The Nuclear Option(s)
Today, researchers are using immunotherapy treatments to stimulate the body’s immune system to destroy invading cancer cells. Welcome to the future of medicine. For all of us. GOBOLDLY®
FEATURES

The Nuclear Option(s) Page 1
By Daniel Shea and Kristy Hartman
Lawmakers debate the merits of shoring up struggling nuclear power plants or leaving market forces alone.

Our Country ‘Tis of Thee Page 17
By Megan McClure
How much do we know about our sweet land of liberty? Shockingly little.

Health Care In and Out of Prisons Page 22
By Samantha Scotti
Former inmates struggle if they have no health coverage after being released.

A Bill, a Lawsuit and One Very Important (Missing) Comma Page 28
By Daniel Victor
Bill drafters, take note: The absence of a serial comma in a Maine law could be costly.

DEPARTMENTS

STAFF AWARDS PAGE 4

SHORT TAKES PAGE 5
Connections, insight and ideas from NCSL

NEW OFFICERS PAGE 6
Meet NCSL President Deb Peters and Staff Chair Chuck Truesdell

TRENDS PAGE 8
The latest on the childcare workforce, state lotteries and “jackpot fatigue,” the declining U.S. birth rate, solar industry jobs and teaching young drivers how to interact with police

FROM D.C. PAGE 11
High Court, High Stakes
States await landmark decisions by the Supreme Court on several critical issues.

STATELINE PAGE 20
News in brief from across the country—from shielding public lands in California to studying the “textalyzer” in New York

WHAT STAFF KNOW PAGE 24
5 things clerks and secretaries want you to know

NEWMAKERS PAGE 26
What’s happening under the domes

STATESTATS PAGE 30
Labor on! A snapshot of today’s workforce

THE FINAL WORD PAGE 31
Meet Idaho Senate President Pro Tem BRENT HILL.
“We are held at a higher standard because we have actually been elected by the people.”

SL ONLINE
Visit us on the web for more on the topics covered in these pages.

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2017 Legislative Staff Annual Achievement Awards

The following legislative staff were recognized by their professional staff associations for excellence in service to legislatures. Congratulations to all!

American Society of Legislative Clerks and Secretaries (ASLCS)
  Maryann Horch, senior systems analyst, Senate of Virginia
  Steven T. James, clerk, Massachusetts House of Representatives

Leadership Staff Section (LSS)
  Tom Krause, chief of staff, Georgia Senate Majority Leader Bill Cowsert

Legislative Education Staff Network (LESN)
  Todd Butterworth, senior research analyst, Nevada Legislative Council Bureau

Legislative Information and Communications Staff Section (LINCS)
  K’Lynn Sloan Harris, audio/video coordinator, Montana Legislative Services Division

Legislative Research Librarians Staff Section (LRL)
  Jennifer Bernier, co-head librarian, Legislative Library of the Connecticut General Assembly
  Elizabeth Lincoln, director, Minnesota Legislative Reference Library

National Association of Legislative Fiscal Offices (NALFO)
  Christopher Woods, budget director, Office of the Speaker, California Assembly

National Association of Legislative Information Technology (NALIT)
  Jonathan Palmore, senior assistant clerk-technology, Senate of Virginia
  Hobie Lehman, assistant clerk of committee operations and sergeant-at-arms, Senate of Virginia
  The South Carolina Legislative Services Agency Committee Technology Team
    • Scott Gage, manager of telecommunications and asset management
    • Bruce Ellsworth, senior multimedia and audiovisual engineer
    • Kevin Coats, IT asset management analyst
    • Anthony Amaker, applications manager
    • Michael Stroup, application development team lead

National Legislative Program Evaluation Society (NLPES)
  California State Auditor’s Office

NCSL Standing Committees
  Stephanie Barrett, associate fiscal officer, Vermont Legislative Joint Fiscal Office
  Ken Levine, director, Texas Sunset Commission

National Legislative Security and Services Association (NLSSA)
  Steve Pike, chief, Commonwealth of Virginia, Division of Capitol Police
  Lenore Adams, facilities coordinator, Montana Legislative Services Division

Research, Editorial, Legal and Committee Staff (RELACS)
  Lori Christiansen, director of the division of research, Delaware General Assembly
  Andrew Hedges, senior staff attorney, Indiana Legislative Services Agency
**SHORT TAKES ON NCSL NEWS**

**EXPERTISE**

“We’re in the eighth year of recovery from the Great Recession.”
Arturo Pérez on the budget struggles most states still face nearly a decade after the recession ended, in Bloomberg.

“It’s an equity debate.”
Kevin Pula on the road-use fees some states charge for electric vehicles to make sure their owners contribute to road building and maintenance, in the Fiscal Times.

“As e-commerce continues to grow at 15 percent a year, like it has the last six years, those numbers will grow.”
Max Behlke on the tens of billions of dollars states are losing because they can’t collect sales taxes from remote online retailers, on NPR.

**IDEAS**

**Making Plans**
NCSL’s Education Program is helping states design their education systems by taking advantage of the flexibility in the federal Every Student Succeeds Act. From left, New Mexico Representative Stephanie Garcia Richard, Senator Mimi Stewart and Legislative Education Study Committee Executive Director Rachel Gudgel work on New Mexico’s ESSA plan during an NCSL meeting this summer.

**Task Force Trip**
NCSL’s Agricultural Task Force meetings bring together legislators and staff three times a year to study inland waterways, pollinator health and research partnerships, among other topics. During a visit to New Orleans this summer, members saw firsthand the importance of the Mississippi River and the Port of New Orleans to the agricultural industry and trade. For more information about the task force, go to ncsl.org/magazine.

Below, from left, Iowa Senator Rita Hart, Lowell Atchley of the Kentucky Legislative Research Commission, South Dakota Senator Justin Cronin and New Hampshire Representative John O’Connor ride down the Mississippi River during a tour of a grain elevator and shipyard in New Orleans.

**Autonomous Expertise**
NCSL’s transportation team tracks issues ranging from autonomous vehicles to traffic safety. Visit ncsl.org/research/transportation to find a variety of resources, including a database of legislation. Or visit the magazine’s Deep Dive page for the latest on transportation funding and financing.

Below, Colorado Representative Jennifer Arndt asks questions while touring an Archer Daniels Midland grain elevator facility in Destrehan, Louisiana.

**CONNECTIONS**

NCSL’s Anne Teigen, center, testifies before a Kentucky transportation committee on state efforts to regulate autonomous vehicles. Also testifying were Jason Siwula, left, with the Kentucky Transportation Cabinet, and Marty Frappolli, right, from The Institutes.

Below, colorado Representative Jennifer Arndt asks questions while touring an Archer Daniels Midland grain elevator facility in Destrehan, Louisiana.

**SUPPORT**

Whatever the topic, NCSL probably has a report on it. Recent publications tackle infrastructure, solar energy, the health care workforce and immigration. Visit ncsl.org to find reports, legislative databases and other resources on the topics being discussed in statehouses across the country.
S
outh Dakota Senator Deb Peters is the nation’s leading legislative voice on internet tax fairness, an issue with tremendous budgetary consequences for states across the nation. She’s testified before Congress on the issue and is fed up with congressional inertia, which is causing a loss to states of some $23 billion a year. She has sponsored a bill she hopes ultimately will provoke a U.S. Supreme Court decision in the states’ favor.

Peters, a fourth-term Republican senator, is NCSL’s new president. Her determination in pursuing the federal legislation comes as no surprise to her supporters and colleagues. A certified public accountant and chair of her state’s Government Operations and Audit Committee, Peters always has her eye on the bottom line—and in this case, the bottom line of the 45 states with the sales tax.

Leading the Effort

For more than a decade, Peters has led this national tax fairness effort. But after watching the Remote Transactions Parity Act in the House and the Marketplace Fairness Act in the Senate languish in congressional committees, she decided she’d had enough.

“I’ve played nice with Congress, I’ve been respectful of the system, I’ve been respectful of the process. I am done.”

In 2016, she introduced state legislation allowing South Dakota to collect internet sales taxes. She worked with her governor and state businesses to write the measure so that it would fast-track the expected lawsuit through the courts. She says it was her “nuclear option”—and it had the desired effect: South Dakota sued four online retailers, who then countersued the state, and the case is now in the South Dakota Supreme Court, with a hearing date of Aug. 29. If it makes it to the U.S. Supreme Court—the end of 2017 or early next year is a great possibility—Peters is hoping it will reverse the 1992 Quill Corp. v. North Dakota case that restricts states’ ability to collect sales taxes from retailers with no physical presence within their borders.

Her hard work on the national stage led Governing magazine to name her one of its 2016 Public Officials of the Year.

But her drive as a legislator comes from her love for her home state and a desire to see others succeed in business, as she has. Most major issues lawmakers face on a daily basis, she says, “are trying to keep the efficient programs running well and fix the glitches or find more efficiencies” in the ones that don’t. “Rarely will you see South Dakota take a major risk with taxpayers’ money,” she says.

Building on NCSL’s Strengths

Peters got involved with NCSL as soon as she took office in the South Dakota House in 2005. Since then, she’s served on numerous NCSL committees. Before her election as the organization’s vice president in August 2015, Peters was co-chair of the standing committees.

Along with continued work on e-fairness, Peters wants to boost involvement in NCSL. “I don’t care if you’re Republican or Democrat, I want you involved,” she says. “And then I want more women on both sides.”

She also wants to build on NCSL’s strengths, which she says include research, expert testimony and other in-state assistance efforts; the grant programs and various task forces; and communications. The challenge, she says, is converting success in those areas into involvement in the “core business of the standing committees.”

