

JANUARY/FEBRUARY 2020

FILLING IN FOR THE FEDS

Congress' inability to get things done leaves states carrying a heavy load. **10**

Thank You for Helping Workers Take Control of their Future



To honor the state elected officials who were integral to the passage of historic legislation to ensure retirement security is possible for all hard-working Americans, AARP announces the 2019 class of Super Savers. This bipartisan group of leaders worked to pass legislation or resolutions that address the retirement crisis by helping millions of workers without access to a workplace retirement savings plan to start growing the savings they need to take control of their future.

AARP applauds the 2019 class of Super Savers for their bold and visionary leadership:

Colorado

- State Treasurer Dave Young

Connecticut

- Governor Ned Lamont
- President Pro Tempore Martin M. Looney
- Speaker Joe Aresimowicz

Indiana

- State Representative Sean Eberhart
- State Representative Heath VanNatter

New Jersey

- State Senator Joseph A. Lagana
- Assemblyman Roy Freiman

New Mexico

- State Treasurer Tim Eichenberg

New York

- Governor Andrew M. Cuomo
- State Senate Majority Leader Andrea Stewart-Cousins
- Assembly Speaker Carl Heastie

North Carolina

- State Senator Bill Rabon
- State Representative Stephen M. Ross
- State Representative Jon Hardister
- State Representative Bobby Hanig

Wisconsin

- Governor Tony Evers
- State Treasurer Sarah Godlewski

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SL ONLINE

You can find more information on many of the topics covered in these pages at ncsl.org/magazine. And, if you'd like to get in touch, email us at magazine@ncsl.org.

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From the Editors

THE BIG ISSUES OF 2020

Gridlock in Congress May Mean Opportunity for States

New year, new approach.

We've typically used the first issue of the year to identify the topics we think will be hot in the coming legislative sessions in capitols across the country. But this year, instead of cranking out yet another top 10 list, we asked ourselves, What are the issues states will be forced to deal with because Congress has failed to act?

For many observers, the term "Congress" has become synonymous with gridlock and toxic partisanship, inaction and party before all else. In our cover

story, *Governing* magazine writer Alan Greenblatt says the situation is unlikely to change anytime soon. That means more inertia in Congress and more issues that you, the nation's state lawmakers, will have to tackle this year with little to no help from your congressional counterparts.

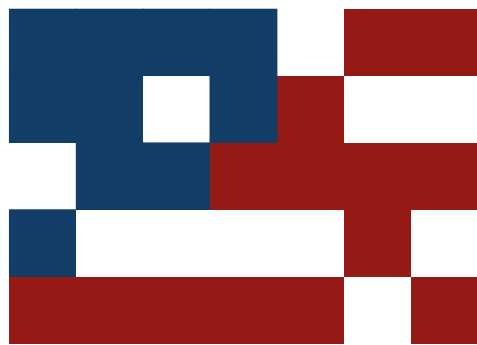
Gridlock in our nation's capital, however, opens up opportunities for states to experiment, and that's not necessarily a bad thing. "My preference has been, and always will be, that states are where the

bulk of public policy should occur," says Wisconsin Speaker Robin Vos (R), NCSL's president. So, where is Congress happy to let states take the lead? Turn to page 10 to find out.

Then turn to the "Innovations" column on page 20. A bipartisan U.S. House panel is seeking ways to modernize Congress. For help, they've turned to state legislatures—and NCSL.

There might be hope for Congress yet.

—*Julie Lays and Kevin Frazzini*



MAKING THE MAPS

THE NCSL SEMINARS ON REDISTRICTING

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Trends



Courtesy USC Alumni Association

The University of Southern California was among the schools targeted in the Operation Varsity Blues admissions scandal.

HIGHER EDUCATION

Tighter Rules in Wake of College Admissions Scandal

The extremely low percentage of applicants who get into elite schools was exposed when federal prosecutors indicted more than 30 wealthy parents for bribery last year. In the scandal that became known as Operation Varsity Blues, the parents paid an admission consultant to rig standardized tests or bribe coaches to help their children gain admission to several top American universities.

Across the country, high school students submitted more than 10 million applications to colleges and universities in 2017, an increase of more than 10% since 2014.

As that number continues to grow, and the likelihood of being admitted to an elite school declines, institutions and states alike are focusing on admission policies.

After news of the scandal broke, California lawmakers scrambled to introduce legislation to address admissions prac-

tices. By session's end, legislators had enacted measures that:

- Require institutions that receive state financial aid to report any preferential treatment in admissions to the legislature every year. This includes admissions based on relationships to donors or alumni.
- Prohibit those found guilty in the federal investigation from claiming tax deductions based on contributions they made to charities involved in the scandal.
- Prohibit admission by exception—a special talent in athletics or the arts—without the approval of at least three senior campus administrators.

Legislators in 13 states introduced bills related to admissions and enrollment in 2019; 17 became law. Not all them were related to the admissions scandal, however. Colorado lawmakers decided to prohibit state colleges and universities from asking

for an applicant's criminal or disciplinary history, with exceptions for certain crimes, including stalking, sexual assault and domestic violence.

Illinois legislators passed a law requiring institutions to admit first-time applicants who graduate from state high schools with a GPA in the top 10% of the student's graduating class. Texas lawmakers amended the state's Ten Percent Plan to ensure admission for high school valedictorians, regardless of graduating class size.

As more colleges and universities move away from admissions based on test scores—and if the fallout from the Varsity Blues scandal persists—states will continue to address admissions policies and rules to ensure all students have fair access to higher education.

—*Andrew Smalley*



The Bank of North Dakota is one of just two public banks nationwide.

FINANCE

Public Banks: a 'Force for Good' or a 'Catastrophe'?

New Jersey soon will join North Dakota as the only states in the banking business. New Jersey Governor Phil Murphy (D) signed an executive order in November creating a Public Bank Implementation Board that will lay plans for a public bank for the state. He called it “a force for good in helping small businesses succeed, in providing student loans at affordable rates, and in opening lines of credit to municipalities needing long-term infrastructure and affordable housing,” according to nj.com.

Once the 14-member board publicly releases its plan, the bank could begin receiving millions of dollars in state deposits previously held by commercial banks. Supporters see it as a way to invest more money back into local communities. The bank will make some of its money avail-

able to community banks for small-business loans, small-scale infrastructure projects and student loans. Bank profits will be pumped back into the state budget.

Opponents argue the bank will compete with established local institutions that are already providing these services and would be vulnerable to political influence.

“The creation of a state-run bank is a looming catastrophe for Garden State taxpayers,” New Jersey Senator Anthony Bucco (R) wrote in a statement. “The truth of the matter is that new agencies run by the state have a history of falling short. This poses too great of a potential liability for New Jersey families who already struggle with taxes.”

North Dakota’s state bank, which dates back to 1919, was created to help ensure

that local farmers wouldn’t be charged inflated interest rates on loans from out-of-state banks. Several states have entertained the idea of establishing a state-run bank in the last 10 years.

California lawmakers recently voted to allow cities to open and operate public banks.

“We finally have the option of reinvesting our public tax dollars in our communities instead of rewarding Wall Street’s bad behavior,” Assemblyman David Chiu (D), co-author of the bill, told the Los Angeles Times.

Public banks also could be a boon to state-licensed cannabis businesses, which currently lack access to banking services.

—Julie Lays

TRAFFIC SAFETY

Getting Ahead of Cyclist Injuries With Helmet Laws

Prompted by the growing number of bicycle riders and the resulting increase in crashes and injuries, the National Transportation Safety Board recently conducted its first analysis of bicycle safety in 47 years. As a result of the study, the board called for making cyclists more visible to motorists, developing crash avoidance systems for cars capable of detecting bicyclists and building separated bike lanes and other infrastructure improvements to make roads safer. It also recommended that state legislatures pass mandatory helmet laws.

Only Puerto Rico requires all bicyclists to wear helmets. Twenty-nine states have no helmet law for cyclists of any age, while the other 21 states and the District of Columbia have laws that apply only to cyclists of a certain age, which varies from 17 years and younger in California, Delaware and New Mexico to 11 years and younger in Louisiana and Pennsylvania, according to the Insurance Institute for Highway Safety. But that might be changing.

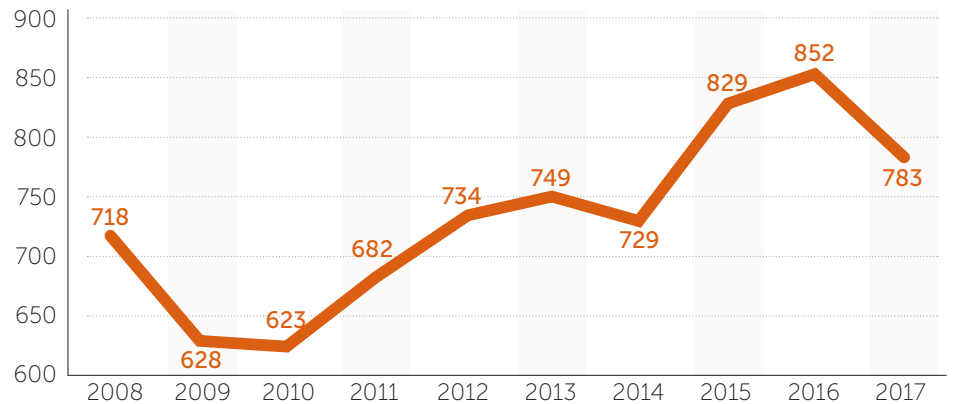
Supporters of helmet laws cite statistics. Crashes with cars killed 854 cyclists in 2018. That's the highest number in 30 years and a 6.3% increase over 2017. And, of those who died, only about 17% were wearing helmets. Studies show that wearing a helmet decreases the likelihood of a head injury by about 48%. Although only about half of cyclists wear a helmet, they are four times more likely to do so if a law requires it, according to studies cited by the Insurance Institute for Highway Safety.

Opponents don't believe helmet laws are the answer. They would rather see upgrades to vehicle safety systems and road design. Helmet laws are hard to enforce, they say, and may discourage people from biking altogether. And, studies show that the more cyclists on the road, the safer all are due to the "safety in numbers" effect.

"While requiring helmets may seem like an intuitive way to protect riders, the



Bicyclist Traffic Crash Fatalities 2008-2017



Source: National Highway Traffic Safety Administration

evidence doesn't bear this out. Experience has shown that while bike helmets can be protective, bike helmet laws are not," says Corinne Kisner, executive director of the National Association of City Transportation Officials, in a press release.

Several cities and counties have helmet requirements as well.

—Julie Lays

CRASHES WITH CARS KILLED
854 BICYCLISTS IN 2018—THE
HIGHEST NUMBER IN 30 YEARS.

CENSUS

Help Wanted: Census Bureau Is Short on Temp Workers

As the saying goes, it takes a village to raise a child. The same could be said for getting a complete and accurate census count—but the village would have to be a city the size of Atlanta. Unfortunately, the number of applicants for census jobs has been disappointing.

The U.S. Census Bureau needs around 500,000 temporary employees for the 2020 census and hopes to hire local residents to work door to door in their own neighborhoods. But it's behind on receiving applications—by about 1.7 million.

The bureau recently launched a nationwide campaign to boost lagging recruitment numbers. Why the difficulty finding workers? Several factors are believed to be at play:

- Very low unemployment rates nationwide.
 - An online-only application and training program.
 - A lag in receiving completed background checks.
 - Uncertainty among benefit recipients as to whether their census pay will disqualify them from receiving federal assistance.
- Census jobs, such as census takers, field supervisors, clerks and office supervisors, can last a few weeks to a couple of months. States can decide whether to waive, or exclude, income from these jobs when calculating Medicaid, TANF, CHIP and SNAP benefits. So far, Idaho, Massachusetts and South Dakota have done so.

