

November 21, 2011

## Quiet Crisis



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The next issue of Capitol Journal will be available on December 5th.

### Top Story

*Severe budgetary and political pressures have combined with continued high unemployment and the housing crash to create a quiet crisis for the poor.*

## SNCJ Spotlight

**States trim programs for the neediest Americans**

During the recent Great Recession and the present economic malaise, millions of Americans have relied on the fraying “social safety net” to meet their basic needs. That phrase encompasses the federal programs of Social Security, Medicare, and such federal-state partnerships as Medicaid, unemployment insurance, food stamps,

## A Cannon Perspective



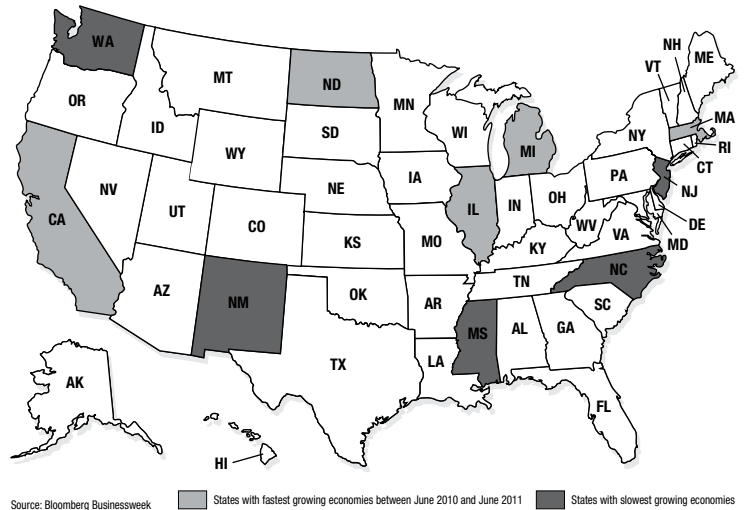
With Lou Cannon

and Temporary Assistance for Needy Families, the basic welfare program that is run by states and funded by federal block grants. Although Medicare faces a looming fiscal crisis and Social Security an eventual one, these bedrock programs are currently intact. The partnership and state programs, however, are under severe budgetary and political pressures that have combined with continued high unemployment and the housing crisis to create a quiet crisis for the poor.

The poor are more numerous in the United States than at any time since the Great Depression; the U.S. Census Bureau found in 2010 that 46.2 million Americans live below the poverty line. This official finding is in all likelihood an understatement. Early this month, the Census Bureau and the Bureau of Labor Statistics issued a “supplemental poverty measure” that put the number of poor at 49.1 million or 16 percent — or just under one in six Americans. The change reflected a long-overdue updating of the way poverty is calculated, taking into account the cost of housing and child care. Soon after this report was issued, the Gallup polling organization, in a survey with the disease-management company Healthways, found that more than a fifth of Americans had at times during the past year lacked sufficient money to buy food for themselves or their families. (The precise figure was 20.2 percent, the second largest since this survey began four years ago. It is based on a large, random sample of 30,289 adults living in all 50 states and the District of Columbia.)

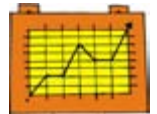
The increase in poverty reflects many factors, the most potent of which is continuing high unemployment. The anemic economy has also produced budget crunches in the states, which are required to balance their budgets and to do so have cut back on programs vital to the poor. Of these programs, Medicaid, the federal-state partnership that provides health care for low-income families, is by far the most costly. The American Recovery and Reinvestment Act, the Obama stimulus bill, eased pressures on the states by increasing the federal share of Medicaid. But this provision

## Bird's eye view



### North Dakota's economy recovering fastest

North Dakota's economy, spurred by an oil boom, is recovering from the recession faster than any other state's, according to the new Bloomberg Economic Evaluation of States Index (BEES), which uses real estate, employment, tax and stock data to gauge the economic growth of all 50 states. No. 2 on the BEES index is Michigan, which has been ranked dead last for the past decade. The most stressed economies, according to the index, are North Carolina's, weighed down by the stock price of Bank of America Corp., and New Mexico's, which has been buffeted by declining real estate prices in eight of the last nine quarters.



expired in mid-2011, leaving states to bear an increasing share of the costs.

“This blew a big hole in state budgets,” said Joy Wilson, the Washington-based director of health policy for the National Conference of State Legislatures. She observed that state revenues are recovering, but not quickly enough to handle the increased Medicaid caseloads.

Medicaid, the nation’s largest health care program, serves 53 million people, many of them children, at a combined federal-state cost of \$300 billion annually. During the last three years more than 30 states have tried to control Medicaid costs by reducing payments to hospitals, doctors, and other providers. States are required to cover basic medical services but have discretion to cut optional services for adults, such as dental care and visits to chiropractors and podiatrists. But what some states consider optional is disquieting to advocates for the poor. Recent examples of Medicaid cutbacks include elimination of adult day-care services in California, of adult eye examinations and eyeglasses in North Carolina, and of adult dental care in Connecticut and Pennsylvania. Many states had few optional programs to begin with and those that have options are running out of places to cut.

“To meet the legal requirements, states have had to cut in other places to meet their Medicaid obligations,” Wilson said. “Medicaid is now taking a toll on education.”

