



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, and the policies, process and politics that shape them.

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## **Election 2020: State Legislative Races and Statewide Ballot Measures | Oct. 19, 2020 | OAS Episode 110**

Ed: Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. This podcast is all about legislatures: the people in them, the policies, process and politics that shape them. I’m your host, Ed Smith.

*“We celebrate democracy in this country and, of course, the fundamental element of that is that the citizens are the sovereign.”*

That was Tim Storey, the Executive Director of NCSL, and one of our guests on the podcast. We’re pleased to have Storey as our first guest because our focus is the November 3<sup>rd</sup> election and how things are shaping up in state legislative races.

Storey has been observing these elections for decades and shares his thoughts on the prospects for a blue wave, how many legislative chambers are likely to change control, and if we’re likely to see a change in overall state control.

Our second guest is Mandy Zoch, an NCSL expert on statewide ballot measures. Zoch explains why there are fewer citizen initiatives on ballots around the nation this year, and some of the more interesting measures voters will decide.

Let’s start with Tim Storey. Tim, welcome back to the podcast.

Tim: Ed, I really appreciate you having me on again. I always enjoy it. Thank you.

*Time Marker (TM): 01:24*

Ed: So, Tim, we know all elections are important, but I’ve heard you say that this election is more important than others. Why is that?

Tim: Well, the obvious reason is, of course, the big R word: redistricting. Once every decade the legislatures primarily are responsible for redrawing legislative lines for not only their own legislative districts, but for the U.S. House congressional districts. And so, the election that sets

the party control of that process takes on added significance among the five election cycles in any given decade.

But it's a lot more than just redistricting. The policy challenges that lie ahead for state lawmakers are unlike anything most of us have seen in our lifetimes. You've got the pandemic that continues to plague the United States and its effects on the economy. And so, state leaders, state legislators who get sworn in mostly in January to start those new sessions, have some really big issues to deal with.

You're also going to perhaps have a new administration in Washington. As we sit now, we're still four weeks roughly from the election on November the 3<sup>rd</sup>. What I don't see happening in Washington, regardless of whether President Trump wins reelection or Joe Biden becomes the new President, what I don't see is a huge break in the gridlock of Washington.

I think there's still a ways to go, whether it's one-party control or not, for Washington to become a big innovator dealing with America's domestic problems, while at the same time states have been doing that.

Since the 116<sup>th</sup> Congress was sworn in in January of 2019, the federal government, the President and the Congress, have only come together to enact 163 bills, and of those, just over 60 of them were to rename federal buildings or to issue commemorative coins. They also have to pass a law to appoint somebody to the Smithsonian board.

So, if you take those out of the equation, they've enacted roughly 100 pieces of legislation, and some of those are huge – big federal spending bills that are over 1,000 pages long, the big trade agreements; a big chunk of those bills have to do with veterans' issues, veterans affairs issues.

At the same time that the federal government has not really been moving forward on policy change, legislatures, at that same time when the federal government faced about 100 bills, legislatures, not including resolutions, passed over 15,000 bills and enacted those with their governors. And those dealt with everything from Medicaid eligibility and health issues and COVID.

The U.S. government passed about eight bills to deal with COVID; legislatures passed hundreds and hundreds to deal with specific issues around COVID. Police reform, all kinds of things that legislatures are taking the lead on. And I don't think that's going to change.

So, the state elections, they matter so much because that's where America's problems are getting solved.

Ed: Well, as a former news guy, I've always marveled at the amount of attention we pay to the people who do very little and the amount of attention we pay to the people who are doing a great deal.

*TM: 04:33*

Ed: You and I have talked about elections for many years and I know from that that you've been watching elections for decades. And when you think about the years where a lot has changed as

a result of the election, what comes to mind, and where do you think this election is going to fit in?

Tim: We know that there is always change in an election cycle, and I use the words election cycle because we sort of pull in the 2019 elections, which actually had one major change in the State of Virginia where Democrats won both the House and the Senate. So, those two chambers switched party control.

In any two-year election cycle, 12 chambers on average will switch from one party to the other, and that's sort of the biggest manifestation of change, because obviously when there's a different party driving the train, they're going to take a much different direction on how they address problems and policies that they enact.

So, we are used to anywhere from eight to 14 chambers switching, the average being 12. But that's actually gone down in recent years and when I look at the landscape of where the battleground chambers are, the very few number of governors' races... there's really only one that is kind of a tossup at this point, this could be a low change election in terms of the overall partisan realignment.

