

THE LAST TERM PROBLEM: SHIRKING, REPUTATIONS, AND SELF-POLICING

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The last term problem is potentially particularly acute for term limited state legislatures, such as Oklahoma, as a large number of representatives are likely to be serving their last term at any given time. Empirical evidence regarding shirking in the last term is mixed. This article suggests that applying branding theory to the last term problem provides a theoretical basis to better understand whether and how the last term problem might actually be a problem. Evidence, from the first application of term limits to the Oklahoma legislature, suggests that representatives in their last term are more likely to miss votes than those earlier in their careers. But, effects are not universal. Further evidence demonstrates that legislators concerned about their brand (reputation), or at least those who parlay their reputation into a prestigious post-legislative appointment, do not shirk, but that those who have no such concerns often shirk quite substantially. It concludes by offering suggestions for the theoretical application of the last term problem to legislators leaving office.

The American term limit movement had its roots planted in Oklahoma in 1989. Predictions of all varieties regarding the consequences of term limits marked the debate as the movement grew throughout the 1990s. Pundits, proponents, opponents and political scientists, alike, projected into a future under term limits. Projections and analyses were necessarily limited by the lack of experience with term limits, especially within the American system. As a result, predictions were often highly speculative. The best prognostications came from political scientists who offered interpretations based on the application of existing theories to new circumstances. The areas where we had most confidence were where our theories were best. Among such theories that reflected confidence was one referred to as the “last term” problem.

According to the last term problem, legislators have reason to behave differently during their last terms because they are no longer beholden to constituents, party leaders, or others who might otherwise constrain their behaviors. As a result legislators might engage in a variety of nefarious behaviors generally classified as shirking, but that might include everything from not showing up for work to selling their votes. Of course, with term limits, there would be many more legislators each session who would be in their last term making the consequences of this problem more severe.

Not all views of the last term problem are negative. In fact, proponents of term limits, in some ways *sought* to have a persistent “last term problem.” That is, they wanted a legislature where members even when in their first term would act like they were in their last term—they wanted legislators who would not feel beholden to parties, interest groups, and even citizen pressure, but would, instead do the “right thing.” One reason so many proponents of term limits were virulent advocates for a six year limit is because that model reflects the kind of legislature sought—one where members are freed of the electoral and other bonds and would act in the best interests of their state or nation from the beginning of their service.

This article, using the case of Oklahoma, examines the theoretical basis of the last term problem and how it might apply to term limited legislatures. After briefly reviewing some of the initial expectations regarding the last term, it reviews research that examines the last term problem before offering a more carefully conceptualized version of the

model relying on branding theory. It follows that conceptualization by testing it in a setting where there are term limits and where the last term problem is most clearly found. Specifically, I look at whether term limited legislators in Oklahoma were systematically less likely to vote in their last year in office and whether there was a difference between those concerned with protecting their brand and those without that concern.

EXPECTATIONS FOR TERM LIMITS AND THE LAST TERM PROBLEM

Any review of the goals and expectation for term limited legislatures quickly reveals that expectations seemed to follow one's position on term limits rather than lead them. On the one hand, proponents view term limits as a way to achieve a "citizen legislature" or in the view of others, such as George Will (1992), a more republican form of government. (There is also no doubt that others were attracted to term limits as a way to achieve a more Republican government.) Opponents tend to see the movement as an attack on the role of legislatures in the American polity and fear the weakening of those bodies. They are concerned about loss of expertise, skill and experience, and fear power flowing into the executive, legislative staff, and interest groups (e.g., Carey 1996)

One clear case where theory guided interpretations of the consequences of term limits revolves around the last term problem. While not always expressed in formal terms, much discussion centered on the consequences of severing ties between the elected legislator and her or his constituents and, perhaps, from party leaders, interest groups, or others. Proponents consciously sought that break while opponents fretted about the consequences of it.

THE LAST TERM PROBLEM IN FORMAL TERMS

The last term problem is embedded in principle-agent theories of legislative behavior. Legislators are seen as agents of any of a variety of potential principles, including constituents, parties, and interest groups. (See Maltzman 1998, for a review.) Legislators are seen as agents who are expected to serve the interests of those principles. They

represent constituents; serve the needs of their parties; and/or advocate for interest groups. But, legislators have their own set of goals: reelection or advancement, power, and prestige. Their interests may not correspond directly with those of their principles and they may try to act independently of those interests. The problem for the principles is to monitor the behavior of their agent-legislators to be sure that they meet the interests of the principles.