The picture is not entirely bleak. Melissa Hansen, a senior policy specialist with NCSL in Denver, observes that most of the service reductions have affected adults. Because states are generally prohibited from cutting the health care services they provide to children, the number of children receiving Medicaid has risen. Hansen also said that states such as Kansas, Minnesota, and Ohio have been innovative in cost containment and managed care, which is widely believed to be the wave of the future in the effort to control soaring health care costs.

The Medicaid debate in Washington has often been partisan, with Democrats defending the program and Republicans viewing it as a prime example of an “unfunded mandate” that leads to runaway entitlement spending. In the more practical world of state government, fiscal considerations generally have trumped political ones. Democratic governors and legislative bodies in such states as California and New York have found it as necessary as their Republican counterparts in Ohio and Pennsylvania to cut Medicaid for budgetary reasons.

In contrast, the battle over unemployment insurance has had partisan overtones in both federal and state capitols. The three states that reduced benefits in 2011 — Florida, Michigan, and Missouri — all have Republican-controlled legislatures. Unemployment benefits vary from state to state. They are based on a worker’s earnings, using a tax on employers to cover the first 26 weeks of unemployment. In 2008 the federal government began a series of extensions that pushed maximum unemployment coverage to 99 weeks in states with high joblessness. Only a score of states offer this maximum and most of them will drop this provision in 2012; in most states maximum coverage is 70 weeks.



According to the U.S. Census Bureau, extended unemployment insurance payments kept three million people out of poverty in 2010. It's uncertain if these extensions will be renewed when they expire at the end of the year. President Obama favors them, but the Republican-controlled House may balk at the \$49 billion annual cost.

The heaviest economic blows have fallen upon the poorest of the poor: the 700,000 low-income families, including 1.3 million children, dependent upon Temporary Assistance for Needy Families (TANF) for survival. TANF, enacted by a

Republican-controlled Congress as part of a sweeping plan designed to end welfare as an entitlement, was signed into law with great fanfare in 1996 by President Bill Clinton, who proclaimed, "We are ending welfare as we know it."

When TANF was created, however, it was assumed that the federal block grants would over time be adjusted for inflation. This hasn't happened except for two years during the Great Recession. Looking for ways to save, states in 2011 implemented what the liberal Center on Budget and Policy Priorities called "the harshest cuts in recent history for many of the

nation's most vulnerable families." Five states — California, Washington, Wisconsin, New Mexico, and South Carolina — and the District of Columbia have cut monthly cash assistance for TANF families, who were already receiving low benefits. Other states have canceled scheduled benefit increases or reduced the number of years that anyone can receive welfare assistance.

It's never easy to be impoverished, but the upshot of these budget cutbacks is that this is a particularly difficult time to be poor. Gallup and Healthways have been tracking Americans' access to basic needs since January 2008 using 13 measurements, including the ability to afford food, housing, and health care. This Basic Needs Index dipped to a low point last month, adding in the words of the Gallup report, to "growing evidence that more Americans are in extreme economic distress." It's a most discomfoting finding.

"Helping more Americans to afford food, shelter, and medicine on a regular basis is arguably as important as helping the jobless find jobs," the report concluded. "Only when basic needs are met can individuals actively work to lift themselves out of poverty and maximize their full potential in society."

— *By Lou Cannon*

**“The heaviest economic blows have fallen upon the poorest of the poor: the 700,000 low-income families, including 1.3 million children, dependent upon Temporary Assistance for Needy Families (TANF) for survival.”**

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# Budget & taxes

**E**NTERPRISE ZONES HAVE BECOME ENTERPRISE IN CO: In 1986, Colorado lawmakers created the Enterprise Zone Program to encourage economic development in struggling parts of the state by giving tax breaks to businesses that bring capital or jobs to “economically distressed areas.” More than two decades later the program has expanded considerably — some say too much.

Originally, there were eight enterprise zones in economically blighted areas comprising about 30 percent of the state. And in the program’s first year of operation in 1987, the state granted \$100,000 in tax credits. Now, according to a report by *The Denver Post*, more than 70 percent of the state lies within an enterprise zone. And last year, state businesses applied for \$75 million in tax credits. Those businesses created a net of just 564 jobs, meaning each job cost taxpayers about \$133,000, the *Post* said.

The state even handed out tax cuts to businesses that laid off workers. Over the past seven years, companies claiming tax credits cut jobs more than 4,000 times.

Those findings have even the architects of the Enterprise Zone Program questioning its usefulness.

“I think it’s expanded way too far,” said former Democratic state Sen. Jim Rizzuto, who helped draft the legislation establishing the program in 1986. “I really feel that it’s been abused and that it’s not addressing those areas that really need the economic assistance.”

Jeanne Faatz, a Republican Councilwoman in Denver who co-sponsored the Enterprise Zone legislation when she was a state legislator, concurs.

“I don’t believe, at this point, that it’s nearly as effective a tool as it was supposed to be,” she said. “It’s just become corporate welfare.”

They won’t get an argument from state’s current chief executive, Gov. John Hickenlooper (D), even with the economic conditions the state is facing.

“Obviously there are so few tools in our tool box regarding economic development that you hate to lose one,” he said. “But 70 percent of the state is in an enterprise zone, and at a certain point it begins to look like an overall tax break to so many people that you should just offer it to everybody.”

