Social Media: Policy You Can Like

INSIDE:
- Rainy Day Funds
- Life Insurance Changes
- Supreme Court Ahead
Patrick Moore founded Greenpeace nearly 40 years ago because of his concern for the environment. Today, he channels that passion to explain nuclear energy’s role in meeting electricity needs while enhancing our air quality.

No single energy technology can meet our carbon reduction goals. However, nuclear energy produces more than 60% of America’s carbon-free electricity, preventing 2 billion tons of carbon each year. That’s the equivalent of capturing all emissions from nearly all of America’s automobiles.

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"I support a smart energy future that must include clean and reliable nuclear energy to generate electricity."

Patrick Moore
GREENPEACE COFOUNDER & NUCLEAR ENERGY ADVOCATE

DR. PATRICK MOORE
GREENPEACE COFOUNDER & NUCLEAR ENERGY ADVOCATE

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STATE LEGISLATURES
NCSL’s national magazine of policy and politics

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• NCSL Bill Information Service Training Webinar. April 9 and 29, 3 p.m. Eastern
• Juveniles: Life Without Parole. April 11, 2 p.m. Eastern
• Making Readers Care About Your Writing. April 25, 2 p.m. Eastern

SEE YOU THERE

• Legislative Summit 2014, Aug. 19-22, Minneapolis, Minn.

TRENDING @ NCSL.ORG ONLINE

• Performance-Based Funding for Higher Education
• Workforce Development Resources
• Managing Corrections Costs
• Leveraging IT Investments to strengthen state government
• Justice Reinvestment to Curb Corrections Costs, Reduce Recidivism and Maintain Public Safety.
• Financial Literacy Legislation
• Employment Leave Legislation
• New Elections Resource Database
• Child Support Digest

TWEET TWEET

#NCSL opposes “Chemicals in Commerce Act.” Read how it could impact your state: http://buff.ly/1q5LBeS @HouseCommerce

Only half of teen moms earn a high school diploma by the time they reach age 22. #NCSL State Legislatures Magazine http://buff.ly/10Q5Q15

Almost half the members of Congress are former state legislators. What it meant and what they learned in @USATODAY - goo.gl/LVzgaO

SAY WHAT?

“This winter, Mother Nature is not only breaking records, she’s breaking budgets as well. From the Midwest to the Southeast and up through New England, states are reporting historic spending on snow removal.”

— Erica Michel, NCSL research analyst, in The Guardian

“State legislators have once again made the tough decisions that are required to balance their budgets in a slowly recovering economy.”

— William Pound, NCSL executive director, in Connecticut’s Darien News

DISPATCHES

Every state has an NCSL staff liaison assigned to it to be a point of contact. Three NCSL recently visited their states and shared these highlights. (For the name of your state liaison, visit www.ncsl.org and type “state liaisons” in the search box.)

Alaska: Legislator is keeping their ears to the tundra on five controversial issues: the growing movement to overturn the state ban on public funding for private schools; construction of the proposed $50 million All-Alaska gas pipeline, which enjoys support in both houses; development of the Pebble Mine Project, which supporters say would yield hundreds of millions of dollars in gold and minerals and critics say could pollute the rich salmon runs; and ways the state can replace declining severance taxes. I met with 28 lawmakers and their staffs, but also was treated to a couple great adventures outside the Capitol, including a night in an old Forest Service hunting cabin on an island 25 miles from Juneau and crystal clear views of the Northern Lights.

— Morgan Cullen, NCSL senior policy specialist and Alaska liaison

Indiana: I learned legislators have tackled a number of tough issues this session—including concussions in youth football. Both chambers recently passed a measure requiring all youth and high school football coaches to complete a certified concussion education course, which includes a test, every two years. The measure would also ban student athletes from playing the sport for 24 hours if they were called off the field for a concussion or head-related injury. Other states have concussion-awareness training laws, but Indiana’s is considered the most comprehensive.

— Martha Salazar, NCSL policy specialist and Indiana liaison

Kansas: The 13-year, nearly $325 million renovation of the State Capitol is almost complete. The Civil War-era building was sorely in need of repairs: its limestone was crumbling in places, and its tarnished dome had been battered by an F5 tornado. I worked as an intern at the Capitol in 2005 and have been watching the renovation progress ever since. Being able to walk through the rotunda now and look up at the gorgeous dome is awe-inspiring. On the ground floor, visitors are surrounded by big blocks of limestone, all quarried in Kansas. When you touch them, it feels like you are literally touching the foundation of all of Kansas.

— Anne Teigen, NCSL senior policy specialist and Kansas liaison

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Pensions Healthier, but Liabilities Remain

Cash and investments held by the 100 largest public-employee retirement systems exceeded $3 trillion in the third quarter of 2013, a record high since tracking began in 1968, according to the U.S. Census Bureau’s Quarterly Survey of Public Pensions. The data show pension plans are recovering from the losses inflicted by the Great Recession, when their cash and securities fell to a low of $2.1 trillion in the first quarter of 2009. The new values top the previous record of $2.93 trillion, set in the fourth quarter of 2007.

Still, many states’ future pension obligations remain heavy. About $6 of every $10 in the pension funds comes from earnings on investments; employee and employer contributions make up the rest. Investment earnings plummeted during the recession. Many states have not made up the losses, and many also have underfunded their retirement systems for years.

More than $1 trillion in unfunded pension promises made to current and retired government employees are straining state budgets, prompting policymakers to find alternative ways to design retirement plans. Lawmakers in nearly every state have taken some action to reform pension plans since the recession, often making changes such as reducing pension benefits or increasing employee contributions.

Illinois, for example, has the largest unfunded pension liability in the nation—roughly $100 billion. Lawmakers overhauled the state pension system in December, expecting to save roughly $160 billion over 30 years and fully fund the retirement system by 2044. The plan cuts retirees’ annual cost-of-living increases and raises the retirement age for workers 45 and younger. Unions are challenging the law in court.

—Luke Martel

State Pension Plans’ Fiscal Health

A funded ratio is a measure of a state’s ability to meet its future pension payout obligations. It is calculated by dividing a pension plan’s assets by its liabilities. Many experts agree a sound system should be at least 80 percent funded.

Note: Data were not available for D.C. and U.S. territories


Distribution of Assets: 2012

Corporate stocks 37.1%
Corporate bonds 12.5%
Foreign and international securities 17.9%
Other securities and investments 14.6%
Cash and short-term investments 3.7%
Governmental securities 10.0%
Real property 4.2%

Four Decades Strong: The 1980s
Big Hair, Big President, Big Shoulders

BY KARL KURTZ

It may have been the big-hair decade in fashion, but politically, the 1980s belonged to Ronald Reagan (a bit of a big-hair guy himself). He and his vice president, George H.W. Bush, occupied the White House for all but the first year of the decade.

The 1980s followed a period of tight state budgets, when almost all new program growth was “through federal grants, in response to federal—not state—priorities,” reported this magazine in October 1980. Congress had just created the U.S. Department of Education, and NCSL was instrumental in getting the legislation amended to ensure the new department would not “increase the responsibility of the federal government over education nor diminish the responsibility for education which is reserved to states.”

In 1981 the country was in the beginning of a severe national recession, a citizen-led tax revolt and a general backlash against social welfare policies. California’s 1978 Proposition 13, which slashed property taxes, was spreading and by 1982, 13 states had adopted their own tax or spending limits.

Enter President Reagan.

In his quest to reduce the growth of government spending, federal taxes, and federal regulations, his administration sharply cut grants to state and local governments. Congress, too, cut out the state share of general revenue sharing in 1981 (although the local government share continued until 1986).

There was talk of a “new federalism,” devolving authority from the federal government back to the states with several proposals and numerous debates about the states swapping roles with the feds to run welfare, food stamps and Medicaid. In the end, though, the new federalism was mostly about new federal cutbacks, leaving states with the responsibility for picking up (or not) the former federal programs.

Politically, the 1980s was an era of divided government. Just as Republican President Reagan shared power with a Democratic Congress, at least half the states’ governors faced a legislature controlled, at least partially, by the other party. Perhaps because of this divided control, the decade was a period of moderation in public policymaking.

Beyond Watergate

By the early 1980s, Republicans had overcome their landslide losses in the post-Watergate elections of 1974 and 1976, while the Democratic Party’s hold on the South was loosening. By the end of the decade, Republicans had increased their influence across the South and held 26 percent of the seats, compared to just 17 percent in 1980.

It was a path-breaking decade for women as well. Sandra Day O’Connor, former majority leader of the Arizona Senate, became the first female Supreme Court Justice in 1981. U.S. Representative Geraldine Ferraro from New York—the Democratic nominee for vice president in 1988—became the first woman on the ballot for either major party in a presidential election.

When legislative sessions opened in 1980, women made up only 10 percent of all state legislators. By the end of the decade they had increased their portion to 17 percent and more were getting elected to leadership positions. Five women served as presiding officers during the decade. That’s not many, but it signaled a significant change, since not even one served in the 1970s.

Policy Déjà Vu

The policy issues of the 1980s sound eerily familiar 30 years later. Redistricting issues revolved around the contiguity, compactness, minority representation and competitiveness of legislative districts. Although illegal, marijuana was being taxed by several states with the hope that tax evasion could aid in prosecuting drug traffickers. Educators were looking to improve school finance, bilingual education and teacher equality. Gambling and lotteries were expanding. Rural areas were concerned about a lack of health care manpower. States were looking for ways to control health care costs. The benefits of energy conservation were being touted. All this and more while a landmark study by President Reagan’s National Commission on Excellence in Education found the country to be “A Nation at Risk” because of failing public schools.

For the legislative institution, the decade was more about consolidation than innovation, a period of building on the many leaps taken to modernize during the 1960s and ‘70s. The most noteworthy changes were the spread of legislative fiscal offices in virtually every state and the emergence of program review and evaluation offices in many.

Computers were changing the world of work, including the work of legislatures. Electronic voting systems moved from electro-mechanical systems to computer-based systems that could also record votes, and store and transfer information to chamber journals. Online bill drafting, linked to bill status and statutory retrieval systems, emerged as legislatures moved beyond mainframe computers.

But while computers increased during the 1980s, state legislators did not. The decade began with a total of 7,562 state lawmakers but ended with 7,461. A few states added legislative seats but more reduced; the biggest cuts being in Illinois (59) and Massachusetts (80). The actions were guided by the belief that a smaller legislature would be more conducive to developing good public policy.

Encounters With Presidents and Wannabes

NCSL’s D.C. office increased in influence and grew as the voice of the states during the 1980s, enjoying remarkable access to our national leaders. The Legislative Summit (called the Annual Meeting) grew larger and larger.

Karl Kurtz is director of NCSL’s Trust for Representative Democracy and has been with NCSL since its inception. He claims he’s never had big hair, but what about a big beard?
crowds and impressive speakers.

During Reagan’s first term, the seven NCSL legislators and staff officers met with the president in the Cabinet Room of the White House to talk about Reagan’s vision of federalism. Patrick Flahaven, then secretary of the Minnesota Senate and staff vice chair of NCSL, recalls how the president “walked around the table, shaking hands with each of us. I had grown a beard, which was unusual in those days, and when he got to me he gave me a quizzical look, like I might be an interloper. So I played it low like a good staffer, and just listened.”

