OIL, TOIL, TURMOIL
By Suzanne Weiss
North Dakota has become the second largest oil-producing state in the nation, but not everyone’s gushing over it.

OUT FOR BLOOD
By Mary Winter
Growing numbers of bed bugs, mosquitoes and ticks are spreading misery and frustrating lawmakers.

SUPREME COURT PREVIEW
By Victor Kessler
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Breaking the cycle of crime and addiction.

The two presidential candidates answer questions from State Legislatures magazine about the relationship between the federal government and the states.

Bush and Dukakis on federalism.

Legislators from Florida to Oregon are scrambling to tip the balance to their side or hang on to their majority.

25 YEARS AGO

Articles from the OCTOBER 1988 issue of STATE LEGISLATURES

Vying for Votes
Legislators from Florida to Oregon are scrambling to tip the balance to their side or hang on to their majority.

Bush and Dukakis on Federalism
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Before the State House in Boston was built on what is known as the “Governor’s Pasture,” the land belonged to John Hancock and was home to grazing cows. The Capitol sat at King and State streets in Boston before the American Revolution, but after the war, leaders proposed the construction of a larger and more elegant structure to house the state Legislature. Thus began the construction of a new State House in 1795 on Hancock’s property. The iconic gilded dome, however, was initially of more modest decorum—wooden and covered with whitewashed shingles. A series of renovations to it began in 1802 when it was layered with copper to prevent damaging leaks. The dome was next painted gray, then gold, and finally covered with gold leaf in 1874, as it has remained since.

“Fifty State Capitols” by Jim Stembridge and “A Celebration of State Capitols” by Richard R. Gibson

Whose Capitol Is It?

To find out, go to: www.ncsl.org/magazine

Visit WWW.ncsl.org/magazine THIS MONTH TO:

Find links to more information on North Dakota’s oil boom.

Learn what you can do about disease-carrying bugs.

Search NCCL’s REAL ID database of state legislation.

Read more on California’s Monterey Shale.

Find all kinds of resources from the Legislative Summit in Atlanta.

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Executive Director
William T. Pound
Managing Editor
Julie Lays
Assistant Editor
Mary Winter
Web Editor
Edward P. Smith
Copy Editor
Lorrie Stelzer
Contributors
Julie Bell
Susan Dunn
Susan Frederic
Scott Hendrick
Lizzy Parker
Arturo Pérez
Lee Posey
Amy Winterfeld
Art Director
Bruce Holdeman
Advertising Sales Manager
LeAnn Hoff
(303) 364-7700
NCSL Officers
President
Senator Bruce Starr, Oregon
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Denver Office
7700 East First Place
Denver, Colorado 80230
(303) 364-7700
Washington, D.C. Office
444 North Capitol Street, N.W.
Suite 515
Washington, D.C. 20001
(202) 624-5400
Website
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THE “WIZARD,” ALAN ROSENTHAL

Editor:
In your July/August 2013 issue, I read and re-read your tribute to Alan Rosenthal. Your efforts superbly chronicled his scholarship and appropriately measured his effects on legislative chambers throughout the 50 states. Left unsaid, however, was Alan’s influence on countless Eagleton Institute of Politics students who have built careers as legislative staff after being excited by Alan’s personal teachings and reverence for the legislative institution.

Alan’s Legislative Process course was mandatory, and I know, through that course, he lit the fire in many students to pursue legislative staff work as a life’s career. With his mandate to “wallow in it”—to be a student of legislatures by observing and getting your fingers dirty with the process of lawmaking—Alan encouraged me and many others to find honor in a career that much of America finds messy and distasteful.

Morning coffee lectures in Eagleton’s drawing room served as our laboratory of democracy. He valued all opinions, and lectures from him felt like comfortable chats. He spoke with us, not to us, but imparted valuable lessons that challenged us to examine preconceived notions and ingrained opinions. This is a unique professorial skill. I doubt Alan realized what he was creating, but he molded young minds to respect the legislative institution and yearn to be part of it. Many of us chose these institutions to make our careers and continue to serve them with Alan’s lessons in the back of our minds. The myriad Eagleton students who turned legislative staff represent Alan’s longest living legacy, and one that I am proud to embody.

Eric L. Nauman
Lead Fiscal Analyst, Minnesota Senate
Eagleton Class of 1994

SIX WHO SERVED, WWII VETS

Editor:
Thanks so much for the wonderful article in your July/August issue on the six state lawmakers who are World War II vets. I was fortunate to have the great honor of serving with one of them, New York Senator Bill Larkin, during his tenure as president of the National Conference of Insurance Legislators, and I consider him a personal friend. When my Dad—a WWII vet and former POW, now deceased—was experiencing difficulties with the Veterans Administration, Senator Larkin went to bat for him. He’s a very caring man, a great guy to have on your side. When he met resistance, he wouldn’t take no for an answer, and I’m sure he would do the same for every one of his constituents.

Susan Nolan
Executive Director
National Conference of Insurance Legislators

Editor:
I enjoyed reading your tribute to Alan Rosenthal. He was one hell of a guy! Over the years I developed a wonderful personal and professional relationship with him. I have many fond memories of him, but one of my favorite Alan stories comes from a conference some years ago. I was sitting in the audience with Alan during a rather pontifical rambling lecture. Alan, no slouch as a scholar himself, sat listening intently for quite some time and then turned to me and said in a rather loud whisper, “What the f... is this jerk talking about?” I had to leave the hall because I couldn’t stop laughing! That’s the Alan I loved and will remember forever.

Michael Fischer
Former Director of Project Citizen
Center for Civic Education

Editor:
Your piece on Alan Rosenthal in the July/August issue was beautifully done. What a tragedy. Alan was a role model for all of us, a great scholar and a true mensch. Congratulations to Karl Kurtz for creating such a wonderful tribute.

Norm Ornstein
Resident Scholar
American Enterprise Institute for Public Policy Research

Editor:
How terrible, but wonderful, that you were able to finish such a thoughtful, comprehensive tribute to Alan Rosenthal that measured up to a very large task. It was heartening to read what so many state legislative luminaries had to say about him.

Thad Kousser
Associate Professor of Political Science
UC San Diego
Coal Still Powers Our Plugged-in Nation

Coal continues to generate more of the electricity that Americans have come to depend upon than any other fuel source. In 2012, coal produced 37 percent of the nation’s electricity, but its share has been decreasing as the use of natural gas has increased. In 1993, for example, coal’s portion was 53 percent while natural gas produced only 13 percent. What’s ahead? The U.S. Energy Information Administration predicts America’s consumption of electricity will increase about 0.9 percent each year through 2040, when it believes coal will be producing about 35 percent of the country’s electricity and natural gas 30 percent. But if gas prices stay low due to more discoveries, it predicts natural gas will take coal’s place as the leading producer of electricity. Currently, Americans make up 5 percent of the world’s population, but use 24 percent of all energy consumed worldwide.

What uses the most electricity at home?

- Air conditioning 19%
- Other equipment 25%
- Kitchen appliances 14%
- Home electronics 10%
- Lighting 13%
- Water heating 9%
- Laundry 5%
- Space heating 6%

Note: Many homes are heated by natural gas or other fuels instead of electricity.

Sources: U.S. Energy Information Administration in the U.S. Department of Energy, and The Institute for Energy Research
THERE WAS NO RED OR BLUE, ONLY GOLD, WHEN PENNSYLVANIA LAWMAKERS STEPPED UP TO THE PLATE in September to take a swing at hunger. It was all sports and no politics in the first-ever charity Capitol All Stars game, sponsored by the Pennsylvania Legislative Services office and Pennsylvania Cable Network. The 50 lawmakers, both Republicans and Democrats, were divided into bipartisan teams. Senate Majority Leader Dominic Pileggi (R) and Representative Frank Dermody (D) were captains of the East Team, and Senate Majority Leader Jay Costa (D) and Speaker Sam Smith (R) headed the West Team. MVP Representative Jim Christiana (R) led the West to an 8-1 win over the East. Altogether, the lawmakers scored $60,000 for Feeding Pennsylvania and Hunger-Free Pennsylvania.

MISSOURI'S REPUBLICAN HOUSE MEMBERS HAVE CHOSEN REPRESENTATIVE JOHN DIEHL (R) to be their next speaker in a caucus vote in early October. If he wins re-election in 2014, and Republicans retain control of the Missouri House, Diehl would take office in January 2015, succeeding the current speaker, Representative Tim Jones (R). Missouri lawmakers are limited to eight years in the House and eight years in the Senate. Diehl is a business attorney and was first elected to the House in 2008. He is currently chairman of the Special Standing Committee on Redistricting.

A GAME OF MUSICAL CHAIRS IN CALIFORNIA HAS FINISHED WITH FORMER ASSEMBLYWOMAN HOLLY MITCHELL (D) resoundingly defeating her Republican opponent to win a Senate seat vacated when Curren Price (D) was elected to the Los Angeles City Council. Mitchell won with 80 percent of the vote. Democrats now control the Senate 28-12, one seat more than a super majority. Over in the Assembly, a special election put Democrats within one vote of a two-thirds majority when Pomona City Councilman Freddie Rodriguez (D) won 51.3 percent of the vote to fill the seat of Norma Torres (D), who was elected to the Senate. And to fill another seat, Democrat Matt Dababneh, an aide to U.S. Representative Brad Sherman, will face off on Nov. 19 against Republican Susan Shelley, an author of three books on the U.S. Constitution.

