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• Builds leadership skills to improve decision-making;
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• Interprets changing national and international conditions to prepare states for the future; and
• Promotes the sovereignty of the states and their role in the American federal system.

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Spectrum: The Journal of State Government seeks to be an honest observer of the state government arena and a vehicle for expressing the newest ideas and latest thinking on state policies and institutions. The mission of Spectrum is to provide reliable information and insightful analysis on public-policy issues to anyone whose interest in state government stretches beyond the limited, short-term goals of the status quo.

Spectrum seeks to develop common ground among entities and individuals who are interested in improving state government and to unite practitioners, academics, businesses, the media and others in a common understanding of the problems and solutions that are unique to the governance of the American states and territories.

The opinions expressed by authors are their own and do not necessarily reflect opinions or policies of The Council of State Governments.

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The 2002 state elections were unique for several reasons:
• The elections were held for the first time under the new Help America Vote Act of 2002;
• They were the first elections under legislative redistricting based on 2000 census data; and,
• They resulted in dramatic shifts in partisan control in most, if not all, states.

The symposium in this issue of Spectrum was designed to analyze the results of the 2002 elections involving all three branches of state governments. The symposium articles are led by R. Doug Lewis of The Election Center, who advises that under the new federal election reform act, states are faced with new challenges in the electoral process. He forecasts, “State and local governments will be faced with a dramatic shift of elections responsibility as a result of the Act.”

The rest of the symposium consists of in-depth analyses of 2002 legislative, executive and judicial elections. Tim Storey of the National Conference of State Legislatures focuses on party control shifts, mid-term election trends, regional analysis, redistricting, divided government and legislative leaders. Thad Beyle of the University of North Carolina analyses the election of 36 governors from a historical context and discusses challenges faced by newly elected governors. Julia Hurst, executive director of the National Lieutenant Governors Association, examines the elections of 23 new lieutenant governors, including 18 female lieutenant governors. At the same time, Matthew Bowdy of the National Association of State Treasurers reports on the popularity of incumbent treasurers in many states. Roy Schotland with the Georgetown University Law Center discusses emerging trends in judicial elections with an emphasis on campaign spending by judicial candidates. Finally, M. Dane Waters of the Initiative and Referendum Institute looks at the 202 statewide ballot measures that voters faced in 40 states and identifies major issues represented in these measures.

This particular issue of Spectrum also includes an article by David Kimball, University of Missouri, St. Louis and two other coauthors, regarding the administration of elections and the issue of unrecorded votes in future state elections; an analysis of trends in local taxation by John R. Bartle, University of Nebraska at Omaha; new perspectives on faith-based community development relative to the African-American religious tradition by Gloria Frederick of the New Jersey Department of Community Service; and an innovative program, “Eye on Lobbying,” characterized by Roth Judd of the Wisconsin Ethics Board. We would like to thank all the authors for their contribution of articles presented in this Winter 2003 issue of Spectrum: The Journal of State Government.

Keon S. Chi
Editor in Chief

The Council of State Governments would like to hear about your experiences with the difficult public policy issues affecting state government. Information exchange among policymakers has always been a goal for Spectrum. We are continuing the tradition by offering “Perspectives” or “Policy Options.” This is a forum for sharing your ideas and recommendations on key policy issues with other state officials.

Submissions should be no longer than 800 words. Please include address, telephone number and photo. Send two hard copies to: Editor, Spectrum: The Journal of State Government, 2760 Research Park Drive, P.O. Box 11910, Lexington, KY 40578-1910. If you have any questions, call Amy Lindon at CSG (859) 244-8220 or e-mail alindon@csg.org.
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Cover photo of Gov. Mike Huckabee courtesy of the Governor’s Office

Election reform as passed by Congress with the new Help America Vote Act of 2002 moves responsibility for election reforms from local levels to the state level. Such changes mean huge differences in the way decisions are made on implementing the legislation. State governments are faced with an entirely new concept in the electoral process and that change is likely to put a strain on both state and local governments. Decisions are necessary immediately and states need to be aware of the changes.

State and local governments will be faced with a dramatic shift of elections responsibility as a result of the federal Help America Vote Act of 2002 (HAVA). It is imperative that state legislatures and local government officials recognize the changes required by the law and plan their responses to facilitate compliance.

The learning curve for states and local governments is likely to be significant, but since the 2004 elections have to be conducted under the new law, the learning cycle has to be immediate. There is little luxury of time to work out long-term strategies. Written state plans required by law will need to be developed quickly in early 2003 if there is to be any chance that states can be in compliance by 2004.

Voter Registration

Some provisions of HAVA take place immediately. For instance, on January 1, 2003, voters who register by mail need to provide positive identification of who they are before they can vote. In 2004, the voter registration form must include a question on citizenship and age. Further requirements in the law mandate all voter registrations must include either a driver’s license number or the last four digits of the voter’s Social Security number. If the voter has neither of those, the state must provide a unique identification number for that person.

From a practical standpoint, election officials are unlikely to look at these requirements separately. They will need to redesign the voter registration forms to include such information and make the forms available almost immediately.

Voter Databases

States are mandated to develop, own, and maintain a central statewide voter database that is interactive with local elections jurisdictions. The new law indicates it wants those databases ready by 2004, but it grants until 2006 for compliance.

Some states have already developed a voter database with information accumulated from local governments in whatever software format they have it. Many officials now believe that anything less than states providing local jurisdictions with identity software to be used for accumulation of voter registration information is the only answer allowed by the law. This is likely to cause furor from local governments who have traditionally designed and maintained their own voter registration programs.

Opponents of giving up local databases to a central state-owned and maintained database will argue that such a database is unlikely to work and that voters will be disenfranchised. Opponents contend that moving to a state database will cause errors and inefficiencies — if not an outright shutdown of the local process. They point to several states that have attempted statewide voter databases that are error-filled or dysfunctional for use as an effective tool in conducting elections.

Proponents of the single statewide database argue that Kentucky, Louisiana, Michigan, Oklahoma, South Carolina, and Virginia — among others — have very functional statewide databases and that their local officials find them useful and accomplish the desired task of cutting down on duplications.

Regardless of how officials at state and local levels feel about the requirements and which is the correct means of compliance, if the discussion of whether a state is going to require a single, central piece of software gets bogged down in arguments between local and state governments, meeting the deadlines of the law on this provision will prove difficult, if not impossible.

Funding

The HAVA legislation is about reordering priorities and indicates the federal government will provide funding to accomplish those goals. The law specifies that state officials certify to the federal government that they comply with federal disability laws and National Voter Registration Act provisions (where applicable) before they can qualify to receive money under HAVA.

Whatever funding is done by Congress on HAVA, however, the chief state election official will have a significantly increased responsibility of supporting local governments in implementing and ensuring compliance with HAVA. The key concept for policymakers and implementation administrators to understand is that it is states that will become responsible for assuring the compliance with the law and the measurement of progress under the law.
Questions and Concerns

Does the state plan to get rid of punch cards and lever machines in order to qualify for voting system buyout incentives under Title I of the Act? If one jurisdiction in the state wants to receive money under the provisions for buyout, does the Act require that all jurisdictions within the state to do likewise? It is unclear if using federal funds to buy one new voting system for a local jurisdiction requires all jurisdictions in the state to immediately provide one voting device fully accessible to voters with disabilities per polling site.

Has the state adopted a legal definition, or given the state’s chief election official the authority to define, what actually constitutes a vote so that all jurisdictions in the state are using the same criteria in counting votes? These definitions have to be according to each generic type of voting equipment (e.g. optical scan, paper or punch card ballot, lever machine or direct recording equipment – DRE).

Will the state receive and spend all of the money at the state level? Or will the state develop plans with each of the local election jurisdictions and pass money through to the local jurisdictions? This is a major decision and has far-reaching impact. If the state chooses to keep all of the money at the state level, and then spends that money buying a statewide voting system, developing a statewide voter database, requiring state training or certification of local election officials, and providing funds for making voting equipment and polling sites fully accessible to people with disabilities, how will those decisions be made and supported by the political system? Will legislators be willing to withstand the political heat from county commissioners and local elections administrators because they are not receiving a more direct funding method?

If the state is to be responsible for how the funds are spent and accountable to the federal government for compliance, should the states even engage in pass-through funding? Such pass-through funding is permissible under HAVA, but is this a correct choice? Further, if the state decides to do pass-through funding, is it to be based on a specific formula or is it to be on a needs-assessment basis? If it is the latter, who and how are decisions made to determine needs? Also, if pass-through funding is chosen, how does the state assure compliance with HAVA since the state is responsible? While the law doesn’t set many specific penalties for noncompliance, other than repayment of the funds sent to the state, can political figures stand up to the political pressures of noncompliance by a local jurisdiction or jurisdictions?

Since the law essentially forces most states to change their voting equipment to “touch screen” or DRE equipment (at least one device per precinct for use of the disabled and other voters), should the state become the technical experts by hiring technical programming staff and equipment maintenance staff? If not, how do local jurisdictions afford such expertise? What of the other costs of fully electronic equipment, such as special storage facilities? Also, since all electronic gear has a percentage of failure rates, who is to do the pre-election and post-election tests? Should that be a state function (such as performed by Georgia, Oklahoma and Rhode Island) or the responsibility of local jurisdictions?

Provisional voting is required of all states. Provisional voting is to be offered to any voter who asserts that they meet the requirements of voting within the state and jurisdiction but does not appear on the official voter rolls. Qualifying the provisional voters and the voter’s ballot after the election takes time, however. California, for example, uses a full 28 days after an election to verify the eligibility of provisional ballot voters. Under HAVA, most states now have two weeks or less to complete an election and certify the results. Are legislatures going to change the number of days allowed to verify voter eligibility? Without such verification time, provisional voters may be denied the opportunity to have their vote counted. Are states prepared to handle the extensive lawsuits that are likely to result from too few days to qualify provisional ballots?

The new law makes the state responsible for developing a complaints procedure so that voters can notify the state immediately of anything they believe is wrong with a local elections process or operation. How will states structure such a process? Does it require starting with the local jurisdiction or bypassing it and making decisions at the state level?

Conclusion

State governments have to be aware that significant changes are forced due to the Help America Vote Act. While the law makes the chief election officer of each state responsible for implementation, no state can be successful without the support of its governor and state legislature. There needs to be recognition among all that elections, of necessity, must be conducted through local jurisdictions for the foreseeable future. Cooperation between state and local governments is vital to the continued health of America’s democratic process. The legislation has the capacity to force great conflict between state and local governments unless unusual care and cooperation are fostered by all.

The end result could be not election reform, but failed elections, and those unintended consequences are simply unacceptable. Americans must have faith in their electoral process. Without it, they cannot believe in the government that results from the process. State governments have a new and large responsibility that must be carefully examined and carefully implemented. The alternative of chaos and confusion, with voters angry and distrustful of the electoral process itself, is too great a risk.

Bio

R. Doug Lewis has more than 20 years experience in elections. In the aftermath of Election 2000, he became the most widely quoted and consulted official in America about elections and was extensively interviewed by the nation’s news media. He was asked by Congress to testify on election reform. Since 1994, he has been director of The Election Center, a national nonpartisan, nonprofit organization that represents the nation’s elections administrators at state and local levels. The Election Center, 12543 Westella, Suite 100, Houston, TX 77077. (281)293-0101. electioncent@pdq.net.
2002 State Legislative Elections

Tim Storey, National Conference of State Legislatures

2002 was a major election year for legislatures with more than 85 percent of all seats up for election and a resulting 26 percent turnover in election states. The Republican Party netted more than 175 legislative seats across the country and wound up with more seats than the Democrats for the first time in 50 years. Republicans now hold 21 state legislatures compared to 16 for the Democrats. Twelve legislatures are split between the two parties and Nebraska is nonpartisan.

When the book is closed on the 2002 legislative elections, Democrats will likely want to hide it on a high, out-of-the-way shelf to be forgotten. For Republicans, though, the story of the November 2002 elections is a page-turner with a happy ending destined for a prominent spot on the coffee table. In terms of total state house seats held by each party, Republicans nudged past the Democrats last fall for the first time in 50 years. The GOP emerged holding 21 state legislatures, more than it has controlled in five decades. While the GOP enjoyed a good election night, there were some bright spots for the coffee table. In terms of total state house seats held by each party, Republicans nudged past the Democrats last fall for the first time in 50 years. The GOP emerged holding 21 state legislatures, more than it has controlled in five decades. While the GOP enjoyed a good election night, there were some bright spots for the GOP.

By every measure, this was a big election year for states. In addition to 36 governors’ races, elections took place for more than 6,214 total legislative seats, or more than 85 percent of all seats in the 50 states. The total number of seats to be elected was up slightly from the usual 80 percent because 2002 was the first election following redistricting using the 2000 census data. In a handful of states like Illinois and Texas, senators run on a staggered schedule with either half or one-third of the body up every two years. Some of those states also require that all members stand for election after redistricting with the result being that elections in years ending in “2” are the biggest in each decade. Forty-six states had regular legislative elections in 2002. Not holding elections were Louisiana, Mississippi, New Jersey and Virginia, who conduct legislative elections in odd numbered years. No regular senate elections were held in Kansas, New Mexico and South Carolina, only house races, so the total number of chambers holding elections last November was 89.

2002 was the first year in which redistricting and term limits converged to affect legislative elections and drive up turnover. In 1992, the most recent post-redistricting election, 15 states had term limits on the books, but none had yet to take effect. Term limits are now in effect and forcing retirements in 11 states and are on the books in 17 states. In this election, term limits ousted a total of 322 legislative incumbents. Arizona, Michigan and Missouri were the states hit hardest by term limits. The Michigan Senate lost a whopping 27 of its 38 members due to term limits (71 percent); however, more than half of the new Michigan Senators will be familiar with the legislative process because they are former House members. New members will fill 17 of the 30 Arizona Senate seats (57 percent turnover) but, as in Michigan, not all of them are strangers to the capitol; 12 have served previously in the Arizona House. Almost half of Missouri House members could not run again because of term limits, contributing to an overall turnover there of 90 new house members, or 55 percent turnover.