Flahaven’s big-hair beard must not have done too much damage since Reagan spoke at NCSL’s 1982 annual meeting in Atlanta—the only sitting president ever to do so. NCSL’s then-President Ross Doyen (R), president of the Kansas Senate, didn’t hide his excitement at getting to fly up to D.C. from the meeting to accompany the president to Atlanta aboard Air Force One.

Later in the decade, former North Dakota Senator David Nething (R), president of NCSL in 1985-86, recalls that the officers met so often with Reagan on proposed federalism changes that the White House receptionist got to know him on sight.

Arkansas Governor Bill Clinton spoke at the 1987 annual meeting in Indianapolis—that is, once he got past a particularly tough young NCSL staffer. Corina Eckl, currently NCSL’s director of state services, was then an eager new staffer assigned the job of ticket collector at the door to the plenary luncheon. When three rather large men tried to enter, she asked for their meal tickets. “We don’t have meal tickets,” she remembers the one man who was clearly in charge saying. “If you don’t have tickets, I can’t let you in,” Eckl stated (twice).

“Little lady, if you don’t let us in an awful lot of people are going to be disappointed. I am Bill Clinton, the governor of Arkansas, the luncheon speaker.” Needless to say, the “little lady” stepped aside to let the gentlemen through so the crowd could hear what the future president had to say.

Another memorable moment from the 1980s was when Geraldine Ferraro spoke just a few days after Walter Mondale selected her to run for vice president. NCSL’s then-president, William Passannante (D), New York assemblyman, proudly introduced his fellow New Yorker with some inspiring words about how Ferraro’s nomination freed every young girl in the country to envision herself president of the United States. But his ending surprised a few when he borrowed a line from the nascent gay politics

of his Greenwich Village district and bellowed into the microphone, “It’s time for state legislatures to come out of the closet!”

**Innovation and Change at NCSL**

International exchanges expanded in the 1980s as well, with study tours to Australia, Brazil, Canada, China, Egypt, Great Britain, India, Israel, Russia and Taiwan.

One of the most enduring exchanges began in 1987 with the German Partnership of Parliaments, an organization of parliamentarians from the German states focused on building stronger relations with North America. That exchange has continued every year since. In 1989 the Berlin Wall fell. Cause and effect? Of course not directly, but the build-up of social, cultural and political exchanges like the NCSL/POP program contributed to breaking down the Iron Curtain.

NCSL was not immune from the cutbacks in federal grants and contracts the states were experiencing in the early 1980s. The organization had built up a substantial staff in the late 1970s, especially in the areas of renewable energy and conservation. But between 1981 and 1982, NCSL had to lay off 21 staff who had lost their federal funding. It was during this time the Foundation for State Legislatures was launched with the goal of strengthening state legislatures through a public-private dialogue.

State Legislatures magazine, the organization’s flagship publication, underwent changes as well. A whole new editorial staff brought a renewed emphasis on unbiased writing and coverage of legislatures, a refreshed look with a modern design and flag, and some innovative new departments. And in 1982, after much discussion, the magazine started accepting paid advertising.

In 1983, NCSL joined with its sister organizations to form the State and Local Legal Center to strengthen advocacy of state and local governments at the U.S. Supreme Court. The center has endured and has had a significant impact on federalism decisions by the high court. You can read about its current efforts starting on page 29.

And finally, it was during this big-hair, big-president decade that William T. Pound became NCSL’s big-shouldered executive director. He had been on the staff of NCSL from its outset in 1975, and succeeded Earl Mackey, the founding director, in 1987.

Stay-tuned, the “Networking Nineties” are coming your way this June.
44 million children

in the US are insured by Medicaid and the Children’s Health Insurance Program (CHIP). And the number is growing because more families are signing up through the Affordable Care Act marketplaces.

Ensuring that these programs remain stable and strong in the states—and that Congress fully funds CHIP—is the right prescription for a healthy future for our children.

Take these.

And call us anytime.

To learn more about what pediatricians are doing to support child health and well-being in your state, contact the American Academy of Pediatrics at 847.434.7799 or stgov@aap.org.
TEXAS IS THE FIRST STATE TO HOLD PRIMARY ELECTIONS IN 2014. When the results were tabulated, Lt. Governor David Dewhurst (R), who has held the post for 12 years and presides over the Senate, came in a distant second behind Senator Dan Patrick (R), a tea party candidate. Dewhurst won 28 percent of the GOP vote to Patrick’s 41 percent. Since Patrick didn’t win more than half the vote, he faces Dewhurst in a runoff May 27. Democrat Senator Wendy Davis, who gained fame last year for a nearly 13 hour filibuster of a bill limiting abortion access, skated to victory in her primary for governor, beating her opponent by nearly 60 percent. She is the first woman nominated for governor since Ann Richards 25 years ago. She will face off against Republican Attorney General Greg Abbott.

“INSIDE THE NEW MEXICO SENATE: BOOTS, SUITS AND CITIZENS,” by former Senator DeDe Feldman, who served in the Senate from 1997 to 2012, is “insightful and compelling” and a “unique history” written by “a passionate legislator,” according to its reviewers. The 254-page book, published by the University of New Mexico Press, is divided into six parts: La Vida Politica in the New Mexico Senate; Boots, Suits, Leaders and Lobbyists; Dances with Wolves: New Mexico Advocates Take On the Big Boys; Patients and Patience: Turning Around the Battleship; By Grit and Grace; and Good People Trapped in a Flawed System: Ethics, Campaign Finance and Transparency.

TWELVE-YEAR INCUMBENT AND NCSL EXECUTIVE COMMITTEE MEMBER REPRESENTATIVE LINDA HARPER BROWN (R) LOST HER TEXAS PRIMARY to former Representative Rodney Anderson (R), a tea party candidate who had a single term in the House before his district was merged with Harper Brown’s, setting up this year’s face-off.

Wisconsin Assembly Republicans voted unanimously to oust Bill Kramer as majority leader following accusations that he sexually harassed a female lobbyist and groped a legislative aide during a trip to Washington, D.C., in February. The caucus met in closed session for 90 minutes before taking the vote. Kramer, a four-term lawmaker who was elected to the post in September, was not present for the vote, and has checked himself into a treatment program, according to his aides. Speaker Robin Vos, who did not support Kramer’s election to the majority leader post, said, “By the unanimous vote that we saw today, I think our colleagues were definitely convinced that the actions were reprehensible and should not have ever occurred, and certainly something he should be embarrassed about.” The GOP caucus selected Representative Pat Strachota as its first-ever female majority leader. She is retiring at the end of the year.

NORTH CAROLINA SENATOR MARTIN NESBITT, A VETERAN LAWMAKER WHO RAN FOR OFFICE TO FILL THE SEAT OF HIS LATE MOTHER and served 11 terms in the House and five in the Senate, died in March of stomach cancer. He was 67. Respected on both sides of the aisle, Nesbitt became Senate majority leader in 2009 and became minority leader when the GOP won control two years later. “He was a giant figure,” said Senator Dan Blue, who got to know Nesbitt in the House when Blue was speaker and replaces Nesbitt as the Senate Democratic leader. “He had a sense of mountain populism … and he sensed his major charge was to look out for the average, everyday person.” Nesbitt died 10 days after he received his diagnosis and four days after he stepped down from his post as minority leader. Nesbitt returned home from the hospital the day before his death to a hero’s welcome. Riding in an ambulance escorted by sheriff’s deputies, he watched well wishers line the road with signs and flags, and in tribute to his love of stock car racing, others drove race cars. “Senator Nesbitt cared deeply about people and spent a lifetime fighting for what he believed would make North Carolina a better place,” said Senate President Pro Tem Phil Berger. State flags flew at half mast.

NCSSL SENIOR FELLOW JACK TWEEDIE, ONE OF THE NATION’S LEADING EXPERTS ON WELFARE REFORM, DIED in January after a long battle with cancer. Jack came to NCSSL in 1995 to work on welfare and social services policy from the University of Denver, where he was a lecturer and visiting scholar in the political science department. He received both his law degree and Ph.D. from the University of California, Berkeley, and had authored a major study on racial and sexual discrimination in the construction industry for the governor of New York. When states pioneered welfare reform in the 1990s, and Congress later followed their lead, Jack crisscrossed the country hundreds of times, testifying before legislatures, helping them craft legislation. He ultimately became director of NCSSL’s children and families program. “Jack’s knowledge, commitment and energy helped shape policy across the nation. He made NCSSL a leader in one of the most important domestic issues of our time, and he was widely recognized for his intellect and dedication. We and the lawmakers who knew and worked with him are grateful for his contributions,” said William Pound, NCSSL executive director.
The alarming rise in drug-related deaths has lawmakers searching for solutions. Several state legislatures have enacted policies that encourage witnesses and people who overdose to call 911 to get help. Drug overdoses became the leading cause of injury death among people ages 25 to 64 in 2010, according to the Centers for Disease Control and Prevention, surpassing even motor vehicle crashes.

Pharmaceuticals, including prescription painkillers such as Oxycontin and Vicodin, were responsible for 60 percent of the 38,329 drug overdose deaths in 2010, according to the CDC. But it’s heroin—blamed in the recent high-profile deaths of actors Philip Seymour Hoffman and Cory Monteith—that has seen a resurgence of use, according to law enforcement officials.

Heroin is cheaper and easier to obtain than prescription opioid painkillers and has nearly identical effects. Heroin users often begin by abusing prescription opioids and then resort to heroin after their tolerance builds and their addiction becomes increasingly expensive. Recent surveys by the National Institute on Drug Abuse show that nearly half the young people who inject heroin reported abusing prescription opioids first.

Once primarily an inner-city problem, heroin is becoming increasingly prevalent in suburban and rural areas, according to the federal Drug Enforcement Administration. The resurgence in heroin use is attributable to the increased regulation of prescription painkillers and cheap supply of heroin.

Fortunately, deaths from opioid overdoses—whether prescription or heroin—can often be prevented if the victim receives immediate medical help. Too often, however, victims or their companions don’t call for help because they fear they will be arrested on drug charges.

In response, 14 states and the District of Columbia have enacted so-called “Good Samaritan” laws to encourage people to call 911 by granting limited criminal immunity to both the victim and the person who seeks help.

Another 18 state legislatures and the District of Columbia have enacted laws that provide varying levels of criminal or civil immunity to first responders—and in some states, friends and family of addicts—who possess and administer naloxone in an emergency. Naxolone is an opioid antidote that can reverse the effects of an overdose when injected or sprayed into the nose. More than a dozen states have combined these approaches. Several states also include provisions for education related to addiction and overdose. —Amber Widgery

Source: NCSL, Feb. 18, 2014
U.S. Test Scores Stagnant

Every three years, a half million students in 65 countries take an academic test called the Program for International Student Assessment (PISA). The 2012 scores were recently announced, and overall, the U.S. results showed little change from 2009. The exam looks at math, science and reading skills and is given to a sample of 15-year-old students across the country. Only Connecticut, Florida and Massachusetts chose to participate as separate education systems and received comprehensive state-level results.