Hickenlooper’s recognition that there are problems with the Enterprise Zone Program may not be enough to do anything about them. California Gov. Jerry Brown (D) tried to eliminate his state’s enterprise zones with the budget plan he introduced in January. But despite a report from the nonpartisan Legislative Analyst’s Office indicating that getting rid of the zones would save the state \$900 million over two years, state lawmakers rejected Brown’s proposal. Republicans saw it as a tax increase, while many Democrats with enterprise zones in their districts were reluctant to part with them, according to Sara Flocks, policy coordinator for the California



Labor Federation, an opponent of the zones.  
(STATELINE.ORG, DENVER POST)

**‘TRIGGER CUTS’ COMING TO CA:** The California Legislative Analyst’s Office released a report last week forecasting that state revenues would fall \$3.7 billion short of the \$88.5 billion anticipated in the 2011-12 budget approved by lawmakers in June. That budget specified that if revenues fell \$1 billion short of projections or more, automatic spending reductions, so-called “trigger cuts,” would be made to higher education, child care and other programs.

Just how big those cuts will be won’t be known until the state’s Department of Finance releases its own revenue analysis next month, but they could range from \$600 million to more than \$2 billion. They’ll ultimately be based on whichever of the two revenue forecasts is higher.

“The budget the governor signed recognized that economic uncertainty could force the trigger cuts to take effect,” said Ana J. Matosantos, director of the Finance Department. “Some level of trigger cuts will likely occur, but the exact amount will be known in December.”

Despite the sobering news, the LAO’s report praised Gov. Jerry Brown (D) and state lawmakers for the cutbacks they made earlier this year to address the state’s budget problems.

“By making very difficult budgetary decisions — including the trigger cuts — the Legislature and the governor have strengthened the state’s fiscal condition considerably,” the report stated. “The Legislature now faces a much smaller budget problem than projected a year ago and the smallest projected out-year deficits since the 2007-2009 recession.”

But the report also had some additional sobering news: The state faces a \$12.8 billion shortfall in next year’s budget. (NEW YORK TIMES, SAN FRANCISCO CHRONICLE, LEGISLATIVE ANALYSTS OFFICE)

**BUDGETS IN BRIEF:** A federal judge in New Orleans has limited the ability of **LOUISIANA** and **ALABAMA** to seek damages for pollution stemming from last year’s Deepwater Horizon oil spill in the Gulf of Mexico. The states had filed lawsuits alleging violations of state environmental laws by BP PLC, Transocean Ltd. and Halliburton Energy Services Inc., but U.S. District Judge Carl Barbier ruled that since the Deepwater rig was located in federal territory — the Outer

## 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: 338**

**Number of Intros last week: 437**

**Number of Enacted/Adopted last week: 214**

**Number of 2011 Prefiles to date: 38,705**

**Number of 2011 Intros to date: 136,774**

**Number of 2011 Session Enacted/Adopted overall to date: 47,076**

**Number of Measures currently in State Net Database: 156,412**

— Compiled By OWEN JARNIGAN  
(measures current as of 11/16/2011)  
Source: State Net database



Continental Shelf — the states can only seek damages under federal law (WALL STREET JOURNAL). • **MASSACHUSETTS** lawmakers gave final approval to HB 3807, legislation authorizing casino gambling in the state. Gov. Deval Patrick is expected to sign the bill before the Thanksgiving holiday (BOSTON GLOBE).

• Gambling experts gathered at the New England Gaming Summit last week said now that **MASSACHUSETTS** is on the verge of allowing casinos in the state, **NEW HAMPSHIRE** and **RHODE ISLAND** will have no choice but to legalize full-scale gambling to protect their own gaming revenues (PROVIDENCE JOURNAL). • **NEW JERSEY**'s Treasury Department released a study last week indicating that 25,000 people have fled the state since income taxes on high earners were increased in 2004 and 2009, costing the state an estimated \$3 billion in revenue (WALL STREET JOURNAL). • Insurance premiums for family coverage increased an average of 50 percent nationally between 2003 and 2010, according to a study conducted by The Commonwealth Fund, a nonprofit health policy foundation. If that rate continues, the study said, the average family premium will be nearly \$24,000 by 2020 (KAISER HEALTH NEWS).

— Compiled by **KOREY CLARK**

## Upcoming stories

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

- **2012 Preview**
- **Health care**
- **The economy**

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# Politics & leadership

**C**ONSTITUTIONAL BLOCKBUSTER COMING TO HIGH COURT: As expected (see “Supreme Court the latest challenge in ACA’s long trial by fire” in November 7th issue of *SN CJ*), the U.S. Supreme Court announced last week that it will consider a set of challenges to the federal health reform law, a case that could help define the legacy of Chief Justice John G. Roberts Jr. and shape next year’s battle for control of the White House and Congress.

Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute, said the “Supreme Court has set the stage for the most significant case since *Roe v. Wade*.”

The justices acknowledged the importance of the case themselves by allotting five and a half hours for oral arguments instead of the usual one. Their order also laid out which fronts of the major partisan battle over health reform they intend to march into.

The justices agreed to hear three related appeals from the United States Court of Appeals for the 11th Circuit, which in August struck down the Patient Protection and Affordable Care Act’s so-called individual mandate — requiring people to purchase health insurance or face a penalty — while upholding the rest of the law.

The justices indicated they will weigh not only the constitutionality of the mandate (*Florida v. Department of Health and Human Services, No. 11-400*) but also whether the 11th Circuit acted properly in severing that provision from the ACA as a whole in issuing its ruling (*National Federation of Independent Business v. Sebelius, No. 11-393*).