“How do you translate the grant information, like fiscal leaders’ grants and labor and economics grants and all the fun stuff that we’re doing there, into the business meetings, because the participation and attendance are so low?”

Taking the Bull by the Horns

Peters’ leadership style leans on consensus building—to a point. There are times, she says, when you just need to be firm. “I mean, e-fairness, for instance, I was all about building consensus, putting names on a paper to get prime sponsors on bills and move them forward.” Until they stopped moving. “We have the consensus, but we’re still not pushing the bill across the finish line. It hits a point in time when you’ve just got to take the bull by the horns and get to work, right?”

Peters has a lot planned for her year at the helm of the organization. If her past accomplishments are any predictor, NCSL is bound to achieve great things this year.

“My nickname is Honey Badger for a reason,” Peters says. “I work hard. I make the tough decisions. And I make people work hard. I maintain high expectations of people and I expect achievements.”

—Kevin Frazzini
Legislative Staff Chair Chuck Truesdell

Chuck Truesdell began his career in journalism at a newspaper an hour from where he was working on his political science degree at the University of Kentucky. Soon the exhausting commute began to weigh on him, and he started searching for a job closer to home.

“As it happened, one of my coworkers at the newspaper was the daughter of our state representative,” Truesdell says. Eventually, the representative invited him to come work for the legislature. Truesdell accepted the offer, and after a couple of months had a permanent position with the public information office, where he worked for eight years.

In a Bit of a Rut

With the Kentucky Legislature split between Democrats and Republicans, bills were introduced year after year in one chamber only to die in the other, and Truesdell found himself writing the same speeches and press releases over and over.

“I got into a bit of a rut. ... I couldn’t think of new words to say. I couldn’t rephrase things anymore.” He adds, “And, to be honest, I don’t think I was the best speech writer.”

So he went back to the University of Kentucky, got a master’s in public financial management and made the transition to the budget office. “I fell in love with the idea of working for the budget office, partly because I enjoy spreadsheets and numbers,” he says, “but also because that’s where the action is.” And his communications experience was part of why he was hired. “You need to know not just numbers, but how to communicate what those numbers mean.”

The Challenges

The most challenging part of his job is explaining it to people. “My parents still think I work for the governor,” he says, laughing. “I have never worked in the executive branch.”

He has found that many people don’t realize the complex network that exists within the legislative branch. “I think a lot of people think of the legislature as the elected officials and that’s it, and there’s a lot of support network behind the legislators to get them the information they need.” Truesdell doesn’t mind working behind the scenes, however.

“I think there are very few legislative staffers who would even entertain the idea of running for the legislature. It’s happened, but most of us really enjoy the policy details and a lot of us are uncomfortable with the spotlight. ... And it takes both actually to make a strong legislative institution.”

One of Truesdell’s core missions as NCSL’s legislative staff chair is to spread the word about NCSL as a resource for legislative staff, many of whom, like Truesdell himself at one time, don’t realize they are members. “My very first exposure to NCSL was the LINCS full-day speech-writing boot camp in 2005. I was blown away. I saw a whole new world of professional development in front of me.”

What’s more, “I met staffers from North Carolina, from Florida, from New Hampshire, from Mississippi, from Wyoming … I never realized how vastly different each legislative staff agency was.”

Truesdell went on to serve as LINCS chair in 2010-11 and received the group’s Staff Achievement Award. He has served on numerous committees and was appointed to serve as overall staff co-chair of the NCSL Standing Committees in 2011-12.

One of his goals as staff chair is to get more staffers engaged in NCSL. “I want to push people out of their comfort zone … and develop formal strategies for mentorships, for encouraging people to run for the executive committee within their staff sections, to run for officer positions on the standing committees. And that will filter up, as it were, because NCSL is really a ground-up organization.”

His other major goal is to continue developing NCSL’s Young and New Professionals program. He wants to get young people involved with state legislatures and provide the professional development opportunities that entice them to stay. “How can we better serve the needs of people just entering the legislature? Because their needs are different than folks who are at midlevel in their career or five years from retirement.”

Hard Worker Who Can Take a Joke

Truesdell says his coworkers would describe him as a hard worker who can take a joke. “I take public policy and the work I do very, very seriously. I don’t take myself seriously at all. I am the one person that you can poke fun at … and lord knows, my coworkers love to needle me.”

He urges other legislative staffers not to be intimidated by NCSL officers or the size of the organization.

“If there’s anything about NCSL that interests you, call somebody, ask somebody. We always welcome more people getting involved. And the more people we can get involved, I think the better off democracy is.”

—Olivia Berlin
Helping Those Who Teach the Youngest

Every day nearly 2 million adults are paid to care for and educate more than 12 million children from birth to 5 years of age. This workforce, made up mostly of women, includes child care workers, Head Start employees, preschool teachers and home care providers.

Science points to these early years as critical for healthy brain development, and the vital role of childhood educators in setting kids on a path to success was stressed in a recent report by the Institute of Medicine and the National Research Council. Early childhood workers, the report said, need to understand the science of child development and have the skills to provide high-quality support for young children.

Yet early educators are among the lowest paid workers in the U.S. Their median hourly wages in 2015 ranged from $8.72 in Mississippi to $12.24 in New York, with a national median of $9.77, according to the most recent data. Nearly half of child care workers received benefits from at least one public program, such as the federal Earned Income Tax Credit, Medicaid or Temporary Assistance for Needy Families.

Preschool teachers make slightly more, with median hourly wages ranging from $10.54 in Idaho to $19.21 in Louisiana. Yet they’re paid much less than kindergarten teachers, whose national median hourly wage was $24.83.

With compensation a factor in teacher-retention rates—and research showing that low retention rates and inadequate teacher preparation affect the quality of care children receive—states are addressing low educator pay in a variety of ways. Some are requiring that early childhood teachers have certain levels of education; others are including certain compensation policies as benchmarks of quality in their rating systems. And most states are gathering data on their early childhood workforces.

Nearly half of states offer scholarships to those earning early childhood credentials—from certificates to associate, bachelor’s and master’s degrees. T.E.A.C.H. Early Childhood scholarships, which began in North Carolina, are now available via state or federal funding in at least 23 states and the District of Columbia.

At least five states operate a wage-supplement program, called WAGES, to boost earnings for early childhood educators. Working with nonprofits and private funders, these states offer supplements based on a teacher’s education level and length of time in his or her position. The average six-month supplement was $891 in 2016.

In recent years, a few states have passed legislation to create workforce registries, bringing the total number of states with these systems to at least 42. The systems contain data on individual workers, including educational attainment, the organizations and providers that employ them, credentialing and licensure, and professional development. These troves of information on workforce makeup and quality can inform lawmakers’ policy and funding choices.

With science demonstrating the importance of early childhood education, many states are finding ways to support the workforce that provides this vital instruction.

—Rochelle Finzel

State Lotteries Fight Jackpot Fatigue

For the 44 states that have them, state lotteries represent a small but valuable source of revenue. In the last few years, at least half those states have seen that revenue decline. Fewer millennials are playing, and many people are waiting to play until jackpots get unusually large, a phenomenon called “jackpot fatigue.” Lotteries also face growing competition from casinos and other forms of gambling.

There are seven more state lotteries today than there were in 1999, but the number of Americans buying tickets has declined by 7 percent, according to a 2016 Gallup poll.

On average, about 1 percent of state revenue comes from lotteries. Sometimes that money goes into the general fund, but most legislatures use it for schools, senior services or environmental protection. In crafting the current state budget, West Virginia lawmakers used some lottery money to fund Medicaid, rather than raise other taxes to cover that cost.

In some states, lottery revenue rivals or exceeds that of corporate income taxes. Nationally, state lotteries generated $66.8 billion in gross revenue in fiscal 2015, which exceeds the $48.7 billion generated by corporate income taxes, according to the Pew Research Center.

After putting $42.2 billion of that income into prizes and $3.2 billion into administration and advertising, however, states were left with net lottery proceeds of $21.4 billion.

States’ reliance on lottery income means they have to continually invent new games and prizes to keep bettors interested. Several have increased or restructured prize amounts and boosted advertising budgets to help the lotteries compete with casinos, which means spending more money in the hopes that those strategies will boost sales.

The multistate Mega Millions consortium recently announced it would raise ticket prices from $1 to $2 in October.

Online lottery sales are one way several states have tried to boost revenue. In June, New Hampshire became the fifth state to legalize internet lottery sales, after Georgia, Illinois, Kentucky and Michigan. At least four other states—Connecticut, Massachusetts, Pennsylvania and Virginia—considered legislation in 2017.

—Olivia Berlin
The Great Recession, like most periods of economic decline, caused unemployment to spike and birth rates to drop. But in the current recovery, unlike others, the economy is improving while birth rates are not. Birth rates fell to a historic low in 2016, with a mere 62 births per 1,000 women between the ages of 15 and 44. In 2015, New England (except Maine) and the District of Columbia had the lowest birth rates in the U.S., while South Dakota, Utah and Alaska had the highest.

Multiple factors have contributed to these low rates in recent years. The first is the recession, as rising unemployment is linked to corresponding decreases in the birth rate. Young workers in particular were hit hard, and the combination of rising costs of living and weighty student loan debts has made supporting children difficult. Even young adults who are more financially secure have chosen to delay marriage and children for other reasons.

Immigration is an important factor as well, as recent immigrants have among the highest birth rates of any group. But immigration gains from Mexico have stalled, according to the Pew Research Center, and several states that typically have received large numbers of immigrants are seeing their birth rates decline sharply.

