

November 7, 2011

Health Reform



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The next issue of
Capitol Journal will be
available on November 14th.

Top Story

Almost two years after the Affordable Care Act became law, the Supreme Court is expected to decide this week if it will indeed be the final arbiter of the most sweeping and controversial health law in a generation.

SNCJ Spotlight

Supreme Court the latest challenge in ACA's long trial by fire

From the moment President Barack Obama signed the Affordable Care Act in March of 2010, observers predicted the law's fate would ultimately be determined by the Supreme Court. Now, almost two years later, the Court is expected to decide this week if it will indeed be the final arbiter of the most sweeping and controversial health law in a generation.

As prognostications go, foretelling the Supreme Court's involvement was hardly going out on a limb. The law's passage came only after one of the most contentious partisan political brawls in American history, one that

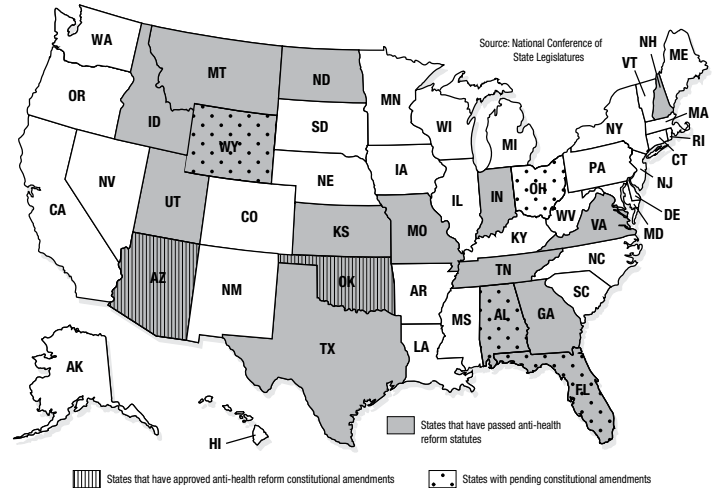
saw the measure pass without a single Republican vote in either Congressional chamber. It only took hours afterward for then-Florida Attorney General Bill McCollum, in conjunction with the attorneys general of a dozen other states, to file suit in federal court seeking to overturn the measure. That suit eventually grew to include 26 states and the National Federation of Independent Business.

Over two dozen lawsuits soon followed, virtually all attacking the law's mandate that almost every U.S. citizen purchase health insurance or pay a penalty. To date, many have been dismissed while others are still pending lower court decisions. A handful, including the initial case, *Florida et al. v. Department of Health and Human Services et al.*, have moved far enough along in the process to ask the Supreme Court for its consideration. The Obama administration has also petitioned the court to rule on the law's merits. Presuming the Court accepts the case when it meets on November 10th, that ruling, expected next spring, could go any number of ways.

Justices could agree with an October 2010 ruling from a federal court in the Eastern District of Michigan that upheld the law in its entirety. The Court could also follow the lead of the Northern District of Florida, which ruled the individual mandate to purchase health insurance violated the U.S. Constitution's Commerce Clause, invalidating the law in total. Or, perhaps most likely, they could agree with an August decision from the 11th U.S. Circuit Court of Appeals, which upheld the individual mandate ruling in the *Florida v. HHS* case but overruled the decision to toss the rest of the law.

That last possibility has health insurers justifiably nervous. The ACA's requirement that insurance companies take all comers, regardless of their health condition and history, is predicated on having enough healthy, premium-paying people in the system to offset the much higher costs of those with serious health issues. Dropping the individual mandate, while maintaining both the "all-comers"

Bird's eye view



A third of states have passed anti-health reform measures

Over the past two years, 17 states have passed laws opposing elements of the Affordable Care Act or other health reform initiatives. Voters in two of those states — Arizona and Oklahoma — codified measures into their state constitutions in 2010. Voters in four other states will have an opportunity to do the same in 2012. In addition, voters in Montana will consider a referendum on a measure passed this year — SB 418 — prohibiting the federal and state governments from mandating the purchase of health insurance coverage.





requirement and another provision barring insurers from basing rates on an applicant's health status, could mean lots of people waiting until they get sick before obtaining coverage, a possibility the Obama administration admits could drive costs up across the board. In a post on The White House blog on August 12th, then-Obama Senior Advisor Stephanie Cutter wrote that losing the mandate "would lead to double digit premium increases — up to 20 percent — for everyone in the individual insurance market."

That would be particularly hard on small businesses says John Arensmeyer, founder and CEO of Small Business Majority, a national business advocacy group that supports the ACA. Arensmeyer believes there is "very little chance of the entire law being overturned," but he questions how effective it could be without the mandate.

"It's the only way to address the cost issue," he says. "Virtually every expert that has looked at this has said they can't see how you get there without requiring everyone to be in the system."

Faced with a potential fiscal disaster, insurers would likely have no choice but to push Congress to allow them out of either the all-comers mandate or the premium restrictions clause or both. Barbara O'Connor, emeritus director of the Institute for the Study of Politics and Media at California State University Sacramento, believes insurers would not stop there.

"If I were an insurance lobbyist, I would try to overturn the entire law," she says. "Because the economics that made it work would be gone."

Even if the Court upholds it, the ACA won't be safe until at least after the 2012 elections. Every Republican presidential candidate has vowed to make overturning it a priority if elected. But making good on that promise would be difficult unless Republicans also took control of the Senate by a filibuster-proof majority. However, a GOP-dominated Congress could conceivably use parliamentary rules to force significant changes to portions of the statute even if President Obama is re-elected.

