



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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2020 Election: Big State Legislative Takeaways | Nov. 16, 2020 | OAS Episode 113

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.

“The big takeaway is how little really has changed after all the money, all the effort, all the campaigning.”

That was Tim Storey, the executive director of NCSL and one of my guests on the podcast. Tim has spent decades watching state legislative elections and he shares his take on this year’s vote.

While much of the focus has been, understandably, on the outcome of the presidential race, there were more than 6,000 state legislative races on Election Day. And the most surprising result was how little change there was, even amid a record turnout of voters.

My second guest is Mandy Zoch, an NCSL expert on statewide ballot measures. She walks us through the outcome of scores of measures and highlights some of the more unusual ballot questions that passed.

Let’s start with Tim. Welcome back to the podcast.

Tim: Oh, I’m so happy to be with you, Ed. Thank you.

Time Marker (TM): 01:22

Ed: Tim, thanks for taking the time to join me again here a week after the election. Let’s start with an overall rundown of what happened in state legislative races.

Tim: Well, this was, of course, another big election, around 6,000 legislative seats up for grab, but at the end of the day, it is the lowest change election at the state level that we have had in

decades. In some ways, going back for 120 years, it's one of the lowest change election cycles. So, we can talk in a little bit more detail about that.

But the big takeaway is how little really has changed after all the money, all the effort, all the campaigning. It feels a little bit to me like trench warfare, that the parties have their territory, they're dug in, and they fought as hard as they could, they did what they could to knock on doors, and they spent a crazy amount of money. And at the end of the day, very little territory changed hands.

TM: 02:21

Ed: So, a lot of people did expect this would be a big change election, maybe a blue wave. But when we talked a few weeks ago, and I'm going to quote you back to you, you said, quote: "This could be a low change election in terms of the overall partisan realignment." Well, looks like you nailed it.

Why did you think it would turn out that way?

Tim: I'm glad you remember that because I was not in that camp. I was always sort of thinking like wow, clearly the Democrats seem to have the wind at their back. That was what we all went in... that was the expectation before the election that this was an opportunity election for Democrats. But I always looked around and thought maybe it's a handful of chambers where they're in good shape; it wasn't going to be a big sweep.

And even as we got closer and expectations start to kind of run amuck on both sides, I thought this wasn't going to be the case. Even the Republicans had sort of conceded that they were going to lose at least two or three chambers and maybe more.

So, this was a big surprise for everybody. The election outcome did not meet expectations. That's probably the case every two years. We base our expectations on assumptions and our human instincts, which aren't always driven by the facts.

Of course, we relied on the polls, which appear not to be as accurate as maybe we sometimes think they are. Not that far off, but also, when we're talking so close, when the country is so evenly divided, everything is within the margin of error.

Why did it turn out that way? I think analysts will be talking about this for some time to come. One of the things is that Americans probably didn't split their tickets. With the exception of one state, New Hampshire, where two chambers flipped, the only two chamber switches in this election cycle, and New Hampshire voters voted for Democrats for federal offices and Republicans for state offices, which is very interesting.

But aside from that, you don't see a lot of ticket splitting. People seem to really be going with their tribe so to speak, with their partisan affiliation.

TM: 04:25

Ed: Well, anyone who is a fan of democracy has to be happy that this was the largest turnout in terms of sheer numbers of voters in U.S. history. And yet, as you were saying, the results are largely status quo. Why do you think so many people voted?

Tim: Let's also remember that so many people participated in the year of a pandemic, right, so there were some clear challenges and barriers to voting. Some of this was that the states went in and adjusted the apparatus, the mechanics of elections. A number of states pre-mailed ballots so that people could vote by mail and really expanded the opportunities for vote by mail in a number of states, not just Democratic controlled states, but Republican controlled states as well.

So, I think that contributed at some level to it. I think both parties focused very heavily on get-out-the-vote, so that influenced it. And whether you like or dislike President Trump, we all know about him and follow him, and everyone had opinions about Donald Trump, and I think were eager to show up and cast that ballot.

Look, four years ago, Donald Trump won with just maybe 100,000 votes in three states. It would appear that that's going to be very similar with Biden. He's going to have very narrow margins in Wisconsin, Georgia, Pennsylvania and, to a lesser extent, Michigan. It won't be quite as tight as it was four years ago, but it's still going to be very tight. It's very closely divided, and it came down to just a handful of states. So, I think people were motivated by, one, their sentiments about President Trump, both pro and con – people came out to support him; people came out to oppose him. So, that happened.