Census Pay Rates by State

State	Pay Range (per hour)	State	Pay Range (per hour)
Alabama	\$13-\$20.50	Montana	\$12.50-\$19.50
Alaska	\$22.50-\$28.00	Nebraska	\$12.50-\$21.50
Arizona	\$12.50-\$19.50	Nevada	\$13-\$18
Arkansas	\$12-\$21	New Hampshire	\$13-\$17.50
California	\$15-\$30	New Jersey	\$13-\$22
Colorado	\$13-\$20.50	New Mexico	\$12.50-\$17.50
Connecticut	\$17-\$25	New York	\$13.50-\$25
Delaware	\$15-\$25	North Carolina	\$12-\$20
Florida	\$12-\$19.50	North Dakota	\$13.50-\$21
Georgia	\$12-\$22	Ohio	\$12.50-\$23.50
Hawaii	\$16-\$22	Oklahoma	\$12-\$17
Idaho	\$13-\$18	Oregon	\$13.50-\$18
Illinois	\$12.50-\$29.50	Pennsylvania	\$13-\$27
Indiana	\$12-\$25	Rhode Island	\$18-\$22.50
Iowa	\$12-\$21	South Carolina	\$12.50-\$16.50
Kansas	\$12-\$21	South Dakota	\$12-\$20
Kentucky	\$12.50-\$21.50	Tennessee	\$12.50-\$26
Louisiana	\$12.50-\$18	Texas	\$12-\$24.50
Maine	\$13-\$17.50	Utah	\$13.50-\$18
Maryland	\$15-\$22	Vermont	\$13-\$17.50
Massachusetts	\$14.50-\$25	Virginia	\$12-\$25
Michigan	\$12-\$24.50	Washington	\$13-\$23
Minnesota	\$12-\$27.50	West Virginia	\$12-\$16.50
Mississippi	\$12.50-\$17.50	Wisconsin	\$12-\$22
Missouri	\$12-\$23.50	Wyoming	\$13-\$19.50

A pay increase might also help in recruitment efforts. It was advised after the bureau encountered high dropout and no-show rates when it hired 32,000 temporary workers earlier this year to verify addresses. In Montana, for instance, hourly pay rates have been increased to \$17 for enumerators and to \$19.50 in a few hard-to-staff rural counties. Nationally, pay will range from \$12 to \$30 per hour depending upon the job and location.

Every 10 years, the census provides the data used to redraw state and federal political districts, to determine the number of U.S. representatives and Electoral College votes each state gets and to portion out the federal funds states will receive for the next decade. It's hard to overstate how important accurate counts are to the states.

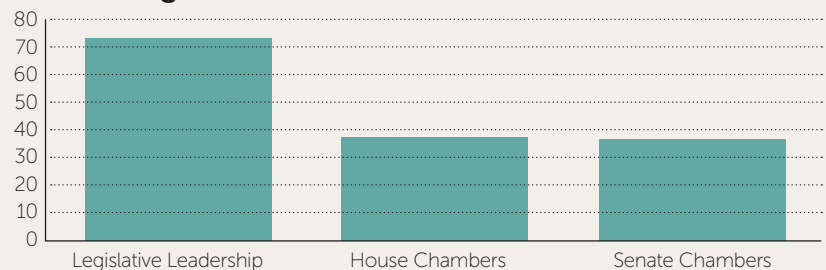
—Christi Zamarripa

DID YOU KNOW?

Women Sustain Chamber Leadership Numbers

Seventy-three women will serve in leadership roles—house speaker, speaker pro tem, senate president, senate president pro tem, majority leader or minority leader—for 2020. The number is virtually unchanged from last year, though Virginia has its first female speaker. All told, of the nation's 7,383 legislators, 2,145 are women this year.

Female Legislative Leaders, 2020



STEVEN D. GOLD AWARD

Analyst David Teal Honored for Service to Alaska, Nation

David Teal, director of the Legislative Finance Division in Alaska, is the 2019 winner of the Steven D. Gold Award for his significant contributions to public financial management and state and local finance. Teal was honored at the Capitol Forum in December for his commitment to strengthening the legislative institution in Alaska and around the country.

Teal has been in state government in various capacities for nearly 37 years, the last 22 of them as director of the nonpartisan Legislative Finance Division. During his tenure with the legislature, he has strived to provide the body with precise, unbiased data and research to inform the decision-making of Alaska's lawmakers. Teal says his goal is "to make the budget process work as smooth as it can, making sure that everyone is working from the same basic assumptions on revenues and expenditures, so legislators are not arguing about the facts, but are just debating policy. That doesn't make it easy, but it certainly helps."

Speaker of the House Bryce Edgmon (I), who has known Teal since he joined the finance division, describes Teal as even keeled. "I've never once seen him off his game under the most trying of circumstances," Edgmon says. "David has kept his cool every moment in his work with the legislature."

As a former president of the



NCSL

David Teal, left, director of the Legislative Finance Division in Alaska, received the Steven D. Gold Award from NCSL Executive Director Tim Storey at the Capitol Forum in Phoenix in December.

Steven D. Gold Award

The Steven D. Gold Award honors significant contributions to the field of public finance in intergovernmental relations. It is given annually by NCSL, the Association for Public Policy Analysis and Management and the National Tax Association in memory of Steven D. Gold, an active member of all three organizations. Gold made significant contributions to the fields of state and local finance and intergovernmental relations. He had an exemplary career as a state and local fiscal analyst and served as director of fiscal studies at NCSL.

National Association of Legislative Fiscal Offices and the Western States Legislative Fiscal Officers Association, Teal has provided expert guidance to legislators and legislative fiscal staff across the country and has mentored many legis-

lative fiscal analysts.

Teal, who retired at the end of last year, is recognized by both parties for his commitment to the legislative institution, and his nonpartisan work is deeply respected. "Alaska is a young state," says Senate

President Cathy Giessel (R). "We celebrated our 60th anniversary as the 49th member of the union this year. Because of our relatively youthful institutions, the people who handle the tillers of government, especially our analysts, provide critical knowledge and experience that inform lawmakers' decisions. Mr. Teal, in his capacity, has been involved in over a third of all the budgets in Alaska's history. David leaves public service with deep tracks grooved into the future for successors to follow."

—Erica MacKeller

MODERNIZING CONGRESS

States Show the Way

BY NATALIE WOOD

These days, most headlines about Congress tend to shout about its dysfunction, sigh over its inertia or bemoan its extreme polarization. Over the past year, however, a bipartisan committee of 12 members of the U.S. House of Representatives, five of whom are former state legislators, has gotten attention for the opposite reasons.

The U.S. House established the Select Committee on the Modernization of Congress in January 2019 to focus on streamlining legislative procedures; creating a leadership pipeline; boosting staff diversity, recruitment, retention and compensation; and improving technology, innovation and administrative efficiencies. This isn't the first time Congress has engaged in such a process. Reform efforts occurred in 1945, 1965 and 1993. What's unique this time, however, is the committee's strong desire to learn from state legislatures.

Enter NCSL, which teamed up with various legislative staff to spotlight our laboratories of democracy on Capitol Hill, educating the committee about legislative innovations, practices and realities throughout the year.

The committee received a primer on training, leadership development and new-member orientations from Stacy Householder, director of NCSL's leadership and international programs. It heard about Missouri's "freshman tour," which takes legislators around the state by bus to learn about each other's districts. It learned that legislators in Colorado, Hawaii, Maine, Washington and Wisconsin can receive ongoing professional develop-

ment in at least one area, such as parliamentary procedure or civics education. Householder also described the array of training and professional development opportunities NCSL offers.

Diane Boyer-Vine, legislative counsel and head of the legislative data center in California, demonstrated her state's "Member Portfolio" web application, which allows legislators to access nearly real-time updates on amendments and existing law, all at the touch of an iPad. Mike Rohrbach, chief information officer and director of information technology in Washington, shared with the committee why his state's very accessible website, remote video testimony capabilities and cybersecurity training make it an IT leader. "Signing up to testify before a committee should be as easy as booking a hotel room. Tracking a bill should be as easy as tracking a package," Rohrbach told the committee.

The committee also heard from Susan Clarke Schaar, clerk of the Virginia Senate, about scheduling and calendaring rules for busy lawmakers who often feel like they need to be in two places at once. Schaar noted in her testimony that, unlike U.S. representatives, Virginia senators (and most state legislators) don't have committee meetings that conflict with floor session, so they can meet session attendance requirements.



Berkeley C. Teate/NCSL

NCSL's Natalie Wood, foreground, testified on rules and procedures before a House select committee in December,

During the committee's final hearing, NCSL staff shared how the legislative process can foster bipartisanship and increase efficiency. Committee members asked questions about "regular order" (an assurance that rules will be consistently followed), decorum, bill referral, amendment processes, and committee authority and jurisdiction. From intermixed member seating in Maine to joint budget committees in Colorado and Wisconsin to secret-ballot voting by committee chairs in Nebraska, Congress heard how states strive for bipartisanship.

The modernization committee recently released legislation asking the U.S. House to pass 30 recommendations that committee members unanimously support. The committee will continue working this year, giving hope that, despite what you might see in the news, Congress won't always be handcuffed by hyperpartisan dysfunction.

Natalie Wood is the director of NCSL's Center for Legislative Strengthening.



FEDERALISM

FILLING IN FOR THE FEDS

Congress' inability to get things done leaves states carrying a heavy load

BY ALAN GREENBLATT

Washington was broken long before impeachment got underway. The current Democratic House and Republican Senate have failed to reach agreement on almost any major policy change. During the first two years of Donald Trump's presidency, when Republicans controlled everything, there were no notable enactments beyond the 2017 tax package and the 2018 criminal justice reform bill. Even the United States-Mexico-Canada Agreement, the White House's replacement for the North America Free Trade Agreement, left much of NAFTA intact.

The same lack of legislative productivity characterized most of Barack Obama's time as president. In fact, it's been about a decade since any real, innovative or ambitious policy achievement has come out of our nation's capital. The situation is unlikely to change for the foreseeable future. Either party could take both Congress and the White House this year, but the Senate is looking much more likely to end up tied than controlled by one party with a filibuster-proof, 60-seat majority.



Congressional gridlock opens up opportunities for states to experiment, and not everyone thinks that's a bad thing. For most of American history, says Wisconsin Assembly Speaker Robin Vos (R), the president of NCSL, power has been shifting inexorably toward Washington, D.C., with groups preferring to deal with a single venue rather than 50 separate state capitols. He welcomes a reversal of that trend.

"My preference has been, and always will be, that states are where the bulk of public policy should occur," he says. "I prefer to have that contest of ideas, where one state advances or falls behind because of the policies local officials are putting into place."

Perennial Time-Consumers

In 2020 and beyond, legislators' time will be monopolized, as it always has been, by traditional tasks such as budgeting and taxation, and education and health care funding. And, this year, with the census coming up, preparing for redistricting will be a front-of-mind matter in most legislatures.