The battle over the ACA is also still raging far beyond Washington D.C. According to the National Conference of State Legislatures, at least 45 states since 2009 have considered legislation to limit their adherence to the law. Seventeen states have adopted such measures. Two, Arizona and Oklahoma, have codified them into their state constitutions. Five more have similar pending ballot measures.

While 22 states acting mostly in concert on any issue is significant, so is the fact that opposition measures failed or didn't come up at all in just as many statehouses. NCSL also notes that 14 states are moving forward with the health care insurance exchanges called for by the ACA, while five more plus the District of Columbia have pending health exchange legislation. And while much of the support and opposition to the law has fallen along red and blue partisan lines, green has also been a player in state-level action: to date, every state but Oklahoma — including 16 that rejected health exchange bills this year — has accepted millions of dollars in federal funds to help create its exchange.

With the possibility that either the Supreme Court or another GOP wave will ultimately kill the ACA, some states might well consider following Massachusetts' lead by creating their own Affordable Care Act. California Secretary of Health and Human Services Diana Dooley, who also chairs the California Health Exchange Board, certainly supports that idea.

"I have repeatedly said it is my priority to take as much of federal money appropriated for exchanges as fast as possible and to use it as wisely as possible to create a successful health benefit exchange for California even if we don't have the full promise of the ACA," she says.

But that is only part of the equation. The stickier issue is requiring individuals to purchase health insurance. Blue Shield of California Director of Public Policy Mike Johnson says requiring people to buy insurance only works if there are government subsidies to help low income residents pay for it.

"Without federal funding, California would have a very difficult time imposing its own mandate and providing subsidies on its own," he says.

"The money to set up an exchange is pennies compared to the cost of the subsidies needed to enroll people in that exchange," adds Micah Weinberg, Senior Policy Advisor with the Bay Area Council, a San Francisco-based business group that supports the ACA. "Right now California doesn't have two nickels to rub together."

The debate is nothing new. California has passed multiple health reform bills, including single-payer measures, over the last 10 years. All were eventually vetoed or overturned by voters. Another failed effort came in 2007, when then-Gov. Arnold Schwarzenegger (R) and Assembly Speaker Fabian Núñez (D) co-authored legislation (SB 1 x) strikingly similar to the ACA. The Assembly approved the \$14.9 billion proposal, but it died after the state Legislative Analyst's Office said the system would potentially be broke within five years without major state subsidies.

The ACA made further efforts moot, but Anthony Wright, executive director of the California consumer health care advocacy group Health Access, thinks that could change if the federal law is struck down. Wright believes the Supreme Court will uphold the law, but says if not, California has no choice but to tackle health reform again on its own.

"What is the alternative?" he says. "The health industry is in a death spiral. If the alternative is to just let things go as they are, that is unsustainable."

Former Assemblyman Roger Niello (R), who was there for the 2007 Schwarzenegger/Nunez legislation, doubts a similar effort would gain any more traction now.

"I can't see any reason the LAO would assess that bill or anything like it any differently today," he says.

Senate President Darrell Steinberg (D) was also there in 2007. He says it is "very feasible" that California could take another run at passing ACA-type legislation of its own if the federal bill goes down, but admits it won't happen without a better economy.



“For California to do it alone, you need economic recovery. We have to have a balanced budget,” he says.

That seems unlikely any time soon, however. And the nation’s economic woes have already forced the Obama administration to drop a portion of the law that would have provided consumers with inexpensive basic long-term care insurance. Other significant changes may follow even if the law survives.

The public’s perception of the law may also be changing. An October poll conducted by the Kaiser Family Foundation indicated that for the first time since the law passed, a majority of Americans (51 percent) view it unfavorably. Whether that portends the law’s demise remains to be seen.

Killing the law, however, also comes with hazards. Some of its elements, such as allowing young adults to stay on their parents’ health insurance until age 26, have proven quite popular. More importantly, even with reform, health care costs are still climbing. A recent report from the federal Office of the Actuary in the Offices of Medicaid and Medicare Services indicates that even with the ACA expected to pay for itself and produce savings that would offset some growth in costs, national health spending is expected to grow from its current 17 percent of GDP to almost 20 percent by 2020.

It is a sobering figure, one ACA supporters say will only be made dramatically worse by sending over 30 million Americans back into the ranks of the uninsured, where they will be forced to continue using highly expensive hospital emergency rooms for their care. Most will also continue avoiding health care altogether until they are very sick or hurt, making it even more costly to care for them.

“It’s not like the uninsured didn’t exist before,” says Wright. “They’ve always been in the system, just in the most inefficient and expensive way possible.”

The Bay Area Council’s Weinberg also cautions the ACA’s opponents to be careful what they wish for.

“If we reform the system, if we make insurance prices competitive, prices will come down,” he says. “We need to give the market a chance to work because if competition doesn’t work to bring down costs, it will only mean more government regulation, not less.”

— *By RICH EHISEN*

Budget & taxes

CO VOTERS IN NO MOOD FOR TAX HIKES: Colorado voters had only one statewide initiative on their ballot last Tuesday (November 1st): Proposition 103. And they were very clear how they felt about the measure



— which sought to raise income and sales taxes for five years to provide \$2.9 billion for education — voting it down by a nearly 2-to-1 margin.

Backers of the proposal conceded defeat less than an hour after the polls closed.

“It’s clear the people of this state aren’t ready right now to tax themselves to solve this problem,” state Sen. Rollie Heath (D) told supporters.

