

May 1, 2006

Will state “experiments”  
 lead the way out of the  
 partisan morass?



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Top Story

*This week, former Senior White House correspondent Lou Cannon considers whether MASSACHUSETTS' recent bipartisan adoption of universal healthcare may inspire federal lawmakers to end the political gridlock that has become the norm in Washington.*

**SNCJ Spotlight**

*Lou Cannon: Experiments in Democracy*

**F**uture historians may mark April 2006 as a month in which states launched notable political and social experiments while the federal government floundered in a partisan morass. The most notable experiment occurred in MASSACHUSETTS, where a landmark bill that is intended to provide near-universal health coverage was passed by a Democratic legislature and signed into law by the Republican governor who proposed it. Soon afterward, a supposedly well-crafted compromise

on the contentious issue of immigration fell apart in the U.S. Senate as problem solving was scuttled for partisan advantage.

The MASSACHUSETTS achievement, the most intriguing of several state initiatives in 2006, suggested that states may be poised to break the political gridlock that has become the norm in Washington. It would not be the first time. In 1932, Supreme Court justice Louis Brandeis famously defined the role of states in an opinion in which he wrote, “It is one of the happy accidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

This opinion, by one of the leading Progressives of the early 20th century, was written in dissent, on a conservative high court that in subsequent years would resist the bold but necessary exercise of federal power initiated by President Franklin D. Roosevelt in response to the dire exigencies of the Great Depression.

States did what they could. The New Deal flowed, not quite seamlessly, into an even more necessary expansion of power during World War II. The federal reach was further extended in the decades after the war, notably by the civil rights revolution. “States’ rights” became the banner of those who sought to perpetuate racial segregation, overshadowing legitimate efforts by states to find their own way on other issues. The legal dismantling of segregation substantially removed the racial stigma and freed states to explore their own paths in social policy (such as welfare policy and health insurance) and restore a balance in the federal system.

Technological innovation and global competition provided the impetus for such exploration, David Osborne wrote in a 1988 book, *Laboratories of Democracy*. Because of these developments, new models of public-private partnerships had begun to replace the top-down federalism of the New Deal era, and states were carving out an innovative role. Osborne, writing at the dawn of the era of globalization, analyzed some of the more promising state

## *The Week in Session*

### States in Regular Session:

AK, CA, CO, DC, DE, KS, LA, MA, MI MN, MO, NH, NY, OH, OK, PA, RI, SC, TN, US, VT, WI

### States in Special Session:

CA "a", PA "a", TX "c", VA "a"

### States in Budget Hearing Recess:

NJ

### Special Sessions in Recess: OK "a"

### States Projected to Adjourn:

AZ, CT, FL, HI, IA, IL, ME

### States Adjourned in 2006:

AL, GA, ID, IN, KY, MD, MS, NE, NM, SD, UT, VA, WA, WV, WY

### States in Special Session

#### Adjourned in 2006:

AR "a", AZ "a", LA "a", OR "a", TN "a"

Letters indicate special/extraordinary sessions

Source: State Net, 04/28/06

experiments. He examined economic development in PENNSYLVANIA, educational reform in ARKANSAS, environmental and social service changes in ARIZONA, industrial policy in MICHIGAN, economic redistribution in MASSACHUSETTS and housing policy in New York. Some of these models (notably those in PENNSYLVANIA and ARKANSAS) have since flourished while others (most conspicuously MICHIGAN's industrial policy) have not fulfilled their promise. What all of them had in common is that they produced valuable learning experiences for other states.

The federal government can learn, too. That was the heart of the argument made by Brandeis, on and off the court. If a state policy failed, it could be discarded. If it succeeded, it could be copied nationally. This was understood by President Bill Clinton, who had been governor of ARKANSAS. President Clinton's welfare overhaul of 1996, for which the Republican House majority also deserves credit, was modeled on pioneering efforts in welfare reform in WISCONSIN and other states.

