

Right Turn

Election success gave Republicans the momentum to push key conservative issues in many statehouses.

BY LOU CANNON

In the complex history of U.S. federalism, states often have played a national leadership role when divided government prevails in Washington and one party holds a commanding majority in the statehouses.

Many transformational measures of Franklin D. Roosevelt's New Deal—unemployment insurance, public works programs, deposit insurance, even Social Security—were modeled after successful programs tried out in states where Democrats ruled the roost during the early years of the Great Depression when Herbert Hoover was president.

In the 1970s, an anti-tax revolt in the states triggered by a California ballot measure foreshadowed President Ronald Reagan's successful attempt to reduce federal income tax rates. In the 1990s, Wisconsin's welfare reform paved the way for the landmark federal bill passed by a Republican Congress and signed into law by President Bill Clinton in 1996.

States now are forging new and mainly conservative agendas on myriad issues in the wake of the 2010 elections, in which the Republicans gained 63 seats and took over the U.S. House of Representatives and also won more than 740 state legislative seats. Going into the election, the GOP held a majority in both legislative houses in 14 states. Afterward, that number grew to 26. Democrats now control 15 legislatures, and eight states are split. Unicameral Nebraska is nominally non-partisan. Republicans also picked up six more governorships, for a total of 29.

ACTION IN THE STATES

The GOP victories in the states have produced more results than the takeover of the U.S. House. Republican-led legislatures and gover-

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nors have made significant changes on pension reform, collective bargaining, voter identification, abortion, immigration and gun control, among others. Many of the new laws reflect Republican values, while others are bipartisan responses to economic realities.

The 2010 election yielded immediate dividends for Republicans in Wisconsin, where the GOP won control of both the Legislature and the governorship. New Governor Scott Walker, seeking to balance the budget and make a political splash, proposed to take away nearly all collective bargaining rights from the state's public workers.

Collective bargaining for public employees has not always been a partisan issue. FDR questioned whether public workers should be unionized, while Reagan, as governor of California, in 1968, signed a bill permitting such bargaining for municipal employees.

Public-employee unions were at the time a relatively minor component of a labor movement dominated by private-sector unions. In recent decades, however, as the membership of these traditional unions declined, the Service Employees International Union and other representatives of public employees have become major players in the labor movement and a leading source of contributions and manpower for Democratic candidates.

Republicans in turn have become increasingly alienated from these unions and critical of collective bargaining in the public sector. So it was no surprise that this year, the Wisconsin Legislature greeted Governor Walker's proposal along party lines.

Soon after Wisconsin, amid angry protests, passed its bill—since upheld by a 4-3 vote of the Wisconsin Supreme Court—Ohio passed an even stricter ban on collective bargaining that includes police officers and firefighters, which the Wisconsin bill does not. Indiana then extended an existing ban on collective bargaining to teachers. As of mid-June, 49 bills had



been enacted in 23 states and Puerto Rico that included some form of restriction on collective bargaining in the 2011 session.

PENSION PROBLEMS

Pension reform is often coupled with collective bargaining, but is “much less partisan driven,” says Ron Snell, a pension expert with the National Conference of State Legislatures.

There is widespread recognition among lawmakers of both parties that an enormous gulf exists between the promises states have made to public employees on retirement and health care and the money set aside to pay for them. There is a \$1.26 trillion gap between the promises and the set-aside funds, according to a report by the Pew Center on the States. This is a 26 percent increase in fiscal year 2009 alone.

The Pew report—“The Widening Gap: The



Great Recession's Impact on State Pension and Retiree Health Costs"—says pension funding shortfalls accounted for \$660 billion of this gap, and unfunded health care costs for the remaining \$607 billion. The gap, especially on pensions, can't be closed quickly because of legal requirements in many states that guarantee workers the full benefits they were promised at the time of retirement. States, however, have moved to fund future liabilities by increasing employee contributions or to reduce them by extending the retirement age.

Twenty-four states have passed some form of pension legislation this year; 21 did so last year. Ten other states are considering it. The 24 include states with Democratic-controlled legislatures such as Delaware, Hawaii, Maryland and New Mexico, as well as Republican-controlled Arizona, Florida, Kansas, North

Dakota and Wisconsin.

In Colorado, where control of the legislature is divided, the pension-reform bill was authored by a Democratic senator. The legislation increased pension contributions by state workers, excluding public-safety employees, from 8 percent to 10 percent. Delaware, meanwhile, extended the retirement age from 60 to 62, and Florida from 62 to 65. The Sunshine State also raised the retirement age from 55 to 60 for "special risk" employees, mostly police officers and firefighters.

CLASH OVER VOTER ID

In contrast to the more bipartisan attitude toward pension reform, party lines have been hardening on voter identification laws.

