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## How Lame Are Lame Ducks?: 2016 Update

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**A** lame duck session of Congress occurs when legislators meet after an election has been held but before the next Congress has taken office.<sup>1</sup> Lame duck sessions are often criticized by the victorious party in the election, and a common critique is that the lame duck members—undisciplined by electoral constraints—vote irresponsibly. There are subtle but statistically significant differences between voting patterns in regular and lame duck sessions, as revealed by analysis of more than 52,000 House and Senate roll call votes.

During a lame duck session, members are slightly less likely to side with their own parties and less likely to vote at all. These patterns persist in very lame duck sessions—those that take place following the loss of majority status within a single house. In these sessions, however, a new pattern emerges: Senators become less likely to cast bipartisan votes. Beyond these voting patterns, it is difficult to say whether members vote more or less “responsibly” during lame duck sessions of Congress. Our analysis supports the primary findings of the existing literature on lame ducks. Past studies have found lame duck legislators to be less likely to indulge most special interests, but others suggest some legislators may be more likely to indulge one particular special interest: their next employers. In this paper, we explain how incentives change for lame duck legislators, briefly review past research on lame ducks, and present our statistical findings that support and add to the existing literature.

## WHAT MAKES A LAME DUCK SESSION SPECIAL?

Lame duck sessions differ from regular legislative sessions in that some members will have lost their reelection bids and others will be on the brink of voluntary retirement.

For many, the mere presence of members who will not be returning is *prima facie* evidence that lame duck sessions are undesirable. As Yale law professor Bruce Ackerman says, “It is utterly undemocratic for repudiated representatives to legislate in the name of the American people.”<sup>2</sup> Indeed, John Nagle of Notre Dame has demonstrated that these sorts of concerns animated the push for the 20th Amendment, which, after 1933, eliminated the long and mandatory lame duck session that had followed each election since the founding of the Republic.<sup>3</sup>

The force of this critique is blunted by the fact that the vast majority of members win their reelections: Since 1962, just 6 percent of representatives and 13 percent of senators have lost reelection.<sup>4</sup> And in the average session, only about 5 percent of members retire.<sup>5</sup>

In the 2016 election, the departing member rate was especially low. Just 3 percent of representatives and 6 percent of senators who sought reelection lost their bids, while 6 percent of representatives and 5 percent of senators retired.<sup>6</sup>

So most legislators who sit during a lame duck session will have just passed an electoral test. A large body of literature examines the reasons that incumbents are unlikely to lose their seats. These factors include name recognition, a fundraising advantage, and uncompetitive, gerrymandered districts.<sup>7</sup> Current estimates suggest the incumbent advantage is between 8 and 10 percentage points.<sup>8</sup>

Among those members who do retire or lose their reelection bids, lame duck sessions might be expected to alter incentives for a number of reasons:

1. Nonreturning members may feel less of an obligation to serve the interests of their constituents since they no longer need their approval for reelection. Depending on the point of view, this may result in more “ideological” votes or more “principled” votes. It is also likely to result in diminished work effort.
2. Nonreturning legislators are also free to ignore whatever political bargains (commonly called

“logrolls”) they have struck with their fellow members, especially party leaders. This has an ambiguous effect on public welfare because, on the one hand, logrolls tend to facilitate policies that favor parochial interests, but on the other hand, logrolls can also help minority interests register intense preferences.<sup>9</sup>

3. These members may feel less pressure to cater to special interests whose financial and organizational support is often needed for political success. This may make lame ducks more likely to serve the general population.
4. There is an important caveat to the previous factor: Nonreturning members may be more likely to cater to the interests of one particular special interest—their next employers. And for many ex-members, this next employer is a lobbyist or a client of a lobbyist.<sup>10</sup>