I think there was a big effort on voter turnout by both sides, and I think voting was easier this time around because of Covid and the pandemic in the sense that you didn't necessarily have to get to the polls. There were more options to vote early, more options to vote by mail.

TM: 06:25

Ed: Well, one of the big issues going into this election cycle, as we talked about before, is redistricting. Given that the GOP held on to their chambers, and actually added a couple, does that mean redistricting will be less of a big deal this time around than it was in 2010?

Tim: No, I would not say less of a big deal or less controversy. It's still a big deal, and that would be the case regardless of who draws the lines, because it leads to a great deal of change. The new lines, whether for legislative seats or for U.S. House seats, will reflect a very dynamic U.S. population over the past ten years. And you're going to see U.S. House seats go from one state to another state. Some states are going to gain representation in the U.S. House; some are going to lose representation in the U.S. House.

So, what you now have is there are 24 states where the legislature has complete authority to draw the state legislative lines as well as the U.S. House lines. A number of states have shifted to commissions. You've got a lot of divided governments in this case. So, there are a number of states where you'll have unified authority to draw the plans, 24 states. Now that's states, not districts.

When you look at it from a district perspective, let's talk about the U.S. House where roughly the Republicans will have the unilateral authority to draw 125 or so U.S. House seats, and Democrats will have about 51 U.S. House seats where they have that kind of authority.

Let's be very clear: neither party can gerrymander the other party into oblivion. This is a flaw that people make. The process is so complicated; the notion of gerrymandering has become more visible to average Americans. But the fact is that even if you have unilateral political authority – you control the House, the Senate and the Governor's mansion – you still have to comply with the Voting Rights Act and with one person, one vote and all kinds of internal rules.

So, for example, in Florida, Republicans control the state House, the state Senate, and the Governor's mansion, and they do draw I think roughly... I can't remember how many U.S. House seats, but let's say 21 or 23, something in that neighborhood; they may be gaining a seat in the U.S. House. But they have a restriction in the State constitution that the maps cannot favor or disfavor one political party.

So, they have a state constitutional limitation on their ability to gerrymander. So, you take Florida out of the equation because of that, because of the rule that's in the Florida constitution.

So, at the end of the day, Republicans can do this for about 125 U.S. House seats, Democrats for about 50. But they've got to get them through the courts. Another thing to keep in mind is that this is nowhere close to the advantage that Republicans had ten years ago when they swamped Democrats in the 2010 election. So, if there's a silver lining for Democrats, it could be worse and it was worse ten years ago.

TM: 09:10

Ed: Beyond redistricting, you pointed out that the new legislatures and returning legislatures face some big challenges, especially around the pandemic and the economy. Will that be everyone's focus when legislatures reconvene early next year?

Tim: Yeah, the legislatures that go into session in January are going to have two big things that will be staring them in the face the day they walk in the door. One is Covid and continued attention to the myriad ways that Covid is affecting Americans' lives, whether it's in the education sector, whether it's in bills around electronic filing and electronic signatures, those kinds of things, and making those more legal in our world where we're not able to do as much on paper and interactive kinds of stuff... privacy issues, which have been amplified during the pandemic.

So, things you don't even realize are related to Covid are Covid-related. And then, of course, there's just the straight up dealing with the healthcare emergency, which by all accounts continues to get worse in many states, if not all states.

And then the second thing is budgets. Many of the states are facing very difficult economic pictures. Not all states. I will say that the pandemic does seem to be hitting some states far harder in terms of the economic impact probably because some states depend so heavily on oil and gas or depend so heavily on tourism. Those sectors have been hit harder in the pandemic and the change in Americans' lifestyle, people not traveling, these kinds of things.

So, a lot of states are going to be having very difficult budget decisions to make. Of course, there are still the prospects of a federal stimulus, an additional federal stimulus that could have a major impact if the government helps states replace some of the lost revenue, something of course that NCSL has advocated for in limited forms.

We're not all out there for a ginormous bailout. We don't even like that word; it's not a bailout. But supporting states with reasonable stimulus to replace some of the lost revenue at a time when the states can't print money, they don't have the ability to borrow the way the federal government does.