The justices also agreed to hear an appeal of another part of the 11th Circuit's ruling, rejecting the states' challenge to the expansion of Medicaid under the ACA (*Department of Health and Human Services v. Florida, No. 11-398*). The states allege that Congress exceeded its constitutional authority when it expanded the eligibility and coverage thresholds states have to adopt in order to participate in the Medicaid program. The problem, according to Paul D. Clement, the former U.S. solicitor general representing the states, is that "Congress did not tie its new conditions only to those additional federal funds made newly available under" the ACA.

"It instead made the new terms a condition of continued participation in Medicaid, thereby threatening each state with the loss of all federal Medicaid funds — on average, more than a billion dollars per year — unless it adopts the act's substantial expansions of state obligations," he said.

Of the four federal appeals courts that have considered challenges to the ACA (the others are the Fourth Circuit, the Sixth Circuit and the District of Columbia Circuit), the 11th Circuit is the only one that has declared the individual mandate unconstitutional so far. Stuart Gerson, at Epstein Becker Green in Washington, said the case from the 11th was the one the U.S. solicitor general wanted the Supreme Court to take, and it's also the one that sets up the issues the best.

Following the high court's announcement, the Obama administration issued a statement reaffirming its position on the constitutionality of the law.

"We know the Affordable Care Act is constitutional and are confident the Supreme Court will agree," said White House Communications Director Dan Pfeiffer.

Pam Bondi, attorney general of Florida, the lead plaintiff of the 26 states challenging the ACA, also welcomed the high court's decision.

"Throughout this case," Ms. Bondi said, "we have urged swift judicial resolution because of the unprecedented threat that the individual mandate poses to the liberty of Americans simply because they live in this country."

## The week in session

**States in Regular Session:** MA, PA (House Only)

**States in Recess:** CT, DC, MI, NC, NH, NJ, NY, OH, PA (Senate Only), RI, US, WI

**States in Special Session:** NE "a"

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

**States Currently Prefiling or Drafting for 2012:** AL, AZ, FL, KS, KY, ME, MT, OK, 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, WI, 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 11/17/2011)  
Source: State Net database

The justices indicated they will also consider an appeal from the Fourth Circuit, which rejected a challenge to the ACA's individual mandate from Liberty University on the grounds that striking down the provision before it takes effect in 2014 would violate the Anti-Injunction Act, a federal law barring suits "for the purpose of restraining the assessment or collection of any tax."

Adam Winkler, a professor at UCLA School of Law, said the justices' decision to grant a full hour of oral argument for the AIA was significant, given that the Fourth Circuit is the only appeals court to have held there was such a jurisdictional bar.

"If the justices believed the AIA was irrelevant or unlikely to be a significant issue, they would have given far less argument time to that question," he said.

But Washington & Lee University Law School professor Timothy S. Jost said while the AIA poses a serious question for the court, and a dissenting opinion from D.C. Circuit Judge Brett M. Kavanaugh makes a convincing argument for applying the AIA bar, he thinks it is "unlikely" the justices will do so.

The court did not set a date for the oral arguments, but experts say it is unlikely to be before late March, setting up a decision in late June — as the 2012 presidential and Congressional election campaigns enter their crucial final months. (NEW YORK TIMES, BNA)

**AZ HIGH COURT REINSTATES REMAP COMMISSIONER:** The Arizona state Supreme Court has overturned the impeachment of the state's top redistricting official, Independent Redistricting Commission Chairwoman Colleen Mathis.

Gov. Jan Brewer (R) and the GOP-controlled Senate had impeached Mathis two weeks ago, claiming that in drafting the state's congressional districts she had willfully skirted rules — including those requiring the commission to hold all of its meetings in public — established over a decade ago when voters approved the redistricting commission.

The Republicans had also argued that Mathis, a registered independent, had drafted a map with the intent of favoring Democrats. That map, which has yet to be finalized by a vote of the committee's five members (two Democrats and two Republicans, in addition to Mathis), reportedly positions Democrats to compete for a majority of the state's nine congressional districts, while forcing two freshmen Republicans, Reps. David Schweikert and Ben Quayle, to face off against each other.

But the court ruled that Mathis had not demonstrated the "substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office" required for impeachment and reinstated her, freeing the commission to proceed with its plan.

"The court has well-served the people of Arizona, who went to great effort 11 years ago to take some of the partisan politics out of the map-making process," Dennis Michael Burke, one of the authors of the ballot measure creating the state's redistricting commission, wrote in an email. "We the people owe the justices a drink."

Brewer was unsurprisingly less enthusiastic about the justices' decision, saying in a statement, the "misguided ruling bodes ill for the integrity of redistricting in this state." (POLITICO, USA TODAY)

### OH DEMS PUSHING FOR REMAP

**REFERENDUM:** Fresh off their victory in overturning union-unfriendly SB 5 on November 8th (see "Voters send mixed signals in off-year elections" in November 14th issue of *SNCJ*), Ohio Democrats are pushing for another referendum next year on the state's new GOP-drawn congressional district map.

Democrats say Republican lawmakers gerrymandered the state's congressional districts to pack Democrats into four districts and make sure Republicans hold on to 12 of the 16 U.S. House seats the state will have — including the one currently occupied by House Speaker John Boehner — after losing two seats due to slow population growth. Republicans counter that their map cuts one member from each party, and the districts are more competitive than Democrats claim.