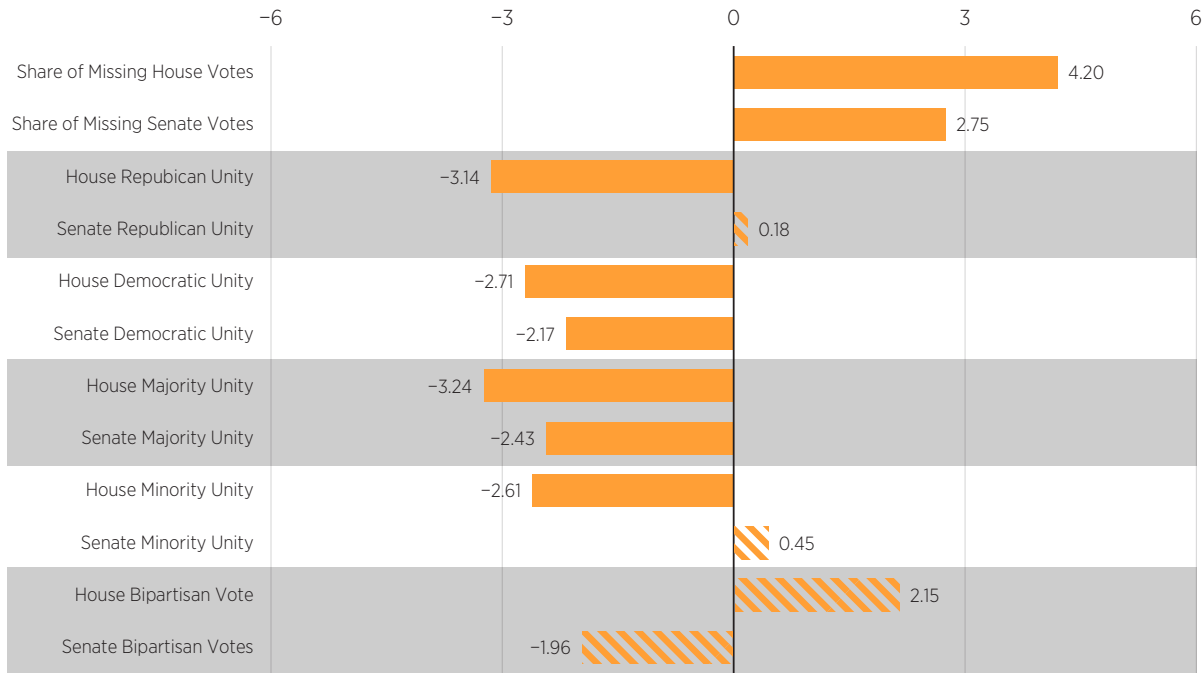
On balance, it is not clear whether these altered incentives are likely to produce better or worse public policy.

Empirical evaluation of lame duck sessions is complicated by the fact these sessions occur at the end of the year, when more complex and controversial bills are likely to come up for a vote. This is because large, complex pieces of legislation take longer to assemble and controversial legislation takes longer to whip. It is possible, therefore, that votes cast near the end of the year will tend to be more momentous and more controversial, whether they take place during an election year or not. For this reason, we believe it is important to control for any confounding “time of year” effect when assessing the influence of lame duck sessions on voting patterns.

## WHAT DO WE KNOW ABOUT LAME DUCK VOTING PATTERNS?

In recent years, a number of researchers have documented differences in voting patterns between regular and lame duck sessions of the House of Representatives.<sup>11</sup> These authors have found House members less likely to participate in roll call votes and more likely to cast votes that are inconsistent with the ideological wishes of their party leaders. There is also some evidence that members who do not face electoral constraints are more likely to ignore the ideological wishes of their constituents.<sup>12</sup>

**FIGURE 1. PERCENTAGE POINT CHANGE DURING LAME DUCK SESSIONS**



Note: A hatched bar indicates the variable is not statistically significant.

We build on this research, extending it to the Senate and introducing controls to account for different voting patterns that might emerge at the end of the year, whether members are voting in a lame duck session or not. We also assess the effect of a “very lame duck” session, that is, one that takes place following the loss of majority status in the chamber.

Our analysis is based on more than 29,000 House and 22,000 Senate roll call votes from 1939 through 2014.<sup>13</sup> A roll call vote is a recorded, chamber-wide vote on any measure. It could be a vote on the final passage of a bill, an amendment, or a procedural vote.