But all of that is contingent on these next four weeks. Election Day is still four weeks away from the time we're taping this, on November the 3<sup>rd</sup>, and that is an eternity in campaign season. But this game is now getting well into the fourth quarter and certainly Joe Biden appears to have a strong lead at this point, which is not to say that Trump is out of it. The game is not over until the buzzer goes off at the end.

But if that holds and if Democrats, it really does turn into a wave on their side, because they're the ones on offense; everything sort of indicates that. I've spoken with many legislative leaders and people involved with legislative elections and that's what I'm hearing from all of them. If that happens, then it's feasible you could have a big shift towards the Democratic side of the equation.

But it's still too early to tell, and if that doesn't materialize, it might be sort of a medium-change election.

*TM: 06:56*

Ed: So, I think right now we stand with 59 chambers held by the GOP, 39 by the Democrats, and Nebraska, of course, nonpartisan. So, there may not be that many chambers, but if you were to look in your crystal ball and bet which ones are most likely to switch, what would your bet be?

Tim: There are only about 20 that you can say are reasonably in the zone of potential change because of the majorities, and maybe only half of the Senates are up in many of the states. There are only elections, by the way, in 44 states. Alabama and Maryland don't have legislative elections this year because they have four-year terms, and they were all elected for both the House and the Senate in those two states two years ago, so we skip Alabama and Maryland. And then you've got the four odd-year states.

So, of the 44 states, maybe 20 chambers that are reasonably in play. But when you boil it down, it's perhaps even smaller than that. So, to answer your question: What are the chambers you want to keep the closest eye on? It's both the Arizona Senate and the Arizona House, and it's been a long time since Democrats controlled the Arizona House in particular. So, that's one you want to keep a close eye on, that state in particular. Of course, they have a Republican governor and that will continue.

There are a handful of states in the South: Texas, Florida, North Carolina, where Democrats have not exactly an easy path to taking over a chamber. The Florida Senate, the Texas House, North Carolina Senate, maybe even North Carolina House. But on paper, they have a fighting chance, and they have to sort of run the table in those states. That will be really interesting to see if after Democrats won in Virginia the House and the Senate, if they can make additional gains in the South after essentially being locked out of chamber control in southern legislatures for almost 30 years, 20 years for sure. So, that's a big deal to keep an eye on.

The Minnesota Senate is controlled only by a two-seat margin by the GOP. Democrats would love to take that back. But when you get into the granular on what are the competitive seats, there are some opportunities for Republicans to gain seats in the Minnesota Senate. So, that's by no means a cakewalk for the Democrats.

Now, what's unique about Minnesota is it's the only state in the country where the House and the Senate are controlled by different parties. So, we could see that become unified in terms of Democratic control of the entire legislature if the Democrats could manage to pull off the Minnesota Senate.

And, by the way, Republicans could conceivably have a shot back at the Minnesota House – big longshot, but it's not out of the question.

And then just kind of wrapping up the other states I'd keep an eye on... The Iowa House, six seats separate the majority Republicans from the Democrats, so a pickup of three seats would leave the Iowa House tied. Democrats are running strong there. It's a battleground for the White House.

And that's what's interesting – a lot of these competitive legislative chambers where the Democrats need a handful of seats to take control, they are in sync with the White House battleground states. So that includes North Carolina; that includes Florida, Iowa, Arizona, Minnesota, Michigan, where the House is in play for the Democrats, and to a lesser extent Wisconsin where the Democrats, again, would need to really have a great night to take the Wisconsin Senate.

*TM: 10:24*

Ed: So, if we did see a blue wave, there may be a little more action than not, but probably not the kind of sea change we've seen in some past cycles.

Tim: Yeah. And when you look at the chambers that are in play, it's mostly Democratic opportunities. This is certainly a cycle where the Republicans have to play defense and the Democrats have had record fundraising. And, by the way, Republicans have had good fundraising numbers in some

states, but the amount of money the Democrats have put into state races, particularly legislative races, is unmatched in American history, and that's partly because of a coordinated effort that syncs back up to redistricting, which I talked about at the top of the podcast.

So, it's a Democratic... that's the party this year; they're the ones that see they have the easier hand and are more optimistic.

*TM: 11:21*

Ed: Now the other issue that I know NCSL always watches closely at election time is state control, where the governor as well as the legislative chambers are in one party. Sounds like there's not going to be a lot of movement there because there's just not a lot of movement among gubernatorial seats. Can you fill us in a little on that?