Turnover

Just as turnover peaked in the post-redistricting years of 1982 and 1992, it spiked again in 2002 to 26.3 percent in the states that had regular elections. That comes out to more than 1750 freshman legislators taking the oath. Turnover in legislatures declined steadily for nearly two decades before leveling off in the 1990s and hovering near the 20 percent mark throughout that decade. In states that held elections in 2000, overall election turnover was just over 17 percent. In 2002, turnover was 2 percent higher for lower chambers at 26.8 percent than for senates at 24.8 percent. This overall turnover data includes 43 legislative seats that were eliminated completely by North Dakota and Rhode Island. Those states reduced the size of their legislatures by 6 and 37 seats respectively. The New York Senate expanded by one seat to 62. There are now 7382 state legislative seats in the 50 states - not including the territories and the District of Columbia.

Going into Election Day 2002, turnover stood at 21 percent based on retirements (voluntary as well as forced by term limits) and primary defeats. The bulk of all seats that turned over were in the pre-election turnover category—roughly 84 percent. Incumbents losing in the general election accounted for only 16 percent of total turnover. Another way to look at it is that only 4 percent of all incumbents lost their seat to an opponent of the opposite party. The top five states in lower house turnover were Arizona, California, Maine, Michigan and Missouri; all of them are term-limited states. The top senate turnover states were Arizona, Arkansas, Michigan, New Hampshire and South Dakota.

GOP Gains /Result in Parity

When it comes to legislatures, 2002 will go down in history as
the year that the two major parties wound up dead even. Legislative seats are now split 50-50. Once Nebraska’s 49 non-partisan senators and the 21 seats held by third parties are factored into the equation, neither major political party controls more than 50 percent of the nation’s legislative seats. Republicans hold 49.6 percent, and Democrats have 49.4 percent, leaving exactly 1 percent in the “other” column. It simply doesn’t get any closer.

Although it is always a bit of a moving target because of constant vacancies and special elections, the total number of Republican legislators stood at 3667 on November 21, 2002 while Democrats held 3642 seats. Independents and other third party members hold 21 seats, a mere 0.3 percent of the total.

The last time the GOP held more seats than the Democrats was following the 1952 election when Republicans commanded 51 percent of all seats (see Figure 1). This election was only the third time in the past 33 election cycles, when the GOP emerged with more seats than Democrats. The previous Republican majority years were 1946 and 1952.

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Even though the total number of seats held by each party is essentially tied, Republicans have a five-state advantage in overall control of legislatures. That is the biggest margin for the GOP since the 1952 election when the party claimed 26 legislatures, 10 more state legislatures than the Democrats. Republicans currently hold both the House and Senate in 21 states — up from 17 before the election. Democrats went from controlling 18 to 16 legislatures.

Partisan control is divided in 12 states, with neither party having a majority in both legislative chambers. In terms of chambers held by each party, Republicans now control 53, Democrats 43, and two are tied. The map shown as Figure 2 shows how evenly divided the country’s legislatures are heading into 2003 sessions.

The margin of control is extremely close in many chambers, making for some tenuous majorities. In 22 of the nation’s legislative chambers, the majority party holds less than 55 percent of the seats. And, as is almost always the case, a couple of chambers wound up tied following the election; the New Jersey Senate and Oregon Senate have the exact same number of Democrats and Republicans. Further, a switch of merely one seat due to a vacancy would change party control in the Colorado Senate, Indiana House, Maine Senate, North Carolina House and the Washington Senate.

**Party Control Shifts**

On average, party control shifts in 12 chambers in every election cycle (see Figure 3), and the 2002 cycle was exactly on the average. Twelve chambers shifted from one column to the other including shifts in the 2001 off-year elections. Republicans picked up eight chambers, Democrats gained two, and two chambers went from Republican to tied.

Republicans picked up the Texas House under a new redistricting plan drawn by a commission that all observers agreed tilted heavily towards the GOP. The commission took on the task after
the legislature deadlocked. Republicans now control all of Texas state government including the legislature, governor and all statewide elected officials for the first time since 1870 — the last time the Texas House was Republican.

Missouri, a perennial bellwether state, followed the national Republican trend. Taking advantage of redistricting and opportunities provided by term limits, Republicans pulled in a remarkable 13 seats to gain control of the Missouri House for the first time since 1954. This follows Republican victories that gave the party control of the state Senate in 2001. Democrats still hold the Missouri governor’s office.

The Colorado Senate switched back to Republicans after two years with Democrats at the helm, giving the GOP total control of Colorado state government, albeit Republicans have a narrow 18-17 advantage in the Colorado Senate.

The Wisconsin Senate went to the Republicans, as well. However, Democrats took hold of the governor’s office for the first time in nearly 16 years. A scandal involving top Wisconsin legislative leaders from both parties loomed over the campaign, but voters re-elected all of the leaders implicated in the court filings. Wisconsin incumbents were forced to run under a court drawn redistricting plan because the legislature could not adopt a plan of its own.

The Arizona Senate deadlock was broken as the chamber went from being tied 15-15 to a solid 17-13 Republican majority. A bipartisan commission outside the legislature drew the Arizona redistricting plan.

Under a court-drawn redistricting plan that put Democrats on the defensive, Tarheel voters delivered the North Carolina House to the GOP 61-59 following four years of Democratic majorities. This is only the second time since Reconstruction that Republicans have controlled the North Carolina House. Many North Carolina Republicans thought their best chance for a takeover was the state senate, but Democrats held onto a 28-22 majority. Republicans have not held the North Carolina senate for more than a century.

Party switchers delivered Georgia Senate control to the GOP for the first time in the history of the state. In the days immediately following the election, four Democratic senators switched their affiliation to the Republican Party. Those four were encouraged to join the GOP by Georgia’s newly elected Republican governor, Sonny Perdue, himself a former Democrat.

In the chamber that has been the most competitive in recent years, Republicans managed a surprise takeover of the Washington Senate. Washington’s Senate has changed hands in five of the last eight elections.

Only the Maine Senate comes close to Washington’s level of volatility. Party control of the Senate in Maine has changed in four of the past five election cycles. It was not until after numerous recounts and state Supreme Court action that the Democrats learned that they would continue to control the Maine Senate. Democrat Chris Hall won a hotly contested Maine Senate seat by only nine votes giving the party a one-vote majority in the chamber. The chamber had been tied following the 2000 election, but a mid-term special election victory gave the Democrats control going into this election. Democrats also picked up the governor’s office in Maine leaving the state with unified Democratic control of government for the first time since the 1984 election.

In addition to the Democrats success in Maine, by winning the Illinois Senate and governorship, they celebrated taking control of that state for the first time in a quarter century. The stage was set for a Democratic takeover when a coin flip gave the party control of a commission responsible for redrawing new district lines using the 2000 census numbers. Illinois is the only state where control of redistricting is left to chance.

By managing a 15-15 tie in the Oregon Senate, Democrats wrested another chamber out of the GOP column. This was only
the third time in the last 64 years that the chamber has changed party control. Prospects for Oregon Senate Democrats are good; Republicans will be defending 10 of the 15 seats up for election in 2004 with Democrats only needing to hold on to five.

It should also be noted that the Democrats enjoyed early victories in this election cycle in the off-year elections in 2001. New Jersey and Virginia held legislative elections in 2001. In Virginia, the Republicans added to their majorities in both chambers, but Democrats seized control of the New Jersey Assembly and gained a tie in the New Jersey Senate.

Mid-term Election Trend

History has proven the party of the president has a difficult time gaining state legislative seats in mid-term elections. Since 1938 — and possibly before, since records are not available — the president’s party has lost an average of more than 350 seats in every mid-term election cycle. Although that trend nearly ended in 1998, when, during Bill Clinton’s second mid-term election, Democrats lost only one seat. Tucked comfortably into the wake of President George W. Bush’s 65 percent popularity, Republicans netted more than 175 total seats in this cycle, including 2001 off-year elections in New Jersey and Virginia. The last time Democrats had a net gain in legislative seats was in 1996 when Bill Clinton won his second term.

Pundits emphasized that President Bush’s strong approval rating almost certainly helped Republicans in legislative races down the ticket. The GOP also waged a stronger than usual “get out the vote” effort in several key states like Georgia, Missouri and New Hampshire helping boost Republicans running for all offices.

Regional Analysis

2002 saw the GOP continue to chip away at the Democrats’ traditional power base in the South. Democrats have lost southern seats in every legislative election cycle since 1982. That year they held 83 percent of all the seats in the region. Although it is still the strongest region for the Democrats, only 56 percent of Southern legislative seats now belong to Democrats.

With the Georgia Senate and North Carolina House switching to the GOP, Democrats now control only half of the South’s 16 state legislatures. Following the last post-redistricting election in 1992, Democrats held every legislative chamber in the South except for the Florida Senate, which was tied. For over 100 years, the party dominated every legislative chamber in the South, but since 1992, Republicans have picked up 13.

Republicans are strongest in the Midwest where they hold 58 percent of all legislative seats. Democrats find themselves at their lowest point in the Midwest since 1962. Democrats gained a net of five seats in the West where the party continues to creep upwards. Democrats are also still strong in the East where they
Republicans won in the traditionally Democratic strongholds of Illinois, Michigan and Pennsylvania and at least 1960. Prior to the election, party control of governors stood at 27 Republican, 21 Democratic and two independents. Now it is 25 Republican, 21 Democratic and five independents. This is the largest number of new governors since at least 1984 election. Regionally, the states with unified government where neither party controls the governor's office and features and led to an overall tally of 29 states with a divided government. The 2002 total of 29 divided states is up from 28 in 2000. The number of states with a divided government has hovered near 30 for the past 18 years. The tally of divided states jumped from 25 to 28 in the 2002 election. The number of states holding elections had completed the redistricting process. Maine and Montana did not have new districts in place for the 2002 election, but both of those states will do redistricting in time for 2004 elections.

In 11 of the 12 legislative chambers where party control switched in this first post-redistricting election cycle, either a commission or a court drew the new lines. Redistricting plans drawn outside the legislature leave the majority party in a more vulnerable position than if the legislature draws its own lines. In the 25 states where the legislature adopted its own redistricting plan, there were no party control changes. The only exception was the Georgia Senate, where a Democratic plan helped elect four Democrats who subsequently switched to the GOP, delivering control of the chamber to the Republicans.

Divided Government

Change in governorships actually topped turnover in legislatures and led to an overall tally of 29 states with a divided government where neither party controls the governor's office and both houses of the legislature. The 2002 total of 29 divided states is up one from before the election. The number of states with a divided government has hovered near 30 for the past 18 years. The tally of divided states jumped from 21 to 28 in the 1984 election. Regionally, the states with unified government are more likely to be in the South and West where 14 of the 20 unified states are found.

Legislatures in 24 states will have to work with new state executives. This is the largest number of new governors since at least 1960. Prior to the election, party control of governors stood at 27 Republican, 21 Democratic and two independents. Now it is 26 Republican and 24 Democratic governors. Democrats picked up key posts in Illinois, Michigan and Pennsylvania and won surprise victories in Kansas and Wyoming. But Republicans won in the traditionally Democratic strongholds of Georgia, Hawaii and Maryland. Overall, the governor's office switched party control in 20 states.

Leaders

About a third of legislative leaders will not be serving in leadership roles next year. Some 120 leadership changes are expected when lawmakers convene in January 2003, including at least 46 Senate presidents, Senate presidents pro tem and House speakers. This comes close to the sweeping leadership changes in 1994 when 138 leadership posts changed.

Speaker Thomas Murphy, who was the nation's longest serving House speaker, lost his re-election bid in Georgia in a newly drawn district that left the legendary speaker more vulnerable than ever. Murphy had pounded the gavel longer than any Georgia speaker in history. He was first elected to the Georgia General Assembly in 1961 and chosen speaker in 1974.

Women in Legislatures

Data from the Center for American Women in Politics (CAWP) at Rutgers University shows women made slight numerical gains in legislatures this past election. Women will comprise about 22.8 percent of the state legislatures. Over 2360 women ran under a major party label for legislative office in 2002, and more than 1445 of them were successful. Just over 62 percent of the women who ran won their race to become a legislator. CAWP data shows that women made dramatic gains in legislatures from 1970 to the early 1990s. In 1971, women held only 4.5 percent of all seats. However, since the mid-1990s, it seems that women have leveled off around the 22 percent mark. Washington continues to lead the list of women in legislatures — 39 percent of all legislators in Washington are female. Alabama has the smallest percentage of women legislators at 8 percent.

Conclusion

Even though 2002 was a good year for the GOP and they continue to show strength in state legislative elections, state governments remain evenly divided between the two major parties. The most prominent issue facing almost all of the legislators who won in 2002 will be budget shortfalls. A recent NCSL fiscal survey indicates that states face a combined $18 billion budget shortfall before the end of 2003 fiscal year. 2004 does looks even worse. Simply put, the state fiscal outlook is gloomier than it has been in over a decade, so many of the newly elected legislators may wonder why they sought to enter the field at such a challenging time. And no matter what course states plot through the fiscal straits that lie ahead, it is certain that most of them will have to identify bipartisan solutions given the even partisan balance that exists across the land.

Bio

Tim Storey is a program principal in the Legislative Management Program of the National Conference of State Legislatures in Denver, Colorado. He specializes in the areas of elections and redistricting as well as legislative staff organization and management. He has staffed NCSL's Redistricting Task Force since 1990 and authored many articles on the redistricting and elections process. Every two years, he leads NCSL's elections project tracking and analyzing the outcome of state legislative races and statewide ballot questions. NCSL, 7700 East First Place, Denver, CO 80230. (303) 364-7700. tim.storey@ncsl.org.
Six eligible incumbent governors decided not to seek another term in 2002. Two governors decided to seek another office: Jeanne Shaheen (D-New Hampshire) ran unsuccessfully for a U.S. Senate seat, while Howard Dean (D-Vermont) began a campaign for the 2004 Democratic nomination for president. Two governors decided to retire after their first terms: George Ryan (R-Illinois) and Jesse Ventura (Reform-Minnesota). Two "accidental" governors, who succeeded to the governorship when the incumbent governor was appointed to a position in the Bush Administration, found little support for their own candidacies and retired from the governorship: Jane Swift (R-Massachusetts) and Mark Schweiker (R-Pennsylvania). These six seats added to the 14 other open seats meant that there were 20 open gubernatorial seats up in 2002.

The 16 incumbents seeking re-election in 2002 had a 75 percent success rate. The 12 winners were Mike Huckabee (R-Arkansas), Gray Davis (D-California), Bill Owens (R-Colorado), John Rowland (R-Connecticut), Jeb Bush (R-Florida), Dirk Kempthorne (R-Idaho), Tom Vilsack (D-Iowa), Mike Johanns (R-Nebraska), Kenny Guinn (R-Nevada), George Pataki (R-New York), Bob Taft (R-Ohio) and Rick Perry (R-Texas) — 10 Republicans and 2 Democrats.