Fourteen countries and various parts of China had higher average scores in all three subjects than the United States: Australia, Canada, Chinese Taipei, Estonia, Finland, Germany, Hong Kong-China, Ireland, Japan, Liechtenstein, Macao-China, Netherlands, New Zealand, Poland, South Korea, Shanghai-China, Singapore and Switzerland. Only 2 percent of American students reached the highest levels of math achievement, while 26 percent of American students scored below standard in mathematics. “We’re running in place and other countries are lapping us,” says Secretary of Education Arne Duncan.

The U.S. performance does not necessarily reflect a lack of resources for education. Only Austria, Luxembourg, Norway and Switzerland spend more per student on education than does the United States.

One bright spot from the test results for the United States is that the achievement gap between high and low socioeconomic groups narrowed slightly between 2009 and 2012. And strong PISA scores by Brazil, Mexico and Turkey show that improvement is possible, even in countries with fewer educational resources. Overall, 40 countries improved their scores.

Andreas Schleicher of the Organisation for Economic Co-operation and Development, which administers the test, says countries can do well in both educational excellence and equity. In fact, educational systems that invest their resources most equitably perform best, he says. Ultimately, the most important factor seems to be a commitment to universal achievement.

New Hampshire Representative Mary Stuart Gile (D) says she is interested in exploring how the highest-performing countries handle assessments. Many have only three assessments during a student’s career (although they are high stakes), in contrast with the current movement in the United States to test students annually in grades three through eight and once in high school. She questions if so many tests are necessary in a time of limited resources.

—Lee Posey

Focusing on Mug Shot Websites

Arrest records and police mug shots have long been available to the public, open to inspection in file cabinets at police departments or law enforcement agencies across the country. The Internet, however, has ended the practical obscurity that paper records used to ensure. Now, many types of public records, including mug shots, are posted on the Web in digital formats, where anyone can copy them.

And copy they have. Several websites post the copied mug shots and then charge fees as high as $1,000 to take down the photographs of those who are innocent or can show that charges were dropped.

Lawmakers in several states see the practice as extortion and are taking aim at these sites. Georgia, Illinois, Oregon, Texas and Utah in 2013 enacted legislation that, among other provisions, bans commercial sites from charging innocent people fees to take down their photos or prohibits sheriffs from releasing mug shots to sites that charge such fees. Wyoming passed a law this year, and at least 12 states are currently considering legislation.

Critics of the legislation say public records should remain public—and note that mug shots and crime reporting are an important part of news coverage and the public’s right to know. A Nieman Journalism Lab report points out that “the First Amendment does not allow the government to regulate content simply because it is distasteful.”

Legislators are not the only ones addressing the issue. A New York Times article, “Mugged by a Mug Shot Online,” reports that several credit card companies are cutting ties with the mug shot websites, and that Google has changed its algorithms so that the sites do not show up as prominently in search results.

—Pam Greenberg
If You Purchased Municipal Derivative Transactions from January 1, 1992 to August 18, 2011
You Could Get a Payment for a Class Action Settlement.

A proposed Settlement has been reached with GE Funding Capital Market Services, Inc., Trinity Funding Co., LLC and Trinity Plus Funding Co., LLC (collectively, “GE”), in a class action lawsuit that alleges price-fixing in the sale of municipal derivatives transactions by GE and other companies. The case, In re Municipal Derivatives Antitrust Litigation, MDL No. 1950, No. 08-02516, is pending in the United States District Court for the Southern District of New York.

Who Is Included in the Settlement?
This Settlement includes all state, local and municipal government entities, independent government agencies, quasi-government, non-profit and private entities that purchased:

(1) Municipal derivative transactions through negotiation, competitive bidding or auction, from any Alleged Provider Defendant or brokered by any Alleged Provider Defendant, and

(2) Any time from January 1, 1992 through August 18, 2011 in the United States and its territories or for delivery in the United States and its territories.

The Defendants and Co-Conspirators are listed in the detailed notice available on the Settlement website.

What Does the Settlement Provide?
GE agreed to a settlement amount of $18.25 million. This Settlement is only a partial settlement of the lawsuit because it only affects the claims against GE. The lawsuit is continuing against other Defendants. Morgan Stanley, Wachovia/Wells Fargo, and JPMorgan have already settled. GE will provide reasonable cooperation, including discovery cooperation, to Class Plaintiffs’ Counsel in the litigation that will continue against other Defendants.

What Do I Do Now?

• **Remain in the Settlement.** To remain in the Settlement Class and participate in the Settlement, you do not have to do anything now. If the Court approves the Settlement, you give up the right to sue GE for the claims and issues in this case. The Settlement Agreement, specifically Paragraph 1(bb), which is available at www.MunicipalDerivativesSettlement.com, describes in more detail the legal claims that you give up if you stay in the Class. If you remain in the Settlement Class, you still have the right to exclude yourself from any other settlements with other defendants reached in this lawsuit. Claim forms are not available now. Register on the Settlement website to receive a claim form when it becomes available.

• **Exclude yourself from the Settlement.** If you do not want to remain in the Settlement Class, you must exclude yourself. You must send a written request for exclusion by first-class mail, postmarked no later than May 6, 2014 to the Settlement Administrator. The detailed notice available on the Settlement website describes the information you are required to include in your request for exclusion. If you exclude yourself, you cannot participate in the Settlement, but you retain your right to sue GE on your own for the claims in this lawsuit.

NOTE: You may receive similar notices regarding proposed settlements with other Defendants (i.e., Bank of America). However, if you wish to exclude yourself from the GE settlement, you **must** send a separate and specific notice with regard to the GE settlement.

• **Object or Comment on the Settlement.** If you remain in the Settlement Class and want to object to or comment on the GE Settlement or any part of it, you must file an objection with the Court and deliver a copy to Class Counsel and **GE no later than May 6, 2014**.

When Will the Court Decide Whether to Approve the Settlement?
The Court has scheduled a hearing on June 6, 2014, at 10 a.m. at the United States District Court for the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, NY 10007, to consider whether to finally approve the GE Settlement as fair, reasonable and adequate, whether to approve Class Counsel’s request for reimbursement of litigation expenses, and to consider any objections.

The Court has appointed the law firms of Hausfeld LLP; Boies, Schiller & Flexner LLP; and Susman Godfrey L.L.P. to serve as Class Counsel and represent all Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense. You or your lawyer may ask to appear and speak at the hearing but are not required to. If you want to be heard by the Court, you must file a written notice of your intention to appear with the Court and deliver a copy to the Class Counsel and **GE no later than May 6, 2014**. The Court may change the time and date of the hearing. Any change will be posted on the Settlement website.

Get More Information
For more information on this lawsuit, your rights, or to obtain a list of defendants, call or visit the Settlement website listed below or write to Municipal Derivatives Settlement, c/o Rust Consulting, Inc., P.O. Box 2500, Faribault, MN 55021-9500.
Greyhound Countdown

Greyhound racing, popular 20 years ago but increasingly seen as cruel to the dogs, has been banned in 12 states, Guam and Puerto Rico. Iowa will join the list if lawmakers enact the bill making its way through the legislature.

Under a new Colorado law, residents can still bet on out-of-state greyhound racing via cable or closed circuit television. New Hampshire enacted similar legislation in 2010, and, like Colorado, the legislation came many years after the last dog track in the state closed for financial reasons. The last of five Colorado tracks shut down in 2008, as casinos and other gaming options surpassed greyhounds in popularity.

Thirty-seven dog tracks have closed in the United States since 2001, according to GREY2K, an organization dedicated to ending greyhound racing. A $3.5 billion industry in 1991, greyhound racing revenues had dwindled to just over $500 million in 2011.

In seven states, 21 tracks remain open, and over half are in Florida. Greyhound track owners in Arizona, Florida, Iowa, Kansas and West Virginia are interested in reducing the number of races and, according to a 2012 New York Times article, some are expanding the more lucrative slot and poker machines at their tracks.

Iowa’s legislation would allow racetrack casino licensees to pay a “live racing cessation fee” of between $2 million and $8 million a year for seven years to discontinue dog racing activities at their casinos. The money would be added to a fund to support greyhound breeders, kennel operators, and other people associated with greyhound racing, along with no-kill animal adoption agencies.

In the past two decades, public concern has also grown over treatment of the greyhounds, which can include surplus breeding and early death for only the most athletic dogs, confinement and harsh living conditions, according to the Humane Society of the United States.

Groups such as the American Society for the Prevention of Cruelty to Animals and GREY2K have drawn attention to the treatment of greyhounds. They say they often are bred in excess to produce a few winners, and that the rest are destroyed or sold to laboratories for use in experiments. The dogs that race often suffer broken legs, cardiac arrest or other injuries on the track, the groups say. After a dog’s racing career is finished, it can be offered for adoption, used as breeding stock, or destroyed.

The American Greyhound Council has worked to improve conditions on greyhound farms and conducts unannounced inspections to ensure that the animals are given proper diets, safe facilities and appropriate exercise. Kennels and farms that violate these guidelines can be banned from greyhound racing for life.

In 2013, New Hampshire introduced legislation that would bar pari-mutuel betting in jurisdictions that did not make greyhound injury records available to the public. And in Florida, legislation has been introduced this session to require the state Division of Pari-Mutuel Wagering to keep public records of greyhound injuries.

—Jonathan Griffin

TAX DAY
BY THE NUMBERS

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1862</td>
<td>The year President Lincoln signed into law the nation’s first federal income tax to help pay for the Civil War</td>
</tr>
<tr>
<td>3%</td>
<td>Tax rate on incomes between $600 and $10,000 in 1862. The rate increased to 5% for incomes of more than $10,000</td>
</tr>
<tr>
<td>90%</td>
<td>Portion of revenue that came from taxes on liquor, beer, wine and tobacco between 1868 and 1913</td>
</tr>
<tr>
<td>7</td>
<td>States with no personal income tax: Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming. New Hampshire and Tennessee tax only dividend and interest income</td>
</tr>
<tr>
<td>11.8%</td>
<td>Average percentage of income New Jerseyans pay annually in income, sales and property taxes, the highest in the nation, followed by New York (11.7%) and Connecticut (11.1%)</td>
</tr>
<tr>
<td>6.4%</td>
<td>Average tax burden in Alaska, the lowest in the nation, followed by Nevada (6.6%), Wyoming (7%), Florida (7.4%) and New Hampshire (7.6%)</td>
</tr>
<tr>
<td>$794.6 BILLION</td>
<td>State tax collections in 2012, surpassing the previous high of $779.7 billion in 2008</td>
</tr>
</tbody>
</table>

WHERE FEDERAL TAXES GO

- Federal Retirees and Veterans 7%
- Transportation Infrastructure 3%
- National Defense 19%
- Social Security 22%
- Health & Medical 21%
- Other 20%
- Interest on Debt 6%
- Safety Net Programs 12%

Sources: Internal Revenue Service, U.S. Census Bureau’s 2012 Annual Survey of State Government Tax Collections, the Tax Foundation, Office of Budget and Management
HAWAIIAN PLUCK
Texas has the guitar—Louisiana, the accordion. Arkansas, Missouri, Oklahoma and South Dakota all claim the fiddle. And now Hawaii is considering a bill that would make the humble ukulele the official state musical instrument.
“The ukulele has been widely regarded as an indigenous Hawaiian instrument since the late 1880s,” Jim Tranquada, co-author of “The Ukulele: A History,” told the Associated Press. Guitar-like instruments were already popular in Hawaii about 130 years ago when plantation owners imported workers from Portugal, Tranquada says. The Portuguese brought a little four-stringed instrument called a machete. When they started making similar instruments out of the indigenous koa tree, it became a uniquely Hawaiian creation.

