives and Senators would also begin on March 4 of each odd-numbered year thereafter and would last until March 4 of the following odd-numbered year. Under this arrangement, each new Congress would typically convene for its first session as prescribed by the Constitution on the first Monday in December of an odd-numbered year, 13 months after its Members were elected in November of the previous even-numbered year. This first session would usually last until the summer of the following even-numbered year, at which point Congress would adjourn until its next constitutionally prescribed meeting time (on the first Monday in December of that year). But at the point when Congress reconvened for its last session, its successor would have already been elected that November. As a result, the last session of each Congress was a lame duck because it would continue until the next Congress officially began on March 4 of the following odd-numbered year.¹⁰

By the end of the 19th century, a number of factors had prompted calls for reform. First, the Apportionment Act of 1872 codified long-standing practice by requiring that all federal elections be held on the same day in November. Yet newly elected Members no longer needed several months to get their affairs in order before arriving in Congress the following March, at the earliest, or the following December, at the latest. The revolution in communications and transportation technology reduced the travel time required to arrive in the nation's capital after an election, and made it possible for Members to get up to speed on developments inside Congress more quickly. With these advances, reformers began to see the representational problems posed by lame-duck sessions in a new light.

Emphasizing this shift in perspective was the fact that lame-duck sessions during the late 19th century featured irregular attendance rates. Members who were defeated in their re-election bids the previous November no longer had electoral incentives to show up for post-election sessions. That is, they participated selectively in congressional deliberations. Yet they could be motivated by partisan considerations. As a consequence, the lame-duck agendas presented by party leaders were often more partisan than those pursued during regular congressional sessions.¹¹

Finally, defeated Members could also be motivated by private considerations to participate in lame-duck deliberations. Indeed, corruption was a particular concern of reformers in the late 19th century. Defeated Members were charged with selling their votes during such sessions in exchange for plum executive appointments. These concerns prompted reformers to call for changes to the congressional calendar that would eliminate opportunities for vote buying. One example was particularly egregious and served as one of the immediate catalysts for a process that would eventually end with ratification of the 20th Amendment to the Constitution ten years later. Reformers alleged that President Warren Harding bought votes to pass the Ship Subsidy Bill of 1922 during the lame-duck session of the 67th Congress. Republicans who were defeated in their bid for re-election were more likely to vote for the legislation than those who were not. The controversy led Senator George Norris (R-NE) to introduce a resolution moving the start date of Congress from March 4 to early January. The Norris resolution was eventually approved as part of the 20th Amendment.¹²

The 20th Amendment was ratified in 1933 and significantly shortened the time available for post-election activity during a lame duck.¹³ Specifically, the 20th Amendment moved the beginning of the terms for President and Vice President from March

9. Charles O. Paullin, *Atlas of the Historical Geography of the United States* (Washington, DC: Carnegie Institution and American Geographical Society, 1932). Digital edition: edited by Robert K. Nelson et al., 2013, <http://dsl.richmond.edu/historicalatlas/> (accessed August 26, 2016).

10. *The Heritage Guide to the Constitution*, p. 90.

11. Jeffrey A. Jenkins and Timothy P. Nokken, "Institutional Context and Party Power: Member Participation and Leadership Strategy in the Lame-Duck Congressional Era," *American Politics Research*, Vol. 34, No. 4 (July 2011), pp. 724-753.

12. Craig Goodman and Timothy P. Nokken, "Lame-Duck Legislators and Consideration of the Ship Subsidy Bill of 1922," *American Politics Research*, Vol. 32, No. 4 (July 2004), pp. 465-489.

13. The 20th Amendment was ratified on January 23, 1933. It took effect in 1935. John Copeland Nagle, "Lame Duck Logic," *University of California, Davis Law Review*, Vol. 45, No. 4 (April 2012).