Four incumbent governors lost their bids to serve a second term, a 25 percent non-success rate. The four losing incumbents were Don Siegelman (D-Alabama), Roy Barnes (D-Georgia), Jim Hodges (D-South Carolina) and Scott McCallum (R-Wisconsin). The three unsuccessful Democrats were from the deep South, which continues the South's move toward the Republican side of the aisle; the one unsuccessful Republican was an "accidental" governor who was not able to win the office on his own.

The remaining 24 races were won by candidates new to the gubernatorial office. They were equally split between the two parties — 12 Democrats and 12 Republicans.

Some Historical Context

In the 468 gubernatorial elections held between 1970 and 2002, incumbents were eligible to seek another term in 354 (76 percent) of the contests. 274 of the eligible incumbents sought re-election (78 percent) and 207 of them succeeded (76 percent). Those who were defeated for re-election were more likely to lose in the general election than in their own party primary by a 3.5 to 1 ratio. The 2002 percentage rates of success fit the three-decade long pattern of incumbents seeking another term.

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*In April 1993, James Folsom, Jr.-D replaced Governor Guy Hunt-R in Alabama.

iiIn July 1996 Michael Huckabee-R replaced Governor Tucker-D in Arkansas.

As can be seen in Table 1, Democratic candidates hold a winning edge in these elections. In 187 of 468 races, the results led to a party shift in which a candidate from a party other than the incumbent's party won (40 percent). Yet these party shifts have evened out over the years so that the Democratic Party's leading margin is only three.
There have been some interesting patterns in these shifts over 33 years of gubernatorial elections. Between 1970 and 1992, Democrats won 200 of the 324 races for governor (62 percent). Then, starting in 1993 through 1998, Republicans won 57 of 90 races (63 percent). From 1999 to 2001, Democrats moved back into the lead by winning 12 of the 16 races (75 percent). In 2002, Republicans regained the mid-1990s momentum by winning 22 of the 36 races (61 percent). So, over the past 10 years of gubernatorial elections, the Republicans hold a 95 to 59 winning advantage (62 percent). Despite this partisan shifting, in 2003 there will only be a narrow 26 Republican to 24 Democratic margin in the governors' chairs.

Another factor in determining how many governors have served in the states is how many of the newly elected governors are truly new to the office, and how many are returning after complying with constitutional term limits or holding other positions. Looking at the number of actual new governors taking office over a decade, the average number of new governors elected in the states dropped from 2.3 new governors per state in the 1950s to 1.9 in the 1970s and 1.1 in the 1980s. In the 1990s, the rate began to move up a bit to 1.4 new governors per state.

As we enter the first decade of the 21st century, new governors were elected in 32 of the 49 elections in 2000, 2001 and 2002. Adding in the one new governor elected in 1999, 33 of the 50 states will have governors who are serving in their first term.

The New Governors

Over the 1998-2002 cycle of gubernatorial elections, there were several different routes to the governor's chair by the 46 newly elected governors. First were the 15 new governors who had previously held statewide office. These included: five lieutenant governors — Don Siegelman (D-Alabama), Gray Davis (D-California), Ruth Ann Minner (D-Delaware), Ronnie Musgrove (D-Mississippi) and Judy Martz (D-Montana); five attorneys general — Janet Napolitano (D-Arizona), Jennifer Granholm (D-Michigan), Mike Easley, (D-North Carolina), Bob Taft (R-Ohio) and Jim Doyle (D-Wisconsin); three state treasurers — Bill Owens (R-Colorado), Bob Holden (D-Missouri) and James Douglass (R-Vermont); one secretary of state — George Ryan (R-Illinois); and one state insurance commissioner — Kathleen Sebelius (D-Kansas).

Second were the nine members or former members of Congress who returned to work within their state. These included U.S. Senators Frank Murkowski (R-Alaska) and Dirk Kempthorne (R-Idaho) and U.S. Congressmen Bob Riley (R-Alabama), Rod Blagojevich (D-Illinois), John Baldacci (D-Maine), Robert Ehrlich (R-Maryland), Mark Sanford (R-South Carolina) and Bob Wise (D-West Virginia). Former U.S. Congressman Bill Richardson (D-New Mexico) had served as an administrator in the Clinton Administration.

Third were the seven legislators and former legislators who moved up from a district to a statewide office. These included Roy Barnes (D-from the Georgia State House) followed by Sonny Purdue (R-from the Georgia State Senate), Tom Vilsack (D-from the Iowa State Senate), Tim Pawlenty (R-from the Minnesota State House), Brad Henry (D-from the Oklahoma State Senate), Jim Hodges (D-from the South Carolina State House) and Mike Rounds (R-from the South Dakota State Senate).

Fourth were the six from the business sector: Jeb Bush (R-Florida), Kenny Guinn (R-Nevada), Craig Benson (R-New Hampshire), John Hoeven (R-North Dakota), Don Carcieri (R-Rhode Island) and Mark Warner (D-Virginia).

Fifth were the six mayors or former mayors: Linda Lingle (R-Maui, Hawaii), Jesse Ventura (Ref.-Brooklyn Park, Minnesota), Mike Johanns, (R-Lincoln, Nebraska), Jim McGreevey (D-Woodbridge, New Jersey), Ed Rendell (D-Philadelphia, Pennsylvania) and Phil Bredesen (D-Nashville, Tennessee).

Finally are the three new governors who followed a unique path compared to their counterparts: former 2000 Winter Olympics Chairman Mitt Romney (R-Massachusetts), former State Supreme Court Justice Ted Kulongoski (D-Oregon) and former U.S. Attorney Dave Freudenthal (D-Wyoming).

Looking at the 356 gubernatorial races between 1977 and 2002, among the candidates were 96 lieutenant governors (26 won), 80 attorneys general (20 won), 24 secretaries of state (5 won), 22 state treasurers (6 won) and 13 state auditors, auditors general or comptrollers (3 won).

“Accidental” Governors

Another route to the governor's chair has been quite prevalent recently. When a governor dies, resigns or moves on to a higher office, the individual on the next step of the succession ladder becomes governor. Eight of the incumbent governors serving at the beginning of 2002 were “accidental” governors. Several had moved up upon the death or resignation of the incumbent governor, while most were in the office as newly elected President Bush tapped many of his former gubernatorial colleagues to join his administration.

In 2003, there will be two "accidental" governors, and both of them have since been elected governor in their own right. When Texas Gov. George W. Bush won the presidential election in 2000, he resigned the governorship and was succeeded by Lt. Gov. Rick Perry (R). Perry was elected governor on his own right in 2002. Arkansas Governor Mike Huckabee (R) succeeded to the governor's chair in July 1996 upon the resignation of incumbent Gov. Jim Guy Tucker (D) who had been convicted of two counts of illegal land deals he conducted prior to serving as governor.1 Huckabee was elected governor on his own in 1998 and re-elected in 2002. The remaining six "accidental" governors serving in 2002 decided not to seek election or re-election on their own right in 2002.

Why Did I Ever Do this?

The newly elected governors are now moving through the transition period in which they must take several significant steps.

- Change how they talk and act. They have to move from the attack mode of a political campaign to an executive mode of governing.
They must realize that those who were instrumental in their victory may not fit easily into an administration that has to work with everyone. So, in thinking through just who might be key players on their new governor's staff and administration, they must start looking outside their campaign organization.

They must realize that every one will be watching them and listening to what they say as clues to what will be the goals and strategies of the new administration. This realization should move them to getting someone to serve as their spokesman, someone who commands respect from the media and other political actors. Again, this is probably not someone from the campaign as they have been the focal point of the attack mode.

Most importantly, comes the realization that in their new role, they will be chief budget officer for the state. A Nov. 25 National Governors’ Association report indicates that the state budgets are in very deep trouble, facing a situation not seen since World War II. The new governor must not only get on top of the state budget, but must do so immediately as the next fiscal year’s budget must go to the state legislature when it convenes in the New Year — and it is the governor’s responsibility to do that. These new governors will have to make drastic decisions on which programs to cut and by how much, and which taxes they will ask to be increased.

But it is the budget question that must stun the newly elected governors of 2002. The state of the economy has made a shambles of state budgets — which must be balanced, as states do not have a printing press to print up new dollars as the federal government does when there is a deficit. The new governor must not only get on top of the state budget, but must do so immediately as the next fiscal year’s budget must go to the state legislature when it convenes in the New Year — and it is the governor’s responsibility to do that! No more political rhetoric on what we might or might not do — as governor they have to do something and that something is making real-world decisions.

Table 2 New Governors: 1970-2002

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TOTALS: 468 257 260 146 109 5 187 +3

Source: www.unc.edu/~beyle

1Number and percent of the total races in which there was a partisan shift in control of the governor’s office, and which party benefited from the partisan shift.

Endnotes

1Tucker was also an “accidental” governor, moving up from lieutenant governor when Governor Bill Clinton resigned after being elected president in 1992.

2Portions of this section appeared in The Chapel Hill News (December 4, 2002).

Bio

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The nation’s two top state offices saw a remarkable 40+ percent turnover in the November 2002 elections, with the selection of 24 new governors and 23 new lieutenant governors. In a time of strapped state budgets and uncertain homeland security, the election of so many new chief executives completed an election of historical impact that makes many previous elections pale in comparison. With the continued churning of leadership, the office of lieutenant governor is a rising force. In January of 2003, eight sitting governors will have risen to the post through the office of lieutenant governor. Further, if one considers that four of the past five U.S. Presidents served as governors before ascending to the presidency, the future implications of the office of lieutenant governor are immense.

Lieutenant Governor Elections

For the purposes of this article, a lieutenant governor is defined as the officeholder in a state or territory next in line for succession to governor. Forty-two states and four territories have the office of lieutenant governor as successor to the governor; five states have the senate presiding officer as successor; and three states and one territory have the secretary of state as successor. Twenty-four states and four territories elect the governor and lieutenant governor as a team in the general election, and the remaining 18 states elect that office separately from the governor.

Turnover

This election, 80 percent of the nation’s population had a chance to elect a minimum of 21 new governors and 22 new lieutenant governors. National Governors’ Association Director Ray Scheppach said in June that the chief executive numbers represented “stunning” turnover with “plenty” of political effect.

Twelve of the lieutenant governors new to office have significant previous state government experience and eight were previously involved as local officeholders, activists or active in the private sector. Specifically, of the 12 with state government experience, three were state treasurers, two were the heads of state government departments, five served in the state senate (two held leadership roles), three served time in both the state house and senate and one served in the state house. Of the eight others, one served on the city council of a major city, three were activists with accomplished backgrounds and four were from the private sector. Two of the lieutenant governors from the private sector had served as the head of their state’s political party (both Republican — Maryland and Massachusetts).

In January of 2003, eight sitting governors rose to the post through the office of lieutenant governor.
Demographics

In January of 2002, 19 of the 55 sitting lieutenant governors (more than 34 percent) were women. Females also held a record five governorships going into the 2002 elections. Democratic Governors’ Association Director B.J. Thornberry said, “2002 will shatter the glass ceiling in statehouses with the election of a historic number of women.”

Ten women ran for governor and 22 women ran for lieutenant governor on major party tickets in the states. As a result of the 2002 elections, there will be six female governors - four Democrats and two Republicans. Eighteen of the 55 lieutenant governors will be women — 11 Republicans and seven Democrats (this count reflects the party-switch from Democrat to Republican of Mississippi Lt. Governor Amy Tuck in December). Also, history was made in Ohio when the nation’s first female African-American lieutenant governor, Republican Jennette Bradley, was elected.

Two of the female lieutenant governors running for other statewide offices won; in Ohio, the female lieutenant governor ran for and won a seat on the state Supreme Court and the female lieutenant governor of Guam became Guam’s first female Congressperson. Since 33 percent of current lieutenant governors are women, as lieutenant governors continue to seek and move to higher offices, it is likely the percentage female governors will continue to increase in the future.

Electoral Issues

Republicans continue to hold more offices of lieutenant governor in 2003 than Democrats – there are 29 Republicans, 22 Democrats, 1 PDP and 1 vacancy (New Hampshire). However, the nature of the office leads to some delays in the final tally of party control. In particular, since five states have the Senate presiding officer serve as lieutenant governor, it is sometimes December or January before the presiding officer is named.

In Vermont, the state constitution requires that certain officeholders be elected by a majority of the popular vote. If the winner does not achieve this majority, then the legislature selects the winner when they reconvene in the new year. The lieutenant governor in Vermont this cycle (and the gubernatorial candidate) did not receive a majority of the vote; however, the majority party candidates in both offices have publicly acknowledged the winners and have said they expect the results to hold in the legislature. Therefore, planning is proceeding within the state for those winners to take office.

A Launching Pad for Higher Office

No in-depth study has been done of lieutenant governors’ ascension to higher office; without an in-depth study, discussion of the office of lieutenant governor as a launching pad for other office is largely anecdotal. We do know that in the 2002 election, two lieutenant governors achieved their electoral goals, as noted earlier, for Congress and state Supreme Court. Also as noted, due to a combination of succession and election, at any given time a significant percentage of individuals sitting in the governor’s office started as lieutenant governor. In this election cycle, the six lieutenant governors running for governor in the general election did not succeed — this is not typical of previous election cycles.

There are many challenges a lieutenant governor must face when seeking election to a higher office. For example, the office of lieutenant governor is diverse and unique with duties ranging from presiding over the senate to running state departments to leading major state commissions. Also, a few lieutenant governors’ offices are part-time, such as South Dakota, or rely heavily on gubernatorial appointment for major roles. In addition, as detailed earlier, the office of lieutenant governor may or may not be elected on a ticket with the governor. When elected independently, the lieutenant governor may serve with a governor of the opposite party, potentially presenting another challenge to ascension to a higher elected position.

With these variables in play, the reasons why lieutenant governors may or may not succeed in election to higher office vary. Some say that in-state issues determine the electoral outcome, regardless of what office the candidate holds. Others say that lieutenant governors may face unique challenges in defining their own roles and experience. If elected as a ticket, part of a lieutenant governor’s duty is to support the governor, therefore eliminating some chances to create a defining role as an individual leader.

