



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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COVID-19: Continuity of State Government and Elections | March 23, 2020 | OAS Episode 86

Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. On this podcast, we’re all about legislatures: the people in them, the policies, process and politics that shape them. I’m your host, Ed Smith. Thanks for joining us.

Today we’re starting a series of podcasts focused on how states are taking acting in response to the Coronavirus pandemic. These podcasts are just one of many new resources NCSL has quickly put together to serve and support legislators and legislative staff during this extraordinary and unprecedented time.

For the next three weeks, NCSL will also present a webinar series looking at public health responses, workplace issues, education and childcare, the economy, elections, and continuity of government.

You can find links to sign up for these webinars and view archive versions along with links to a wide range of other resources at www.ncsl.org/coronavirus.

We’ll start today’s podcast with a conversation with Natalie Wood, who directs NCSL’s Center for Legislative Strengthening. Later in the show we’ll talk with NCSL’s top elections expert.

Natalie, welcome to “Our American States.”

Natalie: Thanks, Ed, it’s my pleasure to be here.

Time Marker (TM): 01:26

Ed: So, Natalie, we’re all working through these uncertain times in our own ways. For people in legislatures and for the institution itself, those ways are unique. It sounds like there are several

ways legislatures are adjusting to Covid19. If you had to name the one most notable one, what would it be?

Natalie: I'd say it's in how they're handling how they actually meet and do work. One piece of that is their session calendars. So, many legislatures have parameters that set up how they meet for the year. By mid-March some legislatures were already done with sessions, or they hadn't even convened in this even-numbered year of the biennium, where others were due to wrap up.

But rapidly we saw legislatures cut things short, suspend or postpone the session to buy some time and work really quickly on emergency legislation and budgets.

As usual, it has worked differently for everyone, and it's not without drama. In Colorado, for example, the legislature is waiting to hear from the state supreme court to see if its suspension counts against the number of days that it's allowed to meet as prescribed in the state constitution. So, it's a time of improvisation and flexibility.

TM: 02:31

Ed: Well, it sounds like legislatures are moving quickly to deal with the situation. What else is going on?

Natalie: Well, there's this phrase "continuity of legislatures" that applies, and it basically means: How can a legislature operate in times of emergency when not meeting in person? It includes helping the legislature communicate, convene and decision make.

So, not surprisingly, our constituents are talking about the idea of a virtual legislature, how to participate remotely. Some states already use teleconferencing and remote voting for committee meetings, and even for legislator town halls. But there's been a flurry of activities on the question of whether voting during session can be done virtually. And in most legislatures, the answer is no.

But Oregon and Wisconsin, for example, had some provisions in place well before the term "social distancing" started trending. And in just the last few weeks we've seen the Arizona House, the Pennsylvania legislature, and even the Council in Washington, D.C. make changes that allow it at least temporarily. And other legislatures are contemplating changes as well.

TM: 02:31

Ed: So how easy is it for legislatures to make these kinds of changes, particularly in the middle of such a crisis?

Natalie: Well, there are considerations that we encourage states to think through. The first is logistical. As you can imagine, what technology and what web-based platforms can you leverage? How can you work out that side of remote participation?

And just as important are the legal considerations, and that can include what a state constitution says, what case law **(??)** says, where is the actual seat of government, and can you,

the legislature, move it? What do open meeting laws in your state say? Most legislators need to be quote/unquote present to vote, present in the physical sense or not, and not virtual.

TM: 04:21

Ed: Speaking of open meetings, legislatures are the people's house, a place where the public gets to engage in and follow lawmaking. How has that changed due to the pandemic?

Natalie: We've seen most legislatures, not all, close their buildings to the public. They canceled capitol tours, and they're enhancing their cleaning regimens.

In states where the legislature is still meeting, they're doing things like encouraging electronic testimony for the public and making sure the public knows when they're livestreaming sessions.

There's also the question of legislative staff and that brings us right back to technology: Who needs to be in the building to get legislative work done? What staff functions can folks do from home? Do people have access to the tools they need to do the work?