Lame-Duck Sessions in the Modern Era

- **76th Congress (1940–1941):** The first lame-duck session since the 20th Amendment took effect in 1935 did not consider any major legislation. Instead, Congress remained in session after the November elections in order to quickly respond to any emergency related to World War II.
- **77th Congress (1942):** Congress passed legislation establishing a military draft for 18-year-old and 19-year-old men. It also approved a measure related to overtime compensation for government employees.
- **78th Congress (1944):** Congress delayed an increase in the Social Security tax, reauthorized the War Powers Act, and increased the amount of money available for congressional staff. The Senate confirmed Edward Stettinius as Secretary of State.
- **80th Congress (1948):** Congress reconvened after the November elections for one day in what was the shortest lame-duck session since the ratification of the 20th Amendment. It extended the Hoover Commission (Committee on Organization of the Executive Branch of Government). The Senate extended the authorization of the Special Small Business Committee.
- **81st Congress (1950–1951):** Congress passed legislation providing foreign aid for Yugoslavia and a supplemental appropriations bill for the Department of Defense. It also passed civil defense legislation.
- **83rd Congress (1954):** The Senate considered a resolution censuring Senator Joseph McCarthy (R-WI) for conduct contrary to senatorial traditions.
- **91st Congress (1970–1971):** Congress reconvened after the November elections with an ambitious post-election agenda. It passed two appropriations bills, a foreign aid package, legislation related to foreign military sales, the Clean Air Act Amendments, and a measure creating the Community Development Corporation.
- **93rd Congress (1974):** Congress approved a trade-reform package and legislation to promote safe drinking water. It also passed a continuing resolution to fund government agencies whose funding had yet to be approved by the House and Senate.
- **96th Congress (1980):** Congress approved five appropriations bills and passed a continuing resolution to fund the remaining government agencies not covered by those bills. It approved a budget resolution and reconciliation legislation. Congress created the Superfund program and approved the Alaska National Interest Lands Conservation and Pacific Northwest Electric Power Planning and Conversation Acts.
- **97th Congress (1982):** Congress passed four appropriations bills and a continuing resolution to fund the agencies not covered by those bills.
- **103rd Congress (1994):** Congress reconvened after the elections for the sole purpose of voting on the General Agreement on Tariffs and Trade (GATT). During the brief session (the House met for one day and the Senate met for two) a single bill was sent to the President. After passing a new GATT on December 1, Congress adjourned.
- **105th Congress (1998):** The House met to consider a measure to impeach President Bill Clinton.
- **106th Congress (2000):** Congress sent 74 bills to the President’s desk during the lame-duck session. Of those bills, five regular appropriations acts were signed into law (three were included

in an omnibus measure). Six continuing resolutions were also approved during this session. One bankruptcy-reform measure made it through both chambers but was vetoed by President Clinton—the first time a piece of lame-duck legislation had been vetoed since 1982.

- **107th Congress (2002):** Congress passed legislation creating the Department of Homeland Security, and reauthorized the Department of Defense. It also approved appropriations bills for the Department of Defense and military construction programs. It passed a continuing resolution to fund the agencies not covered by these bills.
- **108th Congress (2004):** Congress passed an omnibus appropriations measure that funded the entire government (the Consolidated Appropriations Act for FY 2005). It also approved legislation increasing the debt limit and reformed the intelligence community.
- **109th Congress (2006):** The 2006 lame-duck session was called to address FY 2007 appropriations and expiring tax provisions. Although nine regular appropriations bills needed action, no appropriations were included in the 115 bills that the lame-duck Congress sent to the President. Of the 115 bills that were passed, two continuing resolutions extended government funding through February.
- **110th Congress (2008):** During the financial crisis of 2008, a lame-duck Congress passed 12 public laws. No appropriations bills were enacted, but the House notably passed legislation that would have bailed out the auto industry with \$14 billion in taxpayer-backed loans. The Senate blocked a vote on the measure, though the President ultimately provided a financial package.
- **111th Congress (2010):** Congress met for a prolific session where 100 bills were sent to President Barack Obama. Although none of the 12 regular appropriations bills had been passed before the lame-duck session, Congress failed to pass any appropriations, and continued stop-gap funding with three continuing resolutions.
- **112th Congress (2012–2013):** Congress reconvened after the November elections to confront expiring spending and tax policies as well as the impending sequestration. No regular appropriations bills had been passed when the lame-duck session started. Congress failed to pass a single appropriation or continuing resolution during the 56 days that it met. Instead, the government was funded by a continuing resolution. While Congress did not move any appropriations bills, a total of 88 bills were sent to the President, including the American Taxpayer Relief Act.
- **113th Congress (2014):** Congress returned for a lame-duck session to fund government programs. At the end of the 53-day session, 11 regular appropriations bills and three continuing resolutions were enacted.¹

1. This list was compiled in part by using Richard S. Beth and Jessica Tollestrup, "Lame Duck Sessions of Congress, 1935–2012 (74th–112th Congresses)," Congressional Research Service, September 19, 2014.