Will the MASSACHUSETTS bill on health insurance provide a similar national blueprint? That is certainly the hope of the man who conceived it, Republican Governor Mitt Romney, a rising political star and potential contender for his party's presidential nomination in 2008. But while the legislation was by any mea-

## Bird's eye view



### *More states allowing residents to stand their ground*

In 2005, FLORIDA became the first state in the nation to adopt NRA-sponsored legislation that allows residents to use deadly force to defend themselves against violence. Since then, eight additional states have adopted so-called “stand your ground” statutes, with three more – MICHIGAN, NEW HAMPSHIRE and OKLAHOMA – moving measures through at least one legislative chamber last week. While most states already allow people to use deadly force to protect themselves in their home, the majority of the new laws extend that right to include defense against attacks in a car, business or on the street, while also granting shooters protection from criminal prosecution and civil lawsuits. Several states, including CALIFORNIA, COLORADO and WYOMING, have rejected these measures. The accompanying map shows states that have adopted stand your ground laws, those which have defeated such proposals and those still considering at least one such measure.





# Budget & taxes

**L**EGISLATURE OVERRIDES PATAKI BUDGET VETOES: Constitutional powers collided in NEW YORK last week when state lawmakers overrode nearly all of the 200-plus budget vetoes issued by Gov. George E. Pataki (R) earlier in the month. In doing so, the legislature restored most of the \$2.9 billion in spending Pataki had cut from the plan. “I’m sad we have a governor who is out of touch with the needs of the people of the State of NEW YORK,” Assembly Speaker Sheldon Silver (D) said in an interview. Pataki has vowed to ignore \$1.9 billion of the overrides — including those reinstating a property tax rebate averaging \$400 per homeowner and more than \$1 billion in Medicaid funding — on the grounds that they pertain to changes the legislature made to his original budget, in violation of court rulings granting the governor primacy in the budget-making process. Senate Majority Leader Joseph Bruno (R), however, challenged that view, stating, “We are certain the governor went above and beyond any authority the courts ever intended.” With neither side appearing willing to budge, the stage could be set for a battle in the courts that could drag on for years. (NEWS-DAY, NEW YORK TIMES, BUFFALO NEWS, TIMES UNION [ALBANY])

**CORRECTION:** In the April 17 *State Net Capitol Journal*, we mistakenly reported that the VIRGINIA budget process was deadlocked over a House proposal to enact new taxes to fund transportation. The tax proposal is actually in the Senate...and vigorously opposed in the House. We regret the error.

**BUDGETS IN BRIEF:** The OKLAHOMA House passed a measure last Tuesday aimed at tightening restrictions on state spending. Senate Joint Resolution 53 would change the state’s spending cap — currently set at 12 percent per year plus inflation — to 6 percent, unless three-fourths of the members of both houses voted to lift it. The measure was returned to the Senate (OKLAHOMAN [OKLAHOMA CITY]). • The ALASKA Senate passed an oil-tax bill last week that could pump billions of dollars into the state treasury. The measure would substitute the state’s existing tax on production with a 22.5 percent tax on oil companies’ profits, which would increase by .2 percent for every dollar in price that oil rises above \$50 per barrel. The House has passed its own oil-tax bill that sets the rate at 20 percent with a .3 percent escalator (JUNEAU EMPIRE). • The TEXAS House passed a \$3-billion business tax last week that is the cornerstone of Gov. Rick Perry’s (R) plan to cut school property taxes. The proposal was sent on to the Senate, with support-

ers hoping a tax overhaul will finally become reality after four failed attempts in the past two years (HOUSTON CHRONICLE). • **WISCONSIN** lawmakers will face a \$1.5 billion deficit next year, according to figures released last week. The report came just as the Republican-led Assembly was preparing to take up a constitutional amendment to limit state and local spending (MILWAUKEE JOURNAL SENTINEL). • **CALIFORNIA** officials were ecstatic last week when they learned that income tax collections for April were \$1.5 billion higher than expected, reaching over \$10 billion for the month. Those same officials were positively giddy to learn that those figures came in with two more days left to open returns, meaning even more pennies from heaven were on the way. That total included \$1.65 billion on Wednesday the 26th alone, which many long-time officials said could be the state's largest single-day collection ever (SAN FRANCISCO CHRONICLE).