To test whether lame duck and very lame duck sessions are associated with altered legislative behavior, we focus on three main voting patterns: share of missing votes, party unity, and bipartisan votes. The share of missing votes is simply the number of members who fail to vote on a roll call vote divided by the total number of members in the chamber. Party unity is the share of members who vote with their party on each roll call vote, calculated in terms of Republican unity, Democratic unity, majority party unity, and minority party unity. Finally, a bipartisan vote is a roll call vote that garners majority support from both major parties.<sup>14</sup> We hypothesize that

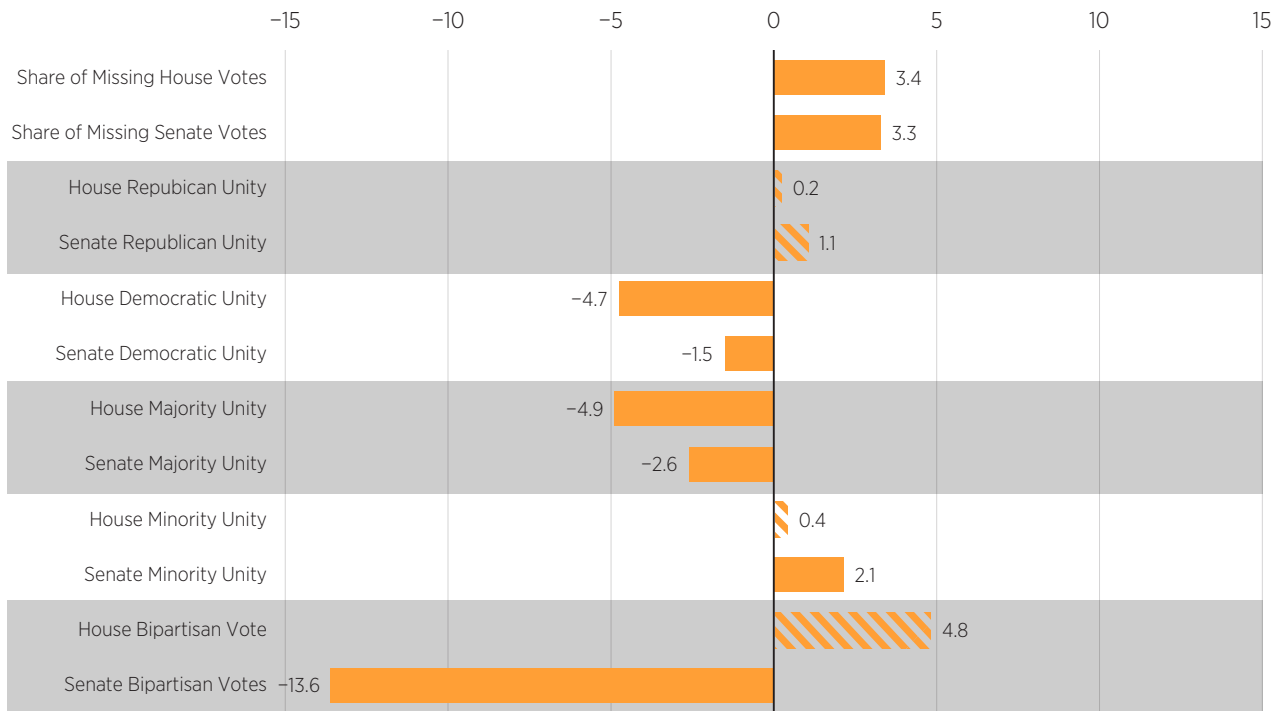
during lame duck sessions, members will be less likely to vote, and when they do, they will be less likely to vote in line with their party leadership.

Figure 1 shows how lame duck voting patterns differ from regular session patterns. These estimates control for the idiosyncratic patterns of particular congresses and for the time of the year.<sup>15</sup> Except where indicated by hatched coloring, the estimated effects are statistically significant.<sup>16</sup> In most cases, the effect is relatively modest and larger in the House than in the Senate.

Viewed in light of typical voting patterns, the largest effect of a lame duck session is to reduce member participation. Typically, about 9 percent of representatives and 10 percent of senators skip roll call votes, but during a lame duck session, an additional 4.2 percent of representatives and 2.75 percent of senators miss votes. In other words, representatives are 46 percent more likely and senators are 27 percent more likely to miss a vote if it happens during a lame duck session.<sup>17</sup>

Lame duck sessions persistently reduce party unity, but not by much. Typically, about 83 percent of House members and 80 percent of senators vote with their party; but during a lame duck session, party unity is reduced by

**FIGURE 2. PERCENTAGE POINT CHANGE DURING VERY LAME DUCK SESSIONS**



Note: A hatched bar indicates the variable is not statistically significant.

about 3 percentage points. The pattern persists across all party categories except Senate Republicans and the Senate minority party (which are typically one and the same).<sup>18</sup> Lame duck sessions have no statistically significant relationship to bipartisan roll call votes—those that are supported by majorities of both parties.

