

November 22, 2004

More battles coming?



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Top Story

The races are (mostly) over, but the postmortem is just beginning, as Republicans and Democrats alike try to figure out what they did wrong — and what they did right — on November 2.

SNCJ Spotlight

Scrutinizing the statehouse races

November 2 brought a few big changes to the nation's statehouse landscape, shifting party control in a dozen chambers. And even as state election officials continue trying to sort out exactly what happened on election day — with recounts still pending in numerous statehouse races — political observers have already begun dissecting the reasons why it happened the way it did.



POLITICS IN BRIEF: Organizers in **WEST VIRGINIA** are forming a third political party to give “the truly conservative person” a voice. The Constitution Party will advocate for a smaller federal government that strictly adheres to the U.S. Constitution and “its foundation in Biblical law” (ASSOCIATED PRESS, DOMINION POST [MORGANTOWN]). • Third-party presidential candidate Ralph Nader has requested a recount in several precincts in **NEW HAMPSHIRE**. Nader asked for the recount to address concerns about the accuracy of optical voting machines used in the state (LOS ANGELES TIMES). • Because of a computer problem in one county, **NORTH CAROLINA** may have to hold another statewide election to select its agricultural commissioner. That race was a close one, with fewer than 3,000 votes separating the Republican and Democratic candidates, and state election officials discovered last Tuesday that the county’s computer failed to record the ballots of over 4,000 voters (NEWS & OBSERVER [RALEIGH]).

— *Compiled by KOREY CLARK*

Across state lines

States still counting...and recounting

Although the elections are now three weeks old, many states are still trying to get a final count on their legislative races. In **MONTANA**, for instance, Democrats are anxiously awaiting a recount on the District 12 race in the House, which saw Constitution Party member Rick Jore defeat Democrat Jeanne Windham by a single vote, 1,556 to 1,555. At stake is control of the Treasure State House, which Republicans now hold by a 50-49 edge. Should a recount give Windham the victory, Democrats would gain a tie and a share of power. Dems already hold the Senate as well as the governor’s office, where Democrat Brian Schweitzer takes over for outgoing Gov. Judy Martz (R). Numerous ongoing recounts could also still change party control in the **MAINE** House, where Dems currently hold a three-seat advantage, and in the **IOWA** Senate, which is tied. One of the larger shifts in seats came in **NEW HAMPSHIRE**, where Democrats realized a gain of a whopping 28 seats, improving from 119 to 147. While gains like that are always a welcome thing for any party, you will have to excuse Granite State Dems if they don’t get overly

excited — even with the losses, Republicans still hold 253 seats. Although final counts are still pending, the accompanying chart shows a snapshot of where states stand as of Nov. 18.

— By *RICH EHISEN*

Both Houses controlled by Republicans							
# Chamber control at risk							
State	Govs. party	House			Senate		
		Dem	Rep	O/V	Dem	Rep	O/V
AK	R	14	26		8	12	
AZ	D	22	38		12	18	
FL	R	36	84		14	26	
GA	R	81	99#		22	34	
ID	R	13	57		7	28	
IN	#R	48	52#		17	33	
KS	D	42	83		10	30	
MI	D	52	58		16	22	
MO	#R	66	97		11	23	
ND	R	27	67		15	32	
NH	#D	147	253		8	16	
OH	R	40	59		11	22	
PA	D	93	110		20	30	
SC	R	50	74		20	26	
SD	R	19	51		10	25	
TX	R	63	87		12	19	
UT	R	19	56		8	21	
VA	D	37	60	3	16	24	
WI	D	39	60		14	19	
WY	D	14	46		7	23	