Not even the \$600,000 supporters raised — or the tenth of that amount opponents had to spend — was enough to prevent the rout.

“The voters of Colorado have spoken loud and clear that this is a measure that would have killed jobs,” said former state Rep. Victor Mitchell (R), who led the Save Colorado Jobs campaign opposing Prop. 103.

Still, Heath tried to remain optimistic, stating, “I hope the people of this state will come together and say, ‘We need to make some changes. We need to find a way to finance our education in a different way.’

“If we have accomplished anything, we have set that conversation in motion,” he said. (DENVER POST)

DEBATE GROWS ON NY ‘MILLIONAIRES TAX’: The tax New York currently imposes on its top earners is scheduled to expire at the end of the year. A growing chorus of New Yorkers wants the tax extended. But there’s a major obstacle blocking that action: the state’s popular governor, Andrew Cuomo (D).

The so-called “millionaires tax” actually applies to individual residents who earn over \$200,000 a year and families with incomes over \$300,000 annually. It was enacted in 2009 as an emergency measure to help the state through the recession. But some think its December 31st sunset date is far too early.

“The wealthiest people in New York state are going to get a nice take-home pay raise on January 1st, while working families continue to struggle,” John Samuelsen, president of New York City’s transit worker union, said at a rally last month to generate support for extending the tax. “It’s not the wealthiest New Yorkers that need monetary relief. It’s working families.”

The Occupy Wall Street protest in New York City has also drawn attention to the issue.

“They’re concerned about income inequality. They’re concerned about the tax code and how it favors the wealthiest among us,” Ron Deutsch of New Yorkers for

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: 189

Number of Intros last week: 454

Number of Enacted/Adopted last week: 234

Number of 2011 Prefiles to date: 38,205

Number of 2011 Intros to date: 135,858

Number of 2011 Session Enacted/Adopted overall to date: 46,701

Number of Measures currently in State Net Database: 155,497

— Compiled By OWEN JARNIGAN
(measures current as of 11/2/2011)
Source: State Net database



Fiscal Fairness said of the protesters. “The Occupy movement has really created space for dialogue that we haven’t had for far too long.”

That dialogue appears to be raising similar concerns among the vast majority of New Yorkers. A recent poll found that 72 percent of the state’s voters supported extending the millionaires tax to avoid further budget cuts, while just 26 percent opposed that action.

But Gov. Cuomo — who has pretty good poll numbers himself — maintains the tax is bad for business because it encourages affluent residents to leave New York.

“The competitiveness of this state is hurt when you’re one of the highest tax states in the nation, and businesses and people are more mobile than ever before,” he says.

Some question whether the tax rate is actually driving anyone out of the state, however.

“There’s just really no evidence that people are very responsive to small changes in tax rates at the state level,” said Charles Varner, a sociologist at Princeton University.

Varner, who has studied the effect of a similar tax on top wage earners in New Jersey, said people consider a lot more than just taxes when deciding where to live.

“Where is the weather nice? Where does my family live? Where do my friends live?...Tax rates are just way, way down the list,” he said.

But Dan DiSalvo, a senior fellow at the conservative Manhattan Institute for Policy Research in New York, supports Cuomo’s position.

“For Gov. Cuomo to make New York competitive and attractive to businesses across the country, he’s got to compete with other states,” he said. “And raising taxes on wealthy individuals is not the kind of signal to send to people who want to come and open a business and make a lot of money.”

Ultimately, the issue may simply come down to a matter of political calculus. Cuomo campaigned last year on a pledge not to raise taxes. And he seems intent on keeping that promise regardless of what the polls say. (NATIONAL PUBLIC RADIO, USA TODAY, PARTNERSHIP FOR NEW YORK CITY)

CT APPROVES JOBS PLAN: Last month, Connecticut Gov. Dannel Malloy (D) achieved what President Obama could not: win bipartisan support for a sweeping jobs plan.

In a one-day special legislative session, Malloy won unanimous support from his own party and nearly unanimous support from the Republican minority to borrow \$626 million over two years to stimulate private-sector jobs. The plan drew only one opposing vote in each chamber.

“How often do you see this happening in Washington?” Malloy said in a statement when he signed the legislation. “Putting people back to work and making Connecticut more business-friendly aren’t goals owned by any one party.”

Upcoming stories

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

- **Online sales tax**
- **Health care**
- **The economy**

One reason for the measure's overwhelming support from both sides of the aisle is the breadth of its approach. Among other things, it eases business regulations, expands job training, establishes new small business tax credits and provides funding for public works projects. Another reason may be the state's twenty-year record of zero job growth. (STATELINE.ORG, CONNECTICUT MIRROR)