Figure 2 shows how voting patterns during very lame duck sessions differ from those of regular sessions. As with lame duck sessions, the effects of a very lame duck session are typically stronger in the House than in the Senate.<sup>19</sup> As with lame duck sessions, very lame duck sessions are associated with a greater tendency to skip votes. Very lame duck sessions are also associated with less party unity, though in both chambers the effect seems to be driven by Democrats and by the majority party. (In fact, very lame duck sessions are associated with slightly more unity among the Senate minority party.) Interestingly, a very lame duck session reduces the odds of a bipartisan Senate vote by about 14 percent but has no statistically significant effect on a bipartisan House vote.

### WHAT DO WE KNOW ABOUT HOW LAME DUCK SESSIONS AFFECT LEGISLATION?

Beyond the voting patterns, the effect of lame duck sessions on policy is a more difficult question to tackle and has accordingly received less attention. Table 1 lists major pieces of legislation passed during lame duck sessions. No discernable ideological pattern is obvious. The diverse list includes the impeachment of President Clinton, the adoption of major trade deals such as the landmark 1994 expansion of the General Agreement on Tariffs and Trade (GATT), and the creation of the Department of Homeland Security.

As we note above, theory predicts that nonreturning members will be more likely to ignore the ideological preferences of their constituents and their party. Indeed, empirical tests suggest that members are more likely to depart from their typical ideological voting patterns during lame duck sessions.<sup>20</sup>

Theory also predicts that vacating members will be less responsive to (most) special interests. And there is some evidence for this as well. One study examined individual votes on a protectionist measure adopted during the 1982 lame duck session of the House of Representatives.<sup>21</sup>

**TABLE 1. MAJOR LEGISLATION PASSED DURING A LAME DUCK SESSION OF CONGRESS, 1970–2014**

Year	Bill
1970	Agricultural Act of 1970
1970	OSHA Act of 1970
1970	Clean Air Amendments of 1970
1971	Omnibus Crime Control Act of 1970
1971	Food Stamp Act of 1970
1974	FOI Act Amendments of 1974
1974	National Mass Transportation Assistance Act of 1974
1975	Trade Act of 1974
1980	Alaska National Interest Lands Conservation Act
1980	Comprehensive Environmental Response, Compensation, Liability (Superfund)
1983	Surface Transportation Assistance Act
1994	General Agreement on Tariffs and Trade Implementation Act
1998	Clinton impeachment
2000	Five appropriations bills
2002	Creation of Department of Homeland Security
2004	Nine appropriations bills
2010	Repeal of Don't Ask, Don't Tell
2010	Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act
2012	Fiscal cliff deal
2014	Consolidated and Further Continuing Appropriations Act, 2015

Sources: Richard S. Beth and Jessica Tollestrup, *Lame Duck Sessions of Congress, 1935–2012 (74th–112th Congresses)* (Congressional Research Service, August 19, 2014); “Lame Duck Sessions Since 1933,” United States Senate, accessed November 21, 2016; Jessica Tollestrup, *Annual Appropriations Acts: Consideration During Lame-Duck Sessions* (Congressional Research Service, August 25, 2010); Jessica Tollestrup, *The Enactment of Appropriations Measures During Lame Duck Sessions* (Congressional Research Service, December 2, 2015); Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 (2010); Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130 (2014).

The researchers found that 66 percent of nonreturning members opposed the measure while 57 percent of returnees supported it. A more recent study examined an auto manufacturers bailout bill that passed the House during the 2008 lame duck session and later died in the Senate. The author found that—unlike returning members—retiring representatives were not responsive to industry campaign contributions.<sup>22</sup>

This does not, however, mean that lame duck sessions cause members to ignore the entreaties of all special interests. President Harding’s controversial proposal to subsidize the construction of US merchant ships is illustrative. The bill was ultimately taken up in a lame duck session of the 67th Congress, where defeated Republicans overwhelmingly supported the measure. When it came time to seek post-congressional work, a “grateful president” saw to it that these members were “disproportionately rewarded [with administration positions] . . . for their unpopular stand.”<sup>23</sup>

## CONCLUSION

Under normal circumstances, members of Congress face a number of perverse incentives. They are under constant pressure to indulge the desires of special interests because these groups are well organized, well informed, and often well-heeled.<sup>24</sup> They are also encouraged to favor the priorities of party leadership, for leadership controls both the agenda and committee assignments, which affect legislative and fundraising success. And, of course, members are incentivized to favor the often-parochial priorities of other colleagues because the reciprocal support of other members is necessary for legislative success of their own priorities.