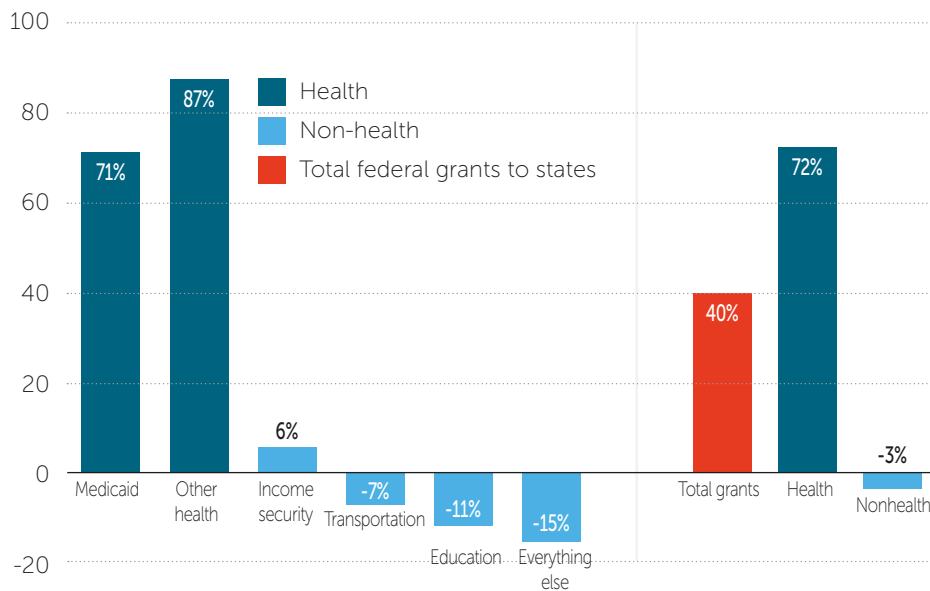
Although there seems to be help available for new federal priorities such as opioid addiction and school safety, Trump's budgets have proposed deep cuts to other domestic programs. These generally have not gotten traction in Congress, but state lawmakers recognize they can't count on infusions of federal cash any more for longstanding programs. And that trend is likely to continue.

Legislators will face several perennial issues in the coming years that Washington has either failed to address or refused to fund:

- **Infrastructure Funding.** The federal Highway Trust Fund has been falling short by billions of dollars for years, yet the federal gas tax hasn't been increased since 1993. Knowing they need a reliable source of increased revenue, 30 state legislatures have raised their own gas taxes since 2013. "People should not mistake the increase in investment at the state level as a substitute for increasing investment at the federal level," says Jim Tymon, executive director of the American Association of State High-

Federal Grants to States by Program

Percentage change from federal fiscal years 2008-17, adjusted for inflation



Source: The Pew Charitable Trusts, 2017



"MY PREFERENCE HAS BEEN, AND ALWAYS WILL BE, THAT STATES ARE WHERE THE BULK OF PUBLIC POLICY SHOULD OCCUR."

Speaker Robin Vos, Wisconsin

way and Transportation Officials.

The federal highway funding bill is due for reauthorization this year and state lawmakers are hoping their regular source of

transportation funding won't be delayed for years, as happened the last time. There are reasons for optimism. A Senate committee approved a \$287 billion package in July last year, and in November, Congress repealed a \$7.6 billion rescission of highway dollars scheduled to take place this summer. "We're moving in the right direction," Tymon says.

- **Legal Marijuana.** Marijuana remains a Schedule I substance, making the possession and sale of marijuana illegal under federal law. However, 11 states, two territories and the District of Columbia have legalized its use by adults, and another 22 allow its use for medical reasons. This legal inconsistency will keep lawmakers busy unless Congress decides to remove marijuana from the controlled substances list or reclassify it as a Schedule II or III substance.

- **Medicaid Costs.** Federal efforts to overhaul this costly state/federal program have fallen short. Further changes in health policy may be in limbo for a while. Policymakers will have to wait to see the full ramifications of a federal court ruling in December that found the Affordable



A young Salvadoran woman is taken into custody for illegally entering the United States by crossing the Rio Grande River in Texas.

Care Act’s individual mandate unconstitutional, putting the entire law’s future in doubt. Some 20 states have sought federal waivers to impose work requirements on Medicaid recipients. Those have largely been held up by the courts, but in December, South Carolina was the first state to receive federal approval to impose work requirements under traditional Medicaid, not just the ACA expansion. Ballot initiatives to expand Medicaid, which voters approved in 2018 in Idaho, Nebraska and Utah, are expected this year in Missouri and Oklahoma.

• **Immigration, Abortion and Gun Rights.** With little federal action on highly partisan and contentious social issues, red and blue states will continue charting their separate courses when it comes to sanctuary cities, abortion limits, gun control and other matters.

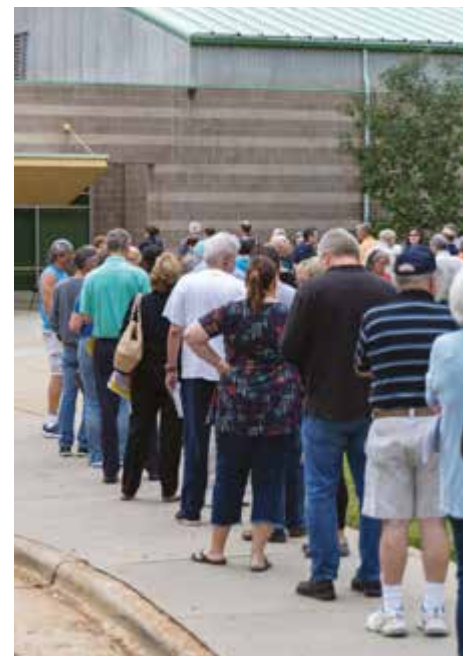
But beyond the perennial issues listed

above, there are important concerns—some high-profile, some not—that states will have to deal with in the coming years because federal lawmakers have failed to provide any new help with either policy direction or funding.

Election Security

In December, Congress agreed to provide \$425 million more for election security. That represented a compromise between House Democrats who wanted \$600 million, and Senate Republicans who had approved only \$250 million. It came on top of \$380 million Congress approved in 2018. At the time, voting security advocates worried that not only was that not enough, but that the money arrived too late, on the very eve of the election year.

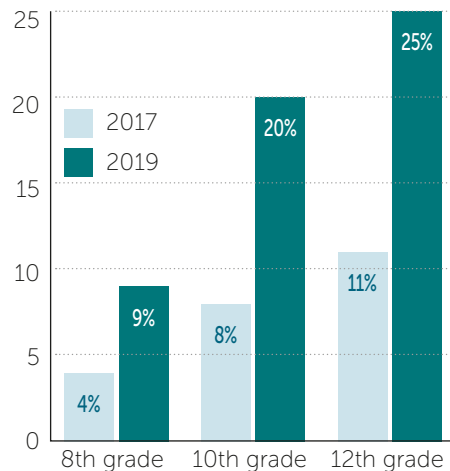
“This money is wonderful but not enough to make the states capable of stepping up to foreign meddling,” says Wendy



To better secure ballots, only eight states are expected to rely entirely on paperless voting machines for the 2020 election.

Vaping on the Rise With Teens

Students' past-month use, by grade



Source: Pew Research Center, University of Michigan data, Jan. 2020



A pedestrian exhales vapor from a vaping device while waiting to cross a busy street in Philadelphia during rush hour.

Underhill, director of NCSL's elections and redistricting team.

States have already done an impressive job on their own of "hardening their cyber shells around elections," Underhill says. Election officials have to perform a tight dance between addressing real vulnerabilities and not fostering panic, since undermining public confidence is at least as great a threat as actual hacking.

To better secure ballots, the number of states relying entirely on paperless machines is expected to fall to eight, six fewer than in 2016.

One other move states could consider making is rewriting the regulations that lead to long delays in certification of voting software and equipment, says Marc Lawrence-Apfelbaum, senior adviser on foreign interference and online threats at the Campaign Legal Center. Last year, states spent just 8% of the \$380 million authorized by Congress ahead of the midterm elections, in large part due to the amount of time it takes to update equipment. (They're expected to spend 85% of the sum in this year's elections.)

"It takes a long time to get anything certified, which costs vendors time and money, and once you've deployed it, you have to start all over again," Lawrence-Apfelbaum

says. "It works the opposite of the way most technologies work, where you do updates all the time with your iPhone."

Vaping and E-cigarettes

Originally touted as a healthy, easy way for adults to stop smoking (60% easier than drug-based methods, some studies suggest), the use of electronic cigarettes—or vaping—first drew concerns over the strong appeal flavored varieties had to young people, fueled, some argued, by aggressive youth-targeted marketing campaigns. Vaping devices—also called vapes, e-hookahs, vape pens, tank systems and mods—work by heating a liquid that, according to the Centers for Disease Control and Prevention, most commonly contains nicotine, THC or cannabinoid oils, but sometimes other additives, to produce a vapor that is inhaled.

Trump threatened to ban most forms of flavored e-cigarettes last fall, because, he said, "We can't have our kids be so affected." On Jan. 2, the administration announced a plan to ban most flavors, but not all. Health advocates warn that this left open a loophole that tobacco companies can exploit, marketing their products, perhaps misleadingly, under the flavor labels still allowed.

Although studies on the health effects of vaping have been inconclusive, 2,561 people in 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands have been hospitalized for lung injuries associated with vaping, as of Dec. 31, 2019. Fifty-five of them, ages 17 to 75 and from 27 states and the District of Columbia, have died, according to the CDC. Most patients reported using THC-containing products of unknown origin.

Massachusetts lawmakers were the first to pass a state ban on flavored vaping products. In at least nine other states, governors have used executive orders or state health departments have used emergency rules to establish bans.

Courts have been skeptical about these moves, but other state legislatures may debate the pros and cons this year of imposing bans that are stricter than the new federal regulations.

Regulatory restrictions, vaping device companies argue, would only impede adults who choose to vape.

Children and Youth

When it comes to children's programs, "we have an imbalanced federal fiscal system," says Timothy Conlan, a professor of government at George Mason University.



Since 2015, the share of federal spending on K-12 education has dropped by 12.1%, and nutrition assistance has fallen even more.

Federal spending currently is focused on defense and entitlements, which drives down spending on programs that benefit children and young people, leaving that job largely to the states, he says. That's not a new dynamic, but the decline over the last five years is notable.

Since 2015, the share of federal spending on K-12 education has dropped by 12.1%, while nutrition assistance has fallen even more, according to First Focus on Children, a bipartisan organization that advocates for spending on children and families. At this point, federal programs aimed at the young make up just 7% of all federal spending. "The share of spending for kids is at an all-time low," says Bruce Lesley, First Focus president.

That leads to some big disparities among states. Some are still below their pre-recession spending levels on K-12, while others spend nothing on early childhood education beyond what the federal government provides.

Children lack political clout, but the politics around children's programs might be changing as the demographics of legislatures evolve. Older women are much more likely than older men to support efforts such as Head Start and the Children's Health Insurance Program. But that gender



"FROM OUR POINT OF VIEW
IN OREGON, IT WAS
VERY CLEAR THE STATUS QUO
ISN'T WORKING."

Representative Julie Fahey, Oregon



gap does not exist among younger adults.

Finding ways to pay for universal programs remains a struggle, but it's becoming more of a priority in many states. Colorado and Rhode Island have ramped up their spending on early childhood and pre-K programs, and New Mexico has just created an Early



States have changed zoning regulations to promote more affordable housing.

Childhood Education Department.

Child care came up repeatedly as an issue of concern in gubernatorial races in 2019. And even the feds are spending more on child care and early childhood programs in general. "We are seeing states starting to increase funding and leveraging these federal dollars with more savvy," says Ed Stierli, director of state campaigns for Save the Children Action Network.

Affordable Housing

Traditionally, legislators haven't had to think much about housing. The federal government has provided funding for low-income housing, while localities have set nearly all the rules. But the days when states could stand idly by appear to be over. "Traditionally, this has been the purview of the federal government and localities," says Oregon Representative Julie Fahey (D). "From our point of view in Oregon, it was very clear the status quo isn't working."

Fahey co-sponsored a law last year that effectively bans single-family zoning in the state. Oregon's law was especially ambitious, but states from Massachusetts to Hawaii have enacted laws aimed at pushing localities to change zoning regulations to encourage more building. "We've viewed it as a local issue, but this absolutely is a state-

wide issue, every bit as much as education or health care,” says California Senator Scott Wiener (D), who has sponsored legislation to prod local governments to build more housing near public transit routes.