Tim: There are only 11 governor's races this year because of the nature of the cycle. Most of the governors are up in the midterm of the presidential cycle. This is the presidential election, so, only 11 governor's races. Nine of those have incumbents running. According to the people who rate the races, Charlie Cook and Larry Sabato and those folks, only one of those is even considered a tossup, and that's in Montana.

So when you realize there's going to be very little if any change at the governor's side of the equation, then the battle for control of legislative chambers is really the only place where you might see changes in that trifecta: who controls all of the state policymaking apparatus. And then it goes back to well, is this a hug night for Democrats, or do they make limited gains in a number of states?

I think you'll see Republicans maybe lose a couple of states in terms of their overall control right now. They have control of 22 states if you consider that Nebraska's legislature, while nonpartisan, is really Republican oriented. There are 15 states controlled by Democrats and 12 that are divided where neither party can make state policy on its own.

So, I think Democrats might gain in their number; the divided might go up by a state or two; and Republicans might lose a state or two. But it's still going to be a pretty even division in terms of which party can say they're driving the states.

*TM: 13:13*

Ed: Well, Tim, in a year when the election is about as wild as any I've ever seen, one of the big wild cards seems to be absentee voting or voting by mail. How do you think that will play out on election night or in the days afterward?

Tim: We know that more Americans are going to vote by mail or early, which is another mechanism that's not voting in a polling place on Election Day, than ever before in American history. That's driven by a number of things. One, there was a gradual move in that direction by states even before the pandemic and then, of course, with COVID, a lot of people are looking for ways to avoid public places like polling sites.

So, the number of people who will be voting by mail is going to go up dramatically. Some estimates say it could be more than twice its previous high, exceeding maybe even 80 million voters out of roughly 130 or 140 million votes that will be cast. We will see record numbers of people voting by mail.

The elections process: taking the votes, counting the votes, and doing that in a secure way and having various contingencies built in, it's an extremely complicated process. I think sometimes that gets lost. We're talking about maybe 140 million voters and maybe one million or more poll workers or election workers. So, these are millions of people trying to do this.

And so, designing systems that can account for every contingency, either in vote-by-mail or by election, is very complicated. And I think the states have been working on this for a number of years and, in many ways, are prepared for this change. We've also seen, by the way, a number of states that have increased the flexibility of their voting systems because of the pandemic.

So, I actually have a fair amount of confidence that it's going to work. I think these state election officials are beyond reproach; I mean, they really are extraordinary professionals and take their duty to our country and the Constitution and free and fair elections as seriously as one could possible take it.

Again, there are over a million of these people who are running the elections if you take into account poll workers, not to mention all the professionals that do it. Could you have a bad actor here or there? Possibly, yes. But the vast majority of them are going to make sure that this system works.

*TM: 15:46*

Ed: Well, I think you're absolutely right that the complexity of election administration is not well appreciated in this country.

Tim: Well, what people don't quite realize is that we don't have an elections framework or structure in the United States; we have 50; we have 50 different ones. And every state really approaches it differently for good reasons – there are historical reasons why states have the voting systems they have; there are geographic reasons; and rural states, urban states have different approaches.

It varies greatly from state to state. And then in some states, you've got differences among the counties. So, we are very decentralized in how we run elections, unlike any other nation in the world, unlike any other democracy in the world.

*TM: 16:33*

Ed: Well, Tim, I always enjoy discussing elections with you and I always learn a lot. I wonder if you have any parting thoughts for our listeners before we wrap up.

Tim: We celebrate democracy in this country and, of course, the most fundamental element of that is that the citizens are the sovereign, that this is everybody's chance to have a voice. I think

Americans, by and large, take that duty very seriously and appreciate their job and their role as a citizen.

And so, I think it's something we should celebrate. I think American elections are extremely well-run and will be this fall. And I think legislators... I have a lot of faith and confidence in the people I know who work in legislatures. They're up for the challenges that are waiting for them when they come into session early next year.

Ed: Well, Tim, thank you again and stay safe. I'll be right back with Mandy Zoch to discuss statewide ballot measures.

MUSIC

Ed: I'm back with Mandy Zoch to talk about ballot measures. Welcome to the podcast.

Mandy: Thanks, Ed. I'm glad to be here.

*TM: 17:52*

Ed: Well, Mandy, thanks for taking the time to do the podcast. I know one of your responsibilities at NCSL is to track statewide ballot measures. I also understand there are fewer ballot measures than usual this year. Can you tell us what's going on with that?

Mandy: So, voters across the country will see 124 ballot measures this year, and that is down from past election years. I should note that there are two main ways that issues get on the ballot: they're either placed there by legislatures or by citizens. And the number of legislatively referred ballot measures in 2020 is in line with past years.