BUDGETS IN BRIEF: NEW HAMPSHIRE'S Republican-led House Ways and Means Committee held a proposed constitutional amendment last month that would bar the state from imposing an income tax. When released in January, CACR 13 will go the full House, where it needs a three-fifths majority in both chambers and a two-thirds majority of voters to be adopted (UNION LEADER [MANCHESTER]). • About 85 percent of local governments in **NEW YORK** are managing to live under the property tax cap imposed under Gov. Andrew Cuomo's (D) fiscal agenda enacted last June (ALBANY TIMES UNION). • A federal judge in Orlando issued a temporary injunction last month blocking **FLORIDA'S** controversial law (HB 353) requiring applicants for welfare to undergo drug testing. Judge Mary Scriven said the law could violate the U.S. Constitution's Fourth Amendment prohibition against illegal search and seizure (MIAMI HERALD). • Total state debt could exceed \$4 trillion, according to analysis released last month by the nonprofit State Budget Solutions. The group combined states' major debts and future liabilities, including public employee pensions, unemployment insurance loans, outstanding bonds and projected budget gaps for fiscal year 2011 (REUTERS). • State tax collections rose 10.8 percent in the second quarter of this year, the best performance since 2005, according to analysis by the Nelson A. Rockefeller Institute of Government (STATELINE.ORG). • **ARIZONA** regulators have taken over PMI Group Inc.'s mortgage insurance unit and imposed restrictions on its claims payouts. The private sector mortgage insurer had been paying about \$1.5 billion a year in claims to reimburse lenders and mortgage investors, including Fannie Mae, Freddie Mac and Wells Fargo & Co., for losses on homeowner defaults (WALL STREET JOURNAL). • **CALIFORNIA'S** High Speed Rail Authority released a business plan last week estimating the cost of building the nation's first high-speed rail line, connecting San Francisco and Los Angeles, at \$98.1 billion — more than double previous estimates — and delaying the system's planned opening by nine years (SAN FRANCISCO CHRONICLE).

The week in session

States in Regular Session: DC, MA, MI, PR, US

States in Recess: CT, NC, NH, NJ, NY, OH, PA, RI, WI

States in Special Session: ND "a", NE "a"

Special Sessions in Recess: DE "b", VA "a", WI "c"

States Currently Prefiling or Drafting for 2012: AL, FL, KS, KY, ME, 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, 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", MD "a", ME "a", MN "a", MO "a", MS "a", NM "a", SD "a", TX "a", UT "a", UT "b", UT "c", WA "a", WI "a", WI "b", WV "a", WV "b"

Letters indicate special/extraordinary sessions

— Compiled By OWEN JARNIGAN
(session information current as of 11/3/2011)
Source: State Net database

Politics & leadership

RACES TO WATCH ON ELECTION DAY: Only about a dozen states are holding elections this Election Day. But there will still be plenty of races to watch.

Among the most compelling are the 40 state Senate contests in Virginia, which some are calling a preview of the 2012 congressional and presidential races. If they're right, Democrats could be in real trouble next year.

Virginia Democrats currently hold a 22-18 majority in the Senate. But Democratic incumbents face tough battles all across the state, while only three GOP-held seats appear to be at any risk, and all of those are in decidedly Republican-leaning districts.

"In 2008, being a Republican was about as popular as having H1N1," said Lt. Gov. Bill Bolling (R). "It's a very different political environment today."

That environment isn't completely inhospitable to Democrats. Under a deal reached by the state's lawmakers, Democrats were allowed to draw a favorable redistricting map for the Senate, while Republicans were granted that same privilege in the House. But it doesn't look as if the new Senate lines will be enough to allow the Democrats to maintain control of the chamber, meaning next year a more conservative agenda could be moving through the General Assembly, which has been largely gridlocked by divided government ever since Democrat Mark Warner was elected governor in 2002.

The loss of Virginia's upper house would also bring Democrats one step closer to being completely shut out of government control in the Deep South, where just two decades ago they held every legislative chamber. Only Arkansas' Legislature and the Mississippi House would remain in Democratic hands, and the Party's eight-seat advantage in the latter is expected to shrink on November 8th as well.

Other significant legislative races include a special election in Iowa's Senate District 18, which could cost the Democrats their majority in that chamber, and the recall election for Arizona state Senate President Russell Pearce (R), sponsor of that state's tough anti-illegal immigration measure, 2010'S SB 1070.

Along with the statehouse races, voters will also decide 26 state-level ballot measures in seven states on November 8th. The one drawing the most attention is Ohio's Issue 2, a referendum on the law passed this year by Gov. John Kasich (R) and the GOP-controlled Legislature stripping public sector unions of their collective bargaining rights (SB 5).

The measure may be the only chance for unions to score a victory in 2011, having suffered setback after setback this year, including the failure to shift the Wisconsin Senate to Democratic control this summer in the wake of a similar battle over collective bargaining there. Unions have poured millions of dollars into the anti-Issue

2 campaign, and voters appear sympathetic to their position. A recent Quinnipiac University poll found that 57 percent want to get rid of SB 5 while 32 percent want to keep it.

“Anything is possible in politics,” Peter Brown, assistant director of the Quinnipiac University Polling Institute, said in a statement, “but with such across-the-board support for repealing SB 5, the governor and his team can’t be optimistic about the fate of their law.”

In an effort to counter that support, the conservative political organization Citizens United was reportedly planning to begin airing six figures worth of pro-Issue 2 ads late last week, primarily targeting the Cincinnati area.

Acknowledging the “uphill battle” conservatives face on Issue 2, Citizens United President David Bossie said “this is why we’ve decided to get in and play a role right at the end to educate the voting public and try to persuade them that this is the right way to go.”

However the vote ultimately goes in the politically competitive state could have a bearing on labor relations elsewhere.

“On the national question, whoever wins this vote is going to get a push,” said Lee Adler, an expert on collective bargaining at Cornell University’s School of Industrial and Labor Relations. “It is a very big deal. Nobody could shrug this off. They might be able to spin it, but they won’t be able to shrug it off.”