Wiener’s bill was unsuccessful last year, but California did enact a statewide rent-control measure, along with other tenant protections. Inland states as well will increasingly find themselves called on to confront housing questions, says Mark Treskon, a senior research associate at the Urban Institute. “There’s going to be more active discussion in states where there are cities with really profound housing-cost issues,” he says.

Climate Concerns

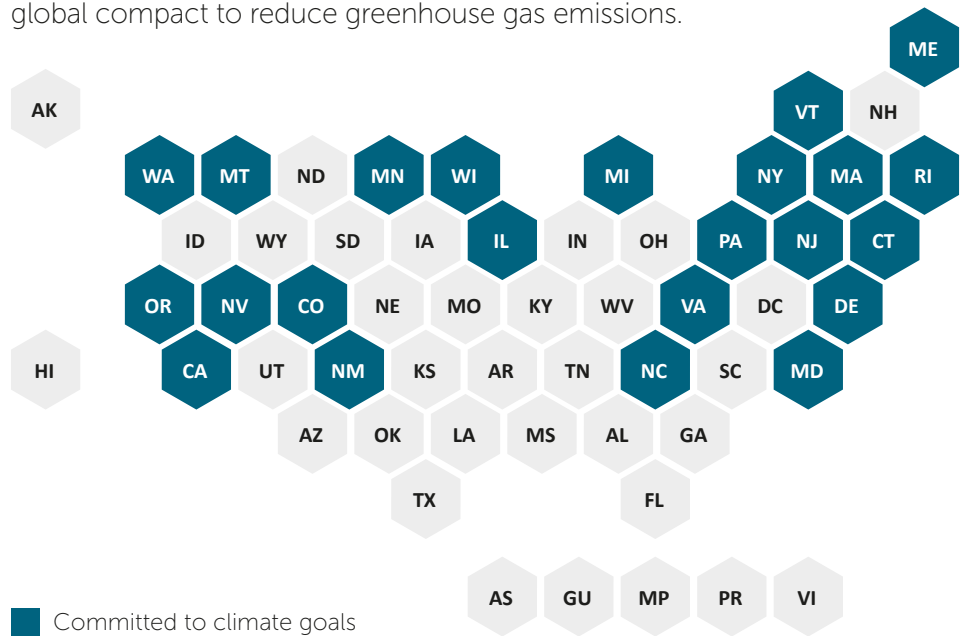
Engaged attention to climate policy has switched from the states during George W. Bush’s presidency, to Washington, D.C., under Obama, and back to the states under Trump. It’s an example of the “whiplash effect” some aspects of federalism are experiencing, says Conlan, the George Mason University professor. At a time of profound polarization, the policy course an issue takes can change rapidly with swings in partisan control. “Federalism has become polarized in a way that we haven’t seen in a very long time, and maybe ever,” he says.

Much of the climate action in the states is taking place at the executive level. Democratic attorneys general are routinely suing the Trump administration over climate questions and other environmental issues as part of their record-shattering docket of lawsuits against Washington. Half the nation’s governors have joined the U.S. Climate Alliance, pledging their states to abide by the terms of the Paris climate agreement, even as Trump moves to withdraw the nation from the accord altogether.

Lawmakers in a handful of states have gone further. Hawaii was the first state, in 2017, to enact laws adhering to the Paris goals, with measures reducing greenhouse gas emissions and promoting carbon sequestration. In Washington, lawmakers passed five climate-change bills mandat-

State Alliance in Lieu of Paris Agreement

Nearly half of the states will remain committed to meeting the goals of the global compact to reduce greenhouse gas emissions.



Source: The Pew Charitable Trusts, 2019

ing renewable power, subsidizing electric vehicles and requiring some buildings to be remodeled, among other strategies. Lawmakers in Arizona, Montana, New Jersey and New York have produced climate-related letters or resolutions.

GOP lawmakers support alternative energy sources, such as wind, for their economic development potential but remain skeptical about the extent to which human activity is contributing to climate change. That doubt is keeping most of them from actively supporting any climate change effort, says Barry Rabe, a public policy professor at the University of Michigan. “As states think about their economic future, their ability to tap fossil fuels in their states becomes a bigger force in state politics than it was 10 or 15 years ago,” he says.

Inaction on climate change at the federal level “has created a desire for policy certainty, whether you’re a state government or a private company,” says Janet Peace, vice president of the Center for Climate and Energy Solutions. “Most big companies see that we’re going to have some climate policy in the future. If you’re

not going to get it from the federal level, they’re turning to the states.”

Power to States

The list of these difficult, federally neglected issues goes on. States are being encouraged to take on more of the costs of responding to natural disasters, for example. The threat of trade wars has prompted some states to drum up their own international deals. And workforce training concerns have legislators seeking better alignment between their education and economic development agencies to address skills gaps that leave millions of jobs unfilled.

In 2020, states will have to find their own way on these and still other issues, with little help expected from Washington.

That’s a challenge Vos is willing to take on: “I think that’s in essence what the founders intended, having power resting in the states.”

Alan Greenblatt is a senior staff writer with Governing.

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Your job isn't easy. We get it. But with the right tools, any legislative staffer can be effective. NCSL is here to help as you get ready for the next session. From e-learning to our award-winning publications, we've got the resources you can rely on to do your very best. Most are available for free on our website, www.ncsl.org, or by emailing us at getinvolved@ncsl.org.

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Get inspired, gain insight, discover new perspectives. NCSL's magazine of policy and politics shines the spotlight on you and your colleagues like no other publication out there. It's sure to enlighten and, we hope, entertain.

MASON'S MANUAL

A handy reference to basic parliamentary rules and procedures. Be sure to look for the revised edition coming in late 2020!

2020 CALENDAR

Be sure to save the date for these NCSL events to learn from and network with colleagues:

- NCSL Legislative Staff Week, May 4-8, 2020
- Legislative Summit, Aug. 10-13, 2020, Indianapolis, Ind.
- Legislative Staff Management Institute, Aug. 28-Sept. 4, Sacramento, Calif.
- Staff professional development seminars, September and October, 2020.
- Staff Certificate Program, Oct. 6, 2020, Atlanta, Ga.

NCSL'S ISSUE SPECIALISTS

Have a question about a policy or procedural topic but don't know who to ask? Find NCSL's staff listed by the issues they cover online or call 303-364-7700 with requests.





Some states tax barbers' services.

TAXATION

Services Targeted for Taxes

Lawmakers consider taxing services as consumers spend less on retail goods.

BY JACKSON BRAINERD

The sales tax is not what it used to be. Although it's still one of the most important and longest-standing sources of revenue for the 45 state governments that levy it, the tax has steadily lost ground for the last several decades as consumers increasingly spend more on services than on retail goods.

Services can be grouped in broad categories, such as professional (accounting, legal), personal (tanning, salons, barbers) and business (advertising, magazines). Many of these are exempt from sales taxes.

Most state legislatures adopted their sales taxes between 1930 and 1960 and chose to apply the tax to the sales of tangible personal property, which represented 60% or more of the average consumer's total personal expenditures during that time. Since then, however, the amounts consumers spend on tangible property and services have basically reversed. Services now make up about two-thirds of personal consumption.

This narrowing of state sales tax bases has resulted in dwindling revenue. To compensate, lawmakers have gradually raised sales tax rates, which averaged

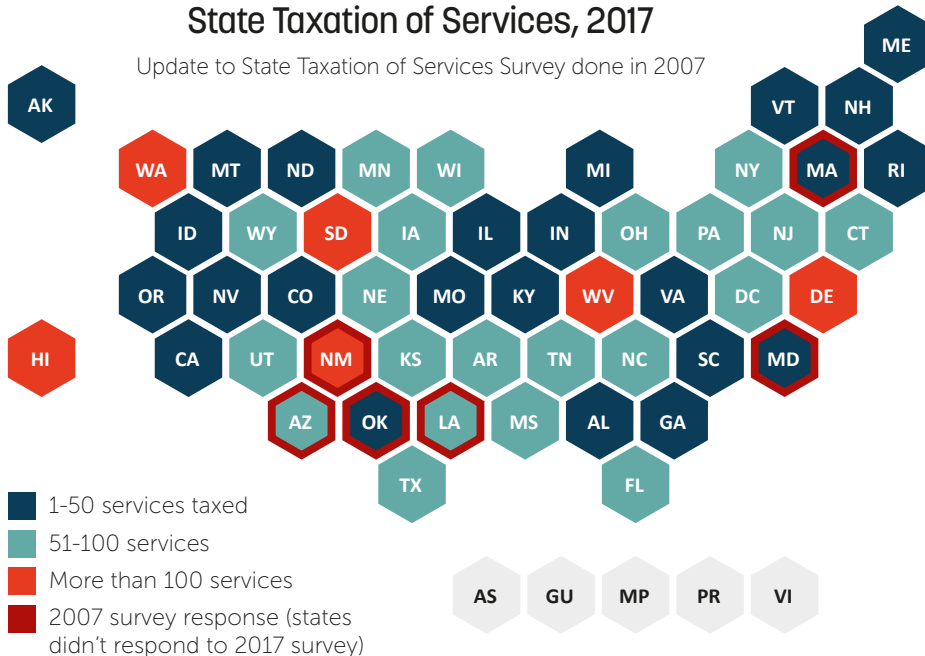
3.25% in 1970, 5% from 1990 through 2000, and 6% today.

Tax policy experts on both ends of the political spectrum generally agree that good tax policy follows the widely accepted principle of "broad bases, lower rates" and should fall to a greater degree on the things people buy the most.

The number of services taxed by each state varies fairly widely, according to a recently updated survey by the Federation of Tax Administrators. Only six states—Delaware, Hawaii, New Mexico, South Dakota, Washington and West Virginia—tax services broadly and few have expanded their

State Taxation of Services, 2017

Update to State Taxation of Services Survey done in 2007



Source: Federation of Tax Administrators, 2017 State Taxation of Services Survey

Services Some States Have Begun to Tax

- Pet boarding, pet grooming, pet day care
- Personal transportation, including peer-to-peer service
- Scenic and sightseeing transportation in a motor vehicle
- Motor vehicle towing
- Parking lots and garages
- Dating referral services
- Identity theft protection
- Streaming media
- Shipping and handling when part of a taxable sale

tax bases. Perhaps most notable in the updated survey was how little things had changed from when it was last conducted, in 2007. Iowa and Kentucky both expanded their tax bases in 2018 to include a handful of services (tanning, landscaping, subscription services), and Connecticut added dry cleaning and interior design work in 2019. (Connecticut has added 20 services over the last decade, the most in the country.)

A significant majority of states, however, added fewer than 10, if any. But that may be changing.

In a December special session, Utah lawmakers passed an extensive tax reform package. Along with lowering income taxes, restoring the full grocery tax and repealing exemptions on motor fuel taxes, the legislation also eliminates certain sales tax exemptions (college sporting events, newspaper subscriptions, external car washes) and expands the sales tax to certain services (pet grooming and care, streaming media, parking lots and dating referral sites, to name a few). The loud buzz the overhaul generated in the Beehive State will likely pique interest elsewhere. A revenue working group in

IT'S NOT ONLY BUSINESSES THAT OPPOSE TAXING SERVICES. ADDING TAXES TO THE COST OF POPULAR DIGITAL GOODS, ENTERTAINMENT AND OTHER CONSUMER SERVICES CAN ALSO DRAW CRITICISM FROM THE PUBLIC.

Massachusetts is considering ways to tax services.

The limited action on this front is due partly to the challenges in administering and defining taxation of services. Many services are complex and industry-specific, making them more difficult than tangible goods for states to value, define and determine how to audit.

