

Right Turn



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The next issue of Capitol Journal will be available on October 3rd.

Top Story

Republicans' big wins in last fall's elections have given them the upper hand in state legislatures across the country, power they used to steer their states into a hard right turn.

SNCJ Spotlight

States shift rightward under Republican control

Rick Perry's emergence as a serious contender for the Republican presidential nomination is a sign of the times. The Texas governor's leap into national prominence was made possible by the economic performance of his state, which has created jobs by the bushful while the nation as a whole is losing them. How much credit Perry deserves is an

A Cannon Perspective



With Lou Cannon



open question, but his candidacy brought the jobs issue to the center of the national political debate, where it should have been all along. Recent polls show Perry and former Massachusetts Gov. Mitt Romney, the other presidential candidate who talks about job creation, running away from the rest of the Republican field.

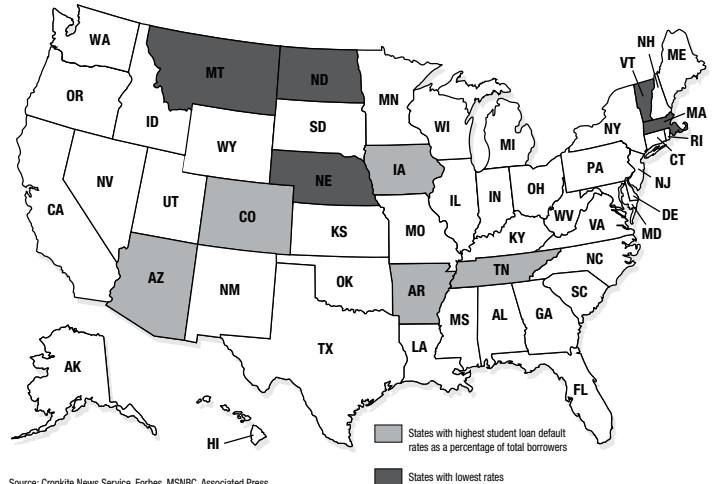
On jobs and myriad other issues, it makes sense for Republicans to turn to the states for salvation. The news this year has been dominated by natural disasters, upheaval in the Middle East, and political gridlock in Washington D.C. All this has helped panic the markets and pushed the United States to the brink of another recession — not that most Americans think we ever really emerged from the last one.

Meanwhile, news from the state capitals has drifted to the back burner after early controversy over the successful efforts of Republican governor Scott Walker of Wisconsin, backed by a GOP Legislature, to curb the collective bargaining power of most public employees. In the ensuing months, Republican-controlled state legislatures and governors have taken the nation on a conservative course on issues that in addition to collective bargaining include pension reform, abortion, voter identification, gun control, and immigration. All this was made possible by the 2010 elections, in which Republicans gained more than 740 state legislative seats and a net of six governorships. Going into the election, the GOP held the legislative majority in both houses in 14 states. After it was over the Republicans controlled both houses in 26 states and the governorship in 29.

The most ballyhooed GOP electoral achievement in 2010 was its gain of 63 congressional seats and control of the U.S. House of Representatives. But Democrats retained the Senate and still have Barack Obama in the White House. In the states they control, Republicans faced no such obstacles and have, on the whole, made the most of their opportunities.

There are historical antecedents for state leadership when there is divided government in Washington while one party holds a commanding majority in the

Bird's eye view



For-profit colleges fuel rise in student loan defaults

The number of people defaulting on their federal student loans has jumped sharply, according to figures released last week by the U.S. Department of Education. The national two-year "cohort default" 8.8 percent in fiscal year 2009, up from 7 percent in fiscal 2008. Department officials attributed the increase at least in part to a sharp rise in the number of defaults among borrowers who attended for-profit colleges. Arizona, home base of the international for-profit University of Phoenix, had the highest default rate in the nation, at 16 percent.



statehouses. The most notable precedent was in the early years of the Great Depression, especially from 1930 to 1932, when Democrats controlled many state governments while Republican Herbert Hoover was president. Democrat Franklin D. Roosevelt was elected in 1932, and soon after his inauguration in March 1933 launched the New Deal. Many of the transformational measures of this manifold social experiment — unemployment insurance, public works programs, deposit insurance, even Social Security — were modeled after successful programs that had been tried first in the states, especially FDR’s own state of New York during the governorship of Al Smith. It may seem odd to mention the conservative Perry and the progressive Smith in the same sentence, but both provided economic leadership in their states when it was lacking in Washington.

What is happening now, however, is a different sort of debate than the one that occurred during the Depression, when businesses and farms were failing and Americans turned to government as a last resort. Today, after decades of deficit spending that was briefly interrupted in the 1990s and then accelerated at full throttle during the presidencies of George W. Bush and Obama, there is broad public understanding that the federal government has been living far beyond its means. Conservatives say the spending spigot must be turned off quickly to prevent the United States from going the way of Greece. Republicans are counting on their eternal prescription of lower taxes and private enterprise to jump-start the lagging economy and avoid a new recession. Liberals would prefer a second federal stimulus program even though the results of the first one were less than glorious. Democrats acknowledge the necessity of eventually reducing the deficit but say the immediate priority is to create jobs. Obama, with no hope of winning congressional approval of a duplicate of his first stimulus bill, the \$787 billion American Recovery and Reinvestment Act of 2009, has settled for a more modest proposal, which he is careful to call a “jobs” program rather than a “stimulus,” priced at \$447 billion. Even that figure is inflated. More than half the benefits of the Obama proposal, whatever it is called, come from continuing a holiday on Social Security payroll taxes — with a partial extension of the tax break to employers — plus extension of unemployment benefits.