Another ballot measure to watch is Washington’s Initiative 1183, which could make the state the first in 20 years to privatize its liquor sales. The proposal, which would close the state’s liquor stores, auction off their assets and license private companies to take them over, has been polling favorably, with a recent survey by the University of Washington finding that about 48 percent of voters supported it and 41 percent opposed it, with the rest undecided, although 3 percent of them were leaning in favor.

“Initiative 1183 looks like it is headed for passage,” said Matt Barreto, director of the poll.

Upcoming elections

11/3/2011 - 11/24/2011

11/08/2011

Arizona Recall Election
Senate District 18

Georgia Special Election
House Districts 10 and 25
Senate Districts 28 and 50

Iowa Special Election
Senate District 18

Kentucky General Election
Constitutional Officers: Governor,
Lieutenant Governor, Secretary of
State, Treasurer, Attorney General,
Auditor of Public Accounts,
Commissioner of Agriculture

Mississippi General Election
House (All)
Senate (All)
Constitutional Officers: Governor,
Lieutenant Governor, Secretary of
State, Treasurer, Attorney General,
Auditor, Commissioner of Agriculture
and Commerce, Commissioner of
Insurance

Mississippi Special Election
Senate District 8

Missouri Special Election
House Districts 15, 39, 41 and 83

New Jersey General Election
Assembly (All)
Senate (All)

Oklahoma Special Primary
House District 1

Oregon Special Primary
US House (District 1)

Tennessee Special Election
Senate District 6

Texas Special Election
House District 14

Virginia General Election
House (All)
Senate (All)

Wisconsin Special Election
Assembly District 95

(continues on next page)



(STATELINE.ORG, POLITICO, WASHINGTON POST, INITIATIVE AND REFERENDUM INSTITUTE, ASSOCIATED PRESS)

NV AND NH SETTLE ELECTORAL

CALENDAR DIFFERENCES: The standoff between Nevada and New Hampshire over their respective presidential primary dates ended last month when Nevada officials finally agreed to move their caucuses from January 14th back to February 4th.

“We just basically want to be the adults in the room here,” said Nevada GOP chairwoman Amy Tarkanian. “This has turned into a huge debacle... It’s unnecessary, it’s turned into a distraction.”

As a result of the move, Nevada will now hold its caucuses four days after Florida’s primaries on January 31st. But the state will still have the first electoral contest in the West. It will also be allowed to bring its full complement of delegates to the Republican nominating convention. And, according to Tarkanian, those delegates will have top-priority seats at the convention and stay at “the best hotel.”

But in acknowledging that rescheduling was the right move for the state, one Nevada official didn’t hesitate to take a swipe at New Hampshire Secretary of State Bill Gardner, who had been pushing Nevada to move its caucus to accommodate a

New Hampshire state law mandating that no other state hold its primary within seven days of New Hampshire’s.

“In our judgment it made more sense to go back into February, be the peacemaker... and quit quibbling with the juvenile Secretary of State of New Hampshire,” said Republican National Committee member Bob List.

With Nevada having cleared the way, Gardner announced last week that New

Hampshire would hold its primary on January 10th. Standing by Gardner’s side when he delivered that news was Jim Splaine, the former New Hampshire lawmaker who wrote the 1975 bill mandating the election-free period around the state’s primary date.

“The New Hampshire primary really is not about New Hampshire,” he said. “It’s about protecting an important element of American democracy, to make sure there is a way and place where candidates running for office in a real election, which New Hampshire’s primary is, can meet voters one to one, face to face, eye to eye, in their

Upcoming elections (cont.)
10/20/2011 - 11/10/2011

11/19/2011

Louisiana General Election

House (All)
Senate (All)

Constitutional Officers: Governor, Lieutenant Governor, Secretary of State, Treasurer, Attorney General, Commissioner of Agriculture and Forestry, Commissioner of Insurance

Texas Special Election

House District 14

Virginia General Election

House (All)
Senate (All)

Wisconsin Special Election

Assembly District 95

living rooms and on the streets, to communicate their messages.”

Gardner concurred.

“New Hampshire is unpredictable and it is unscripted,” he said. “Those moments are precious because those moments have shown the rest of the country some insights into candidates’ character that they may never have had the chance to become aware of.” (LAS VEGAS SUN, CONCORD MONITOR)

In case you missed it

Coming off their best showing in legislative elections since the 1920s, Republicans have high hopes of completing an historic political turnaround in the once Democratic “Solid South.”

In case you missed it, the article can be found on our website at

http://www.statenet.com/capitol_journal/10-24-2011/html#sncj

AZ REDISTRICTING COMMISSIONER IMPEACHED: Arizona’s redistricting process was thrown into chaos last week when the state’s GOP-controlled Senate — at the request of Gov. Jan Brewer (R) — voted to impeach the chairwoman of the Arizona Independent Redistricting Commission, Colleen Mathis.

The commission’s draft proposal gave Democrats the opportunity to claim a majority of the state’s nine congressional seats and pit two GOP freshmen against each other in a primary. And Brewer contended the process Mathis, a registered Independent, followed in creating that proposal failed to meet the constitutional criteria established by voters a decade ago when they approved the commission.

In a statement, Brewer said her decision to call for the vote would “not be popular in some quarters” and was not reached lightly.

“However, the conduct of the IRC — led by Chairwoman Mathis — has created a cloud of suspicion that will not lift,” she said. “A flawed redistricting process has resulted in a flawed product. Just as disturbing, the public does not have confidence in the integrity of the current redistricting process. As Chairwoman of this Commission, the buck stops with Ms. Mathis.”