While monitoring is inherently challenging, the main set of tools available to monitors in this case is the ability to withhold rewards when evidence of shirking is uncovered. For constituents that means withholding votes; for party leaders they can withhold favored positions of power and committee assignments; and for interest groups they can withhold campaign contributions. Most consequences are most relevant to members who seek to make a long-term career in the legislature. Legislators, of course, work to insulate themselves from these consequences even when they plan to seek reelection (Parker 1992), but their efforts are always tempered by the knowledge that their principles can influence the achievement of their goals.

In the context of American legislative offices, principles seem to be relatively successful in overseeing their agents. Kalt and Zupan (1990), Lott (1987) and Bender and Lott (1996) explore the idea of politicians' brand or reputation as politicians' key commodity, especially as it serves a barrier to entry for potential electoral opponents. Legislators' positive reputations serve as an effective deterrent to potential electoral competition. The desire to protect their most precious commodity - - their brand - - serves, then, as an effective deterrent to shirking, according to this argument. In fact, this line of research leads Bender and Lott (1996) to conclude that "[t]he evidence is consistent with political markets efficiently sorting politicians [who shirk]" (p. 89)

But when members are serving in their last term, most of the effective checks on their behavior become irrelevant. Contributions and votes lose their value when legislators do not intend to seek reelection. Party leaders rarely punish a sitting member in the midst of a term even in the case of wayward behavior. As a result, during the last term legislators have the opportunity to act as essentially free agents.

THE LAST TERM PROBLEM THROUGH THE EYES OF OPPONENTS

Opponents of the term limits see the breaking of the ties between principles and agents as a serious problem. Depending on the personal interests or ambitions of the various legislators, they may opt to vote and or advocate for legislation that is contrary to the interests of their constituents. They may act against the interests of the interest groups who have financed them; or, more seriously perhaps, they may become wholly owned subsidiaries of interest groups who may offer some promise of future benefits. Parties may no longer be able exert pressure on members meaning they can no longer rely on fellow partisans for key votes. In short, the agendas members focus upon and the votes they cast may change as they find themselves in their last term.

We may also find shirking in the form of simply not doing their job as one normally expects. Legislators may quit showing up for work. They may skip committee meetings, quit meeting with constituents, interest groups, and party leaders. They may quit voting. All of which are possible because there are no longer can suffer repercussions for their lack of dedication to service.

Some political scientists also have serious reservations about term limits because the last term problem produces more “free agents” who may change their voting behavior or engaged in other activities to the detriment of their principles (e.g., Glazer and Wattenberg 1996). In fact, a number of scholars produce predictions that members will change their voting behavior and/or participate less than they otherwise might. (López 2003 reviews this literature.) That expectation is reflected in the general hypothesis tested in this study: legislators in their last term of service will have lower rates of participation on roll call votes than do their colleagues.

THE LAST TERMS PROBLEM THROUGH THE EYES OF PROPONENTS

What opponents of term limits see as a problem, proponents see as constructive. One of the problems with American legislatures, in their eyes, is that legislators are not sufficiently free to make independent judgments and to make common sense decisions that serve the interests

of citizens. Legislators, in their view, are too concerned with personal career goals and therefore, become dependent on both their constituents and on their party leaders to achieve their goals. But if those elected understand from the beginning that they cannot establish a career in the legislative institution, they are less concerned with those career goals and will be more inclined to act responsibly.

Many term limit advocates support a general theory of a more republican form of government. They want a legislature that is not beholden to any interests, but rather is composed of citizens who will reflect the values of their communities, state, and the nation and act independently to serve those interests. They seek a movement away from a legislature that reflects interest group pluralism and instead that promotes the values of their constituents in a common sense manner. Legislators are expected to do the “right thing” rather than the expedient thing. Expediency is defined as what constituents demand as short term benefits, what interests groups request in exchange for campaign support, and what party leader seek to enhance their goal of controlling the legislative body. The goal of supporters *is* to break the principle-agent bonds to promote legislative bodies composed of people who have as their goal the betterment of the state/nation.