The constitutional and legislative power of the lieutenant governor’s office, combined with the initiative taken by the officeholder and the duties given by the governor, may have bearing on lieutenant governors success in future elections. While many lieutenant governors have well-defined, large roles that develop constituency recognition, others must take a great deal of personal initiative. This includes engaging in projects of benefit to the state or pursuing legislative agendas not prohibited to the office. Some would argue, as well, that the understanding of the both the press and the electorate in a given state could affect the future elected possibilities for lieutenant governors. Those who realize that this officeholder can become governor at a moment’s notice may give more attention to the office and the accomplishments of the person holding it.

Bio

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n the 2002 elections, incumbent state treasurers made history. In all 17 elections in which there was an incumbent eligible to be re-elected, the voters sent them back to their office, making a strong statement that experience matters. This was particularly evident in the seven states where the newly elected or re-elected governor represented a political party other than that of the incumbent treasurer. This same phenomenon played out in four of the eight states where there was an open seat for treasurer, demonstrating that down-ballot voting was not a factor in more than two-fifths of the elections for state treasurers.

Open Seats for State Treasurer

This year’s elections for state treasurer featured eight open seats: Alabama, Arizona, Arkansas, Kansas, Massachusetts, New Mexico, South Dakota and Vermont. In these states, four of the incumbent treasurers were term limited and three of those four were running for another elected office. Additionally, in the other four states where there was an open seat, the incumbent treasurer was running for other elected office, making for a total of seven incumbent treasurers seeking other elected office. Of those seven running for other office, two were elected: one to the office of governor and one to the office of lieutenant governor.

Of the eight new state treasurers, seven of the eight have served in the state legislature, a cabinet-level position or a county elected office. The eighth served in a role appointed by the Alabama Speaker of the House.

Interestingly, one of the term-limited treasurers served in her position for 22 years. Fourteen years were served prior to term limits being implemented and the other eight came after.

Appointments and Elections to Come

In an additional nine states, the state treasurer is either appointed by the governor or elected by the state legislature. These governor appointments and legislature elections took place in late 2002 in the Spring of 2003. Those states where the governor appoints the state treasurer are: Alaska, Georgia, Hawaii, Michigan and New York. Those states where the state treasurer is elected by the legislature include: Maine, Maryland, New Hampshire and Tennessee.

State Treasury Issues

State treasurers serve as the chief financial officers of the states and are guardians of the taxpayers’ money – using it to operate state governments and provide services to residents. Yet, while state treasurers are the trustees of the public purse, voters and the general public often misunderstand their role in protecting and investing the state’s money.

Issues of interest and concern for state treasurers range from the ever-popular college savings plans (now a fixture in all 50 states and the District of Columbia) to management of monies in state coffers. As state budgets fall into the red, the role of fiscal management is now more important than ever. Managing shortfalls in state budgets — while largely viewed by the public as an issue for the governor and state legislature — relies heavily on the guidance of the state’s treasurer. Of the 45 states and the District of Columbia that are dealing with budget shortfalls, many are turning their attention to rainy day funds and tobacco settlement dollars to fill the gap.

Conclusion

In an environment where state budgets, debt management and investment of state monies are in need of an ever-increasing level of scrutiny, the role of state treasurers is vital. While there was a change in the political orientation of representation at both the federal and state levels due to the mid-term elections, when it came to state treasurer elections, voters made it clear that experience matters.

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In 1913, ex-President William Howard Taft described judicial elections as "disgraceful" and "so shocking ... that they ought to be ‘condemned.’" In 2000 and 2002, judicial elections were "nastier, noisier and costlier" than ever. Ohio's 2002 election led their Chief Justice Thomas Moyer to say two days after the election, "Candidates were outraged. Citizens were outraged. I am outraged. Anybody who places his or her trust and confidence in a constitutional democracy should be outraged.... This is the dark side of democracy.”

A century-long reform effort to end judicial elections began in 1906, with Roscoe Pound's landmark speech to the American Bar Association. At that time and now, only 11 states have no judicial elections. The reform effort produced the "merit" selection system (known as the "Missouri plan" since adoption there in 1940) whereby nominations to the bench are initially screened by a panel (often including nonlawyers); then, some years later, the appointees face "retention" elections in which the voters decide whether the judge stays on the bench or not.

Of state judges, 87 percent face elections of some type, with 53 percent of appellate judges and 77 percent of trial judges (general jurisdiction) facing contestable elections. The key in the balancing of electoral accountability and judicial independence is the length of their terms. Facing elections is obviously very different for the 39 percent of state supreme court justices who have terms of 10-15 years than for the 45 percent who have only six years; or for the 19 percent of trial judges with terms of 10-15 years, compared to the 18 percent with only 3-4 years, or the 56 percent with six years.

Twenty states had Supreme Court races in 2000, and candidates' funds rose to $45 million — a 61 percent rise over the prior peak — setting records in 10 states. Additionally, independent interest groups (not political parties) spent about $16 million in the five hottest states: Alabama, Illinois, Michigan, Mississippi and Ohio.

In the 2002 races, the total spent was much less than in 2000. Although data are incomplete this early, apparently candidates raised less than half as much in 2002 as in 2000. Interest group spending was also apparently down, although not as much. An extreme example of interest group spending occurred in Mississippi, where incumbent Supreme Court Justice Charles McRae was defeated by a well-funded opponent, aided by heavy TV advertising by an independent interest group. That group spent about $190,000 for TV time, compared to McRae's $52,000, and his winning opponent's $88,000.

In 2000, total spending in Ohio was over $11 million, of which candidates raised $3.4 million. In 2002, candidates raised at least $5.5 million, and five interest group committees spent at least another $5 million on TV time (most of those groups did not disclose their contributors, but the funds split almost equally between business groups and coalitions of unions and trial lawyers). A constructive new development was the active participation of an Ohio State Bar “campaign conduct” committee that tried to stop and did publicly condemn several ads from interest groups on both sides.

In the three other states so lively in 2000, quiet prevailed in 2002, with each state's total spending around $2 million, perhaps less. Contrast this to the 2000 elections where Alabama had the largest fundraising by candidates — over $13 million; Illinois candidates raised over $8 million, and the Michigan races saw a combined total of $13-$15 million spent by candidates, the two parties and outside interest groups. In those states in 2002, fewer seats were up and the battle for court control (between defense and plaintiffs’ groups) had been settled in 2000.

Five states had TV ads in 2000.
(Alabama, Illinois, Michigan, Mississippi and Ohio). Four additional states ran television commercials in 2002 (Idaho, Nevada, Texas and Washington), but of these, even in Texas under $250,000 was spent on TV. As for retention elections, no Supreme Court Justice was opposed, although in Florida after their Supreme Court’s decisions in Bush v. Gore, active efforts had been threatened.14

Prospects

Replacing contestable judicial elections with some form of appointive system seems an obvious solution to the problems inherent in judicial elections. However, the move to the “merit” system with “retention” elections, now in place in some or all judges in 19 states (for 43 percent of state appellate judges and for 10 percent of trial judges), has stalled for almost 25 years.15 In Florida in 2000, voters overwhelmingly rejected changing their judicial elections.51

Committees and on educating candidates.17 The greatest need is to work on campaign conduct. The judiciary differs from the other branches can only improve and until it does, judicial elections will continue to become more like other elections.18 But destructive campaigning will backfire — as it has several times — when the public realizes that judges must decide on proven facts and applicable law, and that the public’s only safeguard before a judge is impartiality unimpaired by expectations from any campaign.

Endnotes

2This phrase is from the ABA Task Force Report on Lawyers’ Political Contributions (1998), Part 2, p. 13.
3Moyer’s speech was to the Retail Merchants Association (Nov. 7, 2001).

10Jack Torry, “Ohioans Endured the Most TV Ads,” Columbus Dispatch (Nov. 21, 2002).
11Chief Justice Moyer noted that, “Lawyers have a greater responsibility, indeed an ethical obligation....”, quoting from the ABA Task Force Report (n.2 above, p.6): “Never is there more potential for judicial accountability being distorted and judicial independence being jeopardized than when a judge is campaigned against because of a stand on a single issue or even in a single case.” Speech to Retail Merchants Association. (Nov. 7, 2001), n. 3, above.
12Schotland, n. 8 above.
13Brennan Center, n. 9 above.
14Wholly apart from the elections, two court decisions in 2002 – the U.S. Supreme Court’s first about judicial elections and another from the 11th Circuit – may make judicial elections more like other elections. For both decisions, see Weaver v. Bonner, 309 F.3d 1312 (11th Cir. 2002); see also Schotland, Should Judges Be More Like Politicians? Court Review (Spring 2002), p.4.

A potentially major reform was enacted in North Carolina in October 2002 – public funding for appellate candidates. Of 23 states with some public financing, only Wisconsin has funded judicial elections for their Supreme Court. That program worked well for six cycles after enactment in 1979, but since 1995 declining checkoffs have reduced the public funds to an average of only 3.4 percent of the totals raised by the candidates.

15ABA Standing Committee on Judicial Independence, Report on Standards on State Judicial Selection (July 2000), at 1, 2: “[T]here has been little change over the last decade...[T]here has been little to no movement to an appointive system...” In fact, the last state to make the move (and only in part) was New Mexico in 1988; the only others in the 1980s were Utah in 1984 and South Dakota in 1980. In addition, various counties have made the move, and some states have moved to “merit” for interim appointments.
16Schotland, n. 8 above, p. 886.

Bio

2002 Initiatives and Referenda

M. Dane Waters, Initiative & Referendum Institute

The voter’s decided on the fate of 202 statewide ballot questions on Election Day. Were the voters cautious on voting on the ballot questions or did they disregard the concerns of war, terrorism and the economy and do as they pleased? In short, “cautious” was the word of the day. The following essay looks at what the voters approved and what might have lead to them to these decisions.

On Election Day 2002, voters cast their ballots on 202 statewide ballot measures in 40 states and approved approximately 62 percent of them. Fifty-three were placed on the ballot by the people, and 149 were placed on the ballot by state legislatures. Of the measures placed on the ballot by the people, 47 percent were approved — slightly higher than the 100-year average of 41 percent. In looking at the measures placed on the ballot by state legislatures, voters continued the trend of passing those at a higher percentage than citizen measures by adopting almost 66 percent of them. Interestingly, there were 30 percent fewer initiatives on the ballot than 2000 and the fewest number since 1986.

Ballot initiatives

Drug Policy

Coming into the 2002 election cycle, drug policy reformers had enjoyed a tremendous winning record, but they suffered a clean sweep defeat on their statewide initiatives (they did win a local measure in Washington, D.C. and one in San Francisco). Ohio voters chose not to adopt Issue One that would have allowed for treatment instead of incarceration of non-violent drug offenders while Nevadans chose to vote down Question 9 that would have legalized marijuana for recreational purposes. In a surprising outcome, voters voted down Proposition 203 in Arizona that would have legalized medical marijuana. Two closely watched drug related initiatives in South Dakota were defeated. Amendment A would have allowed a criminal defendant to argue the merits of the law and possibly be found innocent because the jury found the law itself to be bad public policy. Measure 1 would have legalized industrial hemp (cannabis).

Many have argued that the reason this election cycle has proven to be more difficult for the drug policy movement than previous elections is due to the extraordinary step by John Walter (President Bush’s drug policy advisor) and Asa Hutchison (head of the Drug Enforcement Administration) in actively campaigning against these measures – a move that many believe may lead to litigation regarding the federal government’s involvement in political campaigns. Regardless of the outcome of this election cycle, there is little doubt that the drug policy reform movement will continue to utilize the initiative process in its quest to raise awareness of the reforms they are seeking.

Animal Rights

Animal rights advocates fared well on Election Day. The animal protection movement emerged in the 1990s as a dominant issue at the ballot box; this election cycle was no exception. Voters in Oklahoma approved an initiative outlawing cockfighting while voters in Florida voted to ban the use of gestation crates for pregnant pigs. On the losing side was an Arkansas initiative that would have made cruelty to animals a class D felony instead of the current class A misdemeanor. The Florida win will help energize the movement to ban gestation crates across the country leading to more ballot measures on this issue in the near future.

Education Reform

Another favorite at the ballot box has been education reform, and this election cycle continued the trend. Five initiatives are especially worth noting. In California, Arnold Swartzenegger’s Proposition 49 won handily. The initiative will “increase state grant funds available for before and after school programs.” This impressive victory will no doubt give the “Terminator” the political prestige he wanted to launch his rumored gubernatorial campaign. In Colorado and Massachusetts voters decided on initiatives that would require children to be taught by using the English language in the classroom. These two initiatives follow wins on this issue in Arizona and California. The surprising thing about these two initiatives is where they won and lost. This issue, which is usually personified as a conservative issue, won handily in the liberal state of Massachusetts (Question 2) but lost in conservative Colorado (Amendment 31). This just goes to show that voters can’t be expected to vote straight party ideology when voting on ballot measures.

Floridians dealt with two high-profile education initiatives. Measure 8, requiring “every four-year-old child in Florida be offered a high quality pre-kindergarten learning opportunity,” won by a narrow margin as did Measure 9. Measure 9 will “provide funding for sufficient classrooms so that there be a maximum number of students in public school classes.” Measure 9 had become a big issue in the governor’s race with candidate Bill McBride throwing strong support behind it while Gov. Jeb Bush was caught in an unfortunate candid moment saying that he had
already thought of several “devious ways” to keep the measure from going into affect.

**Election Reform**

One of the biggest losers on Election Day was election reform. In California and Colorado, voters said no to initiatives that would have put in place what is commonly referred to as “same day voter registration.” Three other Colorado initiatives are also worth noting. Amendment 29, which would have changed the way candidates are placed on the primary ballot by requiring nominating petitions instead of relying on nominating conventions, was defeated. Amendment 28, which would have allowed for mail ballot elections, was defeated as well. The third, Amendment 27, was victorious. Amendment 27 will “reduce the amount of money that individuals and political committees can contribute.”

One of the more telling signs of the political feelings of the electorate was exemplified in Idaho where voters gave a controversial endorsement to a measure that would abolish term limits in Idaho. However, this victory for state lawmakers is being overshadowed by persistent stories of voter confusion over which way to vote on the ballot measure.

**Gaming**

Several ballot measures dealing with expanding gaming or creating a lottery were put before the voters but, as is usually the case, they didn’t fair well. In Arizona, three initiatives were voted on that dealt with gaming. Propositions 200 and 202 dealt with expanding Indian gaming and dictating where and how the proceeds should be divided had mixed results. Proposition 200 was soundly defeated while Proposition 202 passed. The other initiative, Proposition 201, would have allowed for “non-tribal gaming” in the state and was defeated overwhelmingly. In Idaho, voters decided to allow video gaming on Indian land and voters in North Dakota decided to “direct the legislative assembly to authorize the state to join a multi-state lottery.”