But the Democrats say they've already gathered more than a third of the 231,150 valid signatures they need by Christmas to qualify a referendum for next year's ballot. And that campaign has already forced the swing state to move its presidential and U.S. House primary from Super Tuesday on March 6th to June 12th, making it the 49th such contest in the nation and likely all but irrelevant in the GOP nominating process.

If the Democrats reach their goal, the state's new congressional districts would be suspended. Republicans could then draw up another map, but the Democrats said they would force a referendum on any map that favors the GOP. So it is likely a judge will ultimately have to decide whether to keep the current map in place for the 2012 election or draw a new one, which courts had to do in nine states in the last redistricting cycle 10 years ago. (WALL STREET JOURNAL)

**POLITICS IN BRIEF: ARIZONA** Senate Republicans chose Sen. Steve Pierce (R) as the replacement for former Senate President Russell Pearce (R), who was ousted in a recall this month as a result of his hard-line stance on immigration. Pierce said Arizonans can expect a lower profile from him but much of the same agenda as his predecessor (ARIZONA REPUBLIC). • **LOUISIANA** Attorney General Buddy Caldwell said last week his office has filed a lawsuit with the U.S. Supreme Court seeking to retain the congressional seat it is set to lose as a result of the 2010 Census. The state contends it is losing a member of Congress because the Census "included

## Upcoming elections

11/17/2011 - 12/8/2011

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

11/29/2011

### Alabama Special Election

House District 45

12/06/2011

### Georgia Special Runoff

House District 25

Senate Districts 28 and 50



illegal foreign nationals along with holders of guest-worker visas and student visas” in its national count of “lawful residents” (TIMES-PICAYUNE [NEW ORLEANS]). • **NEW JERSEY** Senate President Stephen Sweeney (D) and Assembly Speaker Sheila Oliver (D) managed to retain their leadership posts last week. But Senate Majority Leader Barbara Buono (D) didn’t survive a reshuffling of Democratic leadership brought on by Oliver’s decision to advance a bill to overhaul public employee pensions and health benefits to the Assembly floor in spite of a lack of support among rank-and-file Democrats. Buono was replaced by Sen. Loretta Weinberg (D) in a unanimous vote (STAR-LEDGER [NEWARK]). • Four **SOUTH CAROLINA** counties have asked the state’s Supreme Court to make the Republican Party pay for any costs of holding the state’s presidential primary above the \$680,000 the state has set aside for the election. The state Election Commission expects the primary will cost \$1.5 million, and the cash-strapped counties — Greenville, Spartanburg, Chester and Beaufort — say they shouldn’t have to cut local programs to cover the difference (STATE [COLUMBIA]). • Democratic **VIRGINIA** state Sen. R. Edward Houck conceded to Republican Bryce Reeves on November 10th. Reeves’ 222 vote victory means Republicans will control the Senate — with the aid of Republican Lt. Gov. Bill Bolling’s tie-breaking vote authority — as well as the whole of VIRGINIA state government (VIRGINIAN-PILOT [NORFOLK]).

## In case you missed it

Voters didn’t hand either conservatives or liberals an outright victory on Election Day that might have portended things to come in next year’s full election slate.

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

[http://www.statenet.com/capitol\\_journal/11-14-2011/html#sncj](http://www.statenet.com/capitol_journal/11-14-2011/html#sncj)

— *Compiled by KOREY CLARK*

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# Governors

**C**HRISTIE PUSHES NJ LAWMAKERS ON EDUCATION AGENDA: New Jersey Gov. Chris Christie (R) urged lawmakers last week to address a quartet of education reform bills stalled in the Garden State Legislature since last July. The governor called the bills a bipartisan effort to address the state’s lowest performing schools and reward those that are doing the best job of educating their students. Those measures also comprise the core of the state’s request last Monday for a waiver from the federal No Child Left Behind law.

“There is no issue more important to the future of our state and country than putting the opportunity of a quality education within every child’s reach, no matter their zip code or economic circumstances,” Christie said, calling the four bills

“aggressive,” “bipartisan” and “in line with the Obama Administration’s national agenda to raise standards, strengthen accountability systems, support effective teachers and focus more resources to the classroom.”

Those measures address a variety of issues: SB 2881/AB 4168, which would create a new statewide teacher rating system, tie teacher tenure to effectiveness and end the practice of “last hired, first fired” for teacher layoffs; SB 1872/AB 2810, which would provide tax credits to those contributing to scholarships for low income students; SB 3002/AB 4264, which would create as many as 10 “transformation school projects” in five of the state’s worst performing districts; and AB 4167, which would loosen rules governing the creation of charter schools.

**“There is no issue more important to the future of our state and country than putting the opportunity of a quality education within every child’s reach.”**

Christie originally outlined all of the measures a year ago before formally introducing them to lawmakers last May and June. They have since languished in the Democrat-controlled Legislature. Although the bills enjoy some bipartisan support, Christie’s push last week did little to encourage lawmakers to heed his call for action.

Opponents chalked that up to what they say is the governor’s longstanding vitriol toward teachers and their unions, noting the governor has accused union leaders of being “political thugs.” Most of those leaders are former teachers.