That can include hardware, virtual public networks; they can include any sort of software they need to do drafting, or any sort of other legislative staff function. Then there's the security protocol, and what happens when staff themselves get sick.

So, we're seeing legislative IT shops, staff directors, HR personnel step up quickly to make remote work possible, answer questions, and ensure the safety and health of staff.

We're also hearing from our constituents that people are working in skeleton crews serving in shifts, so people are kind of taking turns going in, that kind of thing.

TM: 05:44

Ed: So, I know we're in largely unprecedented territory, but are there any examples of states taking this kind of action before?

Natalie: Well, legislative bodies have thought through the issue of continuity of government plans since the 1950s during the height of the Cold War when legislatures were worried about enemy attacks.

Obviously, the tech angle is very different than then, and even in 2000 when there were Y2K fears, the ability to work at home was limited.

Washington State is an example; they had an earthquake in 2001 and had to adjust. And you saw legislatures talk about this issue even during the H1N1 outbreak.

But another way to look at this is to see that before last week, for example, Maryland hadn't adjourned early since the Civil War. In California the legislature hadn't taken an unexpected break during session in 158 years.

I'll add that legislatures, as we all know, are made up of creative and committed people and they've problem solved throughout history when faced with extraordinary times such as these, even though the specifics are different.

TM: 06:49

Ed: Well, this is very interesting, Natalie, and I appreciate your taking the time to talk about this. What else would you like to add?

Natalie: Sure. Just that it's unfolding day-by-day just like everything else in the nation. We're tracking all the action on a couple of web pages; they're pretty well-featured on NCSL's website. You can always reach out to us if you need help locating them. We are here to help.

And then, before I go, Ed, I just want to thank all of you, all the legislative staff and legislators who have taken the time to update us on the situation in their capitols and in real time in many cases. It's been amazing to see how legislatures are responding to this challenge.

Ed: Well, Natalie, thanks for taking the time to fill us in on this.

Natalie: My pleasure, Ed, you're welcome.

Ed: We'll be back shortly to discuss how the pandemic is affecting elections and the Census.

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Ed: Welcome back. Now we're going to talk with Wendy Underhill who oversees the elections and redistricting program at NCSL.

TM: 07:53

Ed: Wendy, just a few weeks ago on this podcast, we were discussing the Census. Now Covid19 has hit the nation hard just at the same time the Census Bureau was sending out the first mailings about this decade's count.

What do you hear from the Census Bureau about how it may or has already adjusted its operation?

Wendy: It has been quite a shock. Just like everything else in American life, things are different than they were a week ago, and even than they were just a couple of days ago for the Census.

I will say, though, that the Census Bureau did build in resources and time for contingencies. They didn't know what was going to happen, but there was some preparation for that, and they are acting fast to adjust just like everyone else is.

If you think back to Friday one week ago, Friday the 13th, they scaled back some of their in-the-field operations so that people wouldn't actually be knocking on doors. And then on Wednesday, they scaled it back to the point where no one would be out on the streets at all, much less knocking on doors.

They are prepared to continue to adjust. In doing that, they had to say some things would be started two weeks later, but they're still planning on completing the task on time.

TM: 09:03

Ed: So, what might this mean when it comes to seeing results of the Census?

Wendy: Well, one Census observer told me that she has a dozen scenarios of things in her head of things that could go wrong, but a pandemic was never one of them, and none of us prepared for that.

And yet, what they've got going now is that they still say that they will have the most important piece of data, which is total state population, to the President and to Congress at the end of 2020. December 31st is when it's due. So, the apportionment for congressional seats, which states will lose a seat, gain a seat, stay the same, will be on time they're saying.

After that, then there are the results that are used by redistrictors, which states care a whole lot about. Those are due by March 31st. They still think they'll be able to hit that, but there is a little more squish on that, I'd say, than there is on the apportionment numbers. Very much full steam ahead... They built in enough time that they can squeeze at least two, three, four weeks along the way. So, so far, they're saying that they're going to be able to get this done on time for us.