SENATOR CHUCK MORSE (R) IS NEW HAMPSHIRE'S NEW SENATE PRESIDENT, replacing Peter Bragdon. Morse served in the Senate from 2002-2006, and was re-elected in 2010 and 2012. Before that, he served two terms in the House. New Hampshire does not elect a lieutenant governor, so the Senate president also serves as “acting governor” whenever needed.

WISCONSIN REPRESENTATIVE JOHN NYGREN (R) SHARES A POWERFUL BUT PAINFUL STORY of his daughter’s heroin addiction in a new video that’s part of a state campaign to raise drug abuse awareness. Last year, 159 people died from drug overdoses in Milwaukee County, with heroin deaths surpassing cocaine deaths for the first time, 38 to 34. Nygren told Wisconsin Radio Network that his daughter Cassie, a former straight-A student, got hooked on heroin in high school. Nygren is backing several bills that would make it harder to get prescription pain killers, which are often gateway drugs to heroin abuse. One bill would require a photo ID when picking up the drugs from a pharmacy.

NORTH CAROLINA SENATE PRESIDENT PRO TEMPORE PHIL BERGER (R) RECENTLY ANNOUNCED he will not make a bid to challenge U.S. Senator Kay Hagan (D) in 2014. That leaves House Speaker Thom Tillis a leading GOP candidate for the U.S. Senate seat.

TEXAS SENATOR WENDY DAVIS (D) RECENTLY ANNOUNCED SHE IS RUNNING FOR GOVERNOR. Should she win, she would be the first Democrat in the Texas governor’s mansion since 1995, when the late Ann Richards left office. Today, Republicans control the Texas Legislature and every major state office. In June, Davis attracted national attention when she stood on the Senate floor for more than 11 hours as part of a filibuster against abortion restrictions.

IOWA SENATOR KENT SORENSON (R) RESIGNED IN EARLY OCTOBER AFTER BEING ACCUSED OF VIOLATING A SENATE RULE that bars senators from being paid by political action committees. Sorenson is accused of taking money from Michele Bachmann’s political action committee, MichelePAC, for campaign work during her run for president. Sorenson told The Associated Press that his resignation was best for his family, and that his decision was “absolutely not” an admission of wrongdoing.
Military veterans can earn academic credit for skills they gained in the service and pay lower tuition rates in at least 25 states.

More than 800,000 veterans and their families are taking advantage of the U.S. government’s post-9/11 GI Bill to attend college, and the number is expected to rise, according to the Student Veterans of America, an organization that supports veterans seeking higher education. In general, benefits pay for 36 months of tuition at the resident rate, typically much lower than the non-resident rate. (In 2012-13, public four-year institutions charged residents an average of $8,655 in tuition and fees per year, while they charged non-residents $21,706.)

The requirement that students establish residency—often defined as living in the state for 12 months—before receiving resident rates is waived for veterans in 25 states, and similar legislation is pending in at least eight more.

States are also acknowledging the value of skills and training veterans acquire in the military. Groups such as the American Council on Education and the Center for Adult and Experiential Learning have developed guidelines on assigning academic credit to specific military-related skills. At least half the states have passed legislation to develop similar criteria, and bills are pending in another five states.

In Texas, a bill carried by Senator Leticia Van de Putte (D) created the College Credit for Heroes program to maximize college credit awarded to veterans and service members for their military experience. Administered by the Texas Workforce Commission, seven community colleges were selected in 2011 to help create standards for assessing military training that can be used by any college in Texas, with emphasis on allied health programs. In May of this year, the program was expanded to other professions and to six new partner schools.

—Michelle Camacho Liu

**Benefits for Vets**
The GI Bill pays in-state tuition rates and fees directly to the institution the veteran attends. A monthly housing allowance and an annual book/supply stipend go directly to the student. Veterans attending private or foreign institutions are eligible for tuition benefits of up to $18,000 per academic year.

**Sources:** U.S. Census Bureau, 2011 American Community Survey, Voting and Registration in the Election of November 2010
Showdown in Colorado

The September recall of two Democratic legislators in Colorado—Senate President John Morse and Senator Angela Giron—rocked Democratic Party leaders and re-energized gun rights activists nationwide. Both lawmakers supported stronger gun laws, and both are the first legislators ever to be recalled in the state.

Many observers credit the upset to grassroots activism led by a 28-year-old Republican, Victor Head, his brother and a colleague, all three in the plumbing business in Pueblo, a city of roughly 107,000. Their efforts, in part, rallied 52,540 voters, or 1 percent of the state’s population, to oust the lawmakers. Colorado Republican Party Chairman Ryan Call told a newspaper he was surprised by the results, but thrilled that voters had stood up to “out of touch” lawmakers. The Colorado GOP is “energized, organized and ready to fight and win in 2014,” Call said.

The Colorado election reflects Americans’ increasingly polarized positions on guns as the number of mass shootings climbs. Since the Newtown, Conn., school shooting last December, nine states have tightened gun restrictions, while more than two dozen states have increased the rights of gun owners.

The new laws in Colorado expand background checks on gun sales and limit ammunition magazines to 15 rounds. Colorado was once solidly Republican, but an influx of Democrats in recent years has turned the state into a partisan battleground. Following the recall, Republican National Chairman Reince Priebus promised that “Republicans are going to compete for every vote in Colorado, and tonight is only the beginning of our path to victory in 2014.”

Colorado Democratic Party Chairman Rick Palacio characterizes the recalls as “mostly symbolic wins” for the GOP. Democrats still maintain their majority in the Colorado Statehouse, Palacio says, and the stricter gun laws remain on the books. “I don’t think this is an omen of things to come, but rather a snapshot in time, much like a poll,” he adds.

Morse, who would have been term-limited out after the 2014 session, lost by a slim 343-vote margin in his Colorado Springs district, where voters are roughly 34 percent Democrat, 26 percent Republican and 40 percent unaffiliated or something else. In Pueblo, where Democrats account for 45 percent of voters, Giron’s defeat—by 12 percentage points—was more unexpected and demoralizing. Republican George Rivera won Giron’s seat, and Republican Bernie Herpin will succeed Morse.

The relatively small elections (turnout was 21 percent in Colorado Springs and 36 percent in Pueblo) attracted big money from those who saw it as a proxy battle between the nation’s gun-rights and gun-safety forces. New York Mayor Michael Bloomberg, Mayors Against Illegal Guns and other prominent figures contributed $3 million to Morse and Giron. In contrast, the pro-recall war chest was about $540,000, more than half of it donated by the National Rifle Association. Other groups that aren’t required to report contributions also may have pitched in.

The David-and-Goliath aspect of the race made victory all the sweeter for gun rights advocates. “The people of Colorado Springs and Pueblo sent a clear message to their elected officials that their primary job is to defend our rights and freedoms and that they are accountable to their constituents—not the dollars or social engineering agendas of anti-gun billionaires,” the NRA said in a prepared statement.

Some analysts say the recalls may cause moderate lawmakers in both parties to shy away from gun control measures out of fear of losing their seats. Others believe citizens’ groups will short-circuit lawmakers and use ballot initiatives to change gun laws.

The Democrats’ Palacio argues it’s unwise to draw broad conclusions from two small races. Morse was hurt by a court decision not to allow mail-in ballots and by a lack of early voting opportunities, Palacio says. In Pueblo, Palacio believes Giron failed to engage constituents early enough in the race. “What we saw in Pueblo was information coming almost solely from one side. There was a lot of confusion. Voters knew the recall was about gun rights, but that’s not good enough.” For example, Palacio says, many voters may be opposed to gun control in general, but supportive of new laws when they understand precisely what they do—such as require background checks to weed out buyers with records of violence.

Palacio says Giron could have “worked harder and earlier to make sure the [pro-gun] scare tactics and noise didn’t prevail with the public. The job of the state legislator is to make constituents understand their vote … No lawmaker should have a bunker mentality.”

—Mary Winter
Common Core Cold Feet

The debate and the number of bills on the Common Core State Standards Initiative, set to launch in 2014, have heated up significantly this year. Grassroots groups on both sides of the issue have been active in several states, triggering a flurry of media attention. Lawmakers in 47 states have introduced 235 Common Core-related bills this year. At least 89 have been enacted in 36 states, addressing everything from funding to accountability to postponement of the plan.

Common Core, initiated in 2009 by the bipartisan National Governors Association and the Council of Chief State School Officers, aims to keep American students globally competitive and college- or career-ready by the end of high school. Supporters hope to raise student achievement through uniform educational standards for kindergarten through 12th grade, focusing on English and math competency.

Backers of the initiative say it gives educators the first nationally standardized blueprint of the skills and knowledge students need to be competitive in today’s global market. Adopting the Common Core Standards is voluntary, and the decision to participate usually has been left to state boards of education. These boards also usually administer the program, although Common Core affects a number of policy areas overseen by state legislatures, including tests, curricula and teacher evaluations.

Critics argue the plan gives the federal government too much control over local matters, may potentially invade students’ privacy and costs too much. Alaska, Nebraska, Texas and Virginia have voted not to participate in Common Core. Indiana, Michigan, North Carolina, Oklahoma, Pennsylvania and Wisconsin want more time to investigate concerns. And Minnesota adopted just the math standards.