CELLBLOCK SLIMS
Rural county sheriffs are selling e-cigarettes to prisoners to reward good behavior, regulate their mood swings and raise revenue. In Gage County, Nebr., Sheriff Millard Gustafson recently sold out of his monthly supply of 200 e-cigarettes for the 32-prisoner jail. “They’ve been selling like hot cakes,” he told the New York Times. “I look at this as something to control their moods. And so if they’re not a good boy or girl, I’m going to take them away, just like I do with the TVs.” Traditional cigarettes are prohibited from most jails because they’re fire hazards. E-cigarettes, powered by a battery, heat a liquid solution to create a vapor that users inhale. Most contain nicotine. The long-term health effects are unknown.

FIX FOR THE FREEZE
Michigan lawmakers have approved $100 million in emergency funding for counties, cities and villages to fix roads damaged by this winter’s brutal weather. The money will cover “sand, salt, snow and potholes ... added expenses we’ve incurred as a result of the kind of winter we’ve had,” Senator George Pappageorge (R) told the Detroit News. Detroit has seen its snowiest year on record, and in some areas, snow removal costs are up 200 percent this year over last. The money comes from a $115 million reserve fund for road projects. “Three years of sound budget decisions and living within our means has made it possible to direct existing resources toward our roads,” Senate Majority Leader Randy Richardville (R) said.

MILK, UNPLUGGED
Raw milk fans are hailing a bipartisan bill in the Maryland General Assembly that would allow a consumer to buy the milk from a farmer if he has a financial investment in the cow or herd. The sale of raw milk has been banned in the state since 2006. Bill co-sponsor Delegate Nic Kipke (R) says being able to buy raw milk is a matter of individual choice and personal freedom. Another sponsor, Delegate James W. Hubbard (D), says legalizing the sale of raw milk could benefit farmers economically. Twenty states prohibit the sale of raw milk to humans because it can carry bacteria such as salmonella or E. coli. Proponents of raw milk claim it’s more nutritious than pasteurized milk, which has been heated to kill bacteria.

TXTL8R
Officials at the Iowa Department of Transportation are hoping a smartphone app will help keep their teens from texting while driving. The app, called TXTL8R, restricts phones from receiving or sending texts when their internal GPS senses movement faster than 15 mph. The app, made by Aegis Mobility, can be used by anyone, but only teens ages 14 to 17 are eligible to have the state cover the $4 monthly fee. The projected cost is $480,000 annually.
PACKIN’ PASTRY
A bill moving through the Florida Legislature would prohibit school districts from disciplining children for playing with simulated weapons. The so-called Pop-Tart bill was inspired, at least in part, by a Maryland boy who was suspended for chewing his Pop-Tart into the shape of a gun. “Obviously, we don’t want firearms brought to school in a backpack,” Florida Representative Dennis Baxley (R) told the Tampa Bay Times. “But we got into a lot of simulated behaviors and overreacted.” The Florida bill would protect schoolchildren who play with imaginary guns, miniature toy guns and toy guns made of snap-together building blocks. They are free to draw pictures of guns or hold their pencils as if they were firearms. They could still get in trouble, however, if their play disrupts class or hurts anyone.

REVISITING THE GROCERY TAX
Two Idaho lawmakers have drafted legislation to eliminate the state’s six percent grocery tax. The measure would also do away with the annual state tax credit residents can claim, a measure designed to help offset the food tax. Senator Russ Fulcher (R), who is sponsoring the plan with Senator Cliff Bayer (R), has called grocery tax “the most regressive tax there is.” Idaho is one of 19 states that tax groceries. Most Idaho residents are allowed to claim an $80 grocery tax credit on their annual state income taxes (increasing to $100 next year). Fulcher said eliminating the tax and credit would cost the state a total of about $26 million. Fulcher is running against Governor C.L. “Butch” Otter in May’s primary.

HUNTERS UNITE
Mississippi voters will decide in November whether to amend the state constitution to guarantee the right to hunt and fish. “We’re hoping to send a message to the rest of the country that we are passionate about our hunting and fishing. We don’t want anybody dabbling with our sportsmen’s way of life,” said Representative Lester “Bubba” Carpenter (R), lead sponsor. If the measure passes, Mississippi will join 17 other states that guarantee the right to hunt and fish in their constitutions. Supporters say animal rights groups have challenged hunting rights elsewhere, and that the amendment would deter new limits on hunting seasons, restrictions on hunting weapons or further protections for prey. The proposal passed both state chambers overwhelmingly in 2012.

BREAKING UP IS HARD TO DO
Fifty-five states in the Union? That’s what a Silicon Valley venture capitalist hopes to see in his bid to break California into six new states. Tim Draper says the state is ungovernable because it is so large, and that residents would be better served by smaller governments. He won approval to begin collecting the 807,000 signatures needed to get his plan on the November ballot in California, one of 24 states that allow direct initiatives. Draper would create the states of Jefferson, North California, Silicon Valley, Central California, West California and South California. Los Angeles and Santa Barbara would be part of West California, while San Francisco and San Jose would be in Silicon Valley. Experts say the plan has little chance. Any such state break-up also would require congressional approval. But a guy can’t be blamed for California dreamin’.

BUDGET BLUES IN MAINE
A Maine state trooper told lawmakers he has resorted to feeding his six children road kill because he can’t afford enough food. Trooper Jon Brown spoke in favor of lifting a state salary freeze in effect since 2009. He was among dozens of state workers who asked members of the Legislature’s Appropriations Committee to restore funding so raises could resume. Maine has been battling a budget shortfall of nearly $100 million. Brown, a military veteran, was paid a little more than $37,000 in pretax wages in 2012, state records show. Amounts for 2013 were not available. Brown says his family depends on food stamps and Medicaid, and often eats game he shoots, adding, “I do not hesitate to collect a deer carcass from the roadway; this is necessary to provide for my family,” the Bangor Daily News reported. The bill, LD 1639, has been referred to the Senate Appropriations and Financial Affairs Committee.
Let’s face it—most adults are liking, posting, tweeting, commenting and joining social media sites as much as their kids are. In fact, almost three-quarters of adults who use the Internet are signed up on at least one social networking site of some kind, and 42 percent use more than one, according to the Pew Internet & American Life Project survey.

This is an audience many legislatures have decided is worth reaching. Social media users are more politically engaged and influential than most people, research shows. Pew found that Facebook users are more likely to attend a political meeting, more likely to vote, and more likely to try to influence how others vote.

Social media offers lawmakers a way to keep citizens informed and to share unfiltered perspectives about state issues that are receiving dwindling coverage through more traditional media outlets.

“Social media is a phenomenal way to reach constituents,” says Pennsylvania Senate Majority Leader Dominic Pileggi (R). “As a policymaker, I find the direct, immediate feedback to be tremendously helpful.”

Almost every state legislature or legislative caucus now uses some type of social media to highlight bills or actions on bills, to discuss policy issues or positions on issues, and to post photos or videos that highlight events with constituents or legislators’ daily activities.

Nonpartisan offices in about half the states use Twitter. Caucuses more frequently use Facebook, Twitter and YouTube, and, most recently, photo sharing sites, like Flickr and Instagram.

Are Guidelines Needed?

As their popularity and use spreads, more organizations are developing policies specifically to address the use of official social media accounts in the workplace. Do legislatures need to as well?

Some organizations are comfortable without a specific social media policy, relying on existing policies and trusting the judgment and discretion of those authorized to use social networking sites. Others feel a need to address the way that social media can magnify careless or reckless statements, allow disclosures of sensitive information inadvertently, and threaten computer security through such things as phishing and malware.

A recent Society of Human Resource Management survey of private sector employers found that 55 percent have guidelines for social media communications. In the public sector, in 2012,

Pam Greenberg is NCSL’s policy expert on legislatures and their use of social media.
more than 50 percent of states had social media policies for the executive branch, and another 25 percent were working on them when the National Association of State Chief Information Officers surveyed them.

Fortunately, examples of policies and guidelines are increasingly available. In “Social Media in the Public Sector Field Guide: Designing and Implementing Strategies and Policies,” authors Ines Mergel and Bill Greeves recommend “identifying a core group of users focused on identifying, championing, and implementing the social media strategies and policies of your organization.” This team should involve representatives from management, legal services, public information, information technology, and human resources departments. They recommend that the workgroup also be part of initial experiments with social media in order to determine the value of posting, how resources will be allocated, and if the effort can be maintained over the long term.

Here are some elements to consider when developing an official social media policy for legislative accounts.

1. **Define the Purpose**

   This may seem obvious, but a statement of the purpose and goals for the use of social media helps focus and guide its use, and shouldn’t be glossed over. Review your current goals and mission and determine how social media might support them. Consider the types of information and interaction citizens and constituents are seeking and how they use social media to communicate.

   For example, the Minnesota House Public Information Services’ “Social Media Policies and Best Practices Guide” states that the purpose of social media is to support the department’s mission and overall communication strategy. “Our use of social media allows us to open new channels of communication to the public... and a robust social media strategy will allow us to broadcast our content quickly, effectively, and in ways that users will find engaging.”

2. **Define Responsibilities**

   Clearly defined roles and responsibilities for oversight and management are an important part of any social media policy to help prevent unauthorized access or loss of control over accounts. Specify who is authorized to agree to the terms of service required by social media companies. Designate who will “own” the account (e.g., which legislative agency) and who will oversee its use. Determine who will keep a record of and have access to account usernames and passwords.

   “The Legislative Communication Officer, upon request, will set up social media accounts on behalf of staff,” states Montana’s social media policy for legislative staff. It goes on to specify that the Legislative Communications Office “must be informed of the usernames and passwords for all social media accounts established for posting legislative information” and that any changes to usernames or passwords must also be forwarded to the communications officer.

   Finally, decide who will be authorized to post and whether posts will be reviewed by one or more people before being made public. The Texas Legislative Research Library, for example, began its use of social media cautiously. “We knew it would be critical to maintain an appearance of non-bias, so we formed a group of librarians to review both the tweets and the resources before posting them. We haven’t experienced any major issues with our Twitter feed, so this seems to be an effective way to screen for potential controversy,” says library director, Mary Camp.

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**Password Protected**

Twelve states prohibit employers from requesting usernames or passwords to personal Internet accounts to get or keep a job. Similar legislation prohibits educational institutions from requiring students or student applicants to provide access to their social media accounts. Vermont passed legislation in 2013 to study the issue. Another 28 states are considering legislation in sessions this year.

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Note: Wisconsin legislation is pending the governor’s action.