“The governor’s input is welcome, but his education agenda has so far been tainted by poisonous rhetoric and politics and been a failure for children and property taxpayers, so we’ll keep working on our own education reforms,” said Tom Hester Jr., a spokesperson for the Assembly Democrats.

But while a number of Dems have introduced reform bills of their own, they too have gone nowhere. Teacher unions have also offered their own reforms which called for lengthening the time it takes for teachers to earn tenure and expanded access to early childhood education like kindergarten and preschool.

The war of words does not appear likely to end soon. Christie dismissed the union proposals as “well short of anything that would change anything” while also issuing a press release chiding lawmakers for not acting on his proposals. (STAR-LEDGER [NEWARK], NEWJERSEYNEWSROOM.COM, ASBURY PARK PRESS, NEW JERSEY GOVERNOR’S OFFICE)

**KASICH SOFTENING APPROACH?** For months, Ohio Gov. John Kasich (R) talked tough on changes he said need to be made to the Buckeye State workers’ compensation system, namely seeking to cut worker benefits and to privatize at least part of the system. He hinted strongly that he would follow a path similar to SB 5, his successful legislative effort to remove public employees’ collective bargaining rights.



But after seeing voters resoundingly overturn the measure (Issue 2) on November 1<sup>st</sup>, the governor has been taking a much softer tone.

Since the election, Kasich has noted on multiple occasions that any reforms to the workers' comp system would have to be negotiated between labor and management. A Kasich representative, however, denied the stunning defeat of his boss's signature legislation was behind his willingness to hammer out changes over the bargaining table rather than through the Legislature.

"Frankly, in the coming days, once the turmoil of state Issue 2 goes away, I hope labor will join us in working on some things to get our people back to work more quickly," said Steve Buehrer, Kasich's workers' comp director, who added that he and Kasich always intended to sit down with legislative and labor leaders to discuss major reforms.

But in a speech to a state business group last week, Kasich indicated that the election has impacted his approach.

"It doesn't really matter to me who's yelling and screaming. Gotta listen to folks. I learned that last week," he said.

Kasich will also soon be revisiting another controversial topic: Lake Erie water usage. Last July, Kasich vetoed HB 231, a measure that would have regulated water withdrawals from Erie, the shallowest of the five Great Lakes. Kasich said then the bill lacked "clear standards for conservation" and didn't do enough to monitor the

lake's health after withdrawals. The veto surprised some of his Republican colleagues in the Buckeye State Legislature, but Kasich had plenty of support from other Great Lakes

## **"Gotta listen to folks. I learned that last week."**

officials. New York Gov. Andrew Cuomo (D) and Michigan Gov. Rick Snyder (R) urged him to nix the bill, as did former Ohio governors Bob Taft and George Voinovich, both Republicans.

He has subsequently been working with legislative leaders on a new, much tougher proposal that would require businesses to obtain permits if they wish to siphon off: more than 2.5 million gallons of lake water a day (instead of 5 million as indicated in HB 231); 1 million gallons a day from rivers and groundwater that flow into the lake, instead of 2 million; 100,000 gallons a day from "high quality" streams and tributaries to the lake, instead of 300,000. The state currently applies no limits on withdrawals.

Lawmakers in the GOP-controlled Legislature have already signaled they are likely to support the measure.

"By and large I think we are going to come into a pretty good agreement with the governor on this. There will be a couple of contentious pieces, but it seems to be more acceptable by those who opposed my bill," said state Rep. Lynn Wachtmann (R), who authored HB 231.

Kasich expects to have the bill ready for introduction before the end of the year. (COLUMBUS DISPATCH, CLEVELAND PLAIN DEALER).



**CORBETT STIFLES SANDUSKY CHARITY GRANT:** Pennsylvania Gov. Tom Corbett (R) has placed a hold on a \$3 million state grant slated for The Second Mile charity established by former Penn State football assistant Jerry Sandusky, who has been accused of molesting several young boys who participated in the organization's programs. Corbett, who as the state attorney general in 2008 was responsible for opening the investigation into the accusations against Sandusky, approved the grant earlier this year. Corbett defended his approval, saying he could not reject the grant for risk it would harm the ongoing investigation.

"I could not act ... on this without saying certain things that would have possibly compromised the investigation," he said last week after an unrelated appearance at a Philadelphia charter school. "So eventually we did approve it. I did not know the date that the [grand jury] presentment would come down ... as soon as it came down, we gave directions to stop [the grant]."

Corbett spokesperson Eric Shirk said the grant was set to be in the form of reimbursements toward the cost of constructing facilities for the charity and that no money had actually been distributed, adding that the grant was "suspended pending further review." (SAN FRANCISCO CHRONICLE, PITTSBURGH POST-GAZETTE)