Moreover, it is that view that led to the hardened position on the part of many term limits proponents in favor of a strict six year limit. That limit would serve to temper the ambitions of elected legislators by letting them know from the beginning that they cannot make a career in the legislature. The goal essentially was to set up the last term problem from the beginning; not just to have the last term problem in the last term. Of course, they did not see the problem as a “problem,” but rather as an opportunity to have free agents making sensible decisions.

SHIRKING AND THE LAST TERM PROBLEM IN THE LITERATURE

Just as the views of polemicists are mixed, so, too, is the evidence presented by scholars regarding shirking by Members of Congress during their last term (Herrick, Moore and Hibbing 1994; Carey 1994; Lott 1990; Zupan 1990; Lott and Reed 1989). Studies of state legislatures under term limits also provide inconsistent evidence on how term limits affect legislative behavior, especially shirking. Carey, et al. (2003) find

evidence of a “Burkean” shift where members are less likely to promote narrow constituent interests and are more state-oriented. Herrick and Thomas (2005) find evidence in their surveys that term limited members are more policy-oriented. But, Wright (2004) finds no evidence of policy shifts and concludes that “participation does not appear to be any less in TL states or among last term members within the TL states.” Clearly, work remains in terms of understanding the application of the last term problem.

CONCEPTUAL CLARIFICATION

In this section, I develop theoretical arguments that will help clarify why the last term problem might not be uniform across states or across individuals. First, I look at how the length of the limited term might influence the consequences of the last term problem. I do so, in part, to explain why Oklahoma is an ideal test case for the theory. Second, I explore who, among the various legislators, should be most likely to manifest last term behavior. That discussion sets up the empirical analysis that will follow.

If advocates of the six year term limit are correct, then the length of the term matters. A legislator in the first year of her or his twelve year limited service is very likely to behave much like any other (non-term limited) legislator. But, a member in the early part of a six year term is likely to feel some of the last term phenomenon almost from the beginning. So, when that legislator actually reaches her or his last term, behavioral changes should be less obvious. But, one who reaches the end of a twelve year term might show more evidence of change. The split over six year limits as opposed to longer limits nearly tore the movement apart; the guess here is that the split was for good reason. Below, I will explain why that conclusion leads to Oklahoma as an ideal test for the shirking hypothesis.

Second, not all members should react the same way when reaching the end of the road. Herrick and Thomas (2005), for example, demonstrate higher levels of progressive ambition among term limited legislators. Presumably one’s behavior will be different if they intend to run for higher office as opposed to return to the hardware store.

Parker (2005) provides a theoretical basis for sorting through who is more or less likely to be affected by the last term problem. In his

work on ethical behavior by legislators, Parker provides the discipline's most careful application of branding theory to the behavior of politicians. He argues that members are concerned about the integrity of their name, i.e., their brand. Developing that point, Parker argues that what members have (in fact, their only commodity) is their reputation and that most of the time they work to protect that "brand."

Parker ties branding theory to the last term problem by arguing that those who seek prestigious post-career appointments are more likely to protect that brand by behaving ethically; they "self-police" - - even in their last term. Those with lesser ambitions no longer need to protect their brand and might shirk to achieve other personal goals. But, those seeking prestigious positions self-police and are less likely to shirk during their last term.

For term limited legislators in their last term, I hypothesize that state legislators who seek prestigious post-legislative career positions should also self-police and be more likely to behave in ways that are considered appropriate. Their actions should be more consistent with other legislators, that is, they should be faithful to principles and less likely to shirk. Since the focus on this work is participation, we would expect to see less drop-off in participation for those who self-police because they seek prestigious post-legislative career positions than for those not seeking prestigious positions.

RESEARCH DESIGN

This research is designed to test whether the last term problem, i.e., shirking, is found in a term limited legislature. More specifically, it tests the hypothesis that term limited legislators in their last term who have reason to care about their brand because they seek prestigious post-legislative career appointment are less likely to shirk than those who have no reason to protect their brand. The indicator I will use as evidence of shirking is missing floor votes. If I find that both groups of term limited legislators, i.e., both those concerned about their brand and those not, shirk then we have evidence of a general last term problem. If I find no shirking, then the findings would raise serious questions about the last term problem as a general theoretical proposition. If my hypothesis is supported, it would suggest that the last term problem is not general, but rather confined to those who lack ambition for higher

positions. I use the first imposition of term limits in Oklahoma as the setting for my research.