In general, Republicans see fraud prevention as the driving force behind voter ID laws. Democrats, on the other hand, see the laws as

an attempt to restrict access and depress voting turnout.

Earlier this year, Kansas and Wisconsin passed new photo ID requirements for voters. Alabama, South Carolina, Tennessee and Texas strengthened existing requirements to specify that IDs must include a photo. This brings the total number of states requiring ID at the polls to 29, 14 of which require a photo.

A survey by the Brennan Center for Justice at New York University School of Law found several demographic groups that tend to vote Democratic—African Americans, young people and poor people—were less likely than the general population to have a photo identification. The contentions of both sides are unproven: turnout has not declined in states with photo-ID laws, and there have been few prosecutions of voter fraud in any state.

“Neither side has been able to assemble much evidence to back up its contentions,” says Jennie Bowser, an elections expert with NCSL.

IMMIGRATION AND THE COURTS

Among the many issues considered by state legislatures this year, immigration is the most emotional and the one on which the least progress has been made. That’s in part because immigration issues cut across party and ideological lines. It’s also because states are awaiting a Supreme Court ruling on the 2010 Arizona law—SB 1070—authorizing local police to check the immigration status of people they detain.

The Obama administration has challenged the legality of this measure, contending that the federal government has preempted the issue. The U.S. Court of Appeals for the 9th Circuit blocked enforcement of SB 1070. Copycat measures were passed in five states but federal judges blocked them from taking effect in Georgia, Indiana and Utah. In the other two states—Alabama and South Carolina—the new laws also face legal challenges. The provision in Utah is part of a comprehensive package of immigration laws approved by the Legislature that addresses employment, identification, human trafficking and law enforcement. The bill also established a temporary guest worker program and seeks federal waivers to implement it.

The courts have yet to speak on the Utah approach, but on May 26, the U.S. Supreme Court handed down an important decision on another Arizona law, dating from 2007, that penalizes businesses that hire illegal immigrants. This measure—the Legal Arizona Workers Act—requires businesses to confirm their employees’ legal status with the federal E-Verify database and allows the state to suspend the licenses of firms upon a second offense. Eight states have passed similar measures, as noted in the 5-3 decision written by Chief Justice John Roberts upholding the law.

As with collective bargaining, penalizing employers is another issue on which ideological battle lines have shifted over time. Traditionally, liberals favored such penalties, contending employers often escaped punishment while illegals caught working for them were deported. But three of the high court’s four liberal justices dissented from the Roberts decision on the Legal Arizona Workers Act.

Liberals and business interests alike contend that the E-Verify database has too high an error rate.

Overall on immigration, however, the ideo-

logical and partisan lines in the states have been more blurred than the high court division on the Arizona Legal Workers Act would suggest. State lawmakers have been frustrated by the lack of a comprehensive federal solution. Bipartisan attempts to produce a comprehensive bill addressing border security, guest workers and amnesty for illegals were attempted in 2005 and 2007, supported by the late Senator Edward Kennedy and President George W. Bush. They were rejected in Congress by a conservative coalition that included members of both parties.

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During his campaign for the presidency, Barack Obama promised immigration reform, but he has yet to advance legislation to accomplish it.

TACKLING SOCIAL ISSUES

The Republican ascendancy this year also spilled over into social issues.

Conservatives have long sought to limit abortions, and their efforts bore fruit this year after the GOP gains in the 2010 election. Indiana, Kansas and North Carolina cut off funding to Planned Parenthood and other clinics that provide abortion services, and a measure to accomplish this is pending in Texas. A federal judge has put the Indiana law on hold. Alabama, Idaho, Indiana, Kansas and Oklahoma also banned abortions after the 20th week of pregnancy. Nebraska passed the first such limit in 2010.

Surprising to some, however, was that conservative Republican legislative majorities led the way this year on prison sentencing reform. Legislation to send nonviolent drug offenders to treatment instead of prison passed the Kentucky Senate unanimously early in the year, pushed by Senate President David Williams, who has since become the Republican nominee for governor. Georgia, Oklahoma, South Carolina and Texas, all with Republican-controlled legislatures and GOP governors, also have taken various steps toward sentencing reform. So has Connecticut, where Democrats control both legislative chambers and the governorship. Legislation passed in the Nutmeg State will reduce sentences for inmates who complete the equivalent of high school degrees and accept counseling.

Although penologists for many years have questioned the morality of long prison terms as well as their effectiveness, the principal motivation for the latest surge of sentencing reform has been fiscal. During the past two decades corrections costs have risen more than any state expense except Medicaid and now account on average for about 7.2 percent of state budgets. With education and health care already taking hits as states struggle to balance budgets in fiscal 2012 without the federal stimulus provided the past three years by the American Recovery and Reinvestment Act, corrections became a logical target for budget balancers.