Brewer was certainly right about the unpopularity of her decision among some. Arizona Democratic Party Chairman Andrei Cherny called the impeachment vote “a historic abuse of power without parallel in modern American history.”

“Every honest person in the state agrees that this is not about substantial neglect of duty or gross misconduct in office,” he said. “It is about protecting the careers of Republican congressmen at the expense of good government and fair elections.”

The Party said it would try to block the impeachment in court. If that fails a commission on appellate court nominations will have to approve a replacement for Mathis. (POLITICO)

POLITICS IN BRIEF: PENNSYLVANIA Gov. Tom Corbett (R) signed legislation (SB 1151) last month allowing for an emergency state takeover of cash-strapped Harrisburg. The move comes about two weeks after Harrisburg’s city council filed for bankruptcy, an action opposed by the governor and the city’s Democratic mayor, Linda Thompson (WALL STREET JOURNAL, PATRIOT-NEWS)



[HARRISBURG]). • Republicans who control the **WISCONSIN** Legislature changed the Capitol’s gun policies to permit concealed firearms in many parts of the building, including committee hearing rooms and the floors of both chambers. The Capitol rule changes coincided with a statewide relaxation of gun control policies (SB 93) that went into effect this month (STATELINE.ORG). • **OREGON** House Co-Speaker Arnie Roblan (D) announced last month that he intends to run for the Senate seat being vacated by retiring state Sen. Joanne Verger (D). Roblan’s decision will end his shared speakership with Rep. Bruce Hanna (R) in the chamber, which is split 30-30 between the Democrats and Republicans (OREGONIAN [PORTLAND]).

— *Compiled by KOREY CLARK*

Governors

BROWN PITCHES MAJOR CA PENSION OVERHAUL: California Gov. Jerry Brown (D) has proposed a 12-point plan to reform public employee pensions in the Golden State. Brown says he wants to put his proposal before voters in November 2012.

The linchpin of Brown’s plan would involve moving future workers from a defined benefit plan enjoyed by current state and local government employees to a “hybrid” model that would combine benefits from a standard state pension, the Social Security system and a 401(k)-style savings account. Other key elements to his proposal include raising the retirement age for new non-safety workers; requiring both current and future employees to split the cost of their monthly pension contributions, which are now predominantly paid for by employers; limiting workers’ ability to “spike” their pensions with one-year pay increases; and lengthening the time a worker must be employed with the government before being eligible for retirement health care benefits.

Critics have long contended that the government pension plans, which include both state and local government employees, are building a massive unfunded liability that could eventually prove catastrophic to the state’s economy. Figures vary, but worst case scenarios for the Golden State’s three largest public employee retirement funds — CalPERS, CalSTRS and the University of California Retirement System — place the gap between assets and obligations to retirees at around \$500 billion.

The proposed reforms drew immediate skepticism from labor leaders and Legislative Democrats, who questioned whether any of the changes could be done outside of the collective bargaining process. Senate President Darrell Steinberg (D) called the governor’s proposal “provocative” but also cautioned that “the vast

majority of public sector employees are middle class workers and their average pensions are far from exorbitant.”

Assembly Speaker John A. Pérez (D) seemed even less enthusiastic. The Speaker said lawmakers would “carefully consider” the governor’s proposal and “work with him to bring stability to our pension system,” but offered little else.

Republicans, meanwhile, generally embraced Brown’s plan, though mostly as a good start rather than a comprehensive solution.

“Brown’s plan, while a small step in the right direction, proposes to save only \$1 billion per year. California can’t wait 500 years for a solution,” said California Republican Party Chairman Tom Del Baccaro. Former state finance director Mike Genest also issued limited praise, calling the plan “more substantial than I expected, particularly with regards to new employees” before adding that it fell short of what is needed.

“Any proposal that does not require current employees to share in the responsibility of reducing our unfunded liability falls short of averting this crisis,” he said.

Brown’s proposal will also likely have competition on the ballot. A group calling itself California Pension Reform has submitted two versions of a pension overhaul ballot measure to the state attorney general’s office. Both have stricter elements than the governor’s, including a higher retirement age for public safety workers and a requirement that employees pay a greater share of their pension contributions if their fund’s assets equal less than 80 percent of its obligations. Once the measures have been analyzed by the state Department of Finance and the Legislative Analyst’s Office, the group will choose one of the two and begin collecting signatures to get it on the ballot.

Brown, however, has made it clear he thinks his plan offers the best of both worlds.

“I’ve laid out what I think is a minimum that any plan in California ought to meet,” Brown said. “And the minimum protects the taxpayer while being fair to the employees.” (LOS ANGELES TIMES, SACRAMENTO BEE, BLOOMBERG BUSINESSWEEK, NEW YORK TIMES, SAN FRANCISCO CHRONICLE)

DEAL NIXES GAMBLING EXPANSION: Georgia Gov. Nathan Deal (R) said he has no interest in bringing casino-style gambling to the Peach State. Responding to a Georgia Lottery Corporation study that suggested building three casinos with a total of 10,000 gaming terminals would generate nearly \$1 billion per year in revenue for the state as soon as 2014, Deal spokesperson Brian Robinson said, “there will not be an expansion of gambling under his watch.”

Deal has been adamantly opposed to more gambling, ordering authorities in August to crack down on illegal online wagering at Internet cafes. Robinson said Deal was very concerned with the report’s findings about the amount of illegal gambling already available in Georgia.