Most analyses of term limits think of them as some form of a natural experimental design. For those interested in the last term problem, the distinction is important because other designs that look at the last term problem using those who voluntarily retire from non-term limited legislatures may have some selection bias. While that thought has some merit, it tends to gloss over some key elements. First, other types of selection bias in using term limited legislators might be found, such as who seeks office to begin with or the exercise of progressive ambition. Additionally, some designs fail to consider the differences that the length of the term makes. Oklahoma's implementation of term limits provides some advantages in addressing both of those issues.

While Oklahoma was the first state to enact term limits, it was last to have them take effect. The limits in Oklahoma are for twelve years and the first group to be affected was removed 14 years after the voters imposed the limits. Moreover, those already in the legislature were "grandfathered," i.e., their previous service did not count. When legislators were finally forced from office in 2004, most of those affected looked very much like career legislators. Therefore, we have a cleaner test of the consequences of the last term effect (as opposed to term limits more generally). It also largely avoids selection bias based on who might seek office in a term limited state.

Focusing on a single state with a large number of term limited legislators also allows us to try to take into account Parker's theoretical point regarding branding by being able to look in detail at individuals and their post-legislative ambitions. But because 2004 was the first application of limits there was a fairly large number of members removed from office—28 in the state house.

Another condition that makes Oklahoma a better test than most for the issues raised by the last term problem is the combination of the long (12 year) limit and the fact that because legislators were grandfathered, most had served longer than twelve years. In fact, only five of the 28 house members turned out of office had only served 12 years; eight had served at least 20 years. As a result, most legislators did not really look like "citizen" legislators but rather like professional politicians. Of all the term limited legislators, this group should be the group most likely to change behavior as they moved into their last term. Of course, that conclusion means we need to be careful about

generalizing to term limited legislatures from this analysis, but it provides a clear test of the last term problem.

The basic research design compares the participation rates on roll votes for members who were in their last term to those who were not being forced from office. The large number of votes cast and the relatively unsophisticated records of the legislature make analysis of all votes very challenging. As a result this article looks both at the first 100 votes cast in the session and the last 100 votes. The basic statistical analysis takes the form of conducting a difference of means test on the number of votes missed by term limited legislators as opposed to those not limited.

To test whether the branding theory for legislators proposed here has explanatory power I follow Parker and consider what members did after their term ended. There are two fundamental problems with that effort: one theoretical and one practical.

The practical problem is the challenge of identifying what individuals have done after they left the legislature. To determine what members did, I utilized personal expertise, talked to other knowledgeable observers, and conducted Google and newspaper searches for retired members. My goal was to classify their post-legislative career as prestigious or not prestigious. Still, in a small number of cases, I was unable to determine anything conclusive about the member's post-legislative career. In those cases, I operated on the assumption that if knowledgeable observers knew nothing of them and if I could not find anything during computer searches, then those individuals were not holding prestigious positions and considered them retired.¹ (In many cases, they were also among the oldest members forced from office, supporting the conclusion that they probably have retired from public life.)

The theoretical problem is that the concept of "prestigious position" is, of course, fuzzy. To help me make judgments, I considered the theoretical origins of the concept. The question I used to make that judgment is whether one's reputation likely influenced whether one would gain that position. Both a second expert and I coded all the positions as prestigious or not (without regard to missed votes, of course). I focused only on proximity positions after leaving the legislature rather than following long term careers. The question used was not whether being a former state legislator would help, but whether being a former state legislator with a positive reputation would make a difference in whether or not that person received her or his new position. The other expert and I agreed on the classification of all but

one case and were able to resolve that difference with some discussion. A few notes might help. First, I coded anyone running for office as seeking a position with prestige. I also coded as prestigious all members who had a spouse seek election to the retiring member's seat. Those who became lobbyist were treated differently depending on for whom they lobby. The University of Oklahoma lobbyist was treated as a prestige position. As was one other person who represents a number of major organizations in the state. Part-time lobbyists were not treated as holding a prestigious position. One easy case is a former representative who returned to law practice, but who turned up on eBay while doing my Google search. He was trying to sell a rock that is "naturally shaped like the Virgin Mary." He is classified as not being concerned about his reputation.²

ANALYSIS

Like most legislatures, participation rates are high. The mean number of votes missed by legislators for the first 100 votes is 3.1; for the final 100 votes, the mean is 2.8. I first look at whether members being term limited out of office behaved differently from those not term being removed from office. Table 1, examining the first 100 votes of the session, shows a weak

TABLE 1

Votes Missed, of First 100, by Term Limited

	Mean*	SD
Not Term Limited (n = 72)	2.4	7.5
Term Limited (n = 28)	5.0	8.6

*Difference significant at the .10 level

relationship. The mean number of votes missed by those not being removed from office is 2.4; for those being term limited, the mean is 5.0. The difference is significant at the .10 level. The standard deviations for the two groups are similar, but slightly smaller for those continuing in office.