It can be a very politically challenging

task as well. No industry wants to see new tax burdens, and service taxation debates are prone to hyperbole. A proposed tax on legal services in Wisconsin in 2009 resulted in the state bar claiming it was nothing less than an attempt to tax “justice itself.” And in Washington, D.C., a tax on health club services was derided by the industry as a penalty for being healthy.

It's not only businesses that oppose taxing services. Adding taxes to the cost of popular digital goods, entertainment and other consumer services can also draw criticism from the public. In fact, voters in Arizona and Missouri recently passed constitutional measures that ban the taxation of services. And at least two groups in Utah have already begun gathering signatures to force a referendum on the ballot to give voters the opportunity to repeal the state's new law.

Although concerns about shrinking sales taxes have been building for decades, state legislatures have largely resorted to passing piecemeal efforts rather than adopting measures to tax services broadly. This year may very likely feature renewed state efforts.

Jackson Brainerd is a senior policy specialist in NCSL's Fiscal Affairs Program.



Moving Toward the Middle

Honest discussions bring people with diverse political beliefs a little closer.

BY JULIE LAYS

Talking politics around the kitchen table—even with beloved relatives—can be risky.

Imagine expressing your personal, political beliefs with 522 strangers.

That's what a scientific sample of registered voters chose to do last October in a study looking at how deep the nation's partisanship rift really ran.

The study, “America in One Room,” was organized by Helena, a nonpartisan problem-solving institution; MacNeil/Lehrer Productions’ By the People project; and the Center for Deliberative Democracy at Stanford University. Participants were recruited by the social research organization NORC, at the University of Chicago.

The researchers wanted to know if our divisions and polarization are as entrenched as many claim they are. They gathered “an accurate, representative sample of the entire American electorate in all its political, cultural and demographic diversity,” according to a news release.

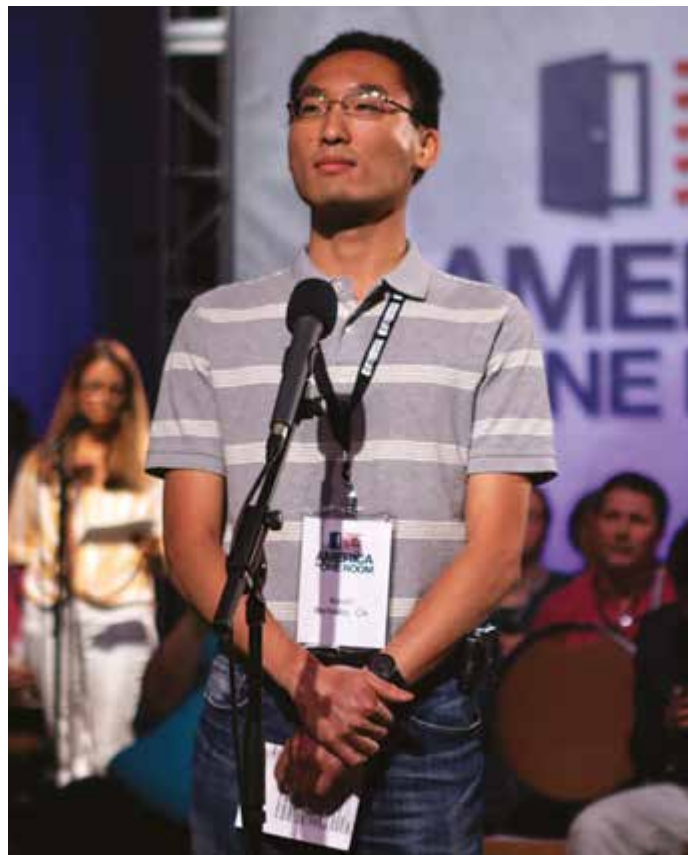
“We had a hypothesis that the American people are not as polarized as the American political class, not as polarized as our elected representatives and politicians,” said Larry Diamond, a co-leader of the study and a sociologist at Stanford University. All Americans need, the researchers believed, was access to more nonpartisan information and factual discussions.

Participants spent three days last October listening to expert briefings on topics like immigration, health care, foreign policy, the environment, and taxes and the economy; reading booklets vetted by both parties on the pros and cons of these contentious issues; discussing the issues in diverse, small groups; and asking questions of some 2020 presidential candidates.

After the long weekend, the percentage saying American democracy was working well doubled from 30% to 60%.

“WE HAD A HYPOTHESIS THAT THE AMERICAN
PEOPLE ARE NOT AS POLARIZED AS ... OUR
ELECTED REPRESENTATIVES AND POLITICIANS.”

Larry Diamond, Stanford University



Courtesy photos

This page and previous page: Voters sharing thoughts during the three-day “America in One Room” study weekend.

“People of all backgrounds discussed the most difficult issues that have pulled us apart as a country. With civil discussion, they came to understand and respect each other,” said Jim Fishkin, co-leader of the study and director of the Center for Deliberative Democracy. “These conclusions deserve to be listened to by policymakers.”

Surveys before and after the event showed shifts toward centrist policies among Republican and Democratic voters alike, more than in the control group. For example, support for zero-carbon emissions for vehicles fell from 66% to 55%, while support for using more taxes and market incentives to address climate change increased from 61% to 72%. Support for rejoining the Trans-Pacific Partnership rose from 47% to 74%, while support for increasing the federal minimum wage to \$15 an hour fell from 54% to 39%.

“Even though I imagined there would be significant changes in opinion, the results far exceeded my expectations,” Diamond said. “From both ends of the political spectrum, there was movement toward greater moderation and prudence. Our participants left with much more hope for American democracy—and so did I.”

Julie Lays is the editor of State Legislatures magazine.

Stateline

ALASKA

Where Female Farmers Are Flourishing

Nearly half of all farmers in Alaska are women, well above the average of about 36% nationwide. There are several factors behind the trend, *Modern Farmer* magazine reports, but two of them are the financial resources available to female farmers and a blossoming of peony growers. The U.S. Department of Agriculture's Farm Services Agency sets aside loan money for underrepresented groups, including women and beginning farmers. And Alaska's brief summer growing season allows peonies to be harvested later in the season than in other regions where the showy blooms are grown.

FUN FACT

To flower, many peonies need 100-300 hours of temperatures below 40 degrees Fahrenheit. That's why they love Alaska!



US HEALTH RANKING

Clean 'Green Mountain' Living

Vermont scored bragging rights as the nation's healthiest state in this year's "America's Health Rankings Annual Report," which compares the 50 states on more than 30 health metrics. The report, produced for 30 years by the United Health Foundation, offers a "state and national snapshot" of health trends over time. Vermont topped the ranking because it decreased rates of smoking and mental distress and has low incidences of violent crime and certain sexually transmitted diseases. Rounding out the top five, in order, were Massachusetts, Hawaii, Connecticut and Utah.

MARYLAND

Putting It Plainly

Writing the way people talk—limiting syllables per word and words per sentence—can go a long way toward making statutes and government documents more understandable to the public. The U.S. government and some states have adopted such "plain language" standards for that very reason. But writing at a grade school level doesn't guarantee the message can be easily understood. A proposed Maryland law would require that ballot questions be accompanied by

UTAH

Thank You Fur Your Service

If legislation proposed by Representative Karianne Lisonbee (R) succeeds, March 13 will become a new Beehive State holiday, K9 Veterans Day. Lisonbee enlisted support from the legislature's Veterans and Military Affairs Commission, which endorsed her measure, and a couple of special furry lobbyists: Mazzie and Geli, retired military dogs who served with U.S. contractors in Kuwait. K9 Veterans Day has been observed across the country for years as an unofficial holiday due to the persistence of the late Joseph White, a military dog handler during the Vietnam War, the Salt Lake Tribune reports.



Courtesy Jim Crismer

Retired war dogs Geli, left, and Mazzie did narcotics detection work for a U.S. contractor in Kuwait.

statements of the measures' purpose—on the ballots, not in a voters' guide or elsewhere. The statements must be written so they can "be understood by" people with a sixth grade level of reading comprehension. For now, the bill's sponsor, Senator Cheryl Kagan (D), is unsure how the plain language requirement would be tested. What she does know

is that ballot measure language "shouldn't sound like a legal document."

HOGS WILD

Porkers on the Prowl

Most of the United States' 6 million feral pigs live in the South—about half of them in Texas—but they're on the move, The New York Times

reports. Their range expanded to 38 states from 17 in the last 30 years. That means ranchers and government officials as far north as Montana are keeping an eye on this smart, destructive invader. (Annual damage estimates run as high as \$2.5 billion.) Adding to the challenge, the hogs are already at home in Canada, surviving the winter cold by developing thick coats of fur and burrowing "pigloos" into the snow.

CALIFORNIA

A Pot App for Your Smartphone

After California legalized marijuana in 2016, it struggled to keep up with licensing requests, which, along with stiff taxes on legal weed, has contributed to a flourishing illicit market, including unlicensed dispensaries. Now, consumers can find out if a shop is legit by using their smartphones. A new program run by the state's Bureau of Cannabis Control encourages licensed retailers to post QR codes in their store windows. When consumers scan the code, they can check the retailer's license information. The United Cannabis Business Association, which represents licensed retailers, supports the program because consumers can be sure the products they buy are "legal and safe."



Thank You for Supporting America's Greatest Support System: Family Caregivers

To recognize their work to support family caregivers, AARP honors 73 elected officials by naming them to the 2019 class of Capitol Caregivers—a bipartisan group from 29 states and territories. Specifically, these elected officials advanced policies to support the adult children, spouses, friends and others who make it possible for older Americans to live independently in their homes and communities—where they want to be.

Congratulations and thank you to the elected officials in AARP's 2019 class of Capitol Caregivers:

Alabama

- Senator Greg Albritton
- Senator Greg Reed
- Representative Laura Hall

Arizona

- Senator Heather Carter
- Senator Kate Brophy McGee
- Senator Rick Gray

California

- Assemblymember
Cecilia Aguiar-Curry
- Dr. Richard Pan

Connecticut

- Senator Julie Kushner
- Representative Robyn Porter

Delaware

- Governor John Carney
- Senator Anthony Delcollo

Florida

- Senator Jeff Brandes
- Representative Daniel Perez
- Representative James Grant

Georgia

- Senator Kay Kirkpatrick
- Senator Renee Unterman

Hawaii

- Senator Sharon Moriwaki
- Representative Gregg Takayama

Illinois

- Representative Anna Moeller
- Senator Jacqueline Y. Collins

Indiana

- Senator Andy Zay
- Senator Eric Koch
- Senator Greg Taylor
- Senator Linda Rogers
- Senator Mike Bohacek
- Senator Tim Lanane

- Representative Ed Clere
- Representative Steve Davisson

Iowa

- Senator Amanda Ragan
- Senator Mark Segebart
- Representative Cecil Dolecheck
- Representative Jennifer Konfrst

Kansas

- Representative Jarrod Ousley
- Representative
Susan Concannon

Kentucky

- Representative Daniel Elliott

Maine

- Representative Patrick Corey

Mississippi

- Senator Joey Fillingane
- Senator W. Briggs Hopson III

Montana

- Representative Ed Buttrey
- Representative Mary Caferro

Nebraska

- Senator Kate Bolz

New Hampshire

- Representative Polly Champion

New Jersey

- Senator Stephen M. Sweeney
- Senator Joseph F. Vitale
- Assemblywoman
Annette Quijano
- Assemblyman Herb Conaway, Jr.

New Mexico

- Representative Daymon Ely

New York

- Governor Andrew Cuomo
- Senator Rachel May
- Assemblymember
Harry B. Bronson

North Dakota

- Senator Nicole Poolman
- Representative Lisa Meier

Ohio

- Senator Kenny Yuko
- Senator Steve Wilson

Rhode Island

- Senate Majority Leader
Michael J. McCaffrey
- Senate Majority Whip
Maryellen Goodwin
- Senator Adam J. Satchell
- Senator Cynthia Armour Coyne
- Senator Walter S. Felag, Jr.
- Representative Julie A. Casimiro
- Representative Patricia A. Serpa
- Representative
Robert E. Craven, Jr.