**Tax Reform**

Since 1978’s Proposition 13 in California cut property taxes, tax reformers have used the initiative process religiously; this election cycle was no different. However, it wasn’t exactly a banner year for tax cut advocates. The voters of Massachusetts voted down Question 1 that would have abolished their state income tax, while voters in Arkansas defeated an initiative that would have abolished certain taxes on their food and medicine. Regardless of these outcomes, tax cutters will be back in future elections to carry on the legacy California’s Proposition 13.

**Honorable Mentions**

Voters also showed their resolve to maintain the norm with the defeat of two high-profile measures in Oregon – Measure 23 would have called for universal health care and Measure 27 would have called for the labeling of genetically modified foods. These defeats do not necessarily mean that voters don’t support these reforms – it’s just that given the uncertainty of the times these are items that they feel can be addressed in the future – but not now. Smoking was another area that voters spoke out on. In Florida the voters adopted Amendment 6 that will ban smoking in all public places. In Missouri, voters chose not to increase cigarette taxes, while in Arizona the voters decided to make cigarette taxes $1.18 a pack – more than double the current rate. As to social policy, not much was on the ballot this election cycle with the exception of banning same sex marriage in Nevada. Nevadans voted once again (by law amendments must be voted on twice before becoming law) to adopt the ban.

**Referenda**

Over the last couple of election cycles, and especially since the fiscal impact of Sept. 11, state legislatures have been looking at ways to increase revenues in their states. At least 40 states will have budget deficits this year, and in this election cycle, lawmakers were hoping that the voters would “ease their pain” and give them more money to spend. In short – the verdict is mixed. Tennessee lawmakers were hoping to establish a lottery, and voters decided to help them by passing Amendment A-1. In Louisiana, Montana, and South Carolina, voters were asked to give lawmakers greater latitude in investing in the stock market. The voters for the most part said no, with the exception of one measure in South Carolina — essentially telling lawmakers that the stock market is too risky to be investing public funds. As to bonds, California voters adopted the largest bond measure in the state’s history; Proposition 47 will raise $13 billion for an across-the-board overhaul of the state’s public school facilities. Other bond measures across the country seamed to fare well also.

**Conclusion**

So what did we learn from the voters? Primarily, faced with uncertain economic times and the possibility of war, voters chose to be cautious and maintain the status quo, with one obvious exception – education reform. The reason for this, many argue, is that during tough fiscal times voters feel that big ticket road projects and other costly non-education-related items can wait until economic times are better and they are more comfortable approving them. What can’t wait is the education of their kids.

(For a complete listing of statewide ballot measures and how they fared on Election Day visit www.ballotwatch.org.)

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**Bio**

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Beginning about 30 years ago the states started to shake themselves awake from a prolonged period of institutional and policy stagnation and dormancy. From their castigation as “fallen arches” of the U.S. federal system, the states have become more capable and responsive actors within the framework of the American federal system. Today, the political revival of the states is recognized by all but the most ardent defenders of nation-centered federalism.

In 1986, we authored a book entitled *The Resurgence of the States* (Bowman and Kearney, 1986) that documented the political revival of the states and presented a dynamic, conceptual model that identified the precipitators, products, and potential depressors of state resurgence. In this paper, we briefly revisit and reexamine the resurgence model and its companion arguments. The central questions we seek to address are (1) What has happened to the products of state resurgence? (2) What warning signs have appeared that might herald threats to state resurgence?

The Resurgence Model

As seen in Figure 1, the model identifies eight factors, or precipitators, that set into motion the resurgence of the states. Declining confidence in the national government, a dysfunctional federal grant-in-aid system, and the growth of the intergovernmental lobby changed the climate for state action. At the state level, extensive constitutional and institutional reforms, as well as legislative reapportionment and increased inter-party competition, altered the governmental environment. With localities facing an array of governance challenges, the time was ripe for reinvigorated states to reassert themselves in the American federal system. And they did.

More interesting and important for this analysis are the products of state resurgence. Have the states sustained or extended their efforts in the six areas identified in the model? Or has resurgence run its course and a new equilibrium or even a reversal of course been established? By comparing, where possible, 1985 data with the most recent data available, we attempt to answer that question with respect to each of the six products of state resurgence.

**Figure 1** The Model of the Resurgence of the States

**Precipitators**
- Distrust/Lack of Confidence in the National Government
- State Constitutional Reform
- State Institutional Reform
- Intergovernmental Lobby
- Reapportionment
- Political Party Competition
- Dysfunctions of Federal Grants-in-Aid
- Local Government Incapacities

**Products**
- Increased State Responsibility for Local Governments
- Greater Interstate Cooperation
- Expanding Scope of State Operations
- Faster Diffusion of Innovations
- Improved Revenue Systems
- Increased National-State Conflict

**Depressors**
- Financial Retrenchment
- Interstate Conflict
- Political Corruption

The authors revisit their “resurgence of the states” thesis to determine whether the states continue to progress as capable, innovative, and responsive actors within the federal system. They conclude that despite the presence of several persistent threats, resurgence persists into the 21st century.
legal power to raise additional revenues by themselves. The local government portion of state expenditures now exceeds one-third of total state expenditures. However, localities have little discretion as to how to spend these funds: 75 percent of the money is earmarked for public education and social welfare. Further, states are not reluctant to intervene in instances in which the performance of a local government is woefully substandard, as has occurred in public education. And states often structure local choices as, for instance, in “smart growth” laws that reward localities that target new growth to areas already having infrastructure and deny funding for infrastructure projects that encourage sprawl.

Decentralizing actions have taken place, also. States have granted more discretionary authority and programmatic flexibility to their counties (37 states) and municipalities (46 states) through home rule provisions. States are also showing greater sensitivity to the mandate issue. In 44 states, fiscal notes are attached to proposed legislation or administrative regulations that involve local governments and, in nearly half of the states, local governments are reimbursed for state-mandated expenditures. As a protective measure, cities and counties in some areas have joined together to form regional entities to give them greater clout as they beseech state government. Thus, although some analysts herald the onset of a “second-order devolution” in which states and localities increasingly function as governing partners, the pattern is more equivocal.  

Greater Interstate Cooperation

Although competition among jurisdictions is inherent in a federal structure, there are instances in which jurisdictions cooperate and work together. States have put aside longstanding conflicts to create regional organizations aimed at developing multistate solutions to pressing problems.

Some of these actions have reciprocity as their rationale. For instance, 23 states have a mutual agreement to aid one another when natural disasters such as hurricanes and forest fires strike. Other cooperative behaviors stem from an apparent win-win calculation by participating states. On behalf of consumers, for example, states have recently brought legal actions against tobacco companies, Microsoft Corporation, large record labels and music retailers. And others are likely defensive maneuvers. That is, an agreement among states to design a common policy may be a more palatable alternative than federal preemption. Whatever the reason, states are engaged in more cooperative interactions than ever before.

An important element of expanded state cooperation is the intergovernmental lobby. The Council of State Governments (CSG), The National Governors Association (NGA), the National Conference of State Legislatures (NCSL), the National Association of Attorneys General (NAAG) and other intergovernmental organizations have been actively identifying, developing, and promoting policies of interest and importance to the states.

It is important not to overstate the degree of cooperative interaction. A serious problem is that the 50 states and their local governments frequently experience deep and bitter divisions over their perceived interests. These conflicts are carried over into debates within and between the governmental interest groups and reflected in official organizational positions communicated to the Congress and to the president.  

Expanding Scope of State Operations

Although some of the national government’s actions have preempted the states and thus diminished state authority, the states themselves have continued to push the bounds of activity outward through one of three paths:

• The creation of new policy in an area where government has not been active,
• The movement of states into policy areas that the national government has vacated, and,
• The design of administrative regulations, often with federal support and guidance, that push states in new directions.

Frequently, state action is a precursor to federal action. New technology, for example, has raised an unanticipated set of issues to which states have responded. For example, with the national government silent on the issue, New York in 2001 became the first state to ban the use of cellular telephones while operating a motor vehicle. Other new policy adoptions involve smart growth, controlling prescription drug costs and DNA testing. Much legislative activity takes states into areas where there had been little or no government regulation previously.

States also expand their scope of operations by filling in the gap created by national government de-emphasis of, or retreat from, a policy area, such as regulation of the insurance and utility industries and strengthening emission standards for air pollutants.

Another scope-expanding opportunity occurs in the administrative realm. Under some federal programs, states are given latitude in their design of appropriate regulations. Although a federal agency might provide guidance and ultimately, its consent, states have discretion to modify and enhance program elements to fit the state context. Some states have enthusiastically embraced this discretion and designed regulations tailored to their situations, as shown through welfare reform under TANF.

Faster Diffusion of Innovations

State governments learn from each other. States often look to neighbors for policy solutions, Regional consultation and emulation is logical; similar problems beset jurisdictions in the same region, a program used in a neighboring state is politically more acceptable than one from a distant state, and organizational affiliations bring state and local administrators together with their colleagues from nearby areas.

States are the places where new ideas emerge, are nurtured, and grow into public policy, traveling along one of two alternative diffusion paths. In one, a state-determined path, the idea cum policy spreads to other states facing similar situations. Whatever the mechanism for diffusion — the media, an intergovernmental association, an entrepreneur — the policy
spreads from one state to another until it reaches a stopping point. The other path involves the federal government, acting through mandate, grant condition or sanction. After policy development and diffusion at the state level, the innovation becomes federal law and as such is adopted by the remaining states. On this path, the national government has essentially preempted the decision-making role of the nonadopting states in the case of the .08 blood-alcohol content definition for driving under the influence.

A non-systematic look at selected innovations suggests that the pace of innovation has not slowed over the past 15 years. Examples include school choice legislation (36 states had enacted some type of school choice policy by 2000); modernization of workers’ compensation laws (41 states have enacted “business-friendly” provisions); state legislation to ban recognition of same-sex marriage (considered in 48 states between 1993 and 1997, passing in 28 of them); and laws that allow consumers to halt telephone solicitations (13 states between 1998 and 2000).

Obviously, the pace of diffusion depends on the nature of the innovative policy and its relevance to any particular state as well as the presence of key factors such as policy entrepreneurs and actions of neighboring states. However, given the burst of new technologies increasing the flow of information across states and the role of governmental interest groups and national advocacy coalitions in policy dissemination, the expectation of faster diffusion holds. New ideas are constantly being pulled into and pushed onto states’ agendas.

Improved Revenue Systems

A sound state revenue system must yield sufficient monies to pay for existing and projected programmatic and administrative commitments and service needs. State own-source revenues have grown substantially on an absolute and per capita basis since 1985. The situation turned less positive in 2001 because of the national economic recession.

Ideally, state revenue systems would not be overly dependent on one or two tax devices. Instead, multiple alternatives would spread the tax burden, enhancing revenue elasticity in relation to broad economic conditions. State revenues in constant dollars have changed by source since 1985, with the personal income tax increasing in relative importance from 29.6 percent of tax revenues in 1985 to 36 percent in 2000. Sales tax revenues, after rising proportionately for many years, declined to 1985 levels in 2000 at around 32 percent. Lotteries and gaming have been widely adopted in the states during the past two decades, but they have helped minimally to relieve pressure on the personal income and sales taxes, representing only around three of total own-source revenues in most states. The largest decreases were recorded for the corporate income and severance taxes. The increased dependence of the states on two major taxes would appear to be a negative development for resurgence.

Equity is another desirable trait of state revenue systems. Fairness typically implies progressivity, which can be approached through various means. Some improvements in equity may be noted. In 1986, 28 states exempted food from the sales tax and 43 exempted prescription drugs; in 2002, the figures were 30 and 45, respectively. Today, all but seven personal income tax states have three or more brackets and at least 17 states indicate some form of indexation. In sum, the states as a whole have registered gains in tax system yield and equity, but lost ground on the criterion of diversity.

Several structural problems threaten to hinder the future stability of state revenue systems. These include the decline of manufacturing and the rise of the service economy, the impacts of globalization, federal reluctance to devolve fiscal responsibility along with program responsibilities (state Medicaid expenditures, for example, are projected to grow at an average annual rate of 9 percent from 2001-2011) and, in several states, chronic structural deficits.

One of the greatest specific challenges to state revenue systems today for the 45 states that tax sales is broadening the sales tax to incorporate services and the growing volume of untaxed catalog and Internet sales. Especially problematic is the ability to tax catalog and Internet sales. States estimate that they lost over $13 billion in annual revenues in 2001 from untaxed Internet sales and that they forfeit some $4 billion a year from catalog sales. The Internet Tax Freedom Act’s moratorium on taxing e-commerce expires November 2003. Meanwhile, through the Streamlined Sales Tax Project, 31 states had agreed to a uniform e-tax by July 2002.

Another way of looking at fiscal health is total year-end budget balance as a percentage of expenditures. For 1985, this figure for the 50 states was 5.2 percent. Balances plummeted to 1.1 percent in 1991, a year of economic recession, and climbed to 10.1 percent in 2000. In 2002, following a marked economic slowdown, the overall budget balance was estimated to be 3.5 percent of expenditures.

Increased National-State Conflict

The national government and the states have always been embroiled in a variety of conflicts — both profound and profane. Such is the nature of a federal system. But the level and intensity of conflict are variable. Following a lengthy period of “cooperative federalism,” conflictual federalism resumed during the 1970s and 1980s over the issue of increased federal (congressional) preemption of state activities.

State-national conflicts continued into the 1990s, but the nature and tone of the debate changed. Ironically, the resurgence of the states gained credence and validity in Congress and in the White House, where three former governors have held office for 17 of the past 21 years. With bipartisan and public support, Congress has devolved federal responsibilities to the states until few direct domestic service-providing activities remain under the purview of the national government. Indirectly, through its inaction and gridlock, Congress has ceded domestic policy making responsibility to the states. Congress, of course, will never entirely lose its penchant for pre-empting and mandating, but the Unfunded Mandates Relief Act, together with a lengthy period of policy gridlock, has tempered the tendency of Congress to intrude on state authority.