There have been echoes of the deficit debate in the states, which are limited by budget-balancing requirements that do not apply to the federal government. Republican dominance has contributed to frugal policies in which budgets are

In the hopper

At any given time, State Net tracks tens of thousands of bills in all 50 states, the US Congress and the District of Columbia. Here’s a snapshot of what’s in the legislative works:

Number of Prefiles last week: 113

Number of Intros last week: 530

Number of Enacted/Adopted last week: 128

Number of 2011 Prefiles to date: 36,882

Number of 2011 Intros to date: 133,246

Number of 2011 Session Enacted/Adopted overall to date: 45,264

Number of Measures currently in State Net Database: 152,045

— Compiled By OWEN JARNIGAN
(measures current as of 9/14/2011)
Source: State Net database



balanced more by spending cuts than tax increases. Partisanship on budgetary issues, however, is not as stark in the states as in the nation's capital. In New York State, for instance, Democratic Gov. Andrew Cuomo shunned calls from liberals in his own party (and *The New York Times*) to extend a tax surcharge on high incomes and instead won overwhelming bipartisan support for a prudent budget that wiped out a \$10 billion deficit and reduced spending on Medicaid, the federal-state program that provides health care for the poor. Indeed, most states, regardless of party control, have had to reduce spending for the neediest as the stumbling economy has driven families into poverty and increased the Medicaid rolls. More than 11,000 of the poorest families in Michigan have been told that in October they will lose cash assistance grants the state has long provided. Arizona and California have made it harder for low-income residents to receive cash grants; Missouri and Florida are reducing the duration of jobless benefits for laid-off workers.

Where the GOP domination in the states has had the most impact is less on economic issues than on political ones such as voter identification, which Republicans describe as an effort to control fraud and Democrats see as an attempt to restrict access and depress voter turnout. There's not much evidence for either proposition: voter fraud prosecutions are infrequent and turnout has increased in some states since voter ID laws went into effect. But in an era when identification is routinely required for travel and purchases, Republicans have the stronger political case. Six states in which the GOP holds a legislative edge passed voter ID laws this year, bringing to 29 the number of states requiring identification at the polls, including 14 that require a photo.

The Republican ascendancy in the states has also spilled over onto social issues, predictably on abortion and somewhat surprisingly on prison sentencing reform. State after state is rebelling against the high cost of jailing minor offenders. Kentucky passed legislation (HB 463) to offer non-violent drug offenders treatment instead of prison, a measure spearheaded by Senate President David Williams, who has since become the GOP nominee for governor. Various sentencing reforms also became law in four states — Georgia, Oklahoma, South Carolina and Texas — with Republican-run legislatures and GOP governors, as well as in Connecticut, where Democrats hold both the governorship and legislative majorities.

Opponents of abortion advanced their goals in several states where Republicans are in control. Indiana, Kansas, and North Carolina cut off funding to Planned Parenthood and other social clinics that provide abortion. Texas required a doctor to perform a sonogram before an abortion (HB 15), while Alabama, Idaho, Indiana, Kansas, and Oklahoma banned abortions after the 20th week of pregnancy. Abortion rights advocates have fought back in the courts. A federal judge ordered Kansas to restore federal funds to Planned Parenthood and another judge put the Indiana law on hold. Still another

Upcoming stories

Here are some of the topics you may see covered in upcoming issues of the *State Net Capitol Journal*:

- **Education**
- **Health care**
- **The economy**



federal judge blocked a portion of the Texas law that required doctors to describe what they found on the sonograms to women who are having abortions.

Democrats have had no such luck in legal challenges to collective bargaining restrictions. The Wisconsin Supreme Court upheld the bargaining ban on a 4-3 vote. Ohio passed an even stricter ban on collective bargaining (SB 5) that includes police officers and firefighters, which the Wisconsin law does not. Indiana also extended an existing ban to teachers (SB 575). Several other states tinkered with collective bargaining laws, generally at the expense of employees.

Whether the right turn in state legislatures foreshadows Republican victories in the 2012 presidential and congressional elections remains to be seen. But with the economy mired in slow growth and high unemployment, and the White House struggling to gain traction, Democrats have as much reason as Republicans did during the Depression to worry about their political prospects.

— By Lou Cannon

Budget & taxes

HAVE HOMELAND SECURITY GRANTS GONE TO WASTE? In the years since 9/11, the Department of Homeland Security has poured \$34 billion into states to help them address the threat of terrorism. But on the tenth anniversary of the terrorist attacks, questions are being asked about whether states are really safer after all that spending.

Colorado received about \$354 million in homeland security grants since 2002. But an investigation by the *Denver Post* found that the state's purchase records are in disarray and some rural areas received as much money as the state's urban centers.

In Iowa, which has spent nearly \$250 million in DHS grant money, the *Gazette* uncovered equipment purchases that have simply disappeared. For example, in 2004, the Iowa Department of Administrative Services spent \$23,500 on a "dissecting microscope with digital camera for on-site detection of trace evidence for explosives in bodies" and a "freezer (-80) freezer (-20) refrigerator PVC manifold for micro support equipment for bio and chemical terrorism at bio safety Level 3." But when DAS officials were asked about those items in July, a spokesman said: "Our procurement folks have not been able to find any trace of the freezer or dissecting microscope."

