



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, the politics that compel them, and the important work of democracy.

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### **Decisions in 2018 May Affect Legislation in 2019 | OAS Episode 52**

Welcome to “Our American States,” a podcast of meaningful conversations that tell the story of America’s state legislatures, the people in them, the politics that compel them, and the important work of democracy. For the National Conference of State Legislatures, I’m your host, Gene Rose.

Our guest today is Wendy Underhill, program director for the Elections and Redistricting Department at the National Conference of State Legislatures. Wendy, we appreciate you walking us through some of the major policy issues that voters took action on in November.

Wendy: Oh, well, I’m happy to help out on this. It’s one of my favorite topics.

Gene: Well, great. Why don’t you give us a broad perspective on how many issues were on the ballot and how voters responded to them this year?

Wendy: In terms of numbers, there were 155 statewide ballot measures on November’s ballots, but there were a few more earlier in the year on primary ballots. So the total for the year was 168. And from my perspective what’s interesting about that is where do those measures come from and, in fact, the largest numbers come from legislatures. Legislatures oftentimes refer things to the ballot and so 71 of those came from the legislatures.

But it’s the ones that come from the citizens that tend to get the most attention in the press and there were only 64 of those. So my point is just that the legislature is producing more than the citizens are at this point.

Gene: So was there a major theme that was on the ballot box this year?

Wendy: There are always just a whole host of issues. It’s kind of interesting to think of looking at the ballot measures as a whole as indicators for legislators and for policymakers of any kind what might be coming in the next year or two. So there’s a smorgasbord, let’s call it, everything from marijuana to health to redistricting and elections and transportation—lots and lots of different things.

Marijuana was certainly one of the ones that we got asked more about. This year, Michigan became the first state in the Midwest to adopt retail marijuana. This used to be called recreational marijuana. You probably remember that, Gene, but kind of the terminology has

shifted to retail now, I think so that there can be more of an emphasis on this as a potential revenue source; you know, you can have a sales tax on it.

So we are up to 10 states plus D.C. and I think it's the Mariana Islands that have retail marijuana. And then on the medical side there are three that adopted it in November, and those are Missouri, Oklahoma and Utah. And that brings us to a total of 32 states with some variation on medical marijuana, so we're almost at the two-thirds mark there.

Gene: So in a related policy issue, what about health care?

Wendy: Well, the big news there was around Medicaid expansion and I'm sure most listeners know that the Affordable Care Act left it an option for states to expand their Medicaid with some federal money, and then the states pitch in as well. There were three states, Idaho, Nebraska and Utah, three Midwestern or Western Republican-led states that did adopt in their ballots a full expansion of Medicaid.

Earlier in the year, Oregon passed a tax to help with its Medicaid expansion. There was one place where it didn't go through and that was in Montana. They had expanded it, but they had a tax measure that would have been a tobacco tax on the ballot this year, and that was voted down. But it's not clear that it was voted down because of the tax part, or if it was voted down because Medicaid wasn't something that the citizens were interested in.

And I think, if you don't mind, I'll just use that as a bridge to talk about tobacco taxes in general. I told you Montana failed. In South Dakota it also failed. But there was one measure in Avon, Colorado ... we usually only look at statewide things, but Avon, Colorado did pass a tax for its small municipality of 6,500 people.

California said yes to paid breaks for ambulance workers, and California said no to regulating dialysis costs. And that one was kind of interesting. It's hard to understand exactly what was involved on that one, and when voters are confused about what the measure means, then they often do vote no.

One that did pass was in Nevada. It exempts from sales tax medical equipment. So, we got some yesses and some no's on health care kinds of things.

Gene: So let's walk through some other policy issues. What about transportation?

Wendy: You bet. A lockbox was adopted in California and Connecticut and I have to admit I didn't know what a lockbox was until very recently. A lockbox means that any monies that are raised for the purpose of transportation or any specific subject can't be tapped to take care of other pressing needs. So it sort of protects transportation money. And it's kind of a trend around the nation to do lockboxes for transportation and California and Connecticut joined that trend.

In terms of gas taxes themselves, you might say one was approved in California and a different one failed in Missouri. And Maine often does its transportation things through bonds and it did several and they all passed; that's common there. And we're headquartered in Denver and there were two kind of competing measures to fund improvements in our roads and both of them failed. And that, too, Gene, sometimes when there are two things, people say I can't

differentiate between these and I'm just going to say no to it. So that's what happened with transportation this year.

Gene: Let's jump to criminal justice issues.

Wendy: Well, crime victims' rights bills are always popular. Many states now have this in their constitutions and six more added it this year. So Florida, Georgia, Kentucky, Nevada, North Carolina and Oklahoma now have put in their constitutions a crime victims' bill of rights kind of thing.