The political process as a whole permits small, concentrated interests to wield disproportionate power.<sup>25</sup> It allows agenda setters to manipulate the outcome of votes.<sup>26</sup> And it permits winning coalitions to adopt policies that benefit themselves or push costs onto others outside the coalition.<sup>27</sup> Even though voters themselves sometimes reward bad policy choices, regular elections are typically thought to be the best bulwark against these pressures.<sup>28</sup>

Ironically, a lame duck session of Congress mitigates some of these perverse incentives at the same time that it diminishes the discipline of electoral accountability. Lame duck sessions seem to make members more independent. During a lame duck session, members are less likely to vote at all, and when they do vote, they are less inclined to follow the wishes of their party or their constituents. Lame duck members may be less inclined to indulge special interests, but they may make an important exception for their next employers. Given the fact that 80 to 90 percent of members win their reelection bids, these effects are unsurprisingly small.

## PUBLICATION NOTE

This report was originally released in 2014. We have updated it to account for the most recent lame duck session of Congress, allowing us to analyze an additional 2,875 votes.

## ACKNOWLEDGMENT

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## NOTES

1. This is not the only way the term is used. Some apply it to any politician unlikely to seek or unable to stand for reelection. See, for example, James Alt, Ethan Bueno de Mesquita, and Shanna Rose, "Disentangling Accountability and Competence in Elections: Evidence from U.S. Term Limits," *Journal of Politics* 73, no. 1 (January 2011): 171–86. Others use it to refer to a regular session of Congress in which partisan control flips following the next election. See, for example, Roger Congleton, "The Politics of Government Growth," in *The Elgar Companion to Public Choice*, ed. William F. Shughart and Laura Razzolini (Northampton, MA: Edward Elgar Publishing, 2001).
2. Bruce Ackerman, "Is the Lame-Duck Congress Constitutional?," *Washington Post*, November 12, 2010.
3. John Copeland Nagle, "Lame Duck Logic," *UC Davis Law Review* 45, no. 4 (2012): 1177.
4. Center for Responsive Politics, "Reelection Rates over the Years," accessed November 21, 2016.
5. "Casualty List," *Roll Call*, accessed November 16, 2016.
6. "Casualty List," *Roll Call*.
7. For an overview of some of the factors that skew election odds in favor of incumbents, see Eric O'Keefe and Aaron Steelman, "The End of Representation: How Congress Stifles Electoral Competition" (Policy Analysis No. 279, Cato Institute, Washington, DC, 1997).
8. Stephen Ansolabehere, Erik C. Snowberg, and James M. Snyder, "Television and the Incumbency Advantage in U.S. Elections," *Legislative Studies Quarterly* 31, no. 4 (November 1, 2006): 469–90.
9. Dennis C. Mueller, *Public Choice III* (Cambridge, UK: Cambridge University Press, 2003), 104–08.
10. Center for Responsive Politics, "Revolving Door: Former Members of the 113th Congress," accessed November 21, 2016.
11. Jeffery A. Jenkins and Timothy P. Nokken, "Partisanship, the Electoral Connection, and Lame-Duck Sessions of Congress, 1877–2006," *Journal of Politics* 70, no. 2 (April 2008): 450–65; Timothy P. Nokken, "Uncertainty and Roll-Call Voting in Lame-Duck Sessions of the U.S. House, 1969–2010," *Legislative Studies Quarterly* 38, no. 4 (November 2013): 571–91; Timothy P. Nokken, "Comparing Agenda Content and Roll-Call Behaviour in Regular and Lame-Duck Sessions of the House of Representatives, 1879–2010," *Journal of Legislative Studies* (June 4, 2014): 1–21.
12. Researchers refer to a reluctance to vote as "participatory shirking" and a reluctance to vote as one's constituents demand as "ideological shirking." The classic study of ideological shirking is Joseph P. Kalt and Mark A. Zupan, "The Apparent Ideological Behavior of Legislators: Testing for Principal-Agent Slack in Political Institutions," *Journal of Law and Economics* 33, no. 1 (April 1990): 103–31. For a critique of this view, see James R. Vanbeek, "Does the Decision to Retire Increase the Amount of Political Shirking?," *Public Finance Review* 19, no. 4 (October 1991): 444–56. There is also evidence that members are more likely to vote against their party later in their careers. Thomas Stratmann, "Congressional Voting over Legislative Careers: Shifting Positions and Changing Constraints," *American Political Science Review* 94, no. 3 (September 2000): 665–76.
13. Data are drawn from Keith Poole, "Voteview" database, December 1, 2015.