Both Houses controlled by Democrats

State	Govs. party	# Chamber control at risk			Senate		
		Dem	Rep	O/V	Dem	Rep	O/V
AL	R	63	41	1	25	10	
AR	R	71	29		27	8	
CA	R	48	32		25	15	
CO	R	34#	30		18#	17	
CT	R	99	52		24	12	
HI	R	41	10		20	5	
IL	D	65	53		31	27	1
LA	R	67	37	1	24	15	
MA	R	138	21	1	34	6	
MD	R	98	43		33	14	
ME	D	76	73	2	18	17	
MS	R	77	45		29	23	
NJ	D	47	33		22	18	
NC	D	63#	57		29	21	
NM	D	42	28		24	18	
RI	R	60	15		33	5	
VT	R	83#	60	7	21	9	
WA	#R	55	43		26#	23	
WV	D	68	32		21	13	

States with split control

State	Govs. party	# Chamber control at risk			Senate		
		Dem	Rep	O/V	Dem	Rep	O/V
DE	D	15	26		13	8	
IA	D	49	51		25#	25	
KY	R	57	43		15	23	
MN	R	66	68		35	31	1
MT	#D	49	50	1	27#	23	
NV	R	26	16		9	12	
NY	R	104	46		27	35	
OK	D	44	57#		26	22	
OR	D	27	33		18#	12	
TN	D	53	46		16	17#	

- Notes:
1. NE has a non-partisan, unicameral legislature.
 2. The following states did not have legislative elections this year: AL, LA, MD, MS, NJ, VA. Additionally, the MI Senate and MN Senate were not up this year.
 3. O/V indicates 3rd party and/or vacancies.

Source: StateNet database



Budget & taxes

BUDGET BATTLE CONTINUES IN NY: NEW YORK Gov. George Pataki (R) vetoed a bill last week that was aimed at overhauling the state’s famously dysfunctional budget process, which had been overwhelmingly approved by the Legislature. The measure would have established an independent agency to provide revenue estimates (a regular point of contention among the state’s elected officials), shifted the start of the fiscal year from April 1 (a deadline the governor and Legislature have missed for 20 years in a row) to May 1 and required a contingency budget to take effect in the event the new deadline was missed in the future. Pataki said he vetoed the bill because it gave lawmakers an incentive to miss the deadline, which would allow them to throw out his budget plan and come up with one of their own. Unsurprisingly, the move angered lawmakers, who complained that passing the budget reform bill was one of the few things they managed to do this year. Assembly Speaker Sheldon Silver (D) called Pataki “an obstacle to government reform” and urged his fellow lawmakers to override the veto. But, despite the fact that both houses unanimously approved the bill, it’s unclear whether that will happen. Senate Majority Leader Joseph Bruno (R) said only that his caucus would meet “to discuss how we will proceed.”

In related news, the New York Supreme Court took up two landmark cases last Tuesday that could alter the balance of power between the executive and legislative branches in regard to the state budget process. At issue in the two cases — Pataki vs. New York State Assembly and Silver vs. Pataki — is how much latitude the governor has in drafting the budget and how much the Legislature can alter that plan once they receive it. Court-watchers say the cases could be decided before the end of the year. (NEW YORK TIMES, ALBANY TIMES UNION)

CA MOVES CLOSER TO TAXING BY THE MILE: Last Monday, CALIFORNIA Gov. Arnold Schwarzenegger (R) appointed a new director of the Department of Motor Vehicles (DMV) who advocates replacing the state’s gas tax with a levy based on how much residents drive. A growing number of transportation officials are saying that due to the increasing popularity of more fuel-efficient cars, the state’s gas tax — currently 18 cents per gallon — is not keeping up with the state’s road maintenance needs. The numbers appear to bear that out. According to a report earlier this year by the Legislative Analyst’s Office, revenue from the gas tax will have declined 8 percent between 1998 and 2005, while

the number of miles driven by Californians will have increased 16 percent. In addition to bringing in more revenue, officials say the per-mile tax would also enable them to improve traffic flow by taxing drivers more for using higher-traffic roadways during peak hours. The plan

has plenty of critics, however, including supporters of hybrid-fuel cars, who say it would eliminate a major incentive to purchase such vehicles, and privacy advocates, who fear the global positioning satellite (GPS) technology the new system would rely on could be used for other purposes. Consequently, the by-the-mile tax has not yet been endorsed by Schwarzenegger. But the governor's appointment of veteran Caltrans official Joan Borucki as head of the DMV has placed a strong supporter for the idea within the top level of his administration. (LOS ANGELES TIMES)