TM: 10:07

Ed: Well, certainly, everything is shifting quickly in this situation, and we'll be sure to check back with you soon as things develop.

Wendy: Absolutely. We do have a Census resources page. It's got a lot of stuff on it. But we've put front and center what's going on with the Census and Covid19. We are linking to any press releases that they offer from the two that I mentioned. They're up there and we are definitely keeping a close tab on what's going on with the Census.

Ed: Well, we want to urge people to go to www.ncsl.org for information on the Census and the election, which is the next topic I'd like to turn to.

TM: 10:42

The news has been everywhere that primaries are being postponed, which is not a very common thing in my memory. What's involved to make a change like that?

Wendy: It's a pretty great big deal to be able to shift dates like that. The only really clear example of that in the last 20 years was on 9/11, which happened to be primary date in New York, and they did cancel what had already been voted on and they started over on September 25th that year. So that was a primary date that did shift based on obviously unforeseen and remarkable circumstances.

Other than that, the only example I've got of recent years is super storm Sandy in New Jersey in 2012, which hit a few days before Election Day, and so many people were out of their homes that the State of New Jersey did sort of bend their rules about how displaced voters could get their ballots back to be counted.

Other than that, it's pretty unusual to see... I believe it's six states now that have changed their primary dates, and by the time listeners come and hear this, it could easily be nine or ten states with changed primary dates. We'll see how that goes.

So, it's basically unprecedented.

Ed: We want to let listeners know that we're recording this podcast on March 20th and it is being posted on March 23rd. Things are moving so quickly that we want you to have that context in the event some of the things we're discussing are outstripped by events.

TM: 12:08

Ed: So, Wendy, besides postponing elections, are there other things states can do or are doing?

Wendy: Absolutely. It's a pretty tricky thing. People are talking about moving to voting by mail, and there are some states that already do that, and in all states, people can get an absentee ballot. It used to be said that in some states you needed an excuse, but I think nationwide everyone has an excuse now in that Covid virus is out and about and we're being asked to stay at home.

So, people can ask for an absentee ballot. But that's pretty tricky for a state to shift from polling place voting as the primary way to vote to entirely going to mail voting, or even increasing the amount of mail voting. So, states are working on both the legal side of that and also the practicalities related to that.

Legally, some states have laws about when absentee ballots need to be out there and how they will be handled and when they'll be returned, and how soon they can be processed. If a state has a law that says that you can't open the envelope for an absentee ballot until Election Day, you can imagine that if you get lots and lots more than you usually do, that election returns could be delayed. So, states are looking at the processing time.

They're also looking at whether absentee ballots have an opportunity for the voter to fix a problem on the signature for the ballot; not to fix what they voted on, but fix whether the ballot is going to be counted based on the return of it.

So, those are a couple of key points, whether they need to put postage on them and make it prepaid so that people don't have to find a stamp – those are all some legal questions that are under consideration right now.

And then there's a whole bunch of practical things. I was just on a phone call today with a national working group on the potential for much more absentee voting, and concerns about: can vendors provide the ballots in time, can they get printed in time, do we have processes in time, do they need to buy new equipment to put in place – just a lot of practical things.

I do think local election officials and state election officials are about the most creative people in our country, and also really practical, so everybody is working really hard at it. But right now, there is a lot of uncertainty that goes along with this interest in increasing the number of people who would vote absentee, both in the primaries right this season, and also potentially in November, depending on how this goes.

TM: 14:29

Ed: Well, Wendy, that's a lot to take in and thanks for breaking it down for us.

Wendy: You're most welcome and, as you said earlier, it's going to be day-by-day. We do have this kind of information up on the web page and my team on elections is happy to answer any questions as we go along at elections-info@ncsl.org.

Ed: Remember, you can find a wide range of resources on the Corona virus emergency at NCSL's website at www.ncsl.org/coronavirus.

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."

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