Table 2 draws the same comparison for the last 100 votes cast in the legislative session. Here the differences are quite pronounced. The mean number of missed votes for those not term limited is only 1.7. (This analysis removes a legislator who late in the session was arrested and missed over 50 of the final votes while unable to get to the floor to cast them.) For term limited legislators the mean number of missed votes increased to 5.5. The

TABLE 2
Votes Missed, of Final 100, by Term Limited

	<u>Mean***</u>	<u>SD</u>
Not Term Limited (n = 71)	1.7	3.1
Term Limited (n = 28)	5.5	8.4

***Difference significant at the .01 level

difference is significant at the .01 level. The large standard deviation for term limited legislators suggests that they behaved in quite divergent manners, but regardless, the last term problem appears to be supported: term limited legislators were more likely to shirk by not casting votes than were non-term limited legislators.

A small number of legislators voluntarily retired at the end of the

TABLE 3
Votes Missed, of Final 100, by Seeking Reelection

	<u>Mean**</u>	<u>SD</u>
Seeking Reelection (n = 65)	1.8	3.2
Not Seeking Reelection (n = 34)	4.6	7.9

**Difference significant at the .05 level

session. Since filing for reelection follows the end of the session by about six weeks, it is reasonable to assume that they had already decided not to seek reelection. Table 3 compares those in their last term (regardless of

reason—but still excluding the arrested lawmaker who did not seek reelection) with those who did seek reelection. That table shows the same basic pattern, though slightly less pronounced than when considering only term limited members.

Having concluded that term limited legislators were more likely to shirk, we turn attention to whether that pattern is consistent across those being removed from office. Both the large standard deviations for those members and the reputational theory proposed above suggest that we should find differences among the term limited members.

Based on the classification described above, Table 4 provides overwhelming support for the hypothesis that desire for a prestigious position leads one to protect her or his reputation and to not shirk, at

TABLE 4
Term Limited Members Votes Missed, of Final 100,
by Prestige of Future Position

	<u>Mean***</u>	<u>SD</u>
Not Prestigious (n = 15)	9.4	10.0
Prestigious (n = 13)	1.0	1.6

***Difference significant at the .005 level

least not in regard to not voting. The mean number of missed votes for those who did not end up with a prestigious position is 9.4 with a standard deviation of 10. Those who did end up in a prestigious position missed an average of 1 vote, with a standard deviation of 1.6. The difference is significant beyond the .005 level. One member missed 29 of the 100 votes and three members missed about one-fourth of the votes. All of those who missed at least ten percent of the votes were members who seemed to have little reason to be concerned about their reputation. Of course, not all such legislators shirked. Four missed no votes and a number missed only a handful. But, to be sure, those who had no obvious reason to be concerned about their reputation were much more likely to miss votes.

A second test of the reputational hypothesis uses data from a sample of 97 votes (which is one of four roll calls) cast in May, the last month of

the session. These votes were collected by Patterson (2005) and prove to be similar to the final 100 votes cast. In fact, among term limited legislators, the number of missed votes from the two sources have a Pearson correlation of .76. Still, the collection of votes across May allows us to look beyond just the final days to a more inclusive sample, in terms of the time frame. The pattern in Table 5 is quite similar to that in Table 4 with means of 11.1 missed votes for the group who did not

TABLE 5

**Term Limited Members Percent Votes Missed
by Prestige of Future Position, May Sample**

	<u>Mean**</u>	<u>SD</u>
Not Prestigious (n = 14)	11.1	12.7
Prestigious (n = 13)	3.1	3.9

**Difference significant at the .05 level

have reputational concerns and 3.1 for those with reason to be concerned about their reputation. The difference is significant at the .05 level.