A recent Gallup poll indicates the public doesn’t know much about the initiative; 62 percent of respondents said they had never heard of it. Still, most states are on schedule and preparing for Common Core. The program’s two groups developing the tests have released cost estimates for the exams, sample questions and technology requirements. Pilot exams are being conducted in a few states, and the final ones are set to roll out in the fall of 2014.

—Madeleine Webster

Where America’s Students Stand

The Harvard Kennedy School compared reading and math proficiency of 2011 high school graduating classes in more than 30 nations. It found:

◆ The United States ranked No. 17 in reading.
◆ Shanghai, China, was the top-performing city in both math and reading.
◆ In math, 32 percent of U.S. students were proficient, compared to 58 percent in Korea and 56 percent in Finland;
◆ The only U.S. states with math proficiency rates greater than 40 percent were Kansas, Massachusetts, Minnesota, New Jersey, North Dakota and Vermont.

REAL ID Update

The U.S. Department of Homeland Security (DHS) will soon announce the timeline for full enforcement of the REAL ID Act. The timeline is expected to delineate four to six stages of a gradual phase-in of enforcement. Full enforcement—when an ID not in compliance will be rejected for all federal purposes under the act—will not be reached for two to three years.

Currently, 20 to 21 states are in full compliance, but DHS is expected to grant a dozen more states an automatic extension if they have met most of the requirements. Other states still may apply for one; however, all extensions will expire on a set date, likely one year or less from the start of the enforcement process.

The 2005 federal act requires states to issue driver’s licenses and ID cards that meet certain standards in order for them to qualify as acceptable identification for certain federal purposes such as boarding commercial flights. The standards include what information must be presented, which documents may be used to prove lawful status, what data the identification card must contain, and other criteria concerning the card’s security.

Compliance costs, privacy and other federalism concerns resulted in 17 states enacting statutes voicing opposition to the law. Most recently, in early September, Alaska lawmakers reiterated their opposition to the federal mandate by enacting House Bill 69. It prohibits “state and municipal agencies from using assets to implement or aid in the implementation of the requirements of certain federal statutes” including, among other things, the REAL ID Act.

—Molly Ramsdell

To search NCSL’s database of state legislative responses to the federal REAL ID Act, go to www.ncsl.org.
Early on, 2013 looked like it would be a big year for tax reform. Governors in several states spoke of bold tax cuts in their state-of-the-state addresses, and in March, 34 states and the District of Columbia reported to NCSL that tax reform measures were on their 2013 legislative calendars. As it turned out, the year was more of a mixed bag. Thirteen of the 34 states enacted tax reforms, but in many cases the adopted measures were significantly pared down from what was introduced. The reforms generally did one of three things: reduced income taxes, broadened the sales tax base or increased transportation funding.

Overall, seven states cut net taxes by more than 1 percent, five states increased them by more than 1 percent, and 36 states made no significant changes. Collectively, states cut taxes by $1.3 billion, a modest sum compared to past years and about 0.2 percent of the prior year’s collections. (Data for Georgia, Missouri, Puerto Rico, the U.S. Virgin Islands and Washington, D.C., were not available.)

Most of the cuts were to personal income taxes, and will start with FY 2014 revenue collections. The biggest decreases were in Iowa, Maine, North Carolina, North Dakota, Ohio and Wisconsin. Maine and Wisconsin applied previously enacted rate cuts, and Iowa created several new credits. In addition, sales tax rates dropped in two states: Arizona will see a $900 million reduction because voters in November declined to extend a temporary rate increase, and the Kansas sales tax rate is going from 6.3 percent to 6.15 percent (although lawmakers stopped it from falling to the scheduled 5.7 percent).

Most increases came in the general sales tax category, where states are expected to show a net gain of $720 million. But just a few states account for most of the activity. Virginia and Maine increased general sales taxes—Virginia to the tune of nearly $1.3 billion—while Massachusetts, Minnesota, North Carolina and Ohio decided to tax a number of previously exempt services. Minnesota also raised personal income tax rates. Four states—Massachusetts, Maryland, Vermont and Wyoming—raised gasoline taxes as part of broader transportation funding plans. And Virginia eliminated its excise tax on gas, but imposed the sales tax on it.

—Mandy Rafool

### Tax Changes
(The projected net effect on collective state tax revenues from FY 2013 to FY 2014)

<table>
<thead>
<tr>
<th>Type of Tax</th>
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<tr>
<td>Corporate Income</td>
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<tr>
<td>Sales and Use</td>
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<td>Health Care</td>
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<tr>
<td>Tobacco</td>
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<td>Alcoholic Beverages</td>
<td>$5.1</td>
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<tr>
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<tr>
<td>Miscellaneous</td>
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</tr>
<tr>
<td><strong>Net Change</strong></td>
<td><strong>-$1,348.0</strong></td>
</tr>
</tbody>
</table>

Note: Does not include data from Georgia, Missouri, American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands

Source: NCSL
PROVING PATERNITY

In Mississippi, if a girl under 16 gives birth and won’t name the father, authorities must order a sample of her umbilical cord blood to help prove paternity through DNA testing. Representative Andy Gipson (R), the new law’s sponsor, hopes it makes it easier to prosecute statutory rape cases and lower Mississippi’s stubbornly high teen pregnancy rate. Experts say teen moms often shield the identities of the fathers, many of whom are over age 21. Critics argue the law is too invasive and question how a potential father can be compelled to submit DNA and possibly implicate himself in a crime. But Governor Phil Bryant (R) has drawn a bright line: “It is time to stop children from being raped.”

ELECTIONS

TOO MANY ELECTIONS?

Two Ohio lawmakers want to end special elections, saying they’re too expensive and turnout is low. The bill, by Representatives John Becker (R) and John Adams (R), would prevent school districts and local governments from putting tax issues before voters in February and August. “Local government entities—it’s usually schools, but it can also be the local governments—spend a lot of the local taxpayers’ money to acquire additional taxpayers’ money in these special elections,” Becker told the Cleveland Plain Dealer. Cuyahoga County charges roughly $1,500 to $2,300 per precinct to hold a special election. The Ohio School Board Association opposes the bill, arguing it takes time to educate voters about issues and that schools need the flexibility special elections provide.

LOBSTER TALE

Maine Governor Paul LePage (R) told folks gathered at a lobster festival that the state needs more lobster processing plants. He blamed the Legislature for getting in the way by keeping taxes and energy costs too high, the Bangor Daily News reported. Representative Chuck Kruger (D), who introduced LePage at the festival, later said the governor was swimming in the wrong ocean. LePage has yet to release bond money voters approved in 2010 that would spur job creation, Kruger said. Politics aside, lobster fishermen’s pots aren’t empty. Maine is spending $3 million on a national campaign to market the decapod crustaceans, thanks to a bill passed by lawmakers and signed by the governor.

I’LL HAVE A WARM ONE

Indiana grocery stores, gas stations and pharmacies can sell beer, but it has to be warm. If you want a cold one you’ll have to find a liquor store or grab one at a bar or restaurant. Hoping to overturn the law that limits “cold” sales, the Indiana Petroleum Marketers and Convenience Store Association have sued. They noted that Indiana is the only state that regulates the sale of beer by temperature. In the opposing corner, a liquor store chain called 21st Amendment argues that, if gas stations and pharmacies want to sell cold beer, they should be under the same restrictions as liquor stores, which must close on Sundays, be at least 200 feet away from churches, and limit those who enter to customers 21 and older. Public opinion is running hot and cold.

U TXT, U LOOZ

A New Jersey appeals court has sent a strong message about distracted driving: Text someone you know is driving, and you can be held liable if an accident occurs. In 2009, Kyle Best, 18, drove his truck over the center line and hit a motorcycle. Both people on the motorcycle lost their left legs. They sued Best and the woman texting with Best at the time of the accident, arguing the woman was “electronically present” in the truck. Best settled out of court, and judges ruled the evidence against the woman was insufficient. But the court laid down a new standard of responsibility. When the sender “has actual knowledge or special reason to know ... that the recipient will view the text while driving, the sender has breached a duty of care to the public by distracting the driver.”
TOP 10 FOR STARTUPS
More businesses were launched in Arizona, per capita, than in any other state in 2011, according to the 2012 Kauffman Index of Entrepreneurial Activity. For every 100,000 adults in Arizona, 520 businesses were started, according to Kauffman. It conducts its rankings on a yearly national survey of about half a million adults who start a business. Arizona’s lures are low business and property taxes, plus a highly educated labor pool. Texas, No. 2, has no personal or corporate income tax, and living costs are low. California, Nevada and Idaho appeal to tech companies, and manufacturers like Missouri’s low taxes and energy costs.

1. Arizona
2. Texas
3. California
4. Colorado
5. Alaska
6. Missouri
7. Nevada
8. Vermont
9. Idaho
10. Florida

EARTHQUAKE ALERT
An extra 30 seconds’ warning before an earthquake may save thousands of lives, many experts believe. That’s the thinking behind California Senator Alex Padilla’s (D) bill to create an early warning system for earthquakes. The measure, signed by Jerry Brown (D) in late September, calls for the California Office of Emergency Services to oversee development of an $80-million sensor system to relay data to a central location that would trigger alerts before the shaking starts. Padilla believes an early warning system would give the public more time to find safety and the operators of trains and power stations time to shut down, potentially averting derailments and explosions.