Four years after one California county received over \$100,000 in surveillance equipment to help protect its water treatment system from a terrorist attack, \$67,000 worth of the gear still hadn't been taken out of the box, according to *California Watch*, part of the Center for Investigative Reporting. Its investigation also revealed a police department in another county that bought \$47,000 in software it never used.

The investigations in all three states also turned up instances of money being spent on questionable items such as plasma TVs and baseball caps.

“Here’s the problem: The Department of Homeland Security actually has no way of knowing what the money was used for,” said Matt Mayer, former head of the DHS’ terrorism-preparedness office. “We know we bought a lot of stuff. But we don’t know where that stuff is, what condition it is in and whether our first responders know how to use it properly.”

“And at the same time,” Mayer added, “We know we’ve wasted a whole lot of money. I was in charge of this program. So I can speak from experience.”

Another apparent problem was that at the outset, the grants turned into a money grab that encouraged waste and poor accountability.

“When the Homeland Security grants first started out, everybody was applying for everything under the sun,” said David Zahn, a police investigator in Cedar Rapids, Iowa who served as that city’s public safety commissioner from 2000 to 2005. “Was it the best use of money? No.”

Some officials, however, insist the bulk of the homeland security spending was worthwhile and states are safer because of it.

“We have better equipment. We’re better trained,” said Larry Trujillo, Colorado’s homeland security director. “I thank God every day for the money that’s been invested. Until something happens, we won’t know. But we are better.”

Among the things Trujillo’s state has now that it didn’t have on Sept. 11, 2001 are a 35-employee intelligence hub, which helped track Najibullah Zazi, part of the Al Qaeda group accused of planning suicide bombings on New York City’s subway system in 2009, and a radio system that links law enforcement officers and firefighters across the state.

“It’s impossible to say, though, whether the mounds of anti-terrorism gear the government purchased made us safer or made us feel safer,” said Jonathan Adelman, a University of Denver professor who teaches foreign policy and homeland security.

After 10 years, Adelman said, it’s time to take a closer look at “which part did we need and which part is overkill.”

The need to do so may be particularly critical now, given the budget-cutting mood in Washington. (STATELINE.ORG, DENVER POST, GAZETTE [CEDAR RAPIDS], CALIFORNIA WATCH)

OBAMA PITCHES JOBS BILL TO STATES: In an effort to drum up support for the American Jobs Act, the White House released an analysis last week of what the \$447 billion bill would do for each state.

In Florida, for instance, the average household would reportedly receive a \$1,430 tax cut, payroll taxes would be reduced for 410,000 businesses and billions of dollars would be funneled into transportation and school construction projects, providing tens of thousands of jobs for teachers and other unemployed residents.



All told, the Jobs Act would provide \$130 billion in aid to state and local governments, including \$50 billion for transportation projects, \$35 billion for school and emergency services payrolls and \$15 billion to refurbish foreclosed homes and businesses.

The response from state officials has generally fallen along party lines.

“It’s a no-brainer: Congress should pass the bill. Now,” said California’s Democratic governor, Jerry Brown (D), whose state would receive over \$13 billion under the jobs bill.

But Missouri House Budget Committee Chairman Ryan Silvey, a Republican, said: “I’m not a big fan of using one-time money for ongoing expenses. I think that’s what the state should be getting away from, not getting deeper into.” Although he also said, “If we’re given the flexibility to spend it as we see fit and not as they see fit, I could see some benefit.”

The jobs bill is expected to face determined opposition in Congress, however, with President Obama’s plan to pay for it by imposing higher taxes on the wealthy finding little favor among House Republicans. (STATELINE.ORG, ASSOCIATED PRESS, WHITEHOUSE.GOV)

NEW CHALLENGE TO HEALTH REFORM COMING FROM

UNLIKELY SOURCE: From the day President Obama signed the federal health care reform law, conservative states have been defying it and even trying to overturn it. California, meanwhile, has been at the forefront of the reform effort. Last October it became the first state to establish an insurance exchange, and the following month it received federal approval for a \$10 billion plan to help it get a jump start on expanding coverage to its poorest residents, in accordance with two of the law’s key provisions.

But the state has since become one of the biggest threats to the law’s success. Budget troubles have forced it to slash \$2 billion over the next two years from its version of Medicaid, called Medi-Cal. And state officials are now asking the Obama administration for permission to raise copays, cut reimbursements to physicians and medical facilities who treat Medi-Cal patients by 10 percent — dropping the rate for a standard doctor visit to less than \$12 — and limit most beneficiaries to just seven doctor visits a year.

The week in session

States in Regular Session: MA, MI, MO, NH, OH, PA, PR, US, WI

States in Recess: CT, DC, NC, NY

States in Special Session: MO “a”, NM “a”, WI “a”

Special Sessions in Recess: DE “b”, VA “a”

States in Quorum: NJ

States Currently Prefiling or Drafting for 2012: AL, FL, KY, TN

States Adjourned in 2011: AK, AL, AR, AZ, CA, CO, CT, DE, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MN, MO, MS, MT, ND, NE, NM, NV, OK, OR, PR, RI, SC, SD, TN, TX, UT, VA, VT, WA, WV, WY

State Special Sessions Adjourned in 2011: AK “a”, AK “b”, AL “a”, AZ “a”, AZ “b”, AZ “c”, CA “a”, CT “a”, DE “a”, GA “a”, KY “a”, LA “a”, MN “a”, MS “a”, TX “a”, UT “a”, UT “b”, WA “a”, WI “b”, WV “a”, WV “b”

Letters indicate special/extraordinary sessions

— Compiled By OWEN JARNIGAN
(session information current as of 9/15/2011)
Source: State Net database



“This isn’t the way we’d want to run a Medicaid program,” said Toby Douglas, the state’s Medi-Cal director. “If it wasn’t for the state fiscal crisis, we...would not be going forward with these proposals.”