*Source: NCSL, as of Feb. 27, 2014*
3. Establish Content and Tone
Outlining what types of information to post and deciding how interactive the account will be should help in determining what kinds of policies may be needed to maintain consistent content and tone. The difficulty of conveying the nuances of facial expression, verbal inflection, and body language in online communication, and the immediacy and anonymity of social media messaging make guidelines that much more important.

Some states limit legislative social media accounts to a “push” or notification-only service, providing information only one way. This limited use can still generate a loyal following among constituents, media representatives, lobbyists and legislators if the type of information to be posted, such as announcements about committee hearings, bill status, and new reports or new services is consistent. Policies that provide clear guidelines will help. They also may provide guidelines or limits on “following” and “liking” others’ social media accounts or posts.

Other agencies that chose to embrace a more informal, extemporaneous and interactive approach may adopt different guidelines that focus more on maintaining a respectful and friendly tone and posting relevant and useful information.

Ric Cantrell, chief of staff at the Utah Senate, uses what he calls the Barbeque Rule to guide what is posted. “If it works at a neighborhood barbecue, it works on social media. If it does not work at a neighborhood barbecue, it does not work on social media,” he says.

If your organization can handle it, the right strategy for social media is authenticity, Cantrell says. Not everyone can do it. The first priority is to be honorable and act honorably. Second, project a genuine, human picture. “Social media can smell baloney. Conversely, it respects authenticity. If citizens could see what our senators do, the sacrifices they make, and how they work every day—95 percent of the time they would be proud. They’d be bored, but they’d be proud. Our job is to share what really happens here without too much production, polish or Photoshop,” says Cantrell.

“People react positively when smart and good are real. So, be smart and be good. Then be real. Don’t skip step one.”

Whether informal or not, existing policies on Internet and computer use, confidentiality, personnel, ethics and codes of conduct will contain many content-related provisions that can be incorporated into a social media policy. The Alaska Legislature’s social media guidelines draw on other policies and spell out expectations clearly. They state that all who participate in social media on behalf of the Legislature, or a legislative office, should understand and follow the guidelines, summarized below.

◆ Know and follow any computer and ethics policies which concern appropriate behavior within the Legislature.
◆ Respect proprietary information, content and confidentiality.
◆ Always stop, pause and think before posting.
◆ Reply to comments needing a response in a timely manner.
◆ Post meaningful, respectful comments—in other words, no spam or offensive remarks or inappropriate language.
◆ When disagreeing with others’ opinions, keep it polite.
◆ Stay within your area of expertise and provide individual perspectives on your topic.
◆ Last, but not least, do not use these sites or programs for personal benefit.

4. Determine How to Handle Comments
Among the most important provisions in social media policies are those that address how to handle comments from the public. States with social media accounts that allow public comments can reap the benefits of citizen interaction and engagement, but might occasionally face challenges in maintaining a respectful and relevant online environment.
If comments are allowed, it’s best to consult with legal counsel to create guidelines. In “Social Media and Local Governments: Navigating the New Public Square,” published by the American Bar Association, authors Patricia E. Salkin and Julie A. Tappendorf recommend that state and local government agencies adopt and publish a comment policy on the social media site.

“A more detailed policy—for instance, one that states the purpose of the site and outlines the type of comments that will not be allowed or will be subject to removal—will not only assist the constructive use of the social media site by the public but also can reduce or dissuade inappropriate comments.”

Include a disclaimer on the social media site that reserves the right to remove content that violates the law or site policies. Some sites also state that comments posted by the public do not necessarily reflect the opinion of the agency hosting the site.

The Texas Legislative Council’s Facebook page states:

You are encouraged to share your thoughts as they relate to the topic being discussed. We expect comments generally to be courteous. To that end, comments are reviewed according to the following guidelines.

We reserve the discretion to remove comments that:

- Contain obscene, indecent or profane language;
- Contain threats or defamatory statements;
- Contain personal attacks or insulting statements directed toward an individual;
- Contain hate speech directed at race, color, sex, sexual orientation, national origin, ethnicity, age, religion or disability;
- Promote or endorse services or products, although noncommercial links that are relevant to the topic or another comment are acceptable;
- Are unrelated to the topic being discussed;
- Are of a repetitive or spamming nature (the same comment posted multiple times).

Removing posts raises concerns about violating First Amendment rights and questions about what constitutes a government or public forum. As Cantrell says, deleting is rarely the best course of action. “If you’re bugged, take a few minutes. Ask yourself: How would you answer a mean comment in your self-defense?” The suit charged violations of the First Amendment, claiming that members of the Honolulu Police Department “arbitrarily moderate the [Facebook] page by deleting comments and banning users who post or make comments unfavorable to the department.” After the Hawaii Defense Foundation complaint was filed, the department changed its policies and procedures regarding the removal of Facebook posts. The court subsequently determined that the complaint was moot.

In 2013, Governor Mike Pence of Indiana admitted on his Facebook page that his staff deleted comments “simply because they expressed disagreement with my position.” His statement went on to say “I have instructed our staff to review our policy and develop a standard of conduct similar to that of other elected Foundation, a group “dedicated to the defense and protection of arms owners’ civil rights and education on firearm safety and self-defense.” The suit charged violations of the First Amendment, claiming that members of the Honolulu Police Department “arbitrarily moderate the [Facebook] page by deleting comments and banning users who post or make comments unfavorable to the department.” After the Hawaii Defense Foundation complaint was filed, the department changed its policies and procedures regarding the removal of Facebook posts. The court subsequently determined that the complaint was moot.
officials and news organizations in the days ahead. We will post that policy prominently on this site.”

5. **Clarify Guidelines on Political Activity**

The special attributes of social media can lead to new questions about the use of state resources to create, write posts or link to various social media sites.

In Pennsylvania, the State Ethics Commission was asked whether it would be a conflict of interest under the Pennsylvania Ethics Act to post a legislative video on YouTube, created with state resources, if a link to a campaign video appeared on the same page. (YouTube automatically generates these links to related videos.) The opinion of the Ethics Commission in 2009 was that the actions of disinterested third parties such as YouTube or search engines such as Google would not form the basis of a conflict of interest under the act.

Senator Pileggi is in the process of asking the Pennsylvania Ethics Commission to answer additional questions. “Using social media presents some new and important ethical questions related to how to maintain a proper division between legislative work and campaign work,” he says.

A question posed to the Wisconsin Government Accountability Board in 2012 asked for clarification on whether a legislative employee, on work time, may post non-campaign related legislative materials on a social media site, even if campaign-related information also exists on that website. The Wisconsin Legislature’s social media policy reflects the decision of the board. It says that legislators and their staff may post content to websites that contain a mix of legislative, personal, business and campaign materials, as long as:

1. State resources are not used to create the mixed-content websites.
2. Legislative content generated by staff using state resources is also distributed more broadly to the press and public.
3. Personal, business, or campaign material produced by staff is done on their own personal time and without using state resources.
4. Legislators do not use state resources to post campaign or business content.

**In Addition**

Other recommended elements for policies include the following.

◆ **Accessibility.** Some social media outlets are not accessible to people with disabilities, so the policy should address how information on social media sites will be provided to users who request it in more accessible formats, whether through providing equivalent information through other electronic formats or print copies.

◆ **Intellectual property and copyright.** Social media policies should limit posts to materials or images that are created by the legislature or that are clearly in the public domain.

◆ **Retention of social media records.** Materials on official legislative social media sites, including any citizen comments received, may be considered official public records subject to retention and retrieval laws and requirements in some states.

◆ **Terms of service of social media companies.** The terms of service that social media sites require users to agree to can sometimes contradict a state’s laws or policies, or may have special restrictions or requirements. Such was the case in Colorado, where certain clauses in Facebook’s terms of service relating to indemnity, venue for legal disputes, and other provisions conflicted with state law until new terms were negotiated. Reviewing the terms of service can help identify which social media outlets to use and if additional provisions should be included in policies.

Every organization will have its own approach to policies for social media sites, depending on its purpose, use and organizational culture. Policies will need to be reviewed and changed over time, as existing social media outlets evolve and new ones appear. After all, a mere 20 years ago, the term “social media” most likely referred to that especially outgoing statehouse reporter seen often at the capitol.
Tips From the Trenches

Are you out of interesting ideas for using social media? Here are a few ways you can energize your efforts.

BY REPRESENTATIVE MICHAEL SCHLOSSBERG

We have finally hit a point where being an elected official on Facebook is no longer unique, but practically a job requirement. In fact, if you are reading this article, chances are, you are already using social media to help communicate with your constituents.

But, do you use it well? Uniquely? In a manner that is engaging, informational and provides added value for your constituents? Or are you just using it to regurgitate press releases?

If so, don’t. Using press releases on social media may be fine, but it’s not going to get more people to like or follow you.

To get constituents to connect with an elected official on social media, they have to want to get to know that official on a deeper level. They want to see what a day is like for their representative and where he or she stands on issues. Constituents want to get information that is relevant to their lives.

Break the mold. Take full advantage of social media by incorporating some of these innovative ideas into each of these social networks.

“Where Am I?” Pics on Facebook

When I’m out and about in my district, I’ll take a photo of a unique façade, upload it into Facebook, and ask, “Where am I today in the 132nd District?” Doing so serves two purposes: it shows off cool features in your district while establishing that you are out and about, not just sitting in your office.

Town Hall With a Twitter Twist

With enough advance notice and planning, you can host a constituent Town Hall. In a nutshell: Send out a press release, solicit questions and then answer them through tweets during a set time while using a Twitter hashtag (I use #AskSchloss). As an added bonus, the media loves covering stories like this, so you’ll likely get traditional press as well.

Vine Your Vote

You can record a video of your vote on an important issue and send it out via the Vine to give your vote an added push. Vine has the added bonus of appearing directly in someone’s Twitter feed, making the video easy to watch. Integrating it into your Facebook page is also a snap. A word of caution: Make sure it’s legal to shoot the Vine. In Pennsylvania, for example, no pictures or video can be recorded on the floor of the House without special permission from the speaker.

Instagram your Capitol

If your Capitol is anything like mine, it’s beautiful, filled with one-of-a-kind architecture and incredible views. Take pictures and upload them to Instagram. Then connect that account with your Facebook and Twitter accounts. Showing off the magnificent building in which you work can enhance the prestige of your job.

Segment Your Constituents in Google+

One of Google+’s greatest features is “circles,” which allows you to group your connections based on interests or other categories. Create a Google+ profile and then create your circles by issue (economic development, education, transportation, etc.) Sort your constituents appropriately; it’s not that hard if you keep up with it. Then, post information that is relevant to each circle. This way, you can ensure that the information you post is reaching those most interested in reading it.

Post Policy on LinkedIn

LinkedIn is less about cute pictures of your kids and more about demonstrating your expertise. With that understanding, use LinkedIn to discuss your various policy initiatives and post your policy papers. Go in-depth and ask for real feedback, not just a “like.”

Most people have some type of social media account, including elected officials. But too often, out of a lack of knowledge or lack of time or both, our use of social media is cliché. So be different. Break the mold and post interesting content in innovative ways, and you will be rewarded with a deeper connection to your constituents.