Upcoming Elections (11/17/2004 - 12/1/2004)

11/30/2004
Alabama Special Election House 47

BUDGETS IN BRIEF: U.S. Rep. John Linder (R-GA), together with 50 co-sponsors, has introduced legislation to replace the federal income tax with a national sales tax. Under the proposal, all goods and services, including food and medical expenses, would be taxed at a rate of 23 percent. Tax experts say that while some changes to the tax code are a certainty, it's not at all clear what they will be. One, however, Bill Raabe, a tax professor at Ohio State University's Fisher College of Business, indicated a national sales tax isn't out of the question. "If it's ever going to happen, now's the time," he said (ASSOCIATED PRESS, THE FORUM [FARGO]). • An **ALABAMA** county circuit judge dismissed a legal challenge to several controversial legislative "pork projects" last week, a decision that, barring an appeal, will allow lawmakers to go ahead with their plans to dole out \$11.7 million in education projects for their districts (BIRMINGHAM NEWS). • Corrections was the fastest growing area of state government in **WISCONSIN** during the 1990s, according to a report by the Wisconsin Taxpayers Alliance. Corrections spending — mainly to open and operate eight prisons — jumped 267 percent since 1992, from \$233 million per year to \$855 million. The Badger State also led the nation in arrest rates (LA CROSSE TRIBUNE). • A group of business executives in **VIRGINIA** has formed a political action committee and raised \$1 million to support Republican state delegates who voted in favor of the tax increase passed during this year's contentious and protracted General Assembly session. The PAC, called Leadership for Virginia, was formed in response to claims that tax opponents will try to oust those delegates in the Republican primaries next spring (WASHINGTON POST).

— *Compiled by KOREY CLARK*

detailed plans to improve virtually every phase of the CYA's operations, including dealing with gangs, treating mentally ill inmates and the use of force by guards and staff. The CYA also agreed to several other short-term solutions, such as separating less dangerous inmates from more violent ones, reducing inmate time in isolation and improving processes for inmates on suicide watch.

The CYA has been rocked with years of controversy and trouble, highlighted last year by the videotaped beatings of two inmates by multiple guards while others watched. There have also been seven suicides and hundreds of other attempted suicides over the last five years. Schwarzenegger said the reforms will return the system to being the national model it once was, saying, "The lawsuit said California should have done a better job with its young offenders, and it was right...we are on the right track now." But not everyone agreed. David Steinhart, a veteran juvenile justice expert and long-time critic of the system, said, "This agreement does not transform the CYA, it merely brings it up to a tolerable level. The danger is that the governor will tie a ribbon around this and call it a day, when there is a lot more that needs to be done to re-engineer the system." A federal judge must still approve the agreement. (LOS ANGELES TIMES)

WILL EXECUTION KILL FLETCHER'S MED LICENSE? A group of Bluegrass State doctors say KENTUCKY Gov. Ernie Fletcher (R), a licensed doctor, violated the American Medical Association's ethical guidelines this month when he signed the execution order for a convicted killer. The group says the AMA clearly prohibits doctors from participating, directly or indirectly, in executions. Fletcher's attorney, John Roach, denied the governor violated the code. "By signing the death warrant, in no way is Gov. Ernie Fletcher participating in the conduct of an execution," Roach said. AMA officials are looking into the matter, but AMA spokesman Dr. Michael Goldrich, chairman of the AMA Council on Ethical and Judicial Affairs, said the code does not normally pertain to non-practicing physicians who are working outside the sphere of medicine. (ASSOCIATED PRESS)

In the Hopper

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

- **Number of 2005 prefiles this week:** **342**
- **Number of 2004 Intros this week:** **533**
- **Number of bills enacted/adopted this week:** **15**
- **Number of 2005 prefiles to date:** **2,277**
- **Number of 2004 Intros to date:** **92,337**
- **Number of enacted/adopted overall in 2004:** **26,185**
- **Total number of measures in State Net database:** **87,645**