Patient advocates and health care providers fear the cuts will undermine the primary aim of the law by forcing more doctors to close their doors to Medi-Cal patients.

“I’m afraid no one is going to take these people,” said Marcia Hall, chief executive of Sharp Coronado Hospital in San Diego County, which stopped taking new Medi-Cal patients in June.

If California’s requested changes are approved, it could also open the door to deep Medicaid cutbacks nationwide.

“There are states that are bellwethers,” said Jane Perkins, legal director at the National Health Law Program. “California is one of them.”

If the state gets what it’s asking for, she said, other states will almost certainly ask for similar treatment, starting a “race to the bottom.”

On the other hand, the health care reform effort is “badly in need of success stories,” and “success in California could add decisive momentum,” said Drew Altman, president of the Kaiser Family Foundation.

“But if California bogs down, or if there is an implementation failure, it would be a huge negative for the whole implementation effort nationally,” he said.

A decision on at least some of the state’s requests is expected this month. (LOS ANGELES TIMES)

MA HOUSE APPROVES CASINOS: The Massachusetts House overwhelmingly approved legislation last week (HB 3702) allowing casino gambling in the state. The Senate is expected to take up the bill later this month, and with Gov. Deval Patrick (D) already on board, the state’s first slot parlor could open within a year, with two casinos to follow two or more years after that.

“We’re taking a major step in the creation of jobs,” said House Speaker Robert A. DeLeo (D), who has been trying to expand gambling in the state for the last two years. “We are right now in Massachusetts — or have been — in a blue collar depression...this is a workforce that we really have to address.” (BOSTON GLOBE)

BUDGETS IN BRIEF: Another 2.6 million Americans slipped below the poverty line last year, the U.S. Census Bureau reported last week. That brings the total to more than 46.2 million, the highest number in the 52 years the bureau has been publishing that information (NEW YORK TIMES). • A tweet last Wednesday from the office of Senate Majority Leader Harry Reid (D-NEVADA) stated that President Obama has declared disasters in 48 states this year, with 10 topping \$1 billion in damage, the most in over 30 years. The only two states that have been spared a major calamity are **MICHIGAN** and **SOUTH CAROLINA** (NPR.ORG).

• **CALIFORNIA** Gov. Jerry Brown (D) failed to get the two Republican votes he needed in the state Senate to pass his \$1 billion jobs bill. And Senate Pro Tem Darrell Steinberg (D) virtually ruled out the possibility of a special session to hammer out an agreement, saying Senate Republicans were showing no signs of budging on the issue (SAN JOSE MERCURY NEWS). • States paid out roughly \$19 billion in erroneous unemployment benefits in the three years that ended in June, according to Labor Department data. Improper payments typically occur when recipients continue to collect benefits after they have returned to work, employers fail to submit accurate and timely information about employee terminations, or recipients fail to register properly with state employment service organizations (WALL STREET JOURNAL).

— *Compiled by KOREY CLARK*

Politics & leadership

A PPEALS COURT TOSSES VA HEALTH REFORM LAWSUIT: A federal appeals panel has thrown out Virginia’s challenge to the federal health care reform law on the grounds that the state lacks standing to sue.

The three-judge panel of the U.S. Court of Appeals for the 4th Circuit in Richmond ruled September 8th that Supreme Court precedent only permits states to contest federal laws hindering their ability to administer state programs or regulate their citizens’ behavior. But noting the timing of Virginia’s lawsuit — filed the day Obama signed the health reform law — the panel said “the only apparent function” of a new Virginia law that is the basis for the state’s suit “is to declare Virginia’s opposition to a federal insurance mandate.”

If the court allowed the state to sue, Judge Diana Gribbon Motz wrote on behalf of the panel, “a state could acquire standing to challenge any federal law merely by enacting a statute — even an utterly unenforceable one — purporting to prohibit the application of the federal law.”

The panel’s unanimous ruling, which overturned a lower court decision striking down the federal law’s mandate that Americans obtain health insurance or pay a penalty, was doubly disappointing to the state and its Attorney General Ken Cuccinelli II.

“Our disappointment not only stems from the fact that the court ruled against us but also that the court did not even reach the merits on the key question of Virginia’s lawsuit — whether Congress has a power never before recognized in American history: the power to force one citizen to purchase a good or service from another citizen,” Cuccinelli said.



Virginia Gov. Robert F. McDonnell (R), however, didn't seem too surprised by the decision of the 4th Circuit judges, all of whom were appointed by Democrats, two by President Obama.

"Honestly, we were expecting that we'd probably lose given the panel of judges," he said in an interview.

But legal analysts pointed to the decision Cuccinelli made to go it alone instead of joining the multi-state lawsuit initially filed by Florida and joined by 25 other states as well as several individuals, whose uncontested right to challenge the health reform law's so-called "individual mandate," has bestowed "piggyback" standing on all of the plaintiff states.

"Virginia's sovereign interest here was weak," said Cornell law professor Michael C. Dorf. "It's not clear to me why they didn't at least enlist individual plaintiffs."