So, hopefully, that will happen, and state budgets will start to turn around. If the vaccine and some of these things... we're all optimistic; we don't know what the timeframe is. On top of that, they've got to deal with the mechanics of holding sessions in the Covid world. I wish I had the plexiglass vendor contracts because there will be plexiglass in the state capitols. I assume in almost all 50, you're going to see plexiglass everywhere in capitols. It seems to be the norm.

Certainly, there will be mask wearing, limited access to the public, more transparency through online streaming of sessions and committee hearings, those kinds of things. So, it's going to be challenging to legislate and make laws and policy in that kind of environment.

TM: 12:10

Ed: Let me follow up on that. Do you think we're going to see legislatures postpone their sessions or convene virtually?

Tim: I don't think you're going to see so much postponing. I think you're going to see more of the accommodations to function, and there will be some virtual session states. A number of legislatures are looking at more virtual or hybrid models that lean heavily on virtual gatherings and limited on in-person gatherings.

Now, there are some states where they have determined their constitution will not allow them to meet virtually, so they have to come in and do this in person. They just have to take extraordinary measures. In some cases, they're going to meet in other locations where they can spread out and not be as close together on the floor of the Senate or the floor of the House.

So, I don't think you'll see as much postponement unless, of course, the virus is so completely out of control in January, and that remains to be seen. The trajectory is very bad right now.

So, I think most states, if not all of them frankly, are planning to meet, planning to go into session on their designated dates, but planning to do it in a very different looking manner than anything they've done before. Some of them had experience when this thing hit in March, but many of them had already adjourned, but they have had months to plan, and they've all been anticipating this kind of session. That's what you're going to see.

TM: 13:31

Ed: Tim, thanks as always for taking the time to discuss the election. Is there anything else you'd like to share with listeners before we wrap up?

Tim: Well, a couple of things I've been thinking about... One of them is that the era of the states and the states leading in American problem solving, that's going to continue. It just does not appear that Washington is going to be the land of compromise all of a sudden. I hope it is. I'm somewhat optimistic that maybe with some new people, some new leaders in Washington, you'll start to see them working together to solve problems.

But I am more convinced than ever that the states are going to continue their leadership on solutions and getting after problems, whether it's access to healthcare during Covid and after Covid, police issues, civil rights issues, education issues, infrastructure – I think the states are going to continue to step up on that. The era of the states will continue.

Ed: As always, we'll be interested to see how that dynamic between the states and the federal government plays out. Thanks again, Tim, and stay safe. I'll be right back with Mandy Zoch.

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The 2020 edition of the Mason's Manual of Legislative Procedure, the only parliamentary manual designed specifically for state legislatures, is now available in both print and digital versions. Order yours today at ncls.org/masonsmanual.

Ed: Mandy, welcome back to the podcast.

Mandy: Thanks for having me.

TM: 15:05

Ed: We just talked a few weeks ago about ballot measures. To start, now that the election is over, why don't you give us a general overview of how statewide ballot measures fared on Election Day?

Mandy: So, there were 124 measures on the ballot and voters ultimately passed over two-thirds of them. Now, I should say that there are a couple of measures out there that are still too close to call, so it might go up from there.

Two-thirds of the citizen initiatives passed, and those are the questions that are put on ballots by the voters themselves. And then about 75% of the legislatively referred measures passed, and those tend to pass at higher rates than citizen initiatives, so no real surprise there.

TM: 15:48

Ed: I know fiscal measures are a common topic for ballot measures, especially those referred by the legislature. Was that the case this year, and how did those make out?

Mandy: Yes, so tax and revenue measures were certainly one of the biggest topics this year. What's really interesting to me is that the fiscal measures that voters passed went in both directions. Voters in some states opted to increase taxes and revenues; voters in other states chose to limit them. Maybe that's not particularly revelatory, but it is interesting.

There were a couple of measures on income tax, for example. Voters in Colorado approved an income tax reduction, and then voters in Illinois rejected a legislative referral to change to a graduated income tax. So, both of those choices really kept taxes down for voters.

On the other hand, voters in Arizona approved an income tax increase on individuals making over \$250,000 a year. So, we kind of see it going both directions.

One thing that voters overwhelmingly did support though, in terms of taxes and revenue, fiscal issues, were tax deductions and exemptions for veterans. Three different states passed measures on those topics and voters tended to approve all of them with really large margins. In fact, one measure in Florida actually passed with about 90% of the vote. So, there's a consensus there.