The effects of fewer births won’t be clear for decades, but experts anticipate a smaller working population in future years. With baby boomers retiring, fewer workers could cause labor shortages and put a strain on state tax revenue and social services like Medicare and Medicaid.

But lower birth rates bring good news too: Fewer teen and unintended pregnancies also are contributing to the decline. According to the National Center for Health Statistics, the teen birth rate dropped 46 percent between 2007 and 2015. Rates have also dipped for women in their 20s, while rates for women in their 30s and early 40s are at their highest since the 1960s.

Some scholars predict that lower rates of early and unintended childbearing will have positive implications for education, the workforce and parenting. Older mothers are generally more economically stable and more likely to carry good health insurance, which could lessen the demand for social services down the road. Fewer pregnancies also indicate more women participating more consistently in the workforce, which would help to fill potential labor shortages.

The biggest unknown right now is how many women are simply delaying childbirth and how many are forgoing it altogether. Only with time will we know whether the low birth rate—and all the policy implications that result from it—represents a temporary phenomenon or a lasting feature of American society.

—Olivia Berlin

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**Where Have All the Babies Gone?**

Birth Rate per 1,000 Women

Ages 15-44, 2015

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<td>54.3 – 63.8</td>
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<td>64.0 – 69.9</td>
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Source: Kaiser Family Foundation, State Health Facts.
A Rising Solar-Powered Workforce

Fueled by the rapidly increasing pace of installations, solar energy is one of the fastest growing employment fields in the nation. One of every 50 new jobs added in 2016 was in the solar industry, according to the Solar Foundation’s National Solar Job Census.

The total number of solar jobs increased by nearly 25 percent last year, surpassing 260,000 workers. About half of those jobs paid an average of $26 an hour, and nearly 70 percent of all solar jobs identified in the survey did not require a bachelor’s degree.

As the solar industry grows, legislators are considering ways to boost employment growth. Some states have developed licensing or certification policies and created training programs to ensure that workers have the expertise needed to safely install solar systems.

Proper installation requires compliance with zoning policies, as well as building, fire and electrical codes. Approaches vary, but at least 12 states and Puerto Rico have statewide policies governing solar photovoltaic, solar hot water and solar thermal contractor licensing and certification.

Rhode Island lawmakers, for example, created the Renewable Energy Professional Certificate in 2014 for registered contractors who have at least an associate degree in renewable or solar energy, or who have completed an approved certification course. It allows drivers to perform certain installation work but requires a licensed electrician to complete all electrical work on a project.

States can require contractors performing electrical work on solar installations to hold a general electrician license; restrict those with limited licenses to certain electrical work, based on system size or components; or leave this determination to localities.

Licensing policies are typically mandatory, though certification is generally a voluntary credential administered by a third party. Maine, New York and Wisconsin, however, require installers to hold a third-party certificate for the system to be eligible for solar incentive programs.

To increase the size and strength of their workforces, some states have created solar training programs. Illinois lawmakers, for example, passed legislation in 2016 that created the Solar for All Program to develop solar projects and job training programs in low-income communities.

The law also requires utilities to develop and fund solar training and apprenticeship programs with incentives to hire qualified individuals who are foster-care graduates or former inmates.

This year, at least five states considered legislation on solar licensing, certification or training, and more states are likely to consider these policies in the future.

—Megan Cleveland

Traffic Stop 101

An addition to driver education is catching on in several states: how to interact with police during a traffic stop.

Knowing how to act during a stop helps both driver and officer feel safer and more at ease in what can be a stressful and occasionally dangerous situation.

Altercations following police stops resulted in the deaths of more than 100 people, including six officers, in 2015, according to the FBI and Washington Post database.

Illinois, in 2016, was the first state to pass legislation requiring driver education courses to include instruction on police procedures during traffic stops and what actions are appropriate for drivers to take during a stop. The Virginia General Assembly passed similar legislation this year.

Lawmakers in Alaska and Arkansas focused on training materials. Alaska’s new law requires motor vehicle instructional manuals to cover drivers’ rights and responsibilities when stopped by an officer. Arkansas also requires the written driver’s license test to include questions on stops.

Legislatures in Louisiana, North Carolina and Texas also passed legislation this year requiring police stops to be part of driver education.

Texas’ new law goes a step further than the others by requiring traffic stops to be part of police training and public high school coursework. The curriculum must include the duties of police, the rights of the public, the proper actions for civilians and officers, how to file a complaint and more.

Mississippi, Missouri, Nebraska, New Jersey, New York and Rhode Island also considered bills, though none had passed as of July 15.

—Amanda Essex

If You’re Pulled Over

1. Let the officer know that you see him or her and pull over with enough space for you and the officer to be out of traffic.
2. Put your vehicle in park, take your foot off the brake, turn the radio off and roll your window all the way down.
3. Keep your hands visible. Place them on the steering wheel or out the window. Passengers, too, should keep their hands visible and remain quiet.
4. At night, turn on the interior light so the officer can see you clearly.
5. Answer all questions honestly, politely and succinctly.
6. Do not reach for anything until the officer asks you to.
7. Always thank the officer at the end, even if you don’t want to, and wait for an OK before driving away.

Source: AAA

SL Online: Search NCSL’s State Traffic Safety Legislation Database
High Court, High Stakes

States await landmark decisions by the Supreme Court on several critical issues.

BY LISA SORONEN

You can’t get much more interesting than what’s on the U.S. Supreme Court’s docket for next term—partisan gerrymandering, the travel ban, religious liberty and sports gambling. The court rarely accepts cases as important as these four (and maybe five) are to states.

Partisan Gerrymandering

The Supreme Court will decide whether drawing maps that give one party a clear political advantage over the other—known as partisan gerrymandering—is unconstitutional.

The court agreed to hear a case from Wisconsin, Gill v. Whitford, on whether the Legislature violated the constitution by redrawing state Assembly district maps to favor Republican candidates. Based on a new formula that its creator claims calculates the level of partisan gerrymandering, a panel of federal judges ruled that the districts were a result of partisan gerrymandering, prohibited by the First and 14th amendments.

The Travel Ban

The high court has agreed to hear a case challenging the president’s executive order that prevents people from six predominately Muslim countries from entering the United States for 90 days, freezes decisions on refugee applications for 120 days and caps total refugee admissions at 50,000 for fiscal year 2017.

In Trump v. International Refugee Assistance Project, the court will decide whether the decision to deny a visa is reviewable, whether the travel ban violates the Establishment Clause and whether the travel ban became moot on June 14, 2017. The court concluded that until it rules on the merits of this case, the executive order cannot be enforced against people, including refugees, who have a “bona fide relationship with a person or entity in the United States.”

Religious Freedom

The case of Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, involves the owner of Masterpiece Cakeshop, Jack C. Phillips, who refused to make a wedding cake for a same-sex couple because of his religious beliefs. The couple claimed Phillips was in violation of Colorado’s public accommodations law. Phillips responded that being required to comply with the law would violate his First Amendment rights.

The Colorado Court of Appeals rejected Phillips’ claims, stating his business “does not convey a message supporting same-sex marriages merely by abiding by the law and serving its customers equally.” The Colorado court also concluded that the state’s public accommodations law is “rationally related to Colorado’s interest to eliminate discrimination in public places.”

Sports Gambling

In Christie v. National Collegiate Athletic Association, the Supreme Court will decide whether the federal prohibition against state-sanctioned sports gambling is an unconstitutional “commandeering” of states’ rights established in the 10th Amendment.

When New Jersey amended its constitution to allow sports gambling, Governor Chris Christie was sued for violating the federal 1992 Professional and Amateur Sports Protection Act. Christie responded that the federal law unconstitutionally commandeers states.

Based on how the Supreme Court has defined commandeering in the past, the Third Circuit Court noted that the federal act did not present states with a coercive choice to adopt a federal program or require states to take any action.

The Supreme Court has struck down laws on anti-commandeering grounds only twice before. In New York v. United States (1992), it struck down a provision requiring states to take title to radioactive waste by a specific date if they did not adopt a federal program. And in Printz v. United States (1997), the court struck down a federal law requiring state and local police officers to conduct background checks on prospective gun owners.

The Big Unknown

As if these weren’t enough, a billion-dollar case for states may make the docket as well. The case challenges the ruling that prevents states from requiring retailers with no physical presence in the state to collect sales taxes.

The restriction resulted from Quill Corp. v. North Dakota, a case ruled in 1992, when e-commerce was just beginning and there was no Amazon.com. “The legal system should find an appropriate case for this Court to re-examine Quill,” Justice Anthony Kennedy said in 2015. A new South Dakota law just may be that case. It requires remote vendors to collect sales taxes, which, as intended, is currently being challenged in state court.

Watch and See

With this number of high-profile cases already on the docket, a potential landmark term is in the making for the fully filled Supreme Court.
The Nuclear Option(s)

Lawmakers debate the merits of shoring up struggling nuclear power plants or leaving market forces alone.

By Daniel Shea and Kristy Hartman

The window was narrowing. There were just a few short weeks remaining before the end of Illinois’ legislative veto session, and lawmakers were working around the clock to squeeze out a compromise on an issue that had divided them for years.

The nuclear power industry in Illinois was struggling. Some accused the owner of the state’s nuclear plants, Exelon Corp., of looking for handouts, of trying to force customers to prop up unprofitable plants. The company’s message, however, was unwavering: Without support, it would be forced to close three of the 11 reactors in the state, reducing the state’s carbon-free electricity by about 20 percent, based on data from the U.S. Energy Information Administration.