Pennsylvania Representative Michael Schlossberg writes a blog on social media and politics at http://politicalfails.wordpress.com and has trained small businesses in how to take advantage of the benefits of using social media.
A Drop in the Bucket

Rainy day funds proved no match against recession-era budget gaps.

BY TODD HAGGERTY AND JONATHAN GRIFFIN

Rainy day funds are one of the most common tools states have to soften the blow of economic downturns and budget shortfalls. With the severe fiscal drought of the last decade you might assume the funds had all but dried up. Not so. Although they still remain below their pre-recession peak, they have steadily been rising.

When the balances of Alaska and Texas are removed from the tally (because their large reserves skew state averages), state rainy day funds fell from a total of $25.9 billion in FY 2007 to $10.4 billion in FY 2010, and now sit at an estimated $21.6 billion.

The funds played a role in helping lawmakers balance budgets throughout the last two recessions, but the role they played was a secondary one. This was partly due to a sense of uncertainty among policymakers—a feeling that despite how bad things are, they could get worse—that has led states to preserve balances rather than exhaust them during risky fiscal climates.

The main reason rainy day funds did not save the day single-handedly, however, is that the majority of them were simply not large enough to fill the deep budget gaps states faced.

In FY 2002, for example, the median rainy day fund balance stood at $95.7 million while the median budget gap was $394.8 million. This difference was even more pronounced in FY 2010, when the median rainy day fund was $105.7 million and the median budget gap was $1.3 billion. These figures each reflect just one year, understating the fact that in both recessions, states faced budget gaps four or more years in a row.

This illustrates that, by design, rainy day funds are intended to solve short-term budget problems, not to address severe or prolonged budget problems.

How Much is Enough?

Legislators, budget experts and observers have debated how much states should allocate for these “budget stabilization funds” since they were first developed. In fact, what size to cap these funds at has been the most controversial aspect of them over the years.

In the early 1980s, rating agencies recommended that states, in general, should set aside 3 percent to 5 percent of their revenues for the reserves. More recently, the Government Finance Officers Association suggested up to 15 percent or two months of general fund revenues might be more helpful.

Todd Haggerty and Jonathan Griffin are both policy specialists in NCSL’s fiscal department.
It may not be politically feasible, however, for a state to maintain the level of reserves that many experts recommend, and appropriate reserve levels vary by state. Specific circumstances, such as the volatility of the state’s revenue stream or the availability of other funds to augment the general fund influence what level is appropriate for each state.

In general, most states cap rainy day funds between 5 percent and 15 percent of their general fund revenues. Others base limits on appropriations. For example, New Jersey caps its Surplus Revenue Fund at 5 percent of total anticipated general fund revenues, while Connecticut limits its Budget Reserve Fund to no more than 10 percent of net general fund appropriations for the current fiscal year.

Responding to Reality

Given the insufficiency of rainy day funds throughout the last two recessions, lawmakers have made several changes in recent years.

Alabama repealed its statutory fund, and later added a second fund to its constitution when voters approved it in November 2008. Utah added an education-specific rainy day fund. West Virginia deposited the remainder of its Tobacco Settlement Medical Trust Fund into its rainy day fund. Vermont created a new rainy day fund similar to its Budget Stabilization Trust Fund, that gives the General Assembly, rather than the state’s commissioner of finance and management, control over all withdrawals.

Several states also have increased the funds’ size limits. Nevada recently increased the maximum fund balance from 10 percent to 20 percent of general fund appropriations. Georgia, Oklahoma and Virginia increased their caps from 10 percent to 15 percent, and Mississippi, Rhode Island, South Carolina and West Virginia also raised cap amounts. North Dakota is the only state that has reduced its cap, from 10 percent to 9.5 percent.

Nine states also have altered their methods for withdrawing funds. Oklahoma lawmakers, for example, changed their fund’s rules so they could use $10 million from it to support manufacturing establishments facing the threat of downsizing the workforce.

A Little Background

As their name suggests, budget stabilization funds exist to minimize the vulnerability of state budgets to economic fluctuations. Florida established the nation’s first rainy day fund in 1959. Known as the Working Capital Fund, it was created to help pay for the day-to-day costs of services during the region’s slow summer months, and to stave off the effects a 1958 crop freeze had on the state’s economy.

In 1980, 10 states had adopted rainy day funds, and by 1989, 20 more. Today, 46 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands have some kind of rainy day fund.

Colorado, Kansas, Montana and New Mexico don’t have “official” rainy day funds, although defining what is a state rainy day fund is no easy task. One state’s definition of a stabilization fund is altogether different from another’s. Colorado has a “required reserve,” and New Mexico has a “restricted reserve,” which some public finance experts count as rainy day funds because they serve to help stabilize the general fund budget.

Whatever the definition may be, the original concept of a rainy day fund is straightforward: Money is saved when state finances are sunny for use when the state’s economy gets hit with a downpour.
If You Purchased Municipal Derivative Transactions from January 1, 1992 to August 18, 2011

You Could Get a Payment for a Class Action Settlement.

A proposed Settlement has been reached with Bank of America, N.A. (“Bank of America”), in a class action lawsuit that alleges price-fixing in the sale of municipal derivatives transactions by Bank of America and other companies. The case, In re Municipal Derivatives Antitrust Litigation, MDL No. 1950, No. 08-02516, is pending in the United States District Court for the Southern District of New York.

Who Is Included in the Settlement?
This Settlement includes all state, local and municipal government entities, independent government agencies, quasi-government, non-profit and private entities that purchased:
(1) Municipal derivative transactions through negotiation, competitive bidding or auction, from any Alleged Provider Defendant or Co-Conspirator or brokered by any Alleged Broker Defendant or Co-Conspirator,
(2) Any time from January 1, 1992 through August 18, 2011 in the United States and its territories or for delivery in the United States and its territories.

The Defendants and Co-Conspirators are listed in the detailed notice available on the Settlement website.

What Does the Settlement Provide?
Bank of America agreed to a settlement amount of $20 million (plus any funds remaining in the State AG Escrow Fund that, as of the date this Notice is issued, Bank of America has access to pursuant to the terms of the State AG Settlement – this potential additional amount could be between $0 and $1 million) to be paid as follows: $10 million has already been paid into an escrow account and the balance will be paid later. This Settlement is only a partial settlement of the lawsuit because it only affects the claims against Bank of America. The lawsuit is continuing against other Defendants. Morgan Stanley, Wachovia/Wells Fargo, and JP Morgan have already settled. Bank of America will provide reasonable cooperation, including discovery cooperation, to Class Plaintiffs’ Counsel in the litigation that will continue against the other Defendants.

What Do I Do Now?
• Remain in the Settlement. To remain in the Settlement Class and participate in the Settlement, you do not have to do anything now. If the Court approves the Settlement, you give up the right to sue Bank of America for the claims and issues in this case. The Settlement Agreement, specifically Paragraph 1(cc), which is available at www.MunicipalDerivativesSettlement.com, describes in more detail the legal claims that you give up if you stay in the Class. If you remain in the Settlement Class, you still have the right to exclude yourself from any other settlements with other defendants reached in this lawsuit. Claim forms are not available now. Register on the Settlement website to receive a claim form when it becomes available.

• Exclude yourself from the Settlement. If you do not want to remain in the Settlement Class, you must exclude yourself. You must send a written request for exclusion by first-class mail, postmarked no later than May 6, 2014 to the Settlement Administrator. The detailed notice available on the Settlement website describes the information you are required to include in your request for exclusion. If you exclude yourself, you cannot participate in the Settlement, but you retain your right to sue Bank of America on your own for the claims in this lawsuit.

NOTE: You may receive similar notices regarding proposed settlements with other Defendants (i.e., GE Funding Capital Market Services, Inc., Trinity Funding Co., LLC and Trinity Plus Funding Co., LLC). However, if you wish to exclude yourself from the Bank of America settlement, you must send a separate and specific notice with regard to the Bank of America settlement.

• Object or Comment on the Settlement. If you remain in the Settlement Class and want to object to or comment on the Bank of America settlement or any part of it, you must file an objection with the Court and deliver a copy to Class Counsel and Bank of America no later than May 6, 2014.

When Will the Court Decide Whether to Approve the Settlement?
The Court has scheduled a hearing on June 6, 2014, at 10 a.m. at the United States District Court for the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, NY 10007, to consider whether to finally approve the Bank of America Settlement as fair, reasonable and adequate, whether to approve Class Counsel’s request for reimbursement of litigation expenses, and to consider any objections.

The Court has appointed the law firms of Hausfeld LLP; Boies, Schiller & Flexner LLP; and Susman Godfrey L.L.P. to serve as Class Counsel and represent all Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense. Your lawyer may ask to appear and speak at the hearing but are not required to. If you want to be heard by the Court, you must file a written notice of your intention to appear with the Court and deliver a copy to the Court and deliver a copy to the Class Counsel and Bank of America no later than May 6, 2014. The Court may change the time and date of the hearing. Any change will be posted on the Settlement website.

Get More Information
For more information on this lawsuit, your rights, or to obtain a list of defendants, call or visit the Settlement website listed below or write to Municipal Derivatives Settlement, c/o Rust Consulting, Inc., P.O. Box 2500, Faribault, MN 55021-9500.

For more information: 1-877-310-0512 www.MunicipalDerivativesSettlement.com
Massachusetts added a provision that 90 percent of capital gain revenue in excess of $1 billion be transferred to the budget stabilization fund.

**Structure of Rainy Day Funds**

Although rainy day funds differ in design and purpose from state to state, there are four common elements that govern most. Lawmakers considering further changes to their funds may want to start with these four questions.

- What are the methods currently used to determine deposits?
- What rules govern withdrawals?
- What provisions have been set for repayment?
- What is the cap on the size of the fund?

Deposits to rainy day funds typically are based on year-end surpluses. For example, Utah requires 25 percent of its general fund surplus, while New Jersey, West Virginia and Wisconsin require 50 percent. Other states trigger deposits when revenues or economic growth exceed specified levels.

Triggers vary in variety and complexity. In Indiana, deposits are triggered when the annual growth rate in adjusted personal income exceeds 2 percent. In Idaho, deposits are triggered when revenue growth exceeds the average growth rate of the previous six years.

When states need to tap these funds, withdrawals typically require the approval of the legislature. A couple of states, like Mississippi and North Dakota, give their governors authority to make transfers from their budget stabilization funds to prevent cash deficits during the fiscal year.

Some states also cap the size of withdrawals made (for example, $50 million in Iowa and three-eighths of the fund’s balance in Missouri).

After these funds have been tapped, several states stipulate how they are to be repaid. The terms and conditions for repayment vary by state. In Iowa and Mississippi, for example, withdrawals must be repaid by the end of the fiscal year. While in Florida, withdrawals must be repaid in five equal annual transfers from the general revenue fund beginning in the third fiscal year after the withdrawal was made. Minnesota law requires repayments only after an “upturn in the state’s economy.”

**The Forecast for Rainy Day Funds**

Recent experience demonstrates that rainy day funds alone cannot eliminate the disruptions caused by severe economic downturns, but they are one tool state lawmakers can use to resolve budget shortfalls and avoid potential deficits.