4 to January 20. The start date for each new Congress was moved to even earlier in the year, from March 4 to January 3.¹⁴

One of the primary purposes of the amendment was to eliminate the use of lame-duck sessions. At the time, it was referred to as the "lame-duck

14. Specifically, Section 1 of the 20th Amendment stipulated: "The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin." Section 2 stipulated: "The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day."

amendment.”¹⁵ Contemporaneous press reports heralded the idea that “lame ducks” would become relics of the past.¹⁶ The expectation was that Congress would conduct its regular business, controversial or otherwise, during the normal period between elections. According to two political scientists who have studied the period, “The key substantive consequence [of the 20th Amendment] was the firming up of the agency relationship—the timing of sessions was altered so that elections to the next Congress would normally take place during the adjournment between Congresses.”¹⁷ Specifically, the short period between November elections and the convening of the new Congress in January was intended to be “an inter-Congress adjournment” by proponents of the 20th Amendment.¹⁸ In the early practice, the time available for post-election sessions would be used only to address the most unexpected events or to respond to the most pressing needs of the nation.

Lame Ducks in the Modern Era

The changing role played by lame-duck sessions in the modern era can be observed in the rate at which they occurred. There have been 20 such sessions since the Constitution was amended to make it largely unnecessary for Congress to reconvene after an election. Thirteen of these occurred between 1940 and 2000.¹⁹ In contrast, seven occurred during the past 16 years.²⁰ As suggested by this trend, the utilization of lame-duck sessions was largely sporadic until recent years. While six of the first sessions were held during wartime, the other lame-duck sessions were used sporadically until the 1990s when they began to be utilized on a regular basis. They are now a regular feature of the congressional calendar. In contrast to the previous six decades, the House and Senate have reconvened for a lame-duck session at the end of every Congress since 2000.

This routinization of post-election sessions highlights the central role that lame ducks have come to play in congressional decision making today. It also reflects the fact that ideological and partisan polarization have made it more difficult for Congress to complete its work on time. This is because both parties have sought to protect their Members from casting votes that could be used against them in the next election. This partisan team play contributed to a breakdown in regular order and a rise in gridlock. In such an environment, lame-duck sessions represent an opportunity for Congress to complete its work at the end of each two-year period because they provide political cover for Members.²¹

In addition, Members of Congress have increasingly used lame-duck sessions to take up controversial issues and nominations instead of measures responding to emergencies or addressing pressing national needs, despite the clear intent of the original proponents of the 20th Amendment. The frequency of lame ducks during the modern era tracks closely with the rise in polarization and the erosion of regular order. A review of the lame-duck sessions held since ratification of the 20th Amendment illustrates that outgoing majorities in the House and Senate now openly work to pass as much of their agenda as they can before the new year.

Without facing the accountability of voters, both parties have taken up contentious pieces of legislation and nominations. Many of these issues are admittedly controversial and difficult to navigate. But rather than work through issues as part of the normal legislative year, recent Congresses have resorted to lame-duck sessions where there is less incentive for Members to represent their constituents. This not only undermines the ability of voters to hold their representatives accountable, it also gives rise to frustration with the responsiveness of governing institutions to the public’s concerns.

15. *The Heritage Guide to the Constitution*, p. 533.

16. Nagle, “Lame Duck Logic,” p. 1182.

17. Jeffrey A. Jenkins and Timothy P. Nokken, “Contemporary Lame-Duck Sessions of Congress: An Overview and Assessment with Special Emphasis on the 110th Congress,” paper presented at the annual meeting of the Southern Political Science Association, January 2009, p. 5.

18. *Ibid.*

19. There were lame duck sessions in the following Congresses during this period: 76th (1940–1941); 77th (1942); 78th (1944); 80th (1948); 81th (1950–1951); 83rd (1954); 91st (1970–1971); 93rd (1974); 96th (1980); 97th (1982); 103rd (1994); 105th (1998); and 106th (2000).

20. There were lame duck sessions in the following Congresses over the past 16 years: 107th (2002); 108th (2004); 109th (2006); 110th (2008–2009); 111th (2010); 112th (2012–2013); and 113th (2014).

21. Jenkins and Nokken, “Contemporary Lame-Duck Sessions of Congress,” p. 6.

The 114th Congress

Continuing the recent trend, the House and Senate have not completed their regular work before the November elections. Instead of completing its regular work, Congress has chosen to spend its time passing uncontroversial measures that do not pose political risks for its Members. Nearly a third of the new laws passed as of September 1, 2016, addressed relatively minor issues. For example, five addressed parochial issues relating to the conveyance or transfer of small parcels of federal land; 33 named post offices or other federal buildings. One of the new laws designated the bison as the national mammal of the United States. The decision by Congress to postpone its annual work to focus on other things makes a post-election lame-duck session more likely.