“[The governor] has focused his attention on the report’s finding that there are 10,000 illegal slot machines operating in Georgia, with each machine taking in approximately \$200,000 and paying out \$100,000 per week,” Robinson said. “The governor is concerned that these illegal machines divert millions of dollars away from the Georgia Lottery and the struggling HOPE [scholarship] and pre-k programs.” (ATLANTA JOURNAL-CONSTITUTION, ATLANTA BUSINESS JOURNAL)

GOVERNORS IN BRIEF: MONTANA Gov. Brian Schweitzer (D) reiterated his opposition to a plan from downstream Missouri River states to lower upstream reservoirs in order to help better manage flood risks in their states. The U.S. Army Corps of Engineers has indicated it will change its management plan if all the states along the river agree on the solution, but Schweitzer said he will only support the plan if Montana reservoirs are excluded (NEWS TRIBUNE [JEFFERSON CITY]).

• **NEW JERSEY** Gov. Chris Christie (R) unveiled a plan to partially privatize the Garden State’s state parks. The state will maintain ownership of the parks while contracting out many of the services they provide, including concessions and equipment rentals. The state’s 39 state parks bring in about \$8 million in annual revenue, far short of the \$39 million they cost each year to operate (PHILADELPHIA INQUIRER).

• Still in **NEW JERSEY**, Superior Court Judge Linda Feinberg ruled that state judges do not have to pay more for pensions and health plans while the state is appealing a ruling that declared the increases unconstitutional. Feinberg said justices are exempt from the increases because of a constitutional provision prohibiting the diminution of their salaries while they are in office (STAR-LEDGER [NEWARK]).

• **MICHIGAN** Gov. Rick Snyder (R) said his administration is reconsidering an earlier decision to consider vehicles as assets under the state’s welfare qualification rules. The state last month began disqualifying recipients with bank accounts of \$5,000 or more or cars valued at \$15,000 (DETROIT FREE PRESS). • **NORTH DAKOTA** Gov. Jack Dalrymple (R) announced he would seek reelection in 2012. Dalrymple took office in December 2010 when then-Gov. John Hoeven (R) was elected to the U.S. Senate (GRAND FORKS HERALD).

— *Compiled by RICH EHISEN*

Hot issues

BUSINESS: A federal court orders the city of San Francisco to alter a new ordinance that requires cell phone dealers to give each phone buyer a fact sheet saying the World Health Organization has classified the phones’ radio-frequency emissions as a “possible carcinogen.” U.S. District Judge William

Alsop called the assertion “untrue and misleading” and ordered city officials to rewrite the warning and to drop a requirement that retailers post it on posters and stickers attached to sales ads. City officials plan to appeal the ruling (SAN FRANCISCO CHRONICLE). • **CONNECTICUT** Gov. Dannel Malloy (D) signs HB 6801b, which among other things streamlines the Constitution State’s business permitting process and offers employers tax credits for hiring veterans, the disabled or the chronically unemployed (HARTFORD COURANT). • The **CALIFORNIA** Department of Toxic Substances Control issues draft rules that create a list of 3,000 toxic ingredients found in consumer goods and allow them to force companies to conduct further research on products containing those ingredients, post public information about them or remove them altogether. A final draft is due next fall (SACRAMENTO BEE). • The U.S. House of Representatives endorses HB 1002, legislation that would impose a five-year moratorium on new state or local taxes on wireless services, unless they are already imposed on other goods and services. A companion bill (SB 543) has been introduced in the U.S. Senate (NATIONAL JOURNAL).

CRIME & PUNISHMENT: The **WISCONSIN** Assembly approves AB 69, so-called “castle doctrine” legislation that would require courts in most criminal and civil matters to presume that property owners using deadly force had acted reasonably against anyone unlawfully inside their residence, business or vehicle, whether they were armed or not. It is now in the Senate (MILWAUKEE JOURNAL-SENTINEL). • The **WISCONSIN** Senate and Assembly endorse SB 22c, a measure that would relieve property owners from liability for conditions on their property that result in injuries to a trespasser or a trespasser’s death. It is now on its way to Gov. Scott Walker (R) for review (POST-CRESCENT [APPLETON]).

EDUCATION: The **PENNSYLVANIA** Senate approves SB 200, a bill that would require student athletes showing signs of a concussion to be kept from participating in their sport until being cleared by a doctor. The bill, which would also require coaches to be trained in the risk of brain injuries in sports and students and their parents to review information regarding the risk of head injuries and concussions before participating in scholastic sports activities, moves to Gov. Tom Corbett (R), who is expected to sign it into law (PATRIOT-NEWS [HARRISBURG]). • The **WISCONSIN** Senate approves SB 237, legislation that requires Badger State school districts that teach sex education to emphasize abstinence as the only reliable way to prevent pregnancy and disease. The measure, which also allows schools go forego any instruction about contraception, now moves to the Assembly (POST-CRESCENT [APPLETON]). • The **MICHIGAN** Senate approves SB 137, legislation that would require Wolverine State school districts to adopt anti-bullying policies. The bill, which also states that those policies not “prohibit a statement of a sincerely held religious belief or moral conviction of a school employee, school volunteer,

pupil, or a pupil's parent or guardian," is now in the House (DETROIT FREE PRESS).

ENVIRONMENT: The **CALIFORNIA** Air Resources Board gives final approval to rules that would make the Golden State the first to implement an economy-wide cap-and-trade program to reduce greenhouse gas emissions. The plan must now be reviewed by the state Office of Administrative law (BLOOMBERG BUSINESSWEEK).