And beyond that there were quite a number of other measures. One that got the most play was in Washington. They had one measure that related to gun safety requiring that guns be stored properly, requiring that you have to be 21 or over to buy a semi-automatic, extending the time period between when you say you want to buy a gun and when you can get it, a waiting period, and extending the background checks a little bit.

They also in Washington adopted a requirement for more police training on the topic of use of force, and I don't know whether that's something we're going to see take off in other places as well, but it seems like it was a timely topic.

Louisiana requires unanimous juries now. There's only one state left that doesn't. North Dakota, when it said no to recreational marijuana or retail marijuana this year, it also said no to expunging marijuana convictions from the past. And Ohio had the opportunity to look at sentencing and it said no to its measure.

Oregon is kind of interesting. They have had in place a policy that says that local police will not assist with immigration enforcement. The measure in front of them was to rescind that or get rid of that. It was voted down, so that prohibition on local police helping with immigration still stands.

Gene: Let's jump to energy and environment. I understand there were quite a few measures on the ballot that didn't pass.

Wendy: That's exactly right and what's interesting is that if you look at this on a map, they're all in the West. I guess that makes sense that energy and environment issues would be a western issue. Alaska had a measure to protect salmon waters and that failed. I think that's a local question, how were they going to do that.

Washington again had the big-news one. They had a carbon emissions tax on their ballot and there were environmentalists who were hoping that that was going to set the standard and other states would go along. But it did fail, so those who were promoting it have to go back to the drawing board on it.

Montana said no to a new plan for reclaiming hard-rock mines. Colorado had a fracking setback regulation; there might be another way to phrase that; but when there's natural gas and other mineral extraction sites, they would have had to be 2,500 feet away from homes and schools instead of the current 500. And that measure failed and I don't know that anybody knows whether it failed because that 2,500 was just too much, it was just too far away. We'll be

interested to see whether Coloradans come back with other measures or take that to the legislature.

And then there were two issues relating to getting renewable energy. Both were in funny western states, Nevada and Arizona, and Nevada said yes and Arizona said no to that.

Gene: Election laws have been in the news here lately. Did voters make decisions on how we run elections in this country?

Wendy: Oh, you bet they did. In fact, you might say that there were more measures that related to elections than on any other topic this year. Some of those were noteworthy; maybe a couple others a little bit less.

But I want to start with voter ID. In Arkansas and North Carolina, the legislatures had tried more than once to enact laws requiring a photo voter ID at the polls, and in both states the state Supreme Court had rejected what they had done. So in both states, the legislatures figured out that what they needed to do was change the state constitution if they wanted to have voter ID. And in both states those passed handily.

Then Michigan had a whole raft of election policy changes that it had on its ballot. One was Election Day registration. Maryland had it, too, so if you compare Michigan and Maryland on Election Day and then automatic voter registration where when you go to the Department of Motor Vehicles, you're automatically registered to vote unless you say you don't want to be, Michigan did that and here too there was a pair—Nevada had that same thing.

And Montana is an interesting case. It had a measure to prohibit ballot harvesting and that's a phrase that is only just now coming into vogue. As more people vote by absentee ballot, there are more ballots out in the community and the question is: Can people other than the voter or perhaps the voter's spouse or family member drop those ballots off? And that's a question we're going to see in legislatures this coming year for sure. But Montanans said no to expanding the ability for people to pick up and drop off other people's ballots.

And let's also just mention Florida before we shift away from this. Florida now will permit ex-felons to be registered to vote without having to go through the governor or any special processes, and some people have said that that will be the largest number of new voters of any policy in decades perhaps.

Gene: What about people who run for office, people who are public servants—were any laws passed that would affect their positions?

Wendy: Oh, you bet. There were several states that passed things that related to either campaign finance ... in Arizona it had to do with how their clean elections public funds could be used, and also setting up ethics commissions and oftentimes the ethics commissions oversee campaign finance reporting.

Basically, it seemed to me that if the word ethics was related to a ballot measure, it passed, because none of the ones that related to ethics or campaign finance failed. And a couple of them, and Missouri was one of them, set limits that you have to be out of office as a legislator or

other elected official for a certain amount of time before you can become a lobbyist. So that cooling off period or waiting period seems to be popular with voters, at least this year it was.

Gene: Then what about redistricting? We know that that process is coming up soon. Were there any issues on the ballot regarding that?

Wendy: I would say that this year, 2018, was a huge year for those who were interested in reform, and I say that based on the numbers. There were five states in total this year that did major changes to their redistricting processes through ballot measures of one kind or another. And if you counted 2010 to 2017, there were five. So in this one year we have the same number we saw in the last seven years, so that's how we know that this was a big year.