— *Compiled by KOREY CLARK*

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# Politics & Leadership

**T**ERM LIMITS TAKE TOLL THIS YEAR: Between 1990 and 2000, 21 states passed laws limiting how long legislators could serve. While a number of states have repealed those restrictions in the years since then, term limits remain in effect in 13 states — ARKANSAS, ARIZONA, CALIFORNIA, COLORADO, FLORIDA, MAINE, MICHIGAN, MISSOURI, MONTANA, NEBRASKA, OHIO, OKLAHOMA and SOUTH DAKOTA — and their impact will certainly be felt in many of those states' capitals this election year.

Lansing, for instance, will see the departure of just over 20 percent of its House members, and Little Rock will lose 29 percent of its lower chamber. Nearly a third of the membership in both houses will bid farewell to Sacramento. But hardest hit will likely be Lincoln, where term limits take effect for the first time this year; nearly half of that capital's 49-member, unicameral legislature will be forced out, including the speaker and the chairs of a dozen committees. The outlook isn't much better for Helena, however, which will lose its Senate president and the majority and minority leaders of both chambers.

MONTANA Senate Minority Leader Bob Keenan (R), who's served in the statehouse for 16 years, said term limits have not only given more power to the governor and lobbyists in the Treasure State, they've also reduced the level of civility in the legislature, as the tendencies of brash newcomers are no longer moderated by the influence of senior statesmen. "We've see an increase in hard-core partisanship and ideology," said Keenan.









Ernie Fletcher (R) said he would not veto \$11 million in funding for a private Bluegrass State Baptist college that expelled an openly gay student last month. The University of the Cumberlands says it wants the money in order to build a pharmacy school. Fletcher said he based his decision not to veto the state funds because the money for the project came from severance taxes paid by coal companies, not by individual taxpayers. Fletcher did say he will seek a court opinion on the constitutionality of the funding (BOSTON GLOBE).

— *Compiled by RICH EHISEN*

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## Hot issues

**B** **USINESS:** The **OKLAHOMA** Senate approves HB 3004, which bans the sale of violent video games to minors. It returns to the House to address amendments made in the Senate (OKLAHOMAN [OKLAHOMA CITY]). • The **FLORIDA** House endorses HB 247, which would bar out-of-state wineries that produce more than 250,000 gallons a year from shipping their product directly to Sunshine State consumers. Those wineries could instead ship only to in-state distributors. The proposal now pops a cork in the Senate (ORLANDO SENTINEL). • A **CALIFORNIA** Assembly committee rejects a measure that would have required all homeowners living in 100-year flood planes to purchase flood insurance. That coverage is now only optional in the Golden State (SACRAMENTO BEE). • The **VERMONT** House approves legislation that says manufacturers of genetically engineered seeds could be sued for damages if their products drift into the fields of neighboring farmers who don't want them. It migrates to the Senate (RUTLAND HERALD). • The **MICHIGAN** Senate endorses legislation that would bar local governments from adopting ordinances that regulate or ban the planting of seeds, including genetically modified organisms. It heads now to Gov. Jennifer Granholm (D) (SOUTH BEND TRIBUNE). • The **ILLINOIS** House approves legislation that would allow Prairie State diners to take home an unfinished bottle of wine as long as it was purchased and opened with a meal. The restaurant would be responsible for placing the leftover vino into a tamper-proof bag for the trip home. The measure moves to Gov. Rod Blagojevich (D), who is expected to sign it (CHICAGO TRIBUNE).