As state fiscal conditions appear to be stabilizing and settling into a period of modest growth, lawmakers are dealing with the competing demands to restore funding to programs, reduce taxes, invest in infrastructure and prepare for the next economic downturn.

Given the boom-and-bust nature of state finances, a case can be made that putting money into a rainy day fund is the most prudent course of action. Lawmakers, however, still must answer the same questions that have surrounded rainy day funds since their inception:

- What is the appropriate amount to accumulate in the rainy day fund?
- Would the state be better off using these funds for ongoing expenditures or returning them to taxpayers?
- Does the rainy day fund only delay finding permanent solutions to tough budget challenges?
Life insurance is for those “what if” situations. What if something happens to me? What if something happens to my spouse? Maintaining adequate life insurance reserves ensures that those “what if” situations will be taken care of. Having enough reserves on hand ensures that life insurers will remain solvent so that policyholders will receive the benefits they need, when they need them most.

Why the Change?

Every state requires insurers to set aside enough money to pay a reasonable number of claims at any given time. But the traditional method used most often to calculate the required reserves has raised concerns among many life insurers, actuaries and insurance regulators. The formula takes a “one-size-fits-all” approach to regulation and hasn’t changed much over the years.

Proponents of modernizing the system through principle-based reserving say the traditional way hasn’t kept up with the times and can’t easily adapt to today’s innovative and increasingly complex life insurance products. To remain current, the traditional method forces frequent and time-consuming changes to state laws and regulations.

Advocates for a change also point out that the current formula too often produces results that inaccurately reflect the risks or the true cost of the insurers’ liabilities and obligations. They fear that some reserve requirements may be too high, while others may be too low. If the reserve requirements are too high, consumers are at risk of paying more than they need to. If they’re too low, insurance companies could become insolvent, leaving consumers high and dry.

In response to concerns, the National Association of Insurance Commissioners began the difficult task of modernizing the way reserve requirements are calculated nearly a decade ago. The process was arduous, with intense debate at numerous meetings, working groups and task forces, followed by revision after revision. The actuarial guidelines, for example, for just one specific kind of coverage (universal life insurance with secondary guarantees) have gone through several revisions since they were developed in 2003.

The insurance commissioners finally adopted a new method to calculate life insurance policy reserves in 2009 that is based on certain principles rather than on a pre-set formula. The association finished an updated Valuation Manual at the end of 2012 and, along with life insurers, began encouraging state legislators to revise their life insurance laws to incorporate the new principle-based method.
The Indiana Department of Insurance has adopted the new principle-based reserving to measure the solvency of insurance companies.

“One reason I supported the legislation last year,” says Indiana Representative Martin Carbaugh (R), “is that this new method offers consumers a higher measure of security because it requires that providers maintain true adequate reserves. And that’s important because it protects both the insurance industry and its consumers.”

Adopting the new method requires amendments to state standard valuation and standard nonforfeiture laws for life insurance policies. To become effective nationwide, the revisions must be enacted by at least 42 states whose residents generate at least 75 percent of the total life insurance premiums paid in the country.

What Is Principle-Based Reserving?

Principle-based reserving considers several factors when determining the amount needed to be held in the reserve. The method replaces the pre-set formulas with a new tiered, comparison approach that requires life insurers to make two computations and use the one that yields the higher amount. The first calculation, based on the traditional formula, uses standard mortality tables and interest rates set in statutes and regulations. The

Where the Action Is

For principle-based reserving to become effective nationwide, at least 42 states (generating at least 75 percent of all life insurance premiums) must authorize it.
second figure considers future economic conditions and uses individualized figures based on the insurance company’s experience with factors such as policyholder behavior and previous expenses.

Life insurers tend to support principle-based reserving as a necessary step to allow them to introduce new multi-benefit products, such as life insurance policies that automatically convert to annuities upon retirement.

“Principle-based reserving represents a change that is important and proper to measure the increasingly complex products that companies develop to meet the needs of consumers, and to compete in the global economy,” says former Governor Dick Kempthorne, president and CEO of the American Council of Life Insurers.

Supporters of the new method point out that it really isn’t all that new or untested. It’s currently used by property and casualty insurance companies as well as health insurance companies in the states and in international insurance markets.

Does Everyone Support Change?

Despite supermajority votes during the National Association of Insurance Commissioners’ adoption process, not all state insurance regulators support the transition to the new method. Two of the more vocal opponents have been Benjamin Lawsky, superintendent of the New York Department of Financial Services, and Dave Jones, commissioner of the California Department of Insurance. When compared to the other states and territories, residents of New York and California generate the two highest percentages of life insurance premiums.

In September 2013, Superintendent Lawsky announced that New York would no longer allow principle-based reserving for universal life insurance with secondary guarantees. He expressed concern that the new method could weaken reserve and capital standards for insurance companies, similar to what occurred in the banking sector before the recent financial crisis.

“In its current form, principle-based reserving represents an unwise move away from reserve requirements that are established by formulas and diligently policed by insurance regulators,” Lawsky says. He questions the validity of the new method that uses “internal models developed by insurance companies themselves. Although proponents assert that the leeway granted to companies is limited, those restraints are so loose as to be practically illusory.”

California’s Jones has voiced concern over a lack of expertise among regulators to accurately verify the adequacy of the new reserve amounts required. He’s also concerned that states will not be able to participate in the review and analysis of the new system.

“I am disappointed that the National Association of Insurance Commissioners decided to move ahead with a dramatic change to the system ... without any fiscal analysis or adopting a complete plan to address capacity and oversight issues,” says Jones.

What Have States Done?

Since the National Association of Insurance Commissioners voted to adopt the Valuation Manual in 2012, seven states have enacted laws to authorize principle-based reserving.

“In New Hampshire, our goal in amending the standard valuation law was to achieve a more complex actuarial modeling that provides better data to capture various risks inherent in establishing adequate reserves for life-insurance products, including annuities,” says Representative Donna Schlachman (D).

“By using a principle-based approach, which considers the type of products sold, we are able to adjust our reserves to the right size based on the specific product, and thus maintain the high solvency standards the people of New Hampshire expect.”

There’s still a long way to go before the new method becomes the law of the land. Combined, the seven states that have voted to adopt it represent only 8 percent of the life insurance premiums necessary to meet the threshold. At least a dozen more state legislatures are debating the issue in legislative sessions this year.
Mid-Term Review

Supreme Court cases this term hold less importance to states than in previous years, but they are no less intriguing.

The biggest cases the Supreme Court will decide this year—a challenge to the president’s recess appointment power, a campaign finance case, and a challenge to the Affordable Care Act’s contraception mandate—aren’t as far-reaching as the big cases of the recent past. But even though they won’t have a great impact on states, the docket is interesting.

Since the magazine previewed Supreme Court cases in the October/November 2013 issue, the Court has ruled in one case and accepted another Clean Air Act case, a public employee free speech case, and another Fourth Amendment search case.

By March 1, the court had issued just one opinion in cases affecting states. In Sprint Communications Company v. Jacobs, the court ruled that a federal court should not have abstained from deciding a case challenging a decision by the Iowa Utilities Board because it was also being challenged in a state court. Sprint had contested a decision by the utility board in federal and state courts simultaneously.

The Supreme Court, in a unanimous opinion, ruled proceedings such as the utility board do not “resemble ... state enforcement actions,” which do warrant abstention, because they were not “akin to criminal prosecution” and were not initiated by the state. The high court also said that a previous court decision (Younger) applies to only three “exceptional circumstances.” The State and Local Legal Center filed an amicus brief in this case.

Can the federal government use a treaty to prosecute an assault case?

The question relevant to states in Bond v. United States is whether the federal government can prosecute an individual...
under a statute implementing a treaty that it would not otherwise have the authority to enact. Upon discovering her best friend was pregnant with her husband’s child, Carol Anne Bond, a biochemist, acquired toxic chemicals from her workplace and Amazon and spread them on her friend’s mailbox, door and car handles a total of 24 times over half a year. Her friend repeatedly contacted the police, who did nothing about the situation. But when she mentioned to the post office that the chemicals were being spread on her mailbox, postal inspectors set up video cameras and caught Ms. Bond in the act. Since a federal agency can’t charge someone with attempted murder or assault, it indicted Ms. Bond for violating an international chemical weapons treaty which makes it a crime to use a toxic chemical for anything other than a peaceful purpose. While Ms. Bond concedes the treaty is valid, she argues the indictment violates the 10th Amendment because states—not the federal government—typically punish assaults.

*Missouri v. Holland,* decided nearly 100 years ago, however, states that Congress may implement a valid treaty even if it would otherwise be unable to enact legislation in that area. The Supreme Court may avoid the question of whether *Missouri v. Holland* should be limited or overruled by deciding that Ms. Bond’s use of the chemicals didn’t violate the federal statute. She argues the statute does not apply to “conduct that no signatory state could possibly engage in—such as using chemicals in an effort to poison a romantic rival.”

**Does the EPA have the authority to regulate greenhouse gases emitted from stationary sources?**

In 2007 in *Massachusetts v. EPA,* the Supreme Court ruled that the EPA has the authority to regulate the emissions of greenhouse gases from new motor vehicles under the Clean Air Act. The question in *Utility Air Regulatory Group v. EPA* is whether the agency may regulate greenhouse gases emitted from stationary sources, like power plants and factories, too.

The D.C. Circuit concluded that the EPA does have the authority, because in *Massachusetts v. EPA* the court determined that the Clean Air Act’s overarching definition of “air pollutant” may include greenhouse gases. The EPA significantly increased the amount of greenhouse gases that will initially require permitting because otherwise millions of stationary sources would need permits.

States will be affected either way this case is decided because they issue permits and own stationary sources that emit greenhouse gases, on one hand, and they would benefit from reduced greenhouse gases emissions, on the other.

**Are public employees’ First Amendment rights protected when testifying before a grand jury?**

In the 2006 case of *Garcetti v. Ceballos,* the court ruled that when an employee speaks as part of his or her official job duties that person is not acting as a private citizen and therefore isn’t protected by the First Amendment. In *Lane v. Franks,* Edward Lane is asking the court to make an exception for subpoenaed testimony. Lane claims he was laid off because he testified under subpoena before a grand jury and at a federal criminal trial that a state legislator employed by his program didn’t do any work.

The 11th Circuit found that Lane was acting in his official job duties when he testified and therefore his speech wasn’t protected by the First Amendment. Other circuits have disagreed, reasoning that public employees have obligations as citizens to testify truthfully independent of their public employment. *Garcetti,* decided 5-4, was a big win for public employers. This is the court’s first opportunity to narrow or affirm *Garcetti.*

**Do police officers have qualified immunity when using force?**

Police officers shot and killed Donald Rickard and his passenger after Rickard led them on a high-speed chase. Their families sought money damages, claiming the officers violated the Fourth Amendment by using excessive force. The officers argued they should be granted qualified immunity because the level of force they used wasn’t prohibited by clearly established law.

In *Plumhoff v. Rickard,* the court will decide whether the lower court properly denied qualified immunity by comparing this case, which arose in 2004, with a later Supreme Court decision from 2007. The court also will decide whether qualified immunity should be denied based on the facts of this case. Rickard wove through traffic on an interstate connecting two states, collided with police vehicles twice, and used his vehicle to escape after being surrounded by police officers, nearly hitting at least one officer.