For instance, not one annual appropriation bill has been signed into law for fiscal year (FY) 2017. While the House and Senate appropriations committees have reported all 12 of the individual bills, only six of those bills have been considered on the House floor and only five have passed.²² The Senate's record is even worse. It has passed only three appropriations bills thus far in 2016.²³ Six of the appropriations bills have yet to receive floor consideration in either the House or the Senate. Only one of the bills has passed both,²⁴ and it has yet to be signed into law due to differences between the House and Senate versions of the legislation. This leaves Congress just 19 legislative days for the Senate, and 17 for the House, to complete the annual appropriations work before the end of the fiscal year.

The National Defense Authorization Act for FY 2017 is another major piece of legislation on which Congress has not yet completed its work. This bill provides legal authority and oversight for every

aspect of the Department of Defense and a version has become law every year for the past 50 years. Lack of progress on appropriations to this point, the limited number of legislative days left before the November elections, and the fact that Congress took a seven-week recess all suggest that Members are deliberately postponing the consideration of important work like appropriations and the Defense authorization bill until after the people vote.²⁵

There are also reports that Congress may take up several controversial issues during the forthcoming lame duck that do not have to be addressed by the end of the year. These items include the Trans-Pacific Partnership trade agreement, additional mandatory funding for the National Institutes of Health under the 21st Century CURES Act, a potential Internet sales tax, additional financing for the Veterans Administration, and the confirmation of Merrick Garland to serve on the Supreme Court, as well as other federal judges.²⁶

Conclusion

Congress should complete its must-pass work before the November 8 presidential election. Any legislation that cannot wait until the new year, like the annual appropriations bills and defense authorization, should be considered before then. Other, more controversial, issues should be left for the next President and the new Congress to address. Failure to do so poses serious implications for the health of this country's representative government.

Intentionally waiting until after the people vote to take up controversial legislation makes it more difficult for representative government to operate as it should. The role of elections as the accountability link between the people and their representatives in Congress is devalued by this practice. Put simply, it

22. The following bills have been considered on the House floor as of September 1, 2016: the Department of Defense Appropriations Act (H.R. 5293); the Energy and Water Development and Related Agencies Appropriations Act (H.R. 5055); the Financial Services and General Government Appropriations Act (H.R. 5485); the Departments of the Interior, Environment, and Related Agencies Appropriations Act (H.R. 5538); and the Military Construction and Veterans Affairs and Related Agencies Appropriations Act (H.R. 4974). H.R. 5055 was defeated on the House floor by a vote of 112 to 305.

23. The following bills have been considered on the Senate floor as of September 1, 2016: the Energy and Water Development and Related Agencies Appropriations Act (S. 2804); the Military Construction and Veterans Affairs and Related Agencies Appropriations Act (S. 2806); and the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act (S. 2844).

24. The Military Construction and Veterans Affairs and Related Agencies Appropriations Act (H.R. 4974) has passed both the House and Senate.

25. Rachel Bade and Heather Caygle, "Congress Takes a 7-Week Vacation with Little to Show for it: Members Are Already Looking ahead to the Lame-Duck for Legislative Action," *Politico*, July 14, 2016.

26. 21st Century Cures Act, H.R. 6.

is harder for voters to hold Members accountable for the decisions they make during lame-duck sessions.

One of the problems presented by lame-duck sessions is that they create an environment where representatives who were just replaced by their constituents can make decisions on important policies before their successors are sworn into office in the new Congress. These Members are no longer accountable to the voter. Another problem is that lame-duck sessions make it more difficult for the people to determine who is responsible for policy outcomes. The lack of transparency and rushed consideration that legislation typically receives during lame-duck sessions limits the information necessary to make an informed decision at the ballot box.

Lame-duck sessions have been tolerated in the past because they were necessary to address pressing national needs or to respond to emergencies. But they are now used regularly to complete Congress's work. Members today deliberately wait until after the people vote to legislate—a practice that must stop.

—**James I. Wallner, PhD**, is Group Vice President for Research, and **Paul Winfree** is Director of the Thomas A. Roe Institute for Economic Policy Studies, of the Institute for Economic Freedom and Opportunity, and Richard F. Aster Fellow, at The Heritage Foundation.