Following decades of actions that smothered the Tenth Amendment and generally undermined state sovereignty, the U.S. Supreme Court took several important steps during the 1990s and early 2000s to resuscitate the constitutional and statutory powers of the states. Largely by virtue of a narrow 5 to 4 majority, the
Rehnquist Court has championed state rights and sovereignty in numerous recent decisions, affirming the relevance of the Tenth Amendment’s reserve powers clause and the sovereign immunity of states under the Eleventh Amendment. Even the scope of extensive national activity under the Interstate Commerce Clause has been narrowed in several cases. All federalism decisions have not gone to the states’ advantage, as demonstrated by the critical presidential election case of 2000, in which the Court seemingly ignored its devotion to states’ rights by overturning the Florida Supreme Court. In general, however, the Rehnquist Court has exhibited clear pro-state inclinations.

Depressors of Resurgence

As indicated above, some state revenue systems have disturbing structural problems, and states tend to depend on a small number of tax devices. Federal tax reform threatens to depress state revenues and taxation and expenditure limitations choke them. These developments pose problems of revenue inelasticity, particularly during times of economic contractions. On the expenditure side, rapidly rising Medicaid and state employee health care costs, the boom in prison construction and operation costs, the upward slope of student enrollment curves in public and higher education, and a potential jump in TANF expenses as time limits for eligibility expire and unemployment rises, all portend serious state budget problems. Likely results of sustained financial difficulties would be retardation of policy innovation and activism, intensification of interstate conflict, and, perhaps even, a “race to the bottom.”

A federal system creates inherent rivalries among states. Some of this rivalry involves competition for mobile capital. Each state’s independent pursuit of economic investment puts it on a collision course with other states seeking that same investment. Natural resources offer another venue for conflict (water, for example). The important question is whether interstate conflict might escalate to such a degree that it is destructive of state resurgence. So far, this has not happened. The states have fought among themselves, but most conflicts have been bi-state, or narrowly regional.

It is difficult to determine whether levels of political corruption have increased or declined. At any given time, it seems as if there is a scandal unfolding in one state or another. The role of money in politics, especially in campaigns and in lobbying, is a perennial concern and with good reason. Even though the past 15 years have not been marked by rampant corruption at the state level, there have been enough incidents to keep the public skeptical, if not somewhat distrustful.

Emerging Trends and Issues

The resurgence of the states has not suffered significant interruption. Historically, American federalism has been dynamic, with the respective responsibilities and powers of the national and state governments changing incrementally over time. Thus state resurgence should not be assumed to be a linear, irreversible phenomenon. The potential depressors described here, perhaps combined with new, as yet unknown threats to state capability, could pull the federalism pendulum into a reversal of course.

Until that occurs, however, it bears consideration what the most recent era of state reform and capacity means in broad terms. For more than two decades, citizen surveys have consistently reported higher levels of confidence in state and local governments and their officials than in the national government. In this sense, resurgence has the support of the citizenry. Although confidence in institutions has diminished across the board, the persistence of state resurgence could help reverse negative public opinion towards government.

State resurgence is also positive in the sense of policy making. In an era of gridlocked national government, the laboratories of democracy generate high levels of policy experimentation and innovation in the critical areas of domestic policy. The long-term value of this longstanding function of the states and their local governments should not be underestimated.

Still, it is not difficult to find reasons to criticize the states. There are the predictable policy and administrative laggards. Furthermore, the states will always struggle with border-spanning activities such as environmental protection and economic development. But overall, the increased capability of the states has taken root. We expect the states’ resurgence to endure for the foreseeable future.

Endnotes

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9Kenyon, “How Strong Are State Revenue Systems?”

Bios

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Trends in Local Government Taxation in the 21st Century

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Local government revenues, especially the property tax, have changed steadily over the last century. These trends are examined over time, by type of local government, and by state. Three major policy recommendations are then offered which would improve fiscal decision-making and meet pragmatic state concerns.

The simple fact that local governments draw only 37.6 percent of their revenues from taxes is profound. This is less than the portion from intergovernmental revenue. The property tax is substantially smaller than state aid, and if current trends continue, the “charges and miscellaneous revenues” category will soon pass property taxes. Also, local governments now raise more revenues from interest earnings than from federal aid. While no one expects the property tax to vanish in the future, it has become much less important and this trend will continue.

Local Government Revenue by State and by Type of Government

The decline of the property tax is a national phenomenon. From 1970 to 1999 only five states (Alaska, Hawaii, Mississippi, New Jersey, Virginia) increased their reliance on the property tax while the other 45 decreased. The Southwest, Rocky Mountain and Plains states had the largest decreases. There is substantial regional variation in the use of the property tax. New England states rely most heavily on the property tax to fund local governments, while Southeastern and Southwestern states are the lowest.

The reduced role of the property tax has affected all types of local governments. From 1948 to 1997, the share of general revenues drawn from the property tax has fallen from 51.4 percent to 27.9 percent. As recently as 1967 special districts used no non-property taxes; by 1997 non-property taxes were an important revenue source for special districts in some states. Special districts draw 11.9 percent of their revenues from the property tax, cities 20.7 percent, counties 24.7 percent, and school districts 36 percent. Only for townships is the property tax more than half of revenues. For cities, general and selective sales taxes total 12.3 percent and income taxes 6.2 percent, while for counties these figures are 7.9 percent and 1.2 percent, respectively. So for cities in particular, and to a lesser extent counties, an important shift is occurring from the property tax towards income and sales taxes, and especially non-tax sources.

Counties

Counties rely on three main sources: intergovernmental aid, property taxes
and user charges. Over the last 20 years, intergovernmental aid and the property tax have declined while user charges and miscellaneous revenue have increased. Johnston, Pagano and Russo found that restrictive property tax limits led to increased reliance on user fees in counties, so continued discontent with the property tax explains some of these changes. Sales taxes have increased for three reasons: (1) more states have granted counties sales tax authority, (2) those states with existing grants of authority have increased the number of counties allowed to levy this tax, and (3) increased rates. A number of major cities now have combined state and local sales tax rates over 8 percent: Chicago, Dallas, Houston, Los Angeles, Memphis, Mobile, Nashville, New Orleans, New York, Oklahoma City, San Antonio, San Francisco and Seattle.

There is substantial variation among the states in the distribution of county revenues. New England counties rely heavily on the property tax and less on aid, while Southeastern states are heavy users of user charges. State aid is quite high in some states – more than a quarter of total revenue in Alaska, Massachusetts, Michigan, North Carolina, Oregon, Tennessee and Virginia but less than one percent in Delaware, Maine, New Hampshire and Vermont. Counties in more than half of the states use a general sales tax, some fairly heavily, such as Arkansas, Georgia, Missouri and New York. Income taxes are only used by three states (Indiana, Kentucky and Maryland). Counties then are evolving away from property taxes and towards a more diversified revenue portfolio – some faster than others.

CITIES

The trends over the last 20 years for cities are similar to counties: intergovernmental revenues and property taxes have decreased their share of the total, while sales, excise and income taxes have increased slightly and user charges and miscellaneous revenues have increased sharply. For cities, state aid and user charges are now both almost as much as property tax revenues.

Regionally, New England cities are again the heavy users of the property tax while user fees are substantial sources outside of the east coast. In 28 states, cities rely more heavily on charges than on property taxes. State aid tends to be higher where charges are lower, although there are exceptions to that general pattern. General sales taxes are used by cities in more than half of the states, and are over 15 percent of total revenue in Alabama, Arizona, Colorado, Louisiana, Missouri, Nebraska, New Mexico, Oregon, South Dakota, Texas and Utah. Of the largest 38 cities, six (Albuquerque, Denver, Nashville, Oklahoma City, Phoenix and Tucson) derive more than 20 percent of their revenue from this tax. Income taxes are not as widespread, but are 20 percent or more of city revenues in Delaware, the District of Columbia, Kentucky, Ohio and Pennsylvania. Cities such as Cincinnati, Cleveland, Columbus, Detroit, Kansas City, Philadelphia, Saint Louis and Toledo raise large portions of their revenue from income and earnings taxes. Selective sales taxes are more than ten percent of local revenues in Florida, Georgia, Illinois, Missouri and Washington. Cities have the most diversified revenue base among local governments and it is in these cases where the potential of sales and income taxes are being realized. A heavy use of charges also suggests a more fee-for-service basis of city administration.

TOWNSHIPS

Townships exist in only 20 states. As mentioned above, they are predominately reliant on the property tax. For example, in Kansas and Nebraska they constitute 83 percent and 91 percent, respectively, of total revenues. Income taxes are more than 10 percent of the total for townships in Indiana and Pennsylvania, however in all other cases non-property taxes are not important for townships.
of user charges and federal revenue is more than 70 percent. Hospitals, transportation, sewers, solid waste, and housing and community development are the largest producers of user fee revenue. For the functional areas of transportation and sewage, user fee revenues come close to covering expenditures while for hospitals and solid waste expenditures are significantly higher than revenues. Special districts come closest to the fee-for-service model among these governments and perhaps this is appropriate given the benefit-based nature of their services.

School Districts

School districts rely most heavily on two sources: the property tax and state aid. In the last 20 years, the reliance on state aid has increased. California’s reaction to Proposition 13 has been the most dramatic example of this. McGuire writes that, “virtually each percentage point loss [in California’s property tax revenue] was replaced by an increase in reliance on state aid.”7 In 30 states, state aid is more than half of school revenue. Other taxes are insignificant sources for schools in most all states. Federal aid, user charges, and miscellaneous revenues are also low. East of the Mississippi River and north of the Mason-Dixon line, property taxes are comparatively larger supporters of schools compared to the rest of the country.

Iowa represents an interesting case that may be suggestive of future changes. In 1998 schools were given local option sales tax authority. Now, schools in 23 of the 99 counties are using this source. Iowa schools also have income tax authority, even though revenues from this source are still low. They may also establish non-profit foundations to raise donations, and about 40 percent of the districts did so as of 2000.8 While Iowa has not used these alternative revenue sources heavily, the door is now open for them to do so more in the future. If it were to do so, it would present an interesting alternative to the traditional financing structure for schools based on the property tax and state aid.

Patterns

Some important trends and issues emerge from this descriptive analysis. The general pattern is towards revenue diversification and to a more heavy dependence on user fees. One of the causes of this has been the many tight restrictions on the property tax. While some of these limitations have been successful in controlling property taxes, they have had little success in controlling the growth of local spending mainly because local spending is popular. To fund local programs such as schools, public safety, community development, infrastructure, and transportation, decision-makers have followed the path of least resistance. The property tax has regularly been one of the least popular taxes, while the sales tax fares much better according to public opinion. Thus it is not surprising that this shift has occurred.

Changes in taxes in the U.S. are pragmatic responses to political, economic and demographic changes.

McGuire and Sheffrin have both pointed out that in many states, structural changes in the property tax have either implicitly or explicitly caused it to become less of a local tax and more of a component of state tax policy in part because it is heavily restricted by states, and also because in many cases school aid formulas mandate minimum local property tax levies.9 McGuire writes, “[t]he idea of local taxation may be passe.”10 Of course it is not now, and probably will never be, but local governments are becoming more similar to private organizations in that many of their services are now sold directly to users or paid for in part by state or federal patrons.

Local sales and income taxes are not large but are growing — especially in the larger cities and counties. In states where these taxes are used, the typical pattern is for the larger cities to receive state authorization for these taxes and then for other cities to subsequently ask for similar access to the tax base. This leads to a slow but steady growth in the use of these taxes over time. While many oppose expanding these taxes to local levels, as long as they are more popular than the property tax this development will continue.

Policy Implications

In predicting changes in tax policy, conventional wisdom is that there will be no change. However numerous small changes over a long enough period of time can lead to a big change. This has been happening among the over 80,000 local governments in the U.S. Elsewhere, I have argued that changes in taxes in the U.S. are pragmatic responses to political, economic and demographic changes.11 These forces have been the most powerful sources of change in the last century, and are likely to continue to be. Because these developments are gradual, and because local governments are so numerous, these changes are often not evident. But later in this century it would not be surprising if the property tax were a small tax funding a narrow range of government activities. User fees are likely to continue to grow, as are local sales and income taxes. State and federal aid will respond pragmatically to political developments, and so will probably wax and wane.

But the future is not yet written and can be affected by our ideas and actions. The principles of good tax policy — efficiency, equity, low administrative and compliance cost, yield, stability, and fair administration — are well known and have fairly wide consensus, at least among academics. The challenge is to have good policy coincide with pragmatic concerns.
Many local services could be fully financed by user charges. There are three good reasons to do so: (1) the benefits of these services are realized by specific users, (2) they create a clearer link between revenues and spending, and (3) they provide signals to local managers about the desired level and quality of services. Improved technology now allows assessing these charges at lower administrative costs, and of course any tax reductions made possible by these shifts are welcome. Services especially ripe for such reform are hospitals, sewers, storm run-off, solid waste, recreation, economic development, and transportation. Highways in particular could be better funded by electronic toll systems which can more precisely charge users based on their time and place of use, vehicle weight, and axle configuration than do current fuel taxes. Also, over the last 30 years water utilities have slipped from being fully funded to relying on cross-subsidies from local taxes; this is an obvious candidate for full benefit-based financing.

Cities have moved the farthest away from the property tax, and some have sales or income tax authority. In the current environment of extreme state budget pressure, some states such as California and Wisconsin are re-examining aid to local governments.13 A reasonable option to consider is to reduce state aid to cities in exchange for enhanced local non-property tax authority. Which taxes are best for any city varies. Retail centers would benefit most from general sales taxes, tourist destinations from lodging taxes and excise taxes on restaurant meals and alcoholic beverages, high income areas from income or wage taxes, and as mentioned above almost all cities could expand user charges. While there are some negatives to all of these alternatives, they respond to current deficit concerns, make cities less dependent on state governments and more accountable to their citizens for decisions about taxes and spending. Large cities are the most economically diversified governments and are (or should be) well enough managed to be treated as adults rather than as wards of the state. As such they are good candidates to trade state aid for additional tax authority.

Endnotes


8Bartle, Edbon and Krane, Ibid.
12McGuire, “Alternatives to Property Taxation for Local Government”

Bio

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increasingly, community development falls within the domain of the public administrator and public policy. Community development addresses housing needs for the poor, improves conditions in low-to-moderate neighborhoods, organizes community residents and engages in neighborhood planning. Community development programs and services develop partnerships among government, community and private sector actors and facilitate access to private-sector financial support.

Until the 1930s, responding to poverty and distress was the task of “charity organizations,” whose assistance was permeated with self-help strategies and personal responsibility messages. However, the New Deal programs of the 1930s resulted in an expanded role of government — implementing programs that provided decent, safe and sanitary housing, assisting senior citizens and, later, comprehensively addressing conditions in decaying cities.