When June 2016 passed without legislation, Exelon announced that it would shutter its worst-performing nuclear plants by the end of the year.

Lawmakers were faced with a dilemma: intervene to preserve the struggling carbon-free resource or let market forces determine the fate of the industry, its employees and the state’s future energy mix.

Unlikely Place for a Compromise

In a state where the Republican governor and the Democratic legislature had been at an impasse over the budget for nearly two years, Springfield, Illinois, appeared to be an unlikely place for a compromise—let alone one involving nuclear power.

And yet, during a narrow two-week window in November, Illinois legislators drafted a bipartisan energy reform package—eventually known as the Future Energy Jobs Bill—that included provisions to assist the state’s struggling nuclear plants. Some coal and natural gas plants argued that the nuclear component would put them at a disadvantage, while some environmental groups pressed the state to invest in renewables.

The bill changed about 30 times, gaining momentum with each iteration, as legislators sought the necessary votes. Eventually, the bill gained bipartisan support and the governor’s blessing.

“The success of the Future Energy Jobs Bill comes from one major theme: compromise. Business, environment and labor all worked together to find a way to protect jobs while also protecting the environment by providing incentives that will drive growth in the renewable energy sector,” says Senator David Koehler (D).

On Dec. 1, 2016, with the final compromise made, Illinois became the second state to finalize a policy aimed at preserving nuclear power plants.

Four months earlier, facing the possible shutdown of two struggling plants, the New York Public Service Commission adopted its own energy reform package with support for at-risk nuclear plants—part of Governor Andrew Cuomo’s “ Reforming the Energy Vision” initiative to modernize the electric system and reduce carbon emissions.
The Market Conundrum

The nation’s 99 commercial nuclear reactors account for around 20 percent of the electricity generated in the U.S., and about 60 percent of the carbon-free electricity. Since 2013, six reactors have permanently closed and another 10 to 15 reactors are at risk of closure, according to the Nuclear Energy Institute.

Like all businesses, these plants need to turn a profit to remain viable. A recent analysis by Bloomberg New Energy Finance found that more than half of the operating nuclear power plants in the U.S. were losing money, with plants that sell power on the wholesale market being particularly vulnerable. Whether this is the result of an efficiently working market or of subsidies and faulty market design is the source of much debate.

Policymakers across the country—particularly in Connecticut, New Jersey, Ohio and Pennsylvania—now face the same dilemma as their colleagues in New York and Illinois: whether to intervene in the market, or let the plants close.

Once a nuclear plant shuts down, it will never reopen. The prospect of losing plants raises concerns about environmental impacts, jobs and tax losses, and maintaining electric reliability, all of which were on the minds of New York officials as they considered the fate of their at-risk plants.

“New York is committed to reaching clean energy goals,” says Senator Joseph Griffo (R). “It was approached initially that the [nuclear power] industry is struggling. It’s clean energy. There are a lot of people that work there. We’re already subsidizing solar and wind, so maybe it’s fair to provide nuclear power with the same consideration.”

In New York, much of the focus has been on carbon emissions. When nuclear plants have closed recently, that power is often replaced by natural gas-fired plants. In Illinois, Ohio and Pennsylvania, the conversation has centered on the job losses and economic impacts associated with closing a nuclear plant.
"Those in Cordova and Clinton can breathe a major sigh of relief, as these jobs, the economic impact they produce, and tax dollars that are generated from these plants will continue," Senator Sue Rezin (R) said after the measure passed in Illinois.

"The state’s energy portfolio will now not only remain strong, but can grow—a good thing for the state’s economy, jobs and communities across the state."

The reality is that wholesale electricity markets weren’t set up to consider any of these issues. They were set up to achieve one primary objective: provide the lowest cost electricity at any given time.

Gas on the Rise
At the moment, price signals in these markets have largely favored the widespread development of natural gas. As natural gas prices drop, so too do electricity prices. And while some have warned against becoming overly dependent on one source of energy, others have pointed to the nation’s vast shale gas reserves and the low-cost electricity they produce.

"The people in my district care about turning on the lights and not having to pay an arm and a leg for it," says Ohio Senator Sean O’Brien (D). "Asking my constituents in northeastern Ohio—an area that has at least 50 years’ worth of cheap, clean-burning shale gas trapped just a few yards beneath our feet—to pay more to bail out these uncompetitive plants is unfair and makes no sense."

For this reason, many consumer advocates have argued that the markets are working and ratepayers are reaping the benefits.

Compounding the issue has been a combination of a slowing demand for electricity and a growing interest in renewable energy. Numerous states and the federal government have offered a combination of subsidies and mandates to stimulate and support the development of renewable energy projects. As nuclear has come...
under pressure, some states are considering whether its carbon-reduction benefits don’t merit similar supports—even going so far as to push to have nuclear considered a renewable resource.

But there has been push-back to this idea. Many are concerned about the unresolved issues surrounding the disposal of nuclear waste, while others argue that supporting specific energy sources risks subverting competitive markets.

“Nuclear is not a new technology seeking to break into the market, which might justify a temporary subsidy,” says Connecticut Representative Mary Mushinsky (D). “If legislators subsidize, they are using ratepayer or taxpayer funds to increase the rate of return for one fuel.”

These concerns are common. In fact, including ratepayer protections was one of the final compromises that got Illinois’ bill over the line.

**ZECs All Around**

In Illinois and New York, lawmakers and regulators have adopted ZECs (zero emissions credits) to compensate certain nuclear plants for every megawatt-hour of carbon-free electricity generated. Similar to credits for wind and solar generators that avoid carbon emissions, ZECs have piqued lawmakers’ interest during this session—possibly because they provide an immediate fix for at-risk plants, or because they’re the only policy mechanism to date that’s been enacted.

New York’s ZECs program went into effect last April. The subsidy will cost approximately $7.6 billion over 12 years and is designed to compensate three struggling nuclear plants. The ZECs program is expected to add around $2 to the average customer’s monthly electric bill. The Public Service Commission said it was the “least cost” option for carbon reduction, as widespread and rapid deployment of renewables would cost more.

While there is broad agreement among lawmakers to support the state’s nuclear plants, that doesn’t mean everyone agrees on the policy. The New York Legislature would like to see the ZECs program provide greater ratepayer protections, but each chamber differs on what form that would take. The Senate narrowly passed a bill that would alter the funding source and reduce the amount of funds available for the ZECs program, though it’s unlikely to pass the Assembly.

“It would change the current program initiative so that ratepayers didn’t have to bear the burden of additional charges,” Griffo, the New York senator, says. He noted that customers already pay toward energy efficiency and renewables on their bills, “so adding a ZEC caused a lot of consternation.”

Illinois’ legislation went into effect on June 1, and will offer about $235 million a year for 10 years to Clinton and Quad Cities—the two plants slated for closure. Illinois’ nuclear plants generate more than 96 million megawatt hours of electricity per year—more nuclear power than any other

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**States With Nuclear Plants in Peril**

- Have had reactors close since 2013
- Have had closures averted or delayed by state action
- Have planned closures and reactors at risk of shutting down
- Nuclear power plant with number of units

Note: New York avoided the closure of three reactors through policy changes, another two reactors are scheduled to shut down over safety concerns. California has two reactors scheduled to close by 2025.

state—but only 14.2 million megawatt hours will be eligible to receive ZECs.

Both programs are being challenged in court for interfering in wholesale markets. Federal judges separately dismissed both challenges in July, however, ruling the policies were sufficiently separate from wholesale markets and therefore don’t violate the Federal Power Act, which regulates the interstate activities of the electric power and natural gas industries. The plaintiffs in each case, including a number of power plant owners, have appealed the rulings.

The outcome of the lawsuits could affect other states as well. New Jersey currently has two bills pending that would require the state Board of Public Utilities to study ZECs. Ohio has also introduced bills in the House and Senate, but after several hearings—one lasting more than 10 hours—it is unclear whether there is consensus among committee members to move forward.

**Approaches Vary**

ZECs are far from the only policy under consideration. A measure introduced in Washington state, for example, would define nuclear as an alternative energy source. If passed, the bill would allow customers to elect to buy nuclear-generated electricity. The New Mexico Legislature also considered adding nuclear power to the state’s renewable standard, but the measure failed to pass committee.

Twenty-nine states and the District of Columbia have mandatory standards requiring utilities to sell a specified amount of renewable electricity. Some states, including Illinois and New York, considered a separate set of standards to support nuclear facilities.

The reality is that each state’s approach may be different. Dozens of legislators in the Pennsylvania General Assembly formed a bicameral, bipartisan Nuclear Energy Caucus to preserve the state’s nuclear power, but some members say a ZECs-type subsidy wouldn’t be right for the state.

Senator Ryan Aument (R), who co-chairs the caucus, has said he doesn’t believe the approach is “politically viable in Pennsylvania.”

With the state facing the possible closure of the Three Mile Island nuclear plant, Aument believes the solution lies in addressing underlying market factors. “TMI, in a sense, points us to a much larger issue regarding the wholesale electricity market,” he says, using an abbreviation for the plant. “I think that’s the heart of the issue, and that’s what we really have to take a look at.” The caucus is working on a policy solution unique to Pennsylvania, though it hasn’t released specifics.

In Connecticut, the Senate has passed similar bills in each of the last two sessions, and each time they met resistance in the House. The bills would have allowed the state’s lone nuclear plant, Millstone, to bypass wholesale markets in a bidding process overseen by four state agencies, which proponents argue is similar to the process for large renewable resources. The legislature adjourned before taking up the most recent bill for a full vote.