HEALTH & SCIENCE: The **WISCONSIN** Assembly approves AB 147, a bill that would grant Badger State doctors immunity in court from their own apologies or other statements to patients and their families. It is now in the Senate (MILWAUKEE JOURNAL-SENTINEL). • **NEW YORK** Gov. Andrew Cuomo (D) signs AB 6305, which requires Empire State health insurers to cover the diagnosis and treatment of autism. Coverage is capped at \$45,000 annually. The law goes into effect next year (DEMOCRAT & CHRONICLE [ROCHESTER]).

SOCIAL POLICY: An **OKLAHOMA** judge temporarily blocks a new Sooner State law (HB 1970) that requires doctors who perform abortions to follow guidelines and protocols authorized by the U.S. Food and Drug Administration and prohibits off-label uses of the drugs. The law was set to go into effect on November 1st (TULSA WORLD). • A federal judge issues a temporary injunction blocking part of a **NORTH CAROLINA** abortion law (HB 854) that requires women seeking the procedure to be presented with a narrated ultrasound image of their womb within four hours of the operation. U.S. District Court Judge Catherine Eagles ruled that element of the law was unconstitutional. She upheld other elements of the law, including a 24-hour waiting period and the requirement that women be given extensive medical information. The law is being challenged by several abortion rights groups (NEWS & OBSERVER [CHARLOTTE]). • A **FLORIDA** judge temporarily blocks a Sunshine State law requiring welfare recipients to be drug tested in order to receive benefits. U.S. District Judge Mary S. Scriven blocked the testing until a lawsuit challenging its constitutionality is resolved (ORLANDO SENTINEL). • The **COLORADO** Supreme Court rules that conversations between children and the attorneys who represent them in custody and neglect cases are not protected by attorney-client privilege. The Court said the child's best interests superseded that of litigants in a custody or abuse case (DENVER POST).

POTPOURRI: The **MICHIGAN** House approves SB 291, legislation that would lift the Wolverine State's requirement that motorcycle riders wear a helmet, provided the rider is 21 and has at least \$20,000 of medical coverage. The measure has returned to the Senate for consideration of amendments made in the House

(DETROIT NEWS). • The **PENNSYLVANIA** Senate approves SB 314, which would bar Keystone State drivers from receiving, reading or sending cell phone text messages while behind the wheel. It moves to Gov. Tom Corbett (R), who is expected to sign it into law (PITTSBURGH POST-GAZETTE).

— Compiled by RICH EHISEN

Once around the statehouse lightly

A **FRIGHTFUL SUGGESTION:** Wherever you are in the world, Halloween is always on October 31st. But one Connecticut lawmaker is looking to send that tradition to the graveyard. Rep. Tim Larson doesn't really want to kill the holiday, mind you, just move it. As the *Hartford Courant* reports, Larson wants to make the last Saturday of October Halloween regardless of on what day the 31st falls. A weekend date, he says, will spare harried parents from rushing home from work to take the kids out trick-or-treating, and then reviving the whole gang early the next morning for work and school. The idea hit him too late to impact this year's festivities, which fell on a Monday, but he plans to introduce legislation next session. If passed, however, it might already be dead on arrival: Gov. Dannel P. Malloy is opposed, citing worry over "confusing the ghosts, goblins, and witches." We think he was kidding.

BEARISH ON BEAVERS: For 36 years, the industrious North American beaver has been Canada's official national animal, a worthy acknowledgment of the country's rich history as a hub for international fur trading. Alas, not everyone thinks so highly of the furry little rodent. As Reuters reports, Canadian Sen. Nicole Eaton is pushing her colleagues to ditch the beaver as the national animal in favor of the mighty polar bear, saying the bear's "strength, courage, resourcefulness and dignity" make it "perfect for the part." The beaver, she says, is nothing but "a dentally defective rat." If that sounds pretty personal, it is. Eaton acknowledged her enmity comes in part because of the damage beavers do by gnawing away on the dock of her waterfront cottage each summer. Polar bears have apparently never chewed up her stuff, so there you go.

OH HOW RANDOM: It would sure be fun to be a fly on the wall the next time U.S. House Speaker John Boehner has some alone time with anti-tax crusader Grover Norquist. As *Politico* reports, Boehner last week referred to Norquist — president of Americans for Tax Reform and the author of a "no new taxes" pledge signed by



just about every Republican in state and federal office — as “some random person.” His comment came in response to being asked if the often-polarizing Norquist was a positive or negative influence on Congressional Republicans. Norquist publicly agreed with Boehner’s assessment, saying the pledge was between lawmakers and their constituents. Perhaps, but Boehner’s office practically pulled a muscle issuing a statement saying the speaker was just making a “humorous” point. Uh huh.

THE ULTIMATE GARAGE SALE: For Harrisburg, Pennsylvania desperate measures call for desperate times. Mired in \$300 million in debt and having recently filed for bankruptcy, city leaders are looking for any avenue to come up with some cash. So, as Reuters reports, officials in the Keystone State’s capital city are looking to offload over 8,000 historical artifacts currently gathering dust in a nondescript city warehouse. The scattered collection of guns, ammunition, sheriff’s badges, canoes and even stagecoaches was acquired over several years, with taxpayer dollars no less, by former seven-term mayor Stephen Reed, who dreamed of building an epic Wild West museum that would draw visitors from all over the globe. Alas, the museum idea is itself an artifact, leaving city leaders hoping they can get someone, anyone, to take it all off their hands. Interested parties need to hurry up – city elders are only accepting bids until November 9th.

— *By RICH EHISEN*



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