**GOVERNORS IN BRIEF:** Prompted by significant cost overruns and delays in a high profile transportation project in the county in which he lives, **NEW YORK** Gov. Andrew Cuomo (D) announced a series of reforms to keep state highway construction projects on time and on budget. The reforms include faster approval of change orders, greater oversight and more use of experts to manage complex projects (DEMOCRAT & CHRONICLE [ROCHESTER]). • **KANSAS** Gov. Sam Brownback (R) signed a proclamation last week apologizing for the historic treatment of Native Americans that occupied lands that now comprise the Sunflower State, treatment he said was marked with "a spirit of deception." Brownback issued the apology as part of the state's celebration of its 150<sup>th</sup> anniversary of statehood (LAWRENCE JOURNAL-WORLD). • **CALIFORNIA** Gov. Jerry Brown, **NEW YORK** Gov. Andrew Cuomo, **MARYLAND** Gov. Martin O'Malley, **CONNECTICUT** Gov. Dannel P. Malloy, **MASSACHUSETTS** Gov. Deval Patrick and **VERMONT** Gov. Pete Shumlin, all Democrats, joined mayors from nine U.S. cities and the District of Columbia last week in signing a letter to the U.S. Senate Judiciary Committee asking them to overturn the Defense of Marriage Act, the federal law that denies marital benefits to same-sex couples. The Committee approved the measure (US SB 598), which faces long odds in the full Senate (SAN FRANCISCO CHRONICLE). • **WEST VIRGINIA** Gov. Earl Ray Tomblin (D) was sworn in last week as the Mountain State's 35<sup>th</sup> chief executive. Tomblin, who had served in the post for a year after replacing former Gov. Joe Manchin (D), who was elected to the U.S. Senate, was elected to fulfill the rest of Manchin's term on October 4<sup>th</sup> (CHARLESTON GAZETTE).

— Compiled by RICH EHISEN

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# Hot issues

**B** **USINESS:** The **MISSOURI** Supreme Court upholds a Show Me State law that bars sexually-oriented businesses from allowing dancers to perform nude or to touch customers, prohibits the sale of alcohol and requires clubs to close at midnight. Club owners are considering appealing the decision to the federal court system (KANSAS CITY STAR). • **MICHIGAN** Gov. Rick Snyder (R) signs SB 281, which protects Wolverine State bowling alleys from lawsuits arising from slip-and-fall accidents that occur after a patron has worn bowling shoes outside of the establishment (MICHIGAN GOVERNOR'S OFFICE). • The **MASSACHUSETTS** House and Senate approve HB 3807, which would legalize casino gambling in the Bay State. The measure, which would require local residents to endorse a casino project before it could be built, moves to Gov. Deval Patrick (D), who is expected to sign it into law (BOSTON GLOBE). • Still in **MASSACHUSETTS**, the House approves SB 2033, which would gradually allow supermarket companies that own multiple stores to sell alcohol at up to six more of their outlets by 2020. Current law allows markets to sell alcohol at no more than three of their outlets statewide. It moves to Gov. Patrick for review (BOSTON GLOBE).

**CRIME & PUNISHMENT:** The **MASSACHUSETTS** Senate approves SB 2059, legislation that would, among several things, deem anyone convicted of two serious crimes a habitual offender. A third conviction would require that person to serve at least two thirds of their sentence before being eligible for parole. The House endorses its own version of the bill, HB 3811, which would require a person with a third conviction to serve their entire sentence without parole. Each measure now moves to the other respective house for consideration (BOSTON GLOBE, STATE NET). • **NEW JERSEY** Gov. Chris Christie (R) signs AB 1491, which requires Garden State residents accused of violating domestic violence-related restraining orders to post the full amount of their bail or have a bond secured by real property equal to the bail amount plus \$20,000. Previous law allowed violators the option to post 10 percent of their bail to gain their release, often as little as \$50 (NEW JERSEY GOVERNOR'S OFFICE).

**EDUCATION:** Eleven states — **COLORADO, FLORIDA, GEORGIA, INDIANA, KENTUCKY, MASSACHUSETTS, MINNESOTA, NEW JERSEY, NEW MEXICO, OKLAHOMA** and **TENNESSEE** — ask the U.S. Department of Education for waivers from the federal No Child Left Behind law. Last Monday was the deadline for asking for waivers, but almost all states are expected to eventually seek approval to go around the 2001 law (WASHINGTON POST). •

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**PENNSYLVANIA** Gov. Tom Corbett (R) signs SB 200, which requires student athletes showing signs of a concussion to be removed from competition until cleared by a medical professional. The law, which also requires students and their parents to review information regarding the risk of head injuries and concussions before participating in scholastic sports activities and coaches to be trained in the risk of brain injury in sports, goes into effect next July (PATRIOT-NEWS [HARRISBURG]). • **LOUISIANA** Gov. Bobby Jindal (R) issues EO 2011-23, which requires anyone working at a public Pelican State college who has witnessed child abuse or neglect to report it to law enforcement within 24 hours (TIMES-PICAYUNE [NEW ORLEANS]).

**ENVIRONMENT:** The **PENNSYLVANIA** Senate approves SB 1100, legislation that would assess a \$50,000-per-well annual fee on Marcellus Shale natural gas drilling operations. The fee would be imposed over the well's first 20 years of use. The measure moves to the House, which at press time was working on its own version of the bill (PITTSBURGH POST-GAZETTE). • The **IDAHO** Oil & Gas Conservation Commission approves new rules that require natural gas drillers to monitor groundwater supplies before and after the use of hydraulic fracturing with existing or new wells (IDAHO STATESMAN [BOISE]). • The **ARIZONA** Department of Environmental Quality announces the Grand Canyon State will pull out of the multi-state Western Climate Initiative, a regional collaboration to establish a cap-and-trade program to reduce emissions of greenhouse gases. **CALIFORNIA** is the only U.S. state left in the WCI moving to implement a cap-and-trade program (ARIZONA CAPITAL TIMES [PHOENIX]).