Virginia's battle against the health reform law isn't over, however. Immediately after the appeals panel's ruling, Cuccinelli announced the state would be appealing the decision to the U.S. Supreme Court. Back in February, he and McDonnell had asked the court to review the case before it had gone through the normal appeals process, but the justices had declined. Now the case may be one of several relating to the issue the high court could rule on as early as next June, in the middle of the presidential and congressional campaign season.

"I've said for a year that the United States Supreme Court is going to make the final decision on that and maybe, ultimately, the United States Congress depending on what happens in the election," McDonnell said. (WASHINGTON POST, ASSOCIATED PRESS)

DEMS LOSE BIG IN TWO CONGRESSIONAL RACES: Democrats suffered big losses in a pair of Congressional races last week, only adding to the Party's jitters about next year's elections.

In Nevada, Republican former state Sen. Mark Amodei defeated Democrat Kate Marshall in a special election for the 2nd Congressional District seat vacated by Republican Dean Heller, who was promoted to the U.S. Senate in May. A GOP victory was hardly unexpected in the race. The rural northern Nevada district has 32,000 more Republican voters than Democratic ones and has never elected a Democrat. But Amodei simply rolled over Marshall, claiming 58 percent of the vote to her 36 percent.

Upcoming elections

9/15/2011 - 10/6/2011

09/20/2011

Florida Special Primary
Senate District 1

Georgia Special Election
House District 43

Massachusetts Special Election
House District 12th Bristol

Massachusetts Special Primary
House District 3rd Berkshire

New Hampshire Special Election
House District Hillsborough 3

09/27/2011

South Carolina Special Election
House District 100

Tennessee Special Primary
Senate District 6

10/04/2011

West Virginia Special Election
Constitutional Officer: Governor

The outcome of a special election in New York, however, was even more of a surprise. There Republican Bob Turner, a retired media executive, defeated Democratic state Assemblyman David Weprin, in the 9th Congressional District — encompassing parts of Brooklyn and Queens — where a Republican hadn't been elected since the 1920s.

Republicans characterized both races as referendums on President Barack Obama's leadership. At Amodi's victory party, Nevada GOP Chairwoman Amy Tarkanian called the win "the first step telling President Obama he's done." And Turner consultant Steve Goldberg said the race in New York was "all about Obama — not even a thought of anything else."

But even the explanation a senior Democratic Congressional aide gave for his Party's loss in New York pointed an accusing finger at the president.

"The approval ratings for the guy at the other end of Pennsylvania Avenue cratered," he said.

However, although as House Democratic Whip Steny Hoyer said, "Every election reflects on the person in charge," the Democrats' special election losses last week can't be blamed entirely on Obama. The fact that the seat up for grabs in New York's 9th District was previously occupied by Anthony Weiner, a Democrat who resigned over a high-profile Twitter "sexting" scandal, undoubtedly played a role in the race there. The Queens Democratic Party's decision to select as their candidate for that contest a member of the state Assembly who doesn't actually live in the 9th District, ostensibly because he is Jewish like many of the district's voters, likely did too. The decision of the state's labor-backed Working Families Party, a major force in other local races, to invest its resources elsewhere appears to have been a factor as well.

That last item may actually be a sign of things to come for other Democratic candidates at the national level, including the president, next year. Leaders of the AFL-CIO have been talking about focusing their attention on state-level races. And the SEIU is considering funneling its resources into a campaign advocating for jobs instead of Obama.

"Obama needs to reconnect with labor, get in the trenches with us again," said one veteran labor official. "There is, among my members, a sense of disconnect with him. He needs to signal to us that he is a labor champion, not just supported by labor." (WASHINGTON POST, POLITICO, CBS NEWS)

POLITICS IN BRIEF: A three-judge panel of the U.S. Court of Appeals for the 3rd Circuit in Philadelphia voted 2-1 to overturn **NEW JERSEY** Lt. Gov. Kim Guadagno's (R) disqualification of star Olympic athlete Carl Lewis, a Democrat, from the Senate race in the state's Republican-leaning 8th Legislative District because he does not meet the four-year residency requirement for such candidates. The panel said the state "failed to demonstrate compelling state interest in the application" of that residency requirement. Republicans said they plan to appeal the decision either

to the full 3rd Circuit or the U.S. Supreme Court (STAR-LEDGER [NEWARK]).

- GOP legislative leaders in **WISCONSIN** said they plan to focus on jobs and the economy rather than hot button social issues like abortion during the fall session that officially began last Tuesday, but likely won't begin in earnest until late next month. But Democrats were skeptical Republicans would keep their word, given that they said much the same thing before the start of the session in January, when they rallied behind Gov. Scott Walker's (R) proposal to curb public employees' collective bargaining power, plunging the Capitol into chaos for weeks (POST-CRESCENT [APPLETON]).
- As of last Tuesday, all of the proceedings of the **PENNSYLVANIA** Supreme Court are now being recorded for later broadcast on cable TV. The six civil appeals that kicked off the court's new era of judicial transparency, however, may not necessarily be ready for prime time; Chief Justice Ronald D. Castille said viewers might want to consider sitting down with a "strong cup of coffee" to get through the oral arguments (PITTSBURGH POST-GAZETTE).
- **OHIO** Republicans have drawn a new Congressional district map that will give them a good chance of holding 12 of the 16 seats the state will have for the next decade, after slow population growth over the past one reduces its federal contingent of 18 members — 15 Republicans and 3 Democrats — by two. The plan is expected to be approved quickly by the GOP, which controls both the executive and legislative branches of the state's government (COLUMBUS DISPATCH).
- The **NORTH CAROLINA** General Assembly has approved a proposed constitutional amendment banning same-sex marriage (SB 514) that will go before voters in May. Voters have already approved constitutional same-sex marriage bans in 31 states (CHARLOTTE OBSERVER).