Government programs have grown tremendously since the Depression and have become more complex and, because of this, government machinery cannot meet the increased demand. Government has to cope with technological changes, budget constraints, theoretical arguments, decentralization and public choice. As a result of these competing interests, government is diminishing its role as social service provider and encouraging charity organizations to step back into its previous role within community development and social service delivery, resulting in more decentralized service delivery systems.

Decentralization of services evolves from the paradoxical beliefs of American citizens that government should remain limited while at the same time expand to meet the ever-increasing needs of a complex society. Decentralization takes two forms: administrative decentralization and political decentralization. Administrative decentralization is when government delegates the responsibility for managing the programs, as well as the authority needed to do so. Political decentralization is when decision-making power is given to the independent decision-makers, who alone are responsible for its use.

Administrative decentralization is the crux of a new government relationship that suggests that the performance of government programs depends on interdependence between government and its agents (proxies). Interdependencies are evident in three areas: 1. Sharing of authority; 2. Differences in values management; 3. Techniques. As to sharing of authority, it is important to realize that, as government relies more and more on proxies, it shares a significant amount of authority for its programs. The second area, differences in values management, is particularly salient for this discussion since the culture of religious organizations, their values and those of government, are significantly different. The question is how best to reconcile these cultural differences and still maintain the integrity of each. Third, innovative techniques are critical to learning and applying different approaches and methodologies to managing and responding to the needs of these new proxy arrangements.

Government by proxy describes the crucial relationship between the federal government and the third parties that ultimately administer programs. Proxy arrangements reflect the growth of the nonprofit sector as a service provider as well as increased use of organizational arrangements that act instead of government. These government-by-proxy mechanisms include: 1. Contracts; 2. Grants to the state and local governments; 3. Tax expenditures; 4. Loan programs; and, 5. Regulation. Government-by-proxy attempts to have a larger federal government, while at the same time maintain a smaller federal bureaucracy.

The African-American Church Tradition and Community Development

African-American churches have an extensive history of providing services in the African-American community. In a study of mental health service implementa-
tion in African-American churches, it was found that without the ministers’ support and involvement, the assistance was less likely to be offered. Another study of African-American faith-based community corporations found that the minister was essential to establishing the direction, mission and administration of the faith-based community development corporation and to obtaining resources for the organization.

The modern day community development movement owes much to activist African-American ministers and congregations who, in response to poverty, social injustice and social unrest of the 1960’s, facilitated establishment of community development corporations and other non-profit organizations for combating poverty and racism of marginalized residents living in depressed conditions.

Originally, community development programs were conceived to encourage minority communities to become actively involved in their communities, to be active partners in their own economic uplift and to strengthen access to the political process. The African-American church was a strong and influential contributor to the early movement. One concept of institute building, charismatic leadership, provides a lens through which to view and understand at least one aspect of the African-American managed and administered community development corporation.

Challenges Presented by Faith-Based Community Development

Although the African-American faith-based community development corporation is uniquely situated to participate in developing participatory governmental partnering, charismatic leadership presents major challenges and opportunities. Three such challenges are readily apparent and warrant discussion.

Separation of Church and State

Separation of church and state is probably the most controversial issue and area of concern. Lack of accountability can be a troubling problem, particularly relating to anti-discrimination measures (or lack of) and recordkeeping. Accountability is a double-edged sword. Government is concerned with whether faith-based organizations follow prescribed legal requirements for hiring, appropriate space and other federal requirements made of traditional community development practitioners.

The question is how far can the government go in monitoring religious organizations before such monitoring is construed as an infringement of government upon religion and religious freedoms? Since many African-American faith-based community development corporations found that of the 49 organizations studied, 66 percent of the staff is from the affiliated congregations, the Board of Directors is also predominantly from congregation; more than 90 percent of the membership was from the affiliated congregation.

Opposition and accountability to the new initiative declar- ing that it would actively oppose its passage because of the potential for discrimination.

Concern about discrimination may have merit. A survey of African-American faith-based community development corporations found that of the 49 organizations studied, 66 percent of the staff is from the affiliated congregations. The Board of Directors is also predominantly from congregation; more than 90 percent of the membership was from the affiliated congregation.

Hiring Discrimination

Hiring discrimination is another troubling accountability area. The heart of the contentious problem is that public policy leaves undefined the relationship of faith-based organizations to public policy requirements of accountability. Religious organizations, though receiving public funds, are essentially private organizations. As private organizations, they are perhaps not subject to the same anti-discrimination laws that apply to public organizations. This particular issue has created some of the strongest criticism and concern.

Since many African-American faith-based community development corporations have strong charismatic tendencies, the mission focus is likely to be a stronger component of the organization than rational-legal factors such as grant making and record-keeping. However, both rational-legal and charismatic concerns must be addressed in creative and balanced ways by the public sector.

Separation of church and state is probably the most controversial issue and area of concern.
social services have, until now, have been unable to do: more fully develop human potential. Three areas offer promise for the implementation of people-based strategies rather than the traditional place-based approaches.

Social Capital

Community development practitioners admit to the intractability of social problems. Social capital symbolizes a way to address the problem, people to people.\(^1\) The term refers to those stocks of social trust, norms and networks that people can draw upon to solve common problems. Networks of civic engagement such as neighborhood associations, sports clubs and cooperatives are an essential form of social capital. The denser these networks, the more likely that members of a community will cooperate for mutual benefit and development.

The challenge to utilizing social stock is to locate and mobilize them to contribute to public problem solving and increase participation in the democratic process. Increasingly, congregation-based organizing is recognized as a vehicle to mobilize existing stocks of social capital in church networks, generate new stocks and facilitate community building through partnerships that include political, business and civic partners. Indeed, “it is somewhat surprising that little attention has been devoted to faith as a basis for social capital formation.”\(^1\)

Networks and Resource Acquisition

Recognition of the value of networks to the work of community development corporations is a relatively recent development in community development. Networks represent interrelations and interdependencies organizational fields and focal points for organizational institutional life: key suppliers, resource and product consumers, regulatory agencies and other institutions.\(^2\) They are the relational frameworks in which an organization operates.\(^3\)

Increasingly, networks are essential to the success of community development corporations. Network relationships channel resources, including information, technical assistance and funding.\(^4\) Network members at all levels and sectors of the community development system participate in alliances and agreements that formulate strategies, make policies, operate programs and fight political battles.

Faith-based community development organizations make use of existing networks but also bring some of their own. Congregational and denominational support is fertile new ground for community development and network building. Such support might not only mean financial sustenance but also access to an enormous pool of volunteers, previously not been engaged in community development. Foundational support might also be increased since some foundations only assist church based efforts.

African-American faith-based community development corporations have a strong grasp of the necessity for network development and participation. Survey and case study data indicate that networks are significant to their ability to provide services.\(^5\) Access to networks, however, can be a function of longevity and size of the organization. Those African-American faith-based community development corporations with small staffs may have difficulty accessing support for their services and implementing their mission.\(^6\) Recently formed organizations may face the difficulty of lack of access to organization-sustaining network resources. It is also likely that networks and partnerships are related to the size of the organization and the types of services provided. Those organizations that have fee-based services have a stronger need for network partnerships.

Self-Help

African-American faith-based community development corporations, with their long history of self-help, empowerment of community leaders and political involvement, are well suited to provide transitional leadership. But they are challenged to determine the best way to implement people-based strategies to a wider community. Smaller, younger organizations may be better positioned than larger, older ones to accomplish this type of transition. They are more flexible in their day-to-day dealings with the public and are closer to the ground. Presumably they are more responsive to their constituencies.\(^7\) Larger organizations have acquired a larger, more bureaucratic posture to service delivery that might make them look and feel more like government.

Further Research

New partnering paradigms are a reality that public administrators should understand in order to provide effective assistance.\(^8\) The following offers promise for further examination and methods to assist new partners.

1. Public administrators need to better understand how to assist organizations with religious values and culture to remain responsive on their own terms while confronting accountability and growth issues. In other words, how does an organization fulfill bureaucratic requirements and remain loyal to its mission? How will changing the culture of the organization change the way in which services are delivered? What support and resources are needed?

2. Given the public policy debate over church and state, what is the role of public administration in assisting an ever-growing population of faith-based service providers?

3. How might public administrators take advantage of this new paradigm shift from a place-based orientation to one that is more people-directed to facili-
tate stronger and more sustainable community development efforts?

4. The traditional religious organizations are no longer the only organizations providing social services to under served populations. How do these new denominational partners influence public administration decisions? Are there significant differences to service delivery between new partners and more familiar partnership models?

Conclusions and Recommendations

Faith-based community development and service delivery clearly establishes many challenges for public administration and the population, in general. As the old paradigms about church and state shift, new models of religious involvement in the public policy arena are evolving. Public administration has an opportunity to be proactive and to make itself relevant to this new debate. To do so involves understanding new partners and unlikely institutions (the seminary, for example) and hearing from and understanding new voices—many of who are not traditional participants in public policy debate.

Endnotes


11Fox, Metropolitan America.


14Frederick, “Organizing Around Faith: African-American Faith-Based Community Development Corporations.”


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everal election reforms have been proposed to reduce the number unrecorded votes.1 Many of the reform proposals focus heavily on voting equipment. However, in the current economic climate state and local governments may be unwilling to spend a lot of money on new voting equipment even if some federal funding is available. Election laws and administrative decisions that determine ballot design strongly influence the number of unrecorded votes and are less expensive to change than voting technology. By focusing so much attention on voting technology, the election reform movement may be missing other cost-effective methods to reduce the number of unrecorded votes in future elections.

A Brief Examination of the 2000 Presidential Election

We start by examining unrecorded votes in 2895 American counties in the 2000 election. While this sample covers 92 percent of all counties and 95 percent of votes cast for president in the 2000 election, we could not get complete data for every county. Not all states require local election officials to count or report the number of unrecorded votes or the total number of ballots cast in an election. In addition, a few jurisdictions reported erroneous totals (as when the number of presidential votes exceeds the number of ballots cast). Thus, a basic element of any election reform proposal should require local election administrators to count and report the number of overvotes, undervotes, and ballots cast, in addition to the vote totals for each candidate in every election.

Among the counties in our sample, over 1.8 million unrecorded votes were cast in the presidential contest (1.8 percent of ballots cast). In one out of every four counties, more than 3 percent of the ballots failed to record a vote for president. It is important to keep in mind that unrecorded votes can occur because of overvotes (selecting too many candidates) and undervotes (not recording a choice for any candidate). Overvotes are almost certainly the result of voter error (perhaps due to confusion with voting equipment, ballot instructions, or ballot design). In contrast, undervotes may be the result of voter confusion (e.g., people may fail to cast a proper vote if they do not understand the voting procedure) or the voter’s intent to abstain if none of the candidates are appealing. Thus, there are multiple causes of the high number of ballots with unrecorded votes in the United States.

There are six basic methods of voting in the United States: paper ballots, lever machines, Votomatic punch card machines, Davatovel punch card machines, optical scan ballots and direct recording electronic (DRE) machines. DRE and optical scan systems are the newest technologies, seeing increased use as jurisdictions replace older methods (paper ballots, lever machines and punch cards). Optical scan systems can also be divided into those where ballots are counted at a central location (like the county courthouse) or at the voting precinct. One advantage of the precinct-count optical scan systems is that they give voters a chance to discover and correct possible mistakes (overvotes and undervotes). The central-count optical scan systems do not have such an error-correction feature. Finally, a small number of counties (almost entirely in states where elections are administered by townships) use more than one type of voting technology.

Votomatic punch card machines (source of the infamous “hanging chad”) produce the highest rate of unrecorded votes (at least one percent higher than any other voting method).2 After the Votomatic, however, differences between other voting methods in terms of unrecorded votes are not as large. In comparing newer technologies, precinct-based optical scan systems performed better than central-count optical scan systems and electronic machines in 2000. Among the newer voting methods, only the precinct-based optical scan system performed significantly better than lever machines and paper ballots. Thus, if the overall frequency of unrecorded votes is the main concern of election administrators, counties using lever machines, paper ballots, or Datavote punch cards may not need to rush to buy new voting equipment unless they can afford a precinct-count optical scan system.

Unrecorded Votes and Election Reform

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Roughly 2 million voters (almost one in every 50 to cast a ballot) failed to record a choice for president in the 2000 elections. These unrecorded votes are the result of “undervotes” (where voters make no selection) and “overvotes” (where too many selections are recorded). In Florida, more than 175,000 ballots failed to record a vote for president (mostly overvotes).
If confusion is a cause of unrecorded votes, then ballot features that make it easier for voters to complete a ballot may reduce the number of unrecorded votes. One such feature is the straight-party option, which appeared on the presidential ballot in 15 states in the 2000 election. The straight-party option, which typically appears at the top of the ballot with each party’s name and logo, allows people to cast a vote for the same party in every contest on the ballot. Our analysis reveals that the straight-party ballot device reduces the number of unrecorded votes. In states with a straight-party option on the ballot, 1.3 percent of the ballots cast failed to record a vote for president in 2000. By comparison, in states without straight-party voting, 2.0 percent of ballots failed to record a vote for president. Aside from replacing Votomatic machines with any other voting method, the impact of the straight-party option on unrecorded votes appears to be larger than a change in voting equipment. This evidence is consistent with other studies showing that unrecorded votes are less common when the ballot design minimizes voter confusion.

Furthermore, the straight-party option reduces the socio-economic disparity in unrecorded votes. Ballots with unrecorded votes are more common in counties or precincts with large populations of racial and ethnic minorities, low-income residents, less-educated residents or elderly voters. However, this familiar pattern is largely absent in states with straight-party voting (see Table 2).

Some studies indicate that the elevated rate of unrecorded votes associated with confusing ballots and voting technology falls disproportionately on racial and ethnic minorities and the poor. It appears that disadvantaged groups are more confused by certain voting methods. We find that DRE voting machines, lever machines and precinct-based optical scan systems reduce the racial and economic disparity in unrecorded votes. These voting methods have features that help prevent voting mistakes. For example, when programmed properly, electronic machines and lever machines do not allow voters to cast votes for more than one candidate. Other voting methods do not have these same features and thus exacerbate socio-economic differences in unrecorded votes.