It's a little hard to generalize because each one has a specific twist to it. I will tell you that Ohio and Colorado both had their measures put on the ballot by the legislature. In both states a great deal of work behind the scenes to work out something that would be satisfactory for both parties and for advocacy groups out in the community led to the measures that those states put forward. They were close to unanimous coming out of the legislatures I'll say and then they were voted yes by the citizens.

And then the others are Michigan, Missouri and Utah—those came through the citizens' initiative process.

Gene: Of course, we know that state government can't run without funding and resources. Did voters have anything to say about budgets and finance this year?

Wendy: Yes, they did. You're absolutely right. You might even say that what they do with their budgets is the most important policy choices that states make. On the raising revenue side, the thing that interested me was that there were three states that tried to put extra taxes on high income and the only one of those that passed was in California. And California set the bar for when they started to collect that new tax at one million dollars. That money will be used to prevent homelessness.

The other two states, Maine and Colorado, had their bar set lower at 125,000 or 150,000, about that much, and in Maine they were going to use it for home health care and in Colorado for education. But those two went down. And again, when you have a tax associated with a policy and it goes down, you're really not sure if the complaint was about the tax or the complaint was about the policy. So I'm not quite sure what that means.

Then the other side, limiting revenues, Florida said that they from here on will require a two-thirds majority of the legislature to raise taxes, so that's limiting the ability to increase taxes. Oregon had a similar kind of thing; they said no to it. Arizona put a ban on new taxes on services, so this isn't a rollback of sale tax, but there won't be any additional ones on services. And North Carolina said yes on lowering the maximum income tax rate.

And I think that's close to all. There were a number of bond measures. Bond measures often do pass. Sixteen out of 18 did. So I think that's pretty close to all on the revenue up and down side.

Gene: Are there some things that we've left out or other things that you think are noteworthy?

Wendy: Yeah. Let's talk about minimum wage for just a minute. It's true that three or four years ago changes to minimum wage to increase it over the federal minimum were pretty common. It's a little less common, but two states did have it on their ballots this year and those were Arkansas and Missouri. And both said yes to it, so they'll start to increase their minimum wage; several years to phase in the increases. Arkansas' will go to \$11 an hour and Missouri will go to \$12.

And just to put that in perspective, the federal minimum is \$7.25. So, when you get to 11 or 12, that is a significant increase over the federal rate.

If you want something kind of fun, I'll just tell you that in New Hampshire they put in their constitution the right to live free from government intrusion. So we know it's a "live free or die" state; you know, that's from the license tags. But now it's enshrined in the constitution that they can live free from government intrusion.

Gene: Let me get you out on this one, Wendy. When legislatures go into sessions in 2019, how will the voter reaction to these various initiatives and referendums that you've discussed, how will they impact state legislatures next year?

Wendy: To some extent, as you well know, everything is unique to each state. But to some extent they do look at what's happened in the neighboring states. As I mentioned, the ballot harvesting one in Montana, it could be that other states will be looking at that. And the Medicaid expansion, basically Republican-led states saying yes to it might be of interest to other states.

But I'm not in any way going to predict that we'll see more states go that way. Right now, 36 states have expanded Medicaid and it could be that the other 14 are just not interested in going that way.

Another place I do see already that legislators are interested is in the process of those citizens' initiatives. While they are not as successful at the ballot as the ones that the legislature puts forward, they can cause headaches for the legislature. Oftentimes they're not drafted to fit in as smoothly to the existing statutes and so they can be a little problematic. And so a number of states are looking at: What are the processes that we as a state have to work well to integrate these too? And legislators are particularly interested in whether they can change in the term afterwards; in some states you can and in some states you can't; and whether the processes used to collect the signatures on those are appropriate and set the bar at the appropriate level, not so high that no one can ever do it, but not so low that it's easy to get that process done.

So I think they're useful; they do relate to policy. Certainly, anything related to revenue, people are looking at. I think the criminal justice ones, the transportation ones, they might look at what's been popular and wonder whether that would be appropriate in their states.

Gene: Our guest today has been Wendy Underhill, program director for the Elections and Redistricting Department at the National Conference of State Legislatures. Wendy, thank you so much for sharing your expertise with us today.

Wendy: Oh, I was happy to. It was fun and I'm always happy to hear from anyone if they'd like to be in touch or, and I forgot to tell you, Gene, that we do have all this information spelled out in the

ballot measures database at NCSL. So I think if you google NCSL ballot measures database, it will pop up and you'll see the results from all of these measures throughout the nation.

Gene: Well perfect. We'll be interested in looking forward to what you're tracking next year.

Wendy: Thank you, Gene.

Music and Gene VO:

And that concludes this edition of "Our American States." We invite you to subscribe to this podcast on iTunes and Google Play. Until our next episode, this is Gene Rose for the National Conference of State Legislatures. Thanks for listening.