— Compiled By GINA HUMMELL
(2003-04 data current as of 11/12/04
Source: State Net)



GOVERNORS IN BRIEF: Although she did not rule out a run for the presidency in 2008, **ARIZONA** Gov. Janet Napolitano (D) said she intends to run for a second term in 2006. Napolitano, 46, also underwent surgery to have an ovarian cyst and her right ovary removed. Her office released a statement that said the cysts appeared to be benign, and she is expected to be back at work this week. Napolitano had breast cancer surgery in 2000 (**ARIZONA REPUBLIC**, **ASSOCIATED PRESS**). • Acting **NEW JERSEY** Gov. Richard Codey (D) signed two executive orders in his first two days in office. The first calls for an overhaul of the Garden State’s mental health system, while the second will provide ethics training for thousands of state employees and ban special fees for lobbyists (**NEW YORK TIMES**). • **WISCONSIN** Gov. Jim Doyle (D) announced plans to spend \$750 million in public and private money to bolster the Badger State’s standing in the burgeoning biotech industry. At least \$375 million of that would go toward building two state-of-the-art embryonic stem cell research centers. The proposal is in direct response to **CALIFORNIA** voters approving \$3 billion in funding for embryonic stem cell research on Nov. 2 (**MILWAUKEE JOURNAL-SENTINEL**).

— *Compiled by RICH EHISEN*

Hot issues

B **USINESS:** Attorneys general in **MASSACHUSETTS**, **CONNECTICUT**, and **NEW HAMPSHIRE** file suit against Simon Property Group, North America’s largest shopping mall owner, alleging that the company’s gift cards include fees and an expiration date that are in violation of consumer protection laws. The company had already filed suit against the three states in federal court, claiming their cards are issued by Bank of America and therefore subject to federal laws covering interstate commerce rather than more restrictive state laws (**FOSTER’S DAILY DEMOCRAT**). • **MICHIGAN**-based retailer Kmart agrees to purchase fellow retail icon Sears, Roebuck and Co. for \$11 billion, a deal that will create the third largest retailer in the nation. With almost 3,500 retail stores, the new company, to be called Sears Holding Corporation, will have around 55 billion dollars in annual sales (**ASSOCIATED PRESS**).

CRIME & PUNISHMENT: A **FLORIDA** court rules that the state’s plan to shift the cost of housing and feeding its juvenile detainees to counties is unconstitutional. The ruling says the state’s effort to have counties foot the \$90 million annual price tag needed a two-thirds majority approval from the Legislature to



pass constitutional muster. The Senate vote achieved the standard, but the House did not (ORLANDO SENTINEL). • The **ILLINOIS** House endorses legislation that protects homeowners who live in areas that allow gun ownership from criminal prosecution for shooting home intruders. The House voted 85-30 to override a veto of the measure from Gov. Rod Blagojevich (D), meaning the bill now becomes Prairie State law (CHICAGO SUN-TIMES). • The **ILLINOIS** Supreme Court shoots down two lawsuits accusing gun manufacturers of knowingly letting guns fall into the hands of criminals. Both rulings were unanimous, but five of the seven justices banded together to urge Prairie State lawmakers to create tougher gun regulations (ASSOCIATED PRESS).

EDUCATION: The University of **CALIFORNIA** board of Regents rejects a proposal to add the category of “multiracial” to the cultural identity portion of student application forms. The proposal’s author, UC Regent Ward Connerly, reasoned that such a designation would allow students more options in defining themselves while also recognizing a growing segment of the student population. Regents countered that the current system follows federal guidelines because it allows applicants to mark as many racial identifiers as they like, and produces more reliable racial data. The vote was 12-1 against (ASSOCIATED PRESS).

Quote...

“The word would be ‘eureka,’ It’s knowing where you are and what you have without trying to guess what a court might do. It’s a monumental day in Arizona water history.”