STUDY NOW, PAY LATER
At a minimum, a college education can cost $34,000. That’s a hefty sum for most and prohibitive for many. To help students, Oregon lawmakers are considering a new financing system where students pay no tuition up front. In return, students would pay a percentage of their future income—say 3 percent over a 20- to 25-year period—back to the state. A House bill directing the state’s Higher Education Coordinating Commission to study a pilot program passed unanimously. New Jersey, Ohio, Washington and other states are investigating similar proposals. Details are daunting, but in Oregon, plan backers like to say Phil Knight, Nike co-founder and generous University of Oregon benefactor, would be a great source of seed money.

JOCKS CALL TAX FOUL
Tennessee lawmakers are hearing from pro athletes unhappy with the state’s so-called “jock tax.” It’s a $2,500 surcharge levied on basketball and hockey players, per game, capped at $7,500 a year. Tennessee doesn’t have an income tax, but it does charge a number of professionals, such as dentists and lawyers, a privilege tax of $400 a year. In 2009, it was extended to NBA and NHL players. Proceeds go to the Nashville Predators and Grizzlies to help pay for operations at their arenas. At a hearing, some lawmakers questioned the fairness of the tax, noting it does not apply to players in the National Football League or entertainers. But they also conceded that the Predators and the Grizzlies depend on the proceeds from the tax. Senator Jack Johnson (R) sponsored a bill to repeal the tax this spring, but he now thinks the players should work out a solution on their own, according to The Tennessean.

WIN FOR WOLVES
Mexican gray wolves in Arizona and New Mexico are howling their approval over the federal government’s proposal to increase their territory and drop plans to capture them when they enter this country from Mexico. Many ranchers who have lost cattle to wolves oppose the plan to allow the endangered wolves to cross freely into Arizona and New Mexico. The wolves have been decimated by hunting and trapping and by ranchers protecting their livestock. Several years ago, about 75 wolves were reintroduced into a small area in central Arizona and New Mexico, the Blue Range Wolf Recovery Area. The U.S. Fish and Wildlife Service is conducting hearings on the plan to release wolves into the Gila National Forest in January 2015, greatly expanding their territory to include a vast swath of Arizona and New Mexico. Michael Robinson of the Center for Biological Diversity in Tucson, Ariz., says he “strongly believes” federal officials will implement the plan.
Economist Beth Ann Bovino

“One of the bright spots I see is that the private sector has been able to absorb two fiscal shocks and still spend, invest and hire.”

STATE LEGISLATURES: What are the most formidable challenges facing the U.S. economy?

BOVINO: There are a few things that weigh on my mind. Top of the list, of course, is what is happening in Washington, D.C. Now that the U.S. government failed to approve another continuing resolution, the federal government is shutdown, with many workers furloughed without pay. On top of that, the Treasury hits the debt ceiling soon. Both events weigh on the economy and certainly cause businesses to be concerned and hold back on spending and investing.

SL: What else concerns you?

BOVINO: Other factors at play include issues surrounding Europe. Could what’s happening with Europe—their debt ceiling and sovereign crisis—show up on U.S. shores and cause banks to hold back on lending as well? And the final thing that worries me is what’s happening with the labor market. We are seeing an improvement, but we still have a lot of people unemployed, and for a long time. The longer they stay out of work, the more their skills are hurt and the more likely it becomes that when they do get a job, they will have lower wages.

SL: What are the greatest strengths in the U.S. economy?

BOVINO: After four years of holding back on spending and saving a bit more, businesses are sitting on a lot of cash. This puts us in a good place. One of the bright spots I see is that the private sector has been able to absorb two fiscal shocks—the sequestration and the fiscal cliff deal in January—and still spend, invest and hire. Businesses have added 200,000 jobs a month, even with sequestration. That means people can spend a bit more, which they are doing.

SL: What effect will further gridlock in our nation’s capital have on the national economy?

BOVINO: Another factor just starting to play into the economy is furloughs. Furloughs started kicking into full gear in July. When people, in this case government workers, have smaller paychecks, that might be a weight on consumer spending down the road.

SL: During the last debate over the debt ceiling, Standard & Poor’s downgraded its U.S. debt rating. What are the prospects for another downgrade?

Beth Ann Bovino was recently named U.S. chief economist for Standard & Poor’s Ratings Services, where she develops U.S. economic forecasts, writes popular publications on the U.S. economy, and is known for her exceptional ability in forecasting economic trends. Prior to joining Standard and Poor’s, Bovino worked on economic and market research with Sungard Institutional Brokerage, UBS Warburg and the Federal Reserve. She has a doctorate in economics from Columbia University, a master’s in international and development economics from Yale University, and a bachelor’s degree in economics from the Wharton School at the University of Pennsylvania.
BOVINO: The decline in the effectiveness and predictability of fiscal policymaking was the prime reason for the 2011 downgrade, so that’s already factored into the current rating. With the economy actually getting stronger and stronger, the rating group has removed the negative outlook on the AA+ rating. That means they now believe there is less than a one-third chance of another downgrade—an improving scenario. They also, however, made it clear that if political brinkmanship becomes more extreme or deficits widen, via rollbacks on sequestration, for example, without offsetting measures, that would raise risks to the U.S rating.

SL: Which economic sectors look the most promising?

BOVINO: Energy. Energy is small in the United States, but it’s growing, and I expect it will develop even further. U.S. energy production is predicted to be the largest in the world, surpassing Saudi Arabia. Energy production helps bring manufacturing back to the United States. It also lowers electric bills—all positive. It also has an effect on infrastructure. Pipelines need to be in place, railroads need to get this energy out across the country, and we need to be able to export it, as well. All this strengthens manufacturing, and will continue to do so down the road.

SL: Which economic sectors concern you most?

BOVINO: Consumer spending. It is a large chunk of the economy, and we need to see jobs coming back. Right now the 7.4 percent unemployment rate may be a lot better than the 10 percent we saw just a few years ago, but we need to get back to normal levels of around 6 percent. That seems to be a ways away.

SL: How does an aging workforce affect the U.S. economy?

BOVINO: During the recession, as baby boomers saw their nest eggs start to shrink, they continued to work. But eventually, they do have to retire, and that is a particular concern for the federal budget. In 2010, four workers were able to pay for the retirement benefits of one retiree. But in about 20 years, there will be only two workers for every one retiree. That’s going to be a big weight on public finances and something certainly to consider down the road.

Editor’s note: This interview is part of a series of conversations with national leaders. It has been edited for length and clarity. The opinions are the interviewee’s and not necessarily NCSL’s.
Atlanta lived up to its “Hotlanta” nickname during NCSL’s Legislative Summit in August, warmly welcoming nearly 5,000 lawmakers, staff and others to the cool, cavernous Georgia World Congress Center, where tireless volunteers from the Georgia General Assembly helped attendees find their way to four general sessions, 100+ policy and committee meetings, and the Exhibit Hall, filled with 181 exhibitors.

An all-star lineup of keynote speakers included the first woman on the U.S. Supreme Court, Sandra Day O’Connor; CNN commentator David Gergen; TIAA-CREF CEO Roger Ferguson; and Standard & Poor’s Chief U.S. Economist Beth Ann Bovino. Policy sessions covered a range of hot topics, from data mining and drones to mobile apps and military veterans.

Attendees also found time to pack more than 1,000 backpacks of food for Atlanta’s kids through the Backpack Buddy Challenge organized by NCSL’s Hunger Partnership. States competed for $12,000 in grants provided by Yum! Foods to use for fighting hunger in their states. Georgia packed the most backpacks, followed by New Mexico and Utah, while New Hampshire and Oregon had the highest participation rates.

Networking opportunities abounded at the opening “Georgia on My Mind” reception, several interactive policy sessions, the walk for wellness, bipartisan bike ride, and the “Whale of an Evening,” final event at the aquarium.

Next year’s Summit takes us to beautiful Minneapolis, Aug. 19 – 22. Mark the date now as it’s sure to be another great Summit full of inspiring speakers, dynamic sessions and fun networking events.

Snapshots From Atlanta

Changing of the Guard: New Officers

- President: Oregon Senator Bruce Starr (R)
- President-Elect: Nevada Senator Debbie Smith (D)
- Vice President: Utah Senator Curt Bramble (R)
- Staff Chair: Tom Wright, chief of staff for the Alaska House speaker
- Staff Vice Chair: Margaret “Peggy” Piety, staff attorney, Indiana Legislative Services Agency

Oregon Senator Bruce Starr (R) accepts the gavel from New Hampshire Representative Terie Norelli (D). NCSL leadership alternate between the two political parties every year.

Tom Wright, chief of staff for Alaska’s House speaker, is the new NCSL staff chair, succeeding Patsy Spaw, secretary of the Texas Senate. Staff play a key role in the governance of NCSL.

Massachusetts Senator Richard Moore (D) greets former Supreme Court Associate Justice Sandra Day O’Connor. She shared her views on civic education and fair courts at the opening general session and also participated in a policy session on how we select judges.

Georgia won the Backpack Buddy Challenge organized by NCSL’s Hunger Partnership by packing the most backpacks full of food for Atlanta’s children. The state received $5,000 to give to local hunger-fighting organizations.
“The summit covered everything—as much information as an individual could choose to obtain."

“The best session was the immigration panel with an update on the federal immigration bill."

“There were several very helpful, substantive sessions, like the pension track, legal implications of social media, how to evaluate large data sets."

“David Gergen sounded a perfect note of bipartisanship in addressing how we should tackle issues with competence at the state level,” said a participant after hearing Gergen’s remarks on the final day of the Summit.