South Carolina

- Representative Gary Clary

Tennessee

- Senator Kerry Roberts

Utah

- Senator Wayne A. Harper

Virgin Islands

- Governor Albert Bryan, Jr.
- Senator Brian A. Smith
- Senator Janelle K. Sarauw
- Senator Myron D. Jackson
- Senator Novelle E. Francis Jr.

Washington

- Senator Jamie Pedersen
- Representative Laurie Jinkins

I  Caregivers™

At AARP, we believe supporting family caregivers is a top priority for all of us. In 2020, across the states, we will continue to fight for more support, help at home, workplace flexibility, training, financial protection and more. Learn more at aarp.org/SupportCaregivers.



***AARP THANKS LEADERS ACROSS
THE COUNTRY FOR FIGHTING FOR
LOWER DRUG PRICES.***

While too many Americans struggle to make ends meet, the big drug companies continue to rake in billions. That's why AARP would like to thank elected officials across the country for standing up to prescription drug companies and fighting to lower prices for everyone. To recognize their work, AARP honors 28 elected officials by naming them to the 2019 class of Price Fighters—a bipartisan group from 14 states.

Congratulations and thank you to the elected officials in AARP's 2019 class of Price Fighters:

Alabama

- Senator Arthur Orr

Alaska

- Senator Cathy Giessel

California

- Governor Gavin Newsom
- Attorney General Xavier Becerra
- Assemblymember Jim Wood

Florida

- Governor Ron DeSantis
- Senator Aaron Bean
- Representative Tom Leek

Indiana

- Representative Robin Shackleford

Maryland

- Senator Brian Feldman
- Senator Katherine A. Klausmeier
- Delegate Joseline Peña-Melnyk

Maine

- Senate President Troy Jackson
- Assistant Majority Leader Eloise Vitelli
- Senator Robert Foley
- Senator Heather Sanbor

Montana

- Senator Mary McNally

Nebraska

- Senator Mark Kolterman
- Senator John McCollister

Nevada

- Governor Steve Sisolak
- Senator Yvanna D. Cancela

New Mexico

- Senator Jeff Steinborn
- Representative Joanne Ferrary

Texas

- Representative Tom Oliverson
- Representative Senfronia Thompson

Washington

- Senator Karen Keiser
- Representative June Robinson

Wyoming

- Representative Dan Kirkbride



**Thank you to AARP's 2019 class of Price Fighters
for putting an end to Rx price gouging.**



Debating the Death Penalty

Capital punishment divides legislators, but not along party lines.

BY AMBER WIDGERY

Unlike other controversial topics, there is no party line when it comes to the death penalty.

Since 2015, 25 states have enacted more than 60 new laws addressing capital punishment, from expanding or limiting aggravating factors and modifying execution methods to changing trial procedures or repealing the practice altogether.

At NCSL's 2019 Legislative Summit in Nashville, a panel of lawmakers convened to discuss capital punishment and the beliefs that have influenced the positions they've taken on the issue. Utah Representative Paul Ray (R) and Colorado Senator Rhonda Fields (D) support the death penalty, while New Hampshire Representative Renny Cushing (D) and Wyoming Representative Jared Olsen (R) do not. The panel's diversity of opinion reflected the lawmakers' deeply personal life experiences more than their party affiliation.

Washington Representative Roger Goodman (D) moderated the discussion.

Goodman: What is the status of capital punishment in your state?

Ray: Utah has only nine people on death row and one of the highest bars in the nation to get there. No death row inmate has ever made an appeal on the grounds of innocence. In three of the last four years, repeal legislation has failed. In fact, each time there is a new bill to repeal the death penalty, we actually expand the death penalty a little bit. As you see from the panel here today, this isn't a party issue. What I explain to people is that this issue is personal, and you have to let people

"I GREATLY QUESTION
GOVERNMENT'S ABILITY
TO DECIDE QUESTIONS OF
LIFE AND DEATH."

Representative Jared Olsen, Wyoming

"THIS IS NOT AN EASY TOPIC.
IT IS A VERY DARK TOPIC
TO BE TALKING ABOUT."

Senator Rhonda Fields, Colorado

come to their own decisions.

Cushing: New Hampshire was actually the first legislative body in this century to repeal the death penalty in 2001, but the legislation was vetoed. We finally completed the task [last] year, on May 31. The more New Hampshire legislators learned about capital punishment, the less there was for them to like about it. They concluded that New Hampshire can live without it. In New Hampshire, a substantial number of people don't trust the government to collect taxes or plow snow, so the last thing they want to do is give it the power to kill. The repeal effort united people who don't often come together on issues. And at the core of this effort were

the voices of family members of murder victims who recognize that capital punishment doesn't accomplish the one thing they want it to, which is to bring back their loved one.

Fields: Right now, we have capital punishment in Colorado. The reason I support it is because of my own personal story: Of the three people serving on death row in Colorado, two of them murdered my son and his fiancée. It is something we don't use very often because the crime has to meet very stiff criteria. In my son's case, the criterion was that he was a witness to a crime and scheduled to testify the next day. It was also a double homicide and the defendant was already doing time for the murder my son witnessed. Efforts to repeal the death sentence [in 2018] were halted due to issues with the process, but the bill is coming back, so there might come a time when Colorado would not have capital punishment as an option.

Olsen: We still have capital punishment in Wyoming. The last time we used it, however, was in 1992. We currently have no one on death row, but there is a case being litigated that may end up sending someone there. A bill to repeal capital punishment has been introduced in Wyoming every year, but it hasn't gained any traction until [last] year. The bill I brought up gained wide support from leadership in the House. It passed with a substantial majority there, and passed out of committee in the Senate, but failed by just three votes in a Senate floor vote.

Victims often say they are serving a life sentence and that there needs to be a sense of justice. We also hear there is

no closure in capital cases because of the lengthy trials and appeals. What are your impressions?

Fields: I feel like I'm serving on death row right now. There's never any closure. There is nothing that is ever going to bring my son back. You lose someone and you can't be made whole. I grieve every single day because of the loss of my son.

Cushing: As a victim survivor, I hate the word closure. You close on a mortgage not a homicide. No sanction will lift the burden for victims. We will be grieving forever. The execution solution or putting people in prison won't end the grief.

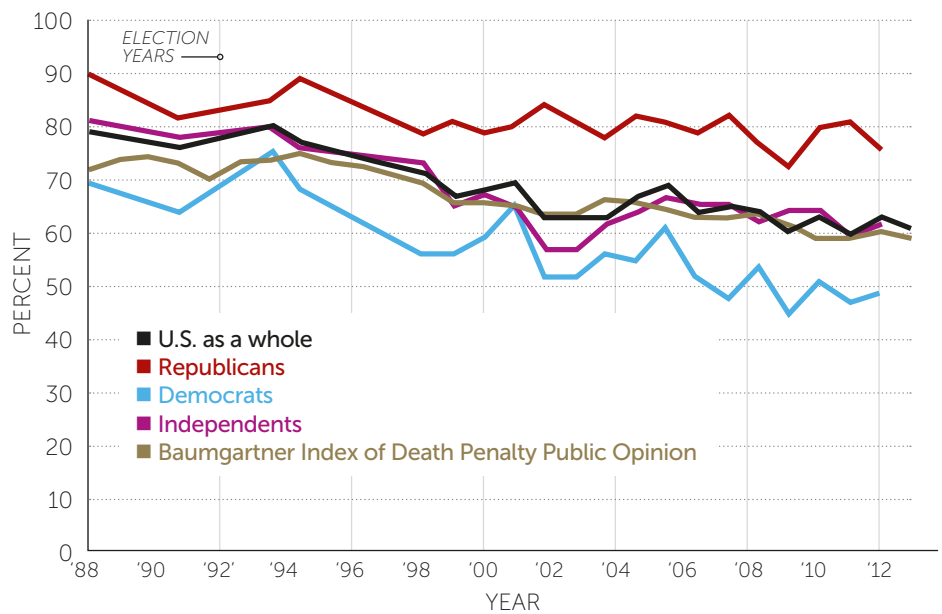
With two Republicans on our panel, I'd like to ask about how values like protection of life, fiscal responsibility and limited government can be interpreted differently to support divergent positions on the issue of capital punishment.

Olsen: I came to the legislature pro-capital punishment but changed my mind after I dove into the research and found out how much money we spend on it. In Wyoming we appropriate money every year to the death penalty defense fund and have spent tens of millions of dollars on a broken system. The cost is 30% greater to house a death row inmate. We should be investing in training and treatment within our criminal justice system instead.

Ray: We have a fiscal fallacy when it comes to capital punishment. People say it is cheaper to house offenders for life than it is to execute them, but no one runs the numbers on health care expenses for aging prisoners, which can potentially be millions of dollars a year for one inmate. If you are going to argue cost, then we should account for everything and compare apples to apples. I believe there are consequences for choices. If you take innocent lives, the consequence is you deserve the death penalty.

Fields: I'd like to talk about this idea of the cost of justice. Repeal bills in Colorado have not proposed to save the state any money. So, what cost do we put on justice? Just because we don't use the punishment often doesn't mean we should eliminate it. That would send a very poor message that

Public Support for the Death Penalty



Source: Index of Death Penalty Public Opinion, Baumgartner, et al., University of North Carolina, Chapel Hill

“NO SANCTION WILL LIFT THE BURDEN FOR VICTIMS.”

Representative Renny Cushing, New Hampshire



no matter how many people you kill everyone gets the same penalty.

Cushing: I'm concerned about creating a hierarchy of victims. I think that is what the death penalty does sometimes, because it is reserved for only the most heinous murders. The reality is that the murder of a loved one is the most heinous. There is often a focus on a few high-profile cases that understandably rip your heart apart, but in New Hampshire there are 130 unsolved homicides. We are willing to spend millions of dollars to prosecute a single case to put someone to death, but for the families of the 130 victims whose murders have never been solved, the question for them is why their loved one isn't worthy enough to have the state devote funds to try to apprehend those killers who are still out there.

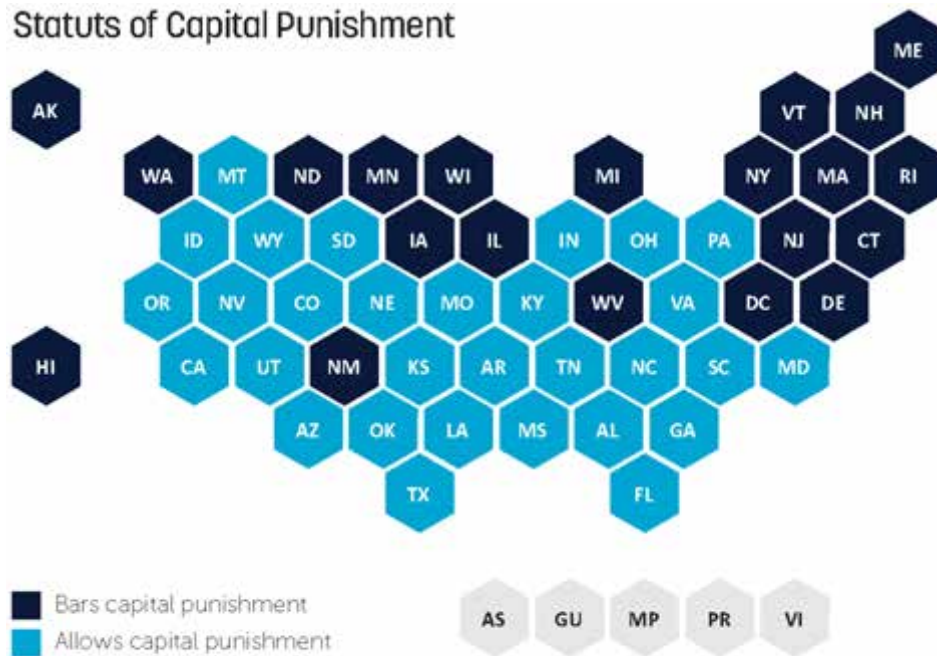
We hear a lot about wrongful convictions and racial disparities in applying the death penalty. Can you comment?