For Connecticut Representative Lonnie Reed (D), it was important to establish a plan B to encourage the nuclear plant to continue operating. “Millstone produces 2,100 megawatts—60 percent of Connecticut’s electricity,” she says. “Without smart planning, the sudden departure of Millstone could deliver a devastating blow to our economy and environment.”

Reed’s colleague Mushinsky also wants Millstone to continue operations but has spoken of the need for legislators to see more evidence that the power plant needs support. “If the plants are actually in danger of closing, legislators might be willing to preserve them,” Mushinsky says.

Connecticut legislators might get more detailed information early next year. Governor Dannel Malloy (D) recently directed the state to review Millstone’s financial position, its need for policy support and what form that policy could take.

**What’s Next?**

Advocates of policies that assist nuclear power cleared a major hurdle when federal judges ruled in favor of the ZECs programs in Illinois and New York. The rulings, however, have been appealed and the eventual outcomes will affect not only struggling nuclear plants, but also other states considering similar mechanisms.

Advocates in Illinois and New York argue that the ZECs policies mirror existing mechanisms that support renewable energy and were designed to support the carbon-free attributes of nuclear power plants, which would otherwise be lost without financial assistance. However, market operators have urged states not to enact these policies, arguing the best approach is to address the issue regionally or nationally. And many agree—even some who have been backing state initiatives.

The Federal Energy Regulatory Commission is examining whether it’s the role of the federal commission to intervene as states consider policy solutions. The agency is currently two commissioners short of a quorum, and any federal rulemaking could take years. By the time changes take effect, plants may close.

For this reason, some policymakers feel they don’t have time to wait. Certainly, some legislators in Illinois felt the pressure of losing three reactors as they debated the issue last fall. They had debated the same issue in previous years, but it wasn’t until November’s veto session, with the fate of those plants and jobs on the line, that legislators made the final decision.

As more states face similar situations, it’s likely that lawmakers will continue to introduce and debate policies aimed at supporting at-risk nuclear plants. And, if the experience of Illinois lawmakers is any indication, shoring up nuclear energy and jobs might be one area in which Republicans and Democrats can find agreement.
How much do we know about our sweet land of liberty? Shockingly little.

BY MEGAN MCCLURE

You know how a bill becomes a law. But do your constituents? Do they know how the responsibilities of state legislators differ from those of our lawmakers in Congress? Or how a case gets to the Supreme Court? And, as far as state budgets go, do they understand what their taxes pay for?

Civics—the study of how government works and the rights and responsibilities of being a citizen—seems to be disappearing. Fewer than 30 percent of fourth-, eighth- and 12th-grade students were proficient in civics, and a significant gap persists between white students and students of racial and ethnic minority groups, according to the 2010 National Assessment of Educational Progress civics assessment. The assessment found a decline in the overall civics knowledge of high school seniors between 2006 and 2010. This ignorance of the responsibilities of citizenship results in young people being inadequately prepared to participate in the democratic process. With only about half our citizens bothering to vote, it’s clear that “we the people” are not as engaged in government as we should be.

To achieve proficiency in civics is not particularly complex; it doesn’t take years to learn the basics. And yet, less than half of eight-graders tested in the most recent national civics exam knew the purpose of the Bill of Rights, and only one in 10 eighth-graders demonstrated acceptable knowledge of the checks and balances our country relies on through the three branches of government.

An Ongoing Concern

The problem is not just with today’s students. Barely one-third of more than 1,400 adults could name the three branches of government in a survey by the Annenberg Public Policy Center at the University of Pennsylvania. One-fifth of respondents thought that a 5-4 Supreme Court vote would be sent back to Congress for consideration. These results “demonstrate that many know surprisingly little” about our government, says Kathleen Hall Jamieson, director of the Annenberg Center, and offer “dramatic evidence of the need for more and better civics education.”

Why is this alarming? “A democratic government cannot function without citizens’ participation, and civics education provides the bedrock for that participation. The less the population knows and understands about how the American system of government works and the values and history behind it, the more vulnerable the system becomes,” says Charles N. Quigley, executive director of the Center for Civic Education.

“Today’s students are tomorrow’s leaders, and giving them a strong foundation in civic values is critical to the vitality of America’s democracy and economy in the 21st century,” said former U.S. Secretary of Education Arne Duncan in 2012 with the release of the report “Civic Learning and Engagement in Democracy: A Road Map and Call to Action.” Duncan stressed the need “to develop and improve civic learning as part of a well-rounded education so every student has a sense of citizenship.” The report, along with other dismal news, prompted the Joe Foss Institute to create the Civics Education Initiative. The nonprofit institute is dedicated to educating youth about the nation’s unique freedoms.
Test Your Civics Chops

Here are 20 of 100 possible questions on the U.S. citizenship test. To become naturalized citizens, immigrants must get at least 60 percent correct. On this mini-test that would be 12 correct answers. If you ace it, you’re not only a citizen, you are a statesman. Answers are below.

1. What is the supreme law of the land?
2. What do we call the first ten amendments to the Constitution?
3. What is one right or freedom from the First Amendment?
4. How many amendments does the Constitution have?
5. What are two rights in the Declaration of Independence?
6. What is the economic system in the United States?
7. What stops one branch of government from becoming too powerful?
8. We elect a U.S. senator for how many years?
9. The House of Representatives has how many voting members?
10. If both the president and the vice president can no longer serve, who becomes president?
11. Under the U.S. Constitution, what is one power given to the states?
12. There are four amendments to the Constitution about who can vote.
13. Name one of the two responsibilities of U.S. citizens.
14. Name two rights of everyone living in the U.S.
15. Who wrote the Declaration of Independence?
16. When was the Declaration of Independence adopted?
17. When was the Constitution written?
18. The Federalist Papers supported the passage of the U.S. Constitution.
19. Name one of the writers.
20. What did the Emancipation Proclamation do?

Answers to Quiz

1. the Constitution 2. the Bill of Rights 3. speech, religion, assembly, press, petition
4. 27 5. life, liberty, pursuit of happiness
6. checks and balances, separation of powers 7. freedom of speech, freedom of assembly, freedom to petition
8. six 9. 435 10. the Speaker of the House
11. freedom of worship, the right to bear arms
12. older can vote; you don't have to pay a poll tax to vote; any citizen can vote; women and men can vote; a male citizen of any race can vote; 13. voter, voter, voter
18. freed the slaves 19. fought for women's rights
20. Fought for women's rights

There is little time in the school day for civics education anymore, the institute says, partly due to the increased emphasis on testing subjects other than social studies. “Civics is being boxed out of the classroom today by an all-consuming focus on … tests that are being used in many cases to determine funding and a host of outcomes for schools, students and teachers,” says Lucian Spataro, the institute’s chief academic officer and vice president of legislative affairs.

The institute’s solution? Make the U.S. citizenship test for immigrants a graduation requirement for high-schoolers.

Test of Citizenship

The Civics Education Initiative wants state legislators to require high school students, as a condition for graduation, to answer at least 60 of the 100 questions on the U.S. citizenship civics test correctly—the same level of knowledge asked of immigrants seeking to become naturalized U.S. citizens.

State by state, the initiative is working with lawmakers, students, teachers and other concerned citizens. Twenty states and the U.S. Virgin Islands have passed legislation inspired by the initiative, and another three states have enacted versions of a civics-test bill through action by their education boards.

Teachers’ unions, the ACLU and advocates for students with disabilities claim the requirement is an unfunded mandate that places even more pressure on classroom teachers who are already stretched to their limits. Several states have passed legislation by getting input from all those involved and tweaking the measures to address their concerns and fit their state’s unique needs. The initiative’s goal is to get legislation supporting civics education enacted in all 50 states.

Every state has passed legislation addressing civics education over the years, often within social studies requirements, according to the Education Commission of the States. Most states either require specific civics courses or describe what students must learn. Some require students to pass civics tests to receive credit for the courses, but not to graduate. Arizona, Missouri, North Dakota, Utah, Tennessee and Wisconsin are just starting to require the test for graduation.
Plenty of Effort

There are many other groups focusing on civics education.

Former U.S. Supreme Court Justice Sandra Day O’Connor, spurred by what she saw as the inadequacy of American civics education, founded iCivics in 2010. The nonprofit provides web-based games and tools to help students learn about and participate in civic life. iCivics has joined with the Annenberg Center, the American Bar Association, the Library of Congress and other organizations to create the Civics Renewal Network, which is “committed to strengthening civic life in the U.S. by increasing the quality of civics education in our nation’s schools and by improving accessibility to high-quality, no-cost learning materials.”

On the Civics Renewal Network website, teachers can find civics education resources, searchable by subject, grade, resource type, standards and teaching strategy. The “We the People Program,” from the Center for Civic Education, also promotes “civic competence and responsibility among upper elementary and secondary students” using simulated congressional hearings, textbooks and other interactive strategies.

State legislators are doing their part to promote civics education as well. Almost every legislature offers civics education materials or learning experiences to students and the public. Mock legislative sessions give students a chance to see how the lawmaking process works. Legislatures also offer internships and page positions to young people interested in lawmaking and civics in general.

The Wisconsin Legislature received NCSL’s 2016 Kevin B. Harrington Award for Excellence in Democracy Education, an annual recognition of an individual or organization for advancing public understanding of state and local representative democracy. A cornerstone of Wisconsin’s civics education opportunities is the Senate Scholars Program, in which high school students spend a week at the Capitol learning about the legislative process and meeting with legislators, legislative staff professionals and the press.