**HEALTH & SCIENCE:** The U.S. Supreme Court agrees to hear a challenge to the 2010 federal Affordable Care Act. The case, *FLORIDA et al. v. Department of Health and Human Services et al.*, was one of a half dozen before the court, but the only one they chose to consider. A decision is expected by early summer (WASHINGTON POST). • **MICHIGAN** Gov. Rick Snyder (R) signs a trio of health care measures: SB 235, which allows state health officials to permanently revoke the license or registration of health care professionals convicted of first-, second- or third-degree criminal sexual conduct; HB 4411, which allows offenders to apply for reinstatement only if their conviction is for fourth-degree criminal sexual conduct or intent to commit criminal sexual conduct; and HB 4412, which allows for a permanent license or registration revocation if the offense occurred while the perpetrator was acting within his or her role as a health care professional (DETROIT FREE PRESS, MICHIGAN GOVERNOR'S OFFICE). • Still in **MICHIGAN**, the Senate approves SB 693, which would create a health insurance exchange in compliance with the Affordable Care Act. It is now in the House Committee on Health Policy (MICHIGAN GOVERNOR'S OFFICE, STATE NET).



**SOCIAL POLICY:** The **MASSACHUSETTS** House and Senate approve HB 3810, which would add transgender people to the list of groups protected under the Bay State’s civil rights law. It moves to Gov. Deval Patrick (D) for review (BOSTON GLOBE). • The **MICHIGAN** Court of Appeals lifts a lower court order that had temporarily blocked implementation of a new five-year time limit on the receipt of state welfare benefits. The court said blocking the program while the lawsuit is pending was an extraordinary measure and could not be justified unless it was clear the recipients were likely to prevail (DETROIT FREE PRESS). • The **CALIFORNIA** Supreme Court rules that supporters of Proposition 8, a 2008 voter-approved measure that bars same-sex marriage in the Golden State, may legally defend the measure in court since the governor and attorney general have refused to do so. The ruling sends the case back to the 9<sup>th</sup> U.S. Circuit Court of Appeals, which asked the state’s high court to determine if the law’s supporters had legal standing to defend it. A lower state court had previously ruled the law unconstitutional (SAN JOSE MERCURY NEWS).

**POTPOURRI:** The U.S. House of Representatives endorses U.S. HB 822, a bill that would require states that issue concealed weapons permits to honor similar permits issued in other states. It moves to the U.S. Senate (LOS ANGELES TIMES).

— *Compiled by RICH EHISEN*

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# Once around the statehouse lightly

**UNFORGETTABLE ARNOLD:** It has been a long and very difficult year for Arizona Rep. Gabby Giffords, who is recovering from serious gunshot wounds to her head suffered in an attack last January. As part of her therapy, she often was shown pictures of famous people to test her recognition skills. As the *Sacramento Bee* reports, one of those photos was of former California Gov. Arnold Schwarzenegger. Showing she had plenty of memory of the Governor’s most recent exploits, Gifford replied, “Messing around – babies,” a reference to revelations Schwarzenegger had fathered a child with his housekeeper while married to his now estranged wife Maria Shriver. And to think Arnold was worried that only Maria would never forget.

**A TREE TAX DOES NOT GROW ANYWHERE:** It seemed simple enough: the U.S. Department of Agriculture announced a few weeks ago it was imposing



a 15-cent-per-tree fee on Christmas tree growers, with the money to pay for a new board that would work to promote the industry and boost the sale of live Christmas trees. Alas, as the *Wall Street Journal* reports, that sent some folks bonkers, screeching that the Obama administration was taxing Christmas. Never mind that the fee was on growers, not consumers, and that 70 percent of the industry favored the levy in hope of developing a catchy ad blitz akin to the milk industry's famous and highly successful "Got milk?" campaign. Faced with withering criticism, the feds sped away from the plan faster than Rudolph and the boys blazing across the Christmas Eve skies. Ho, ho, ho indeed.

**SUPER HOOSIER VACATION:** The Super Bowl is not just another football game. This year's event, set for February 5<sup>th</sup> in Indianapolis, will draw hundreds of thousands of crazed fans — some for the actual game but many more for the endless parties and other shenanigans that surround it — to Indy a full week before the first kickoff. That influx is great for local businesses, but it is cramping the style of lawmakers doing the state's business. As the *Ft. Wayne Gazette* reports, most lawmakers from outside the region have lost their accommodations for the days before the game as hotels have given their rooms to higher-paying football fans, forcing the Legislature to take off several days. On the bright side, the hometown Colts' unexpectedly abysmal season has kept the local insanity to a minimum. As Senate pro Tem David Long said last week, the Colts being there "would be crazy." Or maybe just crazier.

**THE NO PLATE SPECIAL:** End of session can be hectic, with all kinds of bills flying around in an effort to beat the closing gavel. But this can lead to mistakes. Case in point comes from the Texas Legislature, which as the *Austin American-Statesman* reports, ended this year's effort by passing a bill that reorganized much of the Lone Star State's vehicle code. Unfortunately, the 234-page bill left out the penalty for driving a vehicle without a license plate, currently a \$200 fine. Oh, driving sans license plates is still a violation, but one without any legal repercussions. The bill's author, Rep. Joe Pickett, has lobbied the state attorney general to interpret the fine as being implied in order to leave the measure with some teeth. The AG has six months to rule — not good given the law goes into effect in less than two and lawmakers don't meet again until 2013. Stay tuned.

— By RICH EHISEN



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