— Compiled by **KOREY CLARK**

Governors

MIDWEST GOVS PUSH BACK ON NY BALLAST RULES: Just a few years ago, the eight Great Lakes States governors were all seemingly rowing in the same direction in their efforts to protect the Lakes from being drained by massive population growth in other regions. But that unanimity has withered in the face of another battle: protecting the Lakes against an influx of invasive species that conservationists say are severely damaging the Lakes' ecosystem.

While all the states agree something needs to be done about contaminated ballast water — which ships take on for stability — carried into the Great Lakes by overseas freighters coming in via the St. Lawrence River, they disagree on how to go about it. Last week, a trio of Midwest governors banded together to tell New York Gov. Andrew Cuomo (D) they are not in favor of pending Empire State regulations to regulate ballast discharge, set to go into effect in 2013.



The three — Ohio Gov. John Kasich, Wisconsin Gov. Scott Walker and Indiana Gov. Mitch Daniels, all Republicans — sent Cuomo a letter last week asking him to soften the regulations, which impose a far stricter standard than not only any other Great Lakes state, but also international guidelines for concentrations of foreign organisms in ballast. New York’s standard, for instance, is about 100 times more stringent than that set forth by the International Maritime Organization (IMO). That grows to about 1,000 times tougher for ships built after January 1st, 2013. Allowing those rules to go into effect, the governors wrote Cuomo, will have a disastrous impact on the shipping industry and their state economies.

“Unless the NYDEC [New York Department of Environmental Conservation] regulations are amended, they will possibly force the closure of the St. Lawrence Seaway, and imperil thousands of maritime-related jobs in the Great Lakes States and Canada,” they wrote.

At issue is technology, or more accurately the lack thereof, which Kasich, Walker and Daniels contend is not sufficient to accomplish what New York is seeking. Wisconsin considered similar rules last year, but dropped them when it became clear that the technology couldn’t handle the task.

But supporters of the New York standards say the tougher rules are critical, arguing that the IMO standards are insufficient for slowing the inflow of invasive species. Thom Cmar, an attorney with the Natural Resources Defense Council, dismissed the governors’ request to kill New York’s regulation, calling the IMO standard a “product of political negotiations, not science.”

“Most scientists believe that the IMO standard will not protect the Great Lakes from future ballast water invasions, and that a much stronger standard such as New York’s is needed,” he said.

Cuomo didn’t comment on the letter, but state Department of Environmental Conservation officials said they are open to reviewing the rules once the U.S. Environmental Protection Agency issues new federal rules in November. (WATERTON DAILY TIMES, MILWAUKEE JOURNAL-SENTINEL)

SNYDER WANTS MI TO SHAPE UP: Calling rising health care costs “one of the most significant economic challenges facing Michigan and the United States,” Gov. Rick Snyder (R) unveiled a multi-point plan to improve his state’s health, including an all-out effort to encourage Wolverine State residents to lose weight and get into better shape. Tenets of his proposal included creating a state health insurance exchange to meet requirements of the federal health reform law, supporting legislation to extend coverage to include autism and ban smoking on public beaches, and greater efforts to control ailments like diabetes, high blood pressure and obesity that are linked to heart disease. Snyder said the state spends almost \$6 billion annually treating heart disease.



As part of that plan, Snyder directed Michigan doctors to start monitoring the body mass index (BMI) of their young patients, with the data being sent to a state registry. Doing so, Snyder spokesperson Sarah Wurfel said, would help track the state’s growing pediatric obesity problem while helping doctors take more proactive steps to stem the problem.

Snyder also outlined his plan to create the state’s health insurance exchange. Dubbed the MIHealth Marketplace, the exchange would operate as a nonprofit firm while overseeing the sale of health insurance to uninsured adults or small businesses. It would offer four different pricing structures, from the least expensive bronze policies with basic benefits and the lowest monthly premiums to platinum policies with the most benefits and highest monthly costs. It would also be able to contract with private firms or even government agencies to do some of its work, including selecting insurance plans that meet federal standards to participate.

Lawmakers must ultimately approve Snyder’s proposals. But, unlike many of his GOP colleagues that oppose federal health reform, Snyder made it clear he wants his state to set up its own health insurance exchange to “ensure it does not become a big, bloated bureaucracy...We either do something our way now and create a marketplace that is uniquely Michigan or allow the federal government to do it their way. We believe Michiganders should control their own future.” (DETROIT FREE PRESS, DETROIT NEWS, ASSOCIATED PRESS)

In case you missed it

Last week, President Obama unveiled a jobs plan that could potentially pump hundreds of billions of dollars into the economy and save state and local governments from further layoffs. But getting it through Congress may prove the toughest job of all.