NCSL’s Legislators Back to School Program is a great source of materials and support for legislators interested in visiting classrooms and talking with students about civics and state legislatures. Unique to the program’s materials is “The American Democracy Game,” designed to put middle-school students in the shoes of a lawmaker to experience dealing with public policy issues, negotiating with stakeholders and finding ways to reach agreement.

When the Foss Institute’s Civics Education Initiative began, it laid out these goals: “First, to bring attention to this ‘quiet crisis’ to ensure students graduate with the tools they need to become informed and engaged citizens; second, to get civics education back in classrooms across this country; lastly, that the Civics Education Initiative should be only the first step in expanding civic awareness and learning for our students … to serve as a foundation for a re-blossoming of civic learning and engagement.”

The initiative and other groups, including NCSL, provide support and educational materials to concerned teachers, civil servants and citizens. We can recover from the current civics crisis by valuing and supporting comprehensive, high-quality civics education. After all, who’s going to run the country if no one knows how it works?

How Polarized Are We?

We keep hearing how polarized we are these days. But how is that measured? Political scientists Boris Shor, of the University of Houston, and Nolan McCarty, of Princeton University, measure polarization by using roll call voting data and state legislators’ responses to the National Political Awareness Test to calculate the ideological distance between the median Democrat and Republican in each state legislature. The larger the distance, the higher the score, and the greater the level of polarization. This is an update from the chart in the July/August 2017 issue.
1 Putting Lands Out of Range
The West is in a fighting mood. The Trump administration’s move to review dozens of national monuments to determine whether they should be shrunk or abolished has raised alarm across the region, High Country News reports. Support for the monuments has been strong in Colorado, Montana, Washington and other states. In California, for example, lawmakers introduced three bills to prevent the administration from weakening environmental laws. One, the Public Lands Protection Act, would give California “right of first refusal” on lands the federal government wants to sell in the state, and would give the state a say in transferring land to a new owner.

2 Abortion Services Update
Lawmakers in 43 states have introduced abortion restrictions this year to date, according to the Guttmacher Institute, a nonprofit research and advocacy organization. In 17 of those states, bills would ban abortion at certain stages of pregnancy, including as early as six weeks; in five states, legislation would require a woman to undergo an ultrasound while a provider shows and describes the image to her even over her objection. Twenty-two states now have six or more abortion restrictions, according to the Guttmacher Institute.

3 Private Choices
The Texas Senate passed legislation creating a tax credit scholarship program to subsidize private school tuition for students with disabilities. Under the “private school choice” program, an estimated 6,000 students would receive scholarships of up to $10,000 to attend private schools. About 26,000 more would get $500 to stay in public schools and pay for services or transportation. The scholarships would be funded by donations from insurance companies that would receive tax credits in return. Critics are concerned that private schools receiving the scholarship money won’t be held to the same accountability standards as public schools serving kids with special needs.

4 Getting to the Point
In a move that Crocodile Dundee would certainly appreciate, Texas lawmakers passed a law allowing adults to openly carry knives with blades longer than 5.5 inches—swords, spears, daggers, machetes and more. The new law, which goes into effect this month, doesn’t apply to schools, prisons, hospitals, amusement parks, sports events or places of worship or where alcohol is served. With Montana and Oklahoma also axing their bans on bladed weapons in recent years, perhaps we’ll see a return of the squire as a hot employment opportunity.

5 Votes Are In. Are They Secure?
Hacking the vote might be easier than you think. In less than a day, groups of “hackers” at the DefCon conference in Las Vegas were invited to help the computer security community by spotting potential vulnerabilities in real voting machines. They tested five different older voting machine types and exploited weaknesses in all of them, USA Today reports. Surprisingly, the groups found passwords allowing administrative access by using Google. The good news is no one could break into the systems wirelessly, no one could change a vote and newer machines are more secure. Next year, the focus shifts to voting network security.
Defeating Distractions
Can the “textalyzer” help save lives on the road? That’s one of the questions New York’s traffic safety committee is studying. Similar to the Breathalyzer, which police use to identify drunken drivers, the textalyzer can be plugged into a driver’s mobile phone after a crash to determine whether he or she was texting, emailing, surfing the web or otherwise using the phone before the accident. Supporters say the device will curb distracted driving, which killed 3,477 people and injured an estimated 391,000 in 2015. Critics raise privacy concerns, and some question the textalyzer’s reliability and accuracy.

Protection for Pregnant Workers
A new Massachusetts law requires employers to offer “reasonable accommodations” to pregnant workers and makes it illegal to fire or refuse to hire a worker because of her pregnancy. Employers must also provide time and private space for nursing mothers to pump breast milk. A woman “should not have to choose between having a healthy pregnancy and earning an income for her family,” says Senator Joan Lovely (D), who co-sponsored the bill. At least 18 other states have similar protections in place, and businesses could seek an exemption if they can prove compliance would result in an “undue hardship.”

A New Life for Lifers
Since the Supreme Court ruling barring mandatory life without parole for juveniles was made retroactive in 2016, nearly a dozen Maryland lifers who committed crimes as juveniles are asking for new sentences. As of late July, four of their sentences have been scrapped, and each awaits a resentencing hearing. Maryland is among more than 20 states where judges have the option to give life without parole sentences for certain offenses. In these states, the resentencing cases are trickier than in states with mandatory sentences because they are not explicitly covered under the Supreme Court ruling.

Protection for Pregnant Workers
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Paw-titioning the Court
Testifying in court is stressful for just about everyone, but it can be especially difficult for child and adult abuse victims. It’s just the kind of place where a friendly, furry face can help. An increasing number of courts are allowing trained dogs to accompany people while giving testimony. At least 144 “courthouse facility dogs,” as they’re known, work in about three dozen states, from Hawaii to Massachusetts, Pew’s Stateline reports. The calming canines even have an association of their own: the Courthouse Dogs Foundation, a nonprofit that promotes the use of trained dogs during legal proceedings.

Aging With Dignity, We Hope
There’s no hiding it: America is graying. New estimates from the U.S. Census Bureau show the nation’s median age—where half the population is younger and the other half older—rose from 35.3 years on April 1, 2000, to 37.9 years on July 1, 2016. Residents age 65 and over grew from 35 million in 2000 to 49.2 million in 2016, accounting for 12.4 percent and 15.2 percent of the total population, respectively. Maine has the nation’s highest median age, at 44.6 years, while Utah has the lowest, at 30.8 years.
Health Care
In and Out of Prison

Former inmates struggle if they have no health coverage after being released.

By Samantha Scotti

Nearly two-thirds of all prisoners are addicted to drugs or alcohol. After being released, they are at a very high risk of using again. Inmates also report having higher rates of high blood pressure, diabetes, hepatitis C, HIV and mental health problems than the general population.

Medicaid doesn’t cover the health care costs of inmates inside jails or prisons, except for inpatient hospital or nursing home care for those who qualify. States are responsible for the health care costs of inmates in state prisons, just as localities pay for care in county jails. Providing that care can be expensive.

States spent $8.1 billion on health care in correctional facilities during fiscal year 2015, with a median expense of $5,720 per inmate, according to a soon-to-be-released report by The Pew Charitable Trusts.

When prisoners stay healthy, states’ budgets stay healthier too.

Ensuring a Smooth Transition

Eventually, 95 percent of all inmates are released from state prison systems, and their successful transition can depend on having appropriate care and treatment services available. Achieving and maintaining healthy and productive lifestyles increases former inmates’ chances of finding work, successfully reintegrating into their communities and staying out of prison.

This is particularly true for inmates who have mental health or substance use disorders.

Without health care coverage, many of them are released without the ability to get the medicines they need.

Obtaining health insurance, or at least access to routine health care services, has long posed challenges for prisoners after their release. When former inmates don’t find coverage, states often end up paying for their expensive, but often avoidable, health care and social services needs down the road.

In the District of Columbia and the 31 states that have recently expanded their eligibility requirements under the Affordable Care Act, many former inmates now qualify for Medicaid.

Lawmakers and agency heads in several states have worked hard to find ways to connect inmates with affordable health care or

Attacking Addiction

High rates of substance abuse among inmates have motivated some states to look for ways to decrease the likelihood of inmates relapsing when they get out, which right now is very likely. Twenty states self-report that they offer, as one option, some form of medication-assisted treatment (from dispensing medications to referring inmates to clinics that dispense them). Approved medications—naltrexone, methadone, buprenorphine, etc.—have been shown to prevent drug or alcohol relapses.
Medicaid before they get out to ensure there is continuity of care. At least nine states have programs that begin the Medicaid application process early enough to have the inmate’s enrollment ready the day of his or her release. Efforts like these often require good communication and coordination between the department of corrections and the state Medicaid program.

Ohio’s Department of Rehabilitation and Correction, for example, works with the state’s Department of Medicaid to help inmates obtain a Medicaid managed care plan at least 90 to 100 days before their release. When released, they have a care coordinator to help them find a primary care doctor, make and confirm appointments, and learn about urgent care, health care specialists and transportation benefits.

“This program has allowed thousands of Ohioans to transition back to the community with their health care already in place,” says Ohio Department of Medicaid Director Barbara Sears.

Suspend Rather Than Terminate

Lawmakers in at least 35 states and the District of Columbia have taken a slightly different approach to ensuring a continuum of care for released prisoners. They have adopted policies that suspend, rather than terminate, Medicaid for inmates while they’re incarcerated, though some do so only temporarily.