### Some Unrecorded Votes are Intentional

The straight-party option is not the only ballot characteristic that influences unrecorded votes. It may be that some vot-
Table 2 Racial and Economic Disparity in Unrecorded Votes

<table>
<thead>
<tr>
<th>Racial composition of county</th>
<th>Unrecorded votes in states with:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No straight-party voting</td>
</tr>
<tr>
<td></td>
<td>Straight-party voting</td>
</tr>
<tr>
<td>Less than 10% black</td>
<td>1.50%</td>
</tr>
<tr>
<td></td>
<td>1.40%</td>
</tr>
<tr>
<td>Between 10% and 30% black</td>
<td>2.30%</td>
</tr>
<tr>
<td></td>
<td>1.10%</td>
</tr>
<tr>
<td>Over 30% black</td>
<td>3.70%</td>
</tr>
<tr>
<td></td>
<td>1.30%</td>
</tr>
<tr>
<td>Median income of county</td>
<td>No straight-party voting</td>
</tr>
<tr>
<td></td>
<td>Straight-party voting</td>
</tr>
<tr>
<td>Less than $25,000</td>
<td>4.40%</td>
</tr>
<tr>
<td></td>
<td>2.00%</td>
</tr>
<tr>
<td>Between $25,000 and $32,500</td>
<td>2.60%</td>
</tr>
<tr>
<td></td>
<td>1.50%</td>
</tr>
<tr>
<td>Between $32,500 and $40,000</td>
<td>2.30%</td>
</tr>
<tr>
<td></td>
<td>1.50%</td>
</tr>
<tr>
<td>Over $40,000</td>
<td>1.30%</td>
</tr>
<tr>
<td></td>
<td>1.10%</td>
</tr>
</tbody>
</table>

What Happened in Florida?

The 2000 presidential election in Florida produced a “perfect storm” in terms of unrecorded votes. Florida ranks above the national average in its population of low-income residents, non-white residents, and elderly residents, all factors associated with higher levels of unrecorded votes. At the same time, Florida does not have a straight-party option on the ballot and the state only counts write-in votes for declared candidates. Furthermore, the largest counties in Florida used Votomatic punch cards in the 2000 election. To top it all off, 10 presidential candidates qualified for the Florida ballot in 2000, prompting several counties to list presidential candidates in multiple columns or pages, creating further confusion for some voters. The combination of all of these forces produced over 175,000 unrecorded votes for president (roughly 2.9 percent of ballots cast in Florida), one of the highest rates in the country.

We examined a database of unrecorded votes in the 2000 presidential election (including overvotes and undervotes) from each Florida voting precinct (gathered by a consortium of newspapers and provided by USA Today). Roughly 65 percent of the unrecorded votes for president in Florida were overvotes, a higher share of overvotes than in other states that reported such data. This suggests that voter confusion was a major source of unrecorded votes in the Florida election.

While punch card ballots contributed to the large number of unrecorded votes in Florida, ballot design was the most critical source of unrecorded votes in the state. Because of a change in state law that eased ballot access requirements for minor parties, ten presidential candidates qualified for the ballot in Florida (a high number compared to other states). Nineteen counties in Florida listed the presidential candidates in more than one column.

Listing presidential candidates in two columns had important consequences. In counties where candidates were listed in one column, 2.1 percent of the ballots contained unrecorded votes for president. In counties where candidates were listed in more than one column, unrecorded votes for president jumped to 7.6 percent of ballots cast. Some voters mistakenly thought that each new column represented a new contest, and they overvoted by selecting a candidate from each column. Overvotes were much more common in counties with the confusing two-column ballot design (5.9 percent of ballots cast as compared to 1.2 percent where candidates were listed in one column).

As in the national data, we also find an interaction between ballot design and race and income. In Florida counties with the confusing presidential ballot design, high rates of overvotes and unrecorded votes were concentrated in precincts with large black or low-income populations. Indicates, in counties that adopted the confusing ballot design, well over one of every 10 voters in heavily poor or black precincts mistakenly voted for more than one presidential candidate. In contrast, in counties that listed presidential candidates in a single column, overvotes remained below 4 percent even in precincts with the largest populations of poor or black residents.

These results raise concerns about unequal treatment and representation of voters in American elections, especially in light of the “equal protection” rationale used by the Supreme Court to decide the 2000 presidential election in the *Bush v. Gore* case. Changes in ballot features and the replacement of Votomatic punch cards will help reduce the disparate impact of unrecorded votes in future elections. In addition, improved poll worker training and voter education efforts (especially in areas with concentrated low-income and minority populations) are worth pursuing.

Conclusion

Ballot design and voting methods influence the frequency as well as the racial
and economic distribution of unrecorded votes. While voters probably intend some unrecorded votes, it is clear that many unrecorded votes are the product of confusion and mistakes by voters.

In the wake of the 2000 elections, many counties are considering new voting technology, and there is intense competition between manufacturers of electronic voting machines and optical scan systems to replace older voting methods. In some quarters, optical scan voting methods are touted as the best available equipment in terms of minimizing the number of unrecorded votes. This recommendation may need to be qualified, particularly since the central-count optical scan systems appear to perform no better than any alternatives to punch cards. If one is interested in reducing the disproportionate racial and economic impact of unrecorded votes, our evidence suggests that precinct-count optical scan systems and electronic voting machines perform better than central-count optical scan methods.

Furthermore, in the march to election reform it is important to look beyond voting technology. Switching to a new voting technology can be very costly, while relatively inexpensive changes in ballot design may have a bigger effect in reducing the number of unrecorded votes in future elections. Adding ballot lines (such as the straight-party and write-in options) that help voters complete an error-free ballot and avoiding designs that create confusion (like listing candidates for the same office in multiple columns or pages) may go a long way toward minimizing the number of unrecorded votes, at least in high-profile contests that appear near the top of the ballot.

Endnotes
1To read many of the election reform proposals, see the web site maintained by the Election Reform Information Project at http://www.electionline.org/news.jsp?is=reports.
3These differences in rates of unrecorded votes remain statistically significant in a multivariate analysis that controls for voting technology and several demographic and election administration factors. See Kimball, Owens, and McAndrew, “Who’s Afraid of an Undervote?”
7We downloaded the Florida precinct data November 7, 2001, from http://www.usatoday.com/news/politics/nov01/ballots-usat.htm. The precinct figures compiled by the newspaper consortium did not include data for Glades County. There also was a disparity between official election results and the newspaper data for Martin County (the newspaper data indicated no unrecorded votes in the county). Thus, Glades and Martin counties are excluded from our analysis.
8In a multivariate analysis of unrecorded votes in Florida that controlled for a host of demographic and election administration factors, the 2-column ballot design was the biggest source of unrecorded votes. Results are available from the authors. Also see Dennis Cauchon, “Errors Mostly Tied to Ballots, not Machines,” USA Today (November 7, 2001), p. 6A.

Bios
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Wisconsin’s “Eye on Lobbying” combines new technologies with the spirit and principles of Wisconsin’s progressive lobbying law to shine a bright light on efforts to influence the development of public policy, and it is winning praise and support from legislators, lobbyists, editorial writers and reporters.

“Eye on Lobbying” permits anyone with access to the Internet to learn the legislative agenda of every organization that employs a lobbyist and, for any legislative proposal, who is trying to influence it. This is possible because now every business and organization that tries to influence a bill identifies its interest in a bill when it starts to lobby, and that information about who is lobbying on what is updated every business day on the Internet.

The effects are many, concrete, dramatic and significant. As the first step in undertaking a program audit of a state agency, the state auditor consults “Eye on Lobbying” to identify the organizations with special interest in the agency’s actions. When preparing the fiscal analysis required of every bill and budget provision, analysts turn to “Eye on Lobbying” to identify affected groups that can explain the bill’s financial implications. As a bill is passed, the governor, before deciding whether to sign the bill, may consult “Eye on Lobbying” to identify which interests are affected and how. “Eye on Lobbying” has become so important to decision-makers that the Wisconsin legislature has linked its internal computer system directly to the “Eye on Lobbying” web page so that as elected representatives on the floor of the legislative chamber discuss and vote on a specific bill they have displayed before them the names of the organizations trying to influence it.

How it Works
Prior to or within two weeks after a lobbyist's first communication with a legislator, legislative staff or agency official about a bill, administrative rule, budget item, or subject of potential legislative activity, an organization retaining a lobbyist identifies its interest in the bill or rule to the Ethics Board. The organization reports the information by keying it into a form available on the Ethics Board’s web site. Multiple times every business day the Board updates its web site, http://ethics.state.wi.us, to display the information that organizations have reported over the course of the day.

“Eye on Lobbying” can be searched:
• By bill or rule, to determine the organizations trying to affect it as well as its text, its status, and its history.
• By organization represented by a lobbyist, to learn the bills and rules it is trying to influence.
• By keyword of lobbying interest, to identify the businesses and organizations lobbying on a topic.
• By key word or phrase in a bill, to identify legislation affecting a matter.
• By subject in budget bill to learn which groups are trying to affect an agency’s budget or operation.

Not only for Legislators
Businesses and organizations use “Eye on Lobbying” for knowledge of the legislative proposals that competitors and kindred interests are trying to affect so that the organizations can decide how or whether to offer support or countervailing arguments. And an organization can readily spot and address a conflict arising from its lobbyist's retention by another organization with a different and antagonistic interest in a bill.

Reporters, editorial writers, and commentators have an on-line display of all the organizations trying to affect each bill and rule along with the name and telephone number and e-mail address for each organization's spokesperson.

Government agencies receive daily notice of the interests trying to modify agencies' programs and budgets and notice of the interests trying to promote, stall or modify administrative rules agencies have proposed.

The public has direct access to information about the many voices participating in and trying to affect the legislative process.

Anyone Can Do It
“Eye on Lobbying” is eminently replicable. Although now one of a kind, it possesses potential to become the norm. This program does not require: significant cost, unusual or complicated programming, computer hardware or software other than those commonly found in most offices, or additional employees (if a jurisdiction already has even a small office with lobbying responsibilities).

The Wisconsin Ethics Board inaugurated its initial version of “Eye on Lobbying” for about $20,000 using readily available off-the-shelf software, and has found it can administer the program without significant increase of costs.

The implementing legislation could not have been simpler. All that was needed

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for the program's start was legislation requiring an organization that employs a lobbyist to identify to the Ethics Board the number of any bill about which the organization's lobbyist communicated with a legislator or legislative employee. The Ethics Board, without requirement or prompting was eager to post the data to a web site as the Board received it.

The Wisconsin experience is instructive because it demonstrates how quickly and completely the affected parties coalesced to promote the innovation – even in spite of initial misgivings. After initial resistance “Eye on Lobbying” was endorsed by the Association of Wisconsin Lobbyists and by Common Cause in Wisconsin, has the enthusiastic support of every interest it has touched, and was approved by the unanimous vote of the Republican Assembly and Democratic Senate.

**Enforcement and Compliance**

Compliance has been high. And why shouldn’t it be? First, this web site, much visited by legislators, is a lobbyist’s dream. It is an opportunity for an organization to express its support or opposition to a bill or to recommend an amendment. Moreover, the legislator sees the organization’s position when that bill has the legislator’s attention and is seeking information about it, perhaps to make a decision affecting its scheduling or passage. Second, noncompliance carries not only a legal penalty, but perhaps even more significantly, the risk of being discredited and shunned by his or her colleagues in the lobbying corps if the lobbyist is discovered to be engaged in stealth lobbying.

**Who Uses “Eye on Lobbying”?**

Traffic to the Ethics Board’s web site has surpassed expectations. However measured — average number of visits each day: 375; unique visitors per month: 4,500; average number of pages viewed each day: 8,000; or hits per month: 425,000 — use of “Eye on Lobbying” has been impressive.

**Legislature’s Acceptance and Support**

So enthusiastic has been the Wisconsin legislature’s acceptance and support of “Eye on Lobbying” that the legislature, for the benefit of its members, has linked the “Eye on Lobbying” web page directly to the legislature’s own home page. Moreover, the Assembly has linked the Ethics Board’s lobbying information to the Assembly’s in-session page that Representatives use in the legislative chamber to follow a day’s proceedings.

Further evidence of the legislature’s enthusiasm arrived during the first legislative session of the program’s operations. Initially, lobbyists were obliged to identify only proposed rules and bills that had been introduced and assigned a number. Soon, however, legislators were asking for information about the nature of all those meetings and hallway conversations, not about bills already before the legislature, but about bills that might be offered and about items that might be included in the budget bill by amendment. Even before the legislature had completed its first session with “Eye on Lobbying,” the legislature had refined the initial legislation to say that when a lobbyist communicates with a legislator or legislative employee about a legislative proposal that has not yet been assigned a number, the lobbyist must describe the topic of the lobbying communication with reasonable specificity, sufficient to identify the lobbying communication’s subject matter.

By the time that legislators arrived at the capitol to be sworn into office for the following term, lobbyists had already identified to the Ethics Board and had posted on the “Eye on Lobbying” web site nearly 1000 proposals for legislation. “Eye on Lobbying” revealed the extent and nature of lobbying that went on when it appeared to many that the legislature was not in session. More importantly, it had permitted legislators, opinion leaders and the 650 organizations employing lobbyists to know the legislative agendas of various lobbying interests and to participate in the shaping of legislation even before the first bill of the session had been introduced.

**What’s Next?**

The Ethics Board is now offering to anyone interested in the legislative agenda the ability to receive notification by e-mail whenever new lobbying activity on a topic or bill of special interest is reported to the Ethics Board. For example, a legislator might receive an e-mail alerting him whenever an organization registers its intention to affect a bill that the legislator has authored. A lobbyist tracking a bill will receive an e-mail whenever an organization changes its position or updates its comment on the proposal. The e-mail will identify the new or changed information. A transportation company might receive a notice whenever a bill is introduced referring to “highway”, “gasoline tax”, “truck” or other keyword that the organization selects.

Many states register lobbyists and collect information about how much a business or organization spends to influence legislators. Wisconsin does that too; but the Wisconsin Ethics Board has overthrown the traditional system of collecting information about how much money organizations spent to lobby last month or last year and has rededicated its efforts to disseminating information about the issues and efforts in the legislature today, next week and next month.

The American Society for Public Administration, the Council on Governmental Ethics Laws, the International City/County Management Association and The Council of State Governments conferred the 2002 Public Integrity Award on the Wisconsin Ethics Board for its conceiving and implementing this innovative program.

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**Bio**

Roth Judd has been an observer of ethics boards and commissions since 1974 when he was appointed director of Wisconsin’s nonpartisan Ethics Board. He is among the founders of the Council on Governmental Ethics Laws, an association of ethics boards and commissions of the states, provinces and cities of North America. (608) 266-8123. ethics@ethics.state.wi.us.
The questions are endless, the source is singular

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