“I enjoyed the bill information services training because I can see myself using it.”

“Health and Human Services Secretary Kathleen Sebelius capsulated so much information into a single address.”

FEDERAL POLICY PRIORITIES ADOPTED

• Ensure that any U.S. deficit reduction plan does not unfairly burden states.
• Pass the Marketplace Fairness Act to give states the authority to collect taxes already owed them from remote sales.
• Pass the Digital Goods and Services Act to create a national framework for taxing digital purchases.
• Reauthorize the food and nutrition programs in the Farm Bill.
• Support a strong higher education system that encourages individual financial success and a strong economy.
• Support federal educational assistance for military veterans.
• Fund state pilot programs that explore transportation funding alternatives.

There were no partisan road blocks during the ever-popular bipartisan bike ride. All participants learned to negotiate the curves and corners to come to the same conclusion at the end of the route.
North Dakota has become the second largest oil-producing state in the nation, but not everyone’s gushing over it.

BY SUZANNE WEISS

It’s being called “The Luckiest Place on Earth.”

North Dakota—just 10 years ago struggling with dispiriting, persistent trends of depopulation and decline—today finds itself with the hottest economy in the United States, growing five times faster than the national average. It boasts multibillion-dollar budget surpluses, growing infusions of international investment capital and the lowest unemployment rate in the country, 3 percent.

And the source of North Dakota’s good fortune, the 640-square-mile Bakken oil shale formation in the northwestern corner of the state, has only begun to yield its riches. The U.S. Geological Survey earlier this year estimated that more than 7 billion barrels can be extracted from the area over the next three or four decades.

Thanks to high oil prices and technological advances—including horizontal drilling and hydraulic fracturing, better known as “fracking”—production in the Bakken oil fields has increased to more than 800,000 barrels a day, six times more than in 2007. In 2012, North Dakota surpassed Alaska and California to become the second largest oil-producing state in the nation behind only Texas, according to the U.S. Energy Information Administration.

In the past, North Dakotans have seen what looked like booms quickly turn into busts—lignite coal in the 1970s, shale oil in the 1980s and again in the 1990s—so naturally there’s an undercurrent of concern about “whether this is going to last,” says Senate Majority Leader Rich Wardner (R). “That’s something we’re still watching, but of course we’re hopeful.”

Senate Minority Leader Mac Schneider (Dem-NPL) agrees. “No one can predict how long the good times will roll, but this boom does appear to have legs,” he says.

“It’s got a whole different flavor from past booms,” says House Majority Leader Al Carlson (R). “This is mining—it’s not exploration anymore.”

The revenue being generated by the boom—in the form of taxes on oil and gas production, personal and corporate incomes, and retail sales—“is beyond what we could have imagined 10 years ago—even two years ago,” Schneider says. “North Dakota has not seen the likes of this, ever. It’s an incredible opportunity.”

Average per-capita personal income in North Dakota is rising at the rate of more than 12 percent a year, and has more than doubled—from $25,592 to $51,893—since 2000, according to the U.S. Bureau of Economic Analysis. The state has cut individual and corporate income taxes, taken on a larger share (80 per-

Suzanne Weiss is a freelance writer in Denver who contributes frequently to State Legislatures.
cent) of the costs of K-12 education, and invested several billion dollars in infrastructure-building ranging from roads and bridges to water, sewer and flood-control projects.

Oil and natural gas development is the biggest economic driver, but the state is also experiencing healthy growth in other sectors. Deere & Co. and Caterpillar are both building factories in North Dakota, and an Amazon service center is also in the works. Small businesses are springing up as well—from garbage collection to coffee shops.

Still, a windfall of such proportions and likely longevity, particularly in a predominantly rural state, has a downside.

State and local officials are struggling to get their bearings in the midst of problems ranging from acute housing and labor shortages to rapidly increasing demands on public services to rising tensions between the eastern and western halves of the state.

What is taking place in North Dakota brings to mind the old saying, “Be careful what you wish for.”

In the Belly of the Boom

Over the past several years, one of the most sparsely populated states—10 inhabitants per square mile—has seen an influx of more than 70,000 workers from across the nation who are attracted to high-paying jobs in the rapidly developing oil patch.

Among the many repercussions for locals are a higher cost of living, more traffic, overcrowded schools, businesses losing employees to the oil fields, increased crime and pollution, and a growing shortage of housing.

In Williston, Tioga and other small communities in the western part of the state, one-bedroom apartments that rented for less than $500 a month four or five years ago now go for around $1,500 a month, and two- or three-bedroom units as much as $3,500. Local hotels, motels and mobile home parks are at 100 percent occupancy. Some companies have cashed in on the low housing supply and built “man camps,” makeshift villages of narrow metal-sided buildings that can house up to 3,000 workers.

“It’s been absolutely crazy lately. We just can’t build fast enough,” says Shawn Wenko, workplace development coordinator for the city of Williston. “We’ve seen 2,200 housing units come online this year, but we probably have demand for more than 5,000.”

With oil companies paying top dollar to the new onslaught of workers they need—annual salaries average $70,000 and with overtime, more than $100,000—restaurants, grocery stores, banks and other local businesses are boosting their employees’ pay. As just one example, fast-food outlets in Williston offer starting pay of $15 to $17 an hour, plus a signing bonus.

Two categories of employers—school districts and county

<table>
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<th>Year</th>
<th>Barrels Produced</th>
<th>Number of Wells</th>
<th>Barrels per Well</th>
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<td>2013</td>
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Note: These statistics include the Bakken, Spanish, Three Forks and Bakken/Three Forks Pools areas, and were recorded in June of each year.

Source: North Dakota state government website.
State Funds From Windfall

Following the lead of a handful of other resource-rich states, North Dakota has created a mechanism to preserve for future generations a portion of the enormous revenue windfall it is reaping from development of the Bakken oilfields. Voters in 2010 approved a constitutional amendment establishing the North Dakota Legacy Fund, into which 30 percent of the state’s revenues from oil production and extraction flow each year. The fund is growing at an astonishing rate—adding $92 million in July 2013 alone—and is expected to top $3 billion by 2015, when the Legislative Assembly convenes its next biennial session.

By law, the legislature can’t begin tapping the fund until 2017. Two-thirds of both houses must approve any spending of principal, and no more than 15 percent of the principal can be disbursed over a two-year budget cycle.

How the fund will be used remains an open question; a legislative study committee was recently set up to evaluate options.

Representatives Al Carlson (R) and Kenton Onstad (Dem-NPL), the House majority and minority leaders respectively, are among a number of state officials who say they favor using a portion of the Legacy Fund to help make postsecondary education more affordable for North Dakotans.

The model they point to is Wyoming’s Excellence in Higher Education Fund and the Hathaway Scholarship Program, which were created by the Wyoming Legislature in 2006 to preserve a portion of federal royalties from oil and gas development.

The first fund, which is expected to reach $100 million over the next several years, is used to endow professorships at the University of Wyoming and the state’s community colleges. The other, named in honor of former Governor Stan Hathaway and building toward a goal of $400 million, provides in-state students with merit- and needs-based scholarships of up to $1,600 a semester, for eight consecutive semesters.

Another quite different model is the $45 billion Alaska Permanent Fund, which was created by a constitutional amendment in 1976, shortly after the opening of the Trans-Alaska Pipeline System. Roughly 25 percent of the state’s oil revenues flow into the fund, which is used to operate state government—Alaska has neither an income nor a sales tax—and to provide Alaskans with an annual cash dividend, which last year was about $900 apiece.

Other such funds include Texas’ $14 billion Permanent University Fund, which uses proceeds from oil and gas production to finance higher education, and New Mexico’s $11 billion Severance Tax Permanent Fund, which the state uses to pay down interest and principal on bonds it sells.

More recently, Utah voters in fall 2012 approved a ballot measure requiring officials to deposit a portion of severance taxes into a trust fund instead of the general fund, starting in 2016. And West Virginia, with increasing natural gas production and an interest in capturing a portion of the expected revenue windfall, recently sent a group of lawmakers to North Dakota to learn about the Legacy Fund and get an update on energy production and its impacts.

“They’re burning off $3.6 million in natural gas a day. It’s like throwing away a lot of $10 bills to get at a bunch of $50 bills.”

—SENATE MINORITY LEADER MAC SCHNEIDER (DEM-NPL)
Iraq) on the list of gas-flaring nations. Although Continental Resources, a major player in the North Dakota oilfield, captures nearly all of the natural gas coming out of its wells, nearly 30 percent of the gas at most of the other wells is flared, according to Schneider.

“They’re burning off $3.6 million in natural gas a day,” Schneider says. “It’s like throwing away a lot of $10 bills to get at a bunch of $50 bills.”

Wardner says the problem will ease over the next couple of years as oil companies move ahead with plans to build new gas pipelines and processing plants. “That’s a high priority. Aside from environmental concerns, people here in North Dakota are frugal. We hate to see waste,” he says.

Wardner and other legislative leaders note the importance of planning for the post-drilling stage of the oil boom.

A major challenge, he says, is “to strike the right balance. You have to stay focused on what is happening today, but also think about what lies down the road. Remember, it wasn’t that long ago—in 2003—that we didn’t have enough money to give public employees a raise. So, naturally, we’re being a little bit cautious.”