CONCLUSION

The evidence presented here supports the conclusion that, at least under some circumstances, a last term effect can be found in term limited legislatures. This research was designed to provide a clear test of the hypothesis regarding last term effects derived from principle agent theory. The measurement of shirking used is the most public of expressions: not voting. It was tested in Oklahoma where members in the last term were likely to look like career legislators in that they had all served at least twelve years and most had served more. Additionally, I explored the hypothesis that not all legislators will respond to the potential freedom from constraint that the last term provides.

In Oklahoma we found that as the legislative session wound down the average term limited legislator missed about three times the number of votes

as a legislator not being term limited. The overall number of missed votes was not extensive, but still clearly outside of the norm for the body. We also found that term limited legislators varied quite substantially in how they responded to the termination of their legislative careers. Many such members behaved normally when it came to casting a vote. But, there were also a number who missed about one-fourth of the final 100 votes cast.

Branding theory was used to help differentiate between shirkers and non-shirkers. Those members who had an obvious reason to be concerned about protecting their reputations as they were about to move into prestigious post-legislative careers were much more likely to continue high rates of voting participation.

But, those who did not have such a motivation were much more likely to shirk. In fact, compared to legislators motivated to protect their reputations, those shirkers missed about nine times as many votes. Having concluded that reputational concerns are important, it is also the case that many individuals whose reputational concerns are nonexistent or not obvious also continued to participate at high rates.

IMPLICATIONS

The direct implications of this analysis are more theoretical than practical, but there are elements of both. In light of the fact that empirical work on the last term problem is not consistent in their conclusions, it is useful to clearly demonstrate a last term influence on behavior, and to build a theoretical basis for determining when it exists. This work is an especially important counter to Wright's (2003) work that reaches the strong conclusion that at the macro level there is no such effect on participation. To the contrary, the analysis presented here provides clear evidence of the last term effect, but points to the need to clarify when it influences legislative behavior.

The most significant finding is that we can overlay branding theory with the last term problem and get a better understanding of when we expect legislators to shirk. But it also demonstrates some of the challenges in doing so. If we conclude that the most valued possession of a legislator is a good reputation (brand) that they want to preserve, the question is how to apply that theory to specific situations. The problems are both practical and theoretical. At the practical end, the question of identifying who is interested in preserving her or his brand is

problematic. Parker suggests we should look at their post-legislative career, which is the recommendation followed here. But, doing that requires a pretty intensive awareness of the circumstances of that career and, necessarily, slippery judgments. It is certainly not a task that Wright could have hoped to undertake while looking across a multi-state sample.

Theoretically it raises the question of when a legislator will want to preserve her or his brand. Are there motivations other than a career in public life that might be adequate to keep legislators dedicated to their service? Is reputation among family, friends and supporters enough? Is a sense of self-worth enough to leave legislators wanting to preserve their brand? My impression for some Oklahoma legislators is that some non-shirkers who might have been predicted to shirk by my model were concerned about their reputation, but not necessarily because they have further political ambitions.

Moreover, the cost of voting is generally pretty low so reputational concerns probably do not need to be very significant to keep members from shirking. One might think “in ten years I might run for Congress” or “if my party captures the governorship, maybe I will want a cabinet appointment.” That vague potential payoff might be enough to keep some potential shirkers dedicated.

Further, while this research took a straight-forward definition of shirking (not voting) there are many other components that are also important, but harder to gauge. Perhaps some legislators who look like they are not shirking in my analysis are engaging in a different form of shirking. They could be voting because they have abandoned their constituents and are serving as the agent of some interest group who promises the future of gainful employment. Participation would be high but the shirking would be quite serious. Even ideologically-based voting analyses might not turn up that form of shirking.

On the practical side of what these findings mean for term limits, the implications are less obvious. Clearly they suggest that shirking does take place, but I am hesitant to conclude how broadly we find that phenomenon. First, as just indicated, this analysis might be missing other forms of shirking so the problem could be even more widespread than suggested here.

Second, Oklahoma is a strong case for this analysis because it seems that the likelihood of shirking would be great. Those who were in this analysis looked very much like career politicians; would those in

states with short terms behave the same? On the one hand, if the goal of electing “citizen legislators” is achieved, then the problem might play out quite differently. Proponents would argue legislators would be motivated towards service and not react to reaching their final term because they know they are on a short leash from the beginning. On the other hand, opponents might argue that the last term problem exists from day one and that shirking would be present in the first term as well as the last...and everything in between. Of course, those are different sides of the same coin. If, though, Herrick et al. (2005) are correct then we have more progressive ambition in term limited states so we might expect not to see high levels of shirking.