Olsen: Wrongful conviction is one of the key factors that changed my mind. As I dove deeper into the research, I learned that for every 8.7 executions there is one exoneration. There is a general distrust of government in Wyoming, much like in New Hampshire, and I greatly question government's ability to decide questions of life and death. People tell me that we know offenders are guilty because of DNA, but the system isn't perfect. Humans and even scientists are fallible. Additionally, we have DNA in only about 10% of the cases.

Ray: In Utah we have appropriate safety nets. No death row inmate has ever attempted to appeal on innocence, so in some states the system is working.

Fields: I don't want to see anyone go to jail for something they didn't do. But it happens. For people of color we see over-incarceration all the time. We want to make sure we avoid it and address it. We need a fair and equitable process. And, of course, racism troubles me, because my color is the one thing I can't divorce myself from, and right now we are living in a society where

Statuts of Capital Punishment



■ Bars capital punishment
 ■ Allows capital punishment

Source: NCSL 2019

“IF YOU TAKE INNOCENT LIVES,
 THE CONSEQUENCE IS YOU
 DESERVE THE DEATH PENALTY.”

Representative Paul Ray, Utah

people of color are being demonized. We have to work at a very high level to address this issue. We also need to work upstream from this dark side of punishment, helping kids read by third grade and develop problem-solving skills.

Cushing: In New Hampshire we had two capital murder cases that went on simultaneously a decade ago. One involved an African American male and the other involved a white millionaire. Both were convicted of capital murder, but when it came to sentencing the jury decided the white millionaire would get life without parole and the young African American would get the death sentence, making 100% of our death row population people of color. On the issue of wrongful conviction, I see Ray Krone in the back of the room. ... This is

the face of wrongful conviction. Ray Krone spent years in jail and was sent to death row for a murder that he did not commit. It is inevitable that some people will be wrongfully condemned and put to death. If you are a family member of the person who is put to death wrongfully, you grieve as much as any of us do.

A Personal Perspective

At the end of the session, Ray Krone was the first member of the audience to ask a question of the panel. Krone spent two years on death row before he was acquitted with the assistance of the Innocence Project, a New York-based nonprofit legal organization, and DNA evidence. His experience, along with that of the panel, further highlighted the very personal nature of this issue. During his remarks, Krone observed that only 2% of counties are responsible for all the people on death row in the United States, a fact that shows, he said, the system works very differently across the country.

Amber Widgery is a senior policy specialist in NCSL's Criminal Justice Program.

Editor's note: The panelists' responses have been edited for length and clarity.



Cushing



Fields



Olsen



Ray

Meet the Panel

New Hampshire Representative Renny Cushing (D) is a founder of Murder Victims' Families for Human Rights and the New Hampshire Coalition to Abolish the Death Penalty. The murders of his father in 1988 and his brother-in-law in 2011 were catalysts for his work as an advocate for crime victims and an opponent of capital punishment.

Colorado Senator Rhonda Fields (D) is the assistant majority leader and the first African American woman to serve her district. She began advocating for victims after the murders of her son and his fiancée. She was elected to the House in 2010 and to the Senate in 2017. She has supported capital punishment since before her time in the legislature.

Wyoming Representative Jared Olsen (R) was elected to the House in 2017. The bill he introduced last year to repeal capital punishment ultimately failed but received more support than any attempt in recent history. A member of the Wyoming Campaign to End the Death Penalty 2020, he wrote a New York Times opinion piece in response to recent federal efforts to resume executions.

Utah Representative Paul Ray (R) has served in the legislature since 2000. In that time he has carried a number of bills supporting capital punishment, including enactments that brought back the use of the firing squad in Utah and that expanded the types of murder that qualify for the death penalty.

INTROVERTS IN THE WORKPLACE

How to Thrive in an Extroverted World

BY MEGAN MCCLURE

It's hard for introverts to bring ideas to the table when they'd prefer to hide underneath it, Betsy Haugen, a legislative librarian from Minnesota, told a crowded session at the Summit in Nashville last summer. "Introverts can learn ways of presenting ideas, and managers can learn how to incorporate introverts into the office culture, without too much stress on all involved," she said.

Haugen was joined in a panel discussion on introverts in the workplace by Matt Gehring, staff coordinator with the Minnesota House Research Department, and legislative librarians Eddie Weeks of Tennessee and Catherine Wusterhausen of Texas.

Too often introverts are thought simply to be shy or anxious people. But introversion is more complex and nuanced than that. It's a personality trait an estimated 25% to 50% of people are born with. You'll find a wide range of personalities and characteristics along the introvert-extrovert continuum.

In general, however, introverts prefer calm, quiet environments and space they can call their own. They often enjoy socializing, but find it tiring. While extroverts gain energy by being around groups of people, introverts expend energy in those situations; they gain it back by spending time alone with hobbies, books or long hikes.

Introverts tend to value a few close relationships, and may appear more aloof and harder to get to know than extroverts. Introverts often prefer to learn by observa-

Advice From the Summit Panel

- **Create an extrovert persona.** "There's the professional version of me, and then there's the guy who wants to sit alone in his office and do research all day."
- **Turn to a higher power.** "Ask for guidance, confidence, ability from that power"—or "a small black hole to destroy the earth before you have to interact with others. You can choose."
- **Carry a power object.** It can be any sort of token or small object that gives you confidence—"Xena Warrior Princess, Wonder Woman, Superman, whatever inspires you."
- **Make 'em laugh.** Humor draws attention to itself, not the presenter.
- **Plan it out.** The main way of coping with the stress of presenting to a group, or just dealing with your day, is preparation.
- **Practice, practice, practice.** Prepare for the worst and hope for the best.

tion rather than experience. They tend to process things internally and sometimes need time to think before responding to a question or expressing an opinion. They can also be very creative, with a talent for thinking outside the box.

Finally, introverts tend to do better in jobs that require working independently than in those that require collaboration and teamwork. But in many American workplaces, including legislatures, extroverts are more highly valued and rewarded since teamwork and collaboration are promoted and encouraged.

What's an introvert to do?

"Let's face it, most workplaces are built by and for extroverts," Weeks said. "But we introverts can be valued members of that workplace as well. It just takes us a little longer to contribute, and our contributions might be a little bit quieter, and we might make it awkward for everyone around us."

Tips for Introverts

- **Find the right job for you.** Many legislative staff jobs require researching, drafting, editing, indexing or archiving—all introvert-friendly tasks. If you are absolutely miserable in your job, do yourself and your co-workers a favor and look for something else.

- **Don't overcommit.** Be mindful of the projects you take on. If you set realistic goals and expectations for yourself, and do your best to meet them, you'll be more successful. And don't be afraid to say "no."

- **Do what you do well.** Introverts are diligent and focused. Research and prepare for meetings ahead of time, and bring notes on what you want to contribute.

- **Build downtime into your schedule.** Take time to prepare and time to recover.

- **Embrace your strengths.** Ensure that your boss knows what those are, as well as your needs and goals. Whether in writing, in a one-on-one meeting or through an informal conversation, let your boss know what you want to accomplish.

- **Share your knowledge.** Do one-on-one training with other staff. Be the lead or presenter for an in-house seminar or training. Team up with someone you have a rapport with to do a presentation.



Open-floor-plan offices are hell for introverts. “We need our own space that we can control,” said one introverted Summit panelist.

- **Delay your response.** If you feel put on the spot to speak and you’re not ready to offer an opinion, it’s OK to say, “I need to think that over. Can I get back to you?” Think about your response, weigh the pros and cons or play devil’s advocate. Then write it up in a brilliant email.

- **Talk early, not often.** In meetings, speak up early so you get it out of the way and take the pressure off yourself. Being sparing in your comments can add weight to them.

Tips for Managers

- **Know your employees** and the personality of your workplace. Understand that introverts often sit back, observe and listen. Identify their strengths and put them into situations that will let them shine. Consider offering written (rather than public) feedback and recognition.

- **Arrange the occasional group outing** or team-building activity that doesn’t require constant unstructured small talk. Instead of going out for happy hour, attend a trivia night, go bowling, tackle an escape



More online

Search “introverts” at ncsl.org/blog for a reading list on introverts in the workplace.

room together—anything that provides natural, not constant, conversation.

- **Avoid open floor plans.** They are hell for introverts. “We need our own space that we can control,” Wusterhausen said.

- **Be wary of meeting fatigue.** Provide agendas before meetings; remember, introverts need time to process internally. And keep things moving, as introverts can be drained by drawn-out interactions.

- **Keep it respectful.** Resist the temptation to create an “us versus them” office culture.

- **Know yourself.** Are you an extrovert or an introvert? A good manager can be either personality type. Being aware of your own needs and skills will make you more comfortable, authentic and successful in your role.

- **Look out for your staff.** If you’re an

introvert, you might not be inclined to speak up on your own behalf. But you may discover that, as a manager, you have no problem speaking up for your staff. With the focus on someone else, it’s so much easier, Gehring said.

A highly extroverted boss may pressure introverts to conform in ways that create stress and actually hurt employee performance. Likewise, extroverted employees may fail to thrive in a workplace designed around the preferences of a highly introverted boss.

Being aware of the variety of personalities in the workplace can make all the difference in office culture and staff morale, productivity and retention. Now that’s something even an introvert could party about (at least for a little while, and quietly).

Megan McClure is a research analyst in NCSL’s Legislative Staff Services Program. This story is based on her notes from the “Introvert’s Plight” session at the 2019 Summit.

Newsmakers



1 | CALIFORNIA

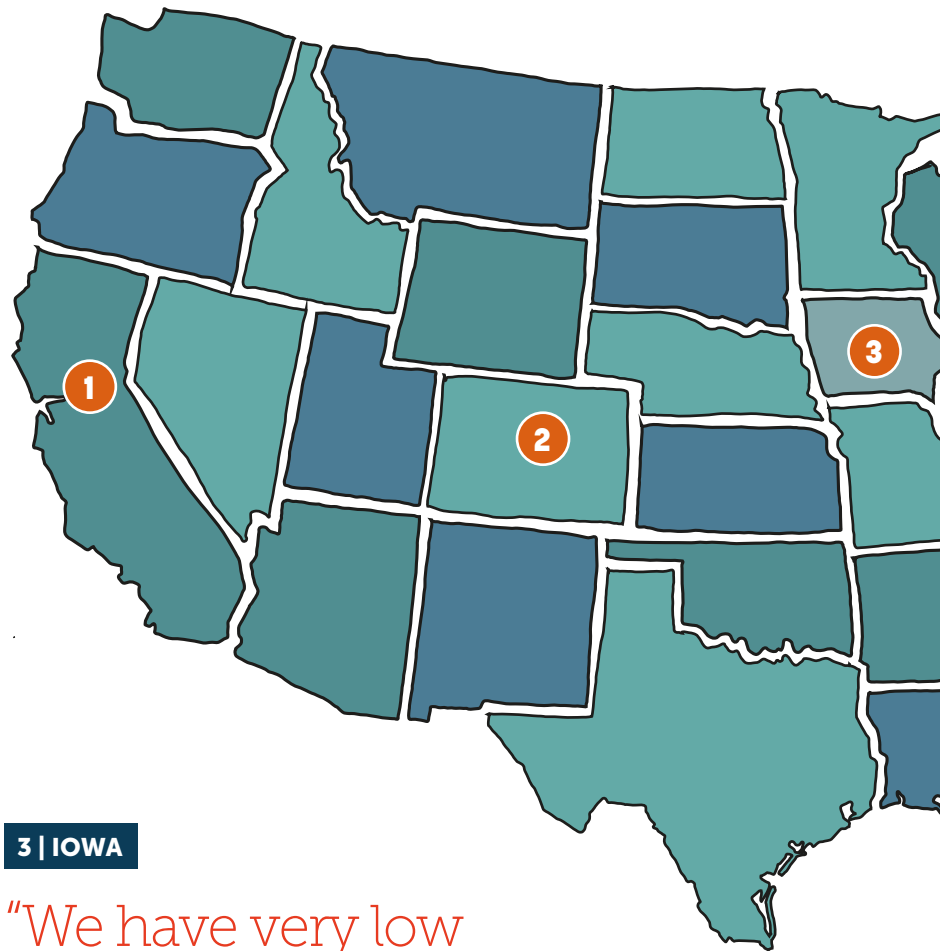
“Technology has fundamentally changed what the word privacy means.”