House Minority Leader Kenton Onstad (Dem-NPL)

The Bank of North Dakota was created 94 years ago to protect local farmers from fluctuating commodity prices, powerful railroads, East Coast banks, challenging weather and more. Today, it’s as strong as ever. As the repository for most state funds, its 2012 annual report showed a ninth consecutive year of record profits, with $81 million in net earnings. Total assets increased $800 million in one year, to $6.1 billion in 2012. It ended last year with $463 million in capital.

The Bank of North Dakota is the nation’s only state-owned bank and a relic of the Peace Garden State’s varied political heritage. It sprang from a populist movement that swept the northern Great Plains, including the North Dakota Legislative Assembly, which created it to protect farmers—offering them low-interest loans and hail insurance. The legislature also created the North Dakota Mill and Elevator.

The scope of the state bank’s activities has greatly expanded, and it now serves as an economic development agency and “banker’s bank,” lessening the loan risks of private banks and helping them finance larger projects. “We think of ourselves as kind of a mini-Federal Reserve,” says Eric Hardmeyer, bank president and CEO.

The bank pays no state or federal taxes and has no deposit insurance; rather, North Dakota taxpayers are on the hook for any losses. But that doesn’t appear to be a problem; since the early 1950s it has transferred more than $555 million in profits to the state’s treasury. And with the development of the Bakken oilfields, the state-owned bank has been able to finance construction of apartments, hotels, office complexes, businesses and water systems in that area of the state.

The state’s populist movement that promoted the idea of a state-owned bank is gone now. Republicans lead the state, with supermajorities in both houses of the Legislative Assembly and control of the governor’s office and two of the state’s three congressional slots. Still, Republicans and Democrats alike maintain strong support for their state-owned bank.
(Dem-NPL) points out that the population growth the state has experienced in the past several years is already leveling off and will likely slow significantly over the next decade. “The oil industry is very mobile,” he says. “Only 20 percent of the workforce is on the production side—80 percent is on the extraction side. So once most of the wells are drilled, the influx of workers will decline steeply. We want people to put down roots here, but the fact is, a lot of them will leave once drilling is complete.”

Schneider thinks state leaders “need to do more to make sure North Dakota is the kind of place people decide to call home.”

**Dividing up a Huge Pie**

As might be expected, oil-boom issues were center stage in the 2013 session of the North Dakota Legislative Assembly, which wound up being the longest in state history.

Over the course of 80 days, legislators enacted a massive tax-relief package that included cutting income-tax rates and boosting the state’s share of financing for K-12 education to 80 percent, thereby lowering the local property-tax burden. They also increased the higher education budget and approved a major expansion of the University of North Dakota School of Medical and Health Sciences. They beefed up budgets for various programs ranging from Medicaid and affordable housing to emergency services, law enforcement and public health. They invested several billion dollars in infrastructure development. And they continued to build up the state’s rainy-day fund and other reserves.

But not everyone thought that was enough.

“This session was notable for its misplaced priorities and a number of squandered opportunities,” says Schneider, expressing disappointment about the defeat of a proposal that would have funneled substantially more money to the rural counties most directly affected by the oil boom.

Even among Republicans, who hold a supermajority in both chambers, there has been some grumbling.

“The session accomplished a lot of good for many people, but I’m afraid it’s what it didn’t do that it will be remembered for,” Representative David “Skip” Drovdal (R) wrote in an opinion piece published in The Dickinson Press. “What it didn’t do was properly fund the oil and gas counties so they will be able to keep up with the drilling activity and the damage it causes.”

Drovdal was among a handful of Republicans who joined Democrats in pushing for an increase in rural counties’ share of oil-production revenues, from 11 percent to 80 percent for the next two years. But the bill that prevailed raised the local share for the 2013-15 biennium to just 25 percent—less than the local share in, for example, Colorado (63 percent), Montana (40 percent) and Wyoming (35 percent).

A majority of legislators also defeated a proposed expansion of a program, administered by the University Land Grant Board, that awards grants to counties with particularly pressing boom-related needs. Grant requests totaled nearly $700 million in the 2011-13 biennium and are expected to approach $1 billion over the next two years, Onstad says. He believes “the amount we’re putting into the program is simply inadequate—only $214 million for 2013-15.”

“It just isn’t right to put these counties in competition with one another for vital needs like health care, law enforcement, road repairs and emergency services,” he says. “We have problems all across the state, not just in the oil counties. When you
have money to fix the leaking roof, you’d better fix it and not just keep putting on patches.”

Senator Stan Lyson (R), who represents Williston and other communities in the heart of the oil fields, disagrees. He says he doesn’t feel the legislature has shortchanged the western part of the state at all.

“Of course, local officials aren’t going to say they’ve got everything they want. But on schools, on roads, on a lot of our counties’ needs, I think we did very well this past session. People understand that, just because you’ve got a big pot of money, you don’t need to spend it all,” Lyson says.

Wardner said that figuring out how to deal with the state’s revenue windfall has created “more tension in the chambers” and made it harder to craft budgets. “In the past, we just said ‘No’ because we didn’t have the money, and we were done with it. Now if we say ‘No,’ they say, ‘Come on—we have the money.’”

Carlson, the House majority leader, says that legislators in the 2013 session continued to demonstrate a strong commitment to addressing the state’s infrastructure needs, enacting tax relief and planning for the future.

“There are always going to be arguments about who gets money and how much,” Carlson says. “The way I look at, here in North Dakota, we’re a work in progress—and I think we’re doing pretty well.”

—Kristy Hartman, NCSL

Could California Be Next?

Covering 1,750 square miles and running from Los Angeles to San Francisco, California’s Monterey Shale formation may be the site of the nation’s next oil boom. According to the U.S. Energy Information Administration, the area could contain more than 15 billion barrels of crude oil—nearly four times the amount of the Bakken shale in North Dakota and far more oil than anywhere else in the lower 48 states.

Until recently, the Monterey Shale wasn’t considered economically viable to develop because its oil is contained in hidden pockets within jagged geologic layers making it difficult to extract. Compared to North Dakota’s Bakken formation, which looks like a layered cake, Monterey Shale resembles an accordion. Technological advances have increased oil industry interest in California, however. And some claim that California could turn into the nation’s top oil-producing state.

The economic potential and employment opportunities of tapping this oil resource is not lost on state lawmakers. In August, a bipartisan delegation of California legislators traveled to North Dakota to learn about the economic and environmental impacts of hydraulic fracturing.

“It is critical that we examine every opportunity for energy independence and job growth, and that we fully understand the economic and environmental impacts that go along with natural gas and oil extraction,” said California Assemblyman Brian Nestande (R) before leaving for North Dakota.

The California delegation met with North Dakota legislators to discuss possible legislative oversight of fracking and—similar to lawmakers from West Virginia—to learn about North Dakota’s Legacy Fund, which brings in substantial revenue from the development of the Bakken shale. NCSL helped facilitate the workshop and provided the delegation with an overview of how states are approaching hydraulic fracturing policies.

During the final week of session, the California Legislature passed a bill to create a permitting system, require groundwater monitoring and ensure public transparency throughout the hydraulic fracturing process. “This is a first step toward greater transparency, accountability and protection of the public and the environment,” said Senator Fran Pavley (D), the bill’s lead author. The bill passed despite opposition from environmental groups that are concerned about potential air and water pollution, seismic activity, and traffic congestion as a result of hydraulic fracturing.

—Kristy Hartman, NCSL
Out for Blood

Growing numbers of bed bugs, mosquitoes and ticks are spreading misery and frustrating lawmakers.

BY MARY WINTER

Like vampires, bed bugs feed on human blood, do their best work at night and are very hard to kill. Also like vampires—at least those on TV and movie screens—bed bugs have made a mysterious comeback in the past decade.

The United States “is now experiencing an alarming resurgence in the population of bed bugs,” the Centers for Disease Control and Prevention and the Environmental Protection Agency announced in May. Unfortunately, they’re not the only bugs that have Americans scratching their heads and asking why now? Black-legged ticks are blamed for a surge of Lyme disease, and mosquitoes carrying the West Nile virus plague certain regions, even though their numbers nationally remain stable.

Experts can’t say with certainty what’s causing the increase, but blood-sucking vermin definitely are on state lawmakers’ minds. In the last four years, NCSL data show states have seen more than 100 bills on bed bugs and 92 mosquito-related bills. Nine states have enacted roughly 18 laws pertaining to Lyme disease, according to the Lyme Disease Association.

Night Feeders

Powerful—but dangerous—pesticides such as DDT all but put an end to bed bugs in the 1950s, but since the late 1990s, they’ve been multiplying and are found in every state, sending complaints pouring into public health agencies, according to the CDC and EPA. About as big around as an apple seed, but as thin as a credit card, beg bugs hide in mattress seams, bed frames, headboards, cracks in furniture and behind wallpaper. They come out at night to feed on human and animal blood, typically leaving red, itchy welts where they bite. Bed bugs aren’t known to carry diseases, but they can cause infections and are costly to governments and businesses. Worst of all is the human suffering they cause, says Representative Dale Mallory (D) of Ohio.

“The stories are endless. People burn their houses down to get rid of bed bugs. People sleep in bathtubs. Kids are sent home from school with their coats in plastic bags,” he says. Mallory lives in Cincinnati, the most bed bug-infested city in the country, according to Terminix pest control company, which ranks cities according to the number of service calls it receives from each.