TAX STRUGGLE

On the whole, Republican legislators, like their counterparts in Congress, have resisted tax increases as a budget fix. The only two states that increased broad-based taxes to close budget gaps—Connecticut and Illinois—have Democratic governors and Democratic legislative majorities. Both states raised sales, income and corporate taxes, and Connecticut also boosted taxes on cigarettes. (Illinois’ increase came on the eve of the new session before newly elected GOP lawmakers joined the legislature.)

Two other states where Democrats rule the roost also partially relied on new tax revenues to balance their budgets. Maryland raised alcohol taxes. Hawaii, hoping to generate more than \$600 million in new revenue over two years, temporarily suspended general excise tax exemptions on various business activities.

Republican-controlled states have also found creative ways to raise new revenue. One method, used this year by Indiana and other states, imposed assessments on hospitals to defray increased Medicaid costs. These measures had bipartisan support.

The fault line on broad-based tax increases can be seen most clearly in states where there is divided government. The Republican-controlled General Assembly in North Carolina rejected the Democratic governor’s call to extend a penny increase in the sales tax.

The Democratic-controlled Legislature in Nevada proposed tax extensions and increases that were blocked by the Republican governor. Eventually, the Legislature and the governor compromised and extended some temporary taxes on payrolls, sales and car registrations.

The Republican-controlled Legislature in Minnesota has so far resisted the Democratic governor’s call for new taxes. In California, where a two-thirds majority is needed for a tax

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increase, the Republican minority blocked Democratic Governor Jerry Brown's efforts to extend surcharges in income and sales taxes and vehicle license fees. The Legislature, however, did pass a budget along party lines without the extensions.

Some Democratic governors, however, share the voters' skittishness about the wisdom of raising taxes during an economic downturn. Andrew Cuomo of New York, for instance, ignored calls from his party's liberal wing to extend a surcharge on high-income taxpayers and instead negotiated with hospital workers and health-care interests to accept spending caps and \$2.8 billion of cuts in Medicaid. His \$132.5 billion budget wiped out a \$10 billion deficit and won prompt approval from a Legislature in which Democrats control the Assembly and Republicans the Senate.

The common budgetary ground reached in New York, the hospital assessments in Indiana, and the deferral of excise-tax exemptions in Hawaii show states continue to seek practical solutions.

CONFLICT AND COMPROMISE

Political compromise is more commonplace in the states than in Washington because most states, unlike the federal government, are required to balance their budgets.

Beyond the necessary budget compromises, however, partisanship ruled the day on the touchstone issues of collective bargaining and

voter identification. Even if the Democrats fare better at the polls in 2012 than they did last year, the new laws on these issues may not be easily reversed. Once laws are on the books it can be difficult to get them off, as House Republicans learned when they tried to repeal federal health care reform.

Many of the taxation limits that states adopted in the 1970s remain in force as do three-strikes laws imposing long sentences on repeat criminal offenders that were adopted by a score of states in the 1990s during a time of heightened public safety concerns. Critics of three strikes says these laws led to prison overcrowding and increased corrections costs. These costs, in turn, produced this year's spurt of sentence-reduction legislation.

In our federal system, states have been initiating changes for good or ill since the early days of the republic. The most notorious changes occurred after the post-Civil War Reconstruction period when racial segregation was re-established throughout the South—and in many places north of the Mason-Dixon line as well.

The most progressive changes on issues such as child labor laws and work safety occurred in an era of social change just before World War I and again in the early years of the Great Depression from 1930 to 1932 when Democrats held many statehouses while the White House was still in Republican hands. In the first period, states such as New Jersey, when Woodrow Wil-

son was governor in 1911, initiated regulatory and ethics reform and conservation measures. In the second period, in 1931-32, New York State insured bank deposits and launched public works programs two years before President Franklin D. Roosevelt emulated them. In 1932, when the Progressive Philip La Follette was governor, Wisconsin passed the first unemployment insurance law, setting what became a national pattern.

What do the legislative changes of 2011 portend for the politics of 2012?

It is unlikely that any of them will shape the presidential election campaign in which the economy will almost certainly will be the key issue. But on the margins, in a close election, what the states did in 2011 could make a difference in 2012. For instance, tougher voter identification laws may discourage marginal voters, a drawback to the Democrats. On the other hand the bans on collective bargaining in Ohio and Wisconsin guarantee that public-sector unions, to whom this is a life-or-death issue, will become heavily involved in an effort to help the Democrats regain legislative majorities in these states.

Even if they do not succeed, such well-financed union activity in battleground states could affect the outcomes of the presidential and congressional elections. Think of that first unemployment insurance law in Wisconsin in 1932 and how it gathered momentum. Much of what happens in national politics begins as a small stone rolling down a hill. By the time it's noticed the stone has become part of an avalanche.

Many such small stones were set in motion by this year's legislative sessions. We don't yet know how far they will fall or what they'll gather in their path.

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