In case you missed it, the article can be found on our website at http://www.statenet.com/capitol_journal/09-12-2011/html#sncj

CHRISTIE KILLS PLAN TO CUT MEDICAID: The administration of New Jersey Gov. Chris Christie (R) dropped plans to freeze enrollment in the state-subsidized FamilyCare health insurance plan and to charge Medicaid patients \$25 to use an emergency room in non-emergency situations. Applicants to the program can have income up to 133 percent of the federal poverty level, or up to \$2,477 monthly for a family of four. Freezing enrollment would have cut about 20,000 otherwise eligible applicants out of the system. The new proposal was part of a Medicaid waiver application filed with the U.S. Department of Health and Human Services. But maintaining the eligibility levels will require far greater federal support than is currently on the table. The Garden State currently receives 65 percent federal funding for the program, but that is set to fall to 50 percent in January 2012. The application the state submitted last week seeks to have the federal government pay a 75 percent share immediately and an 85 percent share in 2013. (STAR-LEDGER [NEWARK], COURIER-POST [TRENTON], NORTHJERSEY.COM)

GOVERNORS IN BRIEF: NEW HAMPSHIRE Gov. John Lynch (D) announced he will not seek a fifth term. Lynch said it was time for the state to have “new leaders and new ideas” (NEW YORK TIMES). • A news report revealed that

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HAWAII Gov. Neal Abercrombie (D) last June issued an executive order giving the U.S. Army Corps of Engineers the authority to bypass state environmental and land use laws to investigate and remove unexploded ordnance. Lawmakers said they were unaware of the order until told about it by news reporters (HOUSTON CHRONICLE). • **NEW MEXICO** Gov. Susana Martinez (R) acknowledged that her paternal grandparents came to the U.S. illegally. Martinez has been embroiled in a controversial effort to bar illegal immigrants from obtaining driver’s licenses (SANTA FE NEW MEXICAN). • **ARIZONA** Gov. Jan Brewer (R) asked a federal court in Phoenix to dismiss a lawsuit over two “day of prayer” proclamations she made, one in 2010 and another last May. A federal appeals court tossed a similar suit from the Wisconsin-based Freedom From Religion Foundation last April (ARIZONA CAPITOL TIMES [PHOENIX]).

– Compiled by RICH EHISEN

Hot issues

BUSINESS: The **CALIFORNIA** Legislature endorses AB 506, a bill that would bar local government agencies from filing for bankruptcy until they undergo mediation or hold a public hearing and declare a fiscal emergency threatening the health, safety or well-being of residents. The measure is now with Gov. Jerry Brown (D) for review (SACRAMENTO BEE). • Still in **CALIFORNIA**, lawmakers endorse AB 101, which would let unions organize childcare providers who work out of the home. It has also moved to Gov. Brown for review (LOS ANGELES TIMES). • **CALIFORNIA** lawmakers also approve AB 183, which would prohibit grocery stores from selling beer, wine or liquor using electronic self-checkout lanes. It also moves to Gov. Brown (SACRAMENTO BEE). • Golden State lawmakers also approve **CALIFORNIA** AB 155, which would allow online retailers like Amazon.com a one-year reprieve from collecting sales tax as required by legislation Gov. Brown signed earlier this year. The measure is intended to give online retailers time to lobby Congress for a national Internet sales tax policy (SACRAMENTO BEE). • Staying in **CALIFORNIA**, lawmakers also endorse AB 325, which would require employers to give workers up to three days of unpaid bereavement leave; AB 22, which would bar employers from using an employee or job applicant’s credit report in hiring or firing decisions; and AB 1155, which would limit factors that affect “apportionment” of workers’ compensation injury awards between job-related and non-job-related factors. All three measures are now with Gov. Brown for review (SACRAMENTO BEE). • In a special session, the **MISSOURI** House approves HB 5 a, legislation that would allow damaged buildings and structures on commercial

property to be removed from tax rolls after natural disasters until they can be used again. The bill is now in the Senate (NEWS TRIBUNE [JEFFERSON CITY]). • The **UTAH** Department of Public Health says it will comply with a request from the Legislature’s Joint Administrative Rules Review Committee to not enforce a new Beehive State rule that bans hookah water pipes containing tobacco from public places. The agency wants lawmakers to determine if hookahs will be banned entirely (SALT LAKE TRIBUNE). • The **MASSACHUSETTS** House approves HB 3702, legislation that would authorize three “resort” casinos and one slots-only gambling parlor in the Bay State. The measure moves to the Senate (BOSTON GLOBE).

CRIME: The **NEW HAMPSHIRE** Legislature overrides Gov. John Lynch’s (D) veto of SB 88, which removes a requirement in state law that a person must first attempt to retreat in a public place before using deadly force in self defense. The law already allowed residents to use deadly force to defend their home or property (NASHUA TELEGRAPH).

EDUCATION: The **MICHIGAN** Board of Education adopts a new rule that requires Wolverine State high school students to get as many as two-thirds of the answers correct to be considered proficient on the Michigan Educational Assessment Program (MEAP) and the Michigan Merit Exam (MME). Students could previously be considered proficient by answering only a third of the questions correctly. The new standard goes into effect immediately (DETROIT FREE PRESS). • The **MISSOURI** Senate unanimously approves SB 1 a, legislation that would repeal a law barring teachers from using websites that give “exclusive access” to students, such as sending private messages on Facebook. The bill, which would also require local school boards to develop policies on communications between employees and students, including those conducted by electronic media, moves to the Senate (NEWS TRIBUNE [JEFFERSON CITY]).

ENERGY: **ILLINOIS** Gov. Pat Quinn (D) vetoes SB 1652, which would have allowed Prairie State utilities to rebuild their electric grids and distribution networks over the next decade without going through the regulatory process. Quinn said the measure would have allowed the companies to impose billions of dollars in automatic annual rate hikes and eroded consumer protections (ILLINOIS STATEHOUSE NEWS, ILLINOIS GOVERNOR’S OFFICE).