But the big ballot measure story this year has been the effect of COVID-19 on citizen initiatives. There are only 38 citizen initiatives for this November, and that is significantly down from past years. There were 60 in 2018 and 72 in 2016. So, to put it bluntly, it's been hard for initiative sponsors to really gather the in-person signatures that they need when we're in the middle of a pandemic.

Ed: It would be difficult, I imagine, to go out there face-to-face trying to get people to sign petitions. So, that makes a lot of sense.

*TM: 19:03*

Ed: It seems like every election cycle there's some kind of hot button issues on the ballot. So, what's hot this year?

Mandy: Taxes and revenue – that's a big theme – we have a number of measures that are seeking to increase revenue, but there are just as many, or so it seems, that are trying to limit revenue.

Some of the other themes that are big this year are health, criminal justice and elections, and some of those topics are always big. But some, like elections and health, they seem to be

receiving extra attention this year, mostly because of the pandemic and the presidential election.

*TM: 19:41*

Ed: So, what about cannabis and abortion? I know these have been popular topics on statewide ballots for many years. What's going on this year?

Mandy: Absolutely, those are still ballot measure staples. We have abortion restrictions on the ballot in Colorado and Louisiana, and then both medical and recreational marijuana/cannabis are on the ballot in a handful of states. And actually, South Dakotans will get to vote on both of those this year.

And I'll add that marijuana is really not the only drug on the ballot this year, so, not a staple, but kind of a newcomer is that 2020 is the first year where psilocybin will be the subject of a statewide initiative. A couple of cities have decriminalized the substance using ballot measures.

This year voters in D.C. will get to decide whether they will join those cities in decriminalizing the substance, and then in Oregon, there's a citizen initiative that is seeking to legalize the substance through the ballot. So, if it passes, Oregon would be the first state to legalize psilocybin, which is a pretty big deal.

Ed: That does seem like a pretty big deal. It's surprising that what we used to call magic mushrooms would end up on the ballot and being potentially legal in a state. So, we'll certainly keep track of that and be interested to talk with you about it once the election is over.

*TM: 21:01*

Ed: Now, the citizen initiative process gives voters, at least in some states, a way to make laws without going through the legislature. What do NCSL members think about that?

Mandy: Well, from a legislative perspective, the laws that are created through the initiative process have some drawbacks. It's fair to say that many of our lawmakers just don't like citizen initiatives, and that's largely because the initiatives circumvent the traditional, deliberative process of legislatures.

*TM: 21:35*

Ed: So, of course, legislatures also place measures on the ballot, as you mentioned earlier in this discussion, but why do they do that? Why don't they just pass the law?

Mandy: In all but one of the states, and that outlier is Delaware, changes to the state constitution must go before voters. So, any constitutional changes need to be put on the ballot. And then some states also have requirements that certain bond measures or taxes need to go before voters as well.

*TM: 22:06*

Ed: So, for the most part, it's not because they want citizen input on the topic, but because they're legally required to put it before voters.

Mandy: Right. Although some states do use advisory questions. So, Washington voters will see, I think it's four advisory questions, and those are nonbinding and it's just a way for the legislature to kind of take the temperature of voters on certain issues.

*TM: 22:30*

Ed: Well, I know that ballot measures may not be the most closely watched decision on November 3<sup>rd</sup>, but we certainly think they're important. I'm wondering if there is anything else you'd like to share about that with our listeners.

Mandy: Sure. So, one of the things that I think is very interesting is that there's a small trend of states using the legislatively referred ballot measures to sort of shed the past, or past aspects of a state's identity so to speak.

Rhode Island is considering a name change. The current official name of the state is The State of Rhode Island and Providence Plantations. They have a measure this year that would remove Providence Plantations from the name.

And then one that's been getting much more attention is in Mississippi. The state legislature decided to remove the Confederate battle emblem from the state's flag, and this November the legislature is submitting a new magnolia flag design to voters for approval. So, that trend is very interesting this year.

Ed: Well, Mandy, I think that it will be very interesting to talk with you again after the election and find out how some of these measures turned out. I thank you for your time and expertise on this topic and we'll talk soon. Stay safe.

MUSIC

Ed: And that concludes this edition of our podcast. We encourage you to review and rate our episodes on iTunes, Google Play or Spotify. You may also go to Google Play, iTunes or Spotify to have these episodes downloaded directly to your mobile device when a new episode is ready. For the National Conference of State Legislatures, this is Ed Smith. Thanks for listening and being part of "Our American States."