**CRIME & PUNISHMENT:** **ARIZONA** Gov. Janet Napolitano (D) signs SB 1444, legislation that extends a life sentence with no possibility of pardon or parole for individuals convicted of three serious felonies. The law also stipulates that felonies accrued in other states count toward the defendant's total (ARIZONA REPUB-

LIC [PHOENIX]). • Still in **ARIZONA**, Gov. Janet Napolitano (D) signs SB 1145, which removes residents' duty to retreat before using deadly force to protect themselves against intruders in their homes or cars (ARIZONA REPUBLIC [PHOENIX]). • The **MICHIGAN** House also endorses legislation that would allow residents to use deadly force against intruders or carjackers. The measure grants home defenders immunity from civil or legal prosecution. It shoots off to the Senate (LANSING STATE JOURNAL). • The **OKLAHOMA** Senate makes it a trio by approving legislation that allows drivers or their passengers to use deadly force to ward off carjackers. The bill would expand the Sooner State's current "Make My Day" law, which allows residents to use deadly force against intruders in their homes. It blasts its way back to the House, which must consider Senate-made amendments (OKLAHOMAN [OKLAHOMA CITY]). • **OREGON** Gov. Ted Kulongoski (D) signs into law a measure that sets a mandatory minimum sentence of 25 years for offenders convicted of first-degree rape, sodomy or unlawful penetration if the victim is under 12. The state will also track perpetrators for life (CORVALLIS GAZETTE-TIMES). • The **FLORIDA** House votes to continue a Sunshine State policy that allows a simple majority vote for a jury to recommend a death sentence. The state Supreme Court had suggested lawmakers reconsider the law because they said it may be in violation of opinions from the U.S. Supreme Court (ORLANDO SENTINEL).

## Upcoming Elections (04/27/06 - 05/18/06)

05/02/2006 Indiana Primary Election  
House (All)  
Senate 1, 4, 6, 11, 14, 15, 17, 19, 21, 22, 23, 25, 26, 27, 29, 31, 38, 39, 41, 43, 44, 45, 46, 47, 48, 49

Constitutional Officers:  
Secretary of State, Treasurer, State Auditor  
US House (All)

05/02/2006 North Carolina Primary Election  
House (All)  
Senate (All)  
US House (All)

05/02/2006 North Carolina Special Election  
Senate 031

05/02/2006 Ohio Primary Election  
House (All)  
Senate (All)  
Constitutional Officers:  
Governor, Secretary of State, Attorney General, State Auditor  
US House (All)  
US Senate ( )

05/09/2006 Nebraska Primary Election  
US House (All)  
US Senate (Nelson)

05/09/2006 Oklahoma Special Election  
Senate 038

05/16/2006 Kentucky Primary Election  
House (All)  
Senate (Even)  
US House (All)

05/16/2006 Oregon Primary Election  
House (All)  
Senate 3, 4, 6, 7, 8, 10, 11, 13, 15, 16, 17, 19, 20, 24, 26  
Constitutional Officers:  
Governor  
US House (All)

05/16/2006 Pennsylvania Primary Election  
House (All)  
Senate (Even)  
Constitutional Officers:  
Governor, Lieutenant Governor  
US House (All)  
US Senate (Rick Santorum)



**EDUCATION:** The **MICHIGAN** House passes a package of 11 bills that would, among other things, require students to be a U.S. citizen or permanent resident, or otherwise be eligible to receive assistance under federal law, before receiving certain state-paid grants. Those measures now graduate to the Senate (**LANSING STATE JOURNAL**). • The **MISSOURI** House overwhelmingly approves HB 1075, which would require Show Me State students to obtain parental permission slips before taking sex education courses. The measure would also prohibit abortion providers from teaching or providing materials for those courses. The bill faces a final vote before moving to the Senate (**NEWS TRIBUNE [JEFFERSON CITY]**).

**ENVIRONMENT:** The **VERMONT** Senate endorses a bill mandating that only appliances meeting certain energy-efficient standards be sold in the Green Mountain State. Currently, only **MASSACHUSETTS** and **NEW YORK** have such stringent standards. It moves to the House (**BURLINGTON FREE PRESS**). • **COLORADO** Gov. Bill Owens (R) vetoes HB 1309, which would have allowed the state to impose stricter air-pollution regulations than those required by the federal government. Owens said the bill would put Centennial State businesses at a competitive disadvantage (**ROCKY MOUNTAIN NEWS [DENVER]**). • The **MISSOURI** Senate endorses a bill mandating that all regular gasoline sold in the Show Me State be at least a 90/10 gasoline-ethanol blend by 2008. It now flows to Gov. Matt Blunt (R), who has said he will sign it into law (**ST. LOUIS POST-DISPATCH**).