TM: 17:15

Ed: Hard to imagine passing anything with 90% of the vote. How about big surprises – was there anything that surprised you?

Mandy: Well, I'm not sure if this is surprising, but it is notable. Two states made significant changes to their identities this election. Rhode Island voted to change its name. It's still Rhode Island, but "Providence Plantations" will no longer be part of the state's official name.

And then in Mississippi, voters adopted a brand-new flag. The legislature, and I know I talked about this last time, had decided to retire the previous flag because it contained a confederate battle emblem. The new flag features the state flower, the magnolia, and it's already flying in different locations around the state since voters approved that new flag.

In fact, earlier today... I don't know if this is interesting... one of my colleagues sent me a video of the new flag being carried onto the field at a Mississippi State football game. So, it's being embraced already.

Ed: Yes, I've seen a picture of the new flag and it looks great. Certainly, a big change in Mississippi.

TM: 18:20

Ed: Now, I've read at least a few headlines saying cannabis was a big winner. Can you break that down for us?

Mandy: Sure. That has actually been my headline too. I mean, every marijuana measure passed. Two states legalized medical marijuana – those were Mississippi and South Dakota. And then four legalized recreational or adult use marijuana, and those states are Arizona, Montana, New Jersey and South Dakota. South Dakota went especially big, going from no legal marijuana to both medical and recreational at once.

TM: 18:53

Ed: Speaking of recreational drug use, it looks like psilocybin mushrooms and even heroin and cocaine gain legal or at least decriminalized status in a couple of places. Was that a surprise? It sure was a surprise to me.

Mandy: From my perspective, it's big news; I mean, it's historic. I don't know that it's exactly a surprise. I have joked that marijuana is kind of the gateway ballot measure for these other drug-related measures, but they did have a lot of public support heading into the election.

So, in D.C., voters decriminalized entheogenic plants and fungi, so that includes psilocybin or magic mushrooms, and Oregon decriminalized possession of small amounts of drugs, so the heroin and cocaine that you mentioned. And the State of Oregon also legalized psilocybin, and it's the first state in the nation to do so. So, that's the big, historic part.

TM: 19:49

Ed: Certainly, a first. Another first is that this election drew more voters in sheer numbers than any election in U.S. history. Did that have an effect on how ballot measures fared?

Mandy: You know, there's always a drop-off in votes as you go down the ballot. More people vote for the president than they do for state legislators or for ballot measures because they tend to be last.

So, I imagine that this year's turnout meant that ballot measures did get more votes, but it's really hard to say if the turnout affected which measures passed and which didn't.

TM: 18:20

Ed: In our discussion on the podcast before the election, we talked about how the pandemic kept down the number of citizen initiatives for the common-sense reason that it's difficult to collect signatures in the middle of a health crisis.

Do you think that will mean more citizen initiatives in the next cycle in two years, sort of a pent-up demand effect?

Mandy: I think there are two main things at play here. One, due to the pandemic, some initiative sponsors did decide to delay or were forced to delay their efforts and wait to get on the ballot in 2021 or 2022. So, that might mean more measures for voters to decide in the coming years.

But the second part of this is that the pandemic is still happening and the public health concerns and guidelines that prevented much of the in-person signature gathering this year in 2020, those challenges might well carry forward into the next round of signature gathering. So, that might mean fewer initiatives again in 2021 and maybe down the road in 2022. Every state kind of has their own timeline.

We tend to see fewer measures in the off year, so I wouldn't expect very many in 2021 to begin with.

TM: 21:34

Ed: Mandy, before we wrap up, is there anything else you'd like to share with our listeners?

Mandy: I will just say that the passed measures give us some sense of the changes in policies that voters want, and that can also be indicative of what we will see in the next legislative sessions, at least potentially.

But we also know that even within a state, voters can almost contradict themselves. This was something that was really interesting to me this year. In California, for example, voters chose to expand voting rights to people on parole, but they chose not to allow 17-year-olds to vote in primaries. Both of those measures, from a 30,000-foot view, are about expanding voting access, but for different groups.

And so, with one passing and one failing, it's really important to remember that the measures that voters pass or fail, they don't always represent a cohesive agenda.

Ed: Well, that may be, in a nutshell, the story of our politics. Mandy, thanks so much for taking the time to do this and I wish you well. Stay safe.

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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."