State governments will benefit from clarity the Supreme Court will provide on the boundaries of both qualified immunity
and the “hot pursuit” doctrine. The State and Local Legal Center has filed an amicus brief in this case.

**Does the Secret Service have qualified immunity when dealing with protesters?**

In *Wood v. Moss*, demonstrators for and against President George W. Bush had equal access to him as his motorcade arrived in Jacksonville, Ore. But when the president made an unexpected stop for dinner, Secret Service agents moved the anti-Bush protesters, who were closer to the restaurant than the pro-Bush demonstrators, about one block farther from the president than the pro-Bush demonstrators. The anti-Bush protesters sued two Secret Service agents claiming they violated their First Amendment rights by discriminating against them because of their political viewpoint. The Ninth Circuit denied the agents qualified immunity.

The Supreme Court will decide whether the lower court evaluated the qualified immunity question in this case too generally. The Ninth Circuit focused on its conclusion that the agents engaged in viewpoint discrimination instead of whether it was clearly established that the anti-Bush protesters could not be moved further away from the president than the pro-Bush demonstrators.

The court will also decide whether the anti-Bush protesters have adequately claimed viewpoint discrimination when there was an obvious security-based rationale for moving them: They were closer to the president. The State and Local Legal Center has filed an amicus brief in this case.

**Who owns abandoned railroad rights-of-way?**

In *Marvin M. Brandt Revocable Trust v. United States*, the court’s decision will affect “Rails-to-Trails,” where state and local governments convert abandoned railroad corridors into recreational trails. The question in this case is who owns an abandoned railroad right-of-way: the United States or a private land owner living next to the right-of-way?

In 1908, the United States granted a railroad company a right-of-way to build a railroad over public land pursuant to the General Railroad Right of Way Act of 1875. In 1976, the predecessor to the Marvin M. Brandt Revocable Trust bought land surrounding part of this railroad right-of-way. In 2004, the railroad abandoned the right-of-way. The trust argued that it owns the abandoned right-of-way. The 10th Circuit disagreed, concluding that a number of federal statutes provide that the United States retains a “reversionary interest” in General Railroad Right of Way Act of 1875 rights-of-way.

If the Supreme Court agrees with the 10th Circuit, state governments will benefit. A federal statute, if applicable, grants the United States title to abandoned railroad rights-of-way unless a “public highway,” which includes recreational trails, is established on the right-of-way within one year of abandonment. Just before the magazine went to press, the Supreme Court ruled in favor of the landowner.

**Are false statement laws constitutional?**

*Susan B. Anthony List v. Driehaus* involves a First Amendment challenge to a state statute prohibiting false statements against candidates for office. The Susan B. Anthony List wanted to run a billboard criticizing a congressman for supporting tax-payer funded abortions by voting in favor of the Affordable Care Act.

A panel of the Ohio Elections Commission found probable cause that this billboard would violate Ohio’s false-statement statute and referred the matter to the full commission, but the hearing never took place because the congressman lost the election. SBA List sued the commission claiming that its proceedings chilled First Amendment protected speech and association rights. SBA List wants the Supreme Court to adopt a test that makes it easier to challenge the constitutionality of false-statement laws. At least 15 states with similar laws prohibiting false statements against candidates will be affected by how the Court rules in this case.

**Can police search the cell phone of someone they’ve arrested without a warrant?**

In *Riley v. California* and *U.S. v. Wurie* the court will decide whether the Fourth Amendment permits police, without a warrant, to search a cell phone found on a person who is arrested. The lower courts reached opposite conclusions in these cases. In *Riley* the California Court of Appeals concluded the warrantless search was lawful. State court precedent held that a warrantless cell phone search was permissible in an arrest if it was “personal property … immediately associated with [his] person.” In this case it was.

In *Wurie*, the First Circuit applied the two justifications for a search during an arrest articulated in *Chimel v. California*—officer safety and preservation of evidence—and concluded that the warrantless cell phone search violated the Fourth Amendment. The court reasoned that officer safety is irrelevant to cell phones, and it is very unlikely that cell phone data would be destroyed while officers obtain a warrant. But as the court in *Wurie* pointed out, smart phones are computers containing a wealth of information. It would significantly assist police officers if they could search these devices when they arrest someone without first obtaining a warrant.

How will the states fare in these cases? We’ll know by the end of June. ☎
Roger W. Ferguson, Jr. is president and CEO of TIAA-CREF, the leading provider of retirement services in the academic, research, medical and cultural fields. He began his career as an attorney in New York City, and is the former vice chairman of the Board of Governors of the U.S. Federal Reserve System. Currently, Ferguson is a fellow of the American Academy of Arts and Sciences; is a member of the Academy’s Commission on the Humanities and Social Sciences; and serves on the boards of the American Council of Life Insurers, the Institute for Advanced Study and Memorial Sloan-Kettering Cancer Center. He spoke with State Legislatures magazine at the 2013 Legislative Summit.

STATE LEGISLATURES: Why is the country facing a retirement crisis?
FERGUSON: The existing systems—Social Security, Medicare and Medicaid—that are focused on aging populations will be under great stress soon as the aging baby boomers retire. They will need to be supported in their retirement years by fewer workers. This will bring to light the need to rethink, repair and restart the retirement system in America to deal with this new reality. The other big concern is that not only are we aging as a society, but we also are living longer, making health care issues even more important.

SL: How long should individuals realistically expect to work?
FERGUSON: It depends on individual circumstances, in terms of the kind of job one does, the physical nature of the work. But for many people approaching retirement, I think it is really important for them to consider working a little longer. Having a longer work life means two things. One is you get to save more, and second, you get to delay when you have to dig into your retirement nest egg. With longer life expectancies, people need to plan for a retirement of maybe 20 years, maybe even 30 years. I think many individuals have not factored in the increase in longevity as they’ve thought about what their retirement might look like. A longer work life is one option individuals should consider.

SL: Is planning for retirement the same for men as it is for women?
FERGUSON: There are some differences for men and women, and some similarities. Women tend to have smaller retirement nest eggs. That’s partially because they tend to be out of the workforce for maybe a dozen years taking care of children or elderly parents. And when they are in the workforce, women still tend to earn on average only 77 cents to 81 cents for every $1 a man earns in a similar job. The second challenge for women is that they tend to live about four years longer than men. So while everyone is dealing with a similar set of challenges, they may be a bit more acute for women.

SL: What happens to public employees when pension promises are broken?
FERGUSON: Many folks go into the public sector expecting the pension to be an important part of the benefits. They may, in fact, take a slightly lower salary in order to have a solid pension. We have to respect the promises that have been made. On the other hand, we have to recognize that, if promises are not sustainable, it creates stresses in the system. Making evolutionary changes from the current systems to a more sustainable system is really very important.

SL: Who should bear the risk for public employees—the employee or the employer?
FERGUSON: We need to recognize that this is a shared responsibility. We think plans are much more sustainable if both the employer and the employee feel they are active participants and bear the risk evenly.

SL: What can state legislators do to address these concerns?
FERGUSON: The first and most important thing is to recognize there needs to be a holistic solution to the retirement crisis. Once legislators move beyond the unfunded or underfunded liability issue, they will need to determine the next step. They also have some obligations to consider. How do they effectively educate their citizens about the challenges? Should they require that financial literacy be taught in schools? How do they ensure enough flexibility to tailor solutions to specific circumstances in each state and locality? They’ve got to be wise; they’ve got to recognize there’s not just one perfect solution for all.

SL: What role does financial literacy play in resolving the retirement crisis?
FERGUSON: Financial literacy in the United States is woefully inadequate. The reason is that very few states require any sort of financial literacy class, even in high school. Folks who have more financial literacy training tend to have more wealth and fewer debt problems. They know more about mutual funds and mortgages, and they plan for retirement. Consequently, it’s important for us to overcome this financial literacy challenge.

SL: What is the most common trend in pension reform?
FERGUSON: The big trend in response to underfunded or unfunded
liabilities is to shift toward a hybrid plan. These plans combine the best of defined benefit plans (programs that guarantee retired employees a specific benefit for life) with the best of defined contribution plans (programs that draw contributions from both the employers and the employees). Many local government, are moving toward a hybrid plan.

**SL: What are some of the features that a successful retirement plan should have?**

**FERGUSON:** A few features are seen consistently across successful plans. One is that everyone is enrolled; participation rates are at 100 percent. Second, good plans have an option for lifetime income in the form of an annuity or another defined benefit. A third is that employees save about 10 percent of their income, if not more, for their retirement. Next, investors have about 10 options to choose from—more than 10 can be overwhelming and fewer than five fails to give enough viable options. Last, good plans offer retirees educational opportunities and professional, objective advice.

**SL: Are you aware of NCSL’s work on pension and retirement issues?**

**FERGUSON:** What NCSL is doing is really important—providing opportunities for legislators to talk about these issues, to hear from experts, to share best practices across different states. Each solution has to be tailored to each state’s needs. The approach NCSL takes—bringing in experts, allowing conversations and having people learn from each other—is really a model for how an institution can help legislators deal with some tough and challenging issues.

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“I could change my voter registration to say I live in Timbuktu, but that doesn’t mean I live there.”

—Florida Senator Jack Latvala (R), who pushed for a new rule requiring lawmakers to show documentation of their home address and district, instead of just stating it, as they’ve done in the past, as reported in the Miami Herald.

“We now for the first time have standards in our rules. It’s a great day for us.”

—Florida House Speaker Will Weatherford (R) after both chambers passed a new rule requiring lawmakers to live in the districts they represent, in the Miami Herald.

“Why is this here again?”

—South Dakota Representative Troy Heinert (D), reacting to a bill to allow people with concealed carry permits to bring guns into the state Capitol, as reported in the Rapid City Journal. The bill narrowly failed.

“Many citizens, I think the majority, have fundamental problems with Common Core and its implementation in the state. I believe that we, as a state, can do a far better job in this area than the federal government dictating to us, and that’s the thrust of this bill.”

—Arizona Senator Al Melvin (R), whose bill would have prohibited Arizona from using Common Core educational standards, reported in the Arizona Republic. It died 18-12.

“So technically, you could be sitting in traffic playing Angry Birds—and that’s totally legal.”

—Colorado Representative Jovan Melton (D), on his proposal to ban drivers from using apps on their cell phones, as reported by the Associated Press. Colorado already prohibits drivers from texting.

“Concussions are such an insidious injury that the symptoms may not show up for years later.”

—Indiana Senator Travis Holdman (R), on his bill to require concussion-awareness training for youth football coaches and a 24-hour waiting period for players who suffer concussions, in the Indianapolis Star.

“In a world of ‘Ozzie and Harriet’ parents, this might be a good thing. Unfortunately, there are parents who aren’t Ozzie and Harriet, and I worry that someone needs to make sure those children are not left and that they are taken care of.”

—Utah Senator Jim Dabakis (D), arguing unsuccessfully against a bill that would remove requirements for parents who home-school their children to follow state curriculum guidelines and school hour requirements, in the Salt Lake Tribune.
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