— **Herb Guenther, director of the ARIZONA Department of Water Resources, reacting to Congressional approval of a settlement of a long-standing water battle between the state and local Indian tribes.**

... unquote

“Why 1 percent of our population should be able to control that much water is beyond reason or comprehension...These Indian tribes are under no compulsion to lease water to the non-Indians. They can either lease or not lease.”

— **Water historian and retired journalist Earl Zarbin voicing a different reaction to the deal. (ARIZONA REPUBLIC)**

ENVIRONMENT: A **NEW JERSEY** appeals court rules that the Garden State environmental commissioner overstepped his authority by blocking a planned hunting season on bears this December. The court ordered commissioner Bradley Campbell to reinstate the hunt and to begin issuing licenses in time for the beginning of the six-day bear season that starts on Dec. 6 (NEW YORK TIMES). • Congress grants final approval to the most far-reaching Indian water settlement in U.S. history. If approved by President Bush, the deal would cede to two **ARIZONA** Indian tribes nearly half of the **COLORADO** River water

originally set aside to service the cities of Phoenix and Tucson, and allow those tribes to lease it back to the cities at a profit. The deal also would reduce Arizona's debt to the federal government for building the canal project that carries water to those cities (ARIZONA REPUBLIC).

HEALTH: The **WEST VIRGINIA** House votes 93-0 to endorse SCR 301, a resolution that authorizes state pharmaceutical officials to move forward with a plan that eventually will allow the state to directly negotiate price discounts with drug manufacturers. The Senate had previously passed the resolution, also on a unanimous vote. Lawmakers say the ultimate goal is to have 10-15 states join them to jointly negotiate discounted prices from drug makers (CHARLESTON GAZETTE).

SOCIAL POLICY: The **WASHINGTON** Supreme Court announces it will finally hear arguments in the first of two lawsuits challenging the Evergreen State's ban on same-sex marriage. The court will begin hearing arguments in March 2005, almost exactly a year after the suits were filed. In each case, a lower court ruled the law to be unconstitutional, but state officials appealed (SEATTLE TIMES). • A U.S. District court blocks **OKLAHOMA** officials from distributing state revenue earned from the sale of specialty "Choose Life" license plates. The injunction comes amidst a lawsuit that challenges the constitutionality of the anti-abortion plates (ASSOCIATED PRESS).

POTPOURRI: The **ILLINOIS** House rejects an attempt to override a veto from Gov. Rod Blagojevich (D) on a bill that would have raised the speed limit for semi-trailer trucks to 65 mph on some Prairie State highways (CHICAGO SUN-TIMES). • A bill that would have allowed **VIRGINIA** to continue on with its decade-long experiment with red light cameras dies in a House committee. The trial period on the cameras expires in June of 2005. Camera supporters say they will reintroduce the legislation next session (WASHINGTON POST). • The **NEW JERSEY** Assembly overwhelmingly approves ACR1, a measure that would amend the state constitution to establish the post of state lieutenant governor. It now goes to the Senate, where it must pass by a three-fifths majority to gain approval. Garden State voters, however, would also have to endorse the measure before it could become law (STAR-LEDGER [NEWARK]).

— *Compiled by RICH EHISEN*



separated by 261 votes (out of more than 2.6 million cast). According to The Associated Press, the cat hair-thin margin has created a vast new world for bloggers, those folks who instantly opine across the Internet. “Like watching a horse race,” says one blogger who often posts as many as 11 updates a day. A recount already is underway. Meanwhile, in CALIFORNIA, yet another legal wrinkle has developed in the weird San Diego mayoral race. As of last Thursday, write-in candidate Donna Frye held a 140-vote lead over incumbent Dick Murphy. But as *California Journal* and the *San Diego Union Tribune* report, a controversy has arisen over some write-ins that may not have been counted because the little bubble next to “write in” was not filled in even though Donna Frye’s name was written in the available space. This legal hassle joins two others filed last week. Expect the winner to be announced just prior to the November 2008 general election.

— By A.G. BLOCK

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