ENVIRONMENT: Lawmakers in **CALIFORNIA** approve AB 900, which would allow construction projects costing \$100 million or more to request streamlined judicial review under the California Environmental Quality Act, known as CEQA, which requires public agencies to identify the environmental impacts of construction and other projects and mitigate them. The measure has moved to Gov. Jerry Brown (D) for review (SAN FRANCISCO CHRONICLE).



HEALTH & SCIENCE: U.S. District Judge Marcia Cooke rules that a **FLORIDA** law that bars doctors from asking their patients if they own guns violates the Constitution’s free speech protections for doctors and patients. The law’s supporters plan to appeal (PALM BEACH POST). • **MICHIGAN** Gov. Rick Snyder (R) announces that Wolverine State doctors will begin monitoring the body weight of their young patients and provide the data to a state registry. The plan is intended to combat childhood obesity (DETROIT FREE PRESS).

IMMIGRATION: District Judge Sarah Singleton blocks most of **NEW MEXICO** Gov. Susana Martinez’s (R) broad plan for certifying the driver’s licenses of tens of thousands of foreign nationals, including those living illegally in the country, pending the outcome of a lawsuit to stop the program. Singleton’s ruling allows the state to move forward with some pending cases to determine whether license holders remain residents (SANTA FE NEW MEXICAN).

SOCIAL POLICY: The **NORTH CAROLINA** House and Senate approve SB 514, legislation that will place a constitutional amendment banning same-sex marriage before voters next May (CHARLOTTE OBSERVER).

POTPOURRI: The **RHODE ISLAND** Supreme Court upholds the Ocean State’s “one-bite” law, which shields dog owners from legal liability if their pet bites someone on the owner’s property unless the dog has previously bitten another person (PROVIDENCE JOURNAL). • **MICHIGAN** Gov. Rick Snyder (R) signs SB 485, legislation that bars city, village and county governments from establishing minimum staffing requirements. The new law does not apply to municipalities that already have minimum requirements (DETROIT FREE PRESS).

— *Compiled by RICH EHISEN*

Once around the statehouse lightly

THE GAME WITHIN THE GAME: End of session in the California Legislature can always be a bit crazy, with lawmakers forced to spend long hours pouring over hundreds of last-minute bills before the final gavel comes down. As such, weary pols often will go to extremes to work some levity into the process. As the *Los Angeles Times* reports, this includes the time-honored tradition

of slipping oddball words and phrases into floor speeches. This year's highlights included, among others, the use of "whitey-tighties," "thighmaster" and "Puff the Magic Dragon." One lawmaker even quoted glam rocker David Bowie, saying, "We can be heroes, members, if just for one day." It wasn't all fun and games, however. Lawmakers waged more than a few testy verbal battles as well, leading Assemblywoman Linda Halderman, a doctor, to remark, "I never thought I would be in a profession bloodier than trauma surgery."

NOT-SO-FREE SPEECH: Speaking of testiness, it might be hard to top the rancor and hard feelings that took over the statehouse in Madison, Wisconsin most of last summer. Case in point is Azael Brodhead, a state parole agent clearly incensed with Gov. Scott Walker's successful effort to take collective bargaining rights away from state employees. So incensed, in fact, he has made it a daily habit to drive by the home of Gov. Scott Walker, honking his car horn and sticking out his middle finger while shouting "Recall Walker!" But as the *Appleton Post-Crescent reports*, the daily trip finally earned Brodhead a ticket. He challenged the citation, saying he was only exercising his First Amendment rights. Last week, a Milwaukee judge disagreed, saying horn-honking was not constitutionally protected free speech. No problem, Brodhead says. He still does his daily drive-by flip off. He just lays off his horn when doing so.

MAYBE THEY SHOULD 'TRUTH' TEST: To hear South Carolina Gov. Nikki Haley tell it, the bulk of the unemployed in her state are doped out illiterates. Proof, the governor says, comes from the Savannah River Site nuclear plant. Haley says officials there have told her of a serious challenge they have in hiring workers because half of the applicants fail the required drug test. The other half, she claimed, "couldn't read or write properly." But as *The State of Columbia reports*, the gov is a little off base, at least with her first assertion. That's because, according to the state Department of Energy, which runs the facility, it doesn't actually drug test anyone until they have been hired. Of those, only about 1 percent fail the screening. That reality, however, is not stopping Haley from pushing to have jobless Palmetto State residents pass a drug test before they can collect unemployment benefits.

SNOOKERED BY SNOOKI? That's certainly how some New Jersey lawmakers feel right about now. That's because the state just received its tab for the film tax credit it gives to movie and television companies to get them to film in the Garden State. And as the *Newark Star-Ledger reports*, a whopping \$420,000 of that bill is for the 2009 season of...wait for it..."Jersey Shore," the reality show featuring the likes of The Situation, JWoWW and everyone's favorite drunken reveler, Snooki. That drew immediate heat from opponents of the tax credit program, including Gov. Chris Christie. Through a spokesperson, the gov called the cast members "phonies" and railed against their "false portrayal" of the seaside community. But not everyone



sees it that way. Kenneth Hershey, mayor of the Seaside Heights community where the show is filmed, lauded the business it brings to the town. Yeah, especially for the tanning salons and bars.

— By RICH EHISEN

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