**HEALTH & SCIENCE:** **COLORADO** Gov. Bill Owens (R) lets HB 1249, which allows pregnant teenagers to get prenatal care without the consent of a parent or a guardian, to become law without his signature. Owens said the need to ensure the mother and baby receive adequate medical care supersedes the need for parental notification (**ROCKY MOUNTAIN NEWS [DENVER]**). • The **SOUTH CAROLINA** House rejects a proposal to ban smoking in bars, restaurants and recreational facilities (**STATE [COLUMBIA]**).

## *In the Hopper*

State Net's database tracks tens of thousands of bills in all 50 states at any given time. Here's a snapshot of what's in the legislative works:

Number of 2006 prefiles last week: 104

Number of 2006 Intros last week: 1,838

Number of bills enacted/adopted last week: 1,376

Number of 2006 prefiles to date: 17,302

Number of 2006 Intros to date: 82,921

Number of enacted/adopted overall in 2006: 16,977

— Compiled By JAMES ROSS  
(Measures current as of 04/27/06  
Source: State Net)



**HOMELAND SECURITY:** The **MISSOURI** Senate endorses a bill that would require the state Highway Patrol to undergo training from the U.S. Department of Homeland Security on federal immigration laws. The bill also allows all police officers to “investigate, apprehend, or detain” undocumented immigrants and transport them to federal Immigration and Customs Enforcement officials, across state lines if necessary. It moves to the House (KANSAS CITY STAR). • **ARIZONA** Gov. Janet Napolitano (D) vetoes SB 1157, which would have allowed the Grand Canyon State to charge the estimated 300,000 to 500,000 undocumented immigrants living there with trespassing. Napolitano said the bill is likely unconstitutional (ARIZONA REPUBLIC [PHOENIX]).

# Quoteable

“Lord knows I would never want to hurt a mother, in any way. Lord knows I would never want to hurt a victim of rape or incest, [but] a crime committed by a rapist should not result in the death of an unborn child.”

— **LOUISIANA Sen. Ben Nevers (D) defending his legislation that would ban all abortions in the Pelican State except those to save the mother’s life. (ADVOCATE [BATON ROUGE])**

**SOCIAL POLICY:** The **LOUISIANA** Senate approves SB 33, which would ban all abortions except for those necessary to save the mother’s life. It heads now to the House (ADVOCATE [BATON ROUGE]). • A federal judge rules that health care providers and others are not required to report all underage sexual activity between consenting youths as sexual abuse. The decision came in response to a constitutional challenge to **KANSAS** Atty. Gen. Phill Kline’s interpretation of his state’s mandatory reporting law (LAWRENCE JOURNAL-WORLD)).

**POTPOURRI:** The **LOUISIANA** House unanimously endorses HB 760, which would forbid law enforcement from taking guns away from law-abiding citizens during times of civil disorder. It fires off to the Senate (ADVOCATE [BATON ROUGE]). • A **CALIFORNIA** Senate committee endorses legislation that would allow residents to claim more than one race when filling out government forms. The federal government has allowed such designations since 1997, but if passed, the Golden State would be the first in the nation to allow it at the state level (SAN JOSE MERCURY NEWS). • The **ILLINOIS** House votes 101-0 in favor of SB 1144, which would bar protests within a 200-foot zone before, during and shortly after funeral services. It moves to Gov. Rod Blagojevich (D), who says he will sign it (CHICAGO TRIBUNE).

— *Compiled by RICH EHISEN*

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# Once around the statehouse lightly

**R**EHAB WORK: On Easter Sunday, Steven Foti, former majority leader of the WISCONSIN State Assembly, began a 60-day vacation in a Waukeshaw County jail after pleading guilty to charges that he violated state ethics laws while serving in the Legislature. His home for the next two months does allow work-release privileges, however. So, reports the *Milwaukee Journal Sentinel*, Foti was at work less than a week after going to the hoosegow. His place of work? The Badger State Legislature, of course, where the ex-lawmaker is a lobbyist. Among his clients: Miller Brewing Company. Meanwhile, ethics reform bills have been stalled in the Senate. Here's hoisting one for work-release.