Senate Majority Leader Bob Hertzberg (D), who helped craft a ballot measure to create a privacy protection agency, in *The Hill*.

2 | COLORADO

“No one is going to say, ‘Oh, I’m just not going to do something because the governor said no.’”

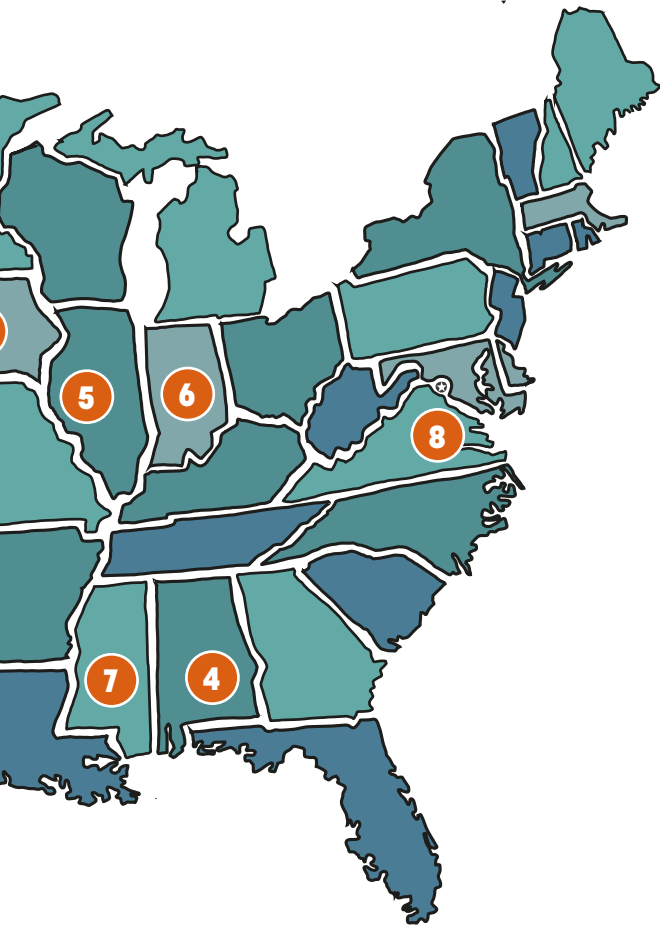
House Speaker KC Becker (D) on how the legislature will work with the state’s governor, in the *Denver Post*



3 | IOWA

“We have very low unemployment here in Iowa, under 2.5 percent, which is a very good problem to have, but then it also creates a situation where businesses that are doing really well right now are struggling to find workforce.”

House Speaker Pat Grassley (R) on creating a desirable workforce, in *The Hill*.



4 | ALABAMA

“This pertains to all religions. It protects everybody.”

Representative Lynn Greer (R) on a bill he plans to introduce to add religious establishments to the state’s “Stand Your Ground Law,” from The Associated Press.

5 | ILLINOIS

Senate President John Cullerton (D) announced his retirement. Cullerton has spent more than four decades in the legislature, the last 10 as Senate president. He plans to step down in mid-January to spend more time with his family and at his law practice.

6 | INDIANA

Representative Todd Huston (R) was selected to replace Speaker Brian Bosma, who plans to step down. Bosma, a House lawmaker since 1986, is the state’s longest-serving speaker, having held the position since the 2011 session, after previously leading from 2004 to 2006. Huston, a representative since 2012, previously served as deputy speaker pro tempore and as co-chair of the Ways and Means Committee. Huston will likely be sworn in by the full House at the conclusion of session this year.

7 | MISSISSIPPI

Three-term Secretary of State Delbert Hosemann was elected lieutenant governor. Hosemann will preside over the state’s 52-member Senate. He succeeds former Lieutenant Governor Tate Reeves, who was elected governor in last year’s election.

8 | VIRGINIA

House Democrats elected Eileen Filler-Corn (D) as their speaker. A delegate since 2010, Filler-Corn will lead a newly flipped chamber as the first female speaker in the state’s 400-year legislative history. In the Senate, which also flipped in the last election, Dick Saslaw (D) moves from minority leader to majority leader. Saslaw was first elected to the House in 1976 and has served in the Senate since 1980.

ETHICS

What's (Un)Ethical About Lobbying?

BY NICHOLAS BIRDSONG

How would you rate the honesty and ethical standards of lobbyists? Perhaps not highly.

Only about 8% of those surveyed feel that lobbyists are more honest than average people, according to a Gallup poll conducted annually since 2002. Nearly 60% of Americans consider them to have low or very low ethical standards. The public perception of those in the government affairs business consistently beats out salespeople, members of Congress and lawyers for the honor of being considered the least-trusted professionals.

Ethics laws often extensively regulate lobbying through registration requirements, prohibitions and disclosures. Thirty-nine states prohibit gifts from lobbyists to public officials or require the disclosure of such gifts to a greater degree than those from other sources.

Nineteen states require legislators to disclose personal or professional ties with members of the profession that would not otherwise be required. Post-government-service employment restrictions are relatively uncommon, except for the 42 states that prohibit former legislators or staff from working as lobbyists for a period of time.

The dismal public opinion and stringent oversight rules reflect the potential for impropriety in a job that, by definition, involves attempting to influence government action.

Wealthy individuals, businesses and industries may be able to drown out less-affluent perspectives with highly persuasive

STATES TAKE A WIDE RANGE OF APPROACHES TO PROTECTING THE INTEGRITY OF THE SYSTEM.



campaigns aiming to convince public officials to take positions that benefit private interests, including some that may run contrary to the public good.

In the absence of enforceable ethics rules, unscrupulous actors may be tempted to skip persuasion and instead simply agree to exchange an official action for something of personal benefit, popularly known as a “quid pro quo.” Unchecked influence peddling could diminish the importance of individual voters and undermine an otherwise democratic political system.

Fortunately, that is not the system we have. Ethics rules preserve boundaries between lobbyists and public officials to protect both the public's confidence and the integrity of governmental institutions.

Just as unrestricted lobbying might cause significant harm, over-regulation deprives the system of valuable perspectives and policymaking expertise.

Individuals who hire lobbyists have legitimate goals that often mirror public interests. An industry might advocate for laws that improve the business climate, resulting in more jobs and widespread economic prosperity. Effective health care and environmental protections help sup-

ply an able-bodied workforce, and a quality public education system helps provide intellectually capable employees.

Even when private interests diverge from the public good, lobbyists' viewpoints range across the political spectrum. Chances are high that most plausible arguments for and against any policy will be voiced before an official action is taken, giving officials sufficient opportunity to determine the course of action that will best serve their constituents.

The profession is not as dishonest as is sometimes assumed, either. Twenty-one states explicitly prohibit lobbyists from materially misleading legislators, and even where the rules don't require it, a professional advocate generally requires a reputation for integrity to effectively persuade lawmakers.

Lobbyists often have a greater level of technical expertise than legislators and staff. Members of the profession may help lawmakers discover possible unintended consequences of a piece of legislation or otherwise benefit the policymaking process.

States take a wide range of approaches to protecting the integrity of the system from improper influences while enabling interested parties to contribute to the policymaking process. While the “best” approach remains a matter of debate, a thoughtful approach to regulation may serve the interests of the profession and the institutions they attempt to influence.

Nicholas Birdsong is a policy specialist with NCSL's Center for Ethics in Government. Email him at nicholas.birdsong@ncsl.org.

The Final Word

Nicole Cannizzaro

Majority Leader, Nevada Senate

After serving three years in the Nevada Senate, Nicole Cannizzaro was elected to the chamber's top leadership position in March 2019. Cannizzaro is a deputy district attorney who earned her law degree from the University of Nevada Las Vegas. She is the first female Senate majority leader in Nevada history.

There are more women serving in the Nevada Legislature than ever before. Is the atmosphere different?

There's more diversity, and women are sitting at the table. There's a real sense of collaboration. That always makes for a better legislative process.

Is this a trend?

We didn't set out to make Nevada the first female-majority legislature. We went out and said we want to find the best candidates. They happened to be a lot of really amazing women—lawyers, doctors, environmentalists, social workers, teachers, moms, law enforcement officers, the list goes on—who have very real skills that make them very effective legislators. The trend you're seeing in state legislatures is that voters are looking for people who understand the issues they're facing and are looking for real-world solutions.

What makes an effective leader?

That's an interesting question because as a leader of a caucus, you are leading other leaders. My job isn't just to be a point of authority. My position is to help empower the leaders that are within my caucus to be the best representatives they can be for their constituencies.

How did your upbringing shape you?

I grew up in Las Vegas and my parents didn't have a high school education. My mom was a waitress and my dad was a bartender. From a very young age I wanted to be a lawyer. My mom said, 'You can do it, but you've got to work hard.' My mom used to work downtown in a little cafe, and I'd sit in the restaurant and do homework. She would serve these lawyers who worked in the courthouse down the street. They were



very fancy. They had suits. They wrote on yellow legal pads. I just thought what they were doing seemed so important.

What drew you to public service?

The legislature had funded a scholarship for Nevada high school students who wanted to stay in-state for college. I earned that scholarship and got to go to college in northern Nevada. The legislature also helped establish the School of Law at UNLV, and so I went to law school there. And now I work downtown in the courthouse across the street from the same little cafe that my mom worked at. I wanted someone to fight for kids like me. I wanted somebody to fight for working families like mine. An example like that, where the legislature created an opportunity for a kid who wouldn't otherwise have it, is exactly why I put my name down and have spent my time knocking on doors, talking to constituents and going to Carson City to try to do the same kinds of things that helped me succeed.

What would surprise people most to learn about you?

I've recently become the person who runs marathons and half marathons, which I never really thought I would be able to do. I ran my first marathon and completed it in a pretty good time last February. I'm still running and doing races.

What final words would you like to share?

We have been given a unique opportunity to change the world around us in a very real way, and that is both an enormous responsibility, but also an exciting opportunity. I'm very grateful for all the people who have put their hat in the ring and do the job of legislators every single day, and all the people who support us, because we wouldn't be able to do our job without really wonderful staff. I hope that everyone who is given this unique opportunity is using it to help change the world and to keep fighting for what they think is right.

Jane Carroll Andrade, a contributing editor, conducted this interview, which has been edited for clarity and length.



BUILDING DEMOCRACY

THE STORY OF
LEGISLATURES

A special podcast series of NCSL's Our American States

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- **Episode 2:** Legislatures in the Revolutionary War Era
- **Episode 3:** Early Western Legislatures
- **Episode 4:** Leading on Women's Suffrage
- **Episode 5:** The Modern Legislature
- **Episode 6:** The Future of State Legislatures

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