14. In each of the three types of tests, the unit of observation is the chamber-wide roll call vote. In each case, we estimate *Dependent Variable* =  $\beta_0 + \beta_1 \text{Lame Duck} + \mathbf{Y}_c + \Phi_M + \epsilon$ . The share of missing votes and the share of members voting with their party are both continuous dependent variables, so we estimate these equations with ordinary least squares. The bipartisan vote is a dichotomous dependent variable, taking the value 1 if majorities of both parties vote yea and 0 otherwise. In this case, we estimate the equation using a probit model and report the marginal effect.  $\mathbf{Y}_c$  is a vector of indicator variables for each Congress from the 77th through the 113th, with the 76th Congress serving as the reference.  $\Phi_M$  is a vector of indicator variables for each month, with January serving as the reference. All tests use heteroscedasticity-consistent estimators.
15. In most cases, the estimated coefficients on Congress and month-indicator variables are statistically significant at the 1 percent level in two-tailed tests. The estimated effects of lame and very lame duck sessions are typically robust to the inclusion or exclusion of these controls. In some cases, however, inclusion of these controls caused the estimated effects of lame and very lame duck sessions to lose statistical significance. As a further check of robustness, we also ran tests on only November and December roll call votes, essentially comparing end-of-year votes in election and nonelection years. These results were also statistically significant and similar in magnitude to those reported in figures 1.
16. Except where indicated, all lame duck and very lame duck regressions are statistically significant at the 1 percent level.
17. This may be entirely driven by departing members. In an analysis of pre-1933 lame ducks, Jenkins and Nokken found that departing members were less likely to vote, but returning members were more likely to vote during a lame duck session. Jeffery 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* 39, no. 4 (July 2011): 724-53.
18. In other words, we cannot rule out the possibility that the observed effect of a lame duck session on Senate Republicans and the minority party of the Senate is due to random chance.
19. The estimated effects of a very lame duck session on Senate minority unity is significant at the 5 percent level, while the estimated effect of a very lame duck session on Senate Democratic unity is significant at the 10 percent level. All other statistically significant results are significant at the 1 percent level.
20. Nokken, "Uncertainty and Roll-Call Voting in Lame-Duck Sessions."
21. John McArthur and Stephen V. Marks, "Constituent Interest vs. Legislator Ideology: The Role of Political Opportunity Cost," *Economic Inquiry* 26, no. 3 (July 1988): 461-70.
22. Salvatore Nunnari, "The Political Economy of the U.S. Auto Industry Crisis" (working paper, Columbia University, New York, NY, August 25, 2014).
23. Craig Goodman and Timothy P. Nokken, "Lame-Duck Legislators and Consideration of the Ship Subsidy Bill of 1922," *American Politics Research* 32, no. 4 (July 2004): 486.
24. Matthew D. Mitchell, *The Pathology of Privilege: The Economic Consequences of Government Favoritism* (Arlington, VA: Mercatus Center at George Mason University, 2014).
25. Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*, Second Printing with New Preface and Appendix (Cambridge, MA: Harvard University Press, 1971).
26. Richard D. McKelvey, "Intransitivities in Multidimensional Voting Models and Some Implications for Agenda Control," *Journal of Economic Theory* 12, no. 3 (June 1976): 472-82.
27. James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962). See, especially, chapter 10.
28. Geoffrey Brennan and Loren E. Lomasky, *Democracy and Decision: The Pure Theory of Electoral Preference* (Cambridge, UK: Cambridge University Press, 1997); Bryan Caplan, *The Myth of the Rational Voter: Why Democracies Choose Bad Policies*, rev. ed. (Princeton, NJ: Princeton University Press, 2008).

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