Soon after Mallory was elected in 2007, a tour of senior housing shocked him. “It was nightmarish,” Mallory says. “There were bed bugs falling from the ceiling. It traumatized me. And the more I looked, the more I saw… It’s one of the smartest bugs. It hides and waits for you, then smells your breath, like someone just lit up the barbecue grill.”

Bed bugs, which have no natural predators, invade apartment buildings, movie theaters, dormitories, nursing homes, hotels, airports—anyplace there’s a high concentration of transient people. They hitchhike in luggage and clothing and can just as easily show up in a five-star hotel as a homeless shelter. Eradicating an infestation “usually requires multiple visits by a licensed pest control operator and diligence on the part of those experiencing the infestation,” according to the CDC and EPA. The price can

Mary Winter is State Legislature’s assistant editor and senior writer.
be well over $1,000, and people who can’t afford that often try ineffective over-the-counter insect foggers or “bug bombs,” or they try to drive the bugs out with intense heat, which can be dangerous without proper equipment, says Mallory.

What’s needed, Mallory says, is research on more effective ways to kill bed bugs and legislation that allows more resources to be used to eradicate them. Mallory sponsored a successful House resolution asking Congress to urge the EPA to approve the emergency use of the pesticide Propoxur—banned for indoor use—to attack the bugs, but the bill died in Congress. He also formed a bed bug task force but claims local leaders are too embarrassed by a bed bug problem to deal with it. “Lots of people have decided to stick their heads in the sand.” The lack of progress frustrates Mallory. “If you’re Cincinnati, how do you continue to do nothing when you’re No. 1 in the nation for bed bugs?”

**Bug Laws**

Ohio’s anti-bed bug law prohibits hotels from using bedding infested with bed bugs or other vermin. At least 22 similar laws are on the books in other states. In New York, landlords must tell any prospective renters if an apartment has had bed bugs within the last year. Nevada requires infested hotel rooms be “thoroughly fumigated, disinfected and renovated until such vermin or bed bugs or other similar things are entirely exterminated.”

Oregon lawmakers took a different approach. State law shields the names of infested hotels and businesses. No government agency tracks bed bugs in Oregon, so private exterminators have been the best source of information, says Oregon Representative Bill Kennemer (R). Hotels fear they’ll lose business if word gets out they have bed bugs. So lawmakers came up with “a workable and quality solution.” Exterminators turn over infestation information to health agencies, but all names and exact locations are redacted from the public record. With tourism Oregon’s third-biggest industry, keeping the lodging sector healthy is critical to the economy, Kennemer emphasizes.

**West Nile Outbreaks**

In late July, Colorado Statehouse regulars were surprised to learn that a former colleague was hospitalized in critical condition, suffering severe headaches, weakness and fever—all because of a mosquito bite. Former Representative Ken Summers (R) developed encephalitis, or swelling of the brain, from a mosquito carrying the West Nile virus, which required him to be
on a ventilator to help him breathe. Doctors expect he will need months of therapy.

Summers’ case was far worse than most. Up to 80 percent of people bitten by mosquitoes carrying the virus don’t develop any symptoms. The rest will suffer milder, flu-like symptoms. According to the CDC, most people with this type of West Nile disease recover completely, although fatigue can last weeks or months. A small percentage who are infected will develop what Summers has—serious neurologic illness, such as encephalitis or meningitis, which can cause coma, paralysis and death.

Since 1999, more than 37,000 Americans have contracted West Nile, and about 1,549 have died from it. Last year was especially bad—West Nile struck some 5,674 Americans, killing 286.

Outbreaks are hard to predict, although the right combination of weather, including high moisture and temperature, is known to encourage mosquito breeding. The good news is that pesticide spraying reduces the spread of the disease. “Numerous studies have shown that the risk of West Nile far outweighs the risk of pesticide exposure,” says Janet McAllister, entomologist in CDC’s Arboviral Diseases Branch. Still, safety concerns persist and environmental groups that object to pesticide spraying have taken up their concerns with lawmakers.

More typical is Maine’s law, which directs state agriculture and forestry departments to protect the public from mosquito-borne diseases by using “integrated pest management techniques and other science-based technology that minimize the risk of pesticide use to humans and the environment.”

**Lyme on the Rise**

Another vermin is causing an uptick in Lyme disease. The blacklegged or deer tick infects 300,000 Americans with the disease every year, the CDC estimates, and that number is increasing.

When ticks feed on people, they can infect them with a bacteria acquired from deer that causes Lyme disease. Up to 30 percent of deer—the ticks’ main food source—carry the bacteria in their blood.

These ticks can be as small as pinheads, with bites that are painless, so people often don’t detect them. But three to 30 days after being bitten, victims often develop flu-like symptoms and a skin rash. Most recover quickly if they receive antibiotics within 72 hours. Without the drugs, the infection can spread to the heart, joints and nervous system, causing long-term pain, cognitive impairment and numbness. Even when victims receive antibiotics, however, an unknown percentage continue to suffer symptoms.

In 2011, 96 percent of all cases of Lyme disease occurred in 13 states in the Northeast and Midwest. C. Ben Beard, chief of the Bacterial Diseases Branch, Division of Vector-Borne Diseases for the CDC, believes the increase in Lyme disease is due to “a number of factors,” including changes in weather, loss of biodiversity due to land development and expanding deer populations.

In Massachusetts, where Lyme disease has been called an epidemic, a 2011 legislative report urged the state to look at more aggressive ways to fight the tick, including reducing deer and rodent populations, eliminating tick habitat, using chemical and biological controls, and increasing public awareness about checking routinely for ticks and wearing the proper clothing outdoors.

Representative Pam Brown (D) of New Hampshire calls Lyme disease a “huge problem” in her state and has first-hand knowledge of its devastation. Brown was bitten by a tick in 2002 and says she has never recovered. At 57, the one-time quality assurance engineer for a software firm has lost two jobs because of cognitive decline and fatigue. “My ability to work at that level is kaput. Instead of earning six figures, I have been on disability for years.”

Brown takes Western and Chinese medicine, but says she still has difficulty concentrating and can’t rely on her memory. “It takes me three hours to do a job that should take one.” She says it took six years to get a diagnosis of Lyme.
disease—she was first told she had mononucleosis—and says many doctors don’t believe chronic or long-term Lyme disease exists. In part to advocate for more awareness about Lyme disease, Brown ran for a House seat in a special election earlier this year and won. She would like to see legislation requiring New Hampshire doctors to receive Lyme disease education.

Because diagnosis remains inexact, Virginia this year passed a law requiring health care providers to notify affected patients that laboratory testing can produce false negatives. Other bills address treatment. A new Maine law mandates that the state’s Lyme disease website include information about all kinds of treatments for Lyme, including long-term use of antibiotics. Many doctors opposed the bill, saying long-term antibiotic use may be riskier than the disease.

But in Connecticut, Massachusetts, New Hampshire and Rhode Island, doctors who treat Lyme patients with long-term antibiotics are protected from disciplinary action. In Connecticut and Rhode Island, insurance companies must cover treatment, and New York is considering similar legislation.

States and nonprofit groups are also stepping up efforts to educate people on how to avoid tick bites in the first place, which many experts agree is the single best defense against the disease.

Keeping the public safe has long been one of state governments’ most important roles—a role most legislators will tell you never gets any easier.

For more information on how to deal with disease carrying bugs, go to www.ncsl.org/magazine.
As the U.S. Supreme Court begins another term, several cases could have a significant effect on state governments. From legislative prayer to affirmative action to age discrimination, here are a few of the questions the high court will face this term.

**Does banning affirmative action altogether violate the 14th Amendment’s Equal Protection Clause?**

In *Schuette v. Coalition to Defend Affirmative Action*, the justices will consider the constitutionality of a 2006 Michigan amendment that prevents the state and its universities from giving “preferential treatment to any individual or group on the basis of race” in university admission decisions.

Last term, the affirmative action case of *Fisher v. University of Texas at Austin* was sent back to the circuit court of appeals because the court had failed to require the university to prove that its affirmative action policy is the only way to achieve racial diversity in its student body. As in that case, Justice Elena Kagan has recused herself, making a ruling in broad support of affirmative action unlikely.

**Does allowing prayer before government meetings violate the Constitution if it is offered predominantly by only one religion?**

The court’s ruling in *Town of Greece v. Galloway* could have an impact on any state legislature or other governmental body that begins sessions with prayer. The official policy in the town of Greece in upstate New York allows anyone from any religion without prior approval to deliver an invocation at town board meetings. But in practice, over 10 years, all but four invocations (two Jewish, one Baha’i and one Wiccan) have been led by Christians.

The Second Circuit Court of Appeals ruled the town’s practice violated the First Amendment’s Establishment Clause, which states, “Congress shall make no law respecting the establishment of religion.” (The 14th Amendment extends it to state governments.)

The court hasn’t addressed this issue since 1983 when it ruled in *Marsh v. Chambers* that a state legislature could hire a chaplain to deliver a prayer at the beginning of its sessions as long it was not “exploited to proselytize or advance any one, or to disparage any other, faith or belief.”

**Do “buffer zones” that keep protestors a certain distance from the target of their demonstration violate their First Amendment rights?**

In *McCullen v. Coakley*, the court will examine the constitutionality of a Massachusetts law that creates a 35-foot “buffer zone” around reproductive health care facilities that demonstrators are not allowed to enter. A broad ruling by the justices could have sweeping consequences beyond this particular context. State governments often are challenged to strike a balance between protecting one group of citizens’ free speech rights with another group’s rights to be safe from harassment at clinics, funerals, political events and other locations.