Suspension allows Medicaid coverage and services to resume immediately upon release from prison, avoiding the lengthy reapplication process—which can take anywhere from 45 to 90 days and leave former inmates without services while waiting to be re-enrolled. Suspension also can save on administrative costs related to the Medicaid reapplication and eligibility determination process.

Alabama lawmakers passed Medicaid-suspension legislation this year “to stop the revolving door for people with serious mental illnesses in our jails and prisons, and to reduce prison medical costs to the state,” the bill’s sponsor, Senator Cam Ward (R), says. “In short, if the state terminates Medicaid coverage upon incarceration, the state loses the ability to shift the costs to the federal government,” since funding for Medicaid is a shared state-federal responsibility.

Ensuring that ex-offenders don’t have to worry about how and where to get health coverage after their release helps them readjust to life in their communities, says Sears, the Ohio Medicaid director. It’s “one less stressor for them.”

And who wouldn’t want less stress?
By Holly South

Parliamentarians are the guardians of the gavel, protectors of the legislative process. They are the clerks, secretaries and their staff who juggle several roles to provide the knowledge, service and guidance legislators need to do their jobs well. They shepherd bills through the legislative process, record all chamber proceedings and advise legislators, including leaders, on parliamentary procedures.

Although the ways they are elected, the size of their staffs and their duties vary, clerks and secretaries all have a deep appreciation and respect for the legislative institution, pride in their ability to use their parliamentary expertise to help members, and a strong sense of civic duty.

Devotion to the legislature and commitment to public service are what draw these professionals to this work despite the stress and the long, irregular hours. Not everyone can do this job. But for those who can, who are in chambers day in and day out, who watch the process and see how hard legislators can work to get something accomplished, it’s what one clerk called, “kind of inspiring.”

Here’s what they want you to know.

1. We don’t run the place—but we make the place run.

We are experts on procedure—from interpreting chamber rules and tracking bills to compiling the calendar and journal—documenting each step of the legislative process. This requires us to be extremely organized, to expect the unexpected and to “go with the flow.”

Our staffs often describe us as the legislature’s COOs or architects or even first responders because of our central role and the guiding hand we provide in our chambers.

Every morning we prepare a script and an agenda, which serves as a road map for the day. It includes the orders of business to be addressed, the bills to be processed and the messages to be handled from the other chamber or the governor.

And every evening, after the chamber adjourns, in at least 30 states, it’s our job to record in the journal, as accurately as possible, every action taken that day. The journal must then be proofed and published so it can be viewed by legislators and the public.

2. We are passionate about the process.

We shepherd legislation through the process, from introduction to enactment. We are essentially the traffic controllers as legislation moves through our chamber and, if passed, goes on to the other
chamber or the governor. Whether a bill passes or not, we must store, engross (amend) and enroll it.

We believe a successful process helps the legislature run thoughtfully, efficiently and effectively. Our society may be geared toward instant gratification, but processing laws requires consideration. A push to get everything instantaneously would not result in better bills.

Members and staffers can be frustrated by the time it sometimes takes us to accomplish what they want, especially when there’s “heat” on an issue. But there are very good reasons for the deliberate pace of the process. Government works on a timeline that’s meant to protect the legislative process from the vagaries of personal opinion, what’s in the newspaper or anyone’s pet project. So, when we do our jobs, we do every step, every single day, for every single bill. There are reasons—in rules, statutes or constitutions—for what we do. Members naturally focus on passing their bills, but we focus on the procedural steps (many of which take place behind the scenes) that take a bill from introduction to enactment.

We don’t care what’s in the bills; we care that every bill gets processed the same way. It’s our job to make that happen.

We care about our members.

We really want to help legislators succeed. We view educating them and sharing our knowledge of the legislative process as an important part of our job. We work very hard, in a confidential and nonpartisan manner, to make members’ lives easier and to make sessions run smoothly.

We enjoy answering the questions and addressing the concerns of leaders and other members. We like familiarizing them with Mason’s Manual of Legislative Procedure. We bird-dog the details. We make sure the motions get made, the voting requirements are fulfilled and the deadlines are met.

New lawmakers don’t always appreciate or understand the importance of the details or why we do what we do and say what we say in the chamber. We are concerned that many new legislators lack an understanding of legislative procedures, have little institutional knowledge and are less experienced than their predecessors. Having to teach them about the institution, while processing the laws of the institution, is difficult.

Too often, these inexperienced legislators are less willing than their predecessors to be educated in the process, but are nevertheless determined to change it. Some new members rely on their staffs rather than bothering to learn legislative procedures themselves. We are concerned that this lack of knowledge could mean trouble for our democracy. When there’s little interest in protocol, shortcuts can look appealing. It’s not illegal, necessarily, but it’s not what we should be doing—like voting on things that aren’t being explained.

We are careful not to bring our own political beliefs into the chamber. We need to be able to explain a rule without inserting ourselves into the argument, without passing judgment. We must be able to work well with staff in the other chamber, regardless of the politics or relationships between members.

But the general lack of decorum in many statehouses is troublesome. We are concerned about all the rancor and discord. It’s stressful for staff—and the members, too—and it isn’t productive.

We all have to work together to be great together. Legislators should understand this coming in. But not all of them do.

What Is ASLCS?

Clerks and secretaries can trace their beginnings to 1619. That’s when the British House of Commons lent a clerk, John Twine, to the newly formed Virginia House of Burgesses. The American Society of Legislative Clerks and Secretaries was founded 324 years later—more than 30 years before there was an NCSL.

ASLCS today includes more than 400 principal clerks and secretaries and their staffs. The society’s goals—to improve legislative administration and establish better communication among clerks and secretaries throughout the U.S. and its territories—are met through professional development workshops, networking activities and business meetings.

Learn more about ASLCS at www.ncsl.org/aslcs.
“From my perspective, tax increases that go on forever for something that looks like a short-term problem is not the right answer.”

Montana Representative Nancy Ballance (R) arguing for spending cuts rather than tax increases to make up lost revenue, in The Missoulian.

“If I had a couple of kids at home and I was worried about how I was going to pay for their college, I don’t think I would have stayed in the Legislature for 20 years.”

Washington Representative Eileen Cody (D) on how difficult it can be to serve in a part-time citizen legislature if you are not wealthy or retired, in The News Tribune.

“We have to make decisions as legislators—do we do what is right or do we do what is politically right?”

California Assemblyman Devon Mathis (R), on his and seven other Republicans’ support for an extension of the state’s cap-and-trade law, in the Los Angeles Times.

“My colleagues’ first reaction to this bill was mostly, ‘Seriously? We need a bill for this?’”

Utah Representative Craig Hall (R) on his measure allowing kids to bring sunscreen to school without a doctor’s note, in Stateline.

“I’m not embarrassed to say that I know how to govern without being an extremist.”

Texas House Speaker Joe Straus (R) on the backlash following his opposition to a bill restricting transgender people’s use of public bathrooms, in the New York Times.
TENNESSEE HOUSE SPEAKER BETH HARWELL (R) ANNOUNCED SHE IS RUNNING FOR GOVERNOR, joining a Republican field that includes Senator Mae Beavers, U.S. Representative Diane Black and two businessmen. Harwell has served in the House since 1988 and is the state’s first female speaker. She was elected to the top post in 2011.

MINNESOTA LAWMAKERS SCORED A VICTORY AGAINST GOVERNOR MARK DAYTON (D) when a county judge struck down Dayton’s line-item veto of the House and Senate budgets. The judge ruled Dayton’s veto was “effectively eliminating a coequal branch of government” to force the Legislature to revisit tax cuts and other issues. The judge ruled the veto “null and void,” saying it “effectively abolished the Legislature.” The governor said the state Supreme Court should have the final say.

ILLINOIS REPRESENTATIVE STEVEN ANDERSSON (R) IS OUT AS FLOOR LEADER following his decision to side with Democrats in overriding Republican Governor Bruce Rauner’s veto of the state budget. More than a dozen House Republicans voted with the Democrats to end the state’s record, two-year budget impasse. House Leader Jim Durkin (R) asked Andersson to step down from his post. The new $36 billion spending plan includes a $5 billion tax hike.

“I don’t think it’s a stretch to say that the state is dependent to a great degree for important programs on the lottery.”
West Virginia Senator Charles Trump (R), whose state’s lottery revenue is more than double that from corporate income taxes, in Stateline.

“‘There’s no reason Illinois shouldn’t be participating in this market.’”
Illinois Senator Toi Hutchinson (D) on her proposal to allow hemp cultivation, in The Chicago Tribune.

“I don’t think it’s a stretch to say that the state is dependent to a great degree for important programs on the lottery.”

“‘If the federal government lags, the states have to lead. And that’s what we’re doing.’”
New York Senator Tim Kennedy (D) on the efforts of some states to enforce regulations cut by the federal government, in Bloomberg.

“‘I don’t think it’s a stretch to say that the state is dependent to a great degree for important programs on the lottery.’”

FLORIDA REPRESENTATIVE MIKE MILLER (R) ANNOUNCED HIS BID FOR THE SEAT HELD BY U.S. REPRESENTATIVE STEPHANIE MURPHY (D). Miller was elected to the House in 2014, defeating an incumbent Democrat. Murphy won her seat by defeating a 24-year incumbent Republican in 2016. Voters in Miller’s current House district gave Hillary Clinton the largest margin of any district in the state in the presidential election.

STATE LEGISLATURES

NEWSMAKERs

27 SEPTEMBER 2017
A class-action lawsuit about overtime pay for truck drivers hinged entirely on a debate that has bitterly divided friends, families and foes: the dreaded—or totally necessary—Oxford comma, perhaps the most polarizing of punctuation marks.