**REPEAT PERFORMANCE:** It wasn't bad enough that the OHIO Secretary of State's Office accidentally released thousands of Social Security numbers to the public last March. Now, report the *Cleveland Plain-Dealer* and *Cincinnati Enquirer*, they've done it again. This time, lists containing millions of numbers were given to a Democratic political consultant who just wanted addresses but got so much more. The repeated goofs won't help Secy. of State Ken Blackwell's quest to win the GOP gubernatorial nomination in Tuesday's primary.

**COMPARATIVE CORRUPTION:** It isn't the kind of bumper sticker that state officials like to see, but it gained a certain currency back in 2000 when critics of then-ILLINOIS Gov. George Ryan began plastering vehicles with "Our governor is a bigger crook than your governor." After Ryan's recent conviction for political corruption, concerned Illini wondered whether the Prairie State — home to "Honest Abe" Lincoln — has the most corrupt state government in the nation? According to the *Daily Herald*, the ILLINOIS Campaign for Political Reform thinks so, and it notes that Ryan's administration fostered 76 guilty verdicts from federal investigations, including Ryan himself. Others, however, don't consider it a problem worthy of prolonged angst and offer the notion that an occasional scandal makes ILLINOIS "more interesting than other" states. "Let's not go overboard," says Roosevelt University political observer Paul Green, "and start ... trying to become the OREGON of the Middle West."

**POLITICAL INSURANCE:** Back in 2003, the state of NEW MEXICO'S Insurance Division was looking for a nice, safe mattress to stuff millions of dollars worth of securities posted by insurance companies that want to do business in the Land of Enchantment. So, notes the *Albuquerque Journal* and the Associated Press, the division asked banks to submit proposals. Seems the Century Bank of Santa Fe did a little bit more. It ordered \$16,500 worth of pens from an Espanola jewelry store that just happened to belong to the wife of Insurance Supt. Eric Serna. It also donated more than \$100,000 to a health foundation led by Serna himself. We are, therefore, shocked — shocked — to learn that Century won the contract in July 2003 and recently was given a no-bid extension that earns the bank about \$800,000 a year. Serna has assured everyone that the pens and donation had no bearing on Century's selection.

**TRUMPED IN THE OCEAN STATE:** Yet another erstwhile advocate paid his five bucks to register as a lobbyist in RHODE ISLAND last week, but the *Providence Journal* speculates that Donald Trump won't soon be trudging the halls of the State Capitol. That's because he can afford to hire a battalion of others to trudge for him. Trump is competing for a license to build a casino and wants to get personally involved, even though an aide notes that The Donald doesn't currently harbor plans to visit RHODE ISLAND. His main competitor is a consortium featuring Harrah's and the Narragansett tribe.

**AGE DISCRIMINATION:** For 26 years, D.W. Brown has driven local and state celebs as they participated in Tacoma's Grand Floral Parade. They'd perch on the back of his 1948 Jaguar and wave to appreciative crowds. But in all those years, Brown had never chauffeured a WASHINGTON state governor. That was to change this year, according to the *Tacoma News Tribune*, because Gov. Christine Gregoire was slated to ride at the front of the parade. Brown was ecstatic — until State Police intervened. In their view, the 81-year-old Brown was too old to drive a governor. Lawsuit, anyone?

### In case you missed it:

Homeland security continues to be one of the most important — and contentious — issues states face. In our April 10 issue, we discussed this critical topic with New York state Sen. Michael Balboni (R), the person who authored the Empire State's primary anti-terrorism law and a leading voice on many state-federal task forces charged with shaping our national homeland security policy.

In case you missed it, the article can be found on our Web site at [http://statenet.com/capitol\\_journal/04-10-2006](http://statenet.com/capitol_journal/04-10-2006).

— By A.G. BLOCK

