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**Civics 101**

**What is a lame duck?**

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**Barack Obama:** You, you, you, you, you can tell the. You can tell that I'm a lame duck because nobody's following instructions, everybody out to see.

**Hannah McCarthy:** I'm Hannah McCarthy.

**Nick Capodice:** I'm Nick Capodice.

**Hannah McCarthy:** And this is Civics 101. Today's listener question is "tell me about the lame duck period between the election and the inauguration. Is there potential for accelerating abuse of power?" So first off, Nick, what is a lame duck period?

**Nick Capodice:** The lame duck period is the time between when the president and members of the Congress are elected and when they're sworn into office. And before we dive into what happens during this time, I got to tell you the origin of the expression. It goes back to the colonial era. And a lame duck was used to refer to failing traders and businessmen who were unable to fund their enterprises. So they were just sort of limping along like a lame duck, like a wounded [00:01:00] game bird that might be shot by a hunter.

**Hannah McCarthy:** So this period goes from election to January 3rd.

**Nick Capodice:** Yeah, but it used to be quite a bit longer.

**Dan Cassino:** Prior to the 20th Amendment, so before basically the mid 20th century, the lame duck period was really long.

**Nick Capodice:** This is Dan Cassino, the man, the myth, the legend, professor of political science at Fairleigh Dickinson University.

**Dan Cassino:** They still had elections in November, but the new Congress didn't come into session until March at the earliest and was amended to come into session until November of the following year. So you had a very long lame duck sessions and this was a big problem at the time that you wound up with things like, oh, I don't know, in 1860, the civil war starting during a lame duck period. Right. South Carolina seceded after Lincoln's elected before he takes office in March. And so Lincoln has left there saying, I don't know what to do about this. I'm not president yet. And so problems like that lead Congress to adopt the 20th Amendment and shorten the lame duck period.

**Hannah McCarthy:** All right. Now we have a much shorter lame duck session, but I want to know what Congress and [00:02:00] the president can do in it.

**Nick Capodice:** Well, Dan told me in the modern era, not a whole heck of a lot. Before the 1970s, though, presidents sometimes used their pocket veto. See, if a president doesn't sign a bill into law and Congress is in session, it automatically becomes a law. But if the president doesn't sign it and Congress isn't in session, it does not become a law. Also, when the president makes appointments, when Congress isn't in session, they don't need confirmation. They just go right through.

**Dan Cassino:** So since the 1970s, Congress got around this problem by never not being around. That is, they just vote themselves into a pro forma session, which for most of the last 20 years meant that Joe Biden, because he lived in Delaware, would take the Amtrak up to Washington, D.C., gavel, end a session saying, yeah, I'm here senseor any business note. Nobody else here. OK, cool, we're done that. And now the Senate was in session for the day.

**Nick Capodice:** One thing I want to add here is that Congress can sometimes pass unpopular legislation in a lame duck session because their actions are no longer electorally accountable. [00:03:00] And that is fairly rare on the national level. But lest we forget, Hannah, state and local government, always extremely relevant to your life, also has lame duck sessions. And it is not uncommon for a state legislature to pass a bunch of laws that are not popular with the public, especially if that state's House or Senate is going to flip on January 3rd. We saw this in a big way in 2018 in the Wisconsin election when an outgoing GOP Congress worked overnight to pass laws limiting the incoming Democratic governors power.

**Hannah McCarthy:** But what about other presidential powers? Can the outgoing president issue executive orders?

**Nick Capodice:** Oh, absolutely.

**Dan Cassino:** He can order the executive branch around, have the right to do whatever he wants within the laws as prescribed by Congress. The problem the president runs into during the lame duck session, actually, is that a lot of times the executive branch just isn't around. They're on break. It's the Christmas holiday. They're gone. Nobody's around. And we've actually seen some significant attempts to move policy during December run. The fact that people just are on vacation for a couple of weeks and they don't come back [00:04:00] until middle of January when the new president sworn in anyway.

**Nick Capodice:** One final presidential power during a lame duck session is the power of pardon. Presidents can pardon whomever they like leading up to the end of the presidency as to whether a president can pardon themselves in this lame duck session. That is an issue that has never been in the courts. So we don't really know the answer.

**Nick Capodice:** So that is the lame duck in a nutshell, or rather an eggshell. If you have questions will get answered. Just click the ask a question link at the top of our website, civics101podcast.org.