What ensued in the U.S. Court of Appeals for the 1st Circuit, and in a 29-page court decision handed down in March, was an exercise in high-stakes grammar pedantry that could cost a dairy company in Portland, Maine, an estimated $10 million.

In 2014, three truck drivers sued Oakhurst Dairy, seeking more than four years’ worth of overtime pay that they had been denied. Maine law requires workers to be paid 1.5 times their normal rate for each hour worked after 40 hours, but it carves out some exemptions.

A quick punctuation lesson before we proceed: In a list of three or more items—like “beans, potatoes and rice”—some people would put a comma after potatoes, and some would leave it out. A lot of people feel very, very strongly about it.

The debate over commas is often a pretty inconsequential one, but it was anything but for the truck drivers. Note the lack of Oxford comma—also known as the serial comma—in the following state law, which says overtime rules do not apply to:

The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of:

(1) Agricultural produce;
(2) Meat and fish products; and
(3) Perishable foods.

Does the law intend to exempt the distribution of the three categories that follow, or does it mean to exempt packing for the shipping or distribution of them?

Delivery drivers distribute perishable foods, but they don’t pack the boxes themselves. Whether the drivers were subject to a law that had denied them thousands of dollars a year depended entirely on how the sentence was read.

If there were a comma after “shipment,” it might have been clear that the law exempted the distribution of perishable foods. But the appeals court sided with the drivers, saying the absence of a comma produced enough uncertainty to rule in their favor. It reversed a lower court decision.

In other words: Oxford comma defenders won this round.

“That comma would have sunk our ship,” David G. Webbert, a lawyer who represented the
drivers, said in an interview in March.

The language in the law followed guidelines in the Maine Legislative Drafting Manual, which specifically instructs lawmakers to not use the Oxford comma. Don’t write “trailers, semitrailers, and pole trailers,” it says—instead, write “trailers, semitrailers and pole trailers.”

The manual does clarify that caution should be taken if an item in the series is modified. Commas, it notes, “are the most misused and misunderstood punctuation marks in legal drafting and, perhaps, the English language.”

“Use them thoughtfully and sparingly,” it cautions.

Legal history is replete with cases in which a comma made all the difference, like a $1 million dispute between Canadian companies in 2006 or a very costly insertion of a comma in an 1872 tariff law.

Varying interpretations of a comma in the Second Amendment have figured in court decisions on gun laws, including a Federal District Court overturning a Washington gun ordinance in 2007. (The Supreme Court later overturned the law in the case known as District of Columbia v. Heller.)

Most American news organizations tend to leave the Oxford comma out while allowing for exceptions to avoid confusion, like in the sentence: “I’d like to thank my parents, Mother Teresa and the pope.”

Reporters, editors and producers at The New York Times usually omit the comma, but Phil Corbett, who oversees language issues for the newsroom, wrote in a 2015 blog post that exceptions are sometimes made:

“We do use the additional comma in cases where a sentence would be awkward or confusing without it: Choices for breakfast included oatmeal, muffins, and bacon and eggs.”

The Associated Press, considered the authority for most American newsrooms, also generally comes out against the Oxford comma.

But the comma is common in book and academic publishing. The Chicago Manual of Style uses it, as does Oxford University Press style. “The last comma can serve to resolve ambiguity,” it says.

A 2014 survey of 1,129 Americans by FiveThirtyEight and SurveyMonkey Audience found 57 percent in favor of the comma and 43 percent opposed.

Webbert, who said working on the case recalled his boyhood grammar and Latin lessons, scoffed at the idea that he was representing all those in favor of the Oxford comma. He was only representing the truck drivers, he said.

The drivers, who earned between $46,800 and $52,000 per year without overtime, worked an average of 12 extra hours a week, Webbert said. Though three drivers filed the class-action lawsuit in 2014, about 75 will share the money.

Oakhurst, a longtime family business that was acquired by Dairy Farmers of America in 2014, employs about 200 people and has annual sales of $110 million, selling dairy products throughout New England, according to its website.

Webbert declined to take a personal position on the broader debate of using the Oxford comma. But he sounded like a lot of English teachers and writing coaches who offered an alternative suggestion: If there’s any doubt, tear up what you wrote and start over.

“In this situation, it did create an ambiguity, which means you have to either add a comma or rewrite the sentence,” he said.
Grover Cleveland signed legislation in 1894 making Labor Day an official national holiday. The idea came from the states; half of them were already observing “workingmen’s holidays” to celebrate the social and economic achievements of American workers. Always the first Monday in September, this year we’ll celebrate on September 4. Here’s a snapshot of today’s workforce and what they face.

**Average Weekly Wages**
(Fourth Quarter 2016)

Source: U.S. Bureau of Labor Statistics

**Back to Work**

Ranking states by their seasonally adjusted unemployment rates in June 2017 places Colorado and North Dakota on top with a low rate of 2.3 percent each. Alaska currently has the highest rate, at 6.8 percent.

**Lowest**
- Colorado 2.3%
- North Dakota 2.3%
- Hawaii 2.7%
- Nebraska 2.9%
- New Hampshire 2.9%

**Highest**
- Arizona 5.1%
- Kentucky 5.1%
- Louisiana 5.5%
- D.C. 6.2%
- New Mexico 6.4%
- Alaska 6.8%


**Jobs Ahead**


**Average Hourly Earnings of All Employees**

Source: U.S. Bureau of Labor Statistics

**The top 10 occupations projected to grow the most (numerically) between 2014 and 2024, with their average salaries in 2016.**

- Personal care aides $21,920
- Registered nurses $68,450
- Home health aides $22,600
- Food preparers/servers, incl., fast food $19,440
- Retail salespersons $22,680
- Nursing assistants $26,590
- Customer service representatives $32,300
- Restaurant cooks $24,140
- General and operations managers $99,310
- Construction laborers $33,430

**The top 10 occupations projected to grow the fastest during the same timeframe**

- Wind turbine service technicians $52,260
- Occupational therapy assistants $59,010
- Physical therapist assistants $56,610
- Physical therapist aides $25,680
- Home health aides $22,600
- Commercial divers $49,090
- Nurse practitioners $100,910
- Physical therapists $85,400
- Statisticians $80,500
- Ambulance drivers/attendants, not EMTs $23,850
A n Idaho native and graduate of Utah State University, Brent Hill is a retired certified public accountant and certified financial planner. He was appointed to fill a vacant Senate seat in 2001 and was elected president pro tempore in 2010. Hill and his wife, Julie, are celebrating their 45th wedding anniversary this year. He is the author of “A Matter of Principle” which recounts his political and personal philosophies.

How did you go from being an accountant to being in the Legislature? I’ve always been fascinated with the political process, even as a kid. I love our government and the way the Constitution is set up. But quite frankly, I was too shy as a kid to ever consider running for public office. And in Idaho we meet from January until the end of March or into April, and that’s the busiest time for tax accountants. But later in my life, as our children were grown and my career was more secure, it became an opportunity to fulfill that dream to serve. I think we all have a yearning to serve, whether that’s in our family, church, service clubs or government.

What advice do you give to new legislators? I think we all know that integrity is important, but I don’t know if we realize how extremely important it is when you’re in public service. Your integrity, that’s all you have.

What’s the biggest takeaway from your book? There are two. One is the importance of integrity and being true to those you work with as well as yourself. We are held at a higher standard because we have been elected by the people. We don’t do the very minimum of what’s required in ethics. We need to be striving for something much higher. The other principle I stress is the concept—or truth—that most people are good. And the good far outweighs the bad. It’s so easy to become cynical. There are many things to complain about regarding our federal government, as well as other levels of government. And it’s not that we shouldn’t focus on those things. We should, and we should try to solve our problems and become better. But we have had problems in the history of this nation and we’ve always risen to become better.

Which authors inspire you? I love American history, particularly since I’ve been more involved in the political process. David McCullough is one of my favorite authors. The book that’s sitting on my bedstand right now is “John Adams.” I’m on my third time through it. Another one of my favorite authors is Doris Kearns Goodwin. And Edward Larson wrote a book called “George Washington, Nationalist.” I try to pattern my leadership style after George Washington’s more than anyone else’s. The lessons we can learn from the successes, challenges and failures of previous leaders are invaluable. To transform them into today’s world and into my life, that’s a challenge, but it’s an exciting challenge.

What have your 19 grandchildren taught you about the future? The most valuable lessons in my life I’ve learned from my own children, and now, my grandchildren. There is wisdom that comes from the innocence of a child. And there’s an optimism that comes from seeing how they learn and grow and develop. The youth of this world are just incredible, at least the ones who are striving to be good. I think they’re going to be better prepared leaders than my colleagues and I were.

What would surprise people most to learn about you? How incredibly shy I was in my younger years. When I was 14 we moved four miles, but it might as well have been 4,000, because I had to change high schools. I went into that with a strong determination that relationships were more important than material things. And so I put more effort into building friendships. It wasn’t easy, but I knew it was something I needed to do.

What final words would you like to leave with our readers? Look for the goodness in people, including politicians. When I first went to Boise, I was going to “drain the swamp.” My impression of politics came from talk show hosts and movies and speeches, all of which were very critical of our political process. My most pleasant surprise was that there were a lot of people who were there for the right reasons. They wanted to make Idaho a better place to live, raise families and do business. Cynicism is one of the greatest enemies to a free society. We’ve become so cynical, but we need to see the good and then make the good even better.

Jane Carroll Andrade, contributing editor, conducted this interview, which has been edited for length.
POWERING THE GRID.
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