Regardless, this work does fit with a body of work that suggests that post-legislative career incentives might help prevent shirking (Carey 1994). Lott (1990) found evidence of shirking in Congress but that it could be limited if Members of Congress (or their family) sought to continue in governmental office or lobbying. But, he tends to attribute this to the control that other institutions, such as party, might have on the opportunity structure for retiring members. Still, his findings are consistent with mine and suggest that concern for future opportunities might constrain shirking.

Hard work remains. For both theoretical and practical reasons, it will be valuable to further clarify both theories about the last term and branding and to understand their empirical applications. We need to clarify and develop research strategies to detect different forms of shirking. One of the implications of this work is that we need more intensive work on small numbers of people to understand both who is concerned about her or his reputation, and why, and to explore alternative ways that shirking might present itself. This work suggests that such efforts should be fruitful.

REFERENCES

- Bender, Bruce and John R. Lott, Jr. 1996. "Legislator Voting and Shirking: a Critical Review of the Literature." *Public Choice* 87: 67-100.
- Carey, John. 1994. "Political Shirking and the Last Term Problem: Evidence for a Party Administered Pension System." *Public Choice* 81: 1-22.
- Carey, John. 1996. *Term Limits and Legislative Representation*. New York: Cambridge University Press.
- Carey, John, Gary Moncrief, Richard Niemi, and Lynda Powell. 2003. "The Effects of Term Limits on State Legislatures: Results from a New Survey of the 50 States" presented at the Annual Meeting of the American Political Science Association.
- Glazer, Amihai and Martin Wattenberg. 1996. "Promoting Legislative Work: A case for Term Limits." In *Legislative Term Limits: Public Choice Perspectives*, ed. B. Grofman. Boston: Kluwer Academic Publishers.
- Herrick, Rebekah, Michael Moore, and John Hibbing. 1994. "Unfastening the Electoral Connection: The Behavior of U. S. Representatives when Reelection is No Longer a Factor." *Journal of Politics* 56: 214-227.
- Herrick, Rebekah and Sue Thomas. 2005. "Do Term Limits Make a Difference? Ambition and Motivation Among U.S. State Legislators." *American Politics Research* 33: 726-747.
- Kalt, Joseph. P, and Mark. A. Zupan. 1990. "The Apparent Ideological Behavior of Legislators: Testing for Principle-Agent Slack in Institutions." *Journal of Law and Economics* 33: 103-131.
- López, Edward J. 2003. "Term Limits: Causes and Consequences" *Public Choice* 114: 1-56.
- Lott, John R., Jr. 1987. "Political Cheating." *Public Choice* 52: 169-187.
- Lott, John R., Jr. 1990. "Attendance Rates, Political Shirking, and the Effect of Post-Elective Office Employment." *Economic Inquiry* 28: 133-150.
- Lott, John R., Jr. and Robert Reed. 1989. "Shirking and Sorting in a Political market with Finite-Lived Politicians." *Public Choice* 61: 75-96.

- Maltzman, Forrest. 1998. *Competing Principles: Committees, Parties and the Organization of Congress*. Ann Arbor: University of Michigan Press.
- Parker, Glenn. 1992. *Institutional Change, Discretion, and the Making of Modern Congress: An Economic Interpretation*. Ann Arbor: University of Michigan Press.
- Parker, Glenn. 2004. *Self-Policing in Politics*. Princeton: Princeton University Press.
- Patterson, Matthew B. 2005. "A Case Study of Term-Limited Members in the 2004 Session of the Oklahoma House of Representatives." Unpublished manuscript.
- Will, George. 1992. *Restoration: Congress, Term Limits, and the Recovery of Deliberative Democracy*. New York: Free Press.
- Wright, Gerald C. 2004. "Do Term Limits Limit Representation?" presented at the Fourth Annual State and Policy Conference, Kent State University and the Joint Term Limits Conference, the University of Akron.
- Zupan, Mark. 1990. "The Last-Term Problem in Politics: Do Congressional Representatives Not Subject to a Reelection Constraint Alter Their Voting Behavior?" *Public Choice* 65: 167-180.