In a 2008 case, *Hill v. Colorado*, the court upheld a similar law against a First Amendment challenge because it addressed a legitimate state concern for the safety and privacy of individuals using the facilities, and it applied to all demonstrators equally, regardless of their viewpoint. The court also noted that the Colorado law regulated the “time, place and manner” of speech without foreclosing or unduly burdening the right of demonstrators to communicate their message. The State and Local Legal Center will file an *amicus* brief in support of the Massachusetts law.

**How far and wide does EPA’s authority extend?**

*Environmental Protection Agency v. EME Homer City Generation* considers the scope of the Environmental Protection Agency’s authority to regulate interstate pollution. Under the Clean
Air Act, the EPA sets air quality standards, and states create their own implementation plans to achieve them. If a state fails to submit a plan or correct a rejected one, only then can the EPA impose its own plan.

If the court does not dismiss this case for lack of federal jurisdiction, it will be answering two questions. Can a state plan developed before the EPA announced its reduction targets be replaced with a federal plan without first giving the state time to amend it? Does the Clean Air Act permit the EPA to not only define how much pollution a state is contributing to its neighbors, but also what equipment the state should use to mitigate the pollution downwind?

May fired state and local employees sue on the grounds of age discrimination without filing a formal complaint with the Equal Employment Opportunity Commission?

In Madigan v. Levin, the Supreme Court will decide whether government workers who claim they’ve been victims of age discrimination may take their former employers directly to court and avoid requirements in the federal Age Discrimination in Employment Act. Harvey Levin claims he was fired at age 60 from his job as an Illinois assistant attorney general because of his age and gender. He sued the state directly under the 14th Amendment and 42 U.S.C. §1983, avoiding the federal act that requires complaints be filed first with the Equal Employment Opportunity Commission. The commission often resolves issues before problems reach the courts. Many are concerned that circumventing this process would result in more complaints going to court, costing employers—including state governments—substantially more time and money.

When is it appropriate for federal courts to abstain from hearing certain cases until after the state courts have ruled?

Sprint Communications Company v. Jacobs arose from a telecom dispute in Iowa. Sprint refused to pay another company’s intrastate access charge and asked the Iowa Utility Board to confirm its decision. But the board sided with the other company and ordered Sprint to pay. Sprint then decided to challenge the board’s decision in federal and state courts, simultaneously. The Eighth Circuit followed the Younger abstention doctrine, which says federal district courts should refrain from hearing cases until state courts issue final rulings.

The Supreme Court took the case to decide whether it matters what specific circumstances exist when using the abstention doctrine. The question is whether a federal court should be able to review certain types of decisions immediately or abstain until state proceedings have ended. The State and Local Legal Center has filed an amicus brief in this case in support of using the abstention doctrine.

The Case for Federalism

Although some of these cases lack the glamour and media hype of last term’s game changers on gay rights and voting practices, many deal with federalism principles that form the core of state governance. With the court likely to grant 30 or so more petitions before February, there will be plenty of rulings to watch. Whether the justices will rule in favor of the states, however, remains to be seen.
Minorities have disproportionately outnumbered whites in the nation’s juvenile justice system for a long time. In 2010, all minorities combined comprised about 40 percent of the nation’s youth, yet they accounted for nearly 70 percent of the population in secure juvenile facilities, according to the Department of Justice’s Office of Juvenile Justice and Delinquency Prevention.

Nationally, custody rates for minority juveniles were 2.8 times higher than for whites, and in 18 states, the minority-to-white placement rate was more than 4 to 1. African-Americans are the most over-represented minority. In 42 states, in 2010, the placement rate for black juvenile offenders into residential correctional facilities exceeded that of all other racial and ethnic groups, according to the juvenile justice office.

Reducing this imbalance is a goal of the federal Juvenile Justice and Delinquency Prevention Act, which requires states to try to eliminate disparities or face losing federal juvenile justice funding. Most states have made that effort, but the reasons these disparities exist are not always easily identified or even acknowledged, and solutions can be elusive. But numerous studies across the country document the problem persists.

Several states and cities are working to narrow the gap by requiring more racial impact analyses and race-neutral assessments, switching to more effective community-based programs, and training correctional and educational staff on cultural differences that may affect juvenile behavior.

**Unintended Biases**

Oregon lawmakers passed a bill this year requiring that all legislation be screened for language that might result in unequal targeting or treatment of minority youth. It’s called a “racial impact statement” and it’s a way to look, upfront, for procedures that could have unintended impacts on minorities.

Iowa and Connecticut also have laws that require racial impact statements, while Minnesota conducts comparable analyses, but without legislation.

“Racial impact statements represent a constructive way to address disparities in the justice system,” says Marc Mauer, executive director of The Sentencing Project in Washington, D.C. “These policies give legislators the opportunity to address any unintended result of a given law instead of having to amend it later.”

When making detention decisions, officers’ assessments of how likely a youth will offend often are subjective and have resulted in inequities. Georgia now requires juvenile justice staff and probation officers to use “race-neutral risk assessment instruments” in an effort to eliminate racial and ethnic bias and better indicate when detention is necessary. They evaluate a youth’s probation status, history of appearing in court, prior record, and the seriousness of the current charge without unduly weighing social factors that increase the likelihood of being placed in detention.

For example, instead of asking if a young person lives with both his parents, a situation common to only 36 percent of African-Americans, a race-neutral assessment might ask if he lives with two adults capable of supervising him at home. Similarly, asking if a youth is involved in a “productive activity” when not in school can guide decisions about the most appropriate level of supervision.

Juvenile justice officials in Berks County, Penn., use a race-neutral assessment instrument to distinguish young offenders who pose a danger or flight risk from those who can stay
safely within the community with supervision. Many youth who stay in their homes must check in at a “reporting center” on weekday evenings, where they receive help with schoolwork and career-college exploration and participate in group counseling, recreation, enrichment activities and community service projects.

Allowing kids to remain in their own schools and neighborhoods helps them and the Pennsylvania county, authorities say. In 2009, minorities made up 90 percent of the population at the evening reporting center, and 96 percent completed supervision without re-offending that year. Because of the reporting center, Berks County reduced its out-of-home placement costs by $2.4 million in 2009, with a further drop in 2010. And, in 2012, Berks County closed its juvenile detention center. The initiative also helped the county land nearly $1 million in federal funding for a YouthBuild program to teach job skills.

Memphis, Tenn., starting using the SHAPE program in 2007 to reduce the number of minority students sent to juvenile detention. It diverts juveniles who commit minor offenses from the court system into a 14-week community program that teaches them skills to be drug free, make good decisions and change negative behaviors. It also requires some students to participate in community service projects, write letters of apology or pay for their misdeeds. A study by the University of Memphis showed a 60 percent decrease in the number of students sent to juvenile court over three years.

In 2007, Connecticut started sending all 16- and 17-year-olds directly to juvenile court rather than to the adult system, where a disproportionate number of minority kids had been sent in the past. The “Raise the Age” law, sponsored by Representative Toni Walker (D) and Senator Toni Harp (D), “transformed a previously wasteful, punitive, ineffective and often abusive juvenile justice system into a national model—at no additional cost to taxpayers,” Harp says on her website. It has steered thousands of 16-year-olds, a large percentage of them minorities, away from the adult criminal system, from which, according to Harp, they return worse off, not better.

Connecticut didn’t stop there. The state also requires a judge’s order for any admission to a juvenile detention facility, which has sharply reduced all admissions, especially those of minorities. State and judicial offices in Connecticut also must collect data on the number of minority youth in confinement and report their findings regularly to the General Assembly and governor. Currently, Connecticut lawmakers are considering a bill that would require public schools and police to establish clear guidelines for when police should be called to campuses. Such efforts have lowered police visits and reduced arrests of minorities for petty offenses.

Other initiatives include Maryland’s requirement that police assigned to public schools receive cultural competency training, and a newly created council in Texas is charged with identifying racial disparities in the state’s juvenile justice, child welfare and mental health systems.

Closing the racial gap in juvenile justice is a complex, challenging task, but with these and similar measures, lawmakers and criminal justice workers say they’re beginning to see results.
Heard During the Legislative Summit in Atlanta in August:

“Washington, D.C., is broken. That’s why Americans are depending on state legislators.”
—David Gergen, former adviser to four presidents, and political analyst for CNN.

“After my two terms in the Georgia state Senate, I went on to a couple of lesser offices.”
—Former President Jimmy Carter to legislative leaders visiting the Carter Center.

“The first, and most important, thing state legislators can do about the retirement crisis is to recognize that there needs to be a holistic solution ... they have to figure out what the next plan is going to be.”
—Roger Ferguson, chief executive officer, TIAA-CREF

“Hunger is an urban issue, a suburban issue and a rural issue. This is an issue that affects everyone in every community.”
—Representative Dwight Evans (D), Pennsylvania, co-chair of the NCSL Hunger Partnership.

“I don’t want a small helicopter [drone] hovering outside the bathroom window while I’m taking a shower. But I also don’t want to throw the baby out with the bath water.”
—Alaska Representative Shelley Hughes (R)

“Two-thirds of the public knows the name of at least one judge on the TV show, ‘American Idol,’ but only 15 percent can name the chief justice of the U.S. Supreme Court.”
—Retired Supreme Court Associate